

FIRST DIVISION

[G.R. No. 237997, June 10, 2020]

**PETE GERALD L. JAVIER AND DANILO B. TUMAMAO,
PETITIONERS, VS. SANDIGANBAYAN AND PEOPLE OF THE
PHILIPPINES, RESPONDENTS.**

DECISION

CAGUIOA, J:

Before the Court is a Petition for *Certiorari*^[1] (Petition) filed by petitioners Pete Gerald L. Javier (Javier) and Danilo B. Tumamao (Tumamao) assailing the Resolution^[2] dated January 25, 2018 and Resolution^[3] dated March 1, 2018 of the Sandiganbayan Sixth Division in Crim. Case No. SB-17-CRM-1781, both of which denied their Motion to Quash on Grounds of Inordinate Delay (Motion to Quash) for lack of merit.

The Facts

In 2004, the Province of Isabela procured, by direct contracting, 15,333 bottles of liquid organic fertilizer.^[4] The Commission on Audit (COA), in its Audit Observation Memorandum No. 2004-14 dated October 12, 2004, found that the procurement was done without open competitive bidding, and that the procured items were overpriced.^[5]

On July 4, 2011, the Task Force Abono of the Office of the Ombudsman (Ombudsman) filed a complaint against the public officers involved in the subject transaction,^[6] including Javier and Tumamao, who were the Provincial Accountant and Provincial Agriculturist of Isabela, respectively.

On August 5, 2011, the Ombudsman directed the public officers to file their respective counter affidavits. Javier filed his counter affidavit on November 14, 2011, while Tumamao filed his on November 23, 2011.^[7]

After almost five years, or on September 19, 2016, the Special Panel on Fertilizer Fund Scam of the Ombudsman issued its Resolution finding probable cause to indict Javier and Tumamao, along with Provincial Vice Governor Santiago P. Respicio (Respicio), for violation of Section 3(e), of Republic Act No. 3019 (R.A. No. 3019).^[8] The Ombudsman approved the Resolution on November 22, 2016.^[9]

Thereafter, on October 3, 2017, an Information dated June 14, 2017 was filed against Javier and Tumamao for violation of Section 3(e) of R.A. No. 3019, the accusatory portion of which reads:

That on 26 March 2004, or sometime prior or subsequent thereto, in the Province of Isabela, Philippines and within the jurisdiction of this Honorable Court, accused Provincial Accountant **PETE GERALD L. JAVIER** a high-ranking public officer being then a provincial department head, and Provincial Agriculturist **DANILO B. TUMAMAO**, together with the late Provincial Vice-Governor Santiago P. Respicio, while in the performance of their administrative and/or official functions and committing the crime in relation to office, taking advantage of their official position, acting with evident bad faith, manifest partiality and/or gross inexcusable negligence, conspiring and confederating with one another, did then and there willfully, unlawfully, and/or criminally cause undue injury to the government for in the amount of as (sic) Nine Million Four Hundred Seventy Five Thousand Seven Hundred Ninety Four Pesos (P9,475,794.00), more or less, representing the overpriced amount in the purchase of 15,333 bottles of Bio Nature Liquid Fertilizer at P750.00 per bottle or a total payment of Eleven million four hundred ninety-nine thousand and seven hundred fifty pesos (P11,499,750.00), despite the absence of a public bidding in the procurement process and failure of the supplier, Feshan Philippines (Feshan), to meet the mandated requirements specified in Section 8(a) of Presidential Decree No. 1144 which prohibits the sale and distribution of fertilizers and pesticide without securing from the Fertilizer and Pesticide Authority the necessary license, which defects accused knew fully well, were in violation of Republic Act No. 9184 (The Government Procurement Reform Act) and other pertinent existing rules and regulations, thereby giving unwarranted benefits, advantage or preference to Feshan, to the damage and prejudice of the government.

CONTRARY TO LAW.^[10]

The Sandiganbayan set the date of the supposed arraignment. Javier and Tumamao, however, manifested that they were not ready for arraignment as they intended to file a motion to quash on the ground of inordinate delay.^[11] They then filed the Motion to Quash^[12] on November 24, 2017, arguing that the period constituting five years and four months from the filing of the complaint to the approval of the resolution finding probable cause constituted delay which violated their right to speedy disposition of cases. Javier and Tumamao cited the following jurisprudence wherein the cases were dismissed on the ground of inordinate delay: (a) *Tatad v. Sandiganbayan*,^[13] where the delay was close to three years; (b) *Duterte v. Sandiganbayan*,^[14] where the delay was more than four years; and (c) *People v. Sandiganbayan, First Division, et al. and People v. Sandiganbayan, Second Division, et al.*^[15] (*People v. Sandiganbayan*), where the delay was around five years and five months.

The Sandiganbayan ordered the Ombudsman to file a Comment on the Motion to Quash. The Ombudsman filed its Comment^[16] on November 29, 2017, wherein it prayed for the dismissal of the motion, arguing that the case had voluminous records, and that there were an endless number of cases being filed in their office.

RULING OF THE SANDIGANBAYAN

In its Resolution^[17] dated January 25, 2018, the Sandiganbayan denied the Motion to Quash. While the Sandiganbayan conceded the amount of time which constituted the delay, it simply held that the Ombudsman had valid justifications for such delay. The Sandiganbayan adopted the Ombudsman's justifications, despite the latter's failure to substantiate its claims.

Javier and Tumamao sought reconsideration of the Sandiganbayan 's Resolution. The Sandiganbayan, however, denied the motion for reconsideration in a Resolution^[18] dated March 1, 2018.

Hence, the instant Petition.

Issue

For resolution of the Court is the issue of whether the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying the Motion to Quash filed by Javier and Tumamao.

