

SANDRA M. CAM, PETITIONER, VS. ORLANDO C. CASIMIRO, IN HIS CAPACITY AS ACTING OMBUDSMAN, MOTHALIB C. ONOS, IN HIS CAPACITY AS CHAIRMAN OF THE PROSECUTION AND MONITORING BUREAU O...

G.R. No. 184130. June 29, 2015

Ponente: SERENO, C.J.

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SERENO, C.J.:

This is a Petition for Certiorari under Rule 65 of the Rules of Court seeking to annul the Resolution[1] dated 9 October 2006 and Order[2] dated 13 February 2008 issued by the Office of the Ombudsman in OMB-C-C-05 -0380-H dismissing the complaint for insufficiency of evidence and denying petitioner's motion for reconsideration, respectively.

PREFATORY STATEMENT

In 2005, herein petitioner Sandra Cam went to the Senate to link members of the First Family to jueteng operations in the Bicol region. She confessed to being a "depository" of jueteng payola for General Restituto Mosqueda. She positively declared that she had personally handed bundles of money to Ignacio "Iggy" Arroyo (now deceased) and Juan Miguel "Mikey" Arroyo — brother-in-law, and son, respectively, of then President Gloria Macapagal-Arroyo.

The Case

On 28 June 2005, petitioner executed her Complaint-Affidavit[3] charging private respondents Iggy Arroyo, Mikey Arroyo and Mosqueda with protecting or coddling jueteng operations under Section 2(k) of Republic Act No. 9287 (R.A. 9287),[4] entitled An Act Increasing the Penalties for Illegal Numbers Games Amending Certain Provisions of P.D. 1602 and for Other Purposes. She accused them of benefitting from jueteng.

Private respondent Mosqueda executed his Counter-Affidavit[5] on 30 August 2005. Petitioner countered with a Reply-Affidavit[6] on 24 October 2005. In turn, respondent Mosqueda filed a Rejoinder-Affidavit[7] on 25 November 2005.

On 27 September 2005, respondent Iggy Arroyo executed his Counter-Affidavit.[8] Petitioner executed her Reply-Affidavit[9] on 21 November 2005.

Private respondent Mikey Arroyo did not file a Counter-Affidavit.

Facts

The conflicting versions of facts as narrated by petitioner and respondent Mosqueda are juxtaposed hereunder. Respondents Iggy Arroyo and Mikey Arroyo proffer a blanket denial of any knowledge or involvement in the controversy. They assert that they have never even met petitioner, seeing her only for the first time in television

when she first identified them to be recipients of jueteng payola.[10]

Petitioner claims that she met respondent Mosqueda sometime in 1998 in the course of her job as liaison officer of the then governor of Masbate, Antonio Kho. She claims that from 1998 to 1999, after having had frequent transactions with Police Security and Protection Office (PSPO) in Camp Crame, she became close to PSPO officials.[11] Respondent Mosqueda admits that he met petitioner in 1998, but only in passing.[12]

A disputed phone call on 1 August 2004 allegedly precipitated the engagement of petitioner as depository of jueteng money. According to her, respondent Mosqueda called her that day to ask her to arrange a meeting with the governors of Bicol at the Makati Shangri-la Hotel. That same day, respondent Mosqueda allegedly met with Governors Jesus Typoco, Raul Lee and Luis Viilafuerte (represented by his brother, Bong) in Makati. Two days later, in Camp Ola, Legazpi, respondent Mosqueda allegedly asked her if she could do him a favor of collecting "the thing," which later became clear to her as referring to jueteng money.[13] Records show that Typoco, Lee and Luis Viilafuerte executed a Joint Affidavit[14] and that Bong Viilafuerte likewise executed an Affidavit[15] categorically denying that he was present in the Shangri-la meeting.

