



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **October 7, 2020** which reads as follows:*

“G.R. No. 217483 (PFC Gilbert Omay PA v. Gregorio Sugano Jr., Ruby Sugano-Cabural, Marjorie Sugano-Purgatorio, and Jonathan Cabural)

Antecedents

By complaint affidavits dated December 26, 2007, respondents Gregorio B. Sugano,¹ his daughters Ruby Sugano-Cabural and Marjorie Sugano-Purgatorio,² and son-in-law Jonathan Cabural³ charged petitioner PFC Gilbert Omay before the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices (OMB-MOLEO) for conduct unbecoming of an officer and a gentleman in violation of his oath and the Articles of War.

Sixty-three (63) year-old **Gregorio** essentially alleged: On December 14, 2007, around 3:20 in the afternoon, he was resting outside his house when petitioner arrived with his wife Josefa J. Omay, mother-in-law Rebecca Jumamil, and sisters-in-law Jocelle Jumamil and Judy Enoc and started harassing his family. Petitioner grabbed and dragged Ruby and Marjorie towards Josefa and Judy who suddenly attacked them.⁴

Seeing that his daughters were in danger, he approached and confronted Gilbert, but the latter grabbed his collar, took out a gun, and struck him with it. He fell on the ground, following the strong blow that landed on his face. Unable to stand and with his mouth

- over – nine (9) pages ...

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¹ By Affidavit-Complaint dated December 26, 2007; *rollo*, pp. 70-72.

² By Joint Affidavit dated December 26, 2007; *rollo*, pp. 73-74.

³ By Affidavit dated December 26, 2007; *rollo*, pp. 75-76.

⁴ *Rollo*, p. 70.

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bleeding, he saw petitioner cock the gun, point it at him, and pull the trigger. Fortunately, he was able to dodge the bullet by rolling over to his side when the shot went off. When he finally gathered himself to stand up, he felt another strong blow from what felt like a piece of wood coming from behind, causing him to fall again with extreme pain all over his body.⁵

While on the ground, he saw several bystanders and neighbors who wanted to help him, but petitioner prevented them by threatening to shoot if they moved closer. Petitioner indiscriminately pointed his gun at the crowd who were left with no choice but to freeze in fear. They watched things develop until petitioner fled with his family.⁶

With the attempt on his life and the indiscriminate threats to bystanders with his gun, petitioner violated the Articles of War,⁷ viz.:

Sec. 32. Article ninety-six of Commonwealth Act Numbered Four hundred and eight is hereby amended to read as follows:

"Art. 96. Conduct Unbecoming an Officer and a Gentleman.
— Any officer, member of the Nurse Corps, cadet, flying cadet, or probationary second lieutenant, who is convicted of conduct unbecoming an officer and a gentleman **shall be dismissed from the service.**" (Emphases supplied)

Ruby and Marjorie, and Jonathan⁸ corroborated Gregorio's allegations with their own affidavits.⁹ Respondents also filed criminal charges against petitioner for slight physical injuries, grave threats, and attempted murder.

For their part, **petitioner and Josefa** denied the allegations through their joint **Counter-Affidavit dated May 9, 2008** and riposted: it was Marjorie and Ruby who ganged up on Josefa by grabbing her and pulling her hair. He (petitioner) rushed to the scene to prevent the Sugano sisters from harming his wife. Meanwhile, Gregorio came rushing to the scene, armed with a bolo. Anticipating he could not pacify Gregorio with his bare hands owing to his recent major operations on his battle injuries, he drew his .45 pistol and fired one (1) warning shot in the air to subdue his aggressor. The shot failed to deter Gregorio, thus he punched Gregorio in the face, causing the

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⁵ *Id.*

⁶ *Id.* at 71.

⁷ REPUBLIC ACT NO. 242 - AN ACT TO AMEND CERTAIN PROVISIONS OF COMMONWEALTH ACT NUMBERED FOUR HUNDRED AND EIGHT, OTHERWISE KNOWN AS THE ARTICLES OF WAR.

