

FIRST DIVISION

[G.R. No. 109376, January 20, 2000]

**PANFILO O. DOMINGO, PETITIONER, VS. THE SANDIGANBAYAN
(SECOND DIVISION) AND THE PEOPLE OF THE PHILIPPINES,
RESPONDENTS.**

D E C I S I O N

DAVIDE JR., C.J.:

In this special civil action for *certiorari*, prohibition and *mandamus* with prayer for temporary restraining order and/or preliminary injunction, petitioner Panfilo O. Domingo (hereafter DOMINGO) seeks to nullify the resolution^[1] of 15 March 1993 of the Second Division of the Sandiganbayan denying his motion to quash the information against him for violation of Section 3(e) in relation to Section 4(a) of R.A. No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act.

The records show that on 26 May 1987, the Philippine National Bank (PNB) filed a complaint with the Tanodbayan against former President Ferdinand E. Marcos; Rodolfo M. Cuenca, then president of the Construction and Development Corporation of the Philippines (CDCP); and Joaquin T. Venus, Jr., former Deputy Presidential Assistant. The complaint was docketed as TBP Case No. 87-02391.^[2]

In an Order dated 1 September 1987, Special Prosecutor Juan T. Templonuevo dropped from the complaint Ferdinand Marcos, who was out of the country and therefore outside the criminal jurisdiction of the Tanodbayan, so as not to delay the preliminary investigation against the other respondents. In the same order, it was also directed that a *subpoena* be issued to DOMINGO, the President of PNB at the time of the questioned transactions, it appearing from the evidence on record that he was involved in the case.^[3] However, the *subpoena* addressed to DOMINGO at PNB, Escolta, Manila, his last known address, was returned "unserved," since he was no longer connected with the said bank at the time it was served.^[4]

On 8 June 1988, in line with the ruling in *Zaldivar v. Sandiganbayan*,^[5] then Ombudsman Conrado M. Vasquez issued Administrative Order No. 1 addressed to the Office of the Special Prosecutor and Deputized Tanodbayan Prosecutors authorizing them to continue the preliminary investigation of cases pending as of 27 April 1988 until the same are terminated.^[6]

On 6 February 1992, after a finding of probable cause to implead DOMINGO in the case, Special Prosecution Officer (SPO) III Teresita V. Diaz-Baldos issued an order directing him to submit a counter-affidavit.^[7] DOMINGO submitted on 9 March 1992 his counter-affidavit with the Office of the Special Prosecutor.^[8]

On 9 July 1992, SPO III Diaz-Baldos issued a resolution recommending that DOMINGO and Rodolfo M. Cuenca be prosecuted for violation of Section 3(e) in relation to Section 4(a) of Republic Act No. 3019, as amended, but that the complaint be dismissed as against Ferdinand E. Marcos for being moot and academic by reason of his death, and as against Joaquin T. Venus for lack of merit.^[9] This was approved by Ombudsman Conrado M. Vasquez, and the corresponding information was filed with the Sandiganbayan on 30 July 1992. The case was docketed therein as Criminal Case No. 17847.^[10] The information reads as follows:

