



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

P/SUPT. ALEXANDER RAFAEL and G.R. No. 246128
SPO3 MARINO MANUEL,

Petitioners, Present:

- versus -

LEONEN, J.,
Chairperson,
 CARANDANG
 ZALAMEDA,
 ROSARIO, and
 LOPEZ, J.,* JJ.

**ROCHELL BERMUDEZ, ERLINDA
 APOLONIO, RUENA BERNA,
 MARIFE SABALO, BINGCHLER
 BIENDIMA, THE FACT-FINDING
 INVESTIGATION BUREAU,
 OFFICE OF THE DEPUTY
 OMBUDSMAN FOR THE
 MILITARY AND OTHER LAW
 ENFORCEMENT OFFICES (FFIB-
 MOLEO) AND THE OFFICE OF
 THE OMBUDSMAN,**

Promulgated:

September 15, 2021

MisrDCBett

Respondents.

X-----X

RESOLUTION

CARANDANG, J.:

This resolves the Motion for Reconsideration¹ assailing the Resolution² dated July 10, 2019 rendered by this Court that denied the Petition for Review on *Certiorari*³ filed by petitioners P/Supt. Alexander Rafael (P/Supt. Rafael) and SPO3 Marino Manuel (SPO3 Manuel) questioning the Decision⁴ dated January 5, 2018 and Resolution⁵ dated March 28, 2019 issued by the Court of Appeals (CA) in CA-G.R. SP No. 146657. The CA affirmed the ruling of the

* Designated as additional Member per Special Order No. 2834

¹ *Rollo*, pp. 126-135.

² Id. at 144.

³ Id. at 3-14.

⁴ Penned by Associate Justice Ramon C. Cruz, with the concurrence of Associate Justices Normandie B. Pizarro and Pablito A. Perez; id. at 20-38.

⁵ Penned by Associate Justice Ramon A. Cruz, with the concurrence of Associate Justices Fernanda Lampas-Peralta and Pablito A. Perez; id. at 41-43.

9

Office of the Ombudsman holding petitioners liable for grave misconduct and dismissing them from service.

Facts of the Case

On July 13, 2012, private respondents Rochelle Bermudez (Rochelle), Erlinda Apolonio, Ruena Bernal, Marife Sabalo, and Bingchler Biendima filed their separate Affidavit-Complaints before the Office of the Ombudsman against P/Supt. Rafael, SPO3 Manuel, and then Vice Mayor of Tuguegarao City, Danilo Baccay (Vice Mayor Baccay) for the murder of private respondents' relatives, namely: Michael Bermudez (Michael), Nomer Biendima, Isabelo Tayum, Leonardo Apolinario, Jr., and Villamor Milagroso (collectively referred to as Michael's group). On September 18, 2014, the Fact-Finding Investigation Bureau of the Office of the Ombudsman for the Military and Other Law Enforcement Offices Bureau (FFIB-OMBMOLEO) likewise filed a Supplemental Complaint against petitioners and Vice Mayor Baccay for murder and grave misconduct.⁶

In private respondents' Affidavit-Complaints, Rochelle alleged that on April 1, 2012, his brother, Michael, was arrested for illegal possession of firearms. Michael was detained at the Abra Police Provincial Office for 10 days before he was transferred to the Bureau of Jail Management and Penology in Bucay, Abra. Rochelle claimed that on April 13, 2012, Michael was released on bail posted by P/Supt. Rafael. On April 25, 2012, Michael allegedly called Rochelle and told her that P/Supt. Rafael asked him to act as the latter's security escort in a trip to Tuguegarao City scheduled on April 28, 2012. Michael invited some of his friends to join them.⁷

Further, Rochelle narrated that on April 29, 2012, Michael informed her that they arrived safely in Tuguegarao City with the group of P/Supt. Rafael. Michael allegedly informed Rochelle that P/Supt. Rafael introduced him to Vice Mayor Baccay who gave him an armalite rifle. Michael also told Rochelle that he and his friends were taken to a safehouse owned by Vice Mayor Baccay's friend. Suddenly, on May 1, 2012, Rochelle learned that Michael and his friends were shot and killed.⁸

