

FIRST DIVISION

[G.R. Nos. 243560-62, July 28, 2020]

**NANCY A. CATAMCO (FORMERLY NANCY C. PEREZ), PETITIONER,
VS. SANDIGANBAYAN SIXTH DIVISION; OFFICE OF THE
OMBUDSMAN; AND PEOPLE OF THE PHILIPPINES,
RESPONDENTS.**

[G.R. Nos. 243261-63]

**POMPEY M. PEREZ, PETITIONER, VS. SANDIGANBAYAN (SIXTH
DIVISION), RESPONDENT.**

DECISION

CAGUIOA, J:

The instant consolidated Petitions for *Certiorari*^[1] filed by the petitioner Nancy A. Catamco (Catamco), docketed as G.R. Nos. 243560-62, and by petitioner Pompey M. Perez (Perez), docketed as G.R. Nos. 243261-63, assail the Resolution^[2] dated August 7, 2018 and Resolution^[3] dated October 12, 2018 of the Sixth Division of the Sandiganbayan in SB-18-CRM-0337, SB-18-CRM-0338 and SB-18-CRM-0339, both of which denied their respective motions to dismiss the case for lack of merit.

The Facts

In 2004, a Memorandum of Agreement^[4] was executed between the Department of Agriculture and the Municipal Government of Poro, represented by Municipal Mayor Edgar R. Rama (Mayor Rama), by which the amount of P5,000,000.00 would be released to the municipality for the procurement of farm inputs and implements for distribution to farmers.^[5] The municipality utilized the fund for the purchase of biochemical fertilizers for farmer beneficiaries under the plant now, pay later scheme.^[6] Mayor Rama was authorized by the Sangguniang Bayan to directly purchase liquid Vitacrop fertilizers from Perzebros Company, which was owned by herein petitioners Perez and Catamco.^[7]

Sometime in 2006, based on an alleged finding of the Commission on Audit (COA) of overpricing and irregularities in the procurement process,^[8] the Office of the Ombudsman (Ombudsman) launched Task Force Abono (TFA) to specifically conduct a fact-finding investigation into the purported "fertilizer fund scam."^[9]

A Complaint dated December 27, 2012^[10] was thereafter filed by the TFA on June 21, 2013^[11] against Perez, Catamco and the other public officials involved in the transaction. The Complaint alleged that the following circumstances, *inter alia*,

evinced collusion between the public and private respondents: (i) there was a shortage of 225 bottles delivered as against the purchase order of 3,333 units; (ii) the macronutrient specifications in the label were not met when the fertilizers were subjected to laboratory testing; (iii) based on a canvass conducted from other suppliers of fertilizers with equivalent macronutrient compositions, "Vitacrop" was overpriced by at least 1,092%; (iv) there was no justification to resort to direct contracting; (v) Perzebras was only incorporated two (2) months prior to the award of the procurement contract; and (vi) it took only a day from the issuance of the Sangguniang Bayan Resolution authorizing the municipal mayor to directly purchase fertilizers from Perzebras, to the completion of the delivery, and the acceptance and inspections of the fertilizers by the municipal government.^[12]

On July 19, 2013, the Ombudsman directed the respondents to file their respective counter-affidavits. The respondents filed their respective counter-affidavits from September 12, 2014 to May 20, 2015.^[13]

After more than two (2) years, or on July 17, 2017, the Ombudsman issued its Resolution^[14] finding probable cause to indict Perez, Catamco and their co-respondents, including Mayor Rama, for one (1) count of violation of Section 3(e) of Republic Act (R.A.) No. 3019 and two (2) counts of Malversation under Article 217 of the Revised Penal Code (RPC).^[15] Said Resolution was approved on August 1, 2017.^[16]

Thereafter, petitioners Perez, Catamco, and two other co-respondents filed their motions for reconsideration on August 23, 2017, September 25, 2017 and September 28, 2017, respectively.^[17] These were denied in an Order^[18] dated November 10, 2017 and approved on January 18, 2018. Four (4) months thereafter, the corresponding Informations^[19] were filed before the Sandiganbayan.^[20]

Before arraignment, Catamco and Perez each moved for the dismissal of the case against them claiming that the Ombudsman's inordinate delay of more than twelve (12) years, from the conduct of its investigation in 2006 until the filing of the Information in court, violated their constitutional right to speedy disposition of cases.^[21]

In its *Consolidated Comment/Opposition*,^[22] the Ombudsman prayed for the dismissal of the motions, arguing that time it took to conclude the investigation in the instant case, from the filing of the Complaint in 2013 until the filing of the Information in 2018, cannot be considered as inordinate delay because of the need to meticulously review and evaluate the numerous records and considering the fact that a steady stream of cases reaches the Ombudsman.^[23]

