

ILUMINADO URBANO AND MARCIAL ACAPULCO, PETITIONERS, VS. FRANCISCO I. CHAVEZ, RAMON BARCELONA AND AMY LAZARO-JAVIER, RESPONDENTS.*G.R. NO. 87977. March 19, 1990*

Ponente: GANCAYCO, J.

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Can the Office of the Solicitor General represent a public officer or employee in the preliminary investigation of a criminal action against him or in a civil action for damages against him? This is the principal issue in these two consolidated Petitions.

G.R. NO. 87977

Sometime in 1988, the petitioners in G.R. No. 87977, namely, Iluminado Urbana and Marcial Acapulco, instituted a criminal case against Secretary Luis Santos of the Department of Local Government as well as Sectoral Representatives Pacifico Conol and Jason Ocampos, Jr. of the Sangguniang Panlungsod of Tangub City, for alleged violation of the provisions of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act. The Complaint against them was filed with the Office of the Ombudsman and was docketed as OSP Case No. 88-02780. The Office of the Solicitor General, through Solicitor General Francisco I. Chavez, Assistant Solicitor General Ramon A. Barcelona and Solicitor Amy C. Lazaro-Javier, entered its appearance as counsel for the said respondents as far as the preliminary investigation of the case is concerned.

By way of a special civil action for prohibition filed with this Court, the said petitioners seek to enjoin the Solicitor General and his associates from acting as counsel for the said respondents in the course of the preliminary investigation. The said petitioners submit that in the event that the corresponding information is filed against the said respondents with the Sandiganbayan and a judgment of conviction is rendered by the said court, the appearance of the Office of the Solicitor General on behalf of the said respondents during the preliminary investigation will be in conflict with its role as the appellate counsel of the People of the Philippines.

In its Comment filed on June 13, 1989, the Office of the Solicitor General manifested that the issue raised by the petitioners had been squarely resolved in favor of the said Office in *Anti-Graft League of the Philippines, Inc. v. Hon. Ortega*[1] and *Solicitor General v. Garrido*. [2]

G.R. NO. 88578

On December 29, 1987, the petitioner in G.R. No. 88578, namely, Nemesio G. Co, filed an Amended Complaint for damages against Solicitor General Francisco I. Chavez, the Businessworld Publishing Corporation, Raul L. Locsin and one John Doe. The Amended Complaint was filed with Branch 165 of the Regional Trial Court in Pasig, Metro Manila and was docketed as Civil Case No. 55379. The Honorable Milagros V. Caguioa was the presiding judge therein.

In sum, the Amended Complaint alleged, inter alia, that the defendant Chavez knowingly, willfully and maliciously published and/or caused to be published certain defamatory imputations against the petitioner in an article which appeared in the December 4, 1987 issue of *Business World*, a periodical publication in Metro Manila, and that he caused the publication thereof by way of an interview characterized by bad faith and actual malice. The petitioner also alleged that the defamatory remarks impute that he was a close associate of former President Ferdinand Marcos and his daughter Imee Marcos-Manotoc and that he was involved in some anomalous transactions relating to the funds of the national government during the time that President Marcos was in office. It appears that at the time of the publication of the questioned article, Solicitor General Chavez was the counsel of the Presidential Commission on Good Government (PCGG), the government agency responsible for the investigation of alleged graft and corrupt practices relating to the former President, his relatives and his close associates.

On February 11, 1988, the private defendants *Business World Publishing Corporation* and *Raul L. Locsin* filed a joint Motion to Dismiss.

On February 12, 1988, the Office of the Solicitor General sought an extension of time to file the required responsive pleading. On March 14, 1988, the said Office filed a Motion to Dismiss on behalf of Solicitor General Chavez. Thereafter, the trial court set the case for oral argument on June 23, 1988.

During the scheduled oral argument, the counsel of the petitioner objected to the appearance of the Office of the Solicitor General on behalf of Solicitor General Chavez. The trial court issued an Order suspending the proceedings and instructed the parties to submit their respective positions on the propriety of the appearance of the said Office for the Solicitor General himself. The parties complied with the instructions of the trial court.

