

## THIRD DIVISION

[ G.R. No. 199151-56, July 25, 2016 ]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. THE  
SANDIGANBAYAN, FIFTH DIVISION, LT. GEN. LEOPOLDO S.  
ACOT, B/GEN. ILDEFONSO N. DULINAYAN, LT. COL. SANTIAGO B.  
RAMIREZ, LT. COL. CESAR M. CARINO, MAJ. PROCESO T.  
SABADO, MAJ. PACQUITO L. CUENCA, 1LT. MARCELINO M.  
MORALES, M/SGT. ATULFO D. TAMPOLINO, REMEDIOS "REMY"  
DIAZ, JOSE GADIN, JR., GLENN ORQUIOLA, HERMINIGILDA  
LLAVE, GLORIA BAYONA AND RAMON BAYONA JR.,  
RESPONDENTS.**

### DECISION

#### PERALTA, J.:

Before us is a special civil action for *certiorari*<sup>[1]</sup> under Rule 65 of the Rules of Court which seeks to annul and set aside the Resolutions dated September 16, 2011 and October 15, 2010 by public respondent Sandiganbayan for allegedly having been issued without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction, and to reinstate the six (6) Informations for Violation of Section 3 (e) of Republic Act (R.A.) No. 3019 otherwise known as the "Anti-Graft and Corrupt Practices Act" filed against all private respondents.

The assailed Resolution dated October 15, 2010 granted the motions to quash or dismiss filed by private respondents Lt. Gen. Leopoldo S. Acot (*Acot*), B/Gen. Ildefonso N. Dulinayan (*Dulinayan*), Lt. Col. Santiago B. Ramirez (*Ramirez*), Lt. Col. Cesar M. Cariño (*Cariño*), Maj. Proceso T. Sabado (*Sabado*), Maj. Pacquito L. Cuenca (*Cuenca*), 1Lt. Marcelino M. Morales (*Morales*), M/Sgt. Atulfo D. Tampolino (*Tampolino*) and Remedios Diaz (*Diaz*). The assailed Resolution dated September 16, 2011 denied petitioner's Motion for Reconsideration of the October 15, 2010 Resolution and granted the motions to quash filed by respondents Jose Gadin, Jr. (*Gadin*), Glenn Orquiola (*Orquiola*), Herminigilda Llave (*Llave*), Gloria Bayona and Ramon Bayona, Jr.<sup>[2]</sup>

The motions to quash or dismiss filed by private respondents were premised on the ground of inordinate delay in the conduct of the preliminary investigation amounting to a violation of their constitutional rights to due process of law and to a speedy disposition of the cases.

The facts of the case, as culled from the records, are as follows:

Sometime on December 28, 1994, a letter-complaint was filed by one Carmelita U. Ramirez before the Office of the Ombudsman for the Military and other Law Enforcement Officers (*MOLEO*) alleging, among others, that private respondents conspired and defrauded the government in the amount of Eighty-Nine Million Pesos



(P89M) through ghost deliveries.<sup>[3]</sup> The complaint prompted the MOLEO to immediately conduct a fact-finding investigation. It discovered that a similar fact-finding body within the Philippine Air Force, more particularly the Office of the Inspector General (OTIG), found that based on the audit of the AFP's Program and Evaluation and Management Analysis Division (PEMRAD), Office of the Deputy Chief of Staff for Comptrollership OJ6, there were ghost deliveries of assorted supplies and materials at the 5th Fighter Wing Basa Air Base amounting to P24,430,029.00 and unaccounted supplies and materials worth P42,592,257.61.<sup>[4]</sup>

On February 22, 1995, the records and report of the OTIG were subsequently forwarded to the MOLEO, after which, MOLEO commenced conducting the preliminary investigation against private respondents.<sup>[5]</sup> The last counter-affidavit was filed on March 11, 1996.<sup>[6]</sup>

On April 12, 1996, MOLEO Investigator Rudiger G. Falcis prepared a Resolution recommending that all private respondents be indicted for six counts of Violation of Section 3(e) of R.A. 3019 and six counts of the crime of Malversation of Public Funds through Falsification of Public Documents (Article 217, in relation to Articles 171 and 172, of the Revised Penal Code).<sup>[7]</sup> Then Director Orlando C. Casimiro of the Criminal and Administrative Investigation Bureau concurred in the findings, and the same was recommended for approval by B/Gen Manuel B. Casclang (Ret), Deputy Ombudsman for the Military.<sup>[8]</sup>

On July 10, 1996, Special Prosecution Officer III Reynaldo Mendoza issued a Memorandum recommending the filing of violation of Section 3 (e) of R.A. 3019 and the dismissal of the charges for Malversation of Public Funds.<sup>[9]</sup> This Memorandum was approved by Deputy Ombudsman Orlando Casimiro.<sup>[10]</sup>

