



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-17-CRM-1496**
Plaintiff, **For: Violation of Sec. 3(e)**
of R.A. No. 3019, as amended

SB-17-CRM-1497
For: Malversation of Public Funds

- versus -

Present

FERNANDEZ, SJ, J.,
Chairperson

MUSNGI,* J. and
JACINTO, J.**

GREGORIO T. IPONG, ET AL.,
Accused.

Promulgated:

NOV 09 2017

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves accused Gregorio T. Ipong's *Motion for Reconsideration (To the Resolution dated 4 October 2017)*.¹

Accused Ipong prays that this Court reconsider its Resolution dated October 4, 2017,² and that the Information in the present cases be dismissed on the ground of violation of his right to speedy disposition of cases, his right to due process and his right to be informed of the nature and cause of the accusation against him. He also prays for the quashal of said Informations on the ground that the facts charged do not constitute an offense. He contends:

* As per Administrative Order No. 124-2017 dated April 4, 2017; J. Musngi participated in the Resolution dated October 4, 2017 (*Revised Internal Rules of the Sandiganbayan*, Rule IX, Sec. 2[a])

** As per Administrative Order No. 307-A-2017 dated August 31, 2017; J. Jacinto participated in the Resolution dated October 4, 2017 (*Revised Internal Rules of the Sandiganbayan*, Rule IX, Sec. 2[a])

¹ Dated October 11, 2017; Record, pp. 278-283

² Record, pp. 260-273

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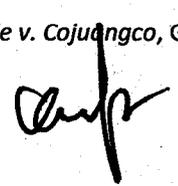
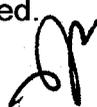
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1. *Estrada v. Office of the Ombudsman, Field Investigation Office*³ does not apply in the present cases.
 - a. The main issue in that case is whether or not the denial of therein accused' request to cross-examine the witness during the preliminary investigation stage constitutes a violation of the accused' right to due process. Moreover, the complainant was the National Bureau of Investigation (NBI) and Atty. Levito Baligod.
 - b. In the present cases, the complainant is the Field Investigation Office (FIO) of the Office of the Ombudsman, which filed criminal and administrative complaints with the Preliminary Investigation Bureau (PIB) and the Administrative Adjudication Bureau (AAB) of the same Office. The PIB recommended the filing of the Information in the present cases with the Court. It was also the Office of the Ombudsman that decided on whether or not to file said Informations.
2. This Court may have overlooked the Supreme Court's ruling in *Republic v. Cojuangco*.⁴ There, it was held that the Presidential Commission on Good Government (PCGG) cannot gather evidence against a respondent, file a complaint, then conduct a preliminary investigation without contravening the basic tenets of due process. The law enforcer who gathered the evidence and filed the complaint cannot be expected to conduct the preliminary investigation with impartiality.
3. His right to speedy disposition of cases was violated. There was inordinate delay in the investigation, filing and prosecution of the present cases.
 - a. The offenses charged were allegedly committed in 2007. However, the Informations were filed only in 2017 – around ten (10) years after the alleged commission of the offenses charged. The Office of the Ombudsman failed to explain why it took that long to file said Informations.
 - b. The matter was brought to the Office of the Ombudsman as early as 2014. Knowing that the transactions occurred in 2007, the FIO should have immediately filed the complaint. Instead, it took another year before the complaint was filed.

³ G.R. Nos. 212140-41, January 21, 2015

⁴ G.R. No. 160897 (consolidated with *People v. Cojuangco*, G.R. No. 160864), November 16, 2016