Private respondents averred that their relatives were not members of the gun-for-hire group as claimed by the police. Private respondents alleged that their relatives were police assets who acted as P/Supt. Rafael's security escorts.⁹ In their Affidavit-Complaints, private respondents attached the Report of the Commission on Human Rights (CHR), which concluded that petitioners are liable for violating the right to life of private respondents' relatives. Private respondents submitted certifications from the Provincial Prosecutor and the Clerk of Court in Abra that their relatives were never charged of any crime. Private respondents likewise attached the autopsy

⁶ Id. at 92.

⁷ Id. at 92-93.

⁸ Id. at 93.

⁹ Id.

9

reports of their relatives showing that the latter sustained multiple gunshot wounds.¹⁰

The FFIB-OMBMOLEO on the other hand attached the following documentary evidence in their Affidavit:

1. Memorandum dated 27 March 2014 stating that the Bullet Trajectory Report is not available because the vehicle was removed from its original position in the crime scene prior to the availability of the Physical Identification Examiner;
2. Scene of the Crime Operatives (SOCO) Report Nr. 17-2012 dated 1 May 2012 showing the sketch details and measurement of fired cartridge cases, positions of the victims when killed and the vicinity map of the scene;
3. Chemistry Report dated 3 May 2012 of the Regional Crime Laboratory Office 2, PNP, Camp Adduru, Tuguegarao City, stating that victim Nomer Biendima and an unidentified cadaver were positive of gunpowder nitrates;
4. Certification dated 28 March 2014 issued by P/CInsp. Jacinto Tuddao stating that their office has no photographs and documents pertaining to the L-300 van with plate no. 594 and that the SOCO Region 2 conducted the investigation on the crime scene;
5. Sworn Affidavit of PO3 Gilbert Columna, the first PNP personnel who investigated the incident, stating that he was able to get only the plate number of the L-300 van because he concentrated his investigation on the victims and he was not able to recall if the vehicle of P/Supt. Rafael sustained bullet shots;
6. After SOCO Report dated 2 May 2012 and photo work sheet;
7. Affidavit of P/Dir. Benjamin Magalong, former PNP Regional Director-Cordillera, stating that thru Short Messaging System (SMS) he granted the request of P/Supt. Rafael for permission/clearance to leave his office to visit his family in Cagayan Province;
8. Certification issued by P/CInsp. Jacinto Tuddao stating that the name of SPO3 Marino Manuel is the only name available out of the four (4) police escorts of P/Supt. Rafael and Affidavit of PO3 Gilbert Columna;
9. Order of Commitment of Jonathan Bernal dated 11 September 2012 and Order of Commitment of Michael Bermudez dated 10 April 2012;
10. Documents containing the data received from four (4) mobile phones of victims recovered from the crime scene;
11. Affidavit of Dr. Cleofas C. Antonio, Medico-Legal Division, NBI, Cagayan Valley Region, stating that the manner of death contained in the CHR Autopsy Report should be completely disregarded; and
12. Personal Data Sheet and Service Record of P/Supt. Rafael.¹¹

¹⁰ Id. at 93-94.

¹¹ Id. at 94-96.

In his Counter-Affidavit to the Affidavit-Complaints of private respondents, P/Supt. Rafael narrated that on April 27, 2012, P/CSupt. Benjamin Magalong (P/CSupt. Magalong) granted him permission to take a leave of absence on April 28, 2012 to May 1, 2012 to visit his family in Cagayan. On April 28, 2012, while he and his security detail were on their way to Tuguegarao City, they noticed a Toyota Corolla following them. Although apprehensive, they continued with their trip. However, on their way back to Abra on May 1, 2012, the same vehicle was again following them. Hence, when they reached Barangay San Lorenzo, Lal-lo, Cagayan, they stopped to check the identity of the persons inside the vehicle. As they approached, a sudden burst of heavy gunfire met them, prompting them to fire back. When the exchange of gunfire stopped, they went near the vehicle and saw five wounded armed men, who were all pronounced dead on arrival at the hospital.¹²

