

SALVADOR JACULINA, PETITIONER, VS. NATIONAL POLICE COMMISSION (SPECIAL APPELLATE COMMITTEE) AND ATTY. PABLO S. VILLANUEVA, RESPONDENTS.

G.R. No. 68491. August 12, 1991

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari seeking the reversal of the March 21, 1984 decision of the Special Appellate Committee of the National Police Commission affirming in all respects the June 3, 1977 decision in Administrative Case No. 77-0572 of Adjudication Board No. 13 of the same Commission finding the petitioner guilty of grave misconduct and dismissing him from the service with prejudice.

The factual background of the case as summarized by the Special Appellate Committee of the NAPOLCOM is as follows:

"In the evening of September 6, 1976, Manuel 'Boy' Lacson had an appointment at the Disco 2000 with Romeo Lavilla, an accountant of the DBP Bacolod Branch regarding a fishing loan which the former had applied for. Lavilla arrived in the said Disco at 8:40 in the evening. After Lavilla had ascertained that Lacson had not yet arrived he sat in one of the stools at the bar. About 20 minutes later, Jose dela Raga along with Gary Hipolito and Rodolfo Torrato entered the Disco. Lavilla greeted the three. Upon the invitation of Hipolito, Lavilla joined them. Hipolito then ordered a half bottle of scotch whisky and the group started drinking.

"About a half hour later, Manuel 'Boy' Lacson and his driver Jose Porras arrived. Lacson and Porras upon the invitation of Hipolito likewise joined the latter's table. Within the next half hour Nelson Chuatico and Gene Castandielo, came in one after the other, 10 to 15 minutes apart. They also joined Hipolito and Lacson's group.

"At past 10:00 o'clock in the evening, Remo's group composed of Jaculina, Lopez and Carlos 'Otik' Benares son of then Bacolod City Mayor Carlos Benares, came in. Upon seeing 'Boy' Lacson, Lopez went to his table and shook hands with him while Jaculina stood nearby. Pat. Remo and 'Otik' Benares went straight to a vacant table near the corner on the bar side of the Disco. While Lopez and Lacson were conversing Jaculina proceeded to the comfort room. From Lacson's table Lopez proceeded to Remo's table but saw Adolfo Leonardia the Manager of the Disco 2000 and they talked to each other. At this juncture Pat. Jaculina had already joined Pat. Remo in drinking beer. Castandielo then told Lacson of Remo's presence but 'Boy' assured him that nothing is going to happen.

"At this instance, Lopez left Leonardia and called up by telephone. Pat. Remo also left his table and Pat. Jaculina likewise stood up. At that moment Pat. Remo was walking casually towards Boy's table, while the dance was going on and the attention of most was focused at the dance floor. Upon reaching the right side of 'Boy', Pat. Remo who was lefthanded called 'Boy, Boy' and in a split-second of Boy's looking at Pat. Remo, was gunned down. The movement was fast at this point.

"As Pat. Remo fired at Boy, Castandielo was split-second late in noticing it but instantly he stood up to grab the gun of Pat. Remo but was parried by the latter who stepped back and was fired at. Castandielo was hit and

fell back on the floor. Pat. Remo again fired at Boy, and Castandielo again stood up and tried to grab the gun of Remo but the latter again stepped back and fired at Castandielo. Pat. Remo then fired again at the slumped body of Boy, and again, Castandielo stood up and went after Pat. Remo but was hit again by Pat. Remo and Castandielo fell on the floor.

"After the shooting, Pat. Remo stepped out of the Disco followed by Pat. Jaculina. The two took a PU in front of the Sugarland Hotel and later surrendered to the police authorities at the house of Mayor Benares." (Decision, Annex "D" of Petition, Rollo, pp. 38-42; Underscoring supplied).

Castandielo survived the shooting but Lacson died (Ibid.).

As a result of the incident, herein petitioner Salvador Jaculina and Nelson Remo were administratively charged with grave misconduct (violation of General Orders Nos. 6 and 7 in conjunction with Presidential Decree No. 9 or illegal possession of firearm with murder and frustrated murder) by respondent Atty. Pablo S. Villanueva, in his official capacity as Chief of the Investigation Division of the National Police Commission (NAPOLCOM, for brevity), with the Office of the Hearing Officer of the NAPOLCOM at Bacolod City (Rollo, pp. 21-22). A criminal complaint was also filed in the military court for illegal possession of firearm with murder and frustrated murder. In said criminal case, petitioner Jaculina was acquitted while Nelson Remo was meted the mandatory penalty of death by a firing squad (Annexes 'A', 'B' and 'B-1'; Petition, Rollo, pp. 16-20).

