

SECOND DIVISION

[G.R. No. 232737, October 02, 2019]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON.
SANDIGANBAYAN (SECOND DIVISION) AND RICO REY S.
HOLGANZA,* RESPONDENTS.**

DECISION

REYES, J. JR., J.:

Through this *Petition for Certiorari*^[1] under Rule 65 of the Rules of Court, petitioner People of the Philippines, represented by the Office of the Special Prosecutor (prosecution), seeks to annul the Resolutions dated December 14, 2016^[2] and May 25, 2017^[3] of the Sandiganbayan Second Division (Sandiganbayan) which dismissed the criminal case against respondent Rico Rey S. Holganza (Holganza) on the ground of violation of the right to speedy disposition of his case. The Sandiganbayan dismissed the criminal case after finding that it took the Office of the Ombudsman Visayas (Ombudsman-Visayas) a period of 12 years and 10 months to conclude its preliminary investigation and file the corresponding information in court.

The Facts

For the benefit of its homeless and underprivileged constituents, the City of Cebu implemented a medium-rise, low-cost condominium project. Local newspapers, however, reported that this condominium project was allegedly attended by irregularities such as the lack of approval from the Commission on Audit (COA) for the City's negotiation of a deed of exchange with the lot owners where the condominium project was built, the absence of a duly-licensed condominium corporation, the late issuance of certificates of occupancy and the disqualification of the actual occupants as entitled beneficiaries.^[4]

On November 25, 1998, and upon the request of the Ombudsman-Visayas, COA Regional Office No. VII directed the Cebu City Auditor to conduct a fact-finding inquiry on the condominium project.^[5]

On April 19, 2000, the COA Regional Office No. VII submitted its verified fact-finding report and a value for money audit report to the Ombudsman-Visayas.^[6] The fact-finding inquiry was thereafter upgraded and docketed as criminal and administrative cases^[7] against several respondents including City Mayor Alvin Garcia (Mayor Garcia) and the members of the Prequalification Bids and Awards Committee (PBAC), which included Holganza.^[8]

On July 4, 2000, the Ombudsman-Visayas ordered respondents to file their counter-

affidavits.^[9] Some of the respondents^[10] moved that they be furnished with the verified complaint filed by the COA as what was furnished them was only a copy of the COA fact-finding report.^[11] In its Order dated October 6, 2000, the Ombudsman-Visayas treated the verified COA fact-finding report as the complaint and, thus, reiterated its order for respondents to file their counter-affidavits.^[12]

Through a Resolution dated March 20, 2002, the Graft Investigation Officer recommended the filing of information against Mayor Garcia, the members of the PBAC and the head of the City's Division for the Welfare of the Urban Poor.^[13]

Pertinent to the members of the PBAC, probable cause for violation of Section 3(e) of Republic Act (R.A.) No. 3019 or the Anti-Graft and Corrupt Practices Act was found against them for granting the contract to build the condominium project to OCTA Builders, Inc., despite the latter not being accredited to undertake construction projects exceeding P3,000,000.00 which may have led to its failure to provide for a structurally sound building thus causing damage to the City. The Resolution was approved by the Deputy Ombudsman for Visayas on August 14, 2002.^[14]

The dispositive portion of the Resolution dated March 20, 2002 reads:

WHEREFORE, premises considered, there being probable cause to engender a well-founded belief that a violation of Sec. 3(e) of the Anti-Graft Law may have been committed, and that respondents Alvin B. Garcia, Laurito M. Malinao, Rodolfo Cabrera, Rico Rey F. Holganza, Eustaquio B. Cesa, and Pura Cimafranca, being members of the PBAC, as well as Mr. Noel B. Artes, Head of the DWUP, are probably guilty thereof, let the corresponding information be filed in the Sandiganbayan. Likewise, there being probable cause to engender a well-founded belief that a violation of Sec. 3(f) of RA 3019 had been committed and that respondent Alvin Garcia is probably guilty thereof, let the corresponding information be filed in the Sandiganbayan.

As to the other respondents, the case against them is hereby dismissed for lack of probable cause.