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4. The filing of the present cases by the Office of the Ombudsman is premature. It should have waited for the Commission on Audit (COA) to issue a Notice of Disallowance ordering the accountable officers to return or reimburse the funds illegally disbursed. The premature filing of the cases violates his right to due process.
5. Both Informations allege that he unilaterally chose and indorsed, without public bidding, Aaron Foundation Philippines, Inc. (AFPI) as project partner in his district's livelihood project. However, he had no participation in AFPI's accreditation. Furthermore, the regulations requiring the conduct of prior public bidding and an appropriation law or ordinance were not yet in effect at the time of the subject transactions.
6. The Information for Malversation alleges that he had control over his Priority Development Assistance Fund (PDAF), but in the FIO's complaint, it can be seen that it was the Department of Budget and Management (DBM) that directly released the funds, not him. He was a mere endorser of the livelihood project in his district. He was never in custody, or accountable for, the PDAF.
7. The act of endorsing AFPI was not a criminal act. It was merely recommendatory in nature. The Technology and Livelihood Resource Center (TLRC) could have rejected his recommendation. Moreover, such act of making an endorsement is part of his official functions as a legislator. He is presumed to have regularly performed such act.
8. He was not involved in the implementation of the project, such being the executive function of the TLRC. The latter was duty-bound to monitor AFPI's compliance with the terms of the implementation. He could not have conspired with his co-accused.
9. The Informations only allege conclusions of law. Hence, such allegations are insufficient or inadequate, and do not constitute the elements of the offenses charged.

The prosecution, in its *Comment/Opposition (to accused Ipong's Motion for Reconsideration dated 11 October 2017)*,⁵ counters:

1. Accused Ipong's Motion does not raise new matters and/or issues that would warrant reconsideration of the assailed Resolution. The Court had already passed upon and meticulously scrutinized such matters.

⁵ Dated October 12, 2017 and filed on October 13, 2017; Record, pp. 287-290

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2. That the Office of the Ombudsman acted as complainant, prosecutor and judge/tribunal does not necessarily mean that the preliminary investigation was not conducted with impartiality. Accused Ipong was afforded the opportunity to explain his side when he was directed to submit his counter-affidavit and countervailing evidence. The Ombudsman enjoys the presumption of regularity in the performance of her official functions.
3. The right to preliminary investigation, although substantial, is not a constitutional right.
4. There was no inordinate delay in the conduct of the preliminary investigation.
5. As to accused Ipong's motion to quash, there is no need to consider facts outside the four corners of the Information. The Information only needs to state the ultimate facts constituting the offense. The finer details of why and how such acts amounted to the language used in the statute are evidentiary matters.

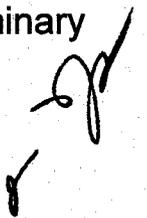
THE COURT'S RULING

Accused Ipong, in his *Motion for Reconsideration*, failed to convince this Court that reversal of the assailed Resolution is warranted. Hence, his Motion must be denied.

Citing *People v. Cojuangco*,⁶ he insists that his right to due process was violated because the Office of the Ombudsman performed the roles of investigator, complainant and judge. The Court is not persuaded.

In *People v. Cojuangco*, the PCGG filed an Information charging therein accused with violation of Sec. 4(b) in relation to Sec. 3(h) of R.A. No. 3019. Prior thereto, the PCGG initiated a civil complaint against therein accused for the same acts alleged in the Information. In the course of the proceedings, the Sandiganbayan issued a Resolution declaring null and void the preliminary investigation conducted by the PCGG and the Information filed pursuant thereto, on the ground that the investigation was arbitrary and unjust, since PCGG gathered the evidence, filed the complaint for the purpose of preliminary investigation, and also conducted said preliminary

⁶ G.R. Nos. 160864 and 160897, November 16, 2016



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investigation. The Supreme Court, citing *Cojuangco v. PCGG*,⁷ held that the Sandiganbayan correctly dismissed the Information. The portion of *Cojuangco v. PCGG* cited in *People v. Cojuangco* reads:

In our criminal justice system, the law enforcer who conducted the criminal investigation, gathered the evidence and thereafter filed the complaint for the purpose of preliminary investigation cannot be allowed to conduct the preliminary investigation of his own complaint. It is to say the least arbitrary and unjust.

It is in such instances that We say one cannot be "a prosecutor and judge at the same time." Having gathered the evidence and filed the complaint as a law enforcer, he cannot be expected to handle with impartiality the preliminary investigation of his own complaint, this time as a public prosecutor.

