

PRESIDENTIAL AD HOC FACT- FINDING COMMITTEE ON BEHEST LOANS, REPRESENTED BY MAGDANGAL B. ELMA, PCGG CHAIRMAN AND ORLANDO C. SALVADOR AS CONSULTANT OF THE TECHNICAL WORKING GROUP...

G.R. No. 135715. April 13, 2011

Ponente: PEREZ, J.

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PEREZ, J.:

This petition for review on certiorari[1] is one among the 17 cases filed before us by the Presidential Ad Hoc Fact-Finding Committee on Behest Loans, charging public respondent Ombudsman Aniano A. Desierto (Ombudsman) for grave abuse of discretion, when, on the ground of prescription and insufficiency of evidence, he dismissed all of these cases then pending before him, including this case in OMB-0-97-1718.

The Facts

Respondents Mohammad Ali Dimaporo, Abdullah Dimaporo, and Amer Dianalan, were stockholders and officers of the Mindanao Coconut Oil Mills (MINCOCO), a domestic corporation established in 1974,[2] while respondents Panfilo O. Domingo, Conrado S. Reyes, Enrique M. Herboza, and Ricardo Sunga, were then officers of the National Investment and Development Corporation (NIDC).

On 10 May 1976, MINCOCO applied for a Guarantee Loan Accommodation with the NIDC for the amount of approximately P30,400,000.00, which the NIDC's Board of Directors approved on 23 June 1976.

The guarantee loan was, however, both undercapitalized and under-collateralized because MINCOCO's paid capital then was only P7,000,000.00 and its assets worth is P7,000,000.00.

This notwithstanding, MINCOCO further obtained additional Guarantee Loan Accommodations from NIDC in the amount of P13,647,600.00 and P7,000,000.00,[3] respectively.

When MINCOCO's mortgage liens were about to be foreclosed by the government banks due its outstanding obligations, Eduardo Cojuangco issued a memorandum dated 18 July 1983, bearing the late President Ferdinand E. Marcos' (President Marcos) marginal note, disallowing the foreclosure of MINCOCO's properties.[4] The government banks were not able to recover any amount from MINCOCO and President Marcos' marginal note was construed by the NIDC to have effectively released MINCOCO, including its owners, from all of its financial liabilities.[5]

The above mentioned transactions, were, however, discovered only in 1992 after then President Fidel V. Ramos (President Ramos), in an effort to recover the ill-gotten wealth of the late President Marcos, his family, and cronies, issued Administrative Order No. 13[6] creating the Presidential Ad Hoc Fact-Finding Committee on Behest Loans (the Committee), with the Chairman of the Philippine Commission on Good Government (PCGG) as the Committee's head. The Committee was directed, inter alia, to inventory all behest loans, and identify the

lenders and borrowers, including the principal officers and stockholders of the borrowing firms, as well as the persons responsible for the granting of loans or who influenced the grant thereof.[7] Subsequently, then President Ramos issued Memorandum Order No. 61[8] outlining the criteria which may be utilized as a frame of reference in determining a behest loan, viz:

- It is under-collateralized;
- The borrower corporation is undercapitalized;
- Direct or indirect endorsement by high government officials like presence of marginal note;
- Stockholders, officers or agents of the borrower corporation are identified as cronies;
- Deviation of use of loan proceeds from the purpose intended;
- Use of corporate layering;
- Non-feasibility of the project for which financing is being sought;
- Extraordinary speed in which the loan release was made.

The Committee found that twenty-one (21) corporations, including MINCOCO, obtained behest loans. It claimed that the fact that MINCOCO was under-collateralized and undercapitalized; that its officers were identified as cronies; that the late President Marcos had marginal note, effectively waiving the government's right to foreclose MINCOCO's mortgage liens; and, that the Guarantee Loan Accommodation were approved in an extraordinary speed of one month, bore badges of behest loans.

Subsequently, the Committee filed with the Ombudsman a sworn complaint against MINCOCO's Officers and NIDC's Board of Directors for violation of Section 3(e) and (g) of Republic Act No. 3019,[9] as amended.

