

EN BANC

[G.R. Nos. 164068-69, November 19, 2013]

**ROLANDO P. DE LA CUESTA, PETITIONER, VS. THE
SANDIGANBAYAN, FIRST DIVISION AND THE PEOPLE OF THE
PHILIPPINES, RESPONDENTS.**

[G.R. NOS. 166305-06]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. EDUARDO M.
COJUANGCO, JR., HERMENEGILDO ** C. ZAYCO, SALVADOR
ESCUDERO III, VICENTE B. VALDEPEÑAS, JR., ROLANDO P. DE
LA CUESTA AND THE HON. SANDIGANBAYAN (FIRST DIVISION),
RESPONDENTS.**

[G.R. NOS. 166487-88]

**REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. THE
SANDIGANBAYAN AND EDUARDO M. COJUANGCO, JR., ROLANDO
P. DE LA CUESTA, HERMINIGILDO C. ZAYCO, JOSE R. ELEAZAR,
JR., FELIX V. DUEÑAS, JR., SALVADOR ESCUDERO III, AND
VICENTE B. VALDEPEÑAS, JR., RESPONDENTS.**

D E C I S I O N

ABAD, J.:

These cases refer to a government agency's grant of financial assistance to a private non-profit organization representing the community whose interests such agency serves.

The Facts and the Case

On February 9, 1995 the Office of the Ombudsman (OMB) filed two separate informations against former members of the Governing Board of the Philippine Coconut Administration (PCA), including its chairman, accused Rolando P. De La Cuesta, and a member, Eduardo M. Cojuangco, Jr., before the Sandiganbayan in Criminal Cases 22017 and 22018. They were charged with granting financial assistance of P2 million in 1984^[1] and P6 million in 1985^[2] to the Philippine Coconut Producers Federation (COCOFED), a nationwide association of coconut farmers, in violation of Section 3(e) of Republic Act 3019 (the Anti-Graft and Corrupt Practices Act).

The criminal Informations read:

In Criminal Case 22017

That on or about December 19, 1985, or sometime prior or subsequent thereto, in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, all public officers, accused MARIA CLARA L. LOBREGAT, ROLANDO P. DE LA CUESTA, HERMENEGILDO C. ZAYCO, JOSE R. ELEAZAR, JR., SALVADOR ESCUDERO III and VICENTE B. VALDEPEÑAS, JR., being then Members of the Board of Directors and FELIX J. DUEÑAS, JR., being then the Administrator, all of the Philippine Coconut Authority, committing the crime herein charged in relation to, while in the performance and taking advantage of their official functions, with evident bad faith and manifest partiality, and all conspiring and confederating with each other, did then and there wilfully, unlawfully and criminally donate and/or extend financial assistance to the Philippine Coconut Producers Federation (COCOFED), a private entity, the total amount of Six Million Pesos (P6,000,000.00) which sum was taken from the Special Funds of the Philippine Coconut Authority, said accused knowing fully well that COCOFED is a private entity and that the same amount was not included in the budget Fund 503, thereby giving unwarranted benefit in favor of the Philippine Coconut Producers Federation (COCOFED) and, consequently, causing undue injury to the Government in the aforestated amount.

In Criminal Case 22018

That on or about January 18, 1984, or sometime prior or subsequent thereto, in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the above named accused, all public officers, accused EDUARDO M. COJUANGCO, JR., MARIA CLARA L. LOBREGAT, ROLANDO P. DE LA CUESTA, HERMENEGILDO C. ZAYCO, and JOSE R. ELEAZAR, JR., being then the members of the Board of Directors and FELIX J. DUEÑAS, JR., being then the Administrator, all of the Philippine Coconut Authority, committing the crime herein charged in relation to, while in the performance and taking advantage of their official functions, with evident bad faith and manifest partiality, and all conspiring and confederating with each other, did then and there wilfully, unlawfully and criminally donate and/or extend financial assistance to the Philippine Coconut Producers Federation (COCOFED), a private entity, the total amount of Two Million Pesos (P2,000,000.00) which sum was taken from the Special Funds of the Philippine Coconut Authority, said accused knowing fully well that COCOFED is a private entity and that the same amount was not included in the budget of Fund 503, thereby giving unwarranted benefit in favor of the Philippine Coconut Producers Federation (COCOFED) and, consequently, causing undue injury to the Government in the aforestated amount.

