REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **Plaintiff,**	**SB-17-CRM-2402 to 2405** **For: Violation of Sec. 3(e) of R.A. No. 3019, as amended**
- versus -	*Present* **FERNANDEZ, SJ, *J.,*** Chairperson **MIRANDA, *J.*** and **PAHIMNA,* *J.***
ALEJANDRO N. ABARRATIGUE, ET AL., **Accused.**	*Promulgated:* **APR 17 2018**

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves accused Alejandro N. Abarratigue's *Motion for Reconsideration*.[1]

In his Motion, accused Abarratigue prays that this Court reconsider and set aside the Resolution dated March 12, 2018, and a new one be issued dismissing the present cases. He contends:

1. The Informations allege that he signed the disbursement vouchers, and thereby caused or facilitated the release of public funds to Doxia Marketing and LSM Pharma & Medical Supply.

2. Such allegation does not constitute the element of causing undue injury to the government because it was not also alleged that

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* J. Pahimna participated in the assailed Resolution; in view of the vacancy in the Sixth Division (Per Administrative Order No. 023-2018 dated January 15, 2018; *Revised Internal Rules of the Sandiganbayan*, Rule IX, Sec. 2[a])

[1] Dated March 18, 2018; Record, pp. 479-487

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Doxia Marketing and LSM Pharma & Medical Supply did not perform the services required of them.

3. In *Mendoza-Arce v. Ombudsman*,[2] it was held that violation of Sec. 3(e) of Republic Act No. 3019 (R.A. No. 3019) may be committed only by causing undue injury. The giving of unwarranted benefits, advantage or preference is but a mode of causing undue injury.

4. The Informations failed to allege any undue injury, an essential element of violation of Sec. 3(e) of R.A. No. 3019. Hence, the Informations should be quashed on the ground that the facts charged do not constitute an offense.

5. This Court erred in finding that the fact-finding investigation commenced only on October 7, 2013. The Office of the Ombudsman Regional Office No. VIII issued a Subpoena Duces Tecum addressed to the Chairperson of the Bids and Awards Committee (BAC) of the Municipality of Hinabangan, Samar on March 23, 2012. Therefore, the fact-finding investigation can be said to have commenced sometime in 2012.

6. The issues involved in the present cases are relatively simple and do not necessitate a thorough review and consideration of facts and applicable laws.

7. There is no justification for the delay in the issuance of the resolution finding probable cause, as well as the delay in the filing of the Informations with the Court after the Office of the Ombudsman denied the accused' motions for reconsideration.

8. He suffered prejudice by reason of the delay in the termination of the preliminary investigation.

    a. Documents and witnesses are no longer available. The originals of the documents needed for his defense were submitted to the Commission on Audit (COA). The only documents available are mere photocopies.

    b. He suffered financial drain, public humiliation and ridicule by reason of the cases filed against him.

9. The filing of the complaint was politically motivated because it was done before the 2013 national and local elections.

10. The Supreme Court, in numerous cases, ruled that it is not the duty of defendants to bring themselves to trial.

[2] G.R. No. 149148, April 5, 2002

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In the *Comment/Opposition (On accused Motion for Reconsideration dated March 18, 2018)*,[3] the prosecution counters:

1. Accused Abarratigue reiterated the arguments he previously made in his *Motion to Quash* and *Supplemental Motion to Quash*.

2. The matters raised by accused Abarratigue have already been passed upon by this Court in the Resolution dated March 12, 2018. He failed to raise new matters or issues that would warrant reconsideration of the said Resolution.

3. That the filing of the complaint is politically motivated is a matter of defense.

4. His motion for reconsideration is nothing but a dilatory scheme.

THE COURT'S RULING

Accused Abarratigue's *Motion for Reconsideration* is bereft of merit. The Court finds no reason to warrant the reversal of the assailed Resolution.

A. Sufficiency of the Informations

Citing *Mendoza-Arce v. Ombudsman*,[4] accused Abarratigue insists that the Information in the present cases are insufficient because they do not allege undue injury, an essential element of violation of Sec. 3(e) of R.A. No. 3019. This Court is not persuaded.