On January 12, 1998, Special Prosecutor Leonardo Tamayo issued a Memorandum recommending the dropping of charges against private respondents Acot and Dulinayan on the ground that the supplies involved were among those that had undergone the regular and proper procedure. This recommendation was approved by then Ombudsman Aniano Desierto on March 2, 1998.<sup>[11]</sup> On even date, Ombudsman Aniano Desierto also approved the Resolution dated April 12, 1996 with the following note - "*with the modifications as to the respondents as recommended by SP Tamayo and as to the scope as recommended by the OSP.*"<sup>[12]</sup>

On January 12, 1999, the case was subjected to another re-evaluation by the MOLEO.<sup>[13]</sup>

In 2003, upon the assumption of then Ombudsman Simeon V. Marcelo, the case underwent another thorough review upon the recommendation of the MOLEO.<sup>[14]</sup>

On April 27, 2005, MOLEO, received the records of the case for the preparation of the Informations to be filed with the court.<sup>[15]</sup>

On July 7, 2005, MOLEO, through its investigation team, issued a Memorandum recommending for another thorough review of the case arguing against the dismissal of the charges against private respondents Acot and Dulinayan.<sup>[16]</sup> The



Memorandum was recommended for approval by then Deputy Ombudsman Orlando Casimiro.<sup>[17]</sup>

On September 19, 2005, then Ombudsman Simeon V. Marcelo referred the case to the Office of the Legal Affairs (OLA) for a thorough review of the case.<sup>[18]</sup>

On June 25, 2007, a Review Memorandum was prepared by Assistant Special Prosecutor Terence S. Fernando and was recommended for approval by Assistant Ombudsman Dina Joy Tenala containing the opinion of the OLA that "the April 12, 1996 Resolution did not become final and executory and that the doctrine relied upon for the dismissal of the case against Acot and Dulinayan is not applicable and that probable cause exists based on evidence."<sup>[19]</sup>

On October 23, 2008, then Over-all Deputy Ombudsman Orlando C. Casimiro approved the said Review Memorandum.<sup>[20]</sup>

On October 6, 2009, six Informations were filed before the Sandiganbayan docketed as SB-09-CRM-0184 to 189 charging private respondents for violation of Section 3(e) of R.A. 3019.

The arraignment was set on November 20, 2009. On November 9, 2009, respondent Dulinayan filed a Motion to Quash/Dismiss and Motion to Defer Arraignment. On December 1, 2009, respondent Acot filed an Omnibus Motion to Quash and Defer Arraignment. On February 8, 2010, a Motion to Quash/Dismiss and for Deferment of Arraignment was filed by respondents Ramirez, Cariño, Sabado, Cuenca and Morales wherein they adopted the motions of respondents Dulinayan and Acot.<sup>[21]</sup> On February 19, 2010, a Motion to Quash was filed by respondent Tampolino.<sup>[22]</sup>

In their separate motions to quash, respondents Dulinayan, Acot, Ramirez, Cariño, Sabado, Cuenca and Morales argued, among others, that their right to speedy disposition of cases was violated when it took the Office of the Ombudsman almost fifteen (15) years to file their case before the court.

In the Comment or Opposition filed by the petitioner, it stated that the respondents failed to invoke their right which must also be weighed with the right of the State to prosecute citing the case of *Corpuz v. Sandiganbayan*.<sup>[23]</sup> It further stated that the State should not be bound by the negligent act of its officers, and the laxity in the filing of the case is prejudicial to the State because it stands to lose Eighty-Nine Million Pesos (P89M).

In his Reply, respondent Dulinayan countered that the cited cases of *Corpuz and Valencia*<sup>[24]</sup> have different factual antecedents. In the said cases, the delay was only one year and there was contributory negligence on the part of the accused. He reiterated that it took more than seven (7) years before the MOLEO requested a review of the Resolution of the Ombudsman and another four (4) years before the Informations were filed. He did not have the opportunity to invoke his right before the Ombudsman because he was not informed of the existence of the cases considering that he was able to secure clearance therefrom. His constitutional rights as embodied in the Bill of Rights take precedence over the rights of the State.



In his Reply, respondent Acot asserted that there was a power play within the Office of the Ombudsman considering that despite prior dismissal of the case against him, it was still subjected to review seven years later and a contrary recommendation was issued after four (4) more years. He claimed that the internal politics in the instant case was akin to the case of *People v. Tatad*.<sup>[25]</sup>

In its Supplemental Comment/Opposition, the petitioner averred that considering the huge amount involved in the case, it had to be reviewed meticulously and scrupulously such that the resolution underwent a hierarchy of review which called for a painstaking and fastidious study of the records of the case.