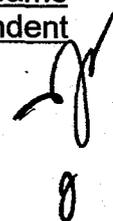
The circumstances of the instant petition are even worse. To repeat, the PCGG and the Solicitor General finding a *prima facie* basis filed a civil complaint against petitioner and intervenors alleging substantially the same illegal or criminal acts subject of the subsequent criminal complaints the Solicitor General filed with the PCGG for preliminary investigation. While ostensibly, it is only the Solicitor General who is the complainant in the criminal cases filed with the PCGG, in reality the PCGG is an unidentified co-complainant.

Moreover, when the PCGG issued the sequestration and freeze orders against petitioner's properties, it was on the basis of *prima facie* finding that the same were ill-gotten and/or were acquired in relation to the illegal disposition of coconut levy funds. Thus, the Court finds that the PCGG cannot possibly conduct the preliminary investigation of said criminal complaints with the "cold neutrality of an impartial judge," as it has prejudged the matter. Add to this the fact that there are many suits filed by petitioner and the intervenors against the PCGG and vice versa.

Notably, in *Cojuangco v. PCGG*, the Supreme Court explained that instead of conducting the preliminary investigation, the PCGG should have forwarded the records to the Office of the Ombudsman. Viz.:

The Court holds that a just and fair administration of justice can be promoted if the PCGG would be prohibited from conducting the preliminary investigation of the complaints subject of this petition and the petition for intervention and that the records of the same should be forwarded to the Ombudsman, who as an independent

⁷ G.R. Nos. 92319-20, October 2, 1990



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constitutional officer has primary jurisdiction over cases of this nature, to conduct such preliminary investigation and take appropriate action.

(underscoring supplied)

It bears stressing that in *Cojuangco v. PCGG* and *People v. Cojuangco*, the entity that conducted the preliminary investigation was the PCGG. In the present cases, it was the Office of the Ombudsman. Sec. 15 (1) of Republic Act No. 6770⁸ (R.A. No. 6770), which provides for the powers, functions and duties of the Office of the Ombudsman, reads:

Section 15. Powers, Functions and Duties. – The Office of the Ombudsman shall have the following powers, functions and duties:

- (1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of his primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases;

(underscoring supplied)

The aforecited provision must be read in conjunction with Art. XI, Sec. 13 of the Constitution, which provides:

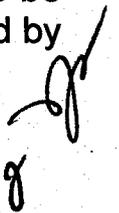
Section 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

- (1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

(underscoring supplied)

From the foregoing, it is clear that the Constitution and R.A. No. 6770 expressly authorize the Office of the Ombudsman to investigate and prosecute **on its own**, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. If the investigation is initiated by

⁸ The Ombudsman Act of 1989



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the Office of the Ombudsman at its own instance, then the Office of the Ombudsman will necessarily act as complainant.

Although the functions of investigator, complainant and "judge" are performed by the Office of the Ombudsman, it does not mean that said functions are performed by a single person or a single office. As accused Ipong himself averred:

4. Again, the complainant is the Field Investigation Office (FIO) of the Office of the Ombudsman, is the complainant in this case [sic]. It undertook a factual investigation and on the basis of its findings, filed the criminal and administrative complaints with the Preliminary Investigation Bureau (PIB) and the Administrative Adjudication Bureau (AAB) of the Office of the Ombudsman. The latter in turn conducted the preliminary investigation after which recommended to the Ombudsman the filing of the instant charges with the prepared Informations. The tribunal who decided whether or not the said Informations will be filed is also the Office of the Ombudsman.⁹

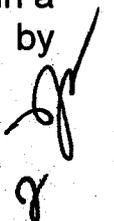
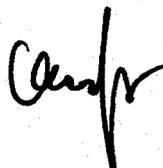
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It can be seen that the different functions were performed by different offices within the Office of the Ombudsman. The fact-finding function was performed by the Field Investigation Office, the preliminary investigation was conducted by the Preliminary Investigation Bureau. Lastly, the Ombudsman decided if the Information should be filed. Because said functions are performed by different offices, it cannot be said that the findings in the fact-finding investigation will invariably be the same as those in the preliminary investigation. Also, it cannot be said that the Ombudsman will automatically approve the findings of the PIB.