By Resolution dated 9 July 1998, the Ombudsman *motu proprio* dismissed the complaint on the grounds that, first, there was insufficient evidence to warrant the indictment of the persons charged; and, second, the alleged offenses had prescribed.[10] The Ombudsman explained:

Being undercapitalized, standing alone is meaningless. The approval of the loans/guarantees was still based on sound lending practice, otherwise, MINCOCO would have been disqualified from obtaining the same. If MINCOCO's equity was more than the amount of the loans, there was no need for it to obtain the latter.

Anent the claim that Mohammad Ali Dimaporo was a crony of the late President Marcos, no evidence was adduced to prove the same, hence, remains a bare allegation. x x x.

On the issue that the notation by President Marcos in the Memorandum of July 18, 1983 is a behest order, suffice it to state that these marginal notes, if they meant endorsement as defined under Memorandum Order No. 61, endorsed the recommendation regarding the mortgage liens of the government banks of the Mothballed Coconut Oil Mills and not the approval/grant of the loans/guarantees in 1976. It is in effect approved the release of the liabilities of the former owners of coconut oil mills, one of which was MINCOCO, but not the acquisition of the said loans/guarantees.

The take over of MINCOCO by UNICOM without the consent of NIDC is not a characteristic of a behest loan. It is a mere violation of procedures that does not warrant a criminal action.

x x x x

For the perpetration of the acts being complained of, the respondents are charged of violations of Sections 3(e) and (g) of Republic Act No. 3019. The instant case however will no longer prosper for the offenses have

already prescribed.

Be it remembered that MINCOCO applied for and was granted loans/guarantees way back in 1976. Thus, these acts are governed by the law in force at the time of their commission, which is the old R.A. No. 3019 before its amendment by Batas Pambansa Blg. 195 in March 1982. Offenses perpetrated prior to the enactment of this latter law prescribed ten (10) years later. And since the case was filed against the herein respondents only in September 1997, the offenses have long prescribed in 1986.

Prescription commenced to run in 1976 when the assailed transaction happened. x x x.[11]

Hence, this petition for review on certiorari under Rule 45 of the Rules of Court.[12]

The petitioner argued that the right of the State to recover behest loans as ill-gotten wealth is imprescriptible under Section 15, Article XI of the 1987 Constitution;[13] and, assuming that the period to file criminal charges herefore is subject to prescription, the prescriptive period should be counted from the time of discovery of behest loans or sometime in 1992 when the Committee was constituted.[14]

The Ombudsman, in his Comment, countered that his office has the discretionary power during preliminary investigation to determine the sufficiency of evidence for indictment;[15] that it is beyond the ambit of the Court to review this exercise of discretion;[16] that Section 15, Article XI of the 1987 Constitution applies only to civil suits and not to criminal proceedings;[17] and, that the crime under which the respondents herein were charged had already prescribed.[18]

Private respondents Panfilo O. Domingo and Enrique M. Herboza, filed their respective Comments mainly reiterating the Ombudsman's contentions. The other respondents did not file their Comments, and, thus, considered to have waived their chance thereto.

The Court's Ruling

The remedy from an adverse resolution of the Ombudsman is a petition for certiorari under Rule 65 of the Rules of Court; what was filed with the Court, however, was a petition for review on certiorari under Rule 45. Nevertheless, the Court will treat this petition as one filed under Rule 65 since a reading of its contents shows that the Committee imputes grave abuse of discretion to the Ombudsman for dismissing the complaint.[19] This was how we also treated the previous cases marred by the same procedural lapse, the latest of which is the 2009 Presidential Ad-Hoc Fact Finding Committee on Behest Loans v. Desierto (G.R. No. 135703).[20]

At the core of the controversy is the Ombudsman's Resolution holding that prescription had already set-in effectively barring the institution of charges against the private respondents. The Ombudsman claimed that the alleged behest loans, transpired in 1976,[21] and, thus, the complaint filed after more than two decades from the commission thereof or on 8 October 1997, was well beyond the 10-year prescriptive period provided for under the old Republic Act No. 3019.[22]

In resolving the issue of prescription, the following shall be considered: (1) the period of prescription for the offense charged; (2) the time the period of prescription started to run; and (3) the time the prescriptive period was interrupted.[23]

At the outset, the provision found in Section 15, Article XI of the 1987 Constitution that "the right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall not be barred by prescription, laches or estoppels," has already been settled in Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto (G.R. No. 130140),[24] where the Court held that the above cited constitutional provision "applies only to civil actions for recovery of ill-gotten wealth, and not to

criminal cases."[25]

The period of prescription for the crime charged in this petition, committed in 1976 and prior to the amendment of Republic Act No. 3019, is ten (10) years.