This matter had already been settled in *Cabrera v. Sandiganbayan*,[5] decided by the Supreme Court *en banc*,[6] where it was held that there are two (2) ways by which Sec. 3(e) of R.A. No. 3019 may be violated, *i.e.* (1) by causing undue injury to any party, including the government, or (2) by giving any private party any unwarranted benefit, advantage or preference. The accused may be charged under either mode or both. *Viz.*:

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[3] Dated March 26, 2018; Record, pp. 494-496
[4] *Supra.* Note 2
[5] G.R. Nos. 162314-17, October 25, 2004
[6] *Constitution.* **Art. VIII, Sec. 4** (3) Cases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case, without the concurrence of at least three such Members. When the required number is not obtained, the case shall be decided *en banc*: *Provided*, that no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc*. (underscoring supplied)

There are two (2) ways by which a public official violates Section 3(e) of Rep. Act No. 3019 in the performance of his functions, namely: (a) by causing undue injury to any party, including the Government: or (b) by giving any private party any unwarranted benefit, advantage or preference. The accused may be charged under either mode or under both. In *Quibal v. Sandiganbayan*, the Court held that the use of the disjunctive term or connotes that either act qualifies as a violation of Sec. 3(e) of Rep. Act No. 3019.

In fine, the delictual act of the accused may give rise to or cause either an undue injury to any party, including the government; or the giving to any private party unwarranted benefits, advantage or preference, or both undue injury and unwarranted benefits, advantage or preference. As explained by the Court in *Bautista v. Sandiganbayan*:

x x x

We note that, as pointed out by the petitioners, the Court held in *Mendoza-Arce* and other cases, that the essential elements for violation of Section 3(e) of Rep. Act No. 3019 are the following:

1. The accused is a public officer or private person charged in conspiracy with him;

2. Said public officer commits the prohibited acts during the performance of his official duties or in relation to his public position;

3. He causes undue injury to any party, whether the government or private party;

4. Such undue injury is caused by giving unwarranted benefits, advantage or preference to such parties; and

5. The public officer has acted with manifest partiality, evident bad faith or gross inexcusable negligence.

The petitioners posit that, as gleaned from the enumerations by the Court of the essential elements of the crime, the only mode by which a public officer may commit a crime for violation of Section 3(e) of Rep. Act No. 3019 is by causing undue injury to any party, both the government or private party, the giving of unwarranted benefits, advantage or preference to such party being only a mode of causing undue injury, which is inconsistent with the rulings of this Court in *Jacinto, Santiago, Bautista* and other cases.

We find the contention of the petitioners untenable. For one thing, we have reviewed the rulings of the Court in *Mendoza-Arce* and kindred cases and find that the issue of whether or not violation of Section 3(e) of Rep. Act No. 3019 may be committed only by causing undue injury to the government or to a private individual, the

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> giving of unwarranted benefits, advantage or preference being only a mode of causing undue injury to the government or to a private party had not been raised therein, nor resolved by the Court. In any event, the ruling in this case has categorized any perceived inconsistencies spawned by the rulings of the Court in *Mendoza-Arce* and other cases and those in *Jacinto, Santiago, Evangelista, Quibal* and *Bautista.*
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> (underscoring supplied)

There is no doubt that the Information need not allege damage or injury if the accused is charged under "giving any private party any unwarranted benefits, advantage or preference," as in the present cases. This Court, in the Resolution dated March 12, 2018, found that the Information in the present cases are sufficient. For convenience, the pertinent portion[7] thereof is hereunder quoted:

> That the Informations do not allege undue injury do not render them insufficient. In *Sison v. People*, it was held that there are two (2) ways by which violation of Sec. 3(e) of R.A. No. 3019 may be committed – first, by causing undue injury to any party, and second, by giving any private party any unwarranted benefit, advantage or preference. To wit:
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> > x x x. While it is true that the prosecution was not able to prove any undue injury to the government as a result of the purchases, it should be noted that there are two ways by which Section 3(e) of RA 3019 may be violated – the first, by causing undue injury to any party, including the government, or the second, by giving any private party any unwarranted benefit, advantage or preference. Although neither mode constitutes a distinct offense, an accused may be charged under *either mode or both.* The use of the disjunctive "or" connotes that the two modes need not be present at the same time. In other words, the presence of one would suffice for conviction.
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> > (underscoring supplied)
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> The accused may be charged under either mode or both. Here, the Informations charge the accused with awarding the subject contracts to Doxia Marketing and LSM Pharma & Medical Supply, respectively, and causing the release of public funds thereto, despite them being unqualified bidders. These allegations constitute the element of giving any private party any unwarranted benefit, advantage or preference. Under this mode, it is not necessary to allege damage or injury to the government.