In any event, it was held in *Estrada v. Office of the Ombudsman, Field Investigation Office*¹⁰ that the requirement of an impartial tribunal does not apply to preliminary investigation. *Estrada* applies to the present cases notwithstanding the fact that the issue in that case was whether or not the accused in a preliminary investigation has the right to cross-examine witnesses. Resolving the issue in that case required the High Court to differentiate the source of the right to due process, *i.e.* the Constitution, from the source of the rights of the defendant in a preliminary investigation, *i.e.* statute. Here, the issue raised by

⁹ Record, pp. 278-279 (*Motion for Reconsideration*, pp. 1-2)

¹⁰ *Supra*. Note 3



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accused Ipong also involves the right to due process *vis-à-vis* the rights in a preliminary investigation.

The other arguments and issues raised by accused Ipong are a mere reiteration and rehash of those in his *Omnibus Motion*. This Court had judiciously considered, and found the same to be without merit in the Resolution dated October 4, 2017. Hence, it is unnecessary to discuss these anew.

In *Mendoza-Ong v. Sandiganbayan*,¹¹ it was held:

Concerning the first ground abovesited, the Court notes that the motion contains merely a reiteration or rehash of arguments already submitted to the Court and found to be without merit. Petitioner fails to raise any new and substantial arguments, and no cogent reason exists to warrant a reconsideration of the Court's Resolution. It would be a useless ritual for the Court to reiterate itself.

For convenience, the portion¹² of the assailed Resolution addressing the issue of inordinate delay is hereunder quoted:

In *Tatad v. Sandiganbayan*, it was held that a delay of close to three (3) years cannot be deemed reasonable or justifiable in view of the circumstances obtaining in that case. It bears stressing that the Supreme Court, in that case, found that the prosecution was politically motivated, and that there was a blatant departure from the established procedure on the part of the prosecution.

The same cannot be said in the present cases. Here, the Informations were filed around two (2) years and two (2) months after the filing of the Complaint-Affidavit. Such period cannot be said to be unreasonable, and thus, it is unnecessary to determine if there is justification for the time it took to complete the preliminary investigation. There being no inordinate delay in the conduct of the preliminary investigation, this Court finds that there was no violation of accused Ipong's right to speedy disposition of cases.

That the Informations charging the accused were filed only around ten (10) years after the alleged commission of the crimes is of no moment. Offenses punished under R.A. No. 3019 prescribe in fifteen (15) years.¹³ On the other hand, Malversation prescribes in

¹¹ G.R. Nos. 146368-69, October 18, 2004

¹² Record, p. 289 (Resolution dated October 4, 2017, p. 10)

¹³ R.A. No. 3019, Sec. 11

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twenty (20) years.¹⁴ The criminal action against the accused could have been instituted at any time within the aforementioned periods.

Finally, the discussion¹⁵ on the sufficiency of the Information in the present cases is hereunder quoted:

In a motion to quash based on this ground, the Court need not consider facts outside the four corners of the Information. Moreover, the Information only needs to state the ultimate facts constituting the offense, not the finer details of why and how such acts alleged amounted to the language used in the statute, such being evidentiary matters. The Supreme Court's discussion in *Go v. Bangko Sentral ng Pilipinas* is instructive. To wit:

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The elements of violation of Sec. 3(e) of R.A. No. 3019 are as follows:

1. The accused must be a public officer discharging administrative, judicial or official functions, or a private person acting in conspiracy with accused public officer(s);
2. The accused must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and
3. Such action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.

The Information in SB-17-CRM-1496 alleges:

1. Accused Ipong, Antonio Y. Ortiz, Dennis L. Cunanan and Marivic V. Jover are public officers, acting in the performance of their administrative and/or official functions.
2. Accused Alfredo A. Ronquillo is a private individual.
3. Accused public officers conspired with one another, and with accused Ronquillo.
4. The accused acted with manifest partiality, evident bad faith and/or gross inexcusable negligence when they performed the following acts:
 - a. Accused Ipong unilaterally chose and indorsed AFPI as project partner in implementing his PDAF-funded livelihood projects, in

¹⁴ Revised Penal Code. Art. 90. Prescription of crimes. – Crimes punishable by death, *reclusión perpetua* or *reclusión temporal* shall prescribe in twenty years.; Art. 217, as amended by R.A. No. 10591

¹⁵ Record, pp. 269-273 (Resolution dated October 4, 2017, pp. 10-14)

