

Republic of the Philippines
SANDIGANBAYAN
Quezon City

Second Division

People of the Philippines,
Plaintiff,

Crim. Cases Nos. SB-18-CRM-0496 to 0497

-versus-

Present:
Herrera, Jr. J.
Musngi, J. &
Pahimna, J.

Oscar S. Moreno, et al.,
Accused.

Promulgated:

April 29, 2019

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RESOLUTION

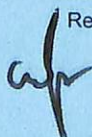
HERRERA, JR., J:

For resolution is an ***Omnibus Motion (with Urgent Prayer To Defer Arraignment)***¹ dated August 20, 2018, filed by accused Rolando M. Pacuribot, through counsel, praying the Court: (a) to quash the informations on the ground that the facts charged do not constitute an offense and/or the averments, if true, constitute a legal excuse or justification; (b) to dismiss the cases on the ground of violation of his right to speedy disposition of cases; (and) to dismiss the cases for violation of his constitutional right to due process.

In Criminal Case No. SB-18-CRM-0496, accused Pacuribot is charged, jointly with others, with ***Violation of Section 3(e) of Republic Act (R.A. No. 3019), or the Anti-Graft And Corrupt Practices Act.***

In Criminal Case No. SB-18-CRM-0496, accused Pacuribot is charged, also jointly with others, with ***Falsification of Public/Official Document***, penalized under ***Article 171, paragraph 2 of the Revised Penal Code.***

As to the first ground invoked by accused Pacuribot, it is settled that a motion to quash on the ground that the facts alleged in the information



do not constitute an offense should be resolved on the basis alone of said allegations whose truth and veracity are hypothetically admitted.² The fundamental test is whether or not the facts alleged in the information, if hypothetically admitted, would establish the essential elements of the offense charged as defined by law.³ Facts which constitute the defense of the accused against the charge in the information must be proved during the trial. Such facts or circumstances do not constitute proper grounds for a motion to quash the information.⁴

Section 3(e) of R.A. 3019 reads:

“Sec. 3. Corrupt Practices of public officers. – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

xxx.

(e) Causing 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 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.”

The elements ⁵ of the offense of **Section 3(e) of R.A. 3019** are as follows:

- 1) The accused must be a public officer discharging administrative, judicial or official functions;
- 2) He must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and
- 3) His action caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.

² People v. Ferrer, 101 Phil. 234

³ Lazarte v. Sandiganbayan, 581 SCRA 432

⁴ Soriano v. People, 591 SCRA 257, 258

⁵ Jacinto v. Sandiganbayan, 178 SCRA 254, 259

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The accusatory portion of the **Information**⁶ dated February 1, 2018 in Criminal Case No. SB-18-CRM-0496 reads:

“That on 6 January 2012, or sometime prior or subsequent thereto, in the Province of Misamis Oriental, Philippines, and within the jurisdiction of this Honorable Court, accused high-ranking public officers **OSCAR SERIÑA MORENO, PATRICK UYGUANGCO GABUTINA, ELMER NAMOCOT WABE, ELSIE PALONGPALONG LOPOY** and **DANILO OLAVIDES MAPUTOL**, being then the Provincial Governor, Provincial Administrator/Chairperson of the Bids and Awards Committee (BAC), Acting Provincial Budget Officer/Vice-Chairperson BAC, Provincial General Services Officer, and Provincial Agriculturist/BAC Member, respectively, **ROLANDO MAGANA PACURIBOT**, Assistant Provincial Engineer/BAC Member, **LEEMAR S. TINAGAN**, Administrative Aide I, Provincial Engineering Office, all of the Provincial Government of Misamis Oriental, while in the performance of their respective administrative and/or official functions and committing the crime in relation to office, taking advantage of their official positions, acting with evident bad faith, manifest partiality and/or gross inexcusable negligence, conspiring and confederating with one another, did then and there willfully, unlawfully and criminally give Equiprent Corporation (Equiprent) unwarranted benefit, advantage or preference by awarding, causing and/or ensuring the award of the contract of lease in favor of Equiprent involving one unit Trailer Truck for the haling of the D155 Komatsu Bulldozer on 6 January 2012, in the amount of Php26,250.00, and facilitating and/or causing the payment of said amount in its favor despite the attendant irregularities during the procurement process, namely: (a) the lack of a public bidding; (b) the absence of any of the conditions under Republic Act No. 9184, justifying the resort to the alternative mode of procurement; (c) the defective canvass as it fell short of the required price quotations from three *bona fide* suppliers, since one of the supposed suppliers denied having participated therein, thereby causing undue injury to the government in the aforesaid amount.

CONTRARY TO LAW.”

The Court finds that the above-quoted averments in the **Information** are sufficient. They contain all the elements constituting a **Violation of Section 3(e) of R.A. 3019**. Also, there is no allegation constituting a legal excuse or justification.

⁶ Record of Crim. Case No. SB-18-CRM-0496, pp. 1-3

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Upon the other hand, **Article 171, paragraph 2 of the Revised Penal Code (RPC)**, on the crime of **Falsification of Document**, provides:

“ART. 171. Falsification by public officer, employee or notary or ecclesiastic minister. - The penalty of prision mayor and a fine not exceeding 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

xxx

2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;”

The elements of falsification under **paragraph 2 of Article 171 of the RPC** are as follows:

1. That the offender is a public officer, employee or notary public;
2. That he takes advantage of his official position;
3. That he falsifies a document by committing any of the following acts:

xxx

b. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate.