That on or about the month of July 1980, and for sometime prior or subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, PANFILO O. DOMINGO, being then the President of the Philippine National Bank, a government financial institution, and hence a public officer, while in the performance of his official functions, committing the offense in relation to his office and conspiring and confederating with then President Ferdinand E. Marcos and with RODOLFO M. CUENCA, a private individual, being then the Chairman of the Board of Directors of the Construction and Development Company of the Philippines (CDCP), a corporation duly organized and existing in accordance with the laws of the Philippines, did then and there willfully, unlawfully, criminally, with evident bad faith and manifest partiality cause undue injury to the Philippine National Bank and grant unwarranted benefits to CDCP in the following manner: accused RODOLFO M. CUENCA, capitalizing and exploiting his close personal association with the then President Ferdinand E. Marcos to obtain favorable loan accommodations for CDCP, requested the latter's assistance and intervention in securing the approval by the Philippine National Bank Board of Directors of the application of the CDCP for a U.S. \$40 Million Letter of Credit and in foregoing the collateral requirements of CDCP, as a result of which accused Panfilo O. Domingo, acceding to the pressure exerted by President Marcos in relation to accused Cuenca's requests, facilitated and made possible the passage by the PNB Board of Directors of Board Resolution No. 144 whereby the U.S.\$40 Million Standby Letter of Credit applied for by CDCP to secure the principal and interest on its loan with the Republic National Bank of Dallas was approved, notwithstanding a collateral deficiency by CDCP on its previous accounts with PNB, and again subsequently recommended to the PNB Board of Directors the approval of Board Resolution No. 180 amending Board Resolution No. 144 in order to allow CDCP to use its loan proceeds secured by the aforementioned letter of credit for its other international projects and thereafter allowed CDCP to forego its collateral requirements, which act of the accused inflicted undue injury and prejudice to PNB which was unjustly forced to assume CDCP's obligation to the Republic National Bank of Dallas after the latter had defaulted in the payment thereof, amounting to U.S. \$29 Million, and which likewise granted unwarranted benefits to CDCP in the same amount.

On 11 August 1992, DOMINGO filed a petition for reinvestigation^[11] with the Sandiganbayan. The latter directed the prosecution to treat the petition as a motion for reconsideration of the 9 July 1992 resolution.^[12] The motion was, however, denied by the Office of the Special Prosecutor on 14 January 1993.^[13]

On 19 February 1993, petitioner filed with the Sandiganbayan a motion to quash the information against him on the grounds that (1) the criminal action or liability has been extinguished by prescription, and (2) the facts charged do not constitute an offense.^[14] In its Resolution of 15 March 1993 the Sandiganbayan denied the motion to quash.^[15]

Not satisfied, DOMINGO filed the instant petition alleging that the respondent Sandiganbayan acted with grave abuse of discretion amounting to lack of jurisdiction when it denied his motion to quash the information.

Meanwhile, on 17 August 1993, during his arraignment in Criminal Case No. 17847, DOMINGO refused to enter a plea; hence, the Sandiganbayan ordered that a plea of "not guilty" be entered for him.^[16]

We shall first take up the issue of prescription.

DOMINGO contends that his alleged criminal liability has already been extinguished by prescription. In support thereof he claims that the prescriptive period commenced to run in July 1980 when the crime was allegedly committed, and was only tolled on 6 February 1992, when he was impleaded as party-respondent by Prosecutor Diaz-Baldos. The filing of the complaint with the Tanodbayan on 26 May 1987 produced no legal effect and could never be deemed to have validly interrupted the running of the prescriptive period, considering that effective 2 February 1987, the Tanodbayan was divested of its authority to conduct preliminary investigation unless duly authorized by the Ombudsman.

We are not persuaded.

In resolving the issue of prescription of the offense charged, the following should be considered: (1) the period of prescription for the offense charged; (2) the time the period of prescription starts to run; and (3) the time the prescriptive period was interrupted.

The Anti-Graft and Corrupt Practices Act (R.A. No. 3019) provides for its own prescriptive period. Section 11 thereof reads: "All offenses punishable under this Act shall prescribe in ten years." This was later amended by Batas Pambansa Blg. 195, approved on 16 March 1982, which increased the prescriptive period of the crime from ten years to fifteen years.

Since the law alleged to have been violated, R.A. No. 3019, as amended, is a special law, the applicable rule in the computation of the prescriptive period is Section 2 of Act No. 3326,^[17] as amended, which provides:

SEC. 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

The prescription shall be interrupted when proceedings are instituted

against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.

