



Republic of the Philippines

SANDIGANBAYAN

Quezon City

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- *versus* -

SB- 18-CRM-0327

For: Violation of Section 3 (e) R.A. No. 3019, as amended

JOHN HENRY RENNER OSMEÑA,
Accused.

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Present:

CABOTAJE-TANG, A., PJ

Chairperson

FERNANDEZ, B., J

FERNANDEZ, S.J.*, J

Promulgated on:

AUGUST 7, 2018

R E S O L U T I O N

FERNANDEZ B., J.

For consideration is an Omnibus Motion (*to Quash the Criminal Informations, to Quash the Warrant of Arrest and/or to Dismiss the case*) dated May 28, 2018, filed by accused-movant John Henry Renner Osmeña, through counsel.

**As per Administrative Order No. 316-2017 dated September 13, 2017*

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The accused-movant principally anchors his Omnibus Motion on the following grounds, to wit - - (1) that the facts charged in the Informations do not constitute an offense and (2) that the length of time that the Office of the Ombudsman (OMB) took to resolve the cases violated the right of the accused-movant to a speedy disposition of the cases.

On the first ground, the accused-movant insists that he did not act with manifest partiality, evident bad faith and gross inexcusable negligence. Neither did he cause any undue injury to any party, including the Government, nor give any party unwarranted benefit, advantage or preference in the discharge of his functions. Hence, these elements of the offense charged are not present.

Relative to the second ground of inordinate delay, the accused-movant alleges that, by applying the balancing test adopted in *Perez vs. People* (544 SCRA 532), his Constitutional right to speedy disposition of cases was violated. He further alleges that the OMB took more than three (3) years from the filing of the Complaint before indicting him before this Court. He claims that he suffered prejudice as a result of the delay as he was overcome by anxiety, mental anguish and sleepless nights as the entire fact-finding and investigation process dragged on. The accused-movant adds that the fact-finding investigation should not be deemed separate from the preliminary investigation if the aggregate time spent for both constitutes inordinate and oppressive delay in the disposition of any case, citing *People vs. Sandiganbayan* (712 SCRA 359)).

Thereafter, the prosecution filed a Motion to Admit Opposition dated June 18, 2018, attached therewith the Opposition itself. The prosecution alleges that it was unable to file its opposition due to the intervening suspension of work, holidays and the team building activities in the Office of the Ombudsman.

In response, the prosecution, in its Opposition dated June 18, 2018, alleges that the facts charged in the six (6) Informations clearly and sufficiently constitute violations of Section 3(e) of Republic Act No. 3019 and that the ground - the facts charged do not constitute an offense - posed by the accused-movant is not a proper ground for a motion to quash.

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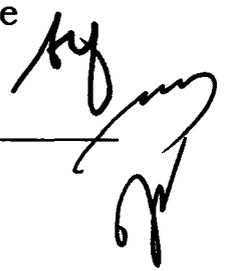
It added that the right of the accused-movant to a speedy disposition of cases was not violated. It also emphasized that the OMB acted on the complaint against the accused-movant within a reasonable time and no unnecessary delay had been incurred in resolving the same.

We now rule.

On the first ground raised by the accused-movant that the facts charged in the Information do not constitute an offense, jurisprudence has consistently reminded us that, as a general proposition, a motion to quash on the ground that the allegations of the information do not constitute the offense charged, or any offense for that matter, should be resolved on the basis alone of said allegations whose truth and veracity are hypothetically admitted. The information need only state the ultimate facts as the reasons therefor could be proved during the trial.

Initially, let us revisit the criminal Information in Criminal Case No. SB-18-CRM-0327 - - -

That in the third quarter of 2014, or sometime prior or subsequent thereto, in Toledo City, Cebu, Philippines, and within the jurisdiction of this Honorable Court, accused **JOHN HENRY RENNER OSMEÑA**, a high-ranking public officer, being the City Mayor of Toledo, Province of Cebu, in such capacity, while in the performance of his duties and taking advantage of his official position, committing the crime in relation to office, acting with evident bad faith, manifest partiality and/or gross inexcusable negligence, did then and there willfully, unlawfully and criminally cause undue injury to Barangay Daanlungsod, Toledo City, by withholding, without basis or sufficient justification and in the absence of a temporary restraining order or a preliminary injunction issued by the court, the release of the real property tax share of said barangay for the third quarter of 2014, in the amount of PhP2,944,940.62, in violation of the provision of Section 271(d) of Republic Act No. 7160 or the Local Government Code



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on 1991, to the prejudice of the aforementioned barangay.

CONTRARY TO LAW.

The other criminal Informations (Crim. Cases Nos. SB-18-CRM-0328 to 0332) are similarly worded except for the periods covered and the amounts involved.

In all the subject criminal Informations, the accused-movant is charged for violations of Section 3(e) of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act.