P/Supt. Rafael alleged that he reported the incident immediately to the Second Regional Public Safety Battalion based in Magapit, Lal-lo, Cagayan. The Scene of the Crime Operatives, Aparri Criminal Investigation and Detection Group, and the Lal-lo Police Station conducted a joint investigation, disclosing that the five men were carrying high-powered firearms, such as the following: (1) one baby Armalite rifle with one magazine loaded with 14 live ammunition; (2) one Caliber .45 Armscor pistol with one magazine loaded with five live ammunition; (3) one magazine with seven live ammunition; (4) one baby armalite with magazine loaded with 30 live ammunition; and (5) one short magazine for M16 loaded with 14 live ammunition. The investigation also showed that two of the five men were found positive for gunpowder nitrates.¹³

On the other hand, SPO3 Manuel corroborated the defenses raised by P/Supt. Rafael. He added that based on the report of P/CSupt. Magalong, one of the slain suspects, Michael, was hired by Jenricks Luna of Lagayan, Abra from 2002-2005 to kill the latter's political rivals. Michael allegedly also worked for Dominic Valera as gun-for-hire. The report further disclosed that a middleperson working for Tuguegarao City Mayor Delfin Ting (Mayor Ting) contacted Michael to assassinate certain personalities, including P/Supt. Rafael. To carry out the assassination, Michael recruited fellow killers based in Abra.¹⁴

In his separate Counter-Affidavit, then Vice Mayor Baccay alleged that his inclusion as respondent in the case was a mistake. He asserted that the CHR special investigators even exonerated him from any participation in the alleged murder of Michael and his group.¹⁵

¹² Id. at 96-97.

¹³ Id. at 97.

¹⁴ Id. at 102-104.

¹⁵ Id. at 99.



In Reply, private respondents insisted that their relatives were utilized by P/SSupt. Rafael as police assets under instruction to kill Mayor Ting and when they failed to do so, they were the ones who were killed.¹⁶

Ruling of the Ombudsman

On June 2, 2015, the Ombudsman rendered its Consolidated Resolution,¹⁷ finding probable cause to indict P/Supt. Rafael and SPO3 Manuel for five counts of murder and finding them guilty of grave misconduct. The criminal and administrative charges against Vice-Mayor Baccay were dismissed.¹⁸

The Ombudsman found that the pieces of evidence recovered from the crime scene support private respondents' theory that what transpired was a deliberate killing of Michael's group. The Ombudsman noted that based on the investigation, it was shown that the two M16 rifles found in possession of Michael and his group were not at all fired. This negates the petitioners' theory that private respondents' relatives fired at them first. Moreover, the 64 cartridge cases recovered from the crime scene did not originate from the two M16 rifles possessed by Michael and his group.¹⁹ The Ombudsman observed that Michael and his friends were found dead in a cramped sedan where their freedom of movement is limited. The Ombudsman believed that if the intention of Michael's group was to stage an ambush against petitioners, it is illogical for them to remain seated inside the car and shoot at an awkward position. The Ombudsman was convinced that Michael and his group were attacked from behind, contradicting petitioners' claim that they exchanged gunfire with Michael's group in front of the latter's vehicle.²⁰

Based on the evidence presented, the Ombudsman concluded that there was probable cause to indict petitioners of five counts of murder.²¹ Additionally, the Ombudsman found that there was substantial evidence to hold petitioners liable for grave misconduct. According to the Ombudsman, the deliberate killing of Michael and his group demonstrates a willful intent to violate the law. Hence, the actions of petitioners constitute grave misconduct.²²

Petitioners moved for reconsideration, which was denied in a Consolidated Order²³ dated February 3, 2016.

Aggrieved, petitioners filed a petition for review before the CA, questioning the ruling of the Ombudsman in holding them liable for grave misconduct.