On the other hand, respondent Mosqueda denies making the call and gives a different account of events on 1 and 2 August 2004. He claims that he was in Bicol from 29 July 2004 to 2 August 2004 to assume command as the new Regional Director of the PNP. He denies arranging and attending a luncheon with the governors in Makati on 1 August 2004, as he was the guest of honor at the inauguration of a new police station in Cabusao, Camarines Sur. He presents a Certificate of Appearance to support his alibi. Respondent claims that on August 2, he was informed by his staff that petitioner wanted to give him a courtesy call, and that he obliged because he "wanted to be acquainted with more people as fast as possible." [16]

Petitioner alleges that on 4 August 2004, a certain "Tita Fanny" went to her room in Alicia Hotel to deliver P250,000 from Albay.[17] Within 30 minutes, another person delivered P100,000 from Sorsogon. Petitioner avers that respondent Mosqueda called her that same night to inquire about the money. He allegedly called her up again to inform her that Colonel Gumban would pick it up the next day. Allegedly upon instruction of respondent Mosqueda, petitioner kept P10,000 for herself and gave P340,000 to Col. Gumban. "Tita Fanny" was supposed to have witnessed the delivery. The following day, 5 August 2004, petitioner gave her Metrobank-Batangas and Calapan account details to Col. Gumban upon his request. He was said to have told her that the gambling lords would make deposits to these accounts.[18]

Respondent Mosqueda presented an Affidavit[19] executed by Col. Gumban, in which the latter denied petitioner's allegations; and a Certification[20] from the General Manager of Alicia Hotel to the effect that based on hotel records, no room was registered on August 3 and 4, 2005 under the name of Sandra Cam.

Petitioner discloses that beginning 6 August 2004 until March 2005, weekly deposits were made to her Metrobank accounts; and that within 24 hours, she would turn over the money to respondent Mosqueda either in Bicol or McDonald's Tagaytay.[21] Respondent dismisses this allegation as unbelievable and unsubstantiated.[22]

On two separate occasions, petitioner attests that upon respondent Mosqueda's instructions, she withdrew money from her bank accounts and gave it to him. The first instance was on 30 August 2004 when she prepared P500,000 allegedly for the "hari." The second instance was on 21 September 2004 when she prepared P1,000,000 allegedly for the "bata" and "tiyo." [23]

Petitioner recounts that on 20 October 2004, 21 November 2004, and 20 February 2005, respondent Mosqueda instructed her to withdraw P1,000,000 for each occasion from her Metrobank account, to divide the amount equally, and to place the money in separate envelopes.[24] Respondent Mosqueda calls the attention of the Court

to petitioner's lack of documentary proof to back up the allegations and her failure to properly explain what happened to the P3,000,000.[25]

Petitioner claims that another phone call from respondent Mosqueda paved the way for her personal delivery of bundles of money totaling P900,000 to then Congressmen Iggy and Mikey Arroyo in the second or third week of December 2004.[26]

The circumstances surrounding the deliveries were narrated by petitioner. She reveals that around 3 or 4 p.m., she proceeded to respondent Iggy Arroyo's office located at Room 209 at the North Wing of Congress. Once alone with him, petitioner gave him a brown envelope containing P400,000 in cash. After peeking into the envelope, respondent Iggy Arroyo allegedly asked, "Bakit kulang to ng isa?" Petitioner answered, "Pinapasabi po ni RD na nagbagyo at natigil ang Camarines Norte" Respondent Iggy Arroyo supposedly replied, "Sabihin mo sa boss mo walang bagyo bagyo sa akin, ang pinag usapan ay pinag usapan." [27] Respondent Iggy Arroyo denies these allegations, and records reflect that he presented Affidavits executed by four of his political assistants attesting that they had never seen or encountered anyone by the name of Sandra Cam inside his office.[28]

According to petitioner, after delivering the brown envelope to respondent Iggy Arroyo, she proceeded to the office of respondent Mikey Arroyo located at Room 202 at the South Wing of Congress. Not finding respondent Mikey Arroyo, she was allegedly directed by his staff to the session hall. There she approached him and introduced herself. Respondent Mikey Arroyo allegedly excused himself from the group he was conversing with and brought her near the gallery, where she gave him a gift-wrapped package containing P500,000.[29] Respondent Mikey Arroyo denies that this event occurred. He informs the Court that a criminal case for libel has been filed against petitioner in connection with her statements that he received benefits from jueteng operations.[30]

After the alleged delivery, petitioner claims that she called respondent Mosqueda to report that she had already delivered the "fruits". He allegedly told her in a happy voice, "Maasahan ka talaga." [31]