⁸ By Affidavit dated December 26, 2007; *rollo*, pp. 75-76.

⁹ By Joint Affidavit dated December 26, 2007; *rollo*, pp. 73-74.

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latter to fall on the ground. In her bid to back up her brother-in-law, Jocelle hit Gregorio with an umbrella to prevent him from further pursuing petitioner. At that point he was already retreating to avoid aggravating his injuries.¹⁰

By Joint Counter-Affidavit dated May 6, 2008, **Rebecca, Jocelle, and Judy** corroborated the version of petitioner and Josefa.¹¹

Ruling of the OMB-MOLEO

By Decision¹² dated September 4, 2009, the OMB-MOLEO found petitioner administratively liable for conduct unbecoming of a public officer and recommended his dismissal from the service, *viz.*:

WHEREFORE, finding respondent PFC Gilbert Omay GUILTY of conduct unbecoming a public officer, it is respectfully recommended that said respondent be DISMISSED from the service.

Let a copy of this decision be furnished the Chief of Staff, AFP and the Commanding General, Philippine Army for implementation.

SO ORDERED.

The OMB-MOLEO noted the consistency among witness testimonies establishing that petitioner was armed with a gun at the time of the incident. Too, contrary to petitioner's denials, evidence on record overwhelmingly proved that he struck Gregorio's face with his weapon and fired a shot at his victim but missed.¹³

It rejected petitioner's theory that Gregorio was the aggressor in the scuffle for it was hardly plausible that any person would challenge another who was visibly armed with a gun. Too, petitioner's allegation that Gregorio himself brandished a bolo was not substantiated with evidence.¹⁴

The OMB-MOLEO emphasized that as a member of the Philippine Army and a public officer, petitioner was a visible

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¹⁰ *Rollo*, p. 78.

¹¹ *Id.* at 81-83.

¹² Penned by Graft Investigation & Prosecution Officer II Lyn L. Llamasares, as concurred by Director Eulogio S. Cecilio and approved for recommendation by Deputy Ombudsman for the Military & Other Law Enforcement Offices Emilio A. Gonzalez III and Overall Deputy Ombudsman Orlando C. Casimiro; *rollo*, pp. 84-88.

¹³ *Rollo*, pp. 86-87.

¹⁴ *Id.* at 87.



representation of the law and justice to the people. Accordingly, he should have been the first to abide by the law and set an example for others to follow. His willful acts and behavior during the incident, however, were clear transgressions of the conduct required of public officials. Thus, the OMB-MOLEO recommended that petitioner be dismissed for conduct unbecoming a public officer.¹⁵

Through its Order dated February 28, 2011, the OMB-MOLEO denied reconsideration.¹⁶

Ruling of the Court of Appeals

By Decision¹⁷ dated February 28, 2014, the Court of Appeals affirmed. It ordained:

First. The Ombudsman has the authority to conduct administrative investigation against erring public officers¹⁸ under Section 13(1), Article XI of the 1987 Constitution¹⁹ and Section 19 of RA 7660.²⁰ As embodied therein, the Ombudsman's jurisdiction encompasses all kinds of malfeasance, misfeasance and nonfeasance committed by any public officer or employee during his/her tenure, whether related to the performance of an official duty.²¹

Second. The factual findings of the Ombudsman were supported by substantial evidence. Notably, petitioner admitted that he fired his service gun *to deter Gregorio* and while the latter persisted,

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¹⁵ *Id.* at 87-88.

¹⁶ *Id.* at 89-91.

¹⁷ Penned by Associate Justice Jhosep Y. Lopez, with Associate Justices Edgardo A. Camello and Henri Jean Paul B. Inting (now a member of the Supreme Court), concurring; *rollo*, pp. 33-41.

¹⁸ *Rollo*, p. 37.