By way of a Motion seeking the disqualification of the Office of the Solicitor General to act as counsel of Solicitor General Chavez, the petitioner manifested to the trial court that he is suing the Solicitor General in his personal capacity for acts which he committed beyond the scope of his authority and as such he cannot be represented by the said Office in the civil suit instituted with the trial court.[3]

On the other hand, the Office of the Solicitor General manifested that the objection raised by the petitioner is an afterthought on account of its belated character, and that this objection notwithstanding, it is authorized to represent any public official even if the said official is sued in his personal capacity pursuant to the unconditional provisions of Presidential Decree No. 478 which defines the functions of the said Office, as well as Executive Order No. 300 issued on July 26, 1987 which made the said Office an independent agency under the Office of the President of the Philippines.[4] In support of this contention, the said Office cited the pronouncement of this Court in *Anti-Graft League of the Philippines, Inc.*[5] The said office also maintained that the cause of action against the Solicitor General is for acts committed by him in his official capacity, i. e., as legal counsel of the PCGG under Executive Order No. 14, series of 1986, and that the assailed actuations of a public official are presumed to have been done in the lawful performance of his duties.[6] In support thereof, the said Office cited the ruling of this Court in *Peralta v. Firme*. [7]

In addition to the arguments above, the Office of the Solicitor General argued that public policy militates against the disqualification of the said Office from representing the Solicitor General in his capacity as a public official because, if it were the other way around, public officials will hesitate to perform their official functions for fear of being haled to court by almost anybody for the purpose of accounting for official acts, not to mention the trouble of having to hire a private lawyer at his own expense in order to defend himself.[8]

The petitioner submitted his Reply thereto, alleging therein, among others, that the argument of the Solicitor General is untenable inasmuch as the expression of his views by way of an interview subsequently featured in a

newspaper article is not an official function of the Solicitor General and that the jurisprudence cited by the Office of the Solicitor General opposes the position it had taken.[9]

In an Order dated November 9, 1988, the trial court denied the Motion of the petitioner for lack of merit.[10] The petitioner sought a reconsideration of the Order. On the other hand, the Office of the Solicitor General opposed the reconsideration sought by the petitioner.[11] The petitioner filed a Reply to the opposition on the part of the said Office[12] which, in turn, filed a Rejoinder to the Reply.[13]

In another Order dated May 26, 1989, the trial court denied the reconsideration sought by the petitioner. The pertinent portion of the said Order is as follows -

"After a careful study, assessment and dissertation of the grounds, arguments advanced by the parties in their respective pleadings now under consideration, as well as the applicable laws and jurisprudence cited therein, the Court has arrived at the inescapable conclusion, and so holds that the plaintiff failed to satisfactorily convince the Court that the Office of the Solicitor General cannot and/or does not have the authority to represent the defendant Francisco I. Chavez in this case, for the simple reason that it is indisputable that at the time said defendant allegedly made the malicious imputations against the plaintiff, he was then and still is the incumbent Solicitor General, and at the same time the counsel for the Presidential Commission on Good Government or PCGG." [14]

Thus, the Order of the trial court dated May 26, 1989 is challenged before this Court on the ground that the same amounts to a grave abuse of discretion amounting to lack of jurisdiction on the part of the trial court.[15] The petitioner now asks the Court to order the Office of the Solicitor General to desist from representing the Solicitor General in the civil suit for damages.

