

MONICO V. JACOB AND CELSO L. LEGARDA, PETITIONERS, VS. HON. SANDIGANBAYAN FOURTH DIVISION AND THE OFFICE OF THE OMBUDSMAN, RESPONDENTS.

G.R. No. 162206. November 17, 2010

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

This is a Petition for Certiorari under Rule 65 of the Rules of Court for the nullification of the Resolutions dated February 4, 2002[1] of the Sandiganbayan Special Fourth Division and December 12, 2003[2] of the Sandiganbayan Fourth Division. In its Resolution dated February 4, 2002, the Sandiganbayan Special Fourth Division set aside the order to dismiss Criminal Case Nos. 25922-25939, among other cases, verbally issued by Associate Justice Narciso S. Nario (Justice Nario), Chairman of the Sandiganbayan Fourth Division, during the court session held on August 20, 2001;[3] while in its Resolution dated December 12, 2003, the Sandiganbayan Fourth Division denied the motions for reconsideration of the petitioners and other accused.

The following facts are duly established from the pleadings of the parties:

From 1993 to 1997, Petron Corporation (Petron), a corporation engaged in the business of refining, marketing and distribution of petroleum products, received Tax Credit Certificates (TCCs) by assignment from 18 private firms[4] registered with the Board of Investments (BOI). The TCCs were issued by the One Stop Shop Inter-Agency Tax Credit & Duty Drawback Center (OSS), an office under the Department of Finance (DOF), created by virtue of Administrative Order No. 266 dated February 7, 1992. Petron used the assigned TCCs to pay its excise tax liabilities.

The practice was for the BOI-registered firms to sign the Deeds of Assignment upon delivery of the TCCs to Petron. Petron then forwarded said documents to the OSS, with a request for authorization to use said TCCs to pay for its excise tax liabilities. DOF Undersecretary Antonio P. Belicena (Belicena) approved the request of Petron through the issuance of Tax Debit Memoranda (TDM) addressed to the Collection Program Division of the Bureau of Internal Revenue (BIR). The BIR Collection Program Division accepted the TCCs as payment for the excise tax liabilities of Petron by issuing its own TDM.[5] The control numbers of the BIR-TDM were indicated on the back of the TCCs, marking the final utilization of the tax credits.[6]

However, the Fact Finding and Intelligence Bureau (FFIB) of the Office of the Ombudsman eventually found that the aforementioned transactions involving the TCCs were irregular and violative of the Memorandum of Agreement dated August 29, 1989 between the BOI and the DOF, which implemented Article 21 of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987.[7]

After the termination of the requisite preliminary investigation, the Office of the Ombudsman issued a Resolution dated March 27, 2000 finding probable cause against several public officers and private individuals, including petitioners Monico V. Jacob (Jacob), President, and Celso L. Legarda (Legarda), Vice-President and General Manager for Marketing, both of Petron, for perpetrating the so-called "tax credit scam." On April 10, 2010, the

Office of the Ombudsman filed a total of 62 Informations, 18 of which, docketed as Criminal Case Nos. 25922-25939, were against DOF Undersecretary Belicena, OSS Deputy Executive Director Uldarico P. Andutan, Jr., petitioners and other Petron officials, and officers of the BOI-registered firms which assigned the TCCs to Petron, charging them with violation of Section 3(e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.

Petitioners provided an undisputed account of the events that subsequently took place before the Sandiganbayan:

On April 14, 2000, petitioners and the four other Petron officers who were similarly charged filed a Motion for Reinvestigation [with the Office of the Ombudsman].

On 17 April 2000, the [Sandiganbayan Fourth Division] issued an Order giving the prosecution a period of sixty (60) days within which -

... to re-assess its evidence in these cases and to take appropriate action on the said motion for reconsideration of accused movants and to inform the Court within the same period as to its findings and recommendations including the action thereon of the Honorable Ombudsman.

Sixty (60) days passed but the Office of the Ombudsman did not even bother to submit a report on the status of the motions for reconsideration. Months passed, and then, AN ENTIRE YEAR PASSED. There was still nothing from the respondent Office of the Ombudsman.