Ruling of the Sandiganbayan

In its Resolution dated August 7, 2018, the Sandiganbayan denied petitioners' respective motions to dismiss. Applying the "Balancing Test,"^[24] the Sandiganbayan found that petitioners' right to speedy disposition of their case was not violated. While the Sandiganbayan conceded that there was a delay of four (4) years and seven (7) months to issue a Resolution, it agreed with the Ombudsman's claim that

such delay was justified due to the voluminous records and number of respondents involved. The Sandiganbayan further noted that jurisprudence has recognized that the steady stream of cases reaching the Ombudsman would inevitably cause some delay. The Sandiganbayan also found the length of delay in this case as reasonable because the Ombudsman had to wait for all respondents to file their respective counter-affidavits.

Moreover, the Sandiganbayan ruled that the delay did not only prejudice petitioners and their co-accused, it also made it harder for the prosecution, who has the burden of proving the guilt of the accused, to prove its case.

Perez and Catamco moved for reconsideration of the Sandiganbayan's Resolution, but the same was denied in a Resolution dated October 12, 2018.

Hence, the consolidated Petitions.

Issue

Whether the Sandiganbayan gravely abused its discretion amounting to lack or excess of jurisdiction in denying the motions to dismiss respectively filed by petitioners.

The Court's Ruling

The consolidated petitions are impressed with merit. The Court rules that the Sandiganbayan gravely abused its discretion in denying petitioners' respective motions to dismiss for violation of their right to speedy disposition of cases. To be sure, a straightforward application of the guidelines provided by the Court in the recent case of *Cagang v. Sandiganbayan, Fifth Division (Cagang)*,^[25] compels the grant of these petitions.

In *Cagang*, the Court laid down the following guidelines in resolving issues concerning the right to speedy disposition of cases:

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.^[26] (Italics in the original)

Applying the foregoing parameters to the present case, the Court finds that,

contrary to the Sandiganbayan's ruling, petitioners' right to speedy disposition of cases was violated by the Ombudsman's delay in concluding the preliminary investigation.

There was inordinate delay in the resolution of the preliminary investigation.

In assessing whether petitioners' right to speedy disposition of cases was violated, *Cagang* dictates that the Court first examine whether the Ombudsman followed the specified time periods for the conduct of the preliminary investigation. If the Ombudsman exceeded the prescribed period, the burden of proof shifts to the State.

[27] While the Rules of Procedure of the Ombudsman does not provide a period within which the preliminary investigation should be concluded, the periods provided under Rule 112 of the Rules of Court, finds suppletory application.[28]

Section 3(f), Rule 112 of the Revised Rules on Criminal Procedure provides that the investigating prosecutor has ten (10) days "after the investigation x x x [to] determine whether or not there is sufficient ground to hold the respondent for trial." In addition, Section 4 of the same rule states that "within five (5) days from his resolution, [the investigating prosecutor] shall forward the record of the case x x x to the Ombudsman or his deputy x x x, [who] shall act on the resolution within ten (10) days from their receipt thereof and shall immediately inform the parties of such action." Thus, the investigating officer of the Ombudsman, has ten (10) days from the termination of the investigation or the submission of the case for resolution, to determine existence of probable cause to indict an accused.

In the present case, the Ombudsman failed to observe the period prescribed under its rules.

Records show that on June 21, 2013,[29] the Complaint was filed against petitioners and other twelve (12) co-respondents. They were directed to file their respective counter-affidavits on July 19, 2013.[30] The respondents, together with petitioners, filed their respective counter-affidavits from September 12, 2014 to May 20, 2015.

[31] However, from the date the last counter-affidavit was filed, the case remained stagnant for two (2) years and two (2) months, until the investigating officer issued a Resolution, on July 17, 2017, finding probable cause against petitioners and their co-respondents.[32]

The Court further notes that Section 7, Rule II of the Rules of Procedure of the Ombudsman, as amended by Administrative Order No. 15-01,[33] "sanction[s] the immediate filing of an information in the proper court upon a finding of probable cause, even during the pendency of a motion for reconsideration." [34] However, in this case, the Ombudsman still took almost a year from the issuance of the said Resolution to file the corresponding Informations with the Sandiganbayan. And even if the Court were to consider the period for the resolution of the motions for reconsideration filed by petitioners and their co-respondents, the Ombudsman still took a considerable time in concluding its preliminary investigation. From the filing of the last motion for reconsideration on September 28, 2017 to the approval of the Order denying said motions for reconsideration, a period of almost four (4) months