This simply means that if the commission of the crime is known, the prescriptive period shall commence to run on the day the crime was committed. However, if the violation of the special law is not known at the time of its commission, the prescription begins to run only from the discovery thereof, *i.e.*, discovery of the unlawful nature of the constitutive act or acts.^[18]

In the present case, it was well-nigh impossible for the government, the aggrieved party, to have known the violations committed at the time the questioned transactions were made because both parties to the transactions were allegedly in conspiracy to perpetrate fraud against the government.^[19] The alleged anomalous transactions could only have been discovered after the February 1986 Revolution when one of the original respondents, then President Ferdinand Marcos, was ousted from office. Prior to said date, no person would have dared to question the legality or propriety of those transactions.^[20] Hence, the counting of the prescriptive period would commence from the date of discovery of the offense, which could have been between February 1986 after the EDSA Revolution and 26 May 1987 when the initiatory complaint was filed.

As to when the period of prescription is interrupted, the second paragraph of Section 2 of Act. No. 3326, as amended, provides that it is "when proceedings are instituted against the guilty person." Whether the running of the prescriptive period was tolled on 1 September 1987, when DOMINGO was impleaded as an accused, or on 30 July 1992, when the information against him was filed with the Sandiganbayan, is immaterial; for only about one or six years, respectively, has elapsed from the date of the discovery of the alleged offense. Thus, the prescriptive period, whether ten years as provided in R.A. No. 3019 or fifteen years as provided in the amendatory Act, has not yet lapsed. The motion to quash on the ground of prescription was, therefore, correctly denied.

We now come to the question of whether the facts charged in the information constitute an offense.

The fundamental test on the viability of a motion to quash on the ground that the facts averred in the information do not amount to an offense is whether the facts asseverated would establish the essential elements of the crime defined in the law.^[21] In this examination, matters *aliunde* are not considered.^[22]

As a general proposition, a motion to quash on the ground that the allegations of the information do not constitute the offense charged, or any offense for that matter, should be resolved on the basis alone of said allegations whose truth and veracity are hypothetically admitted.^[23] The informations need only state the ultimate facts; the reasons therefor could be proved during the trial.^[24]

DOMINGO, together with Rodolfo Cuenca, was charged with violation of Section 3(e), in relation to Section 4(a), of Republic Act No. 3019, as amended. These provisions read:

SEC. 3. Corrupt practices of public officers.- In addition to acts or omissions of public officers already penalized by existing laws, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

...

(e). Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

...

SEC. 4. Prohibition on private individuals. -- (a) It shall be unlawful for any person having family or close personal relation with any public official to capitalize or exploit or take advantage of such family or close personal relation by directly or indirectly requesting or receiving any present, gift or material or pecuniary advantage from any other person having some business, transaction, application, request or contract with the government, in which such public official has to intervene. Family relation shall include the spouse or relatives by consanguinity or affinity in the third civil degree. The word "close personal relation" shall include close personal relationship, social and fraternal connections, and professional employment all giving rise to intimacy which assures free access to such public officer.

The elements of the offense under Section 3(e) are the following: (1) that the accused is a public officer or a private person charged in conspiracy with the former; (2) that the said public officer commits the prohibited acts during the performance of his or her official duties or in relation to his or her public positions; (3) that he or she causes undue injury to any party, whether the government or a private party; (4) that such undue injury is caused by giving unwarranted benefits, advantage or preference to such parties; and (5) that the public officer has acted with manifest partiality, evident bad faith or gross inexcusable negligence.^[25]

The information specifically stated as follows:

- (1) That DOMINGO was a public officer, being then the president of PNB, a government financial institution, and Rodolfo Cuenca was a private individual, then Chairman of the Board of Directors of the CDCP, who conspired and confederated with DOMINGO, capitalizing and exploiting his close personal association with then President Marcos to obtain favorable loan accommodations for CDCP;
- (2) That DOMINGO committed the offense in relation to his office and while in the performance of his official functions;
- (3) That he facilitated and made possible the passage by the PNB Board of Directors of Resolution No. 144, thereby causing undue injury and prejudice to PNB which was unjustly forced to assume CDCP's obligation to the Republic National Bank of