In the meantime, petitioner Jacob was arraigned on 1 June 2000 while petitioner Legarda was arraigned on 18 May 2001.

On March 20, 2001, in view of a significant development in the Shell cases (then pending with the 5[th] Division of [the Sandiganbayan]), petitioners and other accused Petron officials filed a Motion to Resolve with the Office of the Ombudsman. In the said motion, petitioners cited the Memorandum dated 30 January 2001 issued by Special Prosecutor Leonardo P. Tamayo upholding the dropping of the charges against Shell official Pacifico Cruz on the ground that there was no sufficient evidence to prove that he was part of the conspiracy. Petitioners asserted that since their situation/alleged participation is similar to that of Mr. Pacifico Cruz, they should similarly be dropped from the criminal cases. Despite this, the respondent Office of the Ombudsman took no action.

Considering the time that had lapsed, the [Sandiganbayan Fourth Division], at the hearing on 1 June 2001, expressly warned the prosecution that should it fail to resolve the reconsideration/investigation, it would order the dismissal of the cases or require the prosecution to show cause why it should not be cited for contempt.

In its Resolution dated 26 June 2001, the [Sandiganbayan Fourth Division] in fact denied the motion of the prosecution for the resetting of the scheduled arraignment and pre-trial on 2 July 2001 "it appearing that the Reinvestigation of these cases has been pending for more than one (1) year now and the court cannot countenance the unreasonable delay attributable to the plaintiff."

In spite of the denial of their motion, the prosecution still failed to submit its report to the [Sandiganbayan Fourth Division] during the 2 July 2001 hearing. Instead they asked for a period of seven (7) more days to resolve the motions for reconsideration. The arraignment (of the other accused) and pre-trial therefore had to be reset again to 17 July 2001.

One day before the schedule hearing, the prosecution filed a Manifestation requesting the cancellation of the arraignment and pre-trial scheduled the next day on the ground that the motions for reconsideration/reinvestigation were still pending resolution.

Once again, [the Sandiganbayan Fourth Division] gave the prosecution another chance. During the hearing on 17

July 2001, the [Sandiganbayan 4th Division] directed the prosecution, through Prosecutor Orlando Ines, to terminate the reinvestigation within a period of one (1) more month. The arraignment and pre-trial were then reset to 20 August 2001.

At the scheduled hearing on August 20, 2001, Prosecutor Orlando Ines, however, again requested for the deferment of the arraignment and pre-trial on the ground that the resolution on the various motions for reconsideration/reinvestigation were still pending approval by the Office of the Ombudsman.

In all the hearings conducted in the cases the defense verbally and consistently invoked their right to speedy trial and moved for the dismissal of the cases. In the course of more than one year, however, the [Sandiganbayan 4th Division] kept affording the prosecution one chance after another. The sixty days granted to the prosecution became more than four hundred days - still, there was no resolution in sight.

Thus on 20 August 2001, compelled by its duty to uphold the fundamental law, the [Sandiganbayan Fourth Division, through its Chairman, Justice Nario] issued a verbal order dismissing the cases. The dismissal was duly recorded in the minutes of the hearing of the said date which was attested to by the Clerk of Court and signed by the parties.

On 24 August 2001, the prosecution filed a Motion for Reconsideration with the following prayer: "WHEREFORE, the undersigned Ombudsman Prosecutors prayed (sic) that the Order issued by the Honorable Court for the summary dismissal of all the graft and estafa charges aforecited be SET ASIDE."

On August 31, 2001, the [Sandiganbayan Fourth Division] issued an Order taking cognizance of the Motion for Reconsideration filed by the prosecution and requiring the accused to file their respective comments thereon within five (5) days.

On 4 February 2002, OR SIX (6) MONTHS after [Justice Nario] issued the verbal order of dismissal, the [Sandiganbayan Special Fourth Division] issued an Order setting aside said verbal order.

x x x x

In the 4 February 2002 Resolution, this time a Division of five justices (two of whom dissented) rendered a Resolution stating:

WHEREFORE, the dismissal of these cases orally ordered in open court by the Chairman of the Fourth Division during its court session held on August 20, 2001, and reiterated in his subsequent ponencia, is hereby set aside.[8] (Citations omitted.)

