

FRANCISCO S. TATAD, PETITIONER, VS. THE SANDIGANBAYAN, AND THE TANODBAYAN, RESPONDENTS.*G.R. Nos. 72335-39. March 21, 1988*

Ponente: YAP, J.

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In this petition for certiorari and prohibition, with preliminary injunction, dated October 16, 1985, petitioner seeks to annul and set aside the resolution of the Tanodbayan of April 7, 1985, and the resolutions of the Sandiganbayan, dated August 9, 1985, August 12, 1985 and September 17, 1985, and to enjoin the Tanodbayan and the Sandiganbayan from continuing with the trial or any other proceedings in Criminal Cases Nos. 10499, 10500, 10501, 10502 and 10503, all entitled "People of the Philippines versus Francisco S. Tatad."

The petition alleges, among other things, that sometime in October 1974, Antonio de los Reyes, former Head Executive Assistant of the then Department of Public Information (DPI) and Assistant Officer-in-Charge of the Bureau of Broadcasts, filed a formal report with the Legal Panel, Presidential Security Command (PSC), charging petitioner, who was then Secretary and Head of the Department of Public Information, with alleged violations of Republic Act No. 3019, otherwise known as the Anti-Graft and Practices Act. Apparently, no action was taken on said report.

Then, in October 1979, or five years later, it became publicly known that petitioner had submitted his resignation as Minister of Public Information, and two months after, or on December 12, 1979, Antonio de los Reyes filed a complaint with the Tanodbayan (TBP Case No. 8005-16-07) against the petitioner, accusing him of graft and corrupt practices in the conduct of his office as then Secretary of Public Information. The complaint repeated the charges embodied in the previous report filed by complainant before the Legal Panel, Presidential Security Command (PSC).

On January 26, 1980, the resignation of petitioner was accepted by President Ferdinand E. Marcos. On April 1, 1980, the Tanodbayan referred the complaint of Antonio de los Reyes to the Criminal Investigation Service (CIS) for fact-finding investigation. On June 16, 1980, Roberto P. Dizon, CIS Investigator of the Investigation and Legal Panel, PSC, submitted his Investigation Report, with the following conclusion, ". . . evidence gathered indicates that former Min. TATAD have violated Sec. 3 (e) and Sec. 7 of RA 3019, respectively. On the other hand, Mr. ANTONIO L. CANTERO is also liable under Sec. 5 of RA 3019," and recommended appropriate legal action on the matter.

Petitioner moved to dismiss the complaint against him, claiming immunity from prosecution by virtue of PD 1791, but the motion was denied on July 26, 1982 and his motion for reconsideration was also denied on October 5, 1982. On October 25, 1982, all affidavits and counter-affidavits were with the Tanodbayan for final disposition. On July 5, 1985, the Tanodbayan approved a resolution, dated April 1, 1985, prepared by Special Prosecutor Marina Buzon, recommending that the following informations be filed against petitioner before the Sandiganbayan, to wit:

“1.

Violation of Section 3, paragraph (e) of R.A. 3019 for giving D' Group, a private corporation controlled by his brother-in-law, unwarranted benefits, advantage or preference in the discharge of his official functions through manifest partiality and evident bad faith;

“2.

Violation of Section 3, paragraph (b) of R.A. 3019 for receiving a check of P125,000.00 from Roberto Vallar, President/General Manager of Amity Trading Corporation as consideration for the release of a check of P588,000.00 to said corporation for printing services rendered for the Constitutional Convention Referendum in 1973;

3.

Violation of Section 7 of R.A. 3019 on three (3) counts for his failure to file his Statement of Assets and Liabilities for the calendar years 1973, 1976 and 1978.”