¹⁹ Section 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient. (emphasis supplied)

²⁰ AN ACT PROVIDING FOR THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN, AND FOR OTHER PURPOSES:

Section 19. Administrative Complaints. — The Ombudsman shall act on all complaints relating, but not limited to acts or omissions which:

- (1) Are contrary to law or regulation;
- (2) Are unreasonable, unfair, oppressive or discriminatory;
- (3) Are inconsistent with the general course of an agency's functions, though in accordance with law;
- (4) Proceed from a mistake of law or an arbitrary ascertainment of facts;
- (5) Are in the exercise of discretionary powers but for an improper purpose; or
- (6) Are otherwise irregular, immoral or devoid of justification.

²¹ 662 Phil. 45, 52-53 (2011).

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petitioner delivered a blow on Gregorio's face that caused him to fall down.²² More, the Ombudsman relied not only on the affidavits of respondents, but also of other witnesses who were present when the incident occurred.²³

Finally. The Code of Conduct and Ethical Standards for Public Officials and Employees²⁴ declares the state policy to promote a high standard of ethics in public service and enjoins public officials and employees to discharge their duty with utmost responsibility, integrity and competence.²⁵ Any conduct contrary to these standards would qualify as conduct unbecoming of a government employee. As held in *Jamsani-Rodriguez v. Justices Gregory Ong, et al.*,²⁶ **unbecoming conduct** "applies to a broader range of transgressions of rules not only of social behavior but of ethical practice or logical procedure or prescribed method." It encompasses all acts which has a tendency to destroy public respect.²⁷

The Court of Appeals denied reconsideration by Resolution²⁸ dated February 4, 2015.

Present Petition

Petitioner now asks the Court to exercise its discretionary appellate jurisdiction to review and reverse the assailed dispositions of

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²² *Rollo*, pp. 39-40.

²³ *Id.* at 39.

²⁴ RA 6713 AN ACT ESTABLISHING A CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, TO UPHOLD THE TIME-HONORED PRINCIPLE OF PUBLIC OFFICE BEING A PUBLIC TRUST, GRANTING INCENTIVES AND REWARDS FOR EXEMPLARY SERVICE, ENUMERATING PROHIBITED ACTS AND TRANSACTIONS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF AND FOR OTHER PURPOSES.

²⁵ Section 4. Norms of Conduct of Public Officials and Employees. –

(A) Every public official and employee shall observe the following as standards of personal conduct in the discharge and execution of official duties:

x x x x

(b) Professionalism. - Public officials and employees shall perform and discharge their duties with the highest degree of excellence, professionalism, intelligence and skill. They shall enter public service with utmost devotion and dedication to duty. They shall endeavor to discourage wrong perceptions of their roles as dispensers or peddlers of undue patronage.

(c) Justness and sincerity. - Public officials and employees shall remain true to the people at all times. They must act with justness and sincerity and shall not discriminate against anyone, especially the poor and the underprivileged. **They shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest.** They shall not dispense or extend undue favors on account of their office to their relatives whether by consanguinity or affinity except with respect to appointments of such relatives to positions considered strictly confidential or as members of their personal staff whose terms are coterminous with theirs. (Emphasis supplied)

²⁶ 663 Phil. 166, 173-174 (2011).

²⁷ *Rollo*, p. 40.

²⁸ *Id.* at 44-53.

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the Court of Appeals.²⁹ He essentially faults the Court of Appeals for affirming the OMB-MOLEO's Decision even if his alleged infraction was not related to the office or his function, especially as he was on official leave.³⁰

For one, he maintains that although the charge is administrative in nature, the Court should apply rules in criminal proceedings since the present case is an offshoot of the criminal charges against him for slight physical injuries, grave threats, and attempted murder. This administrative case is *at par with criminal law because ultimately it will deprive Gilbert of his means of living.*

The Court of Appeals erred in not applying the equipoise doctrine which should provide guidance in circumstances capable of two interpretations, as here. As such, one which is consistent with the presumption of innocence should prevail. To be sure, Gilbert had no intent to kill for he only fired a lone shot and he desisted from shooting any further. It is an absolatory cause that negates criminal liability.³¹