Aside from cash deliveries, petitioner alleges that the respondent Mosqueda also received an Isuzu D Max and a Toyota Revo from the jueteng payola.[32]

As regards the Isuzu D Max vehicle, petitioner claims that sometime in August 2004, respondent Mosqueda told her that he heard gambling lords were giving vehicles to regional directors. Allegedly, he then told her that he also wanted an Isuzu D Max. Petitioner narrates that on 20 August 2004, she bought an Isuzu D Max and paid for it through a Manager's check for P870,000 and cash amounting to P400,000 given by "Tita Fanny" and a Mr. Tony Ong.[33] Respondent Mosqueda counters that this was another unrealistic story, because if petitioner were to be believed that he was receiving one million pesos per week as jueteng payout, and that he was connected with gambling lords, then he could have bought an Isuzu D Max for himself or asked the gambling lords to deliver one directly to him.[34]

Petitioner discloses that jueteng payola was again used to buy another vehicle for respondent Mosqueda.[35] He admits ownership of the Toyota Revo and petitioner's role in facilitating the transaction, but asserts that he used his personal savings, as well as those of his wife, to buy the vehicle; and that he only accepted the offer of petitioner to negotiate the sale because she knew someone who could give the spouses a big discount on the purchase price.[36]

Petitioner also relates that respondent Mosqueda boasted of his connection to the Presidential Family and his involvement with the Jose Pidal controversy. Petitioner narrates how on 30 October 2004, respondent Mosqueda, while in a meeting with the President, texted her, "Makikita mo kamandag ko sa mga Arroyo;" and "Titingnan ko

galing ni Espinosa." He was referring to Mario Espinosa, who was then the Presidential Assistant for Bicol Affairs. As events turned out later, Mario Espinosa was removed from that position. Respondent Mosqueda also allegedly told petitioner, "Di mo ba alam na kung hindi dahil sa akin bagsak na ang Arroyo Administration?" When asked why, he allegedly answered that it took them weeks to practice Iggy Arroyo to sign as Jose Pidal. Respondent Mosqueda allegedly said, "Ang totoo si FG" and "Ako lang ang may authority mag certify na ang signature ni Iggy ay si Jose Pidal." [37]

Respondent Mosqueda maintains that he never made these representations; and that petitioner was hurling malicious accusations to get back at him for his relentless campaign against jueteng, thereby displacing her financially. [38] He adds that he could not have certified or authenticated the signature of "Jose Pidal", because that was the job of the handwriting expert of the PNP Crime Laboratory, Mely Sorra, who testified before the Senate that respondent Mosqueda did not interfere in her work. [39]

THE RULING OF THE OMBUDSMAN

On 9 October 2006, public respondents dismissed the complaint for insufficiency of evidence.

First, public respondents evaluated the evidence presented by petitioners. They noted that the official receipts covering the purchase of a Toyota Revo in the name of Marilyn Mosqueda, wife of respondent Mosqueda, merely established the actual transaction of the subject vehicle, and nothing more. They ruled that the evidence could not be appreciated to determine the source of funds used to pay for the vehicle, i.e. whether or not the alleged jueteng payola was used as payment. Public respondents held that for an imputation a crime or felony to stand, it must be adequately substantiated by the required quantum of evidence; otherwise, the evidence presented cannot be used as basis for prosecution. [40]

Second, public respondents determined whether the burden of proof had been discharged by petitioner. On the one hand, they observed that the respondents were able to adduce sworn statements of persons allegedly involved in the transaction — Col. Gumbon, Adam Claveria, Jesus Typoco, Jr., Raul Lee, Luis Raymond Villafuerte, and Bong Villafuerte — who explicitly denied having participated in the illegal activities. On the other hand, aside from her own declarations, petitioner miserably failed to controvert the statements by relevant proof. [41]

Third, applying *People v. Ymana*, [42] public respondents held that the uncorroborated and unsubstantiated allegations of complainant would not suffice to determine the existence of probable cause against respondents, more so in the presence of contrary declarations of the allegedly involved personalities in the contested transactions.

