

SECOND DIVISION

[G.R. No. 229656, August 19, 2019]

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. SANDIGANBAYAN (FIRST DIVISION), MANUEL M. LAPID, MA. VICTORIA M. AQUINO-ABUBAKAR, LEOLITA M. AQUINO AND DEXTER ALEXANDER S.D. VASQUEZ, RESPONDENTS.

DECISION

REYES, J. JR., J.:

Claiming that the Sandiganbayan's dismissal of the criminal case filed against respondents on account of violation of the speedy disposition rule was tainted with grave abuse of discretion, petitioner People of the Philippines, represented by the Office of the Ombudsman, through the Office of the Special Prosecutor, interposes the instant *certiorari* petition.

The Facts

The criminal case filed against respondents relates to the "P728 Million Fertilizer Scam" in the Department of Agriculture (DA).

In 2004, the Department of Budget and Management issued a Special Allotment Release Order for P728,000,000.00 with Notice of Cash Allocation for P291,200,000.00 to the DA for the Farm Input/Implement Fund/Program for the purchase of farm inputs/implements for congressional districts or local government units in line with the *Ginintuang Masaganang Ani* (GMA) Program of the DA.^[1]

On May 24, 2004, and under the GMA Program, the Provincial Government of Pampanga purchased 3,880 bottles of Macro-Micro Foliar Fertilizers from Malayan Pacific Trading Corporation (MPTC).^[2]

Allegedly, as early as 2006, the Field Investigation Office-Task Force Abono (FIO) of the Ombudsman investigated the procurement and for this purpose, the FIO issued subpoenas *duces tecum* to several government offices which were responded to by the latter in June 2006.^[3]

On May 2, 2011, the FIO filed before the Ombudsman a complaint^[4] against several officials^[5] of the Provincial Government of Pampanga including its Governor, respondent Manuel M. Lapid (Lapid), as well as against the officials of MPTC,^[6] including its President, respondent Ma. Victoria M. Aquino-Abubakar (Aquino-Abubakar), and incorporator, respondent Leolita M. Aquino (Aquino). Respondent Dexter Alexander S.D. Vasquez (Vasquez), as proprietor of D.A. Vasquez Macro-Micro Fertilizer Resources was also impleaded in the complaint.^[7]

On May 20, 2011, the Ombudsman ordered all respondents to file their respective counter affidavits. Lapid sought for additional time within which to file his counter-

affidavit which he filed on June 30, 2011.^[8] The other respondents also filed separate motions, with the last responsive pleading having been filed by Ronaldo Roxas Dorado, an MPTC incorporator, on February 28, 2012.^[9]

On November 5, 2012, Lapid's counsel entered their appearance and moved for the resolution of the complaint. Both were received by the Ombudsman on even date.^[10]

The Ombudsman's Special Panel for Fertilizer Fund Scam came up with a Resolution^[11] dated September 18, 2013 finding probable cause to indict six,^[12] including Lapid, Aquino-Abubakar, Aquino and Vasquez (collectively, Lapid, et al.), out of the 17 respondents^[13] for violation of Section 3(e) and (g) of Republic Act (R.A.) No. 3019 for having disregarded the procurement law and its implementing rules in purchasing the fertilizers.

Ombudsman Conchita Carpio Morales approved the panel's Resolution dated September 18, 2013 on June 3, 2014.^[14] Lapid and one of therein respondents Benjamin G. Yuzon separately moved for reconsideration which were denied in an Order dated September 12, 2014, approved by Ombudsman Morales on January 30, 2015.

On November 4, 2015, an Information was filed before the Sandiganbayan against the six (6) respondents, including Lapid, *et al.* The Information's accusatory portion reads:

