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Republic of the Philippines
Supreme Court
Manila
FIRST DIVISION

CAPT. JOMAR B. DAQUIOAG,
Petitioner,

G.R. No. 228509

Present:

- versus -

BERSAMIN, C.J.,
PERLAS-BERNABE,*
GESMUNDO,**
CARANDANG, and
ZALAMEDA,* JJ.**

OFFICE OF THE OMBUDSMAN
and HADJI SALAM M. ALABAIN,
Respondents.

Promulgated:

OCT 14 2019

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DECISION

CARANDANG, J.:

Before this Court is an Amended Petition for Review on *Certiorari*¹ filed by petitioner Captain Jomar B. Daquioag (Capt. Daquioag) assailing the Decision² dated August 10, 2015 and Resolution³ dated November 22, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 119051. The CA affirmed the Decision⁴ dated November 27, 2009 and Order⁵ dated December 1, 2010 of the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices (OMB-MOLEO) in OMB-P-A-09-0099-B, finding Capt. Daquioag guilty of grave misconduct and imposing upon him the penalty of dismissal from service.

* On official business.

** Acting Working Chairperson.

*** Designated as Additional Member of the First Division per Special Order No. 2712.

¹ *Rollo*, pp. 123-138. The original petition (pp. 11-26) was amended pursuant to the Court's Resolution dated June 6, 2018 (p.116).

² Penned by Associate Justice Eduardo B. Peralta, Jr., with Associate Justices Noel G. Tijam (Former Member of this Court) and Francisco P. Acosta, concurring; id. at 57-75.

³ Id. at 100-101.

⁴ Penned by Graft Investigation and Prosecution Officer Dynal I. Camba and approved by Overall Deputy Ombudsman Orlando C. Casimiro; id. at 32-35.

⁵ Id. at 37-40.

The Antecedents

On August 10, 2008, Hadja Nihma Alabain (Hadja Alabain), her grandson Qamar Mujanil⁶ (Mujanil), nephew Munajin Alabain (Alabain), and farm workers Julito Maghilum (Maghilum), Ronald Francisco (Francisco), his nephew Robert Alviar (Alviar), and Francisco's son Jaivin Palces (Palces) were on their way home from the farm of Hadja Alabain's husband, Hadji Salam Alabain (Hadji Alabain), in Baas, Lamitan, Basilan, when they saw patrolling Philippine Marine soldiers led by Capt. Daquioag.⁷ Francisco threw away the shotgun he was holding, raised his hands, and shouted "civilian" but the soldiers still fired upon them.⁸ As a result, Alviar died⁹ while Palces sustained a minor injury. Hadja Alabain and Mujanil were subjected to one hour of interrogation. They were allowed to go home afterwards but their shotgun and farm implements were confiscated. Two days after the incident, the carabao that Alviar was riding died.¹⁰

On August 20, 2008, Hadji Alabain and Hadja Alabain together with Spouses Diosdado and Evelyn Alviar (Spouses Alviar) filed a complaint against Capt. Daquioag, among others, before the Commission on Human Rights (CHR). Hadji Alabain and Hadja Alabain, Francisco, Maghilum, Palces, Mujanil, Alabain, and Spouses Alviar executed affidavits in support thereof.¹¹

On December 11, 2008, the CHR issued a Resolution¹² recommending that the case be forwarded to the OMB-MOLEO for the filing of appropriate criminal and administrative charges against Capt. Daquioag and his co-respondents. The CHR held that Capt. Daquioag and his co-respondents failed to verify that their target is a military objective. The attack upon Alviar and his companions was unjustified because they were civilians and non-combatants.¹³

Ruling of the OMB-MOLEO

In its Decision¹⁴ dated November 27, 2009, the OMB-MOLEO found Capt. Daquioag guilty of grave misconduct and imposed upon him the penalty of dismissal from the service. The OMB-MOLEO directed the Secretary of the Department of National Defense (DND Secretary) and the Commanding General or Commandant of the Philippine Marine Corps (PMC Commandant) to implement the decision.¹⁵

⁶ Named "Mujaril" in other parts of the *rollo*.

⁷ *Rollo*, p. 32.

⁸ *Id.* at 30.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 58.

¹² Penned by Legal Officer Brendo D. Morales and approved by Regional HR Director Jose Manuel S. Mamauag; *id.* at 30-31.

¹³ *Id.* at 31.

¹⁴ *Id.* at 32-35.

¹⁵ *Id.* at 34.

