G.R. Nos. 164068-69 – ROLANDO P. DE LA CUESTA, *petitioner, v.* SANDIGANBAYAN, *respondent.*

G.R. Nos. 166305-06 – PEOPLE OF THE PHILIPPINES, *petitioner, v.* EDUARDO COJUANGCO, JR., *et al.*, *respondents.*

G.R. Nos. 166487-88 – REPUBLIC OF THE PHILIPPINES, *petitioner, v.* EDUARDO COJUANGCO, JR., *et al.*, *respondents.*

Promulgated:

NOVEMBER 19, 2013

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SEPARATE CONCURRING OPINION

BRION, *J.*:

The Case

I concur with the *ponencia's* conclusion and submit this opinion to put into proper perspective: (1) the Court's appreciation of the existence of probable cause against accused Rolando P. de la Cuesta and Eduardo Cojuangco, Jr. (collectively, *the accused*) for alleged violations of Section 3(e) of Republic Act No. (*RA*) 3019, the *Anti-Graft and Corrupt Practices* Act; and (2) the alleged violation of the accused's rights to a speedy disposition of the case and to a speedy trial.

A. The Factual Highlights

On February 9, 1995, the Office of the Ombudsman filed two separate informations against the accused, former members of the Governing Board of the Philippine Coconut Authority *(PCA),* for violating Section 3(e) of RA 3019.[1] The informations alleged that the accused authorized the PCA to unlawfully donate the amounts of ₱2,000,000.00 in 1984 and ₱6,000,000.00 in 1985, from its Special Funds, to the Philippine Coconut Producers Federation *(COCOFED).*

The Office of the Solicitor General *(OSG)* took the position that the donation to COCOFED, a private entity, is contrary to law. It pointed out that the ₱2,000,000.00 donation was not included in the PCA's Budget Fund 503 for the year 1984. The ₱6,000,000.00 donation was not part of the

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[1] Section 3(e) of RA 3019 provides:

> (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.

PCA's National Coconut Productivity Program fund, and was not approved by the President as required by Section 2 of Presidential Decree No. (*PD*) 1997.

Upon motion, the Sandiganbayan allowed the accused to seek reconsideration of the informations filed. The Ombudsman thereafter recommended the dismissal of the cases for lack of probable cause. The prosecution accordingly filed a motion to withdraw the informations.

At the hearing of the motion to withdraw, the OSG told the Sandiganbayan that the documents needed to show probable cause had already been submitted to the Ombudsman during the preliminary investigation, but the OSG failed to adequately explain these documents. Thus, the Sandiganbayan gave the OSG time to submit its documentary evidence to the Office of the Special Prosecutor (*OSP*).

On March 17, 1997, the OSP informed the Sandiganbayan that it found no probable cause against the accused. On October 31, 2001, the Sandiganbayan, however, ruled that probable cause existed to warrant the prosecution of the accused. In response, the accused moved for reconsideration, raising in their motion, among others, the violation of their right to speedy trial.

The Office of the Ombudsman reversed its finding and found probable cause against the accused. The Sandiganbayan, however, in its own consideration of the matter, granted the accused's motions for reconsideration in an order dated July 23, 2004. The OSP and the OSG (collectively, *the prosecution*) filed their respective motions for reconsideration which the Sandiganbayan denied.

B. The Current Court's Rulings

In the present petition before this Court, **the *ponencia* found that there was no probable cause to warrant the prosecution of the accused.** The *ponencia* held that the accused authorized the donations in good faith and the PCA administrator's memoranda recommending financial assistance to COCOFED did not, on their faces, indicate corruption. In fact, the donations were meant to help COCOFED stave off an anticipated scaling down of its chapters nationwide.

The *ponencia* also declared that the donations served a public purpose and were made in accordance with the following laws: Section 8 of RA 6260;[2] Section 1 of PD 1972;[3] Section 1 of Executive Order No. 1064;[4] and

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2 The Coconut Investment Act.