In May 2004, or thereabout, in the province of Pampanga, and within this Honorable Court's jurisdiction, above-named accused MANUEL MERCADO LAPID, BENJAMIN DE GUZMAN YUZON and VERGEL BALTAZAR YABUT, all public officers, being then the Provincial Governor, Provincial Accountant, and Provincial Treasurer of Pampanga, respectively, while in the performance of their official functions, conspiring with one another and with private individuals MA. VICTORIA M. AQUINO-ABUBAKAR and LEOLITA M. AQUINO, incorporators of Malayan Pacific Trading Corporation (MPTC), and DEXTER ALEXANDER S.D. VASQUEZ, proprietor of D.A. Vasquez Macro-Micro Fertilizer Resources (DAVMMFR), acting with evident bad faith, manifest partiality, or at the very least, gross inexcusable negligence, did then and there, willfully, unlawfully and criminally cause undue injury to the government and give unwarranted benefits, preference and advantage to accused MA. VICTORIA M. AQUINO-ABUBAKAR, LEOLITA M. AQUINO, and DEXTER ALEXANDER S.D. VASQUEZ by entering, in behalf of the Provincial Government of Pampanga, into a transaction manifestly and grossly disadvantageous to the latter involving the purchase by the Provincial Government of Pampanga of 3,880 liters of Macro-Micro Foliar Fertilizer formulated by DAVMMFR and distributed in Pampanga by MPTC with irregularities and instances of fraud attending the transaction, as follows -

1. Purchase of the said fertilizer from MPTC without the benefit of public bidding as required by Republic Act No. 9184 (The Government Procurement Reform Act) and its Implementing Rules and Regulations;

2. Accused Lapid's certification that there are no suitable substitute to Macro-Micro Foliar Fertilizer in order to unlawfully resort to direct purchase despite the availability of a suitable substitute offered at a much lower price in the locality;
3. Indicating in the Purchase Request/Order a brand name of fertilizer (Macro-Micro Foliar Fertilizer) in violation of Republic Act No. 9184 and its implementing Rules and Regulations;
4. The inordinate speed by which the transaction was consummated - from submission of the price quotation by Vasquez's DAVMMFR on May 12, 2004, to the issuance of a Purchase Order by accused Lapid on May 24, 2004 and delivery of the fertilizer on same date, and full payment to MPTC on May 26, 2004 - all for a period of 14 days only;
5. Vasquez applied for Product Registration with the Fertilizer Pesticide Authority (FPA) only on August 15, 2005 after the transaction in May 2004 while MPTC has no Certificate of License to Operate and Product Registration; and
6. Payment to MPTC of a total of P4,761,818.18 (P4,850,000.00 less tax of P88,181.82) for the said fertilizer at P1,250.00/liter which is overpriced by at least P1,100.00/liter, or a total of P4,268,000.00.

thereby causing undue injury to the government in the aforesaid amount of P4,268,000.00.

CONTRARY TO LAW.^[15]

On January 8, 2016, and prior to arraignment, Lapid moved to dismiss^[16] the criminal case, raising as one of his grounds the alleged inordinate delay of eight years in the fact-finding investigation, preliminary investigation and filing of the case in violation of Lapid's right to due process and to a speedy disposition of his case.^[17] The motion to dismiss was adopted by Aquino-Abubakar, Aquino and Vasquez. Aquino-Abubakar and Aquino subsequently filed their supplemental arguments to the motion to dismiss.^[18] Pending resolution of his motion to dismiss, Lapid was arraigned on February 18, 2016.^[19]

The Ruling of the Sandiganbayan

Finding that Lapid, *et al.*'s right to a speedy disposition of their cases had been violated, the Sandiganbayan issued its first assailed Resolution^[20] dated September 30, 2016 dismissing the criminal case. The Sandiganbayan made the following observations on the conduct of the preliminary investigation proper:

x x x There is no dispute that this was commenced with the filing of the Complaint against accused Lapid, *et al.* on 02 May 2011. Two (2) years and four (4) months after the filing of the complaint, the Ombudsman found probable cause for the filing of the Information in its Resolution dated 18 September 2013 which was finally approved on 03 June 2014. Sometime in July 2014, accused Lapid and Yuzon filed their respective

Motions for Reconsideration. Thereafter, the Information was filed before this Court on 04 November 2015.

From the foregoing timeline, it appears that four (4) years and six (6) months had lapsed from the time of the filing of the Complaint in 2011 until the time the information was filed in 2015. Three (3) years and one (1) month out of this said period was consumed in the Ombudsman's preliminary investigation.

