

## THIRD DIVISION

[ G.R. No. 195032, February 20, 2013 ]

**ISABELO A. BRAZA, PETITIONER, VS. THE HONORABLE  
SANDIGANBAYAN (1<sup>ST</sup> DIVISION), RESPONDENT.**

### D E C I S I O N

**MENDOZA, J.:**

This is a petition for *certiorari* filed by petitioner Isabelo Braza (*Braza*) seeking to reverse and set aside the October 12, 2009 Resolution<sup>[1]</sup> of the Sandiganbayan in Criminal Case No. SB-08-CRM-0275, entitled *People v. Robert G. Lala, et al.*, as well as its October 22, 2010 Resolution,<sup>[2]</sup> denying his motion for reconsideration.

#### **The Facts**

The Philippines was assigned the hosting rights for the 12<sup>th</sup> Association of Southeast Asian Nations (*ASEAN*) Leaders Summit scheduled in December 2006. In preparation for this international diplomatic event with the province of Cebu as the designated venue, the Department of Public Works and Highways (*DPWH*) identified projects relative to the improvement and rehabilitation of roads and installation of traffic safety devices and lighting facilities. The then Acting Secretary of the DPWH, Hermogenes E. Ebdane, approved the resort to alternative modes of procurement for the implementation of these projects due to the proximity of the ASEAN Summit.

One of the ASEAN Summit-related projects to be undertaken was the installation of street lighting systems along the perimeters of the Cebu International Convention Center in Mandaue City and the ceremonial routes of the Summit to upgrade the appearance of the convention areas and to improve night-time visibility for security purposes. Four (4) out of eleven (11) street lighting projects were awarded to FABMIK Construction and Equipment Supply Company, Inc. (*FABMIK*) and these were covered by Contract I.D. Nos. 06H0021, 06H00049, 06H00050, and 06H00052. Contract I.D. No. 06H00050, the subject transaction of this case, involved the supply and installation of street lighting facilities along the stretch of Mandaue-Mactan Bridge 1 to Punta Engaño Section in Lapu-Lapu City, with an estimated project cost of P83,950,000.00.

With the exception of the street lighting project covered by Contract I.D. No. 06H0021, the three other projects were bid out only on November 28, 2006 or less than two (2) weeks before the scheduled start of the Summit. Thereafter, the DPWH and FABMIK executed a Memorandum of Agreement (*MOA*) whereby FABMIK obliged itself to implement the projects at its own expense and the DPWH to guarantee the payment of the work accomplished. FABMIK was able to complete the projects within the deadline of ten (10) days utilizing its own resources and credit facilities. The schedule of the international event, however, was moved by the

national organizers to January 9-15, 2007 due to typhoon Seniang which struck Cebu for several days.

After the summit, a letter-complaint was filed before the Public Assistance and Corruption Prevention Office (*PACPO*), Ombudsman – Visayas, alleging that the ASEAN Summit street lighting projects were overpriced. A panel composing of three investigators conducted a fact-finding investigation to determine the veracity of the accusation. Braza, being the president of FABMIK, was impleaded as one of the respondents. On March 16, 2007, the Ombudsman directed the Department of Budget and Management (*DBM*) and the DPWH to cease and desist from releasing or disbursing funds for the projects in question.<sup>[3]</sup>

On March 23, 2007, the fact-finding body issued its Evaluation Report<sup>[4]</sup> recommending the filing of charges for violation of Section 3(e) of Republic Act (*R.A.*) No. 3019, otherwise known as the Anti-Graft and Corrupt Practice Act, against the DPWH officials and employees in Region VII and the cities of Mandaue and Lapu-lapu, and private contractors FABMIK and GAMPIK Construction and Development, Inc. (*GAMPIK*). This report was filed before the Office of the Ombudsman-Visayas (*OMB- Visayas*) for the conduct of a preliminary investigation and was docketed therein as OMB-V-C-07-124-C, entitled *PACPO-OMB-Visayas v. Lala, et. al.*

After the preliminary investigation, the OMB-Visayas issued its Resolution,<sup>[5]</sup> dated January 24, 2008, finding probable cause to indict the concerned respondents for violation of Section 3(g) of R.A. No. 3019. It was found that the lampposts and other lighting facilities installed were indeed highly overpriced after a comparison of the costs of the materials indicated in the Program of Works and Estimates (*POWE*) with those in the Bureau of Customs (*BOC*) documents; and that the contracts entered into between the government officials and the private contractors were manifestly and grossly disadvantageous to the government.