The Sandiganbayan Special Fourth Division gave the following reasons for overruling Justice Nario's verbal order dismissing the criminal cases against the accused in the alleged tax credit scam:

In the present case, (1) there is already a delay of the trial for more than one year now; (2) but it is not shown that the delay is vexatious, capricious and oppressive; (3) it may be that, as stated in the herein dissented Resolution, "at the hearings conducted in these cases, the defense orally, openly and consistently asked for the dismissal of these cases"; however, these oral manifestations were more of "knee-jerk reactions" of the defense counsel in those hearings everytime the prosecution requested for postponement than anything else as said defense counsel did not seriously pursue the dismissal of these cases, such as by reducing their "request" in a formal written motion to dismiss and/or insisting that the court formally rule on their request for dismissal and go on certiorari if denied; and (4) considering the nature and importance of the cases, if there is any prejudice that may have resulted as a consequence of the series of postponements, it would be more against the government than against any of the accused; however, be that as it may, none of the herein accused has come out to claim having been thus prejudiced.[9]

On February 26, 2002, petitioners, together with four other co-accused Petron officials, filed a Motion for Reconsideration[10] of the February 4, 2002 Resolution of the Sandiganbayan Special Fourth Division. Other accused also filed their motions for reconsideration and motions to quash/dismiss. The prosecution expectedly opposed all such motions of the accused.

In an Omnibus Resolution dated December 12, 2003, the Sandiganbayan Fourth Division ruled in the prosecution's favor and denied all the motions filed by the accused, to wit:

Wherefore, premises considered, this court issues an Omnibus Resolution denying all the above-described Motion to Quash for lack of merit.

Hence, petitioners come before us via the instant Petition for Certiorari averring grave abuse of discretion on the part of the Sandiganbayan Special Fourth Division, specifically:

I

THE RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING PETITIONERS' RIGHT TO SPEEDY TRIAL.

II

THE RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN HOLDING THAT PETITIONERS HAVE NOT BEEN PUT IN DOUBLE JEOPARDY.

III

THE RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT CONSIDERING THE GLARING LACK OF EVIDENCE AGAINST PETITIONERS.[11]

To recall, Justice Nario, as the Chairman of the Sandiganbayan Fourth Division, ordered the dismissal of all criminal cases arising from the purported tax credit scam on the ground that the accused, including petitioners, had already been deprived of their right to a speedy trial and disposition of the cases against them. Petitioners assert that the Sandiganbayan gravely abused its discretion in reversing Justice Nario's order of dismissal of Criminal Case Nos. 25922-25939 because such reversal violated petitioners' constitutional right against double jeopardy.

An accused's right to "have a speedy, impartial, and public trial" is guaranteed in criminal cases by Section 14(2), Article III[12] of the Constitution. This right to a speedy trial may be defined as one free from vexatious, capricious and oppressive delays, its "salutary objective" being to assure that an innocent person may be free from the anxiety and expense of a court litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose. Intimating historical perspective on the evolution of the right to speedy trial, we reiterate the old legal maxim, "justice delayed is justice denied." This oft-repeated adage requires the expeditious resolution of disputes, much more so in criminal cases where an accused is constitutionally guaranteed the right to a speedy trial.[13]

Hence, the Revised Rules on Criminal Procedure also include provisions that ensure the protection of such right. As we presented in *Uy v. Hon. Adriano*[14]:

Section 1(h), Rule 115 of the Revised Rules of Criminal Procedure provides that the accused is entitled to a speedy, impartial and public trial. Section 2, Rule 119 of the said Rules provides that trial, once commenced, shall be continuous until terminated:

Sec. 2. Continuous trial until terminated; postponements. - Trial, once commenced, shall continue from day to day as far as practicable until terminated. It may be postponed for a reasonable period of time for good cause.

The court shall, after consultation with the prosecutor and defense counsel, set the case for continuous trial on a weekly or other short-term trial calendar at the earliest possible time so as to ensure speedy trial. In no case shall the entire trial period exceed one hundred eighty (180) days from the first day of trial, except as otherwise authorized by the Supreme Court.