Section 11[26] of Republic Act No. 3019 as amended by Batas Pambansa Blg. 195, provides that the offenses committed under Republic Act No. 3019 shall prescribe in fifteen (15) years; prior to this amendment, however, under the old Republic Act No. 3019, this prescriptive period was only ten (10) years. In *People v. Pacificador*,[27] the Court held that the longer prescriptive period of 15-years does not apply in crimes committed prior to the effectivity of Batas Pambansa Blg. 195, which was approved on 16 March 1982, because, not being favorable to the accused, it cannot be given retroactive effect. Considering that the alleged crime was committed in 1976, and in line with the Court's ruling in *Pacificador*, the prescription period should be ten (10) years.

Prescription of crime shall begin to run from the day of its commission, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

While we sustain the Ombudsman's contention that the prescriptive period for the crime charged herein is 10 years and not 15 years, we are not persuaded that in this specific case, the prescriptive period began to run in 1976, when the loans were transacted.

The time as to when the prescriptive period starts to run for crimes committed under Republic Act No. 3019, a special law, is covered by Act No. 3326,[28] Section 2 of which provides that:

Section 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting double jeopardy.

Generally, the prescriptive period shall commence to run on the day the crime is committed. That an aggrieved person "entitled to an action has no knowledge of his right to sue or of the facts out of which his right arises," does not prevent the running of the prescriptive period.[29] An exception to this rule is the "blameless ignorance" doctrine, incorporated in Section 2 of Act No. 3326. Under this doctrine, "the statute of limitations runs only upon discovery of the fact of the invasion of a right which will support a cause of action. In other words, the courts would decline to apply the statute of limitations where the plaintiff does not know or has no reasonable means of knowing the existence of a cause of action." [30] It was in this accord that the Court confronted the question on the running of the prescriptive period in *People v. Duque*[31] which became the cornerstone of our 1999 Decision in *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto* (G.R. No. 130149),[32] and the subsequent cases[33] which Ombudsman Desierto dismissed, emphatically, on the ground of prescription too. Thus, we held in a catena of cases,[34] that if the violation of the special law was not known at the time of its commission, the prescription begins to run only from the discovery thereof, i.e., discovery of the unlawful nature of the constitutive act or acts.

Corollary, it is safe to conclude that the prescriptive period for the crime which is the subject herein, commenced

from the date of its discovery in 1992 after the Committee made an exhaustive investigation.[35] When the complaint was filed in 1997, only five years have elapsed, and, hence, prescription has not yet set in. The rationale for this was succinctly discussed in the 1999 Presidential Ad Hoc Fact-Finding Committee on Behest Loans,[36] that "it was well-high impossible for the State, the aggrieved party, to have known these crimes committed prior to the 1986 EDSA Revolution, because of the alleged connivance and conspiracy among involved public officials and the beneficiaries of the loans." [37] In yet another pronouncement, in the 2001 Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto (G.R. No. 130817),[38] the Court held that during the Marcos regime, no person would have dared to question the legality of these transactions.

While the Ombudsman has the full discretion to determine whether a criminal case is to be filed, the Court is not precluded from reviewing the Ombudsman's action when there is a grave abuse of discretion.

True, the Ombudsman is a constitutionally created body with constitutionally mandated independence. Despite this, however, the Ombudsman comes within the purview of the Court's power of judicial review[39] - a peculiar concept of Philippine Ombudsman, embodied in Article VIII, Section 1 of the 1987 Constitution[40] - which serves as a safety net against its capricious and arbitrary acts.[41] Thus, in *Garcia-Rueda v. Pascasio*,[42] the Court held that "while the Ombudsman has the full discretion to determine whether or not a criminal case is to be filed, the Court is not precluded from reviewing the Ombudsman's action when there is grave abuse of discretion." [43] This is because, "while the Ombudsman enjoys, as it must, complete independence, it cannot and must not lose track of the law, which it is bound to uphold and obey." [44]

After reviewing the case's records, the Court finds that the present petition calls for the exercise of its power of judicial review.

