

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. HON. ANIANO A. DESIERTO, AS OMBUDSMAN, EDUARDO M. COJUANGCO, JR., MARIA CLARA L. LOBREGAT, ROLANDO DELA CUESTA, JOSE M. CONCEPCION, ...

G.R. NO. 131966. August 31, 2005

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

This resolves the Motion for Reconsideration and the Second Motion for Reconsideration filed by private respondent Cojuangco, Jr. as well as the Motion for Reconsideration filed by petitioner Republic of the Philippines.

On September 23, 2002, the Court, in the above-entitled case, granted the petition for certiorari filed by the Republic of the Philippines. The resolution of the Ombudsman in OMB-0-90-2811 dismissing the Republic's complaint was set aside, and the Ombudsman was ordered to proceed with the preliminary investigation in said case and to exclude respondents Teodoro D. Regala and Jose C. Concepcion as defendants. Respondent Eduardo M. Cojuangco, Jr. and petitioner Republic of the Philippines then filed their respective motions for reconsideration of the aforesaid decision. Both were denied by the Court in its Resolution dated August 16, 2004.

Respondent Cojuangco, Jr. filed a second motion for reconsideration on the ground, among others, that the Resolution dated August 16, 2004, was promulgated without the requisite division of five as required by A.M. No. 99-8-09-SC. The Court in its Resolution dated April 25, 2005 recalled the Resolution dated August 16, 2004 and the (first) Motion for Reconsideration together with the Second Motion for Reconsideration is deemed submitted for resolution.

In his first Motion for Reconsideration, respondent Cojuangco argues that:

- It was because of lack of evidence or probable cause that the Ombudsman dismissed the complaint in OMB-0-90-2811, not because the offense has prescribed or that LOI 926 and PD Nos. 961 and 1468 precluded prosecution under RA No. 3019 and Article 186 of the Revised Penal Code. Since the Court in its decision of September 23, 2002 did not overturn the Ombudsman's finding of lack of probable cause, the Ombudsman's Resolution of June 2, 1997 may not be nullified.
- No evidentiary basis exists for the Court's finding that the offense had not prescribed; it was, consequently, error for the Court to have found that the offense charged had not prescribed.
- It was also error for the Court to have found that PD Nos. 961 and 1468, LOI No. 926 may not be taken into account in determining whether the respondent violated R.A. No. 3019 and Article 186 of the Revised Penal Code.
- The Court, apparently, overlooked respondent's contention that his constitutional right to speedy disposition of

his case has been violated warranting dismissal of OMB-0-90-2811.[1]

Petitioner Republic of the Philippines, for its part, questions the Court's ruling ordering the exclusion of respondents Teodoro D. Regala and Jose C. Concepcion as defendants in OMB-0-90-2811.[2]

The Court will first resolve respondent Cojuangco's motions for reconsideration.

In his second Motion for Reconsideration, respondent raises the same issues which were earlier submitted in his first Motion for Reconsideration, i.e., as to the existence of probable cause and the matter of prescription.[3]

The Court denies both motions of respondent Cojuangco, Jr.

Graft Investigation Officer II Aleu A. Amante, in his Resolution dated June 2, 1997, recommended the dismissal of the case on the finding that there is "no sufficient evidence to engender a well-founded belief that violation of the Anti-Graft Law was committed and that respondents are probably guilty thereof." [4] Contrary to respondent's argument, such conclusion is basically premised on the finding that the acquisition by UNICOM of the sixteen oil mills was done in accordance with P.D. No. 961, [5] and not because there was no sufficient evidence that private respondents are probably guilty of the charges against them. Amante's recommendation specifically stated that "respondents cannot be made criminally liable for implementing a government policy because there is no element of evident bad faith or malice." [6] And, as is stated in the assailed Decision, the validity of LOI No. 926, and P.D. Nos. 961 and 1468 will not protect respondents from criminal prosecution for violations of R.A. No. 3019 and Article 186 of the Revised Penal Code, to wit:

Moreover, we categorically held in the Orosa case that the fact the transactions were done pursuant to P.D. Nos. 961 and 1468 will not shield the respondents from being charged considering that prosecution for violations of R.A. 3019 involves questions as to whether the contracts or transactions entered pursuant thereto by the private respondents were manifestly and grossly disadvantageous to the government; whether they caused undue injury to the government; and whether the private respondents were interested for personal gain or had material interests in the transactions.

Similarly in the present case, contrary to the Ombudsman's belief, LOI No. 926 and P.D. Nos. 961 and 1468 cannot protect private respondents from criminal prosecution as they are being charged with commission of acts tantamount to violations of R.A. 3019 and Article 186 of the Revised Penal Code. [7] (Emphasis supplied)

In other words, while P.D. Nos. 961 and 1468 may have sanctioned UNICOM's acquisition of the sixteen oil mills, it should not deter the Ombudsman from determining in the preliminary investigation whether such acquisition caused undue prejudice, disadvantage and injury to the government, or that private respondents had a material and personal interest in the acquisition thereof, acts which are defined as corrupt practices and declared unlawful under R.A. No. 3019. These questions have not been taken into consideration by the Ombudsman when he concluded that there is "no sufficient evidence to engender a well-founded belief that violation of the Anti-Graft Law was committed and that respondents are probably guilty thereof."