On August 21, 1989, the Office of the Solicitor General filed its Comment on the Petition, reiterating therein its position before the trial court.[16]

On August 31, 1989, the Court resolved to consider the said Comment as the Answer to the Petition and to give due course to the Petition.[17] Nonetheless, on October 4, 1989, the petitioner filed his Reply to the Comment, reiterating therein his arguments raised before the trial court.[18]

The issue raised in G.R. No. 87977 relates to the authority of the Office of the Solicitor General to appear for certain government officials in the course of the preliminary investigation of their case before the Office of the Ombudsman. The issue raised in G.R. No. 88578 pertains to the authority of the said Office to appear for the Solicitor General who was haled to court in a civil suit for damages arising from an alleged defamatory remark which appeared in a newspaper. Both petitioners raise pure questions of law inasmuch as there are no evidentiary matters to be evaluated by this Court. Moreover, if the only issue is whether or not the conclusions of the trial court are in consonance with law and jurisprudence, then the issue is a pure question of law.[19] Thus, the Court resolved to consolidate both Petitions and to treat them as Petitions for certiorari on pure questions of law in accordance with the provisions of the Rules of Court.[20] In due time, both Petitions were deemed submitted for decision.

In resolving both Petitions, the Court must take into account the duties and functions of the Office of the Solicitor General. Presidential Decree No. 478[21] defines such duties and functions, to wit --

"SECTION 1. Functions and Organization. (1) The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. xxx" (Emphasis supplied)

The Office of the Solicitor General submits that on the basis of this provision, it can represent or otherwise defend

any public official without any qualification or distinction in any litigation, and that an interpretation thereof to the effect that it is authorized to represent a public official only when the said official is clearly shown to be sued in his official capacity is erroneous. In short, the said Office argues that inasmuch as the law does not make a distinction as to the type of litigation wherein the said Office can enter its appearance as counsel, there should be no distinction made.[22]

A similar provision can be found in Section 1661 of the Revised Administrative Code. It reads as follows: "As principal law officer of the Government, the Solicitor General shall have the authority to act for and represent the Government of the Philippine Islands, its officers and agents in any official investigation, proceeding or matter requiring the services of a lawyer." Like the cited provision of Presidential Decree No. 478, this provision does not have any qualifying phrase. The argument of the Office of the Solicitor General as regards Presidential Decree No. 478 seems to apply to this provision as well. Executive Order No. 300, series of 1987 cited by the said Office merely reiterates the provisions of the aforementioned Presidential Decree.

In *Anti-Graft League of the Philippines, Inc.*,^[23] this Court pointed out that the phrase "official investigation, proceeding or matter requiring the services of a lawyer" found in Section 1661 of the Revised Administrative Code embraces a preliminary investigation in a criminal case initiated against a public official considering that the law makes no qualification as to the nature or character of the "official investigation" contemplated. The Court emphasized, however, that where the investigation results in an information filed against the public official concerned, then that official may no longer be represented by the Office of the Solicitor General and that, accordingly, he will have to get his own private counsel. Thus, this Court held that the Office of the Solicitor General can represent the public official at the preliminary investigation of his case, and that if an information is eventually filed against the said public official, the said Office may no longer represent him in the litigation. This ruling was reiterated in *Solicitor General v. Garrido*.^[24]

What is the rationale behind this rule which allows the Office of the Solicitor General to represent a public official during the preliminary investigation of his case, and which prohibits the said office from further representing the said public official when an information is filed against him with the appropriate court? In *Anti-Graft League of the Philippines, Inc.*, this Court stressed that in the performance of their duties, public officials can be subjected to numerous suits, whether ill-founded or not, and that by threats of possible criminal prosecution, parties adversely affected by official action can stay the hand of the public official concerned. The Court observed that there may be hesitancy and diffidence in the execution of their duties if public officials are deterred by the thought that they could be brought to court and face criminal charges. The Court concluded that as an assurance against timidity, the Office of the Solicitor General sees to it that the public officials concerned are duly represented by counsel in the preliminary investigation. As to why the public official concerned may no longer be represented by the Office of the Solicitor General, the ostensible reason is this: the said Office may no longer represent him considering that its position as counsel for the accused will be in direct conflict with its responsibilities as the appellate counsel of the People of the Philippines in all criminal cases.

The Court believes that the ruling announced in *Anti-Graft League of the Philippines, Inc.* and reiterated in *Garrido* should be re-examined in the light of the nature of a suit against a public official.