Private respondents are charged with violation of Section 3(e) and (g) of Republic Act No. 3019 which states:

Section 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:

x 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.

x x x x

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

From the 1999 landmark case of Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto (G.R. No. 130140),[45] to the 2008 Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Tabasondra (G.R. No. 133756),[46] and to the 2009 Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto (G.R. No. 135703),[47] the same issues confronted the Court as the one presented in the present petition, in that the Ombudsman similarly dismissed these cases not only on the ground of prescription but also for insufficiency

of evidence.[48]

Interestingly, the facts in Tabasondra[49] are squarely on all fours as the present case. Tabasondra,[50] involved Coco-Complex Philippines, Inc., (CCPI), a domestic corporation primarily incorporated for the manufacture of coconut oil.[51] CCPI applied for Guarantee Loan Accommodation thru the National Investment Development Corporation amounting to P9,277,080.00, allegedly for the purchase of an oil mill to be supplied by Krupp Germany. The NIDC Board approved the loan in 1969,[52] notwithstanding the fact that CCPI was undercapitalized with only P2,111,000.00 paid-up capital,[53] and under-collateralized with only P495,300.00 assets.[54] Thus, with the NIDC's Guarantee Loan Accommodation, the Philippine National Bank (PNB) granted the loan. Still, with NIDC's guarantee, CCPI obtained additional loans from PNB in 1972, which, as of 1992, ballooned to P205,889,545.76.

When the Committee filed criminal complaints against the CCPI's Officers and PNB's Board of Directors for violation of Section 3(e) and (g) of Republic Act No. 3019, the Ombudsman dismissed the complaint on the ground of prescription. For this, the Committee charged the Ombudsman for grave abuse of discretion, but pending its resolution before us, the Ombudsman, taking cue from the Court's 1999 ruling in G.R. No. 130140,[55] *motu proprio* reinvestigated the complaint it earlier dismissed (and was still pending before us), only to dismiss it anew, in a Resolution dated 16 October 2000, opining that NIDC's Board of Directors, who approved the loans in favor of CCPI, should have been the ones indicted.[56] Subsequently, the Court dismissed Tabasondra for being moot and academic.

Similarly, in the present petition, MINCOCO was also granted by NIDC a Guarantee Loan Accommodation amounting initially to P30.4 million pesos, despite its being undercapitalized and under-collateralized.[57]

As the Ombudsman admitted, when MINCOCO's mortgage liens were about to be foreclosed by the government banks, the late President Marcos intervened and through a marginal note, in connivance with the NIDC's officers, waived the liabilities of its owners to the detriment of the government.[58] It behooves the Court that while the Ombudsman admitted this fact, it saw nothing wrong in President Marcos' intervention, and the involvement therein of the NIDC's officers. This intervention alone, by no less than the highest official of the land, waiving a multi-million peso liability of a private corporation, should have alarmed the Ombudsman.

It surprises us that while the Ombudsman dismissed Tabasondra for not impleading therein the NIDC's Board of Directors, now that they (NIDC's Board of Directors) have been impleaded, the Ombudsman still dismissed the complaint, allegedly for insufficiency of evidence.[59]

Applying *mutatis mutandis* G.R. No. 133756[60] in this petition, it is apparent that there can be liability for violation of Section 3(e) and (g) of Republic Act No. 3019.

Violation of Section 3(e)[61] of Republic Act No. 3019 requires that there be injury caused by giving unwarranted benefits, advantages or preferences to private parties who conspire with public officers. In contrast, Section 3(g)[62] does not require the giving of unwarranted benefits, advantages or preferences to private parties, its core element being the engagement in a transaction or contract that is grossly and manifestly disadvantageous to the government.

The waiver of MINCOCO's multi-peso loan should have been enough basis in finding that probably Section 3(e) of Republic Act No. 3019 was violated and the fact that NIDC extended a loan guarantee to MINCOCO, despite its being undercapitalized and under-collateralized, should have also been enough ground in finding probable cause for violation of Section 3(g) of the above-cited law.

More importantly, the finding of the Committee that MINCOCO obtained *behest* loans because of the following

circumstances: MINCOCO was under-collateralized and undercapitalized; its officers were identified as cronies; President Marcos had marginal note, effectively waiving the government's right to foreclose MINCOCO's mortgage liens; and, NIDC approved MINCOCO's Guarantee Loan Accommodation in an extraordinary speed of one month, should have been accorded a proper modicum of respect by the Ombudsman.