This law provides - -

Section 3. *Corrupt practices of public officers.*- In addition to acts or omissions of public officers already penalized by existing laws, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

From the foregoing, the elements of the offense are - - (1) that the accused is a public officer or a private person charged in conspiracy with the former; (2) that the said public officer commits the prohibited acts during the performance of his or her official duties or in relation to his or her public positions; (3) that he or she causes undue injury to any party, whether the government or a private party; (4) that such undue injury is caused by giving unwarranted benefits, advantage or preference to such parties; and, (5) that the public officer has acted with

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manifest partiality, evident bad faith or gross inexcusable negligence.

A reading of the Informations charging the accused-movant similarly allege, as follows - -

(1) That the accused-movant, being the City Mayor of Toledo, Province of Cebu, is a high ranking public officer;

(2) That on different quarters of 2014 and 2015, or sometime prior or subsequent thereto, the accused-movant, while in the performance of his duties and taking advantage of his official position, committed the offense in relation to his office;

(3) That the accused-movant withhold, without basis or sufficient justification and in the absence of a temporary restraining order or a preliminary injunction issued by the court, the release of the real property tax share of Barangay Daanlungsod, Toledo City, for different quarters of 2014 and 2015 in different amounts, to the prejudice of the said Barangay; and,

(4) That the accused-movant acted with evident bad faith, gross inexcusable negligence and/or manifest partiality, causing undue injury to Barangay Daanlungsod, Toledo City.

Suffice it to state that the facts alleged in the Informations, if hypothetically admitted, would establish the essential elements of Section 3(e) of Republic Act No. 3019.

At most, the allegations of the accused-movant are clearly evidentiary in nature best ventilated in a full-blown trial on the merits.

On the issue of inordinate delay, this Court notes that the timeline outlined by both parties in their respective pleadings were similarly and accurately presented as based on the records, to wit - -

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June 24, 2015 – the Office of the Ombudsman (Visayas) received a Request for Assistance/Grievance Form from the complainants;

December 3, 2015 – the complainants filed a Complaint-Affidavit with Urgent Motion to direct the City Mayor to release RPT Shares under Section 26 Paragraph 3 of RA 6670.

January 14, 2016 – the said Complaint was docketed as OMB-V-C-16-0022 and OMB-V-A-16-0016.

January 20, 2016 – an Order of even date was issued directing the accused-movant to file his counter-affidavit.

February 26, 2016 – the Office of the Ombudsman received the Counter-Affidavit of the accused-movant after he earlier filed a Motion for Time.

June 24, 2016 and June 20, 2016 – the complainants and the accused-movant filed their respective Position Papers.

January 11, 2017 – the Office of the Ombudsman issued a Resolution finding probable cause to indict the accused-movant for six (6) counts of violation of Section 3(e) of R. A. 3019, as amended.

September 8, 2017 – the accused-movant filed a Partial Motion for Reconsideration.

December 1, 2017 – the date of the Order denying the Partial Motion for Reconsideration of the accused-movant.

April 20, 2018 – the six (6) Informations were filed before this Court.

As could be gleaned from the foregoing timeline, it took a little less than three (3) years from the time the complaint was

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filed before the Office of the Ombudsman until the eventual filing of the six (6) Informations before this Court.

We are reminded of *Braza vs. Sandiganbayan* (412 Phil 921, 929 (2001) quoting *de la Pena vs. Sandiganbayan* (G.R. No. 144542, June 29, 2010), where our Supreme Court laid down the guidelines in determining the right to speedy disposition had been violated, to wit - -

The concept of speedy disposition is relative or flexible. A mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case. Hence, the doctrinal rule is that in the determination of whether that right has been violated, the factors that may be considered and balanced are, as follows: (1) the length of the delay; (2) the reasons for the delay; (3) the assertion of failure to assert such right by the accused; and, (4) the prejudice caused by the delay.

Applying the foregoing criteria, the Court found that there exists no inordinate delay in the instant cases. There is neither whimsical, capricious nor arbitrary delay in the proceedings before the Office of the Ombudsman as there has been a consistent on-going investigation against the respondent until sufficient evidence had been gathered to warrant a determination as to whether probable cause existed to indict the accused-movant.

The amount of time it took the Office of the Ombudsman to complete its investigation and file the appropriate Informations against the accused-movant could hardly be considered as "whimsical, capricious and oppressive" as the accused-movant was never deprived of his right to due process, and, had in fact, availed of them.

WHEREFORE, in view of the foregoing - - -

(1) The Motion to admit Opposition dated June 18, 2018 filed by the prosecution is **GRANTED** for being meritorious. Consequently, the Opposition dated June 18, 2018 of the prosecution is **ADMITTED**; and,

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(2) The Omnibus Motion (to Quash the Criminal Informations, to Quash the Warrant of Arrest and/or to Dismiss the Case) dated May 28, 2018 of accused-movant John Henry Renner Osmeña is hereby **DENIED** for lack of merit.

SO ORDERED.



BERNELITO R. FERNANDEZ
Associate Justice

We concur:



AMPARO M. CABOTAJE-TANG
Presiding Justice/Chairperson



SARAH JANE T. FERNANDEZ*
Associate Justice