The time limitations provided under this section and the preceding section shall not apply where special laws or circulars of the Supreme Court provide for a shorter period of trial.

However, any period of delay resulting from a continuance granted by the court *motu proprio*, or on motion of either the accused or his counsel, or the prosecution, if the court granted the continuance on the basis of its findings set forth in the order that the ends of justice is served by taking such action outweigh the best interest of the public and the accused on a speedy trial, shall be deducted.

The trial court may grant continuance, taking into account the following factors:

- (a) Whether or not the failure to grant a continuance in the proceeding would likely make a continuation of such proceeding impossible or result in a miscarriage of justice; and
- (b) Whether or not the case taken as a whole is so novel, unusual and complex, due to the number of accused or the nature of the prosecution, or that it is unreasonable to expect adequate preparation within the periods of time established therein.

In addition, no continuance under section 3(f) of this Rule shall be granted because of congestion of the court's calendar or lack of diligent preparation or failure to obtain available witnesses on the part of the prosecutor.[15]

We further emphasized in *Uy* that "speedy trial" is a relative term and necessarily a flexible concept. In determining whether the right of the accused to a speedy trial was violated, the delay should be considered, in view of the entirety of the proceedings. Indeed, mere mathematical reckoning of the time involved would not suffice as the realities of everyday life must be regarded in judicial proceedings which, after all, do not exist in a vacuum.[16]

Corpuz v. Sandiganbayan[17] is a case originating from exactly the same factual background as the case at bar. Therein petitioners Marialen C. Corpuz and Antonio H. Roman, Sr. were officers of FILSYN Corporation, one of the BOI-registered firms that assigned TCCs to Petron; and were among the accused in Criminal Case No. 25922. They filed a separate Petition for Certiorari before us assailing the Resolutions dated February 4, 2002 of the Sandiganbayan Special Fourth Division and December 12, 2003 of the Sandiganbayan Fourth Division.

We expounded more extensively in *Corpuz* on the right of the accused to a speedy trial and disposition of the case against him, thus:

The right of the accused to a speedy trial and to a speedy disposition of the case against him was designed to prevent the oppression of the citizen by holding criminal prosecution suspended over him for an indefinite time, and to prevent delays in the administration of justice by mandating the courts to proceed with reasonable dispatch in the trial of criminal cases. Such right to a speedy trial and a speedy disposition of a case is violated only when the proceeding is attended by vexatious, capricious and oppressive delays. The inquiry as to whether or not an accused has been denied such right is not susceptible by precise qualification. The concept of a speedy disposition is a relative term and must necessarily be a flexible concept.

While justice is administered with dispatch, the essential ingredient is orderly, expeditious and not mere speed. It cannot be definitely said how long is too long in a system where justice is supposed to be swift, but

deliberate. It is consistent with delays and depends upon circumstances. It secures rights to the accused, but it does not preclude the rights of public justice. Also, it must be borne in mind that the rights given to the accused by the Constitution and the Rules of Court are shields, not weapons; hence, courts are to give meaning to that intent.[18] (Emphases ours.)

We went on to lay down in *Corpuz* the test for determining whether an accused was indeed deprived of his right to a speedy trial and disposition of the case against him:

In determining whether the accused has been deprived of his right to a speedy disposition of the case and to a speedy trial, four factors must be considered: (a) length of delay; (b) the reason for the delay; (c) the defendant's assertion of his right; and (d) prejudice to the defendant. Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.

Delay is a two-edge sword. It is the government that bears the burden of proving its case beyond reasonable doubt. The passage of time may make it difficult or impossible for the government to carry its burden. The Constitution and the Rules do not require impossibilities or extraordinary efforts, diligence or exertion from courts or the prosecutor, nor contemplate that such right shall deprive the State of a reasonable opportunity of fairly prosecuting criminals. As held in *Williams v. United States*, for the government to sustain its right to try the accused despite a delay, it must show two things: (a) that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay; and (b) that there was no more delay than is reasonably attributable to the ordinary processes of justice.