Subsequently, the OMB-Visayas filed several informations before the Sandiganbayan for violation of Sec. 3(g) of R.A. 3019 against the officials of DPWH Region VII, the officials of the cities of Mandaue and Lapu-lapu and private contractors, FABMIK President Braza and GAMPIK Board Chairman Gerardo S. Surla (*Surla*). The Information docketed as SB-08- CRM-0275<sup>[6]</sup> (*first information*) which involved the street lighting project covered by Contract I.D. No. 06H00050 with FABMIK, was raffled to the First Division of the Sandiganbayan. It was alleged therein that Braza acted in conspiracy with the public officials and employees in the commission of the crime charged.

On June 6, 2008, Braza was arraigned as a precondition to his authorization to travel abroad. He entered a plea of “not guilty.”

On August 14, 2008, the motions for reinvestigation filed by Arturo Radaza (*Radaza*), the Mayor of Lapu-lapu City, and the DPWH officials were denied by the Sandiganbayan for lack of merit. Consequently, they moved for the reconsideration of said resolution.<sup>[7]</sup> On August 27, 2008, Braza filed a motion for reinvestigation<sup>[8]</sup> anchored on the following grounds: (1) the import documents relied upon by the OMB-Visayas were spurious and falsified; (2) constituted new evidence, if considered, would overturn the finding of probable cause; and (3) the finding of

overpricing was bereft of factual and legal basis as the same was not substantiated by any independent canvass of prevailing market prices of the subject lampposts. He prayed for the suspension of the proceedings of the case pending such reinvestigation. The Sandiganbayan treated Braza's motion as his motion for reconsideration of its August 14, 2008 Resolution.

On November 13, 2008, Braza filed a manifestation<sup>[9]</sup> to make of record that he was maintaining his previous plea of "not guilty" without any condition.

During the proceedings held on November 3, 2008, the Sandiganbayan reconsidered its August 14, 2008 resolution and directed a reinvestigation of the case.<sup>[10]</sup> According to the anti-graft court, the allegations to the effect that no independent canvass was conducted and that the charge of overpricing was based on falsified documents were serious reasons enough to merit a reinvestigation of the case. The Sandiganbayan said that it could be reasonably inferred from the July 30, 2008 Order of the Ombudsman in OMB-V-C-07-0124-C that the latter would not object to the conduct of a reinvestigation of all the cases against the accused.

Braza filed his Manifestation,<sup>[11]</sup> dated February 2, 2009, informing the Sandiganbayan of his intention to abandon his previous motion for reinvestigation. He opined that the prosecution would merely use the reinvestigation proceedings as a means to engage in a second unbridled fishing expedition to cure the lack of probable cause.

On March 23, 2009, Braza filed a motion<sup>[12]</sup> in support of the abandonment of reinvestigation with a plea to vacate Information, insisting that the further reinvestigation of the case would only afford the prosecution a second round of preliminary investigation which would be vexatious, oppressive and violative of his constitutional right to a speedy disposition of his case, warranting its dismissal with prejudice.

After concluding its reinvestigation of the case, the OMB-Visayas issued its Resolution,<sup>[13]</sup> dated May 4, 2009, (*Supplemental Resolution*) which upheld the finding of probable cause but modified the charge from violation of Sec. 3(g) of R.A. No. 3019<sup>[14]</sup> to violation of Sec. 3(e)<sup>[15]</sup> of the same law. Accordingly, the prosecution filed its Manifestation and Motion to Admit Amended Information<sup>[16]</sup> on May 8, 2009.

On July 1, 2009, Braza filed his Comment (to the motion to admit amended information) with Plea for Discharge and/or Dismissal of the Case.<sup>[17]</sup> He claimed that the first information had been rendered ineffective or had been deemed vacated by the issuance of the Supplemental Resolution and, hence, his discharge from the first information was in order. By way of an alternative prayer, Braza sought the dismissal of the case with prejudice claiming that his right to a speedy disposition of the case had been violated and that the Supplemental Resolution failed to cure the fatal infirmities of the January 24, 2008 Resolution since proof to support the allegation of overpricing remained wanting. Braza averred that he could not be arraigned under the second information without violating the constitutional proscription against double jeopardy.