In closing, public respondents recalled *Gil v. People*, [43] in which the Court ruled that "the prosecution must rely on the strength of its evidence and not on the weakness of the defense." Public respondents did not give due course to the Complaint in view of petitioner's failure to present sufficient proof to support the accusation against private respondents.

Petitioner filed a Motion for Reconsideration, but it was denied for being a mere rehash of the allegations in the Complaint.

DISCUSSION

The sole issue that confronts the Court is whether public respondents committed grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing petitioner's Complaint for insufficiency of evidence and denying her motion for reconsideration.

After consideration of all the issues and arguments raised by the parties, this Court finds no clear showing of manifest error or grave abuse of discretion committed by the Office of the Ombudsman.

There was no grave abuse of discretion
in ruling that the evidence presented was
insufficient to establish probable cause.

We note that the only documents presented to public respondents, aside from petitioner's pleadings, are the following:

1. Vehicle Sales Invoice for a Revo issued by Toyota Makati Inc. ("Toyota") on 21 January 2005 in the name of Marilyn Mosqueda;^[44]
2. Official Receipt No. 32008 issued by Toyota to Marilyn Mosqueda on 12 January 2005 for the cash payment of the reservation fee for a Revo;^[45]
3. Official Receipt No. 32367 issued by Toyota to Marilyn Mosqueda on 17 January 2005 for the partial cash payment for a Revo;^[46] and
4. Official Receipt No. 32669 issued by Toyota to Marilyn Mosqueda on 21 January 2005 for a full check payment for a Revo.^[47]

For the purpose of filing a criminal information, probable cause has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed, and that respondent is probably guilty thereof.^[48] The determination of the existence of probable cause lies within the discretion of the prosecuting officers after they have conducted a preliminary investigation upon complaint of an offended party.^[49]

A preliminary investigation is in effect a realistic judicial appraisal of the merits of the case; sufficient proof of the guilt of the criminal respondent must be adduced so that when the case is tried, the trial court may not be bound, as a matter of law, to order an acquittal.^[50] While probable cause should be determined in a summary manner, there is a need to examine the evidence with care to prevent material damage to a potential accused's constitutional right to liberty and the guarantees of freedom and fair play.^[51] The need for a careful examination of the evidence is also intended to protect the State from the burden of unnecessary expenses in prosecuting and trying cases arising from false, fraudulent or groundless charges.

Being the complainant, petitioner had the burden of establishing probable cause. Burden of proof is defined in Section 1, Rule 131 of the Rules of Court as "the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law."

In order to engender the well-founded belief that a crime has been committed, the elements of the crime charged should be present. This rule is based on the principle that every crime is defined by its elements, without which there should be - at the most - no criminal offense.^[52]

Petitioner accuses private respondents of receiving benefits in the form of cash and vehicles in the operation of the illegal numbers game of jueteng. However, aside from her testimony, petitioner presented only four documents concerning the sale of a Toyota Revo. Public respondents correctly ruled that the official receipts covering the purchase of a Toyota Revo in the name of Marilyn Mosqueda, wife of respondent Mosqueda, cannot be appreciated to prove that the funds used to pay for the vehicle came from jueteng operations.

There was no grave abuse of discretion
in not filing an Information on the basis

of petitioner's uncorroborated testimony.

The Ombudsman has the discretion to determine whether a criminal case, given its attendant facts and circumstances, should be filed or not. The complaint may be dismissed should the Ombudsman find it insufficient in form or substance, or the Ombudsman may proceed with the investigation if the complaint appears to be in due form and substance.[53] Hence, the filing or non-filing of the information is primarily lodged within the full discretion of the Ombudsman.[54]

Petitioner argues that since she is more credible than any of the private respondents, public respondents committed grave abuse of discretion in not giving due course to her Complaint. What she loses sight of is that mere allegation and speculation is not evidence, and is not equivalent to proof.[55] We are not saying that uncorroborated testimony cannot stand alone. On the contrary, the Court does uphold a finding of guilt based on uncorroborated testimony if the testimony is intrinsically credible, and there is no showing that it was improperly or maliciously motivated.[56]

It must be emphasized that the issue before the Court is whether public respondents, in finding that the evidence is insufficient to declare the existence of probable cause, committed grave abuse of discretion. We find that they did not.