3 An Act to Finance the Coconut Replanting Program.

4 Implementing the Coconut Productivity Program.

Sections 1 and 2 of PD 1854.[5] On the ₱6,000,000.00 donation, the *ponencia* asserted that President Marcos indirectly authorized this expenditure in EO 1064 and in a memorandum dated January 14, 1985.

The *ponencia* also ruled that there was no point in resolving the claimed violation of the accused's right to a speedy trial since the Court already affirmed the Sandiganbayan's resolution dismissing the criminal case against the accused.

Discussion of the Case

With all due respect, I disagree with the *ponencia's* finding that there is no probable cause that the accused committed violations of Section 3(e) of RA 3019. I posit that all the elements of Section 3(e) of RA 3019 appear in the informations and have been sufficiently established by the OSG's documentary evidence.

I also posit that the determination of whether the accused's rights to the speedy disposition of the case and to a speedy trial had been violated is a core issue that should have been disposed by this Court in finally determining the outcome of this case. The gross violations of the accused's rights to a speedy disposition of the case and to a speedy trial lead me to concur with the *ponencia's* results and to ultimately deny the present petitions.

A. Existence of Probable Cause

None of the ponencia's cited laws, executive order and memorandum expressly or impliedly authorize the PCA to make a donation to COCOFED

I essentially disagree with the *ponencia's* no probable cause finding as none of its cited laws, executive order, and memorandum expressly or impliedly authorize the PCA to make a donation to COCOFED. I discuss these laws, executive order, and memorandum separately below:

First, the *ponencia* interpreted Section 2 of PD 1854, in relation with Section 1 of the same law, as a prohibition ***only*** **against the use by other government agencies** of the PCA's special funds. The relevant provisions state:

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[5] Authorizing an Adjustment of the Funding Support of the PCA and Instituting a Procedure for the Management of Such Fund.

> Section 1. **The PCA fee imposed and collected pursuant to the provisions of R.A. No. 1145 and Sec. 3(k), Article II of P.D. 1468, is hereby increased to three centavos per kilo of copra or husked nuts or their equivalent in other coconut products delivered to and/or purchased by copra exporters, oil millers, desiccators and other end-users of coconut products.** The fee shall be collected under such rules that PCA may promulgate, and shall be paid by said copra exporters, oil millers, desiccators, and other end-users of coconut products, receipt of which shall be remitted to the National Treasury on a quarterly basis.
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> Section 2. **The receipt and process of all collections pursuant to Section 1 hereof, shall be utilized exclusively for the operations of the Philippine Coconut Authority** and shall be released automatically by the National Treasury upon approval by the PCA Governing Board of its budgetary requirements, as an exception to P.D. 1234 and the budgetary processes provided in P.D. 1177, as amended. [emphasis and underscores ours]

The *ponencia's* position that Section 2 of PD 1854 does not prohibit private entities from using the special funds of the PCA finds no support in RA 1145,[6] and Section 3(k), Article 2 of PD 1468.[7] The relevant provisions of RA 1145 state:

> CHAPTER VI
> Capitalization and Special Funds of the PHILCOA
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> Section 13. Capitalization. – To raise the necessary funds to carry out the provisions of this Act and the purposes of the PHILCOA, **there shall be levied a fee of ten centavos for every one hundred kilos of dessicated coconut, to be paid by the desiccating factory, coconut oil to be paid by the oil mills, and copra to be paid by the exporters, dealers or producers as the case may be.** This service fee shall be collected by the PHILCOA under such rules and regulations that it shall promulgate: Provided, however, That pending the collection of **service fee**, the PHILCOA is hereby authorized to borrow from any banking institution the sum of fifty thousand pesos to be used in the organization and maintenance of this office.
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> Section 14. Special Fund. – The proceeds of the foregoing levy shall be set aside to constitute a special fund to be known as the "Coconut Development Fund," which shall be available **exclusively for the use of the PHILCOA. All the income and receipts derived from the special fund herein created shall accrue to, and form part of, the said fund to be available solely for the use of the PHILCOA.** [emphases and underscores ours]

On the other hand, Section 3(k), Article 2 of PD 1468 provides:

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[6] An Act Creating the Philippine Coconut Administration, Prescribing its Powers, Functions and Duties, and Providing for the Raising of the Necessary Funds for its Operation.

