Republic of the Philippines
Sandiganbayan
Quezon City
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FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

TITO GUERRERO RAZALAN, ET AL.,
Accused.

Crim. Case No. SB-18-CRM-0295
For: Violation of R.A. No. 3019
Section 3(e)

Present:
Lagos, J., *Chairperson*,
Mendoza – Arcega and
Corpus - Mañalac, JJ.

Promulgated:
June 21, 2018

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RESOLUTION

CORPUS - MAÑALAC, J.:

This refers to the following incidents:

1. "Omnibus Motion (a) To Quash the Information and To Dismiss the Case; (b) To Defer Arraignment; and (c) To Suspend Further Proceedings dated May 4, 2018 filed by accused Tito Guerrero Razalan, as well as the Prosecution's "Comment/Opposition" thereto dated May 21, 2018;

2. "Motion to Quash the Information and To Dismiss the Case" dated May 12, 2018 filed by accused Jose Q. De Guzman, as well as the Prosecution's "Comment/Opposition" dated May 12, 2018; and

3. "Omnibus Motion to Quash Information with Motion to Defer Arraignment and Further Proceedings and Motion to Dismiss the Case" dated May 6, 2018 filed by accused Florence Bunao Bueno, Marilene Samaniego Bedania and Jun Mercado Bala, as well as the Prosecution's "Comment/Opposition" thereto dated June 11, 2018

Antecedents

The Information in this case alleges a violation of RA 3019, Section 3 [e] by the above-named accused arising from the alleged irregularities in the bidding of the *Mayantoc Memorial Park Project*, Municipality of Mayantoc, Tarlac amounting to

Php24,783,043.16. Except for accused **De Guzman**, alleged proprietor of JQG Construction to whom the project was awarded, who was conditionally arraigned on May 21, 2018 as a condition to his travel abroad, the arraignment of the rest of the accused, namely: **Razalan** [*then Municipal Mayor*], **Salazar** *[Municipal Treasurer and BAC Member]*, **Bueno** [*Budget Officer and BAC Member*], **Bedania** [*Administrative Officer II and BAC Member*] and **Bala** [*former Municipal Agriculturist and Bac Member*], all of Mayontoc, Tarlac, is set on June 22, 2018.

Meanwhile, the foregoing motions were filed, which is now for resolution of the Court.

The Motions

All three [3] motions basically allege inordinate delay in the investigation of this case by the Office of the Ombudsman as a ground to quash and dismiss the Information. It was averred that the said delay constitutes a violation of their constitutional right to speedy disposition of their case meriting the quashal or dismissal of this case.

Razalan alleges that the complaint of Avelino E. Pobre was filed with the Office of the Ombudsman on April 17, 2012. It was referred to a fact-finding investigation docketed as CPL-L-13-0313, while the formal preliminary investigation began on August 18, 2014 upon issuance of an order for the respondents to submit their respective counter-affidavits. Specifically, on September 8, 2014 a Joint-Counter Affidavit was filed by Razalan, Salazar and Corpuz. On February 14, 2017, the Consolidated Resolution on the complaint dated November 10, 2015 was approved by the Ombudsman finding probable cause against the respondents for violation of RA 3019, Section 3 [e]. A Joint Order dated April 4, 2017 denying the motions for reconsideration thereof was approved by the Ombudsman on October 18, 2017, while the corresponding Information was eventually filed with this Court on April 20, 2018.

Essentially, all accused argue that the delay of six (6) years in the disposition of their case, from April 17, 2012 when the Ombudsman received the complaint up to April 20, 2018 when the Information was filed in court is too long and unreasonable, citing the cases of ***People vs. Sandiganbayan***,[1] ***Angchangco, Jr. vs. Ombudsman***,[2] **Roque vs. Ombudsman**.[3]

Additionally, accused Bueno, Bedania and Bala, challenge the factual basis of the Information, alleging that the purported commission of a violation of RA 3019 Section 3 [e] is a mere speculation considering that all the documentary requirements for the bidding process of the project have been complied with. They also claim that the alleged unwarranted benefit given to JQG Construction has no basis if it if it is only anchored on the non-payment of Php5,000 for the bidding documents, which

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[1] GR No. 188165
[2] 268 SCRA 301 (1997)
[3] 307 SCRA 104

has been the practice in the past so that the same should not be taken as an indication of evident bad faith, manifest partiality, inexcusable negligence in the performance of their function. Good faith allegedly shall be presumed. They allege that the responsibility of determining non-compliance with the requirements stated in the contract such as alleged underpayment of 20% security warranties falls on the Head of the Procuring Entity (HOPE) and JQG Construction. That they had no participation in the execution of the contract. And while there is an allegation of conspiracy with their co-accused Razalan, the Mayor or HOPE, there is no factual basis for conspiracy, hence, this Court has no jurisdiction over their persons as they receive salaries below SG 27.

