

Republic of the Philippines
Sandiganbayan
Quezon City

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

FRANCISCO N. MAMBA, JR. ET
AL.,

Accused. Present:

SB-19-CRM-0048 to 0049
For: Violation of Section 3(e) of
R.A. No. 3019, or the Anti-Graft
and Corrupt Practices Act

LAGOS, J., Chairperson,
MENDOZA-ARCEGA, and
CORPUS-MAÑALAC, JJ.

Promulgated:

March 07, 2024

X -----
Suzette L. Lim -----X

RESOLUTION

CORPUS-MAÑALAC, J.:

Before the Court are: (1) Ramon A. Aytona's *Motion to Quash the Information*¹ dated January 29, 2024; and (2) the prosecution's *Comment/Opposition*² dated February 19, 2024.

The issue presented here is whether the dismissal of the cases against all the accused public officers – which left the conspirator private person, Ramon A. Aytona, the lone remaining accused – ousted this Court of power to proceed with Aytona's case.

ANTECEDENTS

In 2019, the Office of the Ombudsman filed two cases of violation of Section 3(e) of R.A. No. 3019, or the Anti-Graft and Corrupt Practices Act, related to two alleged irregular purchase transactions, involving thousands of bottles of liquid fertilizer, entered in 2004 by the Municipality of Tuao, Cagayan. The cases were docketed as SB-19-CRM-0048 and SB-19-CRM-0049.

¹ Records, Vol. 7, pp. 368-376.

² *Id.* at 398-403.

Aytona was indicted in SB-19-CRM-0048, together with eleven (11) officials/employees of the Municipality of Tuao, Cagayan, namely: Francisco N. Mamba, Jr., William N. Mamba, Frederick G. Baligon, Rodolfo V. Cardenas, Merlina B. Dayag, Anabel S. Turingan, Jose O. Palacpac, Teresita V. Espinosa, Juliana Filipina F. Padilla, Leticia A. Acob, and Petra B. Delos Santos (collectively, excluding Cardenas who died before he could be arraigned, “accused public officers” or “Aytona’s co-accused”).

According to the indictment, private person Aytona – who represented the company that sold thousands of bottles of liquid fertilizer to the municipality – conspired with the other accused related to an alleged irregular purchase of and effecting payment for thousands of bottles of liquid fertilizer. The charge reads:

That on April 5, 2004, or sometime prior or subsequent thereto, in Tuao, Cagayan, Philippines, and within the jurisdiction of this Honorable Court, accused public officers **FRANCISCO MAMBA, JR. y NOVENA**, [Mayor (SG-27)], **WILLIAM MAMBA y NOVENA** [Mayor (SG-27)], **FREDERICK BALIGOD y GUZMAN** [Administrator (SG-24)], **RODOLFO V. CARDENAS** [Treasurer (SG-24)], **MERLINA DAYAG y BATANG** [Administrative Assistant-III (SG-14)], **ANABEL TURINGAN y SURBIDA** [Accounting Clerk (SG-10)], **JOSE PALACPAC y OSALVO** [Administrative Assistant III (SG-10)], **TERESITA ESPINOSA y VENTURA** [Agricultural Officer (SG-24)], **JULIANA FILIPINA PADILLA y FERNANDEZ** [Clerk (SG-8)], **LETICIA ACOB y AGUSTIN** [Agricultural Technologist (SG-10)], and **PETRA DELOS SANTOS y BATIN** [Agricultural Technologist (SG-10)], all of the Municipal Government of Tuao, Cagayan, committing the offense in relation to office and taking advantage of their respective official functions, acting with manifest partiality, evident bad faith, or gross inexcusable negligence, conspiring and confederating with one another and with accused **RAMON [ANGELES] AYTONA**, representative of Feshan Phils. Inc. (Feshan), did then and there willfully, unlawfully, and criminally give Feshan unwarranted benefit, advantage or preference by causing and/or approving the procurement, or entering into a contract for the purchase of 3,333 bottles of BIO-NATURE Liquid Organic Fertilizer at P1,500.00 per bottle, or the total amount of P4,999,500.00 from Feshan, and causing and/or facilitating the partial payment of P3,101,962.50 per Disbursement Voucher No. 401-04-04-024 dated April 5, 2004, despite the following irregularities:

- (1) the absence of a public bidding and the resort to direct contracting was unjustified, in violation of Sections 10 and 50 of R.A. No. 9184 and its implementing rules and regulations;
- (2) the choice of BIO-NATURE as goods to be purchased and the prices indicated in the Purchase Request and Purchase Order were baseless without any project proposal, report, program of work from the proponent and a market survey of available fertilizers for the needs of the beneficiaries, and absent any timely certification that Feshan was an exclusive dealer of BIO-NATURE;
- (3) accused’s failure to perform their duties under the Memorandum of Agreement such as, but not limited to, the periodic monitoring and

evaluation to ascertain the proper utilization of the funds and to intervene and institute corrective measures to safeguard the said funds from misappropriation;

all the foregoing acts ensured the award of the contract to Feshan and facilitated the payment in its favor, thereby causing undue injury to the government in the aforesaid amount.³

Notably, Cardenas, the municipal treasurer, died before he could be arraigned, prompting dismissal of his case.⁴

Prior to arraignment, the accused public officers moved to quash the *Information*, arguing that the Office of the Ombudsman committed inordinate delay in conducting preliminary investigation.⁵ Unconvinced, the Court denied that motion as well as the subsequent motion to reconsider the Court's denial of the motion to quash.⁶

Thereafter, the accused public officers questioned the denial of their motion to quash and their motion for reconsideration in a Rule 65 petition for certiorari before the Supreme Court.⁷

Meanwhile, the accused, including Aytona, were arraigned and had pleaded not guilty.⁸ Preliminary and pre-trial conferences followed. Then, the prosecution started presenting evidence.

While being heard, these cases took a consequential turn: The First Division of the Supreme Court resolved to grant the petition of Aytona's co-accused. It found that the Office of the Ombudsman committed inordinate delay during preliminary investigation and ordered the dismissal of "SB-19-CRM-0048 to 0049 for violation of petitioners' constitutional right to speedy disposition of cases."⁹ The dispositive portion of the resolution reads:

WHEREFORE, the petition is **GRANTED**. The assailed Resolutions dated 05 August 2019 and 13 September 2019 of the Sandiganbayan Fifth Division in SB-19-CRM-0048 to 0049 are **ANNULLED** and **SET ASIDE**. The Sandiganbayan is ordered to **DISMISS** Criminal Case Nos. SB-19-CRM-0048 to 0049 for violation of petitioners' constitutional right to speedy disposition of cases. (Emphasis in the original)

³ Records, Vol. 1, pp. 1-4; Records, Vol. 4, pp. 182-183 (Order dated October 18, 2019 in which the prosecution moved to amend the *Information* to reflect "ANGELES," as Aytona's maternal surname).

⁴ Records, Vol. 2, p. 307.

⁵ *Id.* at 55-63 (Motion to Quash Informations for Inordinate Delay dated June 18, 2019, filed by Aytona's co-accused).

⁶ Records, Vol. 3, pp. 592-599 (Resolution dated August 5, 2019).

⁷ Records, Vol. 4, pp. 93-168 (Petition for Review dated September 28, 2019).

⁸ *Id.* at 182-183 (Order dated October 18, 2019, respecting Aytona), at 266 (Order dated October 19, 2019, respecting William Mamba), at 334 (Order dated January 24, 2020, respecting Mamba, Jr., Baligod, Dayag, Turingan, Espinosa, Padilla, and De Los Santos); Records, Vol. 5, p. 164 (Order dated January 22, 2021, respecting Palacpac, and Acob).

⁹ Records, Vol. 7, pp. 160-165, inclusive of unnumbered pages (*Mamba v. Sandiganbayan*, G.R. Nos. 249343 and 249382, July 6, 2022 [Notice]). The Court received the notice on September 12, 2022.