Accordingly, on June 12, 1985, the following informations were filed with the Sandiganbayan against the petitioner:

Re: Criminal Case No. 10499

“The undersigned Tanodbayan Special Prosecutor accuses Francisco S. Tatad with Violation of Section 3, paragraph (b) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, committed as follows:

That on or about the 16th day of July, 1973 in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then the Secretary of the Department (now Ministry) of Public Information, did then and there, wilfully and unlawfully demand and receive a check for P125,000.00 from Roberto Vallar, President/General Manager of Amity Trading Corporation as consideration for the payment to said Corporation of the sum of P588,000.00, for printing services rendered for the Constitutional Convention Referendum of January, 1973, wherein the accused in his official capacity had to intervene under the law in the release of the funds for said project.

That the complaint against the above-named accused was filed with the Office of the Tanodbayan on May 16, 1980.

CONTRARY TO LAW.”

Re: Criminal Case No. 10500

“The undersigned Tanodbayan Special Prosecutor accuses FRANCISCO S. TATAD with Violation of Section 7 of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, committed as follows:

That on or about the 31st day of January, 1974 in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer being then the Secretary of the Department (now Ministry) of Public Information, did then and there wilfully and unlawfully fail to prepare and file with the Office of the President, a true detailed and sworn statement of his assets and liabilities, as of December 31, 1973, including a statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year (1973), as required of

every public officer.

That the complaint against the above-named accused was filed with the Office of the Tanodbayan on June 20, 1980.

CONTRARY TO LAW."

Re: Criminal Case No. 10501

"The undersigned Tanodbayan Special Prosecutor accuses FRANCISCO S. TATAD with Violation of Section 3, paragraph (e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, committed as follows:

That on or about the month of May, 1975 and for sometime prior thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer being then the Secretary of the Department (now Ministry) of Public Information, did then and there, wilfully and unlawfully give Marketing Communication Group, Inc. (D' Group), a private corporation of which his brother-in-law, Antonio L. Cantero, is the President, unwarranted benefits, advantage or preference in the discharge of his official functions, through manifest partiality and evident bad faith, by allowing the transfer of D' GROUP of the funds, assets and ownership of South East Asia Research Corporation (SEARCH), allegedly a private corporation registered with the Securities and Exchange Corporation on June 4, 1973, but whose organization and operating expenses came from the confidential funds of the Department of Public Information as it was organized to undertake research, projects for the government, without requiring an accounting of the funds advanced by the Department of Public Information and reimbursement thereof by D' GROUP, to the damage and prejudice of the government.

That the complaint against the above-named accused was filed with the Office of the Tanodbayan on May 16, 1980.

CONTRARY TO LAW."

Re: Criminal Case No. 10502

"The undersigned Tanodbayan Special Prosecutor accuses FRANCISCO S. TATAD with Violation of Section 7 of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, committed as follows:

That on or about the 31st day of January, 1977, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer being then the Secretary of the Department (now Ministry) of Public Information, did then and there wilfully and unlawfully fail to prepare and file with the Office of the President, a true and sworn statement of his assets and liabilities, as of December 31, 1976, including a statement of the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year (1976), as required of every public officer.

That the complaint against the above-named accused was filed with the Office of the Tanodbayan on June 20, 1980.

CONTRARY TO LAW."

Re: Criminal Case No. 10503

"The undersigned Tanodbayan Special Prosecutor accuses FRANCISCO S. TATAD with Violation of Section 7 of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, committed as follows:

That on or about the 15th day of April, 1979, in the City of Manila, Philippines, and within the jurisdiction of

this Honorable Court, the above-named accused, a public officer being then the Secretary of the Department (now Ministry) of Public Information, did then and there wilfully and unlawfully fail to prepare and file with the Office of the President, a true, detailed and sworn statement of his assets and liabilities, as of December 31, 1978, including a statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year (1978), as required of every public officer.

That the complaint against the above-named accused was filed with the Office of the Tanodbayan on June 20, 1980.

CONTRARY TO LAW."

On July 22, 1985, petitioner filed with the Sandiganbayan a consolidated motion to quash the informations on the following grounds:

"1.