Claiming that the informations were prematurely filed as they were not notified of the June 2, 1992 Resolution, a requirement provided for by law,^[3] the Sandiganbayan granted the accused leave to seek reconsideration of such Resolution from the Office of the Special Prosecutor (OSP),^[4] the prosecution arm of the OMB. The court gave the Presidential Commission on Good Government (PCGG)

the chance to comment.^[5]

On December 6, 1996 the OMB submitted to the Sandiganbayan^[6] the October 22, 1996 Memorandum of Special Prosecution Officer III Victorio U. Tabanguil, bearing the November 15, 1996 approval of Ombudsman Aniano A. Desierto^[7] recommending the dismissal of the cases. This prompted the accused to file their respective motions to dismiss.^[8]

Meantime, the Office of the Solicitor General (OSG) filed with the OMB a motion for reconsideration of the adverse position that it had taken in the cases.^[9] On learning of the OSG's action, the Sandiganbayan directly ordered it to comment on the prosecution's motion to withdraw the Informations and the accused to reply in turn.^[10] Both complied.^[11] On February 4, 1997 the Sandiganbayan ordered the OSG and the PCGG to appear before it on February 17. Further, it required the PCGG to respond to the OSG's claim that the exhibits needed to prove the existence of probable cause remained with the PCGG.^[12]

At the February 17 hearing of the withdrawal issue, the OSG told the court that, as it turned out, the documents needed to show probable cause had already been submitted to the OMB at the preliminary investigation but were simply not adequately explained and, therefore, not fully appreciated. With this development, the Sandiganbayan gave the OSG time to submit to the OSP a catalogue of the documents mentioned with the accompanying explanation of their significance, after which the latter was to inform the court whether it was maintaining its position or changing it.^[13]

These documents are as follows:

- (a) The PCA Administrator's separate 1984 and 1985 memoranda to the PCA Governing Board recommending the financial grants of P2 million and P6 million, respectively, for COCOFED's use and providing justifications for the same;^[14]
- (b) Minutes of the PCA Board Meetings of January 18, 1984 and December 19, 1985^[15] during which the PCA Governing Board approved the grants under Resolutions 009-84 and 128-85, respectively;
- (c) The PCA Governing Board Resolutions 009-84 and 128-85;^[16]
- (d) The Disbursement Vouchers showing PCA's release of P2 million and P6 million (the latter in two equal payments) grants to COCOFED pursuant to the above Resolutions.^[17]
- (e) The PNB check and the corresponding COCOFED official receipt covering the P2 million PCA "financial assistance" to COCOFED under Board Resolution 009-84.^[18]
- (f) The PNB check and the corresponding COCOFED official receipt

covering the first P3 million of the P6 million PCA “financial assistance” to COCOFED under Board Resolution 128-85.^[19]

(g) The PNB check and the corresponding COCOFED official receipt covering the second P3 million of the P6 million PCA “financial assistance” to COCOFED under Board Resolution 128-85.^[20]

(h) The letter dated 31 July 1986^[21] of PCA Corporate Auditor Archimedes S. Sitjar to the PCA Administrator, disallowing the P2 million “financial assistance” to COCOFED paid out of the PCA Special Funds on the ground that this was not included in Fund 503 of that agency for the year 1984;

(i) The letter bearing receipt dated October 6, 1986^[22] of PCA Auditor Sitjar to the PCA Administrator, disallowing the P6 million “financial assistance” to COCOFED paid out of the National Coconut Productivity Program (NCPP) fund on the ground that this was not included in the NCPP budget of that agency;

(j) The letter dated December 29, 1986 of the PCA Office of the Auditor to the PCA Administrator,^[23] disallowing the P6 million “financial assistance” to COCOFED on the further ground of failure to secure the approval of the Chief Executive/President as provided for in Section 2 of P.D. 1997.^[24]