That resolution became final and executory on September 30, 2022.¹⁰

This Court then dismissed SB-19-CRM-0048 & 0049 as regards Aytona's co-accused,¹¹ leaving Aytona the lone accused:

Considering the foregoing Resolution dated July 6, 2022, and the corresponding Entry of Judgment in G.R. Nos. 249343 and 249382, Criminal Case Nos. SB-19-CRM-0048 to 0049 as regards accused Francisco N. Mamba, Jr., William N. Mamba, Frederick G. Baligod, Merlina B. Dayag, Anabel S. Turingan, Jose O. Palacpac, Teresita V. Espinosa, Juliana Filipina F. Padilla, Leticia A. Acob, and Petra B. Delos Santos, are hereby **DISMISSED**. (Emphasis in the original)

Mindful that SB-19-CRM-0048 is still alive as regards Aytona, the Court set the case for further hearing to allow the prosecution to continue presenting evidence.¹²

In a motion to quash now before this Court, Aytona questions the Court's order to continue with SB-19-CRM-0048, emphasizing the dismissal of the cases against his co-accused. He argues that the Court has lost jurisdiction to continue trying the case against him and that the present criminal action has been extinguished.¹³

Arguing that the Court has lost jurisdiction over his case, Aytona stresses that he is charged as a private person in conspiracy with the accused public officers. The "dismissal of the case against all the accused public officers," he asserts, "effectively deprived" this Court of jurisdiction over his case.¹⁴

As to his case extinguishment claim, Aytona points out that the dismissal referred to in the Supreme Court resolution was a dismissal of "all the cases."¹⁵ He further argues that there can be no violation of the antigraft law without the accused public officers.¹⁶ In his view, it is impossible to prosecute him, as a private person, for violation of the antigraft law alone by himself.¹⁷

The prosecution opposed Aytona's motion to quash the *Information*.¹⁸

On the strength of *People v. Go*,¹⁹ the prosecution responds that the Court can proceed with trying Aytona under the present charge because he is

¹⁰ Records, Vol. 7, p. 295 (Entry of Judgment).

¹¹ *Id.* at 298-300 (Minutes dated December 14, 2023).

¹² *Id.* at 324-325 (Minutes dated January 22, 2024).

¹³ *Id.* at 368-376 (Aytona's Motion to Quash the *Information* dated January 29, 2024).

¹⁴ *Id.* at 369 (Aytona's Motion to Quash the *Information* dated January 29, 2024, p. 2).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 398-403 (Prosecution's Comment/Opposition dated February 19, 2024).

¹⁹ G.R. No. 168539, March 25, 2014.

a private person alleged to have conspired with several public officers.²⁰ It adds that Aytona “did not invoke his constitutional right to speedy disposition of cases.” “He is not,” the prosecution observes, “similarly situated with his co-accused.”²¹ The prosecution also states that Aytona “is deemed to have waived” his right to speedy disposition of cases.²²

RULING

The Court denies Aytona’s motion to quash the *Information*.

*People v. Go*²³ provides the handle needed for this Court to proceed with the case, despite that Aytona is charged merely as a conspirator private person and the only accused left in the case. Under *Go*, a private person alone may still be prosecuted even if the conspirator public officer can no longer be charged, as long as the crime has not yet been extinguished and the basis of conspiracy not removed, to wit:

It is true that by reason of Secretary Enrile’s death, there is no longer any public officer with whom respondent can be charged for violation of R.A. 3019. It does not mean, however, that the allegation of conspiracy between them can no longer be proved or that their alleged conspiracy is already expunged. The only thing extinguished by the death of Secretary Enrile is his criminal liability. His death did not extinguish the crime nor did it remove the basis of the charge of conspiracy between him and private respondent. Stated differently, the death of Secretary Enrile does not mean that there was no public officer who allegedly violated Section 3 (g) of R.A. 3019. In fact, the Office of the Deputy Ombudsman for Luzon found probable cause to indict Secretary Enrile for infringement of Sections 3 (e) and (g) of R.A. 3019. Were it not for his death, he should have been charged.

The requirement before a private person may be indicted for violation of Section 3 (g) of R.A. 3019, among others, is that such private person must be alleged to have acted in conspiracy with a public officer. The law, however, does not require that such person must, in all instances, be indicted together with the public officer. If circumstances exist where the public officer may no longer be charged in court, as in the present case where the public officer has already died, the private person may be indicted alone.

Indeed, it is not necessary to join all alleged co-conspirators in an indictment for conspiracy. If two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done or written by each of them and it makes no difference whether the actual actor is alive or dead, sane or insane at the time of trial. **The death of one of two or more conspirators does not prevent the conviction of the survivor or survivors.** Thus, this Court held that:

. . . [a] conspiracy is in its nature a joint offense. One person cannot conspire alone. The crime depends upon the joint act or intent of two or more persons. Yet, it does not follow that one person cannot be

²⁰ Records, Vol. 7, pp. 399-400 (Prosecution’s Comment/Opposition dated February 19, 2024, pp. 2-3).

²¹ *Id.* at 400 (Prosecution’s Comment/Opposition dated February 19, 2024, p. 3).

²² *Id.* at 400-401 (Prosecution’s Comment/Opposition dated February 19, 2024, pp. 3-4).

²³ G.R. No. 168539, March 25, 2014.

convicted of conspiracy. So long as the acquittal or death of a co-conspirator does not remove the bases of a charge for conspiracy, one defendant may be found guilty of the offense. (Citations omitted; emphasis supplied)

Here, the *Information* charges private person Aytona of *conspiring* with several public officers of the Municipality of Tuao, Cagayan, in carrying out and effecting payment for an alleged irregular purchase of thousands of bottles of liquid fertilizer. Applying *Go*, it is inconsequential to the continual prosecution of this case that Aytona is now the only accused left to be prosecuted, after the dismissal of the cases against the accused public officers who were petitioners in the certiorari case.

Surely, the dismissal based on violation of the constitutional right to speedy disposition of cases extinguished the criminal liability of the accused public officers, but it did not extinguish the crime, nor did it remove the basis of the charge of conspiracy between the public officers and Aytona. The dismissal did not consider the merits of the case, nor did it determine that the crime did not exist. As such, the prosecution may still establish Aytona's culpability by presenting evidence of the crime and the conspiracy.

Aytona's claim that the dismissal in the certiorari case pertained to "all the cases,"²⁴ implying that his case should also be dismissed, fails to persuade. The dismissal order only extends to the accused public officers who instituted the certiorari case. This interpretation is supported by the narrowly worded disposition stating the reason for the dismissal, that is, the violation of the "**petitioners**' constitutional right to speedy disposition of cases."²⁵ Notably, Aytona is not one of the petitioners in the certiorari case.

Moreover, since Aytona was not a party to the certiorari case, an action independent from this case;²⁶ then, generally, he could not benefit nor be prejudiced by the order of dismissal.

Likewise, the Court agrees with the prosecution that Aytona is not similarly situated with his co-accused.²⁷ He did not invoke his right to speedy disposition of cases, a waivable right.²⁸ Having failed to timely invoke such right, he is deemed to have waived it.

²⁴ Records, Vol. 7, p. 370 (Aytona's Motion to Quash the *Information* dated January 29, 2024, p. 3).

²⁵ *Id.* at 160-165, inclusive of unnumbered pages (*Mamba v. Sandiganbayan*, G.R. Nos. 249343 and 249382, July 6, 2022 [Resolution]). The Court received the notice on September 12, 2022; emphasis supplied.

²⁶ *Ro-Ann Veterinary Manufacturing, Inc. v. Bingbing*, G.R. No. 236271, April 3, 2019. "A petition for certiorari under Rule 65 is an entirely independent action from the proceedings initiated with the court of origin. It is neither a part nor a continuation of the original suit"; citations omitted.

²⁷ Records, Vol. 7, p. 400 (Prosecution's Comment/Opposition dated February 19, 2024, p. 3).

²⁸ *Cagang v. Sandiganbayan, Fifth Division*, G.R. Nos. 206438, 206458 & 210141-42, July 31, 2018. "The accused must invoke his or her constitutional rights in a timely manner. The failure to do so could be considered by the courts as a waiver of right."

One more thing that goes against Aytona's motion is that the case against Treasurer Cardenas, one of the accused public officers, was dismissed because of his death,²⁹ not for violation of his constitutional right to speedy disposition of cases. This circumstance makes this case and *Go* closely comparable: A private person (Aytona) was indicted for conspiracy with a deceased public officer (Cardenas).


WHEREFORE, premises considered, Ramon A. Aytona's Motion to Quash the *Information* is **DENIED** for lack of merit.

The Division Clerk of Court is **DIRECTED** to set the earliest date for the continuation of the prosecution's evidence presentation.

SO ORDERED.


MARYANN E. CORPUS-MAÑALAC
Associate Justice

WE CONCUR:


RAFAEL R. LAGOS
Associate Justice
Chairperson


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

²⁹ Records, Vol. 2, p. 307.