



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

FOURTH DIVISION

PEOPLE OF THE PHILIPPINES, SB-17-CRM-0031 to 0037

Plaintiff,

For: Violation of Section 3(e),
R.A. No. 3019, Art. 171(4),
and Art. 217, in re: Art. 171
of the Revised Penal Code

- versus -

Present:

Quiroz, J., *Chairperson*

Cruz, J.,

Jacinto, J.

Promulgated:

PERPETUO B. YLAGAN, et al.,

Accused.

May 7, 2018

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RESOLUTION

JACINTO, J:

This resolves the *Omnibus Motion* (1. To Drop accused Fadri from Four (4) cases and accused Galos also from four (4) cases; 2. To Dismiss the Case) dated 27 January 2018 filed by accused Geishler F. Fadri and Oscar P. Galos¹ (accused-movants).

Accused-movants argue that it is clear from the 25 March 2014 *Resolution*² of the Office of the Ombudsman (OMB) that accused Fadri should only be charged with two counts of Falsification of Public Documents as defined under Art. 171(4) of the Revised Penal Code. Accused Galos, on the other hand, should only be charged with one count of the same offense. They claim that the said *Resolution* did not make any finding of probable cause to indict them for Malversation through Falsification of Public Documents or for Violation of Sec. 3(e) of Republic Act (R.A.) No. 3019. They therefore pray that the following cases be dismissed as against them: SB-17-CRM-00031, 0032, 0036, and 0037.

¹ Records, Vol. II, pp. 225-231.

² Records, Vol. I, pp. 34-56.

They also further pray that the charges of Falsification of Public Documents³ against them be dismissed on the ground that there was inordinate delay in the proceedings before the OMB.

In its *Comment/Opposition* dated 26 February 2018,⁴ the prosecution argues that a reading of the OMB *Resolution* would show that all the accused, including accused-movants, conspired with one another in order to consummate the embezzlement of public funds in the total amount of Php3,000,000.00. It also submits that accused-movants may no longer question the finding of probable cause at this late stage of the proceedings.

As regards the issue of the violation of accused-movants' right to speedy disposition of cases, the prosecution argues that a mere mathematical reckoning of periods is insufficient, and that a balancing test must be applied to determine if there was indeed inordinate delay in the OMB proceedings. It points out that the instant cases are complex, but were nonetheless addressed by the OMB in a reasonably timely manner. Finally, it highlights that accused-movants do not refer to any specific damage or prejudice caused by the supposed delay, nor were they able to show that they asserted their right before the OMB.

There is merit in accused-movants' prayer to be dropped from SB-17-CRM-00031, 0032, 0036, and 0037.

A review of the Record of OMB-C-C-11-0818-L, which was submitted together with the *Informations* and the 25 March 2014 *Resolution* of the OMB, supports accused-movants' claim that only accused Ylagan, Araullo, Braganza, Nabor, Flordeliza, Barredo, Salvador, Iranzo, and Dino should be brought to trial for Malversation thru Falsification of Public Documents and for Violation of Sec.3(e) of R.A. No. 3019. Accused-movants were not among those found to be liable for the said crime in the OMB *Resolution*. As to the Violation of Sec. 3(e) of R.A. 3019, the OMB explicitly indicated that the cases against accused-movants were accordingly dismissed, thus:

WHEREFORE, finding probable cause against some of the respondents, let the following Informations be filed:

- 1) With the Sandiganbayan, two counts of Malversation of Public Funds thru Falsification of Public Documents, defined and

³ SB-17-CRM-0033 and 0034.

⁴ *Comment/Opposition [to the Omnibus Motion: 1. To Drop accused Fadri from four (4) cases and accused Galso also from four (4) cases, and 2. To Dismiss the Case]* dated 26 February 2018; Records, Vol. II, pp. 236-245.