The prosecution deprived accused-movant of due process of law and of the right to a speedy disposition of the cases filed against him, amounting to loss of jurisdiction to file the informations;

"2.

Prescription of the offenses charged in Crim. Case Nos. 10499, 10500 and 10501;

"3.

The facts charged in Criminal Case No. 10500 (for failure to file Statement of Assets and Liabilities for the year 1973) do not constitute an offense;

"4. No prima facie case against the accused-movant exists in Criminal Cases Nos. 10500, 10502 and 10503;

"5. No prima facie case against the accused-movant exists in Criminal Case No. 10199 for Violation of Sec. 3, par. (b) of R.A. 3019, as amended;

"6. No prima facie case against the accused-movant exists in Criminal Case No. 10501 (for Violation of Sec. 3 (e) of R.A. 3019, as amended."

On July 26, 1985, the Tanodbayan filed its opposition to petitioner's consolidated motion to quash, stating therein in particular that there were only two grounds in said motion that needed refutation, namely:

- The offense charged in Criminal Cases Nos. 10499, 10500 and 10501, have already prescribed and criminal liability is extinguished; and
- The facts charged in the information (Criminal Case No. 10500 - For failure to file Statement of Assets and Liabilities for the year 1973) do not constitute an offense.

On the issue of prescription, Tanodbayan citing the case of *Francisco vs. Court of Appeals*, 122 SCRA 538, contended that the filing of the complaint or denuncia in the fiscal's office interrupts the period of prescription.

Since the above-numbered cases were filed with the Office of the Tanodbayan in 1980 and the alleged offenses were committed on July 16, 1973, January 31, 1974 and in May 1975, respectively, although the charges were actually filed in Court only on July 9, 1985, the Tanodbayan has still the right to prosecute the same, it appearing that the ten (10) year prescriptive period has not yet lapsed. Moreover, Tanodbayan pointed out that a law such as Batas Pambansa Blg. 195, extending the period of limitation with respect to criminal prosecution, unless the right to acquittal has been acquired, is constitutional.

Tanodbayan likewise said that the requirement for the filing of the Statement of Assets and Liabilities in P.D. 379 is separate and distinct from that required pursuant to the provisions of the Anti-Graft Law, as amended. For while the former requires "any natural or juridical person having gross assets of P50,000.00 or more x x x" to submit a statement of assets and liabilities "x x x regardless of the networth", the mandate in the latter law is for ALL government employees and officials to submit a statement of assets and liabilities. Hence, the prosecution under these two laws are separate and distinct from each other. Tanodbayan also explained that delay in the conduct of preliminary investigation does not impair the validity of the informations filed and that neither will it render said informations defective. Finally, Tanodbayan added that P.D. 911, the law which governs preliminary investigations is merely directory insofar as it fixes a period of ten (10) days from its termination to resolve the preliminary investigation.

On August 9, 1985, the Sandiganbayan rendered its challenged resolution denying petitioner's motion to quash, the dispositive portion of which reads:

"WHEREFORE, prescinding therefrom, We find, and so hold, that the accused's "Consolidated Motion to Quash" should be as it is hereby, denied for lack of merit. Conformably to Rule 117, Section 4 of the 1985 Rules on Criminal Procedure, the defect in the information in Criminal Case No. 10500 being one which could be cured by amendment, the Tanodbayan is hereby directed to amend said information to change the date of the alleged commission of the offense therein charged from January 31, 1974 to September 30, 1974 within five (5) days from receipt hereof.

SO ORDERED."

On August 10, 1985, in compliance with the Sandiganbayan's resolution of August 8, 1985, the Tanodbayan filed an amended information in Criminal Case No. 10500, changing the date of the commission of the offense to September 30, 1974.