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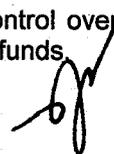
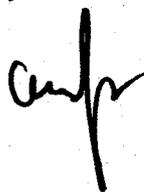
- disregard of R.A. No. 9184 and its implementing rules and regulations.
- b. Accused Ipong and Ortiz entered into a Memorandum of Agreement with AFPI for the implementation of said projects.
 - c. Accused Ortiz, Jover and Cunanan caused the issuance of Land Bank Check No. 399418 in the amount of ₱4,900,000.00, sourced from accused Ipong's PDAF. Accused Ortiz approved Disbursement Voucher (DV) No. 012007050821 and signed the check. Accused Jover and Cunanan failed to carefully examine and verify the accreditation and qualifications of AFPI, and the supporting documents attached to said DV.
 - d. Accused Ronquillo, on behalf of AFPI, received said check.
 - e. The acts of accused public officers allowed accused Ronquillo to take possession of said PDAF. The projects, being non-existent, were not implemented.
5. Undue injury in the amount of ₱4,900,000.00 was caused to the government. The acts of the accused also caused the giving of unwarranted benefits and advantage to accused Ronquillo.

On the other hand, the elements of Malversation of Public Funds, as defined and penalized by Art. 217 of the Revised Penal Code, are as follows:

1. The offender is a public officer;
2. The offender had custody or control of funds or property by reason of the duties of his/her office;
3. Said funds or property were public funds or property for which the offender was accountable; and
4. The offender appropriated, took, misappropriated or consented, or through abandonment or negligence, permitted another person to take them.

The Information in SB-17-CRM-1497 alleges:

1. Accused Ipong, Antonio Y. Ortiz, Dennis L. Cunanan and Marivic V. Jover are public officers, acting in the performance of their administrative and/or official functions.
2. Accused Alfredo A. Ronquillo is a private individual.
3. Accused public officers conspired with one another, and with accused Ronquillo.
4. Accused Ipong is accountable for, and exercises control over the PDAF allocated to him. The subject funds are public funds.



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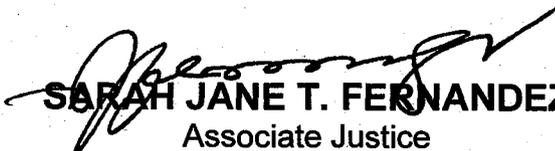
5. The accused allowed AFPI to take said public funds through a scheme involving the following acts:
 - a. Accused Ipong unilaterally chose and indorsed AFPI as project partner in implementing his PDAF-funded livelihood projects, in disregard of R.A. No. 9184 and its implementing rules and regulations. Said PDAF allocation was covered by SARO No. ROCS-07-05416.
 - b. Accused Ipong and Ortiz entered into a Memorandum of Agreement with AFPI for the implementation of said projects.
 - c. Accused Ortiz, Jover and Cunanan caused the issuance of Land Bank Check No. 399418 in the amount of ₱4,900,000.00, sourced from accused Ipong's PDAF. Accused Ortiz approved Disbursement Voucher (DV) No. 012007050821 and signed the check. Accused Jover and Cunanan failed to carefully examine and verify the accreditation and qualifications of AFPI, and the supporting documents attached to said DV.
 - d. Accused Ronquillo, on behalf of AFPI, received said check.
 - e. The acts of accused public officers allowed accused Ronquillo to take possession of said PDAF-drawn public funds. The projects, being non-existent, were not implemented.

The Court finds that both Informations sufficiently allege acts constituting the essential elements of the crimes charged. The other issues raised by accused Ipong are matters of defense, which are better threshed out during the trial on the merits.

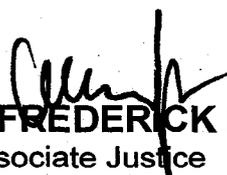
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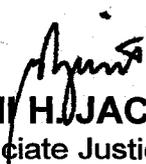
WHEREFORE, Accused Ipong's Motion for Reconsideration is hereby DENIED.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


MICHAEL FREDERICK L. MUSNGI
Associate Justice


BAYANI H. JACINTO
Associate Justice