Considering the membership of the Committee - representatives from the Department of Finance, The Philippine National Bank, the Asset Privatization Trust, the Philippine Export and Foreign Loan Guarantee Corporation and even the Development Bank of the Philippines - its recommendation should be given great weight. No doubt, the members of the Committee are experts in the field of banking. On account of their special knowledge and expertise, they are in a better position to determine whether standard banking practices are followed in the approval of the loan/guarantee or what would generally constitute as adequate security for a given loan.[63]

The duty of the Ombudsman in the conduct of a preliminary investigation is to establish whether there exists probable cause to file information in court against the accused.[64] A finding of probable cause needs only to rest on evidence showing that more likely than not, the accused committed the crime.[65] Considering the quantum of evidence needed to support a finding of probable cause, the Court holds that the Ombudsman gravely abused its discretion when it dismissed the complaint against herein respondents.

Preliminary investigation is not the occasion for the full and exhaustive display of the parties' evidence.[66] It is for the presentation of such evidence only as may engender a well founded belief that an offense has been committed and that the accused is probably guilty thereof.[67] The validity and merits of a party's accusation or defense, as well as admissibility of testimonies and evidence, are better ventilated during the trial proper.[68]

In conclusion, the offenses ascribed to respondents "involve behest loans which bled white the economy of the country, one of the excesses of the authoritarian regime that led to the EDSA revolution, a serious evil that the 1987 Constitution aimed to extirpate." [69] It involves nothing less than the interest of the people whose transgressed rights are supposed to be vindicated by their protector - the Ombudsman.[70] As protector of the people, the Ombudsman should be pro-active in making use of its vast arsenal of powers to "bring the lamp of scrutiny to otherwise dark places even over the resistance of those who would draw the blinds." [71]

The criminal liability of Conrado S. Reyes is hereby extinguished in accordance with Article 89(1)[72] of the Revised Penal Code as confirmed by his death certificate.[73] With respect to respondents Panfilo O. Domingo and Mohammad Ali Dimaporo, the facts of their deaths have to be confirmed to determine the application to them of the same provision.

WHEREFORE, the petition is GRANTED. The Ombudsman is hereby ORDERED to:

1. DISMISS the complaint against deceased respondent Conrado S. Reyes;
2. REQUIRE the counsels of respondents Panfilo O. Domingo and Mohammad Ali Dimaporo to submit proof of their deaths; and
3. FILE with the Sandiganbayan the necessary Information against respondents Abdullah Dimaporo, Amer Dianalan, Enrique M. Herboza, and Ricardo Sunga.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Peralta,[*] Del Castillo, and Perez, JJ., concur.

[*] Per Raffle dated 12 April 2011, Associate Justice Diosdado M. Peralta is designated as additional member in

lieu of Associate Justice Presbitero J. Velasco, Jr. inhibition.

[1] Filed under Rule 45 of the Rules of Court, but treated by the Court as a Petition for Certiorari under Rule 65.

[2] Registered with the Philippine Securities and Exchange Commission on 30 July 1974. Rollo, p. 29.

[3] Petition for Review on Certiorari (hereafter, petition). Id. at 13.

[4] In 1983, MINCOCO sold all its shares to the United Coconut Mills (UNICOM), which retained control over the mothballed oil mills. Petition, id. at 14.

[5] Ombudsman Resolution. Id. at 31.

[6] Issued on 8 October 1992.

[7] Administrative Order No.13.

[8] Issued on 9 November 1992.

[9] Section 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:

x 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.

x x x x

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

[10] Ombudsman Resolution. Rollo, pp. 28-34.

[11] Id. at 31-32.

[12] Per Order dated 13 August 1998, the Ombudsman Denied the Motion for Reconsideration filed by the petitioner. Id. at 35-38.

[13] Petition. Id. at 17-18.

[14] Id. at 21-23.

[15] Ombudsman's Comment. Id. at 342.

[16] Id.

[17] Id.

[18] Id.

[19] Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, G.R. No.135703, 15 April 2009, 585 SCRA 18, 28.

[20] Id.

[21] Petition. Rollo, p 13.

[22] The Anti Graft and Corrupt Practices Act.

[23] Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, G.R. No. 130817, 22 August 2001, 363 SCRA 489, 493.