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The OMB-MOLEO ruled that there was substantial evidence against Capt. Daquioag.¹⁶ He was positively identified by Hadja Alabain as the leader of the group who shot them and it was not shown that Hadja Alabain had ill-motive or bad faith against him. Even though Master Sergeant Urbanito G. Tomas, Technical Sergeant (TSgt.) Edwin Z. Victa, TSgt. Warlito V. Abalos, and Private First Class Bernie S. Baloca signed as witnesses in Capt. Daquioag's affidavit to affirm his claim that he was at their camp when the incident took place, the OMB-MOLEO was not convinced that it was physically impossible for him to be at the place of the incident since the camp is also in Lamitan. In addition, members of the operating troops did not corroborate his claim that they were not with him when the incident took place. The OMB-MOLEO was likewise not persuaded that Capt. Daquioag's group encountered armed members of the Moro Islamic Liberation Front (MILF). Two of the members of Alviar's group were minors and only Alviar carried a shotgun. Hadja Alabain even sought financial assistance from their office to transfer Alviar's remains and to recover the shotgun. As such, Alviar and his companions were not members of the MILF and were not a threat to the soldiers.¹⁷

Capt. Daquioag's failure to perform his duties and skills with the highest degree of excellence, professionalism, intelligence, and skill resulted in the death of Alviar and sowed fear in minors Mujanil and Palces. His failure to prevent the assault was found inexcusable.¹⁸ Capt. Daquioag filed a motion for reconsideration but it was denied¹⁹ so he filed petition for review with the CA.

Ruling of the CA

On August 10, 2015, the CA rendered its Decision²⁰ denying respondent's petition and affirming the OMB-MOLEO.²¹ *First*, the CA held that the OMB-MOLEO was authorized to penalize Capt. Daquioag and to order the DND Secretary and the PMC Commandant to implement his dismissal under Republic Act No. (R.A.) 6770,²² otherwise known as the Ombudsman Act of 1989.²³ *Second*, there was substantial evidence to prove that Capt. Daquioag was the leader of the group that fired upon Alviar. Hadja Alabain positively identified him while he failed to prove that he was not present when the incident took place, which was more or less five kilometers away from the south of the camp. The CA agreed with the OMB-MOLEO that the assault led by Capt. Daquioag on Alviar and his group constitutes grave misconduct.²⁴ Despite Hadji and Hadja Alabain, Maghilum, Alabain, Mujanil, Francisco, and Palces executing a joint affidavit of desistance before the Officer-In-Charge-City Prosecutor of Lamitan City on August 2011, the CA

¹⁶ Id. at 32.

¹⁷ Id. at 33.

¹⁸ Id. at 34.

¹⁹ Id. at 37-39.

²⁰ Id. at 57-75.

²¹ Id. at 74.

²² "An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for Other Purposes," approved on November 17, 1989.

²³ *Rollo*, pp. 61-67.

²⁴ Id. at 67-71.

still upheld the penalty of dismissal. This is in accordance with Our ruling in *Ombudsman v. Medrano*²⁵ that the execution of affidavits of desistance which resulted in the dismissal of criminal cases will not alter the finding on the administrative liability of the respondent.²⁶

Capt. Daquioag filed a motion for reconsideration but it was denied by the CA. Accordingly, he filed a petition before this Court to assail the ruling of the CA. He explained that he was then the Civil Military Officer (CMO) of Marine Battalion Landing Team 7 (MBLT-7). As CMO, he was tasked to foster a good relationship between the military and the public and was prohibited from engaging in armed combat.²⁷ Lieutenant Colonel Leonard Vincent D. Teodoro (LtCol. Teodoro), commanding officer of the MBLT-7, and 2nd Lieutenant Rod Bryan S. Eribal (2Lt. Eribal), commanding officer of the 27th Marine Company of the MBLT-7, executed their respective Affidavits²⁸ to attest that Capt. Daquioag was not involved in the firefight on August 10, 2008. He only accompanied LtCol. Teodoro to the scene at 6 p.m. to collect the body of one enemy who was killed in action, who turned out to be Alviar, and to take it to the City Hall for proper disposition. The Special Operations Platoon-7 commanded by 2Lt. Eribal and the 37th Marine Company commanded by First Lieutenant Reyson O. Talingdan (1Lt. Talingdan) were the ones involved in the encounter with the MILF.²⁹ Capt. Daquioag further argues that the CA erred in disregarding the joint affidavit of desistance.³⁰