Public respondents gave petitioner many opportunities to substantiate her bare allegations. In fact, public respondents Onos, Padre-Juan and Oliva alerted her of the need for more evidence. In their Evaluation Report[57] dated 8 July 2005, they recommended that the Complaint be referred to the Field Investigation Office for appropriate case build-up.[58]

We note that in her Reply-Affidavit (Re: Respondent Mosqueda's Counter-Affidavit),[59] petitioner alluded to several pieces of documentary evidence she submitted to the Senate in support of her allegations.[60] She assumed that the Office of the Ombudsman already had a copy of the Transcript of Stenographic Notes as well as all of the documentary evidence submitted to the Senate, and made it part of the records of the case.[61] However, the records forwarded to this Court do not contain any other document aside from the sales invoice and official receipts.

In any case, petitioner could have easily reproduced or obtained relevant documents, like bank statements or affidavits, and attached these to her Motion for Reconsideration or subsequent pleadings. In the same Reply-Affidavit, petitioner stated that "[n]o less than the officials of the PSPO will attest to the fact that I was close to them." [62] However, she never did submit any such affidavit. For reasons known only to petitioner and her counsel, they chose not to submit additional evidence.

Petitioner misquoted the Resolution.

The argument that public respondents committed grave abuse of discretion in holding that petitioner was not able to prove respondents' guilt beyond reasonable doubt is untenable, because it stems from a misreading of the assailed Resolution. This was the exact wording of the Resolution: "[T]he instant complaint cannot be given due course in view of complainant's failure to present sufficient proofs to support the accusation against the herein respondents." [63] Nowhere in the Resolution do we find any statement that the Complaint was dismissed because complainant failed to prove the guilt of respondents.

Further, petitioner misquotes public respondents when she alleges that "according to public respondent, petitioner's statements in her Complaint-Affidavit cannot be given credence because it is uncorroborated." [64] Below is the explanation of public respondents quoted verbatim:

Applying [the ruling in *People v. Ymana*] in the instant case, therefore the uncorroborated and unsubstantiated

allegations of the complainant will not suffice to determine the existence of probable cause against respondents, more so in the presence of contrary declarations of the alleged involved personalities in the contested transactions.[65] (Emphasis supplied)

Again, nowhere in the Resolution do we find any statement that petitioner's uncorroborated allegations cannot be given credence. Rather, the Resolution impressed that public respondents had been unable to determine the existence of probable cause because petitioner presented only uncorroborated allegations, which were met with contrary declarations of the alleged involved personalities in the contested transactions.

The Court will not interfere in the

Ombudsman's exercise of discretion.

The extraordinariness of the extraordinary remedy of a petition for certiorari must not be diluted by invocations of grave abuse of discretion as some sort of magic phrase to counter almost every unfavorable decision, every adverse interlocutory order issued by judicial and quasi-judicial authorities.

As officers of the Court, litigators are enjoined to be circumspect about filing petitions for certiorari. This Court deems it necessary to remind its officers that to justify the issuance of the writ of certiorari on the ground of abuse of discretion, the abuse must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility; and it must be so patent as to amount to an evasion of a positive duty, or to a virtual refusal to perform the duty enjoined or to act at all, in contemplation of law, as to be equivalent to having acted without jurisdiction.[66] Grave abuse of discretion is the capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction.[67]

Courts do not interfere in the Ombudsman's exercise of discretion in determining probable cause, unless there are compelling reasons. The Ombudsman's finding of probable cause, or lack of it, is entitled to great respect absent a showing of grave abuse of discretion.

In *Presidential Commission on Good Government v. Desierto*,^[68] the Court explained that the rule of non-interference is rooted in the recognition that the Ombudsman's exercise of investigatory and prosecutory powers is mandated by the Constitution. The rule is also adopted for practicality. Otherwise, courts would be swamped if they have to review the exercise of discretion of public prosecutors each time they decide to file an information or dismiss a complaint.