¹⁶ Id. at 101.

¹⁷ Id. at 91-114.

¹⁸ Id. at 112-113.

¹⁹ Id. at 109.

²⁰ Id. at 110.

²¹ Id. at 111.

²² Id. at 112.

²³ Id. at 115-120.

Ruling of the Court of Appeals

In its January 5, 2018 Decision,²⁴ the CA affirmed the ruling of the Ombudsman. The CA reiterated that a cramped car cannot exactly facilitate an ambush. Additionally, the vehicle of the group of Michael sustained greater damage on its left and rear side, which strengthens the theory that they were attacked from behind and not according to the version of petitioners that Michael's group was the one tailing them.²⁵ The CA noted that there were no cartridges recovered that correspond to the firearms found in possession of Michael's group.²⁶ Lastly, the CA noted that the autopsy reports of Michael and his group showed that they were fired at close range.²⁷

The CA concluded that these pieces of evidence against petitioners are substantial to hold them liable for grave misconduct.²⁸

Petitioners filed a motion for reconsideration but the same was denied in a Resolution²⁹ dated March 28, 2019.

Meanwhile, after the filing of five informations against petitioners, they filed separate motions for judicial determination of probable cause and motions for reinvestigation. The motions were anchored on the affidavits of desistance executed by private respondents dated October 24, 2016. The affidavits state that after the incident, they conducted their own "investigation" and found that there was no clear and ample evidence to believe that their relatives were killed in a rub-out and that petitioners did not have the motive to kill their relatives. Finding the motions meritorious, the trial court that handled the criminal case issued an Order dated December 20, 2016, directing the Office of the Provincial Prosecutor of Cagayan to conduct a reinvestigation. Thereafter, the Office of the Provincial Prosecutor of Cagayan recommended the dismissal of the criminal cases.³⁰

On May 16, 2017, the trial court issued an Order,³¹ finding the recommendation of the Office of the Provincial Prosecutor of Cagayan meritorious. Hence, the trial court ordered the dismissal of the five informations for murder filed against petitioners, without prejudice.³²

However, because the CA found petitioners liable for grave misconduct, they filed a Petition for Review on *Certiorari*³³ before the Court. According to petitioners, they acted in valid self-defense and/or in the lawful performance of duties. Petitioners stressed the following established facts to

²⁴ Penned by Associate Justice Ramon A. Cruz, with the concurrence of Associate Justices Normandie B. Pizarro and Pablito A. Perez; id at 20-39.

²⁵ Id. at 34.

²⁶ Id. at 35.

²⁷ Id. at 35-36.

²⁸ Id. at 36.

²⁹ Id. at 41-43.

³⁰ Id. at 204-205.

³¹ Id. at 204-207.

³² Id. at 207.

³³ Id. at 3-14.



prove that what happened was a legitimate police encounter between the group of Michael and petitioners and not an ambush:

1. The so-called victims in this case all carried high powered guns which were either stolen or unlicensed;
2. 2 out of the 5 tested positive for the presence of gun powder nitrates and the guns recovered from their possession tested positive;
3. No evidence, directly and indirectly, to show that the victims were shot when the car was parked and/or that they were shot point blank;
4. Criminal activities of the victims well-established by documents and reports of the PNP;
5. The theory of a legitimate police encounter is corroborated by the evidence on record since the firearm and bullets recovered from the alleged victims support the theory that these people fired upon the police; and
6. No motive whatsoever was attributed to the petitioners to warrant the killing of the victims in this case.³⁴

Petitioners added that they merely reacted to the imminent threat to their lives when, instead of surrendering, Michael's group began shooting them when all they wanted was to ask for the identities of the people behind the car following them.³⁵ Petitioners insisted that since they acted in the exercise of lawful duties, they cannot be held liable for grave misconduct.³⁶

On July 10, 2019, the Court issued a Resolution,³⁷ denying the Petition for Review on *Certiorari* filed by petitioners for failure of the latter to show that the CA committed a reversible error. Hence, petitioners moved for reconsideration.³⁸ In their motion, petitioners highlighted their long years of unblemished public service and asked to consider the same as mitigating circumstances in their favor.³⁹ Petitioners likewise reiterated that they merely acted in the performance of lawful duties.⁴⁰

In its Comment,⁴¹ the Office of the Solicitor General (OSG) countered that the motion for reconsideration and supplement to the motion for reconsideration filed by petitioners were mere rehash of their petition that failed to present valid reason to merit reversal of the Court's Resolution dated July 10, 2019.⁴²

Issue

Whether petitioners are liable for grave misconduct.

