REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY

SPECIAL THIRD DIVISION

PEOPLE OF THE PHILIPPINES, **Plaintiff,**	**Criminal Cases Nos. SB-17-CRM-2185-2189** For: Violation of Section 3(e) of Republic Act (R. A.) No. 3019
-versus –	**Criminal Cases Nos. SB-17-CRM-2190 to 2194** For: Violation of Section 3(g) of Republic Act (R. A.) No. 3019
MANUEL MORALES, *et al.*, **Accused.**	*Present:*
	CABOTAJE-TANG, *PJ* **FERNANDEZ, B., *J.*** and **FERNANDEZ, SJ.[1] *J.***
	Promulgated July 31, 2018

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RESOLUTION

CABOTAJE-TANG, P.J.:

For resolution is the *Omnibus Motion (For Quashal of Information and Suspension of Arraignment and Pre-Marking of Evidence)* dated April 13, 2018 filed by accused Rafael M. Atayde.[2]

Accused Atayde's motion to quash Informations is anchored on the following grounds: (1) the facts charged in the Informations do not constitute an offense, (2) the offenses

[1] Sitting as a special member per Administrative Order No. 262-2018 dated April 30, 2018
[2] pp. 424-444, Record

charged in the Informations had already been extinguished; and (3) there is an unreasonable and inordinate delay which violated his constitutional right to a speedy disposition of his case.[3]

In support thereof, accused Atayde argues that as a private individual, he can only be indicted for violations of Section 3(e) and 3(g) of R.A. No. 3019 if the Information alleged his acts of conspiracy with the accused public officer. He claims that in these cases, the mere use of the phrase "in conspiracy with" the Board of Directors of the Philippine National Bank (PNB) in the Informations is insufficient to inform him of the charges against him.[4] Accused Atayde also claims that it appears that he is being charged because he was allegedly a crony of the late President Marcos. However, there is no single evidence to prove that he was indeed a Marcos crony.[5]

Citing **PCGG vs. Ombudsman, *et al.***,,[6] accused Atayde also argues that granting *arguendo* that the Informations are sufficient to indict him, the offenses charged had already prescribed. He argues that in the aforesaid case, the Supreme Court had ruled that the applicable prescriptive period for cases involving behest loans granted prior to March 16, 1982, the date when *BP Blg.* 195 took effect, is the ten-year period originally provided in R.A. No. 3019; and, that the ten-year period should be reckoned from the date of the discovery thereof or the date when the Presidential Ad Hoc Fact-Finding Committee reported to the President its findings and conclusions anent the behest loans up to the time of the filing of the affidavit-complaint by the Presidential Commission on Good Government (PCGG) with the Office of the Ombudsman.

In these cases, accused Atayde claims that all the alleged behest loans subject of these cases were granted before March 16, 1992; that the report of the Presidential Ad Hoc Fact-Finding Committee on behest loans granted to Hercules Minerals & Oils, Inc. (HMOI) was submitted to President Ramos on April 4, 1994; and, that the PCGG filed its complaint-affidavit with the Office of the Ombudsman on December 15, 2004, or

[3] pp. 1-2, Omnibus Motion; pp, 424-425, Record
[4] at p. 8, Omnibus Motion; p. 431, Record
[5] at p. 4, Omnibus Motion; p. 427, Record
[6] 740 SCRA 368 (2014)

after ten (10) years and eight (8) months. Thus, accused Atayde concludes that the offenses had already prescribed.[7]

Anent the third ground, accused Atayde argues that the lapse of thirty-nine (39) years from the time of the transactions and fourteen (14) years from the filing of the affidavit-complaint clearly violated his right to a speedy disposition of cases. He claims that during the intervening time, most of the accused had already died and those who are left, including him, are inarguably in the twilight of their years. He further claims that because the transactions occurred almost four (4) decades ago, the availably of evidence and witnesses in the support of the defense of the accused has become virtually inexistent. He asserts that he has lived under a cloud of anxiety and is being subjected to the expenses, rigors and embarrassment of trial. He further argues that although the earlier resolution of the Office of the Ombudsman was favorable to him, it took the Office of the Ombudsman six (6) years to terminate the preliminary investigation with the denial of the motion for reconsideration of the PCGG. Allegedly, this inordinate delay of six (6) years constitutes a violation of his right to speedy disposition of his cases which is a ground to dismiss these cases.[8]

Finally, accused Atayde moves for the suspension of his arraignment and the pre-trial on the ground of the pendency of his subject motion.[9]

On June 4, 2018, the prosecution filed a *Manifestation with Motion to Admit Comment/Opposition to the Omnibus Motion filed by accused Rafael M. Atayde* dated June 4, 2018 and the *Comment/Opposition* dated June 1, 2018.[10]