On August 30, 1985, petitioners filed a consolidated motion for reconsideration which was denied by the Sandiganbayan on September 17, 1985. Hence, petitioner filed this petition on October 16, 1985 assailing the denial of his motion to quash. On October 22, 1985, the Court, without giving due course to the petition, resolved to require the respondents to comment thereon and issued a temporary restraining order effective immediately and continuing until further orders of the Court, enjoining the respondents Sandiganbayan and Tanodbayan from continuing with the trial and other proceedings in Criminal Cases Nos. 10499, 10500, 10501, 10502 and 10503. In compliance with said resolution, the respondents, through Solicitor General Estelito P. Mendoza, filed their comment on January 6, 1986.

On April 10, 1986, the Court required the parties to move in the premises considering the supervening events, including the change of administration that had transpired, and the provisions of Sec. 18, Rule 3 of the Rules of Court insofar as the public respondents were concerned, which requires the successor official to state whether or not he maintains the action or position taken by his predecessor in office. On June 20, 1986, the new Tanodbayan manifested that since "the charges are not political offenses and they have no political bearing whatsoever", he had no alternative but to pursue the cases against the petitioner, should the Court resolve to deny the petition; that

in any event, petitioner is not precluded from pursuing any other legal remedies under the law, such as the filing of a motion for re-evaluation of his cases with the Tanodbayan. The new Solicitor General filed a manifestation dated June 27, 1986 in which he concurred with the position taken by the new Tanodbayan.

Pursuant to the above manifestation of the new Tanodbayan, the petitioner filed a motion for re-evaluation with the Office of the Tanodbayan, dated July 21, 1986, praying that the cases in question be re-evaluated and the informations be quashed. The Court is not aware of what action, if any, has been taken thereon by the Tanodbayan. However, be that as it may, the filing of the aforesaid motion for re-evaluation with the Tanodbayan has no material bearing insofar as the duty of this Court to resolve the issues raised in the instant petition is concerned.

Petitioner has raised the following issues in his petition:

- Whether the prosecution's long delay in the filing of these cases with the Sandiganbayan had deprived petitioner of his constitutional right to due process and the right to a speedy disposition of the cases against him.
- Whether the crimes charged has already prescribed.
- Whether there is a discriminatory prosecution of the petitioner by the Tanodbayan.
- Whether Sandiganbayan should have ruled on the question of amnesty raised by the petitioner.
- Whether petitioner's contention of the supposed lack or non-existence of prima facie evidence to sustain the filing of the cases at bar justifies the quashal of the questioned informations.

Petitioner claims that the Tanodbayan culpably violated the constitutional mandate of "due process" and "speedy disposition of cases" in unduly prolonging the termination of the preliminary investigation and in filing the corresponding informations only after more than a decade from the alleged commission of the purported offenses, which amounted to loss of jurisdiction and authority to file the informations. The respondent Sandiganbayan dismissed petitioner's contention, saying that the applicability of the authorities cited by him to the case at bar was "nebulous"; that it would be premature for the court to grant the "radical relief" prayed for by petitioner at this stage of the proceeding; that the mere allegations of "undue delay" do not suffice to justify acceptance thereof without any showing "as to the supposed lack or omission of any alleged procedural right granted or allowed to the respondent accused by law or administrative fiat" or in the absence of "indubitable proof of any irregularity or abuse" committed by the Tanodbayan in the conduct of the preliminary investigation; that such facts and circumstances as would establish petitioner's claim of denial of due process and other constitutionally guaranteed rights could be presented and more fully threshed out during the trial. Said the Sandiganbayan:

"That there was a hiatus in the proceedings between the alleged termination of the proceedings before the investigating fiscal on October 25, 1982 and its resolution on April 17, 1985 could have been due to certain factors which do not appear on record and which both parties did not bother to explain or elaborate upon in detail. It could even be logically inferred that the delay may be due to a painstaking and gruelling scrutiny by the Tanodbayan as to whether the evidence presented during the preliminary investigation merited prosecution of a former high-ranking government official. In this respect, We are of the considered opinion that the provision of Pres. Decree No. 911, as amended, regarding the resolution of a complaint by the Tanodbayan within ten (10) days from termination of the preliminary investigation is merely "directory" in nature, in view of the nature and extent of the proceedings in said office.