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penalized under Article 217, in relation to Article 171, of the Revised Penal Code, against **PERPETUO B. YLAGAN, DENNIS B. ARAULLO, RAYMUNDO E. BRAGANZA, MA. NIEVES R. NABOR, JOSELITO F. FLORDELIZA, JOSE B. BARREDO,** and **ERNA P. SALVADOR,** and one count against **DORY A. IRANZO** and **GROVER L. DINO;**

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5) With the Sandiganbayan, two counts of violation of Section 3(e) of Republic Act No. 3019, as amended, against **PERPETUO B. YLAGAN, DENNIS B. ARAULLO, RAYMUNDO E. BRAGANZA, MA. NIEVES R. NABOR, JOSELITO F. FLORDELIZA, JOSE B. BARREDO,** and **ERNA P. SALVADOR,** and one count against **DORY A. IRANZO** and **GROVER L. DINO;**

The complaint for violation of Section 3(e) of Republic Act No. 3019, as amended, against Fadri and Galos is DISMISSED.⁵

To eliminate any doubt that there was simply an oversight in the OMB's disposition, the body of the OMB *Resolution* in fact coincides with the above-quoted result. It discussed that accused-movants were made liable for signing off on Certificates of Acceptance and inspection reports while the other accused are mainly being held liable for allowing unqualified entities to participate in the projects, violating the Memorandum of Agreement for the same, and transgressing Commission on Audit Rules by allowing payment to the private contractors in two tranches instead of three.

To simplify, the other accused's crimes concern the undue *procurement* and *payment* for the subject fertilizers, while accused-movants are made liable for purportedly falsely signifying that there were items delivered despite lack of *delivery*. While at first glance these acts are connected, they do not necessarily translate to accused-movants' acts as being necessary to the procurement of, and payment for, the illegal contracts. As found by the OMB, the payment and deliveries were made prior to the other accused's execution of a MOA to cover the said transactions:

First, the delivery of the fertilizer to the Province of Romblon and NOAEP's issuance of the PO in favor of Feshan preceded the execution of the MOA and the release of the funds to NOAEP. To recall, Ylagan, Araullo, and Flordeliza executed the MOA on 17 June 2014, and DA-RFU IV released the P3M fund in two tranches on 17 August 2004 and 9 November 2004. Yet, as early as 24 April 2004, the Province of Romblon received 444 bottles of liquid fertilizer from JCI while, on 23 June 2004, Fadri and Falos received, verified, and inspected 2,000 bottles of liquid

⁵ Records, Vol. I, p. 52.

fertilizer from NOAEPI. It is obvious that the purchase and delivery of fertilizer could not have been made if DA-RFU IV had yet to accredit NOAEPI as project implementer and had yet to release the funds therefor.

The OSP has not offered any satisfactory explanation why the *Informations* filed against accused-movants remain unsupported by the OMB's *Resolution*. It has likewise been unable to show any Order or Resolution rendered by the OMB that modified its findings. Rather, it even confirms in its *Comment/Opposition* that accused-movants' acts were not necessary for the consummation of the crimes of Malversation through Falsification or Violation of Sec. 3(e) of R.A. No. 3019.

In lieu of explaining the incongruence of the OMB's submissions, the prosecution argues that the evidence for the separate cases of Falsification can be made interchangeable with those for Malversation through Falsification of Public Documents and Violation of Sec. 3(e) of R.A. No. 3019; hence, no rectification is required to address the disparity between the indictments and the OMB's *Resolution*.

The Record does not support the prosecution's conclusion. Moreover, if this position is allowed, it would tolerate the curtailment of accused-movants' right to due process, since they were not given the opportunity to contest the "interchangeable" finding that they can also be made liable for the several counts of Malversation through Falsification of Public Documents and Violation of R.A. No. 3019, despite the OMB's lack of determination of probable cause for the same. If this is countenanced, it would likewise render nugatory the entire process of preliminary investigation undertaken by the said office.

While the Court had already issued warrants of arrest against accused-movants,⁶ it is not precluded from modifying the said interlocutory order since the same remains within the purview of the Court's power to control its processes and orders to make them conformable to law and justice. Thus, as held in *Heirs of Dimaampao v. Alug*:⁷

An interlocutory order is always under the control of the court and may be modified or rescinded upon sufficient grounds shown at any time before final judgment.⁸ This prescinds from a court's inherent power to control its process and orders so as to make them conformable to law and justice,⁹ and a motion for reconsideration thereof was not subject to the

⁶ *Resolution* dated 27 October 2017; *Records*, Vol. II, pp. 27-30.

⁷ G.R. No. 198223, 18 February 2015.

⁸ *Ley Construction and Development Corporation v. Union Bank of the Philippines*, G.R. No. 133801, 27 June 2000.