[7] The Revised Coconut Industry Code.

> (k) To impose and collect, under such rules that it may promulgate, a fee of ten centavos for every one hundred kilos of desiccated coconut, to be paid by the desiccating factory, coconut oil to be paid by the oil mills and copra to be paid by the exporters, **which shall be used exclusively to defray its operating expenses[**.] [emphases and underscores ours]

A basic principle of interpretation is that words must be given their literal meaning and applied without attempted interpretation where the words of a statute are clear, plain and free from ambiguity.[8]

As quoted above, Section 2 of PD 1854, Section 14 of RA 1145 and Section 3(k), Article 2 of PD 1468 are all unequivocal in stating that the PCA's service fees shall be exclusively utilized for its operations. In fact, Section 14 of RA 1145 clearly states that all income and receipts from the special funds shall be available solely for the use of the Philippine Coconut Administration (and subsequently, the PCA). The word "exclusive" in Section 2 of PD 1854 has a definite and unambiguous meaning. Black's Law Dictionary defines the term as "[a]ppertaining to the subject alone, not including, admitting, or pertaining to any others. Sole. Shutting out; debarring from interference or participation; vested in one person alone."[9]

It is a settled rule that where the law does not distinguish, we should not distinguish.[10] Notably, the above provisions do not distinguish between government agencies and private entities. *On the contrary, they categorically prohibit the utilization of the PCA's funds for other than its operations.*

Second, Section 8 of RA 6260 provides:

> Section 8. *The Coconut Investment Fund.* There shall be levied on the coconut farmer a sum equivalent to fifty-five centavos (₱0.55) on the first domestic sale of every one hundred kilograms of copra, or its equivalent in terms of other coconut products, for which he shall be issued a receipt which shall be converted into shares of stock of the Company upon its incorporation as a private entity in accordance with Section seven hereof. For every fifty-five centavos (₱0.55) so collected, fifty centavos (₱0.50) shall be set aside to constitute a special fund, to be known as the Coconut Investment Fund, which shall be used exclusively to pay the subscription by the Philippine Government for and in behalf of the coconut farmers to the capital stock of said Company: *Provided*, That this levy shall be imposed until the one hundred million pesos authorized capital stock is fully paid, but collection of said levy shall not continue longer than ten years from the start thereof: ***Provided, further*, That the Philippine**

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8 *Globe-Mackay Cable and Radio Corporation v. NLRC,* G.R. No. 82511, March 3, 1992, 206 SCRA 701, 711.

9 *Black's Law Dictionary,* 5th Ed., p. 506.

10 *United BF Homeowners' Associations, Inc. v. The Barangay Chairman,* 532 Phil. 660, 669 (2006), citing *Philippine Free Press v. Court of Appeals,* G.R. No. 132864, October 24, 2005, 473 SCRA 639.

> **Coconut Administration (PHILCOA) shall, in consultation with the recognized national association of coconut producers with the largest number of membership as determined by the Philippine Coconut Administration, prescribe and promulgate the necessary rules, regulations and procedures for the collection of such levy and issuance of the corresponding receipts:** *Provided*, still further, That the receipts and/or certificates shall be non-transferable except to coconut farmers only and to the company: *Provided, furthermore*, That operational expenses of the Company shall be limited to and charged against the earnings and/or profits of the Fund: ***Provided, finally*, That one-tenth of such earnings of the fund for each year shall be used to finance technical and economic research studies, promotional programs, scholarships grants and industrial manpower development programs for the coconut industry.** [italics supplied, emphases ours]

A plain reading of this provision shows that the legislature merely directs the PCA to prescribe rules for the collection of levy in consultation with the recognized national association of coconut producers. It also merely enumerates how one-tenth of the fund's earnings shall be utilized, namely: to finance technical and economic research studies, promotional programs, scholarship grants and industrial manpower development programs for the coconut industry. The provision does not even hint that the donation of the PCA's special funds to a private entity is allowed.