On March 17, 1997 the OSP informed the Sandiganbayan that, even with the above documents, it still found no new evidence sufficient to overturn its earlier findings that no probable cause existed against the accused.^[25]

Four years later on October 31, 2001 the Sandiganbayan ruled that probable cause existed to warrant the prosecution of the accused. It said:

Admittedly, the recipient of these donations was the COCOFED, a private corporation. When government funds are “donated” to private entities—which is against laws and regulations unless otherwise authorized by law—there is, at least at first blush, an apparent undue injury to the government and a corresponding unwarranted benefit to the private party favored with the donation. These make out prima facie the third and fourth elements above, or conversion for misuse of public funds, or some other offense which would be adequately covered by the present Informations.^[26]

Petitioners Dela Cuesta and Cojuangco moved for reconsideration on December 7^[27] and December 10, 2001,^[28] respectively. Meantime, Special Prosecutor Raymundo Julio A. Olaguer replaced Special Prosecutor Tabanguil who retired and on October 17, 2002 Ombudsman Simeon V. Marcelo took over the OMB,^[29] signalling a change in its position. On January 9, 2003 Special Prosecutor Olaguer recommended to Ombudsman Marcelo the adoption of the OSG’s position, which he

approved.^[30] Subsequently, the Special Prosecutor conveyed this change of position to the Sandiganbayan.^[31]

On July 23, 2004, following accused De La Cuesta's filing of a petition before this Court in G.R. 164068-69, complaining of alleged denial of his right to speedy trial,^[32] the Sandiganbayan issued a Resolution^[33] granting the accused's motions for reconsideration of its October 31, 2001 Resolution. The Sandiganbayan thus dismissed the cases against them for lack of probable cause, specifically since it found no *prima facie* evidence that evident bad faith, manifest partiality, or gross inexcusable negligence attended the PCA financial assistance to COCOFED.

The Sandiganbayan said that, based on the OSG-submitted documents, the grant of assistance to COCOFED followed a correct course: the PCA Administrator's proposal outlined the justification for the grants and the law that allowed these; the Board of Directors adopted the proposal upon an assumption that funds were indeed available and that the grants were allowed by law and the PCA charter; the required checks were supported by approved disbursement vouchers that were passed in audit; and COCOFED received the checks in due time. While the payments were disallowed in post audit, this was not because the grants were irregular but because of the absence of certifications of availability of funds and a prior approval by the President.

The Sandiganbayan observed, however, that these omissions only gave rise to possible administrative or civil liability, given that the grants did not appear to be patently illegal. At best, said that court, such omissions were mere errors in management discretion or bad judgment. That court concluded that, in the absence of *prima facie* evidence of evident bad faith, manifest partiality or gross inexcusable negligence, no case for violation of Section 3(e) of Republic Act (R.A.) 3019 exists.

Further, the Sandiganbayan did not agree with the prosecution that the accused may be indicted for technical malversation, using the same informations without violating their right to know what they were accused of. The charges were for the violation of a special law, the Anti-Graft and Corrupt Practices Act, a *malum prohibitum*, which did not embrace or cover any other offense. Section 3(e) of R.A. 3019 did not cover technical malversation or misuse of public funds under Article 220 of the Revised Penal Code, a *malum in se* offense the elements of which were distinct from Section 3(e) of R.A. 3019.

The OSP and OSG filed their respective motions for reconsideration^[34] that the accused opposed.^[35] On December 15, 2004 the Sandiganbayan denied the motion, prompting the OSP and the OSG to file separate petitions with this Court in G.R. 166305-06 and 166487-88, respectively. Subsequently, this Court ordered the two petitions consolidated with the earlier petition in G.R. 164068-69.^[36]

The Issues Presented

These cases present the following issues:

1. Whether or not the Sandiganbayan erred in not holding that it was bound by the findings and recommendations of the Ombudsman concerning the existence of probable cause in the two cases;