The prosecution insists that the Informations sufficiently allege conspiracy among the accused. It claims that it is sufficient to allege conspiracy as a mode of the commission of the offense by the use of the word "conspire" or its derivatives or synonyms, or by allegations of basic facts constituting conspiracy.[11]

Anent the issue of prescription, the prosecution submits that the complaint was instituted within the ten-year

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[7] at pp. 9-13, Omnibus Motion; pp. 432-436, Record
[8] at pp. 13-18, Omnibus Motion; pp. 430-441, Record
[9] at p. 19, Omnibus Motion; p. 442, Record
[10] pp. 475-481, Record
[11] p. 479, Record

prescriptive period and that the PCGG endeavored to institute an action against the responsible officers in 2004 with the Office of the Ombudsman. It also invites the attention of the Court to consider the fact that the PCGG had to investigate numerous behest loans accounts while simultaneously recovering the ill-gotten wealth of Ferdinand Marcos, his families and close associates.[12]

THE RULING OF THE COURT

To begin with, the Court had already granted accused Atayde's prayer for the suspension of his arraignment and pre-marking of evidence considering the pendency of the subject omnibus motion in its Order dated April 19, 2018.[13]

The Court also admits the prosecution's comment/opposition in the higher interest of justice.

As to the subject motion to quash Informations on the ground of prescription, the Court finds that the criminal action had been extinguished which is a recognized ground to quash the Informations.

Rule 117 of the Rules of Court provides that the accused may, at any time before he enters his plea, move to quash the complaint and information on the ground that the criminal action or liability has been extinguished. This ground includes the defense of prescription considering that Article 89 of the Revised Penal Code enumerates prescription as one of those grounds which totally extinguishes criminal liability. Indeed, even if there is yet to be a trial on the merits of a criminal case, the accused can very well invoke the defense of prescription.[14]

In resolving the issue of prescription of the offense charged, the following should be considered: (1) the period of prescription for the offense charged; (2) the time the period of

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[12] at pp. 3-4, Comment/Opposition; pp. 479-480, Record
[13] p. 452, Record
[14] **Romualdez vs. Marcelo**, 497 SCRA 754 (2006)

prescription starts to run; and (3) the time the prescriptive period was interrupted.[15]

With regard to the period of prescription for violation of R.A. No. 3019, the Supreme Court made a distinction. Depending on the date of the commission of the offense, the prescriptive period is either ten (10) or fifteen (15) years:[16]

> Section 11 of RA No. 3019 provides that all offenses punishable therein shall prescribe in 15 years. Significantly, this Court already declared in the case of People v. Pacificador that:
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> > It appears however, that prior to the amendment of Section 11 of R.A. No. 3019 by B.P. Blg. 195 which was approved on March 16, 1982, the prescriptive period for offenses punishable under the said statute was only ten (10) years. The longer prescriptive period of fifteen (15) years, as provided in Section 11 of R.A. No. 3019 as amended by B.P. Blg. 195, does not apply in this case for the reason that the amendment, not being favorable to the accused (herein private respondent), cannot be given retroactive effect. Hence, the crime prescribed on January 6, 1986 or ten (10) years from January 6, 1976.
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> Thus, for offenses allegedly committed by the petitioner from 1962 up to March 15, 1982, the same shall prescribe in 10 years. On the other hand, for offenses allegedly committed by the petitioner during the period from March 16, 1982 until 1985, the same shall prescribe in 15 years.

The same declaration was reiterated in the recent case of **PCGG vs. Hon. Ombudsman, *et al.***:[17]

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[15] **Presidential Ad Hoc Fact-Finding Committee on Behest Loans vs. Desierto**, 648 SCRA 586 (2011)
[16] Romualdez vs. Marcelo, *supra* note 14

[17] *supra* note 6

RA 3019, Section 11 provides that all offenses punishable under said law shall prescribe in ten (10) years. This period was later increased to fifteen (15) years with the passage of Batas Pambansa (BP) Blg. 195, which took effect on March 16, 1982. This does not mean, however, that the longer prescriptive period shall apply to all violations of RA 3019.

Following Our pronouncements in People v. Pacificador, the rule is that "in the interpretation of the law on prescription of crimes, that which is more favorable to the accused is to be adopted." As such, the longer prescriptive period of 15 years pursuant to BP Blg. 195 cannot be applied to crimes committed prior to the effectivity of the said amending law on March 16, 1982.

Considering that the crimes were committed in 1969, 1970, 1973, 1975, and 1977, the applicable prescriptive period thereon is the ten-year period set in RA 3019, the law in force at that time. What is, then, left for Our determination is the reckoning point for the 10-year period.