⁹ *Id.*

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limiting fifteen-day period of appeal prescribed for final judgments or orders.¹⁰

Based on the foregoing, the Court finds sufficient cause to recall the warrants of arrest against accused-movants for SB-17-CRM-00031, 0032, 0036, and 0037, and order the dismissal of the said cases insofar as they are concerned.

Accused-movants' failure to invoke their right to speedy disposition of cases in a timely manner negates the finding of inordinate delay.

The Court finds that accused-movants are similarly situated with accused Dennis B. Araullo, Raymundo E. Braganza, and Ma. Nieves R. Nabor, who likewise filed a motion to dismiss on the ground of inordinate delay in the proceedings before the OMB.¹¹ The said accused's motion was denied by the Court in its 11 December 2017¹² and 2 March 2018¹³ *Resolutions*, wherein it held and affirmed, respectively, that the accused's failure to timely invoke their right to speedy disposition of cases negates a finding that there was vexatious and oppressive delay sufficient to merit the dismissal of these cases.

Given that the Court had already exhaustively discussed its ruling in the said *Resolutions*, there is no reason to repeat the same. However, to add to its previous disquisition, it bears noting that in the *En Banc* cases of *Barcelona v. Lim*,¹⁴ *Gaas v. Gomera*,¹⁵ *Guiani v. Sandiganbayan*,¹⁶ *Licaros v. Sandiganbayan*,¹⁷ *Alvizo v. Sandiganbayan*,¹⁸ *Gaas v. Mitmug*,¹⁹ and *Dela Peña v. Sandiganbayan*,²⁰ it was held that the timeliness of an accused's invocation of their right to speedy disposition of cases is determinative of whether there is inordinate delay sufficient to merit the dismissal of a case. Common to all the said cases is the finding that the failure to invoke the right during the proceedings below, or at least in the earliest instance, negates a finding of inordinate delay. These are applicable to the cases at bar.

¹⁰ *Denso Philippines, Inc. v. IAC*, G.R. No. 75000, 27 February 1987.

¹¹ *Motion to Dismiss (on the ground of inordinate delay)* dated 29 August 2017; Records, Vol. I, pp. 616-622.

¹² Records, Vol. II, pp. 60-64.

¹³ *Id.*, pp. 251-256.

¹⁴ G.R. No. 189171, 3 June 2014.

¹⁵ G.R. No. 165776, 30 April 2008.

¹⁶ G.R. Nos. 146897-917, 6 August 2002.

¹⁷ G.R. No. 145851, 22 November 2001.

¹⁸ G.R. No. 101689, 17 March 1993.

¹⁹ G.R. No. 165776, 30 April 2008.

²⁰ G.R. No. 144542, 29 June 2001.

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Apart from accused-movants' failure to previously contest the purported delay in the proceedings, it likewise bears highlighting that accused-movants filed the instant *Omnibus Motion* at an even later date than accused Araullo, Braganza, and Nabor.

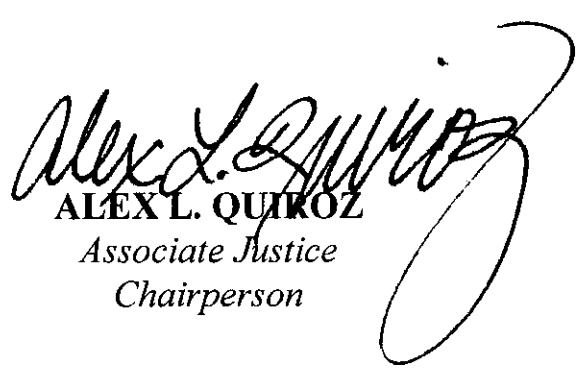
WHEREFORE, premises considered, accused Geishler F. Fadri and Oscar P. Galos' *Omnibus Motion 1. To Drop accused Fadri from Four (4) cases and accused Galos also from four (4) cases; 2. To Dismiss the Case* dated 27 January 2018 is:

- (i) GRANTED, insofar as the warrants of arrest issued against them in SB-17-CRM-00031, 0032, 0036, and 0037 are hereby ordered RECALLED, and the said cases are DISMISSED as to them; and,
- (ii) DENIED, insofar as accused-movants' prayer that the cases against them be dismissed due to inordinate delay.

SO ORDERED.


BAYANI H. JACINTO
Associate Justice

WE CONCUR:


ALEX L. QUIROZ
Associate Justice
Chairperson


REYNALDO P. CRUZ
Associate Justice