The OMB filed its Comment³¹ wherein it argued that the petition raises questions of fact which are not covered by a petition for review under Rule 45 of the Rules of Court.³² In any event, the OMB-MOLEO was correct in holding Capt. Daquioag liable for grave misconduct. He was positively identified by Hadja Alabain as the leader of the group who shot Alviar. Capt. Daquioag did not submit sufficient evidence to dispute this.³³ With respect to the joint affidavit executed in the criminal case, it was a mere afterthought. It has no effect on Capt. Daquioag's administrative liability which is different and distinct from his criminal liability.³⁴ The OMB also pointed out that Hadja Alabain did not inspect Capt. Daquioag's exhibits which was the basis for the affiants' declaration that he was not the one who led the attack against them. Therefore, the joint affidavit is unreliable.³⁵

Issue

Whether the CA erred in upholding the finding of grave misconduct against Capt. Daquioag and ordering his dismissal from the service.

²⁵ 590 Phil. 762 (2008).

²⁶ *Rollo*, pp. 73-74.

²⁷ *Id.* at 129-130.

²⁸ *Id.* at 94-95.

²⁹ *Id.* at 130-132.

³⁰ *Id.* at 133-136.

³¹ *Id.* at 239-259.

³² *Id.* at 247.

³³ *Id.* at 250-251.

³⁴ *Id.* at 252.

³⁵ *Id.* at 254.

Ruling of the Court

The petition is meritorious.

Section 27 of R.A. 6770 provides that “[f]indings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive.” As such, this Court generally accords great respect and even finality to the findings of the Office of the Ombudsman.³⁶

Petitions for review on *certiorari* should be limited to questions of law. However, there are exceptions to this well-established rule wherein this Court may rule on questions of fact, some of which are: (1) when the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is a grave abuse of discretion; and (4) the judgment is based on a misapprehension of facts.³⁷

In this case, the CA and the OMB-MOLEO relied on the statement of Hadja Alabain that Capt. Daquioag was the leader of the group that fired upon her and her companions. According to the CA and the OMB-MOLEO, substantial evidence or relevant evidence, which a reasonable mind might accept as adequate to support a conclusion,³⁸ was satisfactorily presented in this case. We disagree.

Our perusal of Hadja Alabain’s affidavit reveals that she did not state when she saw Capt. Daquioag or how she was able to identify him. She said that more or less 100 armed men located around 20 feet away fired upon them. She did not aver that Capt. Daquioag was one of these men. In fact, Hadja Alabain mentioned him in her affidavit only once, stating “That I executed this affidavit to attest to the truthfulness of the foregoing statements and to file appropriate charges against the Marine personnel led by Capt. Jomar Daquioag, PN (M).”³⁹ None of her companions corroborated her statement that Capt. Daquioag commanded the soldiers who attacked them.⁴⁰ Hadji Alabain, who was not present when the incident occurred, was the only one who said in his affidavit that Capt. Daquioag led the soldiers during the incident.⁴¹ Considering this, the CA and the OMB-MOLEO unduly gave weight to Hadja Alabain’s identification of Capt. Daquioag.

Capt. Daquioag’s explanation that as the CMO of the MBLT-7 he was prohibited from engaging in armed combat and, as such, he did not participate in the armed conflict on August 10, 2008, was more credible. LtCol. Tedoro not only affirmed Capt. Daquioag’s statement but also identified 1Lt. Talingdan and 2Lt. Eribal as the ones who were truly in charge of the troops involved [in] an armed encounter with the MILF.⁴² 2Lt. Eribal himself

³⁶ *Diaz v. Office of the Ombudsman*, G.R. No. 203217, July 2, 2018.

³⁷ *Office of the Ombudsman v. Bernardo*, 705 Phil. 524, 534-535 (2013).

³⁸ *Miro v. Vda. de Erederos*, 721 Phil 772, 787 (2013).

³⁹ *Rollo*, p. 96.

⁴⁰ *Id.* at 311-314, 316.

⁴¹ *Id.* at 308.

⁴² *Id.* at 94.

confirmed this in his affidavit, stating that Capt. Daquioag “was not directly involved on the said operation. The said officer was the ACO, HSC/CMO officer of the unit at the time and only accompanied the former CO Battalion during the visit near the scene to coordinate and inquire about the recent incident.”⁴³ The CA and the OMB-MOLEO should have appreciated the detailed statements of LtCol. Teodoro and 2Lt. Eribal which established that Capt. Daquioag did not commit the act subject of the charge against him.