[24] Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, G.R. No. 130140, 25 October 1999, 317 SCRA 272.

[25] Id. at 289.

[26] Section 11. Prescription of Offenses. - All offenses punishable under this Act shall prescribe in fifteen years.

[27] G.R. No. 139405, 13 March 2001, 354 SCRA 310, 318.

[28] An Act to Establish Periods of Prescription for Violations Penalized by Special Act and Municipal Ordinances and to Provide When Prescription shall Begin to Run.

[29] Then Associate Justice Reynato S. Puno (Ret.) Concurring and Dissenting Opinion in Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, supra note 24 at 319.

[30] Id. at 318-319 citing 21 AM JUR 2d, pp. 715-716.

[31] G.R. No. 100285, 13 August 1992, 212 SCRA 607.

[32] Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, supra note 24.

[33] Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, G.R. 130817, supra note 23; Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, G.R. No. 135119, 21 October 2004, 441 SCRA 106; Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Ombudsman, G.R. No. 135350, 3 March 2006, 484 SCRA 16; Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Tabasondra, G.R. No. 133756, 4 July 2008, 557 SCRA 31.

[34] People v. Duque, supra note 31; Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, supra note 24; Presidential Commission on Good Government v. Desierto, G.R. No. 140358, 8 December 2000, 347 SCRA 561.

[35] 415 Phil. 723 (2001).

[36] Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, supra note 19.

[37] Id. at 28.

[38] Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, supra note 23.

[39] M. Maulion, Power and Paradox: Deconstructing Ombudsman Independence Amidst the Thicket of the Constitution, Law and Jurisprudence, LI U.S.T. L. Rev. 140-141.

[40] Id.

[41] Id.

[42] G.R. No. 118141, 5 September 1997, 278 SCRA 769 at 776 cited in M. Maulion, Power and Paradox: Deconstructing Ombudsman Independence Amidst the Thicket of the Constitution, Law and Jurisprudence, supra

note 39.

[43] Id. at 141.

[44] Id.

[45] Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, supra note 24.

[46] Supra note 33.

[47] Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, supra note 19.

[48] Id.

[49] Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Tabasondra, supra note 33.

[50] Id.

[51] Id. at 35.

[52] Id.

[53] As of 31 December 1969, id. at 36.

[54] Id.

[55] Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, supra note 24.

[56] The Committee questioned the Ombudsman's dismissal thereof before the Court which is now pending for resolution. Supra note 33 at 40.

[57] Ombudsman's Resolution. Rollo, p. 29.

[58] Id. at 31.

[59] Id. at 33.

[60] Presidential As Hoc Fact-Finding Committee on Behest Loans v. Tabasondra, supra note 33.

[61] The elements of the offense in Section 3(e) are: (1) that the accused are public officers or private persons charged in conspiracy with them; (2) that said public officers commit the prohibited acts during the performance of their official duties or in relation to their public positions; (3) that they cause undue injury to any party, whether the government or any party; (4) that such injury is caused by giving unwarranted benefits, advantage or preference to such parties; and (5) that the public officers have acted with manifest partiality, evident bad faith or gross inexcusable negligence.

[62] On the other hand, the elements of the offense in Section 3(g) are: (1) that the accused is a public officer; (2) that he entered into a contract or transaction on behalf of the government; and (3) that such contract or transaction is grossly and manifestly disadvantageous to the government.

[63] Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, supra note 19 at 34.

[64] Id. at 33.

[65] Id.

[66] Id.

[67] Id.

[68] Id.

[69] Then Associate Justice Reynato S. Puno (Ret.) Concurring and Dissenting Opinion in Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, *supra* note 29 at 323.

[70] Id.

[71] Commenting on the role of Ombudsman, which was challenged in 1970 in Alberta, Canada, Chief Justice Milvain said "x x x [h]e can bring the lamp of scrutiny to otherwise dark places even over the resistance of those who would draw the blinds. x x x." M. Maulion, *Power and Paradox: Deconstructing Ombudsman Independence Amidst the Thicket of the Constitution, Law and Jurisprudence*, *supra* note 39 at 110 citing Wafaqi Mohtasib Annual Report [<http://www/policy.hu/bokhari/OmbuIntro.htm>].

[72] Article 89. How criminal liability is totally extinguished. - Criminal liability is totally extinguished:

1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before judgment.

[73] Death Certificate. Rollo, p. 249.

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