The prosecution describes this lapse of time as reasonable delay, bearing in mind the voluminous records, the number of participants involved in the case, and the time needed to evaluate the evidence submitted by each party. The reason proffered by the prosecution is unacceptable as recent jurisprudence has called attention to the constitutional mandate of the Ombudsman as the "protector of the people," such that it is expected to act promptly on all complaints lodged before it. The Supreme Court had occasion to emphasize this in the case of *[Rafael L. Coscolluela vs. Sandiganbayan]* and *[People of the Philippines,]* to wit:

x x x x

This doctrine is further strengthened by the dictates of procedural due process which entails substantial adherence to the requirement of the law governing the conduct of preliminary investigation, and this necessarily includes the prosecutor's substantial compliance with the limitation prescribed by law for the resolution of the case. The ruling in *[Alfredo R. Enriquez, et al. vs. Office of the Ombudsman]* is instructive:

x x x x

It bears stressing that in case of delay, the duty is upon the State to prove that the delay was reasonable, or that the delay was not attributable to it. But, the prosecution clearly failed to hurdle this burden since no plausible explanation was given to justify the delay in the Ombudsman's preliminary investigation.

x x x x

This Court further notes, as adverted to previously, that it took the Ombudsman the better part of nine (9) months merely to approve the 18 September 2013 Resolution finding probable cause against Lapid, *[et al.]* And, again, no satisfactory explanation has been furnished the Court. All in all, the unjustified delay during the Ombudsman's preliminary investigation qualifies as vexatious, capricious, and oppressive. Without a reasonable explanation, the delay in the latter's proceedings is unwarranted considering the adverse effects and/or prejudice that such long delay may cause upon the defense of the accused. x x x^[21] (Citations omitted)

Thus, the Sandiganbayan disposed as follows:

WHEREFORE, premises considered, the Urgent Motion dated 08 January 2016, filed by accused Manuel M. Lapid, and adopted by accused Ma. Victoria M. Aquino-Abubakar, Leolita M. Aquino, and Dexter Alexander

S.D. Vasquez, is **GRANTED**. Accordingly, the case against them is hereby ordered **DISMISSED**, for violation of their rights to the speedy disposition of their cases, without prejudice to any civil liability which the Province of Pampanga may file against them.

On the other hand, accused Benjamin G. Yuzon's Motion to Quash Information dated 10 February 2016, is hereby **DENIED** for lack of merit.

SO ORDERED.^[22]

Petitioner's motion for reconsideration^[23] was denied by the Sandiganbayan in its second assailed Resolution^[24] dated December 13, 2016.

The Issue

Petitioner, thus, resorted to the present *certiorari* petition alleging grave abuse of discretion on the part of the Sandiganbayan when it dismissed the criminal case without applying the balancing test to gauge inordinate delay and instead resorted to a mere mathematical computation of the period of delay. Petitioner likewise assails the Sandiganbayan's finding that the delay was oppressive and prejudicial to Lapid, *et al.* According to petitioner, the dismissal of the criminal case unduly deprived the State of its right to prosecute.^[25]

By way of comment,^[26] Lapid emphasized that petitioner did not prove that the delay in the conduct of the preliminary investigation was reasonable or justified in that it failed to demonstrate the supposed complexity of the case; the records are not voluminous as it consist of single-page documents for a total of 70 annexes; and that the respondents raised substantially similar defenses and issues.^[27]

Lapid further argues that the lapse of a long period of time without having his case tried, without cause or justifiable motive, is deemed as vexatious, capricious and oppressive delay which violates a party's right to a speedy disposition of his case and to due process.^[28] He also claims to have been prejudiced by the delay in the disposition of his case given that one of his primary witnesses, *i.e.*, Provincial Administrator Atty. Benalfre Jabar Galang,^[29] died even before he could perform any act in Lapid's defense.^[30] Contrary to petitioner's claim, Lapid contends that the Sandiganbayan in fact applied the balancing test in determining whether Lapid has been denied his right to a speedy disposition of his case.^[31] Finally, Lapid urges the Court to dismiss the instant petition for violation of the rule on double jeopardy.^[32]

For their part, Aquino-Abubakar, Aquino and Vasquez commented^[33] that the Ombudsman caused the delay of more than nine years in the fact-finding investigation and the preliminary investigation in violation of their right to a speedy disposition of their case.

Thus, the core issue to be resolved is whether or not the Sandiganbayan gravely abused its discretion when it dismissed the criminal case against Lapid, *et al.*, for violation of the latter's right to a speedy disposition of their case. Determinative of this issue is whether or not the Ombudsman committed inordinate delay in the resolution and termination of the preliminary investigation.

The Ruling of the Court