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[7] Record, pp. 468-469 (Resolution dated March 12, 2018, pp. 7-8)

B. Violation of the right to speedy disposition of cases

The Court reiterates its ruling in the Resolution dated March 12, 2018, the pertinent portion[8] of which is hereunder quoted:

> The Supreme Court, in *Corpuz v. Sandiganbayan*, teaches that such right was designed to prevent oppression by holding criminal prosecution over the citizen for an indefinite time, and to prevent delays in the administration of justice. This right is violated only when the proceedings are attended by vexatious, capricious and oppressive delays. Because speedy disposition is a flexible concept, the court must use a balancing test and consider the circumstances peculiar to each case. *Viz.*:
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> x x x
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> That the particular circumstances unique to each case must be considered was reiterated in the more recent case of *Remulla v. Sandiganbayan*. To wit:
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> > Accordingly, both sets of cases only show that "[a] balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy trial cases on an *ad hoc* basis." To reiterate, none of the factors in the balancing test is either a necessary or sufficient condition; they are related and must be considered together with other relevant circumstances. x x x
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> Here, the fact-finding investigation commenced on October 7, 2013. The Affidavit dated March 26, 2014 of the Public Assistance and Corruption Prevention Office (PACPO), Office of the Ombudsman, recommending that the fact-finding case be upgraded into formal criminal and administrative cases against the accused was filed with the Office of the Ombudsman on October 9, 2014. On December 18, 2014, the respondents were directed to file their respective counter-affidavits. The accused, except accused Babon, filed their respective Counter-Affidavits on April 8, 2015. On May 6, 2015, the parties were then directed to submit their respective verified position papers summarizing the charges, defenses, and/or other claims contained in their previously filed affidavits and other pleadings. None of the parties, however, complied with said directive.
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> The Joint Resolution dated January 10, 2017 finding probable cause to indict the respondents for four (4) counts of violation of Sec. 3(e) of R.A. No. 3019 was approved on January 24, 2017. In the Joint Order dated May 25, 2017, the Office of the Ombudsman denied accused Abarratigue's Motion for Reconsideration, but partially granted those of accused Francillo, Mengote, Tapia, Abayare, Pazon and Babon, and modified the Joint Resolution by

[8] Record, pp. 469-473 (Resolution dated March 12, 2018, pp. 8-12)

recommending that accused Francillo and Pazon be indicted for only two (2) counts of violation of Sec. 3(e) of R.A. No. 3019. Thereafter, the four (4) Informations were filed on December 1, 2017.

In *Torres v. Sandiganbayan*, it was held that speedy disposition of cases covers not only the period within which the preliminary investigation was conducted, but also all stages to which the accused is subjected, including the fact-finding investigations conducted prior to the preliminary investigation proper. Thus, length of delay is computed from the start of the fact-finding investigation to the filing of the Information in the present cases – a period of almost four (4) years and two (2) months.

According to the prosecution, even if there was delay in the fact-finding and preliminary investigations, the same was not inordinate. The Supreme Court recognized that the disposition of cases pending before the Office of the Ombudsman takes time because of the steady stream of cases reaching said Office. Moreover, it was not shown how the delay was vexatious, capricious and oppressive. These terms were defined in *Tai Lim v. Court of Appeals* as thus:

> x x x. As the Appellate Court put it in "Steward versus State, 13 Arkansas, 720": "what the constitution prohibits is vexatious, capricious and oppressive delays, manufactured by them ministers of justice." Not every delay in the trial is vexatious, capricious or oppressive. In the legal firmament. The terms have distinct connotations. Vexatious suggests an act which is willful and without reasonable cause, for the purpose of annoying and embarrassing another or one lacking justification and intended to harass (page 2548, Third Edition, Webster's International Dictionary). Oppressive connotes an unjust or cruel exercise of power or authority. Capricious action, on the other hand, means willful and unreasoning action x x x.

