



Republic of the Philippines  
Supreme Court  
Baguio City

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated April 15, 2015, which reads as follows:*

**“G.R. No. 207673 (*Tirso R. Mallare, Jr. vs. Mercy B. Baula*). – This resolves the petition for review on *certiorari*<sup>1</sup> filed by petitioner Tirso R. Mallare, Jr. (Mallare) to assail the Decision<sup>2</sup> dated August 30, 2012 and Resolution<sup>3</sup> dated May 22, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 115404. The CA affirmed the Decision<sup>4</sup> dated August 7, 2007 of the Office of the Ombudsman (OMB) in OMB-P-A-05-1101-I, finding Mallare guilty of grave misconduct and imposing upon him the penalty of dismissal from the service, with accessory penalties.**

In 2005, Mallare, a senior police officer 1, was charged with grave misconduct before the OMB for his alleged participation in the murder in 1989 of the parents and cousin of herein respondent Mercy B. Baula (Baula). It was claimed that Baula was only 16 years old when on December 30, 1989, at about 12:30 a.m., she heard noise from outside their home in *Barangay Pawa, Lagangilang, Abra*. She peeped through a slit in their door and saw Mallare standing near their house as two other persons, Constantino Lopez and Amante Divina, carried long firearms and approached the stairway to their house. After a few moments, the house was struck by gunfire that hit her parents, Lolita and Teofilo Baula, and caused their instantaneous death. 9-year-old Alberto Balwang, Jr. (Balwang), cousin of Baula, was also hit by a bullet. Baula wanted to bring Balwang to a hospital but decided not to do so for fear that their assailants would see and kill her, too. She was able to bring Balwang to a neighbor’s house, but the young boy still died thereafter.<sup>5</sup>

<sup>1</sup> *Rollo*, pp. 2-14.

<sup>2</sup> Penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Amy C. Lazaro-Javier and Leoncia R. Dimagiba concurring; *id.* at 16-25.

<sup>3</sup> *Id.* at 26-28.

<sup>4</sup> Issued by Graft Investigation and Prosecution Officer Marissa S. Bernal; *id.* at 29-32.

<sup>5</sup> *Id.* at 17.

Baula did not report the incident to police authorities until on July 26, 2005, when she executed a sworn statement<sup>6</sup> before the Abra Police Provincial Office. She remained mum on the incident because of fear for her life, believing that some of the assailants were active members of the Citizens Armed Forces Geographical Unit. She supposed that the attack to her family was prompted by revenge, after Mallare suspected that his brother-in-law was killed by a brother of Baula.<sup>7</sup>

Mallare denied the charge against him. He claimed that on December 30, 1989, he was at his brother-in-law's wake in Poblacion, Lagangilang, Abra, which was about 10 kilometers away from the place of the killings. He presented the joint affidavit of Paquito Pagluan, Marissa Pagluan, Danilo Gonzales and Denia Alucbay, who allegedly saw him at the wake from the afternoon of December 30, 1989 until the next day. To further discredit the claim of Baula, Mallare cited her failure to see the persons who actually fired gunshots at their residence, and the fact that her sworn statement was executed several years from the time of the incident.<sup>8</sup>

In a Decision<sup>9</sup> dated August 7, 2007, the OMB found Mallare guilty of the charge. It gave credence to Baula's account of the incident, as against the denial and *alibi* that was presented by Mallare. Thus, the dispositive portion of the OMB's decision reads:

**WHEREFORE**, respondent *SPO1 TIRSO MALLARE* is hereby found **GUILTY** of **GRAVE MISCONDUCT** and thus meted the penalty of **Dismissal from the Service**, pursuant to Section 52 (A), Rule IV, Uniform Rules on Administrative Cases in the Civil Service, with the accessory penalties of forfeiture of retirement benefits and perpetual disqualification from reemployment in the government service pursuant to Section 58, Rule IV of the same Uniform Rules on Administrative Cases in the Civil Service.

Let a copy of this Decision be furnished the Chief, Philippine National Police, for implementation.

**SO DECIDED.**<sup>10</sup>

Mallare's motion for reconsideration<sup>11</sup> was denied *via* an Order<sup>12</sup> dated September 29, 2009. Unyielding, Mallare appealed to the CA.<sup>13</sup>

On August 30, 2012, the CA rendered its Decision<sup>14</sup> affirming the decision of the OMB. The appellate court explained that the circumstances

<sup>6</sup> Id. at 36-37.

<sup>7</sup> Id. at 37.

<sup>8</sup> Id. at 18.

<sup>9</sup> Id. at 29-32.

<sup>10</sup> Id. at 31-32.

<sup>11</sup> Id. at 56-67.

<sup>12</sup> Issued by Special Prosecution Officer Jorge S. Manaois, Jr.; id. at 33-35.

<sup>13</sup> Id. at 68-83.