A close study of the relevant laws also reveals that Section 8 of RA 6260 has no relevance in determining whether the PCA has the power to donate its own special funds to COCOFED. In fact, the PCA's special funds are different from the Coconut Investment Fund.

The PCA's special funds are sourced from the service fees originally collected by the defunct Philippine Coconut Administration for its exclusive use. RA 1145 constituted this fund from the levy of ₱0.10 for every 100 kilograms of desiccated coconut, coconut oil and copra on desiccating factories, oil mills, and exporters, dealers or producers of copra, respectively.[11] PD 232, Creating a Philippine Coconut Authority, subsequently created the PCA and abolished the Philippine Coconut Administration. This decree transferred the Philippine Coconut Administration's powers and functions, including the collection of service fees, to the PCA.[12]

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11 RA 1145, Section 13.

12 Section 6 of PD 232 provides:

> The Coconut Coordinating Council (CCC), the Philippine Coconut Administration (PHILCOA) and the Philippine Coconut Research Institute (PHILCORIN) are hereby abolished and their powers and functions transferred to the Philippine Coconut Authority, together with all their respective appropriations, funding from all sources, equipment and other assets, and such personnel as are necessary[.]

RA 6260 established the Coconut Investment Fund on June 19, 1971. The coconut farmers capitalized this fund through the **Coconut Investment Company** for purposes of maximizing the coconut production, accelerating the growth of the coconut industry, expanding the coconut marketing system, and ensuring stable incomes for coconut farmers.[13] Section 8 of RA 6260 provides that the Coconut Investment Company shall administer the Coconut Investment Fund that came from the ₱0.55 levy on the coconut farmer's first domestic sale of every 100 kilograms of copra, or its equivalent. The collected levies were converted into shares of stock in the Coconut Investment Company.

Thus, the PCA's special funds funded its operational budget, while the coconut farmers raised the capital for the Coconut Investment Fund through the Coconut Investment Company. Under Section 9 of RA 6260, the Philippine Coconut Administration (and subsequently, the PCA) was merely designated as the **collection agent** of the Coconut Investment Fund; *the Coconut Investment Fund is not part of the operational budget of the PCA.* These relationships belie the *ponencia's* position, citing Section 8 of RA 6260, that the donations were warranted because they served a public purpose.

Third, Section 1 of PD 1972 states:

> Section 1. The **basic export duty** imposed by Section 514 of Presidential Decree No. 1464, and the **additional export duty** imposed by Executive Order No. 920-A, on coconut products, as identified and at the rates prescribed by Executive Order No. 920-A, which is hereby incorporated made part hereof any reference, are hereby made **permanently constituted as the initial source of financing for the Philippine Coconut Authority ("PCA"), with the active assistance and participation of the recognized organization of the coconut farmers pursuant to the provisions of Act No. 6260.** [emphases ours]

This provision only relates to the PCA's source of financing. It has no relevance whatsoever to the authority of the PCA to make donations to COCOFED. The statement that the PCA operates with the active assistance and participation of COCOFED does not give the PCA the blanket authority to make a donation to COCOFED.

Fourth, Section 1 of EO 1064 declares:

> Section 1. The Philippine Coconut Authority (PCA) is hereby directed **to immediately formulate and implement an accelerated coconut hybrid planting and replanting program (the Program) aimed at increasing farm productivity.** The annual program (January-December) shall be prepared by the PCA Board in consultation with the private sector and

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13 RA 6260, Section 4.