Nevertheless, the Ombudsman's discretion in determining the existence of probable cause is not absolute.^[69] It remains incumbent upon petitioner to prove that such discretion was gravely abused in a manner that would warrant the Court's reversal of the Ombudsman's findings.

In the absence of any showing of grave abuse of discretion in the present case, this Court cannot reverse the ruling of the Office of the Ombudsman.

WHEREFORE, the instant Petition is DISMISSED, and the assailed Resolution and Order of the Office of the Ombudsman in OMB-C-C-05-0380-H are AFFIRMED.

SO ORDERED.

Leonardo-De Castro, Bersamin, Perez, and Perlas-Bernabe, JJ., concur.

[1] Rollo, pp. 30-62.

[2] Id. at 63-68.

[3] Id. at 69-76.

[4] The Section reads:

Sec. 2. Definition of Terms. - As used in this Act, the following terms shall mean:

x x x x x x x x

k) Protector or Coddler. - Any person who lends or provides protection, or receives benefits in any manner in the operation of any illegal numbers game.

[5] Rollo, pp. 85-108.

[6] Id. at 109-117.

[7] Id. at 591-610.

[8] Id. at 611-615.

[9] Id. at 653-658.

[10] Id. at 191.

[11] Id. at 6.

[12] Id. at 86.

[13] Id. at 7-8

[14] Records, pp. 90-92.

[15] Id. at 171-173.

[16] Rollo, p. 89.

[17] Id. at 8.

[18] Id. at 8-9.

[19] Id. at 439-442.

[20] Id. at 480.

[21] Id. at 9-10.

[22] Id. at 826.

[23] Id. at 10-11.

[24] Id. at 11-16.

[25] Id. at 827.

[26] Id. at 12-13.

[27] Id. at 14.

[28] Id. at 82-84.

- [29] Id. at 14-15.
- [30] Id. at 192.
- [31] Id. at 15.
- [32] Id. at 10, 16.
- [33] Id. at 10.
- [34] Id. at 99-100.
- [35] Id. at 16.
- [36] Id. at 597-598.
- [37] Id. at 73.
- [38] Id. at 402-403.
- [39] Id. at 405.
- [40] Id. at 58.
- [41] Id. at 59.
- [42] 253 Phil. 167 (1989).
- [43] 258 Phil. 23 (1989).
- [44] Id. at 118.
- [45] Id. at 121.
- [46] Id.
- [47] Id. at 120.
- [48] *Kalalo v. Ombudsman*, G.R. No. 158189, 23 April 2010, 619 SCRA 141.
- [49] *Ang-Abaya v. Ang*, 593 Phil. 530, 541 (2008).
- [50] *Perez v. Ombudsman*, 473 Phil. 372 (2004).
- [51] *Tan, Jr. v. Matsuura*, G.R. No. 179003, 9 January 2013, 688 SCRA 263.
- [52] *Ang-Abaya v. Ang*, *supra* note 49 at 542.
- [53] *Vergara v. Ombudsman*, 600 Phil. 26, 41 (2009) citing *Presidential Commission on Good Government v. Desierto*, 563 Phil. 517, 525 (2007).
- [54] Id. citing *Republic v. Desierto*, 541 Phil. 57, 63.
- [55] *Miro v. Mendoza*, G.R. Nos. 172532 and 172544-45, 20 November 2013, 710 SCRA 371.
- [56] *People v. Lamsing*, 318 Phil. 561 (1995) citing *People v. Lorioda*, G.R. No. 93240, 22 January 1993, 217 SCRA 425.
- [57] *Rollo*, pp. 346-349.

[58] Id. at 348.

[59] Id. at 576-585.

[60] Id. at 583.

[61] Id.

[62] Id. at 578.

[63] Id. at 60-61. Emphasis supplied.

[64] Id. at 18.

[65] Id. at 60.

[66] Vergara v. Ombudsman, supra note 53.

[67] Ombudsman v. Heirs of Margarita Vda. De Ventura, G.R. No. 151800, 5 November 2009, 605 SCRA 1,10 citing Velasco v. Commission on Elections, 595 Phil. 1172 (2008).

[68] 553 Phil. 733 (2007).

[69] Ombudsman v. Heirs of de Ventura, supra note 67.

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