For another, he does not deny that he committed an infraction or that he *tainted the uniform*, but insists that the penalty of dismissal from service is gravely disproportionate to his offense which was only his first transgression. More, he was on official leave at the time of the incident and the gun he fired was a private service firearm.³² Thus, his acts could neither be clothed with public function nor contemplated by his oath of office and uniform.³³

In their *Comment*³⁴ dated April 26, 2017, respondents point out that the present petition is a mere rehash of all the issues, arguments and grounds that have been duly resolved by the OMB-MOLEO and the Court of Appeals. Too, they sufficiently established their case with substantial evidence.³⁵ To be sure, petitioner himself admitted his liability, albeit the recommended penalty was allegedly too harsh. Respondents, nevertheless, maintain that the penalty is supported by the Court's ruling in *Samson v. Restrivera*.³⁶

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²⁹ *Id.* at 3-31.

³⁰ *Id.* at 15.

³¹ *Id.* at 17-18.

³² *Id.* at 20-21.

³³ *Id.* at 22-23.

³⁴ *Id.* at 212-219.

³⁵ *Id.* at 212-216.

³⁶ *Supra*, note 21.

Threshold Issue

Did the Court of Appeals commit reversible error in affirming petitioner's liability for conduct unbecoming of a public officer and the corresponding penalty of dismissal imposed on him?

RULING

The Court resolves to DENY the petition for failure to sufficiently show that the Court of Appeals committed reversible error in rendering its assailed dispositions as to warrant this Court's exercise of its discretionary appellate jurisdiction.

Petitioner maintains that the standard of proof beyond reasonable doubt in criminal proceedings must be applied despite acknowledging that the present charge against him is administrative in nature. He, too, insists that the penalty of dismissal from the service is not commensurate to his infraction.

We are not persuaded.

It is not up to the parties to determine the quantum of proof required in the proceedings. For the hierarchy of evidentiary values has long been observed and respected in our jurisprudence.

In administrative proceedings, only substantial evidence or that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion is required. More, factual findings of quasi-judicial agencies are generally accorded respect and even finality by this Court, if supported by substantial evidence, in recognition of their expertise on the specific matters under their consideration.³⁷ *Quiambao v. CA* elucidates:

Thus, factual determinations x x x affirmed by the Court of Appeals are undoubtedly beyond review and conclusive upon this Court, they being triers of facts. **The congruence in their conclusion forecloses any possibility of reversible error or misappreciation of facts. Such being the case, we cannot but affirm their common conclusion as petitioner failed to advance substantial and convincing evidence and arguments that will merit the reversal of prior decisions on the case.**

Here, petitioner failed to adduce substantial and convincing evidence to merit a reversal of the factual findings of the OMB-

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³⁷ *Quiambao v. CA, et al.*, 494 Phil. 16, 38-39 (2005).

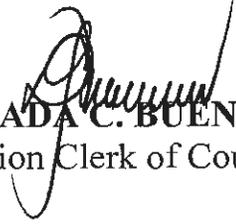
MOLEO as affirmed by the Court of Appeals. On the contrary, he does not even deny as he in fact admits his transgression, albeit argues that the recommended penalty was not commensurate to his offense. Compounded with the other evidence on record, his defenses readily crumble. On this score, there is no reason to apply the rule on equipoise of evidence. For there is no doubt in whose favor the evidence on record preponderate.

As consistently held below, petitioner is guilty of conduct unbecoming of a public officer which is, indeed, punishable by dismissal from the service regardless of any attendant aggravating or mitigating circumstance, *viz.* :

Art. 96. Conduct Unbecoming an Officer and a Gentleman. — Any officer, member of the Nurse Corps, cadet, flying cadet, or probationary second lieutenant, who is convicted of conduct unbecoming an officer and a gentleman **shall be dismissed from the service.**

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court


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