> reviewed by the Cabinet and shall be effective upon approval of the President and 30 days after publication of the same in newspapers of general circulation. The Program shall include the rehabilitation of existing coconut trees as well as intercropping of areas planted to coconut with suitable crops and the replanting shall, together with the project(s) as hereinafter defined involve approximately 30,000 hectares per annum. **PCA shall implement the Program with the active assistance and participation of the recognized organization of coconut farmers pursuant to the provisions of RA 6260 and shall service the requirements of small coconut farmers owning not more than twenty-four (24) hectares who volunteer to participate in the Program.** Initially, devastated areas in Visayas and Mindanao shall be given priority. [emphases ours]

This provision only directs the PCA to formulate and implement the accelerated coconut planting and replanting programs. Again, nowhere in this provision is it stated or implied that the PCA may donate to COCOFED pursuant to the government's coconut planting and replanting program.

Lastly, a memorandum dated January 14, 1985 states:

> Further to my Memorandum dated September 19, 1984 directing the adoption and implementation of a long-term Coconut Productivity Program and providing for the utilization of a portion of the export tax on coconut products to finance the same, please be guided as follows:
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> 1. The special budget of the Coconut Productivity Program of the Philippine Coconut Authority (PCA) for 1985 in the total amount of ₱118.7 million is hereby approved as a priority development project under the Special Activities Fund.
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> 2. To cover the herein-approved special budget, the Office of the Budget and Management is hereby directed to set aside the amount as may be necessary from out of the Special Productivity Fund to augment the funds earlier made available from out of the export tax on coconut products to finance the program.
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> 3. In order to hasten the implementation of the program, the amount of ₱60 million shall be immediately released to PCA not later than January 31, 1985, and the balance of ₱58.7 million not later than June 30, 1985 any provision of Letter of Instructions No. 1408 to the contrary notwithstanding.
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> 4. The PCA is hereby directed to start the full-scale implementation of the program effective on January 1, 1985 with priority given to coconut-producing areas recently affected by the recent typhoons and calamities. For this purpose and in order to ensure the success of the program, **the PCA is authorized to purchase equipment/motor vehicles, to create positions and to hire new, and effect necessary movement of, personnel, and to undertake such other activities that may be required in the implementation of the program and its**

> **major components, as an exception to Letter of Implementation No. 146.**[14] [emphases ours]

This memorandum authorizes the PCA to purchase equipment, to create positions, to hire new, and effect necessary movement of, personnel, and *to undertake such activities that may be required in the implementation of the program and its major components.* These terms do not give rise to the implication, as the *ponencia* recognized, that the President approved the PCA's donation.

Under the principle of *ejusdem generis*, where a general word or phrase follows an enumeration of particular and specific words of the same class, the general word or phrase is to be construed to include things akin to, resembling, or of the same kind or class as, those specifically mentioned.[15] Evidently, the power to donate is neither akin, nor related, to the enumerated powers of the PCA in the memorandum.

The OSG's documentary evidence is sufficient to engender a well-founded belief that an offense under Section 3(e) of RA 3019 has been committed and that the accused are probably guilty thereof

The records show that the accused authorized, without legal authority, the disbursement of public funds in favor of COCOFED in Board Resolutions 009-84 and 128-85. They also allowed the release, without legal authority, of the PCA's funds as evidenced by the disbursement vouchers, the PNB checks and the official receipts. These pieces of evidence, read in light of the law, already show probable cause that an offense under Section 3(e) of RA 3019 has been consummated. For this Court to require further evidence is to render public corporate directors and officers virtually immune from criminal liability under Section 3(e) of RA 3019. Specifically, the *ponencia's* ruling would allow *corporate directors and officers to evade possible criminal prosecution by simply stating in their board resolutions, memoranda, and the like the alleged novel and public purpose of the conversion or transfer of public funds.*

I emphasize at this point that the issue at hand is *only* probable cause and not the guilt of the accused. Probable cause is defined as the existence of such facts and circumstances sufficient to excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was to be prosecuted. It

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[14] *Ponencia*, pp. 10-11.