If the Court were to adhere to private respondent's argument that valid laws shall be taken into account in determining whether there was a violation of R.A. No. 3019 and Article 186 of the Revised Penal Code, then the validity of laws would create a blanket shield and there would be no prosecution for violations of R.A. No. 3019 and Article 186 of the Revised Penal Code, as all acts committed by public officers will be beyond reach, despite the undue damage, injury and prejudice to the government, and the personal gain and material interest of the public officers involved.

Moreover, it is not true that the Court has no evidentiary basis for its finding that the offense had not prescribed. As stated in the assailed Decision, since the ten-year prescriptive period in violation of R.A. No. 3019 is governed

by Section 2 of Act No. 3326, and applying further the ruling in *Domingo vs. Sandiganbayan*,^[8] the complaint in this case, which was filed on March 2, 1990, was well within the prescriptive period. The counting of the applicable ten-year prescriptive period in this case commenced from the date of discovery of the offense, which could have been between February 1986 after the EDSA Revolution, and the filing of the complaint with the Presidential Commission on Good Government (PCGG) on March 2, 1990. Between these dates, at the most, only four (4) years had lapsed. Hence, the complaint was timely filed.

The Court likewise finds respondent's contention in his motions that the seven-year delay in the disposition of the preliminary investigation by the Ombudsman warrants the dismissal of the case against him, without merit.

In the case of *Dela Peña vs. Sandiganbayan*,^[9] the Court had the occasion to re-state the doctrine that:

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 delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.

Despite the finding that there was a considerable delay by the Sandiganbayan in the disposition of the petitioners' case, the Court did not dismiss their case for the reason that the failure of the petitioners therein to assert their right to a speedy disposition of their case amounts to a waiver of such right. Thus, the Court held:

Moreover, it is worthy to note that it was only on 21 December 1999, after the case was set for arraignment, that petitioners raised the issue of the delay in the conduct of the preliminary investigation. As stated by them in their Motion to Quash/Dismiss, "[o]ther than the counter-affidavits, [they] did nothing." Also, in their petition, they averred: "Aside from the motion for extension of time to file counter-affidavits, petitioners in the present case did not file nor send any letter-queries addressed to the Office of the Ombudsman for Mindanao which conducted the preliminary investigation." They slept on their right - a situation amounting to laches. The matter could have taken a different dimension if during all those four years, they showed signs of asserting their right to a speedy disposition of their cases or at least made some overt acts, like filing a motion for early resolution, to show that they were not waiving that right. Their silence may, therefore be interpreted as a waiver of such right. As aptly stated in *Alvizo*, the petitioner therein was "insensitive to the implications and contingencies" of the projected criminal prosecution posed against him "by not taking any step whatsoever to accelerate the disposition of the matter, which inaction conduces to the perception that the supervening delay seems to have been without his objection, [and] hence impliedly with his acquiescence."^[10] (Emphasis supplied)

In respondent Cojuangco's case, records shows that the last pleading filed prior to the Ombudsman's Resolution dated June 2, 1997 was respondent's Motion to Suspend Filing of Counter-Affidavit, which was filed on May 15, 1991.^[11] Between 1991 and 1997, respondent did nothing to assert his right to a speedy disposition of his case. Clearly, his silence during such period amounts to a waiver of such right.

Moreover, respondent's right to a speedy disposition of his case should not work against and preclude the people's equally important right to public justice^[12] considering that the funds used to acquire the 16 moth-balled oil mills came from the coconut levy funds, which are not only affected with public interest, but are, in fact, *prima facie* public funds.^[13]

It is noted that the Court's decision in the *Orosa* case,^[14] which is cited in the decision of the present case, was set aside per Resolution dated July 7, 2004, on the ground that two of the respondents therein, Ma. Clara Lobregat and Jose C. Concepcion, were deprived of their right to file their comments on the petition, and as such, the case was not yet ripe for resolution when the Court rendered its decision. Be that as it may, said resolution does not

bear any consequence on the present case as the jurisprudence relied upon in the Orosa case are still valid and binding precedents.

As regards petitioner Republic's motion that the assailed Decision be reconsidered insofar as the exclusion of respondents Teodoro D. Regala and Jose C. Concepcion as defendants in OMB-0-90-2811 is concerned, the Court finds the same bereft of merit.