In the matter of computation of the prescriptive period in the acquisition of behest loans, the Supreme Court made the following declarations in **PCGG vs. Hon. Ombudsman, *et al.***[18]

An evaluation of the foregoing jurisprudence on the matter reveals the following guidelines in the determination of the reckoning point for the period of prescription of violations of RA 3019, *viz.*:

1. As a general rule, prescription begins to run from the date of the commission of the offense.

2. If the date of the commission of the violation is not known, it shall be counted from the date of discovery thereof.

[18] *supra* note 6

3. In determining whether it is the general rule or the exception that should apply in a particular case, the availability or suppression of the information relative to the crime should first be determined.

If the necessary information, data, or records based on which the crime could be discovered is readily available to the public, the general rule applies. Prescription shall, therefore, run from the date of the commission of the crime.

Otherwise, should martial law prevent the filing thereof or should information about the violation be suppressed, possibly through connivance, then the exception applies and the period of prescription shall be reckoned from the date of discovery thereof.

In the case at bar, involving as it does the grant of behest loans which We have recognized as a violation that, by their nature, could be concealed from the public eye by the simple expedient of suppressing their documentation, the second mode applies. We, therefore, count the running of the prescriptive period from the date of discovery thereof on January 4, 1993, when the Presidential Ad Hoc Fact-Finding Committee reported to the President its findings and conclusions anent RHC's loans. This being the case, the filing by the PCGG of its Affidavit-Complaint before the Office of the Ombudsman on January 6, 2003, a little over ten (10) years from the date of discovery of the crimes, is clearly belated. Undoubtedly, the ten-year period within which to institute the action has already lapsed, making it proper for the Ombudsman to dismiss petitioner's complaint on the ground of prescription.[19]

Simply put, and as correctly held by the Ombudsman, prescription has already set in when petitioner PCGG filed the Affidavit-Complaint on January 6, 2003.

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[19] emphasis supplied

The records of these cases, as well as the Informations themselves, show that the offenses subject of these cases were allegedly committed from February 1, 1980 to March 1, 1982.

The records likewise show that the Terminal Report of the Presidential Ad-Hoc Fact-Finding Committee on Behest Loans was transmitted to President Fidel V. Ramos on April 4, 1994; that the same Terminal Report was received by the Malacanang Palace on April 11, 1994;[20] and, that the PCGG filed its complaint-affidavit with the Office of the Ombudsman on December 15, 2004.[21]

Since the alleged offenses were purportedly committed during the period 1980 until March 1, 1982, or prior to the effectivity of *B.P. Blg.* 195 on March 16, 1982, the prescriptive period should be ten (10) years. Further, the prescriptive period should be reckoned from April 11, 1994, the transmittal of the Terminal Report of the Presidential Ad Hoc Fact-Finding Committee on Behest Loans or, when the same was discovered. Thus, the offenses subject of the Informations had already prescribed when the PCGG filed its complaint-affidavit on December 15, 2004, or after ten (10) years and eight (8) months from the date of the discovery thereof, thereby extinguishing the criminal liability of the accused-movant.

Notably, the prosecution admits that the said Terminal Report was submitted to President Ramos in 1994 and the PCGG "endeavored to institute an action against the responsible officers of both PNB and HMOI in 2004 by filing a Complaint with the Office of the Ombudsman."[22] However, except for asserting that the PCGG had to investigate numerous behest loans and that the State must be protected, it did not present any argument to support its submission that "the Complaint was instituted within the ten (10) year prescriptive period."

To be sure, the prescription of a crime refers to the loss or waiver by the State of its right to prosecute an act prohibited and punished by law. By setting a prescription period for crimes, the State by an act of grace surrenders its right to

[20] Annex E, Order dated June 29, 2017; pp. 148-161, Record
[21] p. 83, Record
[22] at p. 4, Comment/Opposition; p. 480, Record

prosecute and declares the offense as no longer subject to prosecution after a certain period.[23]

With its finding that the criminal liability for the offenses charged had already been extinguished by virtue of prescription of the offenses charged, the Court sees no practical need discuss the other grounds for the quashal of the Informations, *i.e.*, that the facts charged in the Informations do not constitute an offense and the alleged violation of the right to a speedy disposition of the case.

WHEREFORE, the Court **GRANTS** the Omnibus Motion for the Quashal of Information dated April 13, 2018, filed by accused Rafael M. Atayde on the ground of prescription. Accordingly, the present cases against him are **DISMISSED.**

The Hold Departure Order issued against the said accused is hereby lifted and the surety bail bond posted by him is ordered cancelled.

Furnish a copy of the Resolution to the Bureau of Immigration.

SO ORDERED.
Quezon City, Metro Manila

AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson

WE CONCUR:

BERNELITO R. FERNANDEZ
Associate Justice

SARAH JANE T. FERNANDEZ
Associate Justice

[23] **Disini, Jr. vs. Secretary of Justice** , 716 SCRA 237 (2014)