On October 15, 2010, public respondent Sandiganbayan issued a Resolution granting the motions to quash on the ground that the aforesaid private respondents' right to speedy disposition of their cases was unduly violated, thus:

A careful reading of the April 12, 1996 Resolution of the Ombudsman and the Memoranda issued reveals that this initial Resolution was the one which resulted from [the] painstaking study of the documents gathered *vis-a-vis* the counter-affidavits of the respondents. Noteworthy is the fact that the prosecution did not offer any other explanation as to the delay of the review of the Resolution except that the case had to be reviewed meticulously and scrupulously, that the Resolution underwent a hierarchy of review and calls for painstaking and fastidious study of the records of the case. Upon review by OLA, no new documents were studied but there was merely a revisit of the cited case. Such would not require a "painstaking study or grueling review" as claimed by the Prosecution. Thus, the length of time it took to conduct its review is undoubtedly more than what was called for.

Though the Prosecution points out that accused failed to seasonably assert their right, it must be emphasized that the prosecution has not espoused a justifiable reason for the delay in the review of the April 12, 1996 Resolution. We reiterate that the review of the said Resolution did not involve any new computations nor any other ocular inspections. It was merely a revisit and an evaluation of records already at hand and of the cited Arias case and the reasons espoused for the dismissal of the cases against Dulinayan and Acot. Neither new findings nor major changes were reflected in the said Resolution.

Thus, the length of seven (7) years of review is obviously vexatious and oppressive. Likewise, the length of fifteen (15) years to hold the Preliminary Investigation is too long a time to conduct it, considering the circumstances of the case. As to the claim of the Prosecution that the accused failed to assert its rights, we quote the ruling of the Supreme Court in the case of *Cervantes*:

The Special Prosecutor also cited *Alvizo v. Sandiganbayan* (220 SCRA 55, 64) alleging that as in *Alvizo* the petitioner herein was "insensitive to the implications and contingencies thereof by not taking any step whatsoever to accelerate the disposition of the matter."



We cannot accept the Special Prosecutor's ratiocination. It is the duty of the prosecutor to speedily resolve the complaint, as mandated by the Constitution, regardless of whether the petitioner did not object to the delay or that the delay was with his acquiescence provided that it was not due to causes directly attributable to him.

We must highlight the fact that there is no contributory act on the part of the accused that resulted in the delay of the Preliminary Investigation.

Based on the facts and circumstances discussed above, and after considering that the right of the accused-movants to the speedy disposition of their cases and the right of the State to punish people who violated its penal laws should be balanced, this Court resolves to grant the Motions of accused. The prosecution has utterly failed to justify the inordinate delay in the preliminary investigation of these cases.<sup>[26]</sup>

On October 15, 2010, respondent Gadin filed a Motion to Quash Information and Defer Arraignment.<sup>[27]</sup> On October 28, 2010, respondents Orquiola and Llave filed a Motion to Dismiss on the same grounds raised by the other respondents.<sup>[28]</sup> On November 7, 2010, respondents Gloria Bayona and Ramon Bayona, Jr. jointly filed a Motion for Reconsideration with Motion to Dismiss.<sup>[29]</sup>

Respondents Gadin, Orquiola, Llave, Gloria Bayona and Ramon Bayona, Jr. contended, among others, that their right to speedy disposition of cases was violated due to the inordinate delay in the preliminary investigation of the case. Respondent Gadin argued that the delay deprived him from adequately defending himself since the witnesses who could testify in the processes and procedures in the Finance Department of the Philippine Air Force are no longer available and some of the documents he could have used for his defense could not anymore be found.

On November 2, 2010, petitioner filed a Motion for Reconsideration of the Sandiganbayan's Resolution dated October 15, 2010. On September 9, 2011, the Sandiganbayan denied petitioner's Motion for Reconsideration and granted the motions to quash filed by respondents Gadin, Orquiola, Llave, Bayona and Bayona, Jr.

Hence, this petition wherein petitioners impute to public respondent Sandiganbayan grave abuse of discretion amounting to lack or excess of jurisdiction when it granted all of private respondents' motion to quash and denied petitioner's motion for reconsideration.

On January 12, 2012, the Court resolved to require private respondents to comment on the instant petition.<sup>[30]</sup>

We first tackle the propriety of the petition for *certiorari* under Rule 65 of the Rules of Court. In the Comment filed by respondents Tampolino, Ramirez, Cariño, Sabado, Cuenca, Morales, Orquiola and Llave, they stated that the remedy of the petitioner should have been appeal by *certiorari* under Rule 45 because the issue is allegedly purely legal citing the case of *People v. Sandiganbayan, et al.*<sup>[31]</sup> According to the aforesaid respondents, the Resolution of the public respondent Sandiganbayan