Closely related to the length of delay is the reason or justification of the State for such delay. Different weights should be assigned to different reasons or justifications invoked by the State. For instance, a deliberate attempt to delay the trial in order to hamper or prejudice the defense should be weighted heavily against the State. Also, it is improper for the prosecutor to intentionally delay to gain some tactical advantage over the defendant or to harass or prejudice him. On the other hand, the heavy case load of the prosecution or a missing witness should be weighted less heavily against the State. Corollarily, Section 4, Rule 119 of the Revised Rules of Criminal Procedure enumerates the factors for granting a continuance.[19]

In the Petition at bar, Criminal Case Nos. 25922-25939 were filed on April 10, 2000. Petitioner Jacob was arraigned on June 1, 2000, while petitioner Legarda was arraigned on May 18, 2001; with both petitioners pleading not guilty. Since then, there had been no other significant development in the cases since the prosecution repeatedly requested for deferment or postponement of the scheduled hearings as it awaits the result of the reinvestigation of the Office of the Ombudsman. Judge Nario verbally ordered the dismissal of said cases during the hearing on August 20, 2001. Thus, the criminal cases had been pending for about a year and four months by the time they were dismissed by Justice Nario.

The accused, including petitioners, had consistently asked in open court that the criminal cases be dismissed every time the prosecution moved for a deferment or postponement of the hearings.

The prosecution attributed the delay in the criminal proceedings to: 1) the 23 motions for reinvestigation or reconsideration filed by the accused, which was granted by the Sandiganbayan in its April 17, 2000 Order; and 2) the failure of the Office of the Ombudsman to terminate its reinvestigation and submit its report within the 60-day

period fixed by the said graft court.

Irrefragably, there had been an undue and inordinate delay in the reinvestigation of the cases by the Office of the Ombudsman, which failed to submit its reinvestigation report despite the lapse of the 60-day period set by the Sandiganbayan, and even more than a year thereafter. That there were 23 Motions for Reinvestigation filed is insignificant. It should be stressed that reinvestigation, as the word itself implies, is merely a repeat investigation of the case. It is simply a chance for the Office of the Ombudsman to review and re-evaluate its findings based on the evidence previously submitted by the parties. The Office of the Ombudsman should have expedited the reinvestigation, not only because it was ordered by the Sandiganbayan to submit a report within a period of 60 days, but also because said Office is bound by the Constitution^[20] and Republic Act No. 6770, otherwise known as the Ombudsman Act of 1989,^[21] to act promptly on complaints and cases pending before it.

Nevertheless, while the re-investigation by the Office of the Ombudsman delayed the proceedings in Criminal Case Nos. 25922-25939, the said process could not have been dispensed with as it was undertaken for the protection of the rights of petitioners themselves (and their co-accused) and their rights should not be compromised at the expense of expediency.

In *Corpuz*, we warned against the overzealous or precipitate dismissal of a case that may enable the defendant, who may be guilty, to go free without having been tried, thereby infringing the societal interest in trying people accused of crimes rather than granting them immunization because of legal error.^[22] Earlier, in *People v. Leviste*,^[23] we already stressed that:

[T]he State, like any other litigant, is entitled to its day in court, and to a reasonable opportunity to present its case. A hasty dismissal such as the one in question, instead of unclogging dockets, has actually increased the workload of the justice system as a whole and caused uncalled-for delays in the final resolution of this and other cases. Unwittingly, the precipitate action of the respondent court, instead of easing the burden of the accused, merely prolonged the litigation and ironically enough, unnecessarily delayed the case - in the process, causing the very evil it apparently sought to avoid. Such action does not inspire public confidence in the administration of justice.^[24]

Thus, even though we acknowledge the delay in the criminal proceedings, as well as the prejudice suffered by petitioners and their co-accused by reason thereof, the weighing of interests militate against a finding that petitioners' right to speedy trial and disposition of the cases involving them would have justified the dismissal of Criminal Case Nos. 25922-25939. We agree with the Sandiganbayan Special Fourth Division that Justice Nario's dismissal of the criminal cases was unwarranted under the circumstances, since the State should not be prejudiced and deprived of its right to prosecute the criminal cases simply because of the ineptitude or nonchalance of the Office of the Ombudsman. We reiterate our observations in *Corpuz* that:

There can be no denying the fact that the petitioners, as well as the other accused, was prejudiced by the delay in the reinvestigation of the cases and the submission by the Ombudsman/Special Prosecutor of his report thereon. So was the State. We have balanced the societal interest involved in the cases and the need to give substance to the petitioners' constitutional rights and their quest for justice, and we are convinced that the dismissal of the cases is too drastic a remedy to be accorded to the petitioners. The cloud of suspicion may still linger over the heads of the petitioners by the precipitate dismissal of the cases. We repeat -- the cases involve the so-called tax credit certificates scam and hundreds of millions of pesos allegedly perpetrated by government officials in connivance with private individuals. The People has yet to prove the guilt of the petitioners of the crimes charged beyond reasonable doubt. We agree with the ruling of the Sandiganbayan that before resorting to the extreme sanction of depriving the petitioner a chance to prove its case by dismissing the cases, the Ombudsman/Special Prosecutor should be ordered by the Sandiganbayan under pain of contempt, to explain the delay in the submission of his report on his reinvestigation.^[25]

Furthermore, the Sandiganbayan Special Fourth Division did not abuse its discretion in setting aside Justice Nario's verbal order, which dismissed Criminal Case Nos. 25922-25939, for not only was such order baseless, as we had previously discussed herein; but more importantly, because it is an utter nullity, as we had ruled in Corpuz.

We held in Corpuz that:

In the unanimous Resolution of December 12, 2003, the Sandiganbayan ruled as follows:

In the cases at bar, the dismissal made in open court by the Chairman, which was not reduced in writing, is not a valid dismissal or termination of the cases. This is because the Chairman cannot unilaterally dismiss the same without the approval or consent of the other members of the Division. The Sandiganbayan is a collegiate court and under its internal rules prevailing at the time (Rule XVIII, Section 1(b) of the 1984 Revised Rules of the Sandiganbayan, which is now Section 1(b), Rule VIII of the 2002 Revised Internal Rules of the Sandiganbayan), an order, resolution or judgment, in order to be valid - that is to say, in order to be considered as an official action of the Court itself - must bear the unanimous approval of the members of the division, or in case of lack thereof, by the majority vote of the members of a special division of five.

We agree with the foregoing ratiocination. Section 1, Rule 120 of the Revised Rules of Criminal Procedure, mandates that a judgment must be written in the official language, personally and directly prepared by the judge and signed by him and shall contain clearly and distinctly a statement of the facts and the law upon which it is based. The rule applies to a final order dismissing a criminal case grounded on the violation of the rights of the accused to a speedy trial. A verbal judgment or order of dismissal is a violation of the provision; hence, such order is, in contemplation of law, not in esse, therefore, ineffective. Justice Nario failed to issue a written resolution dismissing the criminal cases for failure of the prosecution to submit its report on the reinvestigation of the cases within the sixty-day period fixed by the graft court. Moreover, the verbal order was rejected by majority vote of the members of the Sandiganbayan Special Division. In fine, there has been no valid and effective order of dismissal of the cases. The Sandiganbayan cannot then be faulted for issuing the assailed resolutions.

Neither are the petitioners entitled to a writ of mandamus to compel the Sandiganbayan to reinstate the cases, considering that the verbal order of Justice Nario as aforestated does not exist at all in contemplation of law.[26] (Emphases ours.)

Given that Justice Nario's verbal order dismissing Criminal Case Nos. 25922-25939 is null and void, and does not exist at all in contemplation of law, it follows that petitioners cannot invoke the constitutional right against double jeopardy.

To substantiate a claim for double jeopardy, the following must be demonstrated:

(1) [A] first jeopardy must have attached prior to the second; (2) the first jeopardy must have been validly terminated; (3) the second jeopardy must be for the same offense, or the second offense includes or is necessarily included in the offense charged in the first information, or is an attempt to commit the same or is a frustration thereof.

And legal jeopardy attaches only: (a) upon a valid indictment; (b) before a competent court; (c) after arraignment; (d) [when] a valid plea [has] been entered; and (e) the case was dismissed or otherwise terminated without the express consent of the accused.[27]

In the instant Petition, legal jeopardy has not yet attached since there is so far no valid dismissal or termination of the criminal cases against petitioners.