Under Presidential Decree No. 478 *aforecited*, the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. This is as it should be as he is the principal law officer of the Government.^[25]

In *Anti-Graft League of the Philippines, Inc.*, this Court interpreted this to embrace "both civil and criminal

investigation, proceeding or matter requiring the services of a lawyer." [26]

In Garrido, the Court sustained the authority of the Solicitor General to enter his appearance on behalf of public officials charged with violating a penal statute for acts connected with the performance of their official duties. [27]

It is undisputed that the Office of the Solicitor General is the appellate counsel of the People of the Philippines in all criminal cases. As such, the said Office participates in a criminal case only when the same has reached the appellate courts. It is the office of the city, provincial or state prosecutor, as the case may be, and not the Office of the Solicitor General, which attends to the investigation and the prosecution of criminal cases in the first instance.

However, under the doctrine announced in *Anti-Graft League of the Philippines, Inc. and Garrido*, the Office of the Solicitor General is authorized to enter its appearance as counsel for any public official, against whom a criminal charge had been instituted, during the preliminary investigation stage thereof. Nevertheless, in the same case, this Court held that once an information is filed against the public official, the Office of the Solicitor General can no longer represent the said official in the litigation. The anomaly in this paradigm becomes obvious when, in the event of a judgment of conviction, the case is brought on appeal to the appellate courts. The Office of the Solicitor General, as the appellate counsel of the People of the Philippines, is expected to take a stand against the accused. More often than not, it does. Accordingly, there is a clear conflict of interest here, and one which smacks of ethical considerations, where the Office of the Solicitor General, as counsel for the public official, defends the latter in the preliminary investigation stage of the criminal case, and where the same office, as appellate counsel of the People of the Philippines, represents the prosecution when the case is brought on appeal. This anomalous situation could not have been contemplated and allowed by the law, its unconditional terms and provisions notwithstanding. It is a situation which cannot be countenanced by the Court.

Otherwise, if the Solicitor General who represents the state on appeal in criminal cases can appear for the accused public official in a preliminary investigation, then by the same token a provincial or city fiscal, his assistant or any government prosecutor who represents the People of the Philippines at the preliminary investigation of a case up to the trial thereof can appear for an accused public official at the preliminary investigation being conducted by another fiscal, prosecutor or municipal judge. The situation would simply be scandalous, to say the least.

There is likewise another reason, as earlier discussed, why the Office of the Solicitor General cannot represent an accused in a criminal case. Inasmuch as the State can speak and act only by law, whatever it does say and do must be lawful, and that which is unlawful is not the word or deed of the State, but is the mere wrong or trespass of those individual persons who falsely speak and act in its name. [28] Therefore, the accused public official should not expect the State, through the Office of the Solicitor General, to defend him for a wrongful act which cannot be attributed to the State itself. In the same light, a public official who is sued in a criminal case is actually sued in his personal capacity inasmuch as his principal, the State, can never be the author of a wrongful act, much less commit a crime.

Thus, the Court rules that the Office of the Solicitor General is not authorized to represent a public official at any stage of a criminal case. For this reason, the doctrine announced in *Anti-Graft League of the Philippines, Inc. v. Hon. Ortega and Solicitor General v. Garrido*, and all decided cases affirming the same, in so far as they are inconsistent with this pronouncement, should be deemed abandoned. The principle of *stare decisis* notwithstanding, it is well-settled that a doctrine which should be abandoned or modified should be abandoned or modified accordingly. After all, more important than anything else is that this Court should be right. [29]

This observation should apply as well to a public official who is haled to court on a civil suit for damages arising from a felony allegedly committed by him. [30] Any pecuniary liability he may be held to account for on the occasion of such civil suit is for his own account. The State is not liable for the same. *A fortiori*, the Office of the

Solicitor General likewise has no authority to represent him in such a civil suit for damages.

