

## FIRST DIVISION

[ G.R. No. 109271, March 14, 2000 ]

**RICARDO CASTILLO, DEMETRIO CABISON JR., AND RODOLFO AGDEPPA, PETITIONERS, VS. HONORABLE SANDIGANBAYAN (SECOND DIVISION), AND PEOPLE OF THE PHILIPPINES, REPRESENTED BY HONORABLE CONRADO VASQUEZ, OMBUDSMAN, RESPONDENTS.**

### **DECISION**

**YNARES-SANTIAGO, J.:**

Before this Court is a Petition for Certiorari assailing two Orders dated February 18, 1993<sup>[1]</sup> and March 8, 1993<sup>[2]</sup> of the Sandiganbayan's Second Division denying petitioners' Motion to Dismiss and Motion for Reconsideration.

On August 25, 1986, concerned employees of the Commission on Audit (COA) filed a Complaint before the Tanodbayan,<sup>[3]</sup> against petitioners Ricardo Castillo, Rodolfo Agdeppa and Demetrio Cabison Jr., COA Auditor VIII, COA Auditor II, and COA Auditor III, respectively, all assigned at the National Housing Authority (NHA), for alleged "submittal of initial very derogatory reports which became the basis for the filing of cases with the Tanodbayan and the reversals of their initial recommendations for selected contractors." Petitioners were notified of the Complaint on September 22, 1986 when they were directed by the Tanodbayan to file their counter-affidavits, which they did on September 30, 1986.

In a resolution dated October 30, 1987, the Tanodbayan found a *prima facie* case against petitioners and accordingly recommended the filing of an Information against them for violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act (RA 3019).<sup>[4]</sup>

On November 27, 1987, petitioners promptly filed a Motion for Reinvestigation.<sup>[5]</sup> On March 21, 1988, they filed a Motion to Resolve their Motion for Reinvestigation.<sup>[6]</sup>

Without acting upon the Motion for Reinvestigation and Motion to Resolve Motion for Reinvestigation, an Information was filed on November 5, 1990, before the Sandiganbayan, which reads:

"That on or about August 5, 1986 or prior and subsequent thereto, in Quezon City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, accused namely, Ricardo R. Castillo, Rodolfo M. Agdeppa and Demetrio M. Cabison Jr., all public officers being then COA Auditor VIII, COA Auditor II and COA Auditor III, respectively, taking advantage of their official positions, while in the performance or discharge of their administrative official functions, with evident bad faith

and manifest partiality, conspiring, confederating and confabulating with each other, did then and there willfully, unlawfully and fraudulently cause undue injury, damage and prejudice to the Government of the Republic of the Philippines, to wit: that two contracts were entered into by the NHA management with two private contractors relative to the complete development of Phase V-A Packages 3 & 4 which is being constructed by Sarmiento Construction Co., and likewise Phase IX Packages 7 & 7-A which is being constructed by the Supra Construction Co., both constructions are located at the Tala Estate Sites & Services, by causing to prepare, submit, issue and sign in the different inventory reports/recommendation on various occasions that Sarmiento Construction had an overpayment in the amount of P362,591.98 for Phase V-A Packages 3 & 4 but later on said accused changed their inventory reports/recommendation and subsequently readjusted this as overpayment on physical work thereby prejudicing the government on account of accused's constant changes/reversals in the inventory reports prepared, signed and submitted by them; whereas in the second contract with Supra Construction, accused issued an inventory report by stating thereon that said contractor had a work deficiency in the amount of P788,806.94 but refraining from taking appropriate action on account of P1,873,091.40 withheld on Tala to pay a refund order on a Tondo contract issued by the COA main office. The said accused raised the deficiency in the amount of P855,281.50. Later on, another inventory report was issued and prepared by a Tri-Partite Team Committee composed of COA, NHA and the contractors stating a work deficiency in the amount of P352,121.40 only. Despite previous inventory reports/recommendation by the accused citing different amounts and another amount by the Tri-Partite Team Committee said accused later stated that the final deficiencies of Supra Construction is no longer P855,281.58 but was reduced only to P70,596.37, which reductions in the contractors' final deficiencies were not justified thereby giving unwarranted benefits, preference and advantage to the above-mentioned contractor to the damage and prejudice of the government in the amount of P231,523.00 and to the Sarmiento Construction for inventoried accomplishment were not duly credited by the said accused."<sup>[7]</sup>

Trial on the merits thereafter ensued. After the prosecution rested its case, petitioners filed a Demurrer to Evidence but the same was denied by the Sandiganbayan in a Resolution dated December 11, 1992.<sup>[8]</sup> Petitioners' Motion for Reconsideration was likewise denied in a Resolution dated January 20, 1993.<sup>[9]</sup>

Thereafter, petitioners filed a Motion to Dismiss<sup>[10]</sup> dated February 15, 1993 citing lack of jurisdiction and violation of due process, but the same was denied by the Sandiganbayan. Petitioners' Motion for Reconsideration<sup>[11]</sup> was also denied.

Hence, this petition for certiorari and prohibition, raising the following grounds:

The Honorable Respondent Sandiganbayan committed grave abuse of discretion in not dismissing the Information notwithstanding that there was a violation of petitioners' constitutional rights of "due process" and "speed disposition of cases" and there was use of the strong arm of the

law in an oppressive and vindictive manner against the petitioners.

1. Unexplained and unjustified delay of three (3) years before an Information is filed before the Honorable Respondent Sandiganbayan counting from the date of the resolution of the Ombudsman recommending the prosecution of the petitioners for violation of Rep. Act No. 3019 (or a total of four (4) years from initial investigation up to filing of information);
2. Motion for Reinvestigation and Motion to Resolve the Motion for Reinvestigation filed by the petitioners before the Office of the Honorable Respondent Ombudsman were not acted upon;
3. No reason or explanation was made by the prosecution on the delay in the filing of Information;
4. With no plausible explanation on hand, the petitioners are thus inclined to reason out, or even suspect, that there is connection between such delay and their past and contemporaneous official acts;
5. The lapse of three (3) years or a total of four ( 4) years from start of investigation up to filing of Information may result in the destruction of affirmative evidence tending to establish the innocence of the petitioners and that the passage of time may have produced an unfavorable effect on their defense;
6. Violation of constitutional rights divests the court of jurisdiction;
7. Lack of jurisdiction of the court may be raised at any time;
8. Criminal prosecution may be enjoined in order to afford adequate protection to constitutional rights and to prevent the use of the strong arm of the law in an oppressive and vindictive manner;
9. Subject of instant petition are the Orders of the Honorable Respondent Sandiganbayan denying the Motion to Dismiss of petitioners for violation of their constitutional rights and the use against them of the strong arm of the law in an oppressive and vindictive manner.

Petitioners submit that the Ombudsman oppressed and discriminated against them by not issuing any notice, reply or order denying their Motion for Reinvestigation as well as their Motion to Resolve their Motion for Reconsideration. They argue that the Ombudsman should have granted outright their Motion for Reinvestigation in view of the ruling in *Zaldivar v. Sandiganbayan*<sup>[12]</sup> wherein this Court held, thus:

Under the 1987 Constitution, the Ombudsman (as distinguished from incumbent Tanodbayan) is charged with the duty to:

Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient. (