SO RESOLVED.^[15]

On June 20, 2005, then Ombudsman Simeon V. Marcelo approved the Resolution with a handwritten notation "*as modified by OLA Memo dated 8 Oct. xxx [illegible].*"^[16] This notation pertained to the Ombudsman's Office of Legal Affairs (OLA) Memorandum dated October 8, 2004 recommending that insofar as the violation of Section 3(f) is concerned against Mayor Garcia, the same should be modified to Section 3(g) of R.A. No. 3019.^[17]

Nevertheless, the filing of information did not come to pass as then Ombudsman Marcelo, in the meantime, resigned without the Resolution having been finalized. When then Ombudsman Merceditas Gutierrez (Ombudsman Gutierrez) assumed post, the Resolution allegedly underwent another hierarchy of review. When Ombudsman Gutierrez resigned in 2011 and then Ombudsman Conchita Carpio Morales (Ombudsman Carpio Morales) took her place, the Resolution supposedly

underwent another review.^[18]

On October 16, 2012, Graft Investigation and Prosecution Officer issued a Review recommending the filing of the information against the respondents, as follows:^[19]

WHEREFORE, premises considered, it is respectfully recommended that [Information] be immediately FILED (1) against respondents Mayor Alvin B. Garcia, Laurito M. Malinao, Rodolfo Cabrera, Rico Rey F. Holganza, Eustaquio B. Cesa and Pura Cimafranca for violation of Sec. 3(e) of R[A] 3019; (2) against respondent Noel B. Artes for violation of Sec. 3(e) of R[A] 3019; and (3) against respondent Mayor Alvin B. Garcia for violation of Sec. 3(g) of RA 3019).^[20]

Finally, on May 31, 2013, Ombudsman Carpio Morales approved the information which were filed before the Sandiganbayan on June 24, 2013.

The accusatory portion of the Information for violation of Section 3(e) of R.A. No. 3019, docketed as SB-13-CRM-0737, is as follows:

SB-13-CRM-0737

That on or about the 23rd day of January 1997, or sometime prior or subsequent thereto, in Cebu City, Philippines, and within the jurisdiction of this Honorable [C]ourt, above-named accused ALVIN B. GARCIA, being then the City Mayor of Cebu City, LAURITO M. MALINAO, RODOLFO V. CABRERA, RICO REY F. HOLGANZA being then the City Councilors of Cebu City and EUSTAQUIO B. CESA, being then the City Treasurer of Cebu City, all high ranking public officials, and PURA CIMAFRANCA, a private individual, being an NGO Representative, who are all members of the Pre-qualification, Bids and Awards Committee (PBAC), in such capacities and committing the offense while in the performance of their official functions, confederating together and mutually helping and conniving with each other, with evident bad faith and manifest partiality, did then and there [willfully], unlawfully and criminally cause undue injury to the Government and gave unwarranted preference, benefit and advantage to Octa Builders, Inc., by awarding the contract for the construction of the condominium project of Cebu City costing TWENTY SIX MILLION SIX HUNDRED FORTY THOUSAND PESOS (Php 26,640,000.00), in favor of Octa Builders, Inc., despite the fact that: (1) the contracted amount was determined unilaterally by the proponent Octa Builders, Inc., (2) the contracted amount was pegged without an Approved Agency Estimate (AAE); (3) the award of the said infrastructure project was made without conducting a competitive public bidding; (4) the said contract was awarded without prior approval of the Cebu City Development council; (5) the award was made without publication; (6) the aforesaid contract price was 49.5% more than the Cost Estimate of SEVENTEEN MILLION EIGHT HUNDRED FOURTEEN THOUSAND SIX HUNDRED SEVENTY[-] ONE PESOS and FORTY-FIVE CENTAVOS (Php 17,814,671.45) of the Commission on Audit (COA); (7) the contractor, Octa Builders, Inc. was not qualified as it lacked the requisite capital, experience and license to undertake said construction, it having been incorporated on November 15, 1996, barely two (2) years from its existence as a

contractor with an authorized capital stock of Php 10,000,000.00, with only Php 2,500,000.00 thereof as subscribed and only Php 625,000.00 as actually paid up; and (8) the same firm did not comply with the other mandatory legal requirement of performance bond, to the damage and prejudice of the Government.

CONTRARY TO LAW.^[21]

Holganza then filed an Omnibus Motion on July 2, 2013 for the remand of the case to the Ombudsman for preliminary investigation and to hold in abeyance the proceedings before the Sandiganbayan as regards him until the outcome of the new preliminary investigation.^[22] Holganza averred that when the Ombudsman-Visayas directed the filing of counter-affidavits on the COA complaint in 2000, he was no longer a member of the *Sangguniang Panlungsod* as he was deemed resigned when he ran, but lost, in the May 1998 elections.^[23] As such, Holganza alleged that he did not receive a copy of the COA fact-finding report nor was he given the opportunity to submit his counter-affidavit.^[24] He claimed that he never knew that there was a complaint against him until he read in the newspaper that the information had actually been filed.