The statutory grounds for the quashal of an information are clearly set forth in concise language in Rule 117, Section 2, of the 1985 Rules on Criminal Procedure and no other grounds for quashal may be entertained by the Court prior to arraignment inasmuch as it would be itself remiss in the performance of its official functions

and subject to the charge that it has gravely abused its discretion. Such facts and circumstances which could otherwise justify the dismissal of the case, such as failure on the part of the prosecution to comply with due process or any other constitutionally-guaranteed rights may be presented during the trial wherein evidence for and against the issue involved may be fully threshed out and considered. Regrettably, the accused herein attempts to have the Court grant such a radical relief during this stage of the proceedings which precludes a precocious or summary evaluation of insufficient evidence in support thereof."

This brings us to the crux of the issue at hand. Was petitioner deprived of his constitutional right to due process and the right to "speedy disposition" of the cases against him as guaranteed by the Constitution? May the court, ostrich-like, bury its head in the sand, as it were, at the initial stage of the proceedings and wait to resolve the issue only after the trial?

In a number of cases,[1] this Court has not hesitated to grant the so-called "radical relief" and to spare the accused from undergoing the rigors and expense of a full-blown trial where it is clear that he has been deprived of due process of law or other constitutionally guaranteed rights. Of course, it goes without saying that in the application of the doctrine enunciated in those cases, particular regard must be taken of the facts and circumstances peculiar to each case.

Coming to the case at bar, the following relevant facts appear on record and are largely undisputed. The complainant, Antonio de los Reyes, originally filed what he termed "a report" with the Legal Panel of the Presidential Security Command (PSC) on October 1974, containing charges of alleged violations of Rep. Act No. 3019 against then Secretary of Public Information Francisco S. Tatad. The "report" was made to "sleep" in the office of the PSC, until the end of 1979 when it became widely known that Secretary (then Minister) Tatad had a falling out with President Marcos and had resigned from the Cabinet. On December 12, 1979, the 1974 complaint was resurrected in the form of a formal complaint filed with the Tanodbayan and docketed as TBP Case No. 8005-16-07. The Tanodbayan acted on the complaint on April 1, 1980 - which was around two months after petitioner Tatad's resignation was accepted by Pres. Marcos - by referring the complaint to the CIS, Presidential Security Command, for investigation and report. On June 16, 1980, the CIS report was submitted to the Tanodbayan, recommending the filing of charges for graft and corrupt practices against former Minister Tatad and Antonio L. Cantero. By October 25, 1982, all affidavits and counter-affidavits were in and the case was ready for disposition by the Tanodbayan. However, it was only on July 5, 1985 that a resolution was approved by the Tanodbayan, recommending the filing of the corresponding criminal informations against the accused Francisco Tatad. Five (5) criminal informations were filed with the Sandiganbayan on June 12, 1985, all against petitioner Tatad alone.

A painstaking review of the facts can not but leave the impression that political motivations played a vital role in activating and propelling the prosecutorial process in this case. Firstly, the complaint came to life, as it were, only after petitioner Tatad had a falling out with President Marcos. Secondly, departing from established procedures prescribed by law for preliminary investigation, which require the submission of affidavits and counter-affidavits by the complainant and the respondent and their witnesses, the Tanodbayan referred the complaint to the Presidential Security Command for fact-finding investigation and report.