[15] *Liwag v. Happy Glen Loop Homeowners Association, Inc.*, G.R. No. 189755, July 4, 2012, 675 SCRA 744, 754, citing *Miranda v. Abaya*, 370 Phil. 642 (1999).

is merely a reasonable ground of belief that a matter is, or may be, well founded, or a state of facts in the mind of the prosecutor that would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so.[16]

A finding of probable cause need not be based on clear and convincing evidence of guilt, nor on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt. Probable cause does not import absolute certainty but is merely based on opinion and reasonable belief. It does not require an inquiry into whether there is sufficient evidence to secure a conviction. It is enough to reasonably believe, based on the appreciated facts, that the act or omission complained of constitutes the offense charged.[17]

While the *ponencia* is dissatisfied with the OSG's documentary evidence, I take the contrary view that the accused's evident bad faith or manifest partiality can be discerned from their acts of authorizing and allowing, without legal authority, the disbursement of the PCA's funds in favor of COCOFED. Let it be remembered that ignorance of the law excuses no one from complying therewith.[18] Also, the transfer of funds without legal authority already constitutes undue injury on the part of the government and unwarranted benefit on the part of the recipient private entity. To rule that the accused can evade criminal prosecution on the flimsy ground that the donation served a public purpose would create a very dangerous precedent and open loopholes in our criminal justice system.

B. The Right to a Speedy Disposition of the Case

The violation of the accused's right to a speedy disposition of the case warrants the dismissal of the criminal cases against them

The right to a speedy disposition of the case is guaranteed by Section 16, Article III of the Constitution which provides that "[a]ll persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies." This constitutional guarantee is intended to stem the tide of disenchantment among the people in the administration of justice by judicial and quasi-judicial tribunals.[19]

The constitutional right to a speedy disposition of the case is not limited to the accused in criminal proceedings, but extends to all parties in

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16 *Pilapil v. Sandiganbayan,* G.R. No. 101978, April 7, 1993, 221 SCRA 349, 360.

17 Ibid.

18 CIVIL CODE, Article 3.

19 *Roquero v. Chancellor of UP-Manila,* G.R. No. 181851, March 9, 2010, 614 SCRA 723, 733-734.

all cases, including civil and administrative cases, and in all proceedings, including judicial and quasi-judicial hearings. Thus, any party to a case may demand the expeditious action by all officials who are tasked with the administration of justice.[20]

This right is deemed violated when the proceedings are attended by vexatious, capricious, and oppressive delays, but the concept of "speedy disposition" is relative and flexible. A mere mathematical reckoning of the time involved is not sufficient. Thus, a balancing test is used to determine whether a party has been denied his right and the conduct of both parties is weighed and the peculiar facts and circumstances of the case are taken into account. These circumstances include: **(1)** the length of delay; **(2)** the reasons for the delay; **(3)** the assertion or failure to assert such right by the accused; and **(4)** the prejudice caused by the delay.[21]

The factual circumstances of this case lead me to conclude that the dismissal of the criminal cases against the accused is warranted for gross violation of their right to a speedy disposition of the case. **I point out that the accused have not yet been arraigned despite the lapse of eighteen (18) years from the filing of the informations against them.** The delays in the proceedings of the case can largely be attributed to the prosecution and the Sandiganbayan: (1) the Ombudsman's vacillating positions on whether there is probable cause to hold the accused for trial; (2) the OSG's initial failure to adequately explain the documentary evidence submitted during the preliminary investigation; (3) the Sandiganbayan's four-year delay in promulgating a ruling on the existence of probable cause; and (4) the Sandiganbayan's three-year delay in resolving the accused's motions for reconsideration.