A copy of the administrative complaint was duly served on the petitioner who chose not to file an answer. Nonetheless, a formal investigation was conducted because under the NAPOLCOM's Rules and Regulations, petitioner's failure to answer was considered a general denial of the charges.

Petitioner was detained in the PC stockade at Camp Crame, Quezon City, but the hearings were scheduled by the Hearing Officer in Bacolod City. During all the five (5) hearings conducted, petitioner, under military escort, and his counsel were present, except on two scheduled dates when only his counsel attended.

Under proper escort, petitioner attended the hearing on April 20, 1977. He was supposed to present his evidence but his counsel moved to hold in abeyance the reception of evidence until the termination of the criminal case in the military tribunal. The motion was denied by the Hearing Officer who ruled that the pendency of the criminal case was not a bar to the continuation of the hearing in the administrative case. His motion for the reconsideration of such denial having been likewise denied, petitioner's counsel submitted the case for resolution without proffering evidence.

Adjudication Board No. 13, after a thorough study of the records, rendered a decision dated June 3, 1977, holding thus:

"WHEREFORE, this Board finds respondents Patrolmen Nelson Remo, Salvador Jaculina and Joel Dela Raga guilty as charged and are therefore considered DISMISSED FROM SERVICE WITH PREJUDICE." (Rollo, pp. 23-28).

Petitioner's motion for reconsideration of said decision was denied on April 29, 1982. He appealed to the Special Appellate Committee of the NAPOLCOM but in its decision of March 21, 1984 (Rollo, pp. 33-42), said committee affirmed the appealed decision in all respects.

Hence, the instant petition which We treat as a special civil action.

In the resolution of July 24, 1989, the petition was dismissed for failure to sufficiently show that the respondent Commission had committed grave abuse of discretion in rendering the questioned judgment (Rollo, p. 118). But on motion for reconsideration (Rollo, pp. 119-123), the petition was given due course in the resolution of October 16, 1989 and the parties were required to submit simultaneously their respective memoranda within thirty (30)

days from notice thereof (Rollo, p. 125).

The following issues are raised in the petition, to wit:

"(1) Whether or not petitioner was deprived of his constitutional right to due process; and

"(2) Whether or not his administrative culpability was duly established."

The main thrust of this petition is that the questioned decision is null and void because petitioner was deprived of his constitutional right to due process.

Petitioner contends that he was not afforded the opportunity to present his evidence as during the hearing of the administrative case in Bacolod City, he was confined at the PC stockade in Camp Crame, Quezon City, which is several miles away from the place of hearing. He also avers that the decision of the National Police Commission appears to be the product of the tayo-tayo system considering that the deceased Manuel 'Boy' Lacson was the son-in-law of Carmelo L. Agbayani, the chairman of the Special Appellate Committee of the NAPOLCOM which rendered the questioned decision.

The essence of due process is simply an opportunity to be heard, or, as applied to administrative proceedings, an opportunity to explain one's side (Var-Orient Shipping Co., Inc. v. Achacoso, 161 SCRA 732, 736 [1988]), an opportunity amply afforded to the petitioner.

The records show that the hearings were conducted on January 19, 1977, January 20, 1977, March 1, 1977, April 18, 1977 and April 20, 1977; and that except for the hearings on March 1, 1977 and April 18, 1977 when only his counsel, Atty. Rayfrando Diaz, attended, petitioner was always present (Rollo, p. 67). It is, therefore, evident that he was not in any way, deprived of his substantial and constitutional right to due process.

Petitioner's right to due process was also bolstered by the fact that he was represented by counsel (Gamboa v. Cruz, 162 SCRA 642, 651 [1988]). In fact said counsel moved that the reception of evidence be held in abeyance until the hearing of the criminal case in the military tribunal is terminated and at the same time invoked his constitutional right to remain silent. Unfortunately, when the Hearing Officer denied said motion as well as petitioner's motion for reconsideration, petitioner's counsel himself submitted the case for resolution without adducing his evidence (Rollo, p. 40). Unquestionably, petitioner is bound by the action of his counsel in the proceedings in the case and he cannot be heard to complain that the result might have been different had he proceeded differently (Aguila v. Court of First Instance of Batangas, Branch I, 160 SCRA 352, 358 [1988]).

In the same vein, petitioner's charge of bias on the part of the Chairman of NAPOLCOM's Special Appellate Committee is not persuasive. The questioned decision was not arrived at solely by the Chairman. Two other members of the Committee concurred thereto.