We find such blatant departure from the established procedure as a dubious, but revealing attempt to involve an office directly under the President in the prosecutorial process, lending credence to the suspicion that the prosecution was politically motivated. We cannot emphasize too strongly that prosecutors should not allow, and should avoid, giving the impression that their noble office is being used or prostituted, wittingly or unwittingly, for political ends or other purposes alien to, or subversive of, the basic and fundamental objective of serving the interest of justice evenhandedly, without fear or favor to any and all litigants alike, whether rich or poor, weak or

strong, powerless or mighty. Only by strict adherence to the established procedure may the public's perception of the impartiality of the prosecutor be enhanced.

Moreover, the long delay in resolving the case under preliminary investigation can not be justified on the basis of the facts on record. The law (P.D. No. 911) prescribes a ten-day period for the prosecutor to resolve a case under preliminary investigation by him from its termination. While we agree with the respondent court that this period fixed by law is merely "directory", yet, on the other hand, it can not be disregarded or ignored completely, with absolute impunity. It certainly can not be assumed that the law has included a provision that is deliberately intended to become meaningless and to be treated as a dead letter.

We find the long delay in the termination of the preliminary investigation by the Tanodbayan in the instant case to be violative of the constitutional right of the accused to due process. Substantial adherence to the requirements of the law governing the conduct of preliminary investigation, including substantial compliance with the time limitation prescribed by the law for the resolution of the case by the prosecutor, is part of the procedural due process constitutionally guaranteed by the fundamental law. Not only under the broad umbrella of the due process clause, but under the constitutional guarantee of "speedy disposition" of cases as embodied in Section 16 of the Bill of Rights (both in the 1973 and the 1987 Constitutions), the inordinate delay is violative of the petitioner's constitutional rights. A delay of close to three (3) years can not be deemed reasonable or justifiable in the light of the circumstance obtaining in the case at bar. We are not impressed by the attempt of the Sandiganbayan to sanitize the long delay by indulging in the speculative assumption that "the delay may be due to a painstaking and gruelling scrutiny by the Tanodbayan as to whether the evidence presented during the preliminary investigation merited prosecution of a former high-ranking government official." In the first place, such a statement suggests a double standard of treatment, which must be emphatically rejected. Secondly, three out of the five charges against the petitioner were for his alleged failure to file his sworn statement of assets and liability required by Republic Act No. 3019, which certainly did not involve complicated legal and factual issues necessitating such "painstaking and gruelling scrutiny" as would justify a delay of almost three years in terminating the preliminary investigation. The other two charges relating to alleged bribery and alleged giving of unwarranted benefits to a relative, while presenting more substantial legal and factual issues, certainly do not warrant or justify the period of three years, which it took the Tanodbayan to resolve the case.

It has been suggested that the long delay in terminating the preliminary investigation should not be deemed fatal, for even the complete absence of a preliminary investigation does not warrant dismissal of the information. True - but the absence of a preliminary investigation can be corrected by giving the accused such investigation. But an undue delay in the conduct of a preliminary investigation can not be corrected, for until now, man has not yet invented a device for setting back time.

After a careful review of the facts and circumstances of this case, we are constrained to hold that the inordinate delay in terminating the preliminary investigation and filing the information in the instant case is violative of the constitutionally guaranteed right of the petitioner to due process and to a speedy disposition of the cases against him. Accordingly, the informations in Criminal Cases Nos. 10499, 10500, 10501, 10502 and 10503 should be dismissed. In view of the foregoing, we find it unnecessary to rule on the other issues raised by petitioner.

ACCORDINGLY, the Court Resolved to give due course to the petition and to grant the same. The informations in Criminal Cases Nos. 10499, 10500, 10501, 10502 and 10503, entitled "People of the Philippines vs. Francisco S. Tatad" are hereby DISMISSED. The temporary restraining order issued on October 22, 1985 is made permanent.

SO ORDERED.

Teehankee, C.J., Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, and Aquino, JJ., concur.

[1] Salonga vs. Cruz Pano, et al., 134 SCRA 438; Mean vs. Argel, 115 SCRA 256; Yap vs. Lutero, 105 Phil. 3007; People vs. Zulueta, 89 Phil. 880.

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