The Court's Ruling

The petition is granted. The Court rules that the Sandiganbayan gravely abused its discretion in denying the Motion to Quash.

In resolving questions involving the right to speedy disposition of cases, the Court is guided by its ruling in *Cagang v. Sandiganbayan, Fifth Division*^[19] (*Cagang*), wherein the following guidelines were laid down:

First, the right to speedy disposition of cases is different from the right to speedy trial. While the rationale for both rights is the same, the right to speedy trial may only be invoked in criminal prosecutions against courts of law. The right to speedy disposition of cases, however, may be invoked before any tribunal, whether judicial or quasi-judicial. What is important is that the accused may already be prejudiced by the proceeding for the right to speedy disposition of cases to be invoked.

Second, a case is deemed initiated upon the filing of a formal complaint prior to a conduct of a preliminary investigation. This Court acknowledges, however, that the Ombudsman should set reasonable periods for preliminary investigation, with due regard to the complexities and nuances of each case. Delays beyond this period will be taken against the prosecution. The period taken for fact-finding investigations prior to the filing of the formal complaint shall not be included in the determination of whether there has been inordinate delay.

Third, courts must first determine which party carries the burden of proof. If the right is invoked within the given time periods contained in current Supreme Court resolutions and circulars, and the time periods that will be promulgated by the Office of the Ombudsman, the defense has the burden of proving that the right was justifiably invoked. If the

delay occurs beyond the given time period and the right is invoked, the prosecution has the burden of justifying the delay.

If the defense has the burden of proof, it must prove first, whether the case is motivated by malice or clearly only politically motivated and is attended by utter lack of evidence, and second, that the defense did not contribute to the delay.

Once the burden of proof shifts to the prosecution, the prosecution must prove *first*, that it followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; *second*, that the complexity of the issues and the volume of evidence made the delay inevitable; and third, that no prejudice was suffered by the accused as a result of the delay.

Fourth, determination of the length of delay is never mechanical. Courts must consider the entire context of the case, from the amount of evidence to be weighed to the simplicity or complexity of the issues raised.

An exception to this rule is if there is an allegation that the prosecution of the case was solely motivated by malice, such as when the case is politically motivated or when there is continued prosecution despite utter lack of evidence. Malicious intent may be gauged from the behavior of the prosecution throughout the proceedings. If malicious prosecution is properly alleged and substantially proven, the case would automatically be dismissed without need of further analysis of the delay.

Another exception would be the waiver of the accused to the right to speedy disposition of cases or the right to speedy trial. If it can be proven that the accused acquiesced to the delay, the constitutional right can no longer be invoked.

In all cases of dismissals due to inordinate delay, the causes of the delays must be properly laid out and discussed by the relevant court.

Fifth, the right to speedy disposition of cases or the right to speedy trial must be timely raised. The respondent or the accused must file the appropriate motion upon the lapse of the statutory or procedural periods. Otherwise, they are deemed to have waived their right to speedy disposition of cases.^[20]

From the foregoing guidelines, the Court concludes that, as will be explained below, the right to speedy disposition of cases of both Javier and Tumamao were violated by the Ombudsman's delay in concluding the preliminary investigation.

There was inordinate delay in the preliminary investigation

Despite the *ponente's* reservations as regards the conclusion reached in *Cagang* "that for the purpose of determining whether inordinate delay exists, a case is deemed to have commenced from the filing of the formal complaint and the

subsequent conduct of the preliminary investigation,"^[21] the *ponente* respects that *Cagang* is the standing doctrine. Thus, for purposes of computing the length of delay in the present case, the *Cagang* guidelines will be followed, and the case against Javier and Tumamao would be deemed initiated only upon the filing of the complaint, or on April 27, 2011. Javier and Tumamao were given the opportunity to be heard, and were therefore able to file their counter-affidavits on November 15, 2011 and November 22, 2011, respectively. After these dates, it appears from the record that the case had become dormant until December 5, 2016 when the Ombudsman approved the resolution finding probable cause against Javier and Tumamao.^[22]

There is thus an unexplained delay of five years from the time the counter-affidavits were filed to the termination of the preliminary investigation through the approval of the Ombudsman's resolution finding probable cause.

The prosecution had the burden to explain the delay in the preliminary investigation

According to *Cagang*, if the delay is beyond the time periods provided in the rules to decide the case, the burden of proof shifts to the State.^[23] The Rules of Procedure of the Ombudsman,^[24] however, do not provide for specific time periods to conclude preliminary investigations. Thus, as the Rules of Court finds suppletory application to proceedings in the Ombudsman,^[25] the time periods provided therein would be deemed applicable. Accordingly, Section 3, Rule 112 of the Revised Rules of Criminal Procedure provides that the investigating prosecutor has 10 days "after the investigation x x x [to] determine whether or not there is sufficient ground to hold the respondent for trial."^[26]

This 10-day period may seem sh mi or unreasonable from an administrative standpoint. However, given the Court's duty to balance the right of the State — to prosecute violations of its laws — *vis-a-vis* the rights of citizens to speedy disposition of cases, the Court rules that citizens ought not to be prejudiced by the Ombudsman's failure to provide for particular time periods in its own Rules of Procedure.

Thus, as the preliminary investigation was terminated beyond the 10-day period provided in the Revised Rules of Criminal Procedure, the burden of proof thus shifted towards the prosecution to prove that the delay was not unreasonable. In any event, the period of delay in this case — five years — was extraordinarily long that there could conceivably be no procedural rule that would justify said delay. Undoubtedly, therefore, the burden was on the prosecution to provide justifications for the delay.

The Sandiganbayan gravely abused its discretion in giving credence to the prosecution's bare assertions

In *Cagang*, the Court held that in cases where the burden of proof has shifted to the prosecution, the prosecution must be able to prove the following: