

THIRD DIVISION

[G.R. Nos. 223869-960, February 13, 2019]

**NEPTALI P. SALCEDO, PETITIONER, V. THE HONORABLE THIRD
DIVISION OF THE SANDIGANBAYAN AND PEOPLE OF THE
PHILIPPINES, RESPONDENTS.**

D E C I S I O N

PERALTA, J.:

Before this Court is a petition for *certiorari* filed by petitioner Neptali P. Salcedo (*Salcedo*) seeking to reverse and set aside the January 23, 2015^[1] and the February 12, 2016^[2] Resolutions issued by the Special Third Division of the Sandiganbayan (*Sandiganbayan*) in Criminal Cases Nos. SB-13-CRM-0001 to 0046 and SB-13-CRM-0047 to 0092.

The antecedent facts are as follows:

Culled from the record, it appears that on October 8, 2007, then Congressman Neil C. Tupas, Jr. (*Cong. Tupas, Jr.*) of the Fifth District of Iloilo requested the Commission on Audit (COA) to conduct an audit examination on the implementation of the various projects of the Municipality of Sara, Iloilo. Acting on the said request, the COA created a special audit team sometime in July 2008 that later on conducted a seven (7)-day audit investigation focusing on several priority projects of the Municipality of Sara funded by the Provincial Government of Iloilo and the Office of Senator Franklin Drilon. On July 17, 2008, the COA special audit team issued several Audit Observation Memoranda and directed petitioner Salcedo, then the incumbent Municipal Mayor of the Municipality of Sara, to submit his comment thereon. On September 30, 2008, the Office of the Mayor of the Municipality of Sara submitted the required comment to the COA special audit team.

On October 14, 2008, Cong. Tupas, Jr. filed three separate complaints affidavits charging petitioner Salcedo and other officials of the Municipality of Sara with violations of Section 3(g) of Republic Act No. 3019 (*R.A. No. 3019*), otherwise known as the *Anti-Graft and Corrupt Practices Act*, before the Office of the Ombudsman-Visayas (*OMB-Visayas*), Regional Office, Iloilo, arising from the alleged illegal releases of government funds. The complaints quoted portions of the findings of the COA audit team contained in its special audit report. These complaints were docketed as CPL-C-08-1893, CPL-C-08-1894 and CPL-C-08-1895 (*CPLS*). Subsequently, the OMB-Visayas requested from the COA the submission of the pertinent-audit report so it can properly evaluate the recommendations of the special audit team and validate the allegations of Cong. Tupas, Jr.

In January 2009, the COA submitted to the OMB-Visayas its audit report, together with a joint affidavit executed by the special audit team. The relevant findings of the COA are as follows:

Labor payrolls amounting to a total of P1,834,400.00 were deemed to be of doubtful validity due to the following occurrences; (i) similarity in the signatures of the supposed laborers who worked on the projects; (ii) time roll portions were pasted over once or twice with another time roll; (iii) certain entries like name of project and period covered were written over correction fluid; and (iv) lack of signatures to signify receipt of wages by the concerned laborers.^[3]

According to the COA, the irregularities in the disbursement of government funds can be readily observed from the face of the payrolls and/or the supporting documents for each project which strongly suggest that the local government officials involved should be held criminally liable.

Thereafter, the OMB-Visayas issued a Consolidated Final Evaluation, dated July 17, 2009, upgrading the CPLs to criminal and administrative cases which were docketed as OMB-V-C-09-0284-1 and OMB-V-A-09-0284-2, respectively. On October 28, 2009, the OMB-Visayas issued another Evaluation Report directing that each COA finding be docketed separately as each dealt with a set of circumstances different from the others to attain an efficient and speedy investigation. Later, the OMB-Visayas upgraded anew the complaints into six (6) criminal cases. It concurred with the findings of the COA and recommended that criminal cases for Malversation of Public Funds through Falsification of Public Documents and Violation of Section 3(e) of R.A. No. 3019 be filed against the following officials of the Municipality of Sara, Iloilo, namely: (1) Municipal Mayor Salcedo, (2) Municipal Treasurer Edna A. Pacrim (*Pacrim*) and (3) Municipal Engineer Roel C. Salcedo (*Roel*). One of these criminal cases was docketed as OMB-V-C-09-0392-K which gave rise to the criminal Informations subject of the present petition.

The OMB-Visayas directed the accused to file their counter-affidavits and submit controverting evidence. Instead of filing their counter-affidavits, the three accused adopted their Comment to the Audit Observation Memorandum Ref. No. 411-001-2008, dated May 12, 2008, which they previously submitted during the COA audit. Attached to the said Comment are the joint affidavits executed by the alleged laborers who attested that they worked at the various projects, confirmed to have signed the payrolls, and received their respective wages. Also appended was the affidavit of the Municipal Engineer, who explained the alterations and superimpositions in the time books and payrolls.

After issues had been joined, the OMB-Visayas issued a Resolution dated March 11, 2011, finding probable cause against petitioner Salcedo, Pacrim and Roel, and recommended their indictment for thirty (30) counts of Malversation of Public Funds through Falsification of Public Documents and one (1) count for Violation of Section 3(e) of R.A. No. 3019. Said Resolution was approved by then Acting Ombudsman Orlando C. Casimiro on May 30, 2011.

On July 5, 2011, Salcedo and his co-respondents filed a Motion for Reconsideration dated June 29, 2011, praying for the dismissal of the complaints against them on the ground of lack of legal and factual basis and for being imperfect or premature. Before acting on the said motion for reconsideration, however, the OMB-Visayas issued an Amended Resolution^[4] dated December 8, 2011, modifying its March 11, 2011 Resolution by charging each of the accused with forty-six (46) counts of Malversation of Public Funds through Falsification of Public Documents and another forty-six (46) counts for Violation of Section 3(e) of R.A. No. 3019. The Amended

Resolution was approved by then Ombudsman Conchita Carpio Morales on December 5, 2012.

Consequently, the corresponding ninety-two (92) Informations, all dated December 8, 2011, were filed before the Third Division of the Sandiganbayan on January 3, 2013, which were docketed therein as Criminal Cases Nos. SB-13-CRM-0001 to 0046 (46 counts of Violation of Sec. 3(e) of R.A. No. 3019) and Criminal Case Nos. SB-13-CRM-0047 to 0092 (46 counts of Malversation through Falsification of Public Documents). Since almost all of the Informations for Malversation of Public Funds through Falsification of Public Documents, except the Information docketed as Criminal Case No. SB-13-CRM-0063, involve the amounts higher than P22,000.00, a bail of Eighty Thousand Pesos (P80,000.00) was recommended to each accused for their provisional liberty.

On February 25, 2013, petitioner Salcedo filed a Motion for Reconsideration of the March 11, 2011 Resolution, but the same was denied by the OMB-Visayas in its April 12, 2013 Order.^[5] Salcedo then posted bail sometime in September 2013. Thereafter, Salcedo filed a Motion to Quash dated March 20, 2014, anchored on the ground that the allegations in all the Informations do not constitute the respective offenses charged therein. Petitioner also pointed out that the ninety-two Informations contradicted the findings of the OMB-Visayas that he allegedly falsified the time books and payrolls for thirty (30) projects. The prosecution refuted Salcedo's claim in its Opposition dated May 14, 2014. In the meantime, Roel and Pacrim filed a Motion for Reduction of Bail.

On April 30, 2014, the prosecution filed a Manifestation with Omnibus Motion dated April 28, 2014, seeking for the withdrawal of the Informations for malversation through falsification docketed as Criminal Cases Nos. SB-13-CRM-0047 to 0062 and 0064 to 0092 and the admission of Amended Informations. The amendment sought in each Information was for the substitution of the phrase "*NO BAIL RECOMMENDED*" to the original "*BAIL BOND RECOMMENDED: P80,000.00 (each)*." In addition, the prosecution prayed for the cancellation of Salcedo's surety bond in Criminal Case Nos. SB-13-CRM-0047 to 0092, and for the denial of the Motion for Reduction of Bail filed by Roel and Pacrim.

On January 23, 2015, the Sandiganbayan issued its first assailed Resolution denying Salcedo's Motion to Quash the Informations and granted the prosecution's prayer for the admission of the Amended Informations which reflected the phrase "*NO BAIL RECOMMENDED*" in the malversation through falsification cases. The *fallo* of the said Resolution provides:

WHEREFORE, premises considered, the Court hereby:

1. PARTIALLY GRANTS the prosecution's Manifestation with Omnibus Motion dated April 28, 2014. Accordingly, except for Case No. SB-13-CRM-0063, the Amended Informations in Cases Nos. SB-13-CRM-0047 to 0062 and 0064 to 0092 are admitted and the surety bond posted by accused Neptali Salcedo is cancelled. Accused Neptali Salcedo, however, is allowed to post bail in the reduced amount of P40,000.00 in Case No. SB-13-CRM-0063;
2. PARTIALLY GRANTS accused Roel Salcedo and Edna Pacrim's Motion for Reduction of Bail dated March 20, 2014 insofar as Cases Nos. SB-13-CRM-0001 to 0046 and in Case No. SB-13-CRM-0063 are concerned.

Accordingly, accused Roel Salcedo and Edna Pacrim are allowed to post bail in the reduced amount of P15,000.00 for each count of violation of Section 3(e) of Republic Act No. 3019 and the reduced amount of P20,000.00 for malversation through falsification of public document in Case No. SB-13-CRM-0063. THE SAME TO BE PAID IN CASH.

3. DENIED accused Neptali Salcedo's Motion to Quash dated March 20, 2014 for lack of merit. Let warrants of arrest be issued against accused Neptali Salcedo, Edna Pacrim and Roel Salcedo in Cases Nos. SB-13-CRM-0047 to 0092.

SO ORDERED.^[6]

According to the Sandiganbayan, all the Informations contained the requisite factual averments constituting the essential elements of the crime charge. It ruled that it is not material whether ninety-two or thirty Informations should be filed, in the determination of whether the Informations should be quashed on the ground that the allegations do not constitute an offense. Also, it held that the recommendation of no bail for Criminal Cases Nos. SB-13-CRM-0047 to 0062 and 0064 to 0092 is proper since the complex crime of Malversation through Falsification of Public Documents carries with it the penalty of *reclusion perpetua* where the amount allegedly malversed is greater than P22,000.00 under Article 217, paragraph 4 in relation to Article 48 of the Revised Penal Code. It, likewise, took into consideration the 2000 Bail Bond Guide of the Department of Justice where it was provided, among others, that no bail shall be recommended for the crime of malversation through falsification if the amount involved is P22,000.00 and higher.

In the light of the foregoing pronouncements, the Sandiganbayan ordered the cancellation of the surety bond posted by Salcedo in Criminal Cases Nos. SB-13-CRM-0047 to 0062 and 0064 to 0092, but he was allowed to post bail in the amount of P40,000.00 for Criminal Case No. SB-13-CRM-0063 as the amount allegedly malversed therein is only P20,000.00. Meanwhile, the Sandiganbayan reduced the amount of bail to be posted by Roel and Pacrim to one-half of the bail recommended in Criminal Cases Nos. SB-13-CRM-0001 to 0046, and the two were allowed to post bail fixed at P20,000.00 for Criminal Case No. SB-13-CRM-0063. Their motion for reduction of bail in Criminal Cases Nos. SB-13-CRM-0047 to 0062 and 0064 to 0092 was denied by the anti-graft court because the same allegedly involved a non-bailable offense.

Thereafter, Salcedo filed an Urgent Motion for Reconsideration dated February 17, 2015, questioning the admission of the Amended Informations for Criminal Cases Nos. SB-13-CRM-0047 to 0062 and 0064 to 0092 on the ground that inordinate delay attended the conduct of the preliminary investigation of his alleged crimes, in violation of his constitutional right to speedy disposition of cases. Further, he argued anew that the allegations in the Informations were insufficient to indict him of the crimes of Violation of Section 3(e) of R.A. No. 3019, as well as the complex crime of Malversation through Falsification of Public Documents. He insisted that his mere act of signing the time books and payrolls could not be considered as a prohibited act that would satisfy one of the elements of Violation of Section 3(e) of R.A. No. 3019. Also, he again contended that the Informations for malversation through falsification did not allege that falsification is a necessary means of committing the malversation. Petitioner averred that the penalty for malversation through falsification is not *reclusion perpetua* but *reclusion temporal* in its maximum period

to *reclusion perpetua* and thus, he should be allowed to post bail in Criminal Cases Nos. SB-13-CRM-0047 to 0062 and 0064 to 0092.

On the other hand, Roel and Pacrim filed an Omnibus Motion insisting that they should be allowed to post bail for Criminal Case Nos. SB-13-CRM- 0047 to 0092 because malversation through falsification is a bailable offense and it is not one of the heinous crimes enumerated in Republic Act No. 7659. By way of an alternative prayer, Roel and Pacrim sought for the dismissal of the cases against them on the ground of violation of their right to due process and speedy disposition of cases.

On February 12, 2016, the Sandiganbayan issued its second assailed Resolution, the dispositive portion of which states:

WHEREFORE, the Court denies the following motions for lack of merit and/or for being *pro forma*:

1. Urgent Motion for Reconsideration dated February 17, 2015 filed by accused Neptali Salcedo; and
2. Omnibus Motion dated February 23, 2015 filed by accused Roel Salcedo and Edna Pacrim.

SO ORDERED.^[7]

The Sandiganbayan observed that except for the allegation of violation of their right to speedy disposition of cases, all the other disquisitions and arguments advanced by petitioner Salcedo, Roel and Pacrim in their respective motions for reconsideration were mere reiterations of those which it had already considered and passed upon through its January 23, 2015 Resolution. It held that there was no violation of the accused's right to speedy disposition of cases because on the basis of the facts and circumstances surrounding the preliminary investigation, a reasonable delay was expected of the OMB-Visayas. It pointed out that the accused did not invoke their right to speedy disposition of cases before the OMB-Visayas but only did so after the filing of the Informations. Moreover, the anti-graft court declared that there was no showing of any deliberate attempt to delay the proceedings before the OMB-Visayas. Lastly, the Sandiganbayan ruled that the specifics sought by Salcedo to be alleged in the Amended Informations are evidentiary in nature and are matters of defense which Salcedo may present during trial on the merits.

Unsatisfied, petitioner Salcedo filed an Urgent Motion to Set Aside with Motion to Reinstate Bail dated February 23, 2016, before the Sandiganbayan. Citing the ruling in *People v. Valdez*,^[8] Salcedo prayed for the setting aside of the no bail recommendation in the Informations for Criminal Cases Nos. SB-13-CRM-0047 to 0062 and 0064 to 0092 and that he would be allowed to post bail. Petitioner, likewise, sought for the reinstatement of the surety bond he previously posted.

Thereafter, Salcedo filed, on April 27, 2016, the present petition for *certiorari* ascribing grave abuse of discretion on the part of the Sandiganbayan in issuing the January 23, 2015 and February 12, 2016 Resolutions. In support of his petition, Salcedo raised the following issues:

1. Whether or not the Honorable Third Division of the Sandiganbayan gravely abused its discretion in issuing the questioned Resolutions with respect to the