According to petitioner, respondents Regala and Concepcion should not be excluded as respondents because they are being charged for illegal acts committed in their official capacity as members of the Board of Directors of UNICOM and UCPB, in conspiracy with the other private respondents.[15] Such argument, however, has already been overruled by the Court in both the Regala[16] and Castillo[17] cases, wherein the Court ordered the exclusion of petitioners therein from the acts complained of in connection with the legal services they rendered to the other respondents. Thus, the Court held in the Castillo case that:

It is true that unlike in Regala, petitioner in the present case is not being required to name his clients. However, the case of Regala is still applicable to the present case because the two cases are the same in more important aspects.

The fact of the lawyer-client relationship between petitioner and defendants Enriquezes and Panlilios was immediately raised by petitioner as one of his affirmative defenses. In the same vein, in Regala the professional relationship was raised merely as a defense by defendant lawyers and was not yet proved during the trial. This notwithstanding, this Court struck out the complaint against the lawyers.

The respondent Republic argued in its Comment that:

"Moreover, the rule of confidentiality under the lawyer-client relationship is not a valid ground to dismiss a complaint against a party. It is merely a ground for disqualification of a witness (Section 24, Rule 130, Rules of Court) and may only be invoked at the appropriate time, such as, when a lawyer is under compulsion to answer as witness, as when, having taken the witness stand, he is questioned on such confidential communication or advice, or is being otherwise judicially coerced to produce, through subpoena duces tecum to otherwise, letters or other documents containing the same privileged matter. But defendant is not being required to testify about or otherwise reveal any confidential communication made by the client to him or his advice given thereon. What is clear from the complaint is that defendant is being sued as principal defendant for being in conspiracy with the other defendants in the commission of the acts complained of.

"Besides, the attorney-client privileged communication does not apply if the confidence received by an attorney is for the purpose of advancing a criminal or fraudulent purpose."

This was the same argument raised by the Republic in the case of Regala. In overruling the Republic's position, this Court ruled:

"An argument is advanced that the invocation by petitioners of the privilege of attorney-client confidentiality at this stage of the proceedings is premature and that they should wait until they are called to testify and examine as witnesses as to matters learned in confidence before they can raise their objection. But petitioners are not mere witnesses. They are co-principals in the case for recovery of alleged ill-gotten wealth. They have made their position clear from the very beginning that they are not willing to testify and they cannot be compelled to testify in view of their constitutional right against self-incrimination and of their fundamental legal right to maintain inviolate the privilege of attorney-client confidentiality." [18]

In this case, respondents Regala and Concepcion were constituted as Members of the Board Directors of UNICOM and UCPB in the course of their duties as counsel, and following the ruling in the Regala and Castillo cases, they should be excluded as defendants to the case.

Finally, during the pendency of this petition, respondent Maria Clara L. Lobregat died on January 2, 2004.[19] The death of an accused prior to final judgment terminates his criminal liability as well as the civil liability based solely thereon.[20] Consequently, the case against respondent Lobregat should be dismissed.

WHEREFORE, the first and second Motions for Reconsideration filed by private respondent Eduardo M. Cojuangco, Jr., and the motion for reconsideration of petitioner Republic of the Philippines are hereby DENIED with FINALITY.

The Decision dated September 23, 2002 is MODIFIED to the effect that the charges against deceased respondent Maria Clara L. Lobregat in OMB-0-90-2811, pending preliminary investigation before the Office of the Ombudsman, is ordered dismissed.

SO ORDERED.

Davide, Jr., C.J., Puno, Quisumbing, (Chairman), and Callejo, Sr., JJ., concur.

[1] Rollo, pp. 637-638.

[2] Id., p. 693.

[3] Id., pp. 1170-1180.

[4] Original Record, Folder 1, p.783.

[5] Rollo, p. 81.

[6] Id., pp. 81-82.

[7] Republic vs. Desierto, G.R. No. 131966, September 23, 2002, 389 SCRA 452, 459.

[8] G.R. No. 109376, January 20, 2000, 322 SCRA 655 [2000], cited in Republic vs. Desierto, G.R. No. 136506, August 23, 2001, 363 SCRA 585.

[9] G. R. No. 144542, June 29, 2001, 360 SCRA 478, 485, 487-488.

[10] Id., pp. 487-488.

[11] Records, Vol. 1, p. 672.

[12] Guerrero vs. Court of Appeals, G.R. No. 107211, June 28, 1996, 257 SCRA 703, 716.

[13] Republic vs. COCOFED, G.R. Nos. 147062-64, December 14, 2001, 372 SCRA 462, 481.

[14] Republic vs. Desierto, G.R. No. 136506, August 23, 2001, 363 SCRA 585.

[15] Rollo, p. 695.

[16] Regala vs. Sandiganbayan, First Division, G.R. No. 105938, September 20, 1996, 262 SCRA 122.

[17] Castillo vs. Sandiganbayan, G.R. No. 138231, February 21, 2002, 377 SCRA 509.

[18] Id., pp. 513-515.

[19] Rollo, Annex "1", p. 1137.

[20] Article 89 of the Revised Penal Code; Benedicto vs. Court of Appeals, G.R. No. 125359, September 4, 2001,

364 SCRA 334, 362.

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