REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

Seventh Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

CONCEPCION ONG LIM, DIONISIO DAJALOS BALITE, JOSE ECHAVIA VELOSO, FELIX REALISTA UY, AMALIA REYES TIROL, ESTER CORAZON JAMISOLA GALBREATH, GODOFREDA OLAVIDES TIROL, MA. FE CAMACHO-LEJOS, BRIGIDO ZAPANTA IMBOY, FRANCES BOBBITH DEL ROSARIO CAJES-AUZA, HANDEL TUMULAK LAGUNAY, EDWIN TUTOR VALLEJOS, ABRAHAM DORIA CLARIN, GRETA AYA-AY MENDE, LAURA SARAMOSING-BOLOYOS, and FELIX MASCARIÑAS MEJORADA.
Accused.

Criminal Case No. **SB-17-CRM-2199**

Present:
Gomez-Estoesta, J., *Chairperson*
Trespeses, J. and
Miranda, J.*

Promulgated:
May 24, 2018

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RESOLUTION

GOMEZ-ESTOESTA, J.:

For the Court's resolution are:

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* Per Administrative Order No. 008-2018 dated January 8, 2018

A.

(i) Prosecution's *Motion for Reconsideration (of the Resolution dated April 5, 2018)* dated April 16, 2018;

(ii) Accused Concepcion Ong Lim, Jose E. Veloso, and Felix R. Uy's *Comment/Opposition (on the Prosecution's Motion for Reconsideration)* dated April 30, 2018; and

(iii) Accused Handel Tumulak Lagunay, Edwin Tutor Vallejos, Abraham Doria Clarin, Greta Aya-ay Mende, Laura Saramosing-Boloyos, and Felix Mascariñas Mejorada's *Comment/Opposition (To: Motion for Reconsideration [of Resolution dated April 5, 2018])* dated May 5, 2018.

B.

(i) Accused Concepcion Ong Lim, Jose E. Veloso, and Felix R. Uy's *Motion for Partial Reconsideration* dated April 16, 2018;

(ii) Accused Amalia Reyes Tirol, Ester Corazon Jamisola Galbreath, Godofreda Olavides Tirol, Brigido Zapanta Imboy, and Ma. Fe Camacho-Lejos's *Supplemental Motion for Partial Reconsideration, with Comment on Prosecution's Motion for Reconsideration* dated April 22, 2018; and

(iii) Prosecution's *Consolidated Comment/Opposition* dated May 3, 2018.

Prosecution's Motion for Reconsideration (of the Resolution dated April 5, 2018)

The prosecution argues that the Court erred in dismissing the Information against all the accused on the ground that the facts charged do not constitute an offense, for the reasons below:

First. All laws operate prospectively, unless otherwise provided by the laws themselves. *Memorandum Order No. 213*, which amended Section 42.5 of the *Implementing Rules and Regulations* ("*IRR*") of *Republic Act No. 9184* ("*R.A. 9184*") by allowing letters of credit as a mode of payment, took effect on May 12, 2006. The unlawful act committed by the accused, which was alleged to be authorizing or allowing payment to Civil Merchandising, Inc. ("**CMI**") through a letter of credit as the mode of payment, occurred on April 4, 2006, at which time said act was prohibited as there was then a standing prohibition against issuing such a letter of credit as a mode of payment. This being the case, the amendment introduced by *Memorandum Order No. 213* does not exonerate the accused as it may only be applied prospectively.

Second. The effect of the amendment brought by *Memorandum Order No. 213* is that payment by issuing a letter of credit is now allowed if two (2)

conditions are met.[1] The Information need not allege the non-fulfillment of said conditions; the Information is sufficient because it already stated the unlawful act of the accused, that they authorized the issuance of a letter of credit. The non-fulfillment of the twin conditions is a matter of evidence that will be proven by the prosecution during the trial on the merits.

Third. The accused are charged with violation of Section 3 (e) of *R.A. 3019*, not *R.A. 9184*. While the allegations in the Information may be insufficient to constitute a violation of *R.A. 9184*, said allegations are enough to spell out a violation of *R.A. 3019*.

The prosecution thus prays that the Court's *Resolution* dated April 5, 2018 be set aside and that the motions to quash and/or dismiss filed by the accused be denied.

The accused's Comment/Opposition to prosecution's Motion for Reconsideration

(i) Accused Lim, Veloso, and Uy contend that the Court was correct in dismissing the case on the ground that the facts charged in the Information do not constitute an offense. Since Section 42.5 of the *IRR* of *R.A. 9184* has been amended, charging the accused for its violation prior to the amendment will amount to indicting the accused on a non-existing violation.