³⁴ Id. at 8-9.
³⁵ Id. at 11-12.
³⁶ Id. at 12.
³⁷ Id. at 148.
³⁸ Id. at 126-134.
³⁹ Id. at 127-128.
⁴⁰ Id. at 128.
⁴¹ Id. at 177-178.
⁴² Id.



Ruling of the Court

After taking a second hard look at the facts of the case, the Court grants the motion for reconsideration.

Before delving into the substantive aspect of this case, the Court shall first deal with procedural matters.

In administrative cases initially brought before the Ombudsman, “the findings of fact of that agency are usually afforded great weight and respect, and, when supported by substantial evidence, are accepted as conclusive by the courts.”⁴³ However, this rule is not without exceptions. In cases where judgment is based on a misapprehension of facts, the Court may evaluate factual findings of the administrative body and the CA, such as in this case.⁴⁴

Misconduct is a transgression of some **established and definite rule of action**, more particularly, **unlawful behavior** or **gross negligence** by the public officer. To warrant dismissal from the service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling. The misconduct must imply **wrongful intention** and not a mere error of judgment and must also have a direct relation to and be connected with the performance of the public officer’s official duties amounting either to mal-administration or willful, intentional neglect, or failure to discharge the duties of the office. In order to differentiate gross misconduct from simple misconduct, the elements of corruption, **clear intent to violate the law**, or **flagrant disregard of established rule**, must be manifest in the former.⁴⁵

Undoubtedly, the commission of a serious crime, such as multiple murder, constitutes grave misconduct. However, in an administrative case for grave misconduct arising from the said criminal act of murder, the elements of the said crime need not be proven beyond reasonable doubt. It is enough that there is substantial evidence to prove that respondent willfully caused the death of the victim to hold him liable for grave misconduct. Substantial evidence is “such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. The requirement is satisfied where there is reasonable ground to believe that the respondent is guilty of the act or omission complained of, even if the evidence might not be overwhelming.”⁴⁶

In this case, the evidence on record is not substantial enough to prove that petitioners willfully and treacherously killed the relatives of private respondents. On the contrary, there is ample evidence to support the conclusion that Michael and his group planned and executed an ambush against the group of P/Supt. Rafael, only for the latter to retaliate and defend

⁴³ *Ombudsman v. Rojas*, G.R. No. 209274, July 24, 2019

⁴⁴ *Id.*, citing *De Castro v. Field Investigation Office*, 810 Phil. 31 (2017).

⁴⁵ *Office of the Deputy Ombudsman for Luzon v. Dionisio*, 813 Phil. 474, 487-488 (2017).

⁴⁶ *Id.* at 487

themselves and in the course of the shoot-out, Michael and his friends were overwhelmed and killed by the group of P/Supt. Rafael.

Based on established and uncontroverted intelligence report of then Regional Director Magalong regarding the incident between Michael's group and petitioners, it was found that Michael was contacted by a middleperson working for Mayor Ting to assassinate certain personalities including P/Supt. Rafael. P/Supt. Rafael was included in the list of targets because of his close association with retired Police General Jefferson Soriano, who planned then to run for Mayor of Tuguegarao City. To carry out the assassination, Michael recruited freelance killers based in Abra.⁴⁷ The said report of Regional Director Magalong is not without basis. A perusal of the records of the case shows that as early as April 1, 2012, when Michael was arrested for illegal possession of firearms, it was already known within the intelligence community,⁴⁸ which Michael even admitted, that he is a hired killer utilized by different politicians in Abra and Cagayan provinces. The April 1, 2012 report also disclosed that during that time, Michael had a contract with Mayor Ting for the assassination of eight personalities including P/Supt. Rafael.⁴⁹