<sup>14</sup> Id. at 16-25.

surrounding the killing of Baula's family established that Mallare was a conspirator to the commission of the crime and thus, should be held equally responsible for the acts of his co-conspirators.<sup>15</sup> Mallare moved to reconsider,<sup>16</sup> but this was denied by the CA in its Resolution<sup>17</sup> dated May 22, 2013. Hence, this petition.

The Court denies the petition. The CA committed no reversible error in affirming the OMB's finding that Mallare was guilty of grave misconduct.

It is undisputed that Mallare was already a policeman at the time that the relatives of Baula were killed. For an act to constitute misconduct, it must have a direct relation and be linked to the performance of his official duties.<sup>18</sup> In grave misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rules must be established.<sup>19</sup> Substantial evidence is sufficient to establish the offense. By substantial evidence is meant such amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion.<sup>20</sup>

In the assailed decision, the CA fully explained the acts of Mallare which constituted grave misconduct, taking particular notice of the following circumstances:

- 1) [Baula] saw the three conspirators outside her house (at the backyard) on 30 December 1989 with no apparent lawful purpose/reason for being there and at such an unholy hour, that was, at 12:30 in the morning;
- 2) While sworn to enforce the law and to protect and serve the innocent as police officer, SPO1 [Mallare] did not lift a finger to prevent [Lopez] and [Divina] from riddling [Baula's] house with bullets shot from their long firearms;
- 3) After the shooting, [Mallare] did not extend any aid to the victims of the crime; and,
- 4) [Mallare] did not report the incident to his superiors so that the perpetrators may be promptly brought to justice.<sup>21</sup>

In his petition, Mallare insists on the failure to establish during the proceedings that he conspired with the killers of Baula's relatives. Mallare further harped on his *alibi* that he was at some other place when the killings

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<sup>15</sup> Id. at 20-21.

<sup>16</sup> Id. at 131-135.

<sup>17</sup> Id. at 26-28.

<sup>18</sup> *Gupilan-Aguilar v. Office of the Ombudsman*, G.R. No. 197307, February 26, 2014, 717 SCRA 503, 523.

<sup>19</sup> *Office of the Ombudsman v. Miedes, Sr.*, 570 Phil. 464, 473 (2008).

<sup>20</sup> *Office of the Court Administrator v. Lopez*, 654 Phil. 602, 607 (2011).

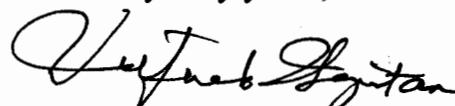
<sup>21</sup> *Rollo*, pp. 21-22.

happened.<sup>22</sup> These arguments, however, involve factual issues that are beyond the scope of a petition for review on *certiorari*. In a petition under Rule 45 of the Rules of Court, the Court addresses only questions of law. It is not the Court's function to analyze or weigh the evidence, which tasks belong to the lower courts. The Court is confined to review of errors of law that may have been committed in the judgment under review.<sup>23</sup> In relation to this principle, the settled rule is that the findings of fact of administrative bodies, if based on substantial evidence, are controlling on the reviewing authority. In such case, it is not for the appellate court to substitute its own judgment for that of the administrative agency on the sufficiency of the evidence and the credibility of the witnesses.<sup>24</sup>

In any event, the Court finds no cogent reason to deviate from the findings and conclusions of the CA, which were consistent with the OMB's own declarations. The established facts were duly supported by Baula's account of what transpired at and within the vicinity of their residence on December 30, 1989. Baula's credibility as a witness was not adversely affected by the arguments of Mallare. She fully explained her fear that prompted her not to report the matter to police authorities for several years since its occurrence. The defenses presented by Mallare, on the other hand, were weak and self-serving as they pertained to mere denial and *alibi*. The joint affidavit of the persons who were at the wake of Mallare's brother-in-law even merely provided that they saw Mallare there since the afternoon of December 30, 1989. Even granting that he was at the wake also on the early morning of December 30, 1989, it was not impossible for him to have gone first to the place of Baula's residence, given the short distance of only about 10 kilometers between these two places.

**WHEREFORE**, the petition is **DENIED**. The Decision dated August 30, 2012 and Resolution dated May 22, 2013 of the Court of Appeals in CA-G.R. SP No. 115404 are **AFFIRMED**." (Villarama, Jr., J., on leave; Mendoza, J., designated as Acting Member per Special Order No. 1966 dated March 30, 2015.)

Very truly yours,

  
**WILFREDO V. LAPITAN**  
Division Clerk of Court

<sup>22</sup> Id. at 4-5.

<sup>23</sup> *Far Eastern Surety and Insurance Co., Inc. v. People*, G.R. No. 170618, November 20, 2013, 710 SCRA 358, 368.

<sup>24</sup> *Medina v. Commission on Audit, et al.*, 567 Phil. 649, 663 (2008).

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