The accusatory portion of the **Information**⁷ dated February 1, 2018 in Criminal Case No. SB-18-CRM-0497 reads:

“That in January 2012, or sometime prior or subsequent thereto, in the Province of Misamis Oriental, Philippines, and within the jurisdiction of this Honorable Court, accused high-ranking public officers **OSCAR SERIÑA MORENO, PATRICK UYGUANGCO GABUTINA, ELMER NAMOCOT WABE, ELSIE PALONGPALONG LOPOY** and **DANILO OLAVIDES MAPUTOL**, being then the Provincial Governor, Provincial Administrator/Chairperson of the Bids and Awards Committee (BAC), Acting Provincial Budget Officer/Vice-Chairperson BAC, Agriculturist/BAC Member, respectively, **ROLANDO MAGAÑA PACURIBOT**, Assistant Provincial

Engineer/BAC Member, **LEEMAR S. TINAGAN**, Administrative Aide I, Provincial Engineering Office, all of the Provincial Government of Misamis Oriental, while in the performance of their respective administrative and/or official functions and committing the crime in relation to office, taking advantage of their official positions, conspiring and confederating with one another, did then and there willfully, unlawfully and feloniously falsify the Request for Quotation, a public document, relative to the rental by the province of one unit Trailer Truck for the hauling of the D155 Komatsu Bulldozer on 6 January 2012, in the amount of Php26,250.00, by making it appear therein that Alex Aguilar of GEO Transport and Construction signed such Request for Quotation, when in truth and in fact he did not so sign the same, much less participate in the canvass/bidding for the said contract, to the damage and prejudice of public interest.

CONTRARY TO LAW.”

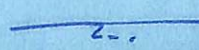
The Court likewise finds that the above-quoted averments are sufficient. They contain all the elements of **Violation of Article 171, paragraph 2 of the RPC**. There is also no allegation constituting a legal excuse or justification.

In connection with the alleged violation of his right to speedy disposition of cases, accused Pacuribot contends that there was inordinate delay in the preliminary investigation conducted by the Office of the Ombudsman. According to him, the complaint was filed on February 3, 2015 but the **Informations** were filed in court only on March 9, 2018, or after three (3) years. He, however, admits that the preliminary investigation resulted to the filing of 24 criminal cases for **Violation of Section 3(e) of R.A. 3019** and 4 criminal cases for **Violation of Article 171, paragraph 2 of the Revised Penal Code**,⁸ thus indicative of the complexities of the issues to be resolved and the volume of documents involved.

In **Dansal, et al. v. Fernandez, et al.**,⁹ the Supreme Court explained:

“In the determination of whether or not the constitutional right invoked by petitioners has been violated, the factors to consider and balance are the duration of the delay, reason

⁸ Record, Vol. 2, pp. 387-389
⁹ 32 SCRA 145



thereof, assertion of the right or failure to assert it and the prejudice caused by such delay. The desideratum of a speedy disposition of cases should not, if at all possible, result in the precipitate loss of a party's right to present evidence...."

A mere mathematical reckoning of the time involved, therefore would not be sufficient. **In the application of the constitutional guarantee of the right to a speedy disposition of cases, particular regard must also be taken of the facts and circumstances peculiar to each case."**

In **Coscolluela v. Sandiganbayan**,¹⁰ the High Court declared:

"The right to "a speedy disposition of cases" is guaranteed by the Constitution, Section 16 of Article III thereof provides: All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial or administrative bodies. This right, however, like the right to a speedy trial, **is deemed violated only when the proceedings is attended by vexatious, capricious and oppressive delays."**

The Court rules that the period of three (3) years spent in conducting the preliminary investigation is reasonable and acceptable. Considering the peculiar circumstances of these cases, the Court finds that there was no inordinate delay, or one that can be characterized as vexatious, capricious and oppressive. There is also no violation of accused Pacuribot's right to due process.

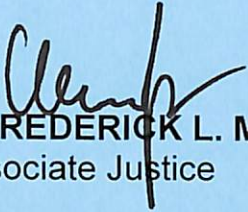
WHEREFORE, the **Omnibus Motion (with Urgent Prayer To Defer Arraignment)** dated August 20, 2018, filed by accused Rolando M. Pacuribot, through counsel, is hereby denied.

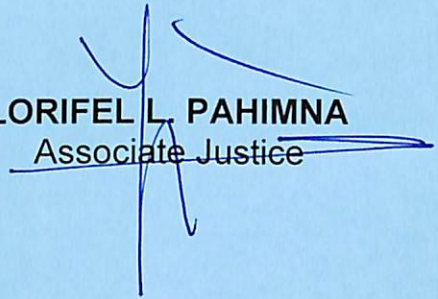
SO ORDERED.


OSCAR O. HERRERA, JR.
Chairperson

We concur:

in the result.


MICHAEL FREDERICK L. MUSNGI
Associate Justice


LORIFEL L. PAHIMNA
Associate Justice

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