To justify their move to suspend arraignment, Bueno, Bedania and Bala also allege that they filed a Petition for Certiorari before the Supreme Court anent the Ombudsman's finding of probable cause.

The Prosecution's Comment

In all its separate Comment/Opposition, the prosecution counters that mere reference to a supposed "delay of six (6) years" is insufficient to support the claim of inordinate delay, which rather requires to be vexatious, capricious and oppressive, citing the case of ***Gonzalez vs. Sandiganbayan.***[4]

It argues that inordinate delay could not be established through mere assumptions and conjectures but the basis thereof must be pointed out, which all the movants failed to do. That all of them even failed to assert previously their right to speedy trial which is said to be fatal, citing the cases of ***Alvizo vs. Sandiganbayan,***[5] ***Dela Pena vs. Sandiganbayan,***[6] and ***Guiani vs. Sandiganbayn.***[7]

As for Bueno, Bedania and Bala's assertions that there is no sufficient basis to establish evident bad faith, manifest partiality and gross inexcusable negligence, the Consolidated Resolution of the Ombudsman found they were in bad faith when as BAC members they recommended the award of contract to JQG Construction notwithstanding the following violations: no procurement conference, no posting of invitation to bid, fee for bidding documents not paid, no invitation to observe the bidding proceedings extended to NGOs, and underpayment of performance and warranty securities, thus, the facts constituting the offense charged were sufficiently alleged. As such, the arguments of Bueno, Bedania and Bala that the bidding requirements were complied with and that they were not in bad faith are evidentiary.

On Bueno, Bedania and Bala's filing of a Petition for Certiorari before the Supreme Court, the prosecution alleges that it does not merit suspension of arraignment in the absence of a Temporary Restraining Order (TRO) from the higher court.

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[4] 199 SCRA 298 (1991)
[5] GR No. 101689, March 17, 1983
[6] GR No. 144542, June 29, 2001
[7] GR No. 146897, August 6, 2002

The Court's Ruling

The guiding principle in determining whether or not accused's right to speedy disposition of his case was laid down in the case of *Dansal vs. Fernandez, Sr.*[8] which held that the Ombudsman's duty to promptly act on complaints "*should not be mistaken with a hasty resolution of cases at the expense of thoroughness and correctness.*"

It has been pronounced that it is not the sheer length of time that elapsed that is solely to be considered in determining a violation of right to speedy case disposition but the totality of the facts of the case as the guiding principle because other factors may be looked into. In ***Dela Pena vs. Sandiganbayan***,[9] these factors include the length of delay, the reasons for the delay, the assertion or failure to assert such right and the prejudice caused by the delay. This principle, in fact, was reiterated in ***Torres vs. Sandiganbayan***,[10] citing the cases of *Braza vs. The Hon. Sandiganbayan* and *Dela Pena vs. Sandiganbayan*, that the constitutional guarantee to a speedy disposition of cases is "a relative or flexible concept" and "depends upon the circumstances peculiar to each case." This was followed by the pronouncement in the case of ***Remulla vs. Sandiganbayan***,[11] holding that the "[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." The case of ***Magsaysay vs. Sandiganbayan***[12] espoused the *balancing test* and the *flexible concept* of speedy disposition, hence, a mere mathematical reckoning of the time involved would not be sufficient.

In ***Corpuz vs. Sandiganbayan***,[13] it was explained how the balancing factors of the balancing test should be weighed particularly the prejudice caused by the delay, to wit:

> 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 would be impaired. Of these, the most serious is the last, because of the inability of the defendant to adequately 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 the cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed and is subjected to public obloquy.

[8] G.R. No. 126814, March 2, 2000
[9] G.R. No. 144542, June 29, 2001
[10] G.R. No. 221562-69, October 5, 2016
[11] G.R. No. 218040, April 17, 2017
[12] G.R. No. 128136, October 1, 1999
[13] G.R. No. 191411/G.R. No. 191871, 484 Phil 899, 917 (2004), July 15, 2013

Reviewing the chronology of events that transpired in the investigation of this case, the Court is not persuaded to hold that there was inordinate delay in the disposition thereof.

As regards the length of time, the fact-finding process involved a period of only about two (2) years, from the receipt of the complaint on April 17, 2012 up to the formal preliminary investigation which commenced on August 18, 2014 when the Order to file counter-affidavit was issued. The preliminary investigation was terminated only a year thereafter upon submission of the Consolidated Resolution dated November 10, 2015, although the same was approved by the Ombudsman on February 14, 2017 considering the layers of authority necessary to review the recommendation. It has to be noted that within this period of investigation, accused Bueno and Bedania filed a Motion for Extension of Time [to submit counter-affidavit] dated August 1, 2015, whereas accused Razalan and Corpuz filed their Joint Motion [for extension of time to submit counter-affidavit] dated September 8, 2014. They also filed their respective motions for reconsideration of the Consolidated Resolution, which altogether contributed to the perceived delay in the filing of Information in Court.

From the records, the time consumed in the investigation of the case was not vexatious, which rather appeared to have arisen from the regular course of action of the Office of the Ombudsman. The time needed to gather documents during the fact-finding, and the time necessary for the corresponding evaluation thereof during the preliminary investigation, inclusive of the time given for the respondents to refute the charges and avail of the remedy of reconsideration from the adverse resolution, have to be considered in determining if the delay was inordinate. Here, there is reason to justify the perceived delay in investigation. It is not oppressive or capricious.

Verily, as argued by the prosecution, the accused themselves never assailed before the Ombudsman the alleged delay in investigation. If they felt that they have already been prejudiced by the delay, they should have asserted the same at the earliest opportune time, but which they never did. The prejudice that may have been caused by the length of time of investigation is not apparent. On the contrary, the records show that they were given the full opportunity to defend themselves and avail of the remedies from the adverse resolution against them.

The situation in this case rather calls for the application of the "*balancing test*" and "*flexible concept*" of speedy disposition of the case. Notably, the enormity of the amount involved in the project warrants that the alleged irregularity in the award thereof be carefully looked into, which should not be outrightly negated by the mere expediency of alleging delay in investigation.

As regards the claim of Bueno, Bedania and Bala that there is no factual basis in the allegation of irregularity as (1) bidding requirements were complied with; (2) bad faith could not be assumed from mere non-payment of the fee for bidding documents by the bidders; and (3) they had no participation in the signing of the contract; it is basic to state that these are matters of evidence. The principle is that

the *Information* shall allege only the ultimate facts establishing the elements of the crime charged; that the fundamental test in determining the sufficiency of the material averments thereof is whether or not the facts alleged, if hypothetically admitted, would establish the essential elements of the crime charged, whereas evidence *aliunde* or matters extrinsic of the information are not to be considered.[14] Considering the averment of facts in the Information, the sufficiency of which has not been assailed in the in the first place, the Court concludes that the same sufficiently states the essential facts constituting the elements of violation of RA 3019, Section 3[e].

On the claim that there is no factual basis for the allegation of conspiracy, the same is not well-taken to merit the dismissal of the case at this stage. In the case of ***Enrile vs. People***,[15] it was held:

> We point out that conspiracy in the present case is not charged as a crime by itself but only as the mode of committing the crime. Thus, there is no absolute necessity of reciting its particulars in the Information because conspiracy is not the gravamen of the offense charged.
>
> It is enough to allege conspiracy as a mode in the commission of an offense in either of the following manner: (1) by use of the word "conspire," or its derivatives or synonyms, such as confederate, connive, collude; or (2) by allegations of basic facts constituting the conspiracy in a manner that a person of common understanding would know what is intended, and with such precision as the nature of the crime charged will admit, to enable the accused to competently enter a plea to a subsequent indictment based on the same facts.

Neither would the pending petition for certiorari justify the deferment of arraignment. Rule 65, Section 7 of the Rules of Court is explicit in stating that "[t]he petition shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued against the public respondent from further proceeding in the case." In **Sps. Diaz v. Diaz, 387 Phil 314, 334 (2000)** cited in ***Estrellita Llave vs. Republic***,[16] it was pronounced that "[a]n application for certiorari is an independent action which is not part or a continuation of the trial which resulted in the rendition of the judgment complained of." Moreover, the Revised Guidelines for Continuous Trial of Criminal Cases, Item III (2)(b)(iv) and (vi) thereof states:

> 2. Motions
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> x x x
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> (b) "Prohibited motions shall be denied outright before the scheduled arraignment without need of comment/or opposition.
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> The following motions are prohibited:

[14] Antone vs. Beronilla GR No. 183824, December 8, 2010, 637 SCRA 615; Domingo vs. Sandiganbayan, G. R. No. 109376, January 20, 2000, 322 SCRA 655; Cabrera vs. Sandiganbayan, G.R. Nos. 162314-17, October 25, 2004.
[15] G.R. No. 213455, August 11, 2015 citing *Estrada v. Sandiganbayan*, 427 Phil. 820, 860 (2002).
[16] G.R. No. 169766, March 30, 2011

x x x

iv. Motion to quash information when the ground is not one of those stated in Sec. 3, Rule 117.

x x x

vi. Motion to suspend arraignment based on grounds not stated under Sec. 11, Rule 116.

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Thus told, there is no reason to suspend the scheduled arraignment on June 22, 2018.

WHEREFORE, the respective motions to quash/dismiss filed by accused Razalan, De Guzman, Bueno, Bedania and Bala, are hereby **DENIED**.

So ordered.

MARYANN E. CORPUS – MAÑALAC
Associate Justice

WE CONCUR:

RAFAEL R. LAGOS
Associate Justice
Chairperson

MARIA THERESA V. MENDOZA – ARCEGA
Associate Justice