This Court is inclined to agree with the prosecution. Although the Informations were filed with this Court only after more than four (4) years, such period can be broken down into the following:

Start of the fact-finding investigation to the filing of the PACPO's Affidavit	1 year
Filing of the Counter-Affidavits from the time the respondents were directed to file the same	Almost 4 months
Filing of the respondents' Counter-Affidavits to the approval of the Joint Resolution	More than 1 year and 9 months
Filing of the Motions for Reconsideration of the respondents to the date of the Joint Order	2 months

Date of the Joint Order to the filing of the Informations	6 months

It can be seen that the preliminary investigation proper took the most time to conduct – more than two (2) years in total. However, there appears no evidence that the investigations – both fact-finding and preliminary – were conducted for the purpose of harassing the accused, or other similar circumstances that would make the delay vexatious, capricious and oppressive. It also does not appear that any stage of the proceedings had taken an unusually long time to complete, considering that the Office of the Ombudsman also handles other cases – both criminal and administrative. This was recognized by the Supreme Court in *Mendoza-Ong v. Sandiganbayan*. To wit:

> x x x. "Speedy disposition of cases" is consistent with reasonable delays. The Court takes judicial notice of the fact that the nature of the Office of the Ombudsman encourages individuals who clamor for efficient government service to lodge freely their complaints against alleged wrongdoings of government personnel. A steady stream of cases reaching the Ombudsman inevitably results. Naturally, disposition of those cases would take some time. x x x
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> (underscoring supplied)

As to the prejudice the accused suffered, indeed, there is no question that anxiety and impairment of the accused' defense, among others, may by brought about by delay in the proceedings. In *Corpuz*, it was explained:

> x x x. Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.

However, it must be emphasized that this must be weighed and balanced with the State's right to prosecute crimes. For there to be violation of the right to speedy disposition of cases, the prejudice suffered by the accused must be serious, or that which cannot be said to be a mere consequence of ordinary or reasonable delay. Also in *Corpuz*, following the aforequoted portion, the Supreme Court said:

> Delay is a two-edge sword. It is the government that bears the burden of proving its case beyond reasonable doubt. The passage of time may make it difficult or impossible for the government to carry its burden. The Constitution and the Rules do not require impossibilities or extraordinary efforts, diligence or exertion from courts or the prosecutor, nor contemplate that such right shall deprive the State of a reasonable opportunity of fairly prosecuting criminals. As held in *Williams v. United States*, for the government to sustain its right to try the accused despite a delay, it must show two things: (a) that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay; and (b) that there was no more delay than is reasonably attributable to the ordinary processes of justice.
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> (underscoring supplied)

As previously discussed, the Court finds that the time it took to conduct the fact-finding and preliminary investigations was not unreasonable. Likewise, it was not shown how the accused suffered serious prejudice by reason of inordinate delay in the proceedings.

In fine, it was not shown that the delay in the conduct of the fact-finding and preliminary investigations could be characterized as vexatious, capricious and oppressive. Hence, there was no violation of the accused' right to speedy disposition of cases.

Assuming that the length of delay is counted from March 23, 2012, the date of issuance of the Subpoena Duces Tecum, the length of delay will be around five (5) years and eight (8) months. But it must be emphasized that the length of delay is but one of the factors in the balancing test, which weighs the conflicting interests of the prosecution and the defendant.[9]

This Court, in concluding that there was no violation of accused Abarratigue's right to speedy disposition of cases, considered not only the length of delay, but also the other factors in the balancing test. These had already been discussed in the assailed Resolution.

Accused Abarratigue, in his *Motion for Reconsideration*, failed to show how the delay can be characterized as vexatious, capricious and oppressive. Verily, there may be inordinate delay if it is found that the prosecution is politically motivated.[10] However, it must be clearly shown that the prosecution of the accused was for the purpose of harassing, or tarnishing the reputation of the accused, or other similar circumstance. The fact that the complaint was filed before the

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[9] Please see *Perez v. People*, G.R. No. 164763, February 12, 2008
[10] Please see *Tatad v. Sandiganbayan*, G.R. Nos. 72335-39, March 21, 1988

scheduled national and local elections, by itself, is not sufficient proof that the prosecution is politically motivated.

Likewise, it was not shown that he suffered serious prejudice as a result of inordinate delay. The unavailability of the original documents does not appear to be caused by inordinate delay, but by the submission of the same to the COA. Similarly, the financial drain, and public humiliation and ridicule allegedly suffered by accused Abarratigue could have been brought about by the mere fact of the existence of cases against him, regardless of delay.

WHEREFORE, accused Abarratigue's *Motion for Reconsideration* is hereby DENIED for lack of merit.

SO ORDERED.

SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:

KARL B. MIRANDA
Associate Justice

LORIFEL L. PAHIMNA
Associate Justice