Considering that *R.A. 9184* is a penal law as it prescribes a penalty for its violation, it follows that Section 42.5 of the *IRR* of *R.A. 9184*, and *Memorandum Order No. 213* which amended the latter, are likewise penal in character. In addition, *Memorandum Order No. 213* is also a procedural law considering that it amended Section 42.5 which is an implementing rule. Being both penal and procedural, *Memorandum Order No. 213* was correctly given retroactive effect pursuant to the doctrine that penal laws which are beneficial to the accused should be applied retroactively.

Said accused further highlight that the crux of the controversy in a motion to quash is merely the sufficiency of allegations as stated in the information, not whether said allegations were established or proven. In the instant case, the averments in the Information are insufficient because if

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[1] Section 42.5 of the IRR of R.A. 9184, as amended, now states:

SECTION 42. Contract Implementation and Termination. —

x x x

42.5. Procuring entities may issue a letter of credit in favor of a local or foreign suppliers; **Provided, that, no payment on the letter of credit shall be made until delivery and acceptance of the goods** as certified to by the procuring entity in accordance with the delivery schedule provided for in the contract; **Provided further, that, the cost for the opening of letter of credit shall be for the account of the local or foreign supplier** and to be so stated in the bidding documents. (Emphasis supplied)

hypothetically admitted, they would not establish the essential elements of violation of Section 42.5 of the *IRR* of *R.A. 9184*.

The prosecution is incorrect in stating that the accused are being charged for violation of *R.A. 3019* and not for violation of *R.A. 9184*. The overt acts allegedly violating Section 42.5 of the *IRR* of *R.A. 9184* constitute the essential elements that would establish a violation of Section 3 (e) of *R.A. 3019*. .

(ii) Accused Tirol, Galbreath, Olavides Tirol, Imboy, and Camacho-Lejos also posit that the Court did not err in dismissing the case. Said accused point to the lapse committed by the prosecution when it failed to furnish copies of its *Motion for Reconsideration* to several of their co-accused, namely, accused Balite, Auza, Lagunay, Vallejos, Clarin, Mende, Boloyos, and Mejorada. As a consequence thereof, the Court's *Resolution* dated April 5, 2018 became final as to the accused who had not been notified by the prosecution. This is in consonance with the rule that statutes must be construed strictly against the State and liberally in favor of the accused.

(iii) accused Lagunay, Vallejos, Clarin, Mende, Saramosing-Boloyos, and Mejorada likewise argue that the dismissal of the case was correct. On procedural grounds, said accused aver that they were not furnished a copy of the prosecution's *Motion for Reconsideration*. As such, the same should be denied outright for violating the three-day notice requirement under Sections 4 and 5, Rule 15 of the *Rules of Court*.[2] The *Motion* is thus a mere scrap of paper.

On substantial matters, accused Lagunay, Vallejos, Clarin, Mende, Saramosing-Boloyos, and Mejorada point out that the prosecution's position is self-contradictory: by charging the accused with violation of Section 3 (e) of *R.A. 3019* in relation to Section 42.5 of the *IRR* of *R.A. 9184*, the prosecution admitted that the accused committed a crime; it cannot now allege that the latter provision is not a penal law. Also, because the Information charging the accused for violation of *R.A. 3019* made use of Section 42.5 of the *IRR* of *R.A. 9184*, the latter provision is an essential component of the whole charge.

Furthermore, the facts charged in the Information do not constitute an offense. In order to prosper, violation of Section 42.5 of the *IRR* of *R.A. 9184* requires the non-observance of two conditions, the second of which has been satisfied: prosecution's exhibit "EE", the Philippine National Bank ("PNB") Certification, shows that the amount of P9,723,998.15 was debited from the current account of the LGU of Bohol on July 12, 2006, and part of this deduction is the cost of opening the letter of credit. The same Certification also discloses that CMI deposited P238,940.00 on July 17, 2006 in the same current account. Consequently, no violation of said law obtains.

Finally, accused Lagunay, Vallejos, Clarin, Mende, Saramosing-Boloyos, and Mejorada asseverate that they were not among the members of

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[2] 1997 RULES OF CIVIL PROCEDURE, rule 15, § 4 and 5

the Bids and Awards Committee ("BAC") who authorized payment via the issuance of a letter of credit.

The Motions for Partial Reconsideration separately filed by: (1) accused Lim, Veloso, and Uy; and (2) accused Tirol, Galbreath, Olavides Tirol, Imboy, and Camacho-Lejos

(1) While accused Lim, Veloso, and Uy do not dispute the dismissal of the case on the ground that the facts as charged in the Information do not constitute an offense, they insist that the prosecution committed inordinate delay which violated their right to speedy disposition of cases. As is always the case, fact-finding investigations by the Office of the Ombudsman ("Ombudsman") are done discreetly without the knowledge and participation of the accused. With or without the participation/knowledge of the accused, fact-finding investigations must be included in determining the existence of inordinate delay. It is emphasized that what controls is the accused's constitutional right to speedy disposition of cases. Corollary, the Ombudsman is mandated to act promptly in the discharge of its functions. Otherwise, if it were so that the Ombudsman is insulated from or not bound by the guarantee of speedy disposition of cases, a situation may arise where a fact-finding investigation might span 20 years or more, but the Ombudsman would not be liable for inordinate delay due to the lack of participation of the accused in said investigation.

Said accused bemoan that the fact-finding phase took 4 years to conclude, and then an additional 3 years lapsed until the case was ultimately filed in court. At this point, the accused are at a disadvantage as they are senior citizens, and it is now difficult to recall details about transactions that took place long ago.

(2) For their part, accused Tirol, Galbreath, Olavides Tirol, Imboy, and Camacho-Lejos join the theory of accused Lim, Veloso, and Uy, in that the Ombudsman committed inordinate delay, and that the period taken up by the fact-finding investigation should be deducted from the time in determining inordinate delay.

Prosecution's Consolidated Comment/Opposition

The prosecution maintains that the period during which the fact-finding investigation was conducted should be *excluded* in the computation of inordinate delay. Assuming arguendo that said period be *included* in the computation of inordinate delay, there is no violation of the accused's right to speedy disposition of cases. Said right is violated only if attended by vexatious, capricious, or oppressive delays, and is evaluated depending on the unique circumstances surrounding each case; a mere mathematical reckoning of time is insufficient in determining if a violation exists. The time spent by the Ombudsman in resolving accused's case is justified by: the fact that said Office has a heavy docket; the number of respondents involved, and the

corresponding effect it has in prolonging or lengthening the proceedings; and the Ombudsman cannot just rely on the findings of the COA as it has to conduct its own review of the facts based on the evidence gathered. Moreover, the accused did not show how they were prejudiced by the proceedings any more than is reasonably attributable to the nature of the preliminary investigation. Finally, the prosecution points out that nothing in the *Rules of Court* supports the notion that a resolution of the Court becomes final by the failure to furnish the adverse party a copy of the prosecution's *Motion for Reconsideration*.

The Court's Ruling

On the prosecution's Motion for Reconsideration

At the outset, accused Lagunay, Vallejos, Clarin, Mende, Saramosing-Boloyos, and Mejorada claim that the prosecution's *Motion for Reconsideration* should be denied outright for being a mere scrap of paper as they were never furnished a copy thereof, in violation of Sections 4 and 5, Rule 15 of the *Rules of Court*. It has been noted by the Court that there was indeed a procedural flaw committed by the prosecution in the filing of its *Motion for Reconsideration*.[3] The *pro forma* rule, however, has no application to criminal cases[4] and should not prevent this Court from resolving the *Motion* on the merits.

In the questioned *Resolution* dated April 5, 2018, this Court dismissed the present case on the ground that the facts charged in the Information do not constitute an offense. Section 42.5 of the *IRR* of *R.A. 9184* has been amended by *Memorandum Order No. 213*, such that there is no longer a prohibition against the issuance of letters of credit if the following two conditions are met:[5] (i) no payment on the letter of credit shall be made until delivery and acceptance of the goods; and (ii) cost for the opening of letter of credit shall be for the account of the local or foreign supplier. Absent the use of the conjunctive word "*or*", which would indicate that non-compliance with either condition would result in its violation, it is clear that said law is violated only upon the non-observance of *both* conditions. As it is worded, the Information

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[3] *See* the Court's Order dated April 20, 2018
[4] *Vide: People v. Colmenares*, G.R. No. L-13284, February 29, 1960
[5] Section 42.5 of the IRR of R.A. 9184, as amended, now states:

> SECTION 42. Contract Implementation and Termination. —
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> x x x
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> 42.5. Procuring entities may issue a letter of credit in favor of a local or foreign suppliers; Provided, that, **no payment on the letter of credit shall be made until delivery and acceptance of the goods as certified to by the procuring entity in accordance with the delivery schedule provided for in the contract;** Provided further, that, **the cost for the opening of letter of credit shall be for the account of the local or foreign supplier and to be so stated in the bidding documents.** (Emphasis supplied)

dated September 11, 2017 states that *only* the second condition was allegedly contravened – that the cost of the opening of the letter of credit was charged to the account of the Province of Bohol. No mention was made as to the non-compliance with the other condition relating to the time of payment by said office, nor of the date of delivery and acceptance of the heavy equipment purchased. Without the allegation that *both* conditions were not observed, it is thus erroneous to aver that Section 42.5 of the *IRR* of *R.A. 9184* was violated by the accused. Consequently, the facts as charged in the Information do not constitute an offense.

Nonetheless, the prosecution insists that the allegations as contained in the Information are sufficient because of the following reasons: **(A)** all laws operate prospectively, the alleged unlawful act by the accused was committed on April 4, 2006, at which time the amendment introduced by *Memorandum Order No. 213* had not yet taken effect;[6] **(B)** the Information need not allege the non-fulfillment of the twin conditions as spelled out in Section 42.5 of the *IRR* of *R.A. 9184* as these are matters of evidence that will be subject to proof by the prosecution during the trial; and **(C)** the accused are charged with violation of Section 3 (e) of *R.A. 3019*, not *R.A. 9184*, and that the allegations in the Information are enough to spell out a violation of *R.A. 3019*.

The stance of the prosecution is untenable.

To repeat at the risk of redundancy, with the passage of *Memorandum Order No. 213*, the prohibition against the issuance of letters of credit is now no longer in effect provided the conditions as set forth in the law are complied with. This being the case, the accused should not be held liable for an act which is no longer penalized by law.

While the Information charges the accused for violation of Section 3 (e) of *R.A. 3019*, the means by which the accused committed such offense was allegedly through violation of Section 42.5 of the *IRR* of *R.A. 9184*. As such, contravention of Section 42.5 of the *IRR* of *R.A. 9184* is an integral part of the Information for violation of Section 3 (e) of *R.A. 3019*, such that proof of the former is necessary to establish the latter. In other words, the proverbial cart cannot be put ahead of the horse. As both provisions are necessarily intertwined based on the facts as charged in the Information, it is crucial that the same must allege the non-observance of both conditions set forth in Section 42.5 of the *IRR* of *R.A. 9184*. Absent such averments, it was thus fatal for the prosecution to omit the allegation of the non-fulfillment of said conditions required by Section 42.5 of the *IRR* of *R.A. 9184*. *Burgos v. Sandiganbayan* is apropos:[7]

> In criminal cases, where the life and liberty of the accused is at stake, due process requires that the accused be informed of the nature and cause of the accusation against him. An accused cannot be convicted of an offense unless it is clearly charged in the complaint or information. To convict him

[6] Memorandum Order No. 213 was published on May 12, 2006 in the Manila Times
[7] G.R. No. 123144, 123207 & 123536 October 15, 2003

> of an offense other than that charged in the complaint or information would be a violation of this constitutional right.
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> The important end to be accomplished is to describe the act with sufficient certainty in order that the accused may be appraised of the nature of the charge against him and to avoid any possible surprise that may lead to injustice. Otherwise, the accused would be left in the unenviable state of speculating why he is made the object of a prosecution.

Hence, the prosecution's *Motion for Reconsideration* should be denied.

On the Motions for Partial Reconsideration separately filed by accused Lim, Veloso, Uy, Tirol, Galbreath, Olavides Tirol, Imboy, and Camacho-Lejos

To emphasize, the time taken by the Ombudsman should not be reckoned from the issuance of the COA's Audit Observation Memorandum dated January 7, 2010, but from the commencement of the preliminary investigation which was initiated by the filing of the Complaint on **November 6, 2014**. There being no evidence to the contrary, it is reasonable to presume that the resolution of the case took its normal course, which culminated in the filing of the Information before this Court on **September 11, 2017**. With this timetable, and within the context of the landmark case of *Tatad v. Sandiganbayan*, the lapse of only *two (2) years and ten (10) months* cannot be considered as delay, much less unreasonable delay, which would prejudice the constitutional rights of the accused, nor can such be labeled as vexatious, capricious, and oppressive.

Although accused Lim, Veloso, Uy, Tirol, Galbreath, Olavides Tirol, Imboy, and Camacho-Lejos attempt to tack in the period spent by the Ombudsman in conducting its fact-finding investigation, the same is not warranted under the circumstances. It may be recalled that in the cases of *People v. Sandiganbayan,*[8] *Remulla v. Sandiganbayan,*[9] and *Torres v. Sandiganbayan,*[10] the Supreme Court factored in the time taken in the fact-finding investigations in determining if undue delay existed. However, those cases were based on particular circumstances, which involved: (a) the participation of an accused was required in the fact-finding investigation of the Ombudsman; (b) the participation of the accused was no longer necessary in order that preliminary investigation may proceed; and (c) there was an obvious fractionalization of investigations which led to the filing of several cases against the accused. None of the abovementioned circumstances that obtained in *People v. Sandiganbayan, Remulla,* and *Torres* find footing in the present case, which prevents the Court from adding the length of time used in the fact-finding investigation to the period of preliminary investigation. Additionally, since the conduct of the Ombudsman's fact-finding investigation in this case was admittedly without the knowledge of the

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[8] G.R. Nos. 188165 & 189063, December 11, 2013
[9] G.R. No. 218040, April 17, 2017
[10] G.R. Nos. 221562-69, October 5, 2016

accused, nor was their participation therein required, it may even be said that the accused could not have been affected by the stress, financial or otherwise, of such investigation, and ergo, the conclusion is that no prejudice was caused to the accused other than what is attributable to the nature of the proceedings before the Ombudsman.

Still, accused Lim, Veloso, and Uy, bemoan the length of time used by the proceedings, specifically that "the [Ombudsman] would already be insulated from the operation of the speedy disposition provision of the [C]onstitution and may easily raise the defense that even if they would consume twenty (20) or more years in fact[-]finding investigation there will be no inordinate delay because of the lack of participation of the accused during [said] stage."

This argument is not well-taken.

Aside from being purely academic, if not speculative, the accused are still afforded protection under the principle of prescription, in addition to the constitutional right of speedy disposition of cases, which would safeguard them in the theoretical event that a fact-finding investigation would entail twenty or more years to conclude. Assuming *arguendo* that such were the case, the right of the State to prosecute the accused would have long prescribed with the lapse of twenty years. All offenses punishable under *R.A. 3019* prescribe in fifteen years.[11] Considering that the prescriptive period would have been reckoned from the discovery of the crime by the authorities,[12] which would have been from the issuance of the COA Audit Observation Memorandum which became the basis to commence the fact-finding investigation, prescription would have already set in which would have given ground for the dismissal of the case. Thus, the fear of never-ending prosecution felt by accused Lim, Veloso, and Uy is more imaginary than real.

Moreover, the cases of *Enriquez v. Office of the Ombudsman*[13] ("*Enriquez*") and *Coscolluela v. Sandiganbayan*[14] ("*Coscolluela*"), which were relied on by accused Lim, Veloso and Uy, are not on point with the factual circumstances in this case.

In *Enriquez*, the Ombudsman was said to have committed inordinate delay when it took more than four (4) years in resolving the cases against the petitioners. On the other hand, in *Coscolluela*, the petitioners were unaware of the outcome of an investigation against them, and they were belatedly informed that the Ombudsman had issued a resolution and had filed an information against them only after the long lapse of six (6) years. In contrast, however, the time taken by the Ombudsman in resolving the preliminary

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[11] Anti-Graft and Corrupt Practices Act, Republic Act No. 3019, § 11 (1960)
[12] An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815, art. 91 (1932)
[13] G.R. Nos. 174902-06, February 15, 2008
[14] G.R. Nos. 191411 & 191871, July 15, 2013

investigation of herein accused amounted to approximately two (2) years and ten (10) months. **This period is well below the four (4) and six (6) year delay which the Supreme Court found to be violative of the accused's right to speedy disposition of cases in *Enriquez* and *Coscolluela*, respectively.** Consequently, the Court maintains its position that there was no inordinate delay committed by the prosecution.

In fine, the *Motions for Partial Reconsideration* are not meritorious.

WHEREFORE, the following *Motions* are **DENIED** for lack of merit, viz:

A. Prosecution's *Motion for Reconsideration (of the Resolution dated April 5, 2018)* dated April 16, 2018;

B. Accused Concepcion Ong Lim, Jose E. Veloso, and Felix R. Uy's *Motion for Partial Reconsideration* dated April 16, 2018;

C. Accused Amalia Reyes Tirol, Ester Corazon Jamisola Galbreath, Godofreda Olavides Tirol, Brigido Zapanta Imboy, and Ma. Fe Camacho-Lejos's *Supplemental Motion for Partial Reconsideration, with Comment on Prosecution's Motion for Reconsideration* dated April 22, 2018;

SO ORDERED.

MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Associate Justice
Chairperson

WE CONCUR:

ZALDY V. TRESPESES
Associate Justice

KARL B. MIRANDA
Associate Justice