These inordinate delays grossly violated the accused's rights as the People of the Philippines had been given more than ample opportunity to prosecute the accused, yet it took a painful eighteen (18) years for the issue of probable cause to be resolved with finality. Again, I point out that the accused have not yet been arraigned after more than a decade of protracted proceedings before the Ombudsman and the Sandiganbayan. After eighteen (18) long years, the case is still at the initial phase of the proceedings - the filing of the information. Meanwhile, the accused are made to suffer the anxiety of unduly delayed proceedings and the expense of court litigation.

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20 Id. at 732.

21 Id. at 732-733; and *dela Peña v. Sandiganbayan*, 412 Phil. 921, 929 (2001).

C. The Right to a Speedy Trial

The violation of the accused's right to a speedy trial also warrants the dismissal of the criminal cases against them

Gross violation of the accused's right to a speedy trial also serves as a reason for the dismissal of the criminal cases. The accused's right to a speedy, impartial and public trial is a right enshrined under Section 14(2), Article III of the Constitution. RA 8493, the Speedy Trial Act of 1998, further elaborates on the right to a speedy trial by providing time frames: **(1) between the filing of the information and the arraignment of the accused; (2) between arraignment and trial; and (3) the trial period.** Before the indictment, there is no trial to speak of in the legal sense.[22]

Similar to the right to a speedy disposition of the case, the defendant may ask for the dismissal of the criminal case on the ground that his right to a speedy trial has been violated. A violation of the right to a speedy trial transpires when the proceedings are attended by vexatious, capricious and oppressive delays. As in the right to a speedy disposition of the case, the concept of speedy trial cannot be based on mere mathematical reckoning of time.

However, the right to a speedy trial only applies to criminal proceedings, unlike the right to a speedy disposition of the case which applies to all proceedings. The right to a speedy trial may also only be invoked during the trial stage, from the filing of information until the termination of trial. On the other hand, the right to a speedy disposition of the case may be invoked during the trial stage, as well as when the case has already been submitted for decision.[23]

Section 7 of RA 8493 states that the arraignment of an accused shall be held within thirty (30) days from the filing of the information, or from the date the accused appeared before the justice, judge or court in which the charge is pending, whichever date last occurs. The accused shall have at least fifteen (15) days to prepare for trial after pleading not guilty at the arraignment. Trial shall commence within thirty (30) days from arraignment as fixed by the court.[24] Under Section 10 of RA 8493, certain delays are excluded from the computation of time within which trial must commence.[25]

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22 *Bermisa v. Court of Appeals,* 180 Phil. 571, 576 (1979).

23 *Licaros v. Sandiganbayan,* 421 Phil. 1075, 1089-1090 (2001).

24 RA 8493, Section 7.

25 Section 10 of Republic Act No. 8493 provides:

The case is required to be set for continuous trial on a weekly or other short-term trial calendar at the earliest possible time. The entire trial period shall not exceed one hundred eighty (180) days from the first day of trial, except as otherwise authorized by the Chief Justice of the Supreme Court.[26]

Exclusions. - The following periods of delay shall be excluded in computing the time within which trial must commence:

(a) Any period of delay resulting from other proceedings concerning the accused, including but not limited to the following:

(1) delay resulting from an examination of the accused, and hearing on his/her mental competency, or physical incapacity;
(2) delay resulting from trials with respect to charges against the accused;
(3) delay resulting from interlocutory appeals;
(4) delay resulting from hearings on pre-trial motions: Provided, That the delay does not exceed thirty (30) days[;]
(5) delay resulting from orders of inhibition, or proceedings relating to change of venue of cases or transfer from other courts;
(6) delay resulting from a finding of the existence of a valid prejudicial question; and
(7) delay reasonably attributable to any period, not to exceed thirty (30) days, during which any proceeding concerning the accused is actually under advisement.

(b) Any period of delay resulting from the absence or unavailability of the accused or an essential witness.

For purposes of this subparagraph, an accused or an essential witness shall be considered absent when his/her whereabouts are unknown and, in addition, he/she is attempting to avoid apprehension or prosecution or his/her whereabouts cannot be determined by due diligence. An accused or an essential witness shall be considered unavailