



Republic of the Philippines
Sandiganbayan
Quezon City

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

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

TITO GUERRERO RAZALAN, ET AL.,
Accused.

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

Promulgated:

June 26, 2018 *lal*

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RESOLUTION

CORPUS - MAÑALAC, J.:

This refers to accused Nilda L. Salazar's *Motion to Quash the Information* dated May 29, 2018 and the prosecution's *Comment/Opposition* thereto filed on June 19, 2018.

The Antecedents

The *Information* alleges a violation of Republic Act No. 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 sometime in November 2009. Accused Salazar, Municipal Treasurer and BAC Member, posted cash bail bond for her provisional liberty on May 4, 2018 and is scheduled for arraignment on June 22, 2018 along with the other accused except for accused **De Guzman** who was conditionally arraigned on May 21, 2018 as a condition to his travel abroad.

Meanwhile, this motion was filed.

The Motion

Salazar moves to quash the Information on the following grounds:

- (a) The Information is defective as it charges more than one offense, and does not conform to the prescribed form;
- (b) The Ombudsman's inordinate delay in the resolution of the case violated her constitutional right to the speedy disposition thereof.

JNF

Salazar argues that the *Information* charges two distinct separate offenses, namely: (1) for giving unwarranted benefit, advantage or preference to a private party, and (2) for causing undue injury to the government; both by allegedly acting with evident bad faith, manifest partiality and/or gross inexcusable negligence which according to her are inconsistent with each other since the former (*evident bad faith and manifest partiality*) requires ill-intent or motive while the latter (*gross inexcusable negligence*) does not. Citing the case of *People vs. Jugueta*¹ which prohibits duplicitous complaints or informations, she contends that the *Information* failed to disclose the true nature of the offense charged and how she specifically committed such offense as there are two (2) distinct offenses and three (3) modes of commission stated therein which confuses her, while the lack of specificity in the mode of the commission of the prohibited acts made it difficult for her to properly formulate her defences.

Similar to her co-accused, Salazar also argues that the acts complained of occurred in 2009; the complaint was filed before the Ombudsman on April 17, 2012 while the *Information* was filed on April 20, 2018 or after an “extremely unreasonable amount of time was allowed to lapse” that allegedly merits the dismissal of this case citing the Supreme Court in *Coscolluela vs. Sandiganbayan*,² *Tatad vs. Sandiganbayan*,³ *Cervantes vs. Sandiganbayan*,⁴ *Licaros vs. Sandiganbayan*,⁵ and *Sales vs. Sandiganbayan*⁶. She contends that that she could no longer be afforded a fair trial because with the passage of time, “her ability to put forth a proper defense had been severely compromised as witnesses have long passed away and relocated, memories have failed, while public and private documents were lost beyond recovery.”

The Prosecution’s Comment

The prosecution counters that the *Information* is sufficient to inform Salazar of the nature and cause of the accusation against her in accordance with Section 6, Rule 110 of the Revised Rules on Criminal Procedure, further citing the case of *People vs. Dimaano*⁷ which held that what is controlling is “the description of the crime charged and the particular facts recited therein.” That the *Information* does not suffer any fatal defect as the phrase “thereby causing undue injury to the government in the amount aforestated was a statement that undue injury was suffered as a result of the accused’s violation of RA 3019 Section 3[e].

As to the claim of inordinate delay, the prosecution counters that there is no factual basis for such claim. A mere mathematical reckoning of time to prove inordinate delay is insufficient, which also requires that it be vexatious, capricious

¹ G.R. No. 202124, April 5, 2016

² G.R. No. 191411, July 15, 2013

³ G.R. No. 72335-39, March 12, 1988

⁴ G.R. No. 108595, May 18, 1999

⁵ G.R. No. 145851, November 22, 2001

⁶ G.R. No. 143802, November 16, 2001

⁷ G.R. No. 168168, September 14, 2005

and oppressive, and prejudicial to the accused, citing the cases of *Spouses Uy vs. Adriano*⁸ and *Gonzalez vs. Sandiganbayan*.⁹

The Court's Ruling

The Criminal Information charges only one offense.

Section 13 of Rule 110 of the Revised Rules of Criminal Procedure provides that “*a complaint or information must charge but only one offense, except when the law prescribes a single punishment for various offenses.*” This rule aims to give the defendant the necessary knowledge of the charge to enable him to prove his defense.¹⁰ In this case, there is only one offense charged which is for violation of RA 3019 Section 3[e]. Contrary to Salazar’s claim, alleging in the *Information* the modes of commission of the said offense, *i.e.* evident bad faith, manifest partiality and gross inexcusable negligence does not violate the prohibition against duplicitous charges. In stating so, the indictment does not charge more than one distinct offenses. The case of *Gallego vs. Sandiganbayan*¹¹ is squarely in point where the Supreme Court held:

“Section 3(e) of the Anti-graft and Corrupt Practices Act does not suffer from the constitutional defect of vagueness. The phrases “manifest partiality,” “evident bad faith” and “gross inexcusable negligence merely describe the different modes by which the offense penalized in Section 3(e) of the statute may be committed, and the use of all these phrases in the same information.”

Rather, the allegations of the *Information* sufficiently inform the accused of the charge against her compliant with the requirements of Section 6, Rule 110 of the Revised Rules of Criminal Procedures, *viz*: it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed. *Informations* need only state the ultimate facts; the reasons therefor could be proved during the trial.¹²

There is no violation of the accused’s constitutional right to the speedy disposition of the case.

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.*¹³ 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*

⁸ 505 SCRA 625 (2006)

⁹ 199 SCRA 298 (1991)

¹⁰ People vs. Ferrer, G.R. No. L-8957, April 29, 1957 (101 Phil 234)

¹¹ G.R. No. L-57841, July 30, 1982

¹² *Id.*

¹³ G.R. No. 126814, March 2, 2000

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*,¹⁴ 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*,¹⁵ citing the cases of *Braza vs. The Hon. Sandiganbayan*¹⁶ and *Dela Pena vs. Sandiganbayan*,¹⁷ 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*,¹⁸ holding 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.” The case of *Magsaysay vs. Sandiganbayan*¹⁹ 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*,²⁰ 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.

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

¹⁴ G.R. No. 144542, June 29, 2001

¹⁵ G.R. No. 221562-69, October 5, 2016

¹⁶ G.R. No. 195032, February 20, 2013

¹⁷ G.R. No. 144524, June 29, 2001

¹⁸ G.R. No. 218040, April 17, 2017

¹⁹ G.R. No. 128136, October 1, 1999

²⁰ G.R. No. 191411/G.R. No. 191871, 484 Phil 899, 917 (2004), July 15, 2013

recommendation. It has to be noted that within this period of investigation, accused Salazar along with co-accused Razalan and Corpuz, filed a *Joint Motion for Extension of Time to File Counter Affidavit*, as well as a *Motion 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. 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.

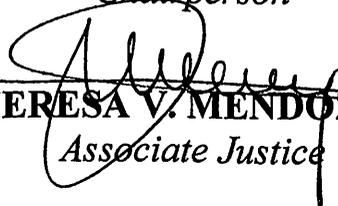
WHEREFORE, based on the foregoing, this Court finds that there is no basis to quash the *Criminal Information* filed in this case, thus, the instant motion is **DENIED**. The arraignment and pre-trial shall proceed as scheduled.

SO ORDERED.


MARYANN E. CORPUS – MAÑALAC
Associate Justice

WE CONCUR:


RAFAEL R. LAGOS
Associate Justice
Chairperson


MARIA THERESA V. MENDOZA –ARCEGA
Associate Justice