On the other hand, private respondents based their theory of murder and rub-out only on the alleged conversation between Michael and his sister, Rochelle, where Michael allegedly told Rochelle that he was hired by P/Supt. Rafael as his security escort. Between the established intelligence reports that Michael was a member of the gun-for-hire contracted to eliminate P/Supt. Rafael and the hearsay evidence presented by Rochelle and private respondents, it is easy to give more credence to the former. Besides, the theory that P/Supt. Rafael hired Michael, a well-known gun-for-hire, as his close-in security, is implausible. No experienced police officer would risk being betrayed by their own security escort.

In rejecting the defense of petitioners, the Ombudsman and the CA relied on three reasons: (a) the investigators failed to find cartridge cases in the crime scene originating from the firearms recovered from the group of Michael; (b) Michael and his peers were found dead in a cramped sedan where their freedom of movement was limited; and (c) the bullet holes were found in the rear and left side of the car carrying Michael and his group, contradicting petitioners' claim that they exchanged gunfire with Michael's group in front of the latter's vehicle.

As to the first, it should be noted that two of the five members of Michael's group tested positive for gun powder nitrates and that the magazines of the firearms recovered in the possession of Michael's group contained less than the full capacity of bullets. The rational conclusion from these circumstances is that the said firearms were fired and used against petitioners. Even if, as pointed out by private respondents, that the investigators failed to recover bullet cartridge casings from the firearms found

⁴⁷ Id. at 73.

⁴⁸ Id. at 84-90.

⁴⁹ Id. at 88-89.



in the possession of Michael's group, this alone does not prove that Michael and his group did not fire upon petitioners. A considerable time has passed from the occurrence of the incidence to the arrival of the investigators in the crime scene. Inasmuch as the group of Michael fired at petitioners when their car was moving and the windows were presumably open, the cartridge cases could have been expelled outside the car.

Next, the Ombudsman and CA concluded that if Michael's group planned to ambush P/Supt. Rafael, they should not have put themselves in a cramped car. This reasoning is quite stretched and baseless. The positioning of Michael and his group in the vehicle would, at most, show only how their bodies settled after the shoot-out happened. It cannot be used as an indication that petitioners murdered them.

Thirdly, the Ombudsman and the CA agreed that the bullet holes in the car boarded by Michael and his group indicated that they were rubbed out. While it was true that the car was on the shoulder of the road and the bullet holes were mostly on the left and rear sides of the car, this supports the narration of petitioners that when they attempted to stop the vehicle to ask for the identities of the persons boarding it, Michael's group shot at them, prompting petitioners to return fire. According to petitioners, the car continued moving forward until it was blocked by a pile of corn sacks on the shoulder of the road. The bullet holes on the left side and rear parts of the car boarded by Michael and his group confirmed the defensive shots fired by petitioners against the occupants of the vehicle.

As succinctly argued by petitioners, as police officers, they are taught not to risk their lives in equal combat with criminals – especially when the latter are armed and dangerous – but are trained to use unequal force to suppress any challenge to their authority. Hence, a single suspicious move by the criminal elements would elicit an uneven response from the well-prepared police officers, trained to answer violence with superior force. Viewed from these lenses, the totality of the circumstances in this case points to no other conclusion than that petitioners and Michael's group engaged in a shoot-out and not a rub-out. Private respondents were not able to convincingly prove, through substantial evidence, that petitioners murdered their relatives, so as to make petitioners liable for grave misconduct.

The course of action taken by petitioners neither involved willful disregard of established and definite rule of action nor tainted with corruption and malice. There was even no attempt from private respondents to show that petitioners acted criminally and for personal or selfish reasons. Hence, there is no basis for the finding of grave misconduct against petitioners.

