



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

Fifth Division

PEOPLE OF THE PHILIPPINES, **SB-17-CRM-0472**
Plaintiff,

– versus –

For: Violation of section 3(h) of
Rep. Act No. 3019

REYNALDO V. TUANDA,
Accused.

Present:

LAGOS, J., Chairperson,
CRUZ*, and
MENDOZA-ARCEGA, JJ.

Promulgated:

June 02, 2017 *lah*

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RESOLUTION

LAGOS, J.:

This resolves the accused's *Motion to Quash the Information*,¹ to which the prosecution filed an *Opposition*.²

In his motion, the accused avers two grounds for the quashal of the Information: (i) that there is inordinate delay in investigating the complaint and in filing the information in violation of the constitutional right of the accused to speedy disposition of cases; and (ii) that the facts charged do not constitute an offense.

The accused says that a letter-complaint was filed against him on 27 May 2011, which was docketed for investigation by the Office of the Ombudsman on 31 October 2011. On 29 December 2011, an investigation plan was drawn. He then claims that between 29

* Designated as Special Member, per Administrative Order No. 025-2017 dated 1 February 2017.

¹ Dated 9 May 2017; Records, p. 93.

² Dated 22 May 2017; Records, p. 156.

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December 2011 to 24 November 2014, nothing about the complaint was heard of. On 25 November 2014, the Field Investigation Office (FIO) completed its fact-finding investigation and issued an Order directing the accused to file his counter-affidavit.

The complaint was resolved on 31 March 2016, where the Office of the Ombudsman found probable cause to charge the accused. This was approved by the Ombudsman on 12 April 2016. The accused filed his motion for reconsideration on 16 May 2016, which was denied on 10 June 2016. The Information dated 6 December 2016 was filed with this Court on 3 March 2017.

He contends that the aggregate time spent to finally resolve and file the case was 4 years and 11 months. He considers this as unreasonable and oppressive delay. He also claims that this delay has prejudiced him, as he is already at an advanced age (74 years old) and has health problems.

The accused also claims that the Information must be quashed as the facts charged do not constitute an offense. He avers that the second and third elements of the offense are not present.

He argues that the permit to engage as a cockpit operator is not a contract or a transaction that involves consideration. He also argues that the permit is only for him to be a cockpit promoter, which is different from a cockpit operator. Thus, he did not profit from the issuance of the permit. What is prohibited is the actual intervention by the accused in the transaction in which he has a financial interest.

In its *Opposition*, the prosecution asserts that the State is equally entitled to due process. The denial of the right to speedy disposition of a case is not dependent solely on the length of time but must also consider the complexity of the issues, the accused's failure to assert the right, and the prejudice caused by the delay. It claims that the accused has not shown any actual prejudice as a result of the time it took to file the case.

The prosecution also says that the factual and legal issues raised by the accused are evidentiary in nature which should be passed upon after a full-blown trial.

DISCUSSION and RULING

The motion lacks merit and must be denied.



It should be first pointed out that the accused's first ground for quashal of the Infromation is not one of the grounds for quashal under the Rules of Court.³ Nevertheless, it will be entertained as it may constitute a ground for dismissal of the case based on a grave violation of a constitutional right.

Speedy disposition of cases

A balancing test has been developed and eventually adopted by the Supreme Court in this jurisdiction to properly consider both the right of the State to due process, in pursuing the prosecution of accused in criminal cases, and the rights of accused and respondents to due process and speedy disposition of their cases.

In *Coscolluela v. Sandiganbayan*⁴, the Supreme Court explained this test, which examines four factors:

“It must be noted, however, that the right to speedy disposition of cases should be understood to be a relative or flexible concept such that a mere mathematical reckoning of the time involved would not be sufficient. Jurisprudence dictates that the right is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured; or even without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried.

Hence, in the determination of whether the defendant has been denied his right to a speedy disposition of a case, the following factors may be considered and balanced: (1) the length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.”

As regards the first factor, it has been ruled in *People v. Sandiganbayan*⁵ and reiterated in *Torres v. Sandiganbayan*⁶ that the period for the fact-finding investigation is included in the computation of any delay.

In *People v. Sandiganbayan*,⁷ the total delay involved was about five years and five months. While in *Torres v. Sandiganbayan*,⁸ the involved delay was at least six years.

In the present case, the period involved has not even reached five years. The accused claims that for three years within this period,

³ See Rule 117, section 3 of the Rules of Court.

⁴ G.R. No. 191411 & 191871, 15 July 2013.

⁵ G.R. Nos. 188165 & 189063, 11 December 2013.

⁶ G.R. Nos. 221562-69, 5 October 2016.

⁷ *Supra*.

⁸ *Supra*.

the case was under fact-finding investigation. But this does not seem to be accurate since the FIO appears to have terminated its fact-finding investigation when it filed the complaint-affidavit dated 28 March 2014.⁹ Moreover, on record are communications coming from the Office of the Ombudsman (Visayas) showing activity during the fact-finding investigation of the case.¹⁰

The second factor to be examined is the reason for the delay. In its opposition, the prosecution has not given any justification for the time period it took to resolve the complaint. But as noted, the records show the Office of the Ombudsman's actions during the fact-finding and the preliminary investigation of this case. It appears to have communicated with several offices for the procurement of relevant documents.

The third factor, which is the accused's assertion of his right, cannot be taken against him because, as ruled in *Coscolluela v. Sandiganbayan*,¹¹ it was not his duty to follow up on the prosecution of his case and he has no duty to bring himself to trial.