As to the second issue, that is, whether or not the administrative culpability of petitioner was duly established, it will be recalled that the administrative complaint filed against petitioner for grave misconduct was based on violation of General Orders Nos. 6 and 7 in conjunction with P.D. No. 9 or illegal possession of firearm with murder and frustrated murder, and that in the criminal complaint filed in the Military Court for said crimes, petitioner was acquitted.

On the other hand, the finding of petitioner's guilt in the administrative complaint by the Special Appellate Committee is solely anchored on the finding of conspiracy based on the following circumstances:

"1. On September 6, 1976, appellant Jaculina and respondent Remo came together to Disco 2000;

"2. Both of them carried firearms fully loaded;

"3. They occupied one table in drinking beer;

"4. When respondent Remo left the table to shoot 'Boy' Lacson herein appellant likewise stood up;

"5. After the shooting both of them immediately stepped out of the Disco;

"6. They took one PU in front of the Sugarland Hotel;

"7. They surrendered to the police authorities at the house of the City Mayor."

It is a rule well-entrenched in our jurisprudence that administrative decisions are entitled to great weight and respect and will not be interfered with by the courts. There are, however, limits to the exercise of administrative discretion. Administrative decisions may be reviewed by the courts upon a showing that the decision is vitiated by fraud, imposition or mistake (underscoring supplied) (*Greenhills Mining Company v. Office of the President*, 163 SCRA 350 [1988]; *Manuel v. Villena*, 37 SCRA 745 [1971]; *Castaneda v. Court of Appeals*, 27 SCRA 186 [1969]).

Ostensibly, the Special Appellate Committee erred when it ruled that conspiracy has been sufficiently established by the circumstances mentioned earlier.

In the case of *People v. Saavedra* (149 SCRA 610 [1987] citing the case of *People v. Custodio* (47 SCRA 289 [1972])), this Court ruled that "conspiracy presupposes the existence of a preconceived plan or agreement and in order to establish the existence of such a circumstance, it is not enough that the persons supposedly engaged or connected with the same be present when the crime was perpetrated." In a more recent case, the case of *People v. Padrones* (G.R. No. 85823, September 13, 1990), this Court stated that "conspiracy transcends companionship."

Treated against such standards, conspiracy has not been successfully established in the case under consideration. Nevertheless, petitioner Jaculina cannot be absolved from liability under the prevailing circumstances. At this juncture, while the High Court is not ordinarily a trier of facts, such factor does not preclude it from evaluating the evidence already submitted to it (*Young, et al. v. Sulit*, G.R. No. 57839, May 9, 1989, En Banc, Minute Resolution on a Motion for Clarification).

As found by the NAPOLCOM, petitioner is guilty of gross misconduct and negligence established by the facts on record although not on the finding of conspiracy.

What is being resolved in this case is petitioner's liability for his acts as a peace officer. His acquittal in the criminal case merely relieved him from criminal liability. It did not in any way carry with it relief from administrative liability (*Police Commission v. Lood*, 96 SCRA 819 [1980]).

A careful review of the records shows that in the instant case, there are facts proven for which petitioner may be held administratively answerable. As correctly culled by the Solicitor General from the NAPOLCOM findings, the following acts of petitioner subject him to administrative liability:

"1. As an officer of the law, petitioner, failed to prevent Pat. Remo from gunning down Lacson, much less arrest him.

"2. He instead ran towards the comfort room at the first burst of gunfire (Annex 'D', p. 4). This is a clear act of cowardice in line of duty for which he should also be held administratively liable.

"3. He is likewise guilty of having taken hard drinks, in this case beer inside a public place (id., p. 3)." (Comment, p. 9, Rollo, p. 72; Memorandum, p. 13, Rollo, p. 143).

While intoxication under Section 19 of Rule III of the Code of Ethics and Professional Conduct of the Rules and

Regulations Governing the Integrated National Police may be considered a minor offense as it does not involve moral turpitude, serious neglect of duty under Section 2, Rule VII of the said Rules and Regulations, is not a minor offense and therefore, any peace officer who commits it exposes himself to the penalty of dismissal. However, the penalty of dismissal imposed on petitioner is not really too harsh for a first offender since his demonstrated cowardice in this case casts dishonor on his job which is to enforce the law.

PREMISES CONSIDERED, the decision of the respondent Special Appellate Committee of the National Police Commission with respect to petitioner's dismissal from the service, with prejudice, is hereby **AFFIRMED**.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

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