On October 12, 2009, the Sandiganbayan issued the first assailed resolution admitting the Amended Information,<sup>[18]</sup> dated May 4, 2009, (*second Information*) and denying Braza's plea for dismissal of the criminal case. The Sandiganbayan ruled that Braza would not be placed in double jeopardy should he be arraigned anew under the second information because his previous arraignment was conditional. It continued that even if he was regularly arraigned, double jeopardy would still not set in because the second information charged an offense different from, and which did not include or was necessarily included in, the original offense charged. Lastly, it found that the delay in the reinvestigation proceedings could not be characterized as vexatious, capricious or oppressive and that it could not be attributed to the prosecution. The dispositive portion of the said resolution reads:

**WHEREFORE**, premises considered, the *Motion to Admit Attached Amended Information* filed by the prosecution is hereby **GRANTED**. The Amended Information charging all the accused therein with violation of Sec. 3 (e) of R.A. 3019, being the proper offense, is hereby **ADMITTED**.

Consequently, accused Braza's *Alternative Relief for Dismissal of the Case* is hereby **DENIED**.

Let the arraignment of all the accused in the Amended Information be set on November 18, 2009, at 8:30 in the morning.

**SO ORDERED.**<sup>[19]</sup>

On November 6, 2009, Braza moved for reconsideration with alternative motion to quash the information<sup>[20]</sup> reiterating his arguments that his right against double jeopardy and his right to a speedy disposition of the case were violated warranting the dismissal of the criminal case with prejudice. In the alternative, Braza moved for the quashal of the second information vigorously asserting that the same was fatally defective for failure to allege any actual, specified and quantifiable injury sustained by the government as required by law for indictment under Sec. 3(e) of R.A. 3019, and that the charge of overpricing was unfounded.

On October 22, 2010, the Sandiganbayan issued the second assailed resolution stating, among others, the denial of Braza's Motion to Quash the information. The anti-graft court ruled that the Amended Information was sufficient in substance as to inform the accused of the nature and causes of accusations against them. Further, it held that the specifics sought to be alleged in the Amended Information were evidentiary in nature which could be properly presented during the trial on the merits. The Sandiganbayan also stated that it was possible to establish the fact of overpricing if it would be proven that the contract price was excessive compared to the price for which FABMIK purchased the street lighting facilities from its supplier. Braza was effectively discharged from the first Information upon the filing of the second Information but said discharge was without prejudice to, and would not preclude, his prosecution for violation of Sec. 3(e) of R.A. No. 3019. It added that his right to speedy disposition of the case was not violated inasmuch as the length of time spent for the proceedings was in compliance with the procedural requirements of due process. The Sandiganbayan, however, deemed it proper that a new preliminary investigation be conducted under the new charge. Accordingly, the

Sandiganbayan disposed:

**WHEREFORE**, in the light of all the foregoing, the separate omnibus motions of accused-movant Radaza and accused-movants Bernido, Manggis and Ojeda, insofar as the sought preliminary investigation is concerned is **GRANTED**.

Accordingly, this case is hereby remanded to the Office of the Ombudsman/Special Prosecutor for preliminary investigation of violation of Section 3(e) of RA 3019. The said office/s are hereby ordered to complete the said preliminary investigation and to submit to the Court the result of the said investigation within sixty (60) days from notice.

However, the Motion for Bill of Particulars of accused- movants Lala, Dindin Alvizo, Fernandez, Bagolor, Galang and Diano, the Motion for Quashal of Information of accused-movants Bernido, Manggis and Ojeda, and accused-movant Braza's Motion to Quash, are hereby DENIED for lack of merit.

SO ORDERED.<sup>[21]</sup>

### **ISSUES**

Undaunted, Braza filed this petition for certiorari ascribing grave abuse of discretion on the Sandiganbayan for issuing the Resolutions, dated October 12, 2009 and October 22, 2010, respectively. Braza raised the following issues:

**A) The Sandiganbayan committed grave abuse of discretion in sustaining the withdrawal of the Information in violation of the constitutional guarantee against double jeopardy, the petitioner having entered a valid plea and vigorously objected to any further conduct of reinvestigation and amendment of Information.**

**B) The Sandiganbayan acted with grave abuse of discretion in allowing the withdrawal and amendment of the Information without prejudice, the proceedings being fraught with flip-flopping, prolonged and vexatious determination of probable cause, thereby violating petitioner's constitutional right to speedy disposition of his case, warranting his discharge with prejudice regardless of the nature of his previous arraignment.**

**C) The Sandiganbayan acted with grave abuse of discretion in denying the motion to quash Amended Information, there being no allegation of actual, specified, or quantifiable injury sustained by the government as required by law (in cases involving Sec. 3 (e) of RA 3019) with the Reinvestigation Report itself admitting on record that the government has not paid a single centavo for the fully- implemented project.**