The Sandiganbayan granted Holganza's Omnibus Motion in its Resolution dated August 6, 2013, and accordingly, the criminal case against Holganza was remanded to the Ombudsman for preliminary investigation.^[25]

Accordingly, the Office of the Special Prosecutor, on July 2, 2014, directed Holganza to submit his counter-affidavit and furnished him a copy of the COA fact-finding report. On July 18, 2014, Holganza assailed the Special Prosecutor's authority to conduct the preliminary investigation. This issue was subsequently clarified on August 4, 2014, and Holganza was directed anew to submit his counter-affidavit which he did on August 19, 2014.^[26]

On September 29, 2014, Holganza filed his supplemental counter-affidavit invoking his right to speedy disposition of cases and reckoned the delay from the time the Ombudsman-Visayas commenced the preliminary investigation in 2000.^[27]

Two years after, or on September 29, 2016, Holganza moved before the Sandiganbayan for the dismissal of the criminal case against him on the ground of inordinate delay.^[28] Holganza pointed out that it took the Ombudsman-Visayas a period of 12 years and 10 months, reckoned from August 7, 2000, when respondents were required to file their counter-affidavits, to June 24, 2013, when the information was filed with the Sandiganbayan, to conclude the preliminary investigation. He further emphasized that it has so far taken the Office of the Special Prosecutor another two years and yet, has not resolved the preliminary investigation as to him.^[29]

The Sandiganbayan's Resolutions

On December 14, 2016, the Sandiganbayan issued its presently assailed Resolution granting Holganza's motion to dismiss.

The Sandiganbayan held that the length of delay should be reckoned from the time of the filing of the initiatory complaint which, in this case, was on August 7, 2000 or the date when Holganza and his co-respondents were ordered to submit their counter-affidavits.

At any rate, the Sandiganbayan held that there would still be inordinate delay even if the period were to be reckoned from the filing of Holganza of his counter-affidavit on August 19, 2014 for purposes of reinvestigation. The Sandiganbayan disregarded the prosecution's claim that the voluminous records that originated from the Ombudsman-Visayas and the physical transfer of the Special Prosecutor's office contributed to the delay. Instead, it observed that Holganza's main defense was similar to the defense raised by his co-respondents which had already been passed upon by the Ombudsman-Visayas. The Sandiganbayan, thus, concluded that the two-year period it has so far taken the Office of the Special Prosecutor for the reinvestigation already constitutes inordinate delay.

In disposal, the Sandiganbayan ruled:

WHEREFORE, the motion is **GRANTED**.

Accordingly, Criminal Case No. SB-13-CRM-0737 with respect to accused [Holganza] for violation of Section 3(e) of R.A. No. 3019, as amended, is hereby **DISMISSED**. Let the bail bond posted by the accused for his provisional liberty be ordered cancelled and returned to him subject to the usual accounting and auditing rules and procedures. The hold-departure order against the accused is also hereby ordered **LIFTED**. Accordingly, let a copy of this resolution be furnished the Bureau of Immigration.

SO ORDERED.^[30]

The prosecution's motion for reconsideration met similar denial from the Sandiganbayan through its Resolution dated May 25, 2017.^[31]

Thus, the present *certiorari* petition.

The Issue

Review is urged on the ground that the Sandiganbayan gravely abused its discretion when it dismissed the criminal case against Holganza for inordinate delay when such conclusion was allegedly reached by mere mathematical computation of the period of delay without considering the facts and circumstances of the case. The prosecution points out that Holganza admitted that he became aware of the case against him only after the filing of the information and that as to him, there was as yet no case filed in 2000 as he was never furnished a copy of the COA fact-finding report which served as the complaint nor was he directed to submit his counter-affidavit.^[32] He was also deemed to have waived the invocation of the right to speedy disposition of his case when he himself moved for the remand of the case for the conduct of a preliminary investigation.^[33]

Grave abuse of discretion is further attributed against the Sandiganbayan in holding that the two-year period it has since taken the Office of the Special Prosecutor to