Lastly, the dismissal of the informations for five counts of murder in the criminal aspect of this case, based on the affidavits of desistance executed by private respondents, cannot be easily ignored. While 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

9

intimidation or for monetary consideration,”⁵⁰ it may still be considered in certain cases.

In *Marcelo v. Bungubung*,⁵¹ the Court gave weight to the affidavit of desistance filed by the complainant in absolving Leopoldo F. Bungubung, then manager of Port District Office of the Philippine Ports Authority of grave misconduct. The complainant, in her affidavit of desistance, explicitly admitted that he merely fabricated all his allegations of corruption against Bungubung. According to the Court, the express repudiation in the 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.

Similarly, in *Daquioag v. Ombudsman (Daquioag)*,⁵² the Court also cited the affidavit of desistance of complainant in exonerating the respondent public officer of grave misconduct. In *Daquioag*, the complainant stated in her affidavit of desistance that she mistakenly identified petitioner public officer as the perpetrator of the offense committed against her relative.

Here, the affidavits of desistance executed by private respondents state that after the incident, they conducted their own investigation where they found that there was no clear and ample evidence to believe that their relatives were killed in a rub-out. They also stated that petitioners did not have the motive to kill their relatives. It must be noted that this case sprang from private respondents’ filing of complaint-affidavits against P/Supt. Rafael and SPO3 Manuel. The complaint-affidavit of Rochelle, the sister of Michael, which became the foundation of the Ombudsman’s theory of a rub-out, even merely contained hearsay evidence of the alleged conversation between the siblings concerning the whereabouts of Michael. Considering that the affidavits of desistance is a complete shift from private respondents’ version of the facts, the affidavits of desistance dilute the very foundation of the charges filed against petitioners.

WHEREFORE, the motion for reconsideration is hereby **GRANTED**. The Resolution dated July 10, 2019 rendered by the Court is **REVERSED** and **SET ASIDE**. P/Supt. Alexander Rafael and SPO3 Marino Manuel are **ORDERED** to be reinstated to their previous positions without loss of seniority rights and with full payments of their salaries, back wages, and benefits from the time of their dismissal from service up to their reinstatement.

SO ORDERED.


ROS MARI D. CARANDANG
Associate Justice

⁵⁰ *People of the Philippines v. Ramirez, Jr.*, 475 Phil. 631, 645 (2004).

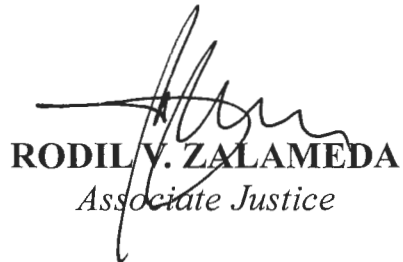
⁵¹ 575 Phil. 538 (2008).

⁵² G.R. No. 228509, October 14, 2019.

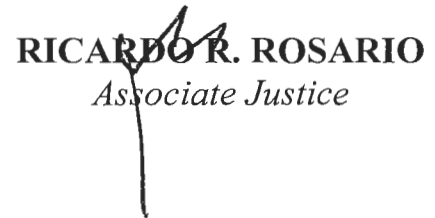
WE CONCUR:



MARVIC MARIO VICTOR F. LEONEN
Associate Justice



RODIL V. ZALAMEDA
Associate Justice



RICARDO R. ROSARIO
Associate Justice



JHOSEP V. LOPEZ
Associate Justice

ATTESTATION

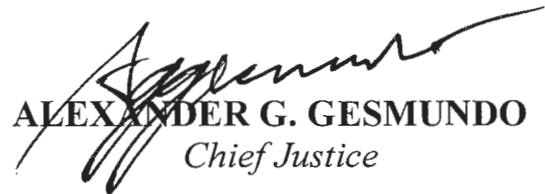
I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC MARIO VICTOR F. LEONEN
Associate Justice

CERTIFICATION

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



ALEXANDER G. GESMUNDO
Chief Justice