Finally, the Sandiganbayan Special Fourth Division did not commit grave abuse of discretion nor erred in not

considering the glaring lack of evidence against petitioners.

As we pointed out in *Rizon v. Desierto*[28]:

Time and again, we have held that a prosecutor does not decide whether there is evidence beyond reasonable doubt of the guilt of the person charged. He merely determines whether there is sufficient ground to engender a well-founded belief that a crime has been committed and that the accused is probably guilty thereof, and should be held for trial. A finding of probable cause, therefore, does not require an inquiry as to whether there is sufficient evidence to secure a conviction. It is enough that the prosecutor believes that the act or omission complained of constitutes the offense charged. A trial is intended precisely for the reception of prosecution evidence in support of the charge. It is the court that is tasked to determine guilt beyond reasonable doubt based on the evidence presented by the parties at the trial on the merits.[29]

Here, there has been no trial yet. Therefore, there has been no occasion yet for the full and exhaustive display of the parties' evidence. The presence or absence of the elements of the crime is evidentiary in nature that shall be passed upon after a full-blown trial on the merits.

WHEREFORE, there being no showing that the impugned Resolutions dated February 4, 2002 of the Sandiganbayan Special Fourth Division and December 12, 2003 of the Sandiganbayan Fourth Division in Criminal Case Nos. 25922-25939 are tainted with grave abuse of discretion amounting to lack or excess of jurisdiction, the instant Petition for Certiorari is DISMISSED for lack of merit.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Peralta,[*] and Perez, JJ., concur.

[*] Per Special Order No. 913 dated November 2, 2010.

[1] Rollo, pp. 54-59; penned by Associate Justice Nicodemo T. Ferrer with Associate Justices Rodolfo G. Palattao and Catalino R. Castañeda, Jr., concurring, and Associate Justices Narciso S. Nario and Raoul V. Victorino, dissenting.

[2] Id. at 47-53.

[3] Rollo, pp. 54-58; issued in Criminal Case Nos. 25911-25915; 25917-25939; and 25983-26016.

[4] Id. at 356; Filsyn Corporation, Dragon Textile Mills, Inc., Southern Textile Mills, Inc., Fiber Technology Corporation, Diamond Knitting Corp., Filstar Textile Industrial Corporation, R.S. Textile Mills, Monte Textile Manufacturing Corporation, Master Colour System Corporation, First Unity Textile Mills, Jantex Philippines, Inc., Unisol Industries & Manufacturing Corporation, Southern Dae Yeong Corporation, Solid Development Corporation, Asia Textile Mills, Inc., Phelps Dodge Philippines, Inc., Alliance Thread Co., Inc., and Kewalram Philippines, Inc.

[5] BIR Form No. 2321.

[6] Rollo, p. 357.

[7] Id. at 357-358.

[8] Id. at 16-25.

[9] Sandiganbayan Record of Criminal Case No. 25922, Volume 1, pp. 318-319.

[10] Id. at 356-364.

[11] Rollo, p. 19.

[12] Sec. 14(2). In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. x x x.

[13] Tan v. People, G.R. No. 173637, April 21, 2009, 586 SCRA 139, 151-152.

[14] G.R. No. 159098, October 27, 2006, 505 SCRA 625.

[15] Id. at 638-639.

[16] Id. at 639-640.

[17] G.R. No. 162214, November 11, 2004, 442 SCRA 294.

[18] Id. at 312-313.

[19] Id. at 313-314.

[20] Sec. 12, Article XI of the 1987 Constitution, reads:

Sec. 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

[21] Section 13 of Republic Act No. 6770, provides:

Sec. 13. Mandate. - The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporation, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people.

[22] Corpuz v. Sandiganbayan, supra note 17 at 322.

[23] 325 Phil. 525 (1996).

[24] Id. at 538.

[25] Corpuz v. Sandiganbayan, supra note 17 at 323.

[26] Id. at 308-309.

[27] People v. Espinosa, 456 Phil. 507, 518 (2003).

[28] 484 Phil. 62 (2004).

[29] Id. at 71.

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