For all these reasons, the argument of the Office of the Solicitor General to the effect that it has the authority to represent or otherwise defend any public official without any qualification or distinction in any litigation pursuant to the unconditional provisions of Presidential Decree No. 478 and the other cited laws is untenable. Applying these principles to the case at bar, the Office of the Solicitor General has no authority to represent Solicitor General Chavez in the civil suit for damages filed against him in the Regional Trial Court arising from allegedly defamatory remarks uttered by him.

The issues raised in these two Petitions have been resolved on the basis of law and jurisprudence as well as the pertinent arguments of the parties concerned. The other points raised by them are irrelevant to the proper disposition of these cases and need not be considered.

The Court is aware of the possibility of public officials being haled to court in an endless array of civil suits. With or without this pronouncement, and considering the nature of a public office in the Philippines vis-a-vis the litigious character of most Filipinos as demonstrated by the number of cases filed in the courts daily, this scenario is a fact that must be accepted. The possibility of being brought to court is an occupational hazard of both the public officer and the citizen, in the same way that every occupation has its own hazards to reckon with. This grim reality notwithstanding, public officials should know that nobody is above the law.

Of course, there is the Citizens Legal Aid Office of the Department of Justice that may be made to assist in the defense of any such public official. As to respondent Francisco I. Chavez, he may appear in his own defense in his private capacity in the action for damages against him. The services of private counsel may also be availed of. And if it is the intention of the State to protect public officials from alleged harassment suits, then the creation of a separate office of government lawyers for this purpose may be in order. But certainly the Office of the Solicitor General can not assume a responsibility in defense of such public officials beyond its statutory authority.

Accordingly, the Court is of the opinion, and so holds that the Office of the Solicitor General is not authorized to represent a public official at any stage of a criminal case or in a civil suit for damages arising from a felony. This pronouncement applies to all public officials and employees in the executive, legislative and judicial branches of the Government.

WHEREFORE, in view of the foregoing, the herein Petitions are hereby GRANTED. The Office of the Solicitor General is permanently prohibited from representing the said respondents in OSP Case No. 88-02780 pending in the Office of the Ombudsman and respondent Francisco I. Chavez in Civil Case No. 55379 pending before the Regional Trial Court of Pasig, Metro Manila. No pronouncement as to costs.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.
Feliciano, J., did not participate in the deliberation.

[1] 99 SCRA 644 (1980).

[2] 100 SCRA 276 (1980)

[3] Pages 36 to 40, Rollo.

[4] Pages 41 to 49, Rollo.

[5] Supra, note 1.

[6] Pages 49 to 52, Rollo.

[7] 101 SCRA 225 (1980).

[8] Pages 53 to 55, Rollo.

[9] Pages 57 to 71, Rollo.

[10] Page 29, Rollo.

[11] Pages 80 to 84, Rollo.

[12] Pages 85 to 95, Rollo.

[13] Pages 96 to 104, Rollo.

[14] Pages 27 and 28, Rollo.

[15] Page 8, Petition; page 9, Rollo.

[16] Pages 111 to 136, Rollo.

[17] Page 190-A, Rollo.

[18] Pages 200, et seq., Rollo.

[19] Torres vs. Yu, 119 SCRA 48 (1982).

[20] Rules 45 and 65, Rules of Court.

[21] Signed into law by President Marcos on June 4, 1974.

[22] Pages 15 and 16, Comment; pages 125 and 126, Rollo.

[23] Supra, note 1.

[24] Supra, note 2.

[25] Section 1661, Revised Administrative Code.

[26] Supra, page 648.

[27] Supra, page 278.

[28] Poindexter v. Greenhow, 114 U.S. 270 (1885).

[29] Phil. Trust Company and Smith, Bell & Co. v. Mitchell, 59 Phil. 30, 36 (1933), cited with approval in Koppel (Phil.), Inc. v. Yatco, 77 Phil. 496, 515 (1946) and Olaguer v. Military Commission No. 34, 150 SCRA 144, 165 (1987).

[30] Article 100, Revised Penal Code.

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