The fourth factor is the prejudice caused by the delay. Besides his general statement as to his age, the accused has not substantiated or specified how he is prejudiced by the time period involved in this case.

After considering these factors, the Court is not convinced that the accused's right to speedy disposition of his case has been violated.

The facts charged do not constitute an offense

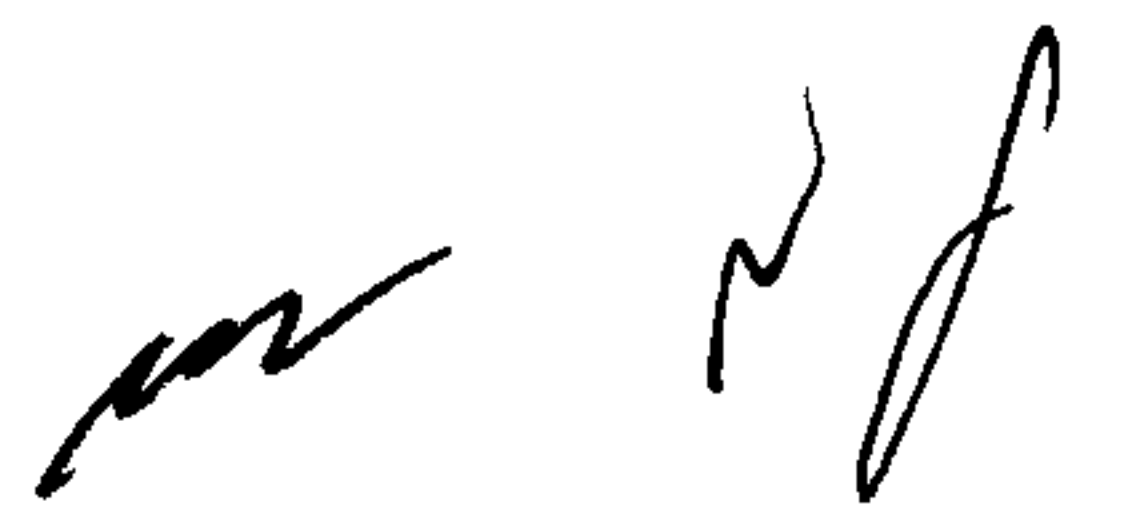
The accused claims that the facts charged in the Information in this case do not constitute an offense. This ground for quashal is covered by Rule 117, section 3(a) of the Rules of Court. He claims that the grant of a permit to engage or act as a cockpit promoter in his favor does not constitute a violation of section 3(h) of Rep. Act No. 3019.

The fundamental test in considering a motion to quash anchored on Rule 117, section 3(a) is the sufficiency of the averments in the Information, that is, whether the facts alleged, if hypothetically admitted, would establish the essential elements of the offense charged as defined by law. It is axiomatic that the information must state every single fact necessary to constitute the offense charged,

⁹ Records, pp. 18-20.

¹⁰ See Records, pp. 18-61.

¹¹ G.R. Nos. 191411 & 191871, 15 July 2013.



otherwise, a motion to quash on the ground that the information charges no offense may be properly sustained.¹²

The elements of the offense of violation of section 3(h) of Rep. Act No. 3019 are:

1. The accused is a public officer;
2. He has a direct or indirect financial or pecuniary interest in any business, contract, or transaction; and
3. He either (a) intervenes or takes part in his official capacity in connection with such interest, or (b) is prohibited from having such interest by the Constitution or by any law.¹³

The first element is undoubtedly alleged. The accused is charged for acts he did during his incumbency as municipal mayor.

The second element is also alleged. He is charged for granting a permit to himself to operate or engage as a cockpit promoter. The accused's claim that he did not profit from being a cockpit promoter involves evidentiary matters which cannot be considered in a motion to quash.

The cited case explaining that a "transaction" must involve a consideration refers to section 3(b) of Rep. Act No. 3019, not 3(h). But even if such were considered, a permit to allow an individual to operate or engage as cockpit promoter invariably involves some consideration since the local government would receive fees therefor.

The third element is also properly alleged. There are two modes by which a public officer, who has a direct or indirect financial or pecuniary interest in any business, contract, or transaction, may violate section 3(h) of the Rep. Act No. 3019. The first mode is if in connection with his pecuniary interest in any business, contract or transaction, the public officer intervenes or takes part in his official capacity. The second mode is when he is prohibited from having such interest by the Constitution or any law.¹⁴ A reading of the Information would readily show that the accused is being charged under the first mode, as he is alleged to have intervened or took part in his official capacity.

The intervention that may be considered as a violation of section 3(h) of Rep. Act No. 3019 is actual intervention in a transaction in which a public officer has financial or pecuniary

¹² Caballero v. Sandiganbayan, G.R. Nos. 137355-58, 25 September 2007, 560 Phil. 302-322.

¹³ Id.

¹⁴ Teves v. Sandiganbayan, G.R. No. 154182, 17 December 2004, 488 Phil. 311-349.

interest.¹⁵ This actual intervention is alleged in this case since the accused is alleged to have granted the permit to himself.


Considering that all the elements of the offense charged are properly alleged, the Information should not be quashed.

WHEREFORE, the motion is hereby **DENIED**.

SO ORDERED.


RAFAEL R. LAGOS
Associate Justice
Chairperson

WE CONCUR:


REYNALDO P. CRUZ
Associate Justice


**MARIA THERESA V.
MENDOZA-ARCEGA**
Associate Justice

¹⁵ Caballero v. Sandiganbayan, supra, citing Trieste, Sr. v. Sandiganbayan, G.R. Nos. 70332-43, 13 November 1996, 145 SCRA 508.

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