In addition, Hadja Alabain executed a joint affidavit with Hadji Alabain, Maghilum, Alabain, Mujanil, Francisco, and Palces dated August 2011, which states:

X X X X

3. That when we filed the case before the office of the Commission on Human Rights in Zamboanga City, we thought it was the accused Capt. Jomar B. Daquioag who led the marine soldiers, but we were mistaken. On two (2) occasions, during arraignment and pre-trial, Hadji Salam A. Alabain and her [*sic*] daughter Jasmin A. Mujamil was able to confer with the accused and when the latter introduced his documentary exhibits during pre-trial, we were able to secure two of which, the affidavit of Lt. Col. Leonard Vincent D. Teodoro and that of 2nd Lt. Rod Bryan S. Eribal; that in both affidavit[s], affiants admitted that the former was the then Battalion Commander and the latter together with 1Lt. Reyson O. Talingdan commanded the group of marine soldiers who shot us and killed Robert Alviar;

4. That we now know 2nd Lt. Eribal and 1st Lt. Talingdan were the ones who led the marine soldiers and not the herein accused Capt. Jomar B. Daquioag. [*sic*]

5. That for these reasons we are no longer interested to pursue the case against Capt. Daquioag [*sic*] and we will no longer testify against him in court; that instead, we will pursue our complaint before the Commission on Human Rights against the real culprits who made themselves known in their affidavits.

X X X X⁴⁴

It is true that an affidavit of desistance is “viewed with suspicion and reservation because it can easily be secured from a poor and ignorant witness, usually through intimidation or for monetary consideration.”⁴⁵ It is not binding on the OMB[-MOLEO] which has the power to investigate and prosecute on its own any act or omission of a public officer or employee, office or agency which appears to be illegal, unjust, improper or inefficient.⁴⁶ Nonetheless, affidavits of desistance may still be considered in certain cases. In *Marcelo v. Bungubung*,⁴⁷ this Court held that the express repudiation in the

⁴³ Id. at 95.

⁴⁴ Id. at 104.

⁴⁵ *Miro v. Vda. de Erederos*, supra note 38.

⁴⁶ *Loquias v. Office of the Ombudsman*, 392 Phil. 596, 605 (2000).

⁴⁷ 575 Phil. 538 (2008).

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affidavit of desistance of the material points in the complaint-affidavit may be admitted into evidence, absent proof of fraud or duress in its execution. The affidavit of desistance makes the complaint-affidavit questionable and the CA took proper notice of it.⁴⁸

The joint affidavit in this case was executed after the OMB-MOLEO rendered its decision in relation to the criminal case for attempted murder against Capt. Daquioag. Hence, it cannot be considered binding upon the OMB-MOLEO and the CA. Even so, Hadja Alabain expressly repudiated her previous statement in her affidavit. She did not simply say that she was no longer interested in pursuing a case against Capt. Daquioag but that she mistakenly identified him. She even identified the persons who were actually involved in the incident. There is no proof that she was coerced to execute the joint affidavit. In fact, the criminal cases against Capt. Daquioag were both dismissed on the basis of the joint affidavit for murder.⁴⁹ Consequently, the finding that Capt. Daquioag headed the group that fired upon Alviar lacks factual basis. There is no proof that he committed an act constituting grave misconduct. Thus, the CA erred in upholding the OMB-MOLEO's decision instead of dismissing the complaint against Capt. Daquioag.

WHEREFORE, the petition is **GRANTED**. The Decision dated August 10, 2015 and Resolution dated November 22, 2016 of the Court of Appeals in CA-G.R. SP No. 119051 are hereby **REVERSED** and **SET ASIDE**. The complaint against petitioner Captain Jomar B. Daquioag for Grave Misconduct is **DISMISSED**.

SO ORDERED.


ROSMAR D. CARANDANG

Associate Justice

WE CONCUR:


LUCAS R. BERSAMIN

*Chief Justice
Chairperson*

(on official business)

ESTELA M. PERLAS-BERNABE

Associate Justice


ALEXANDER G. GESMUNDO

Associate Justice


RODIL V. ZALAMEDA

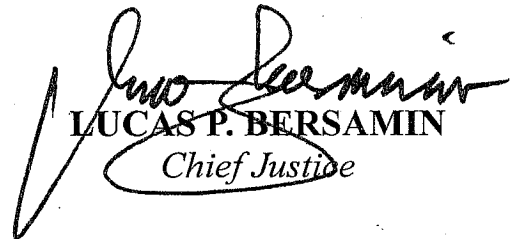
Associate Justice

⁴⁸ Id. at 562-563.

⁴⁹ Rollo, pp. 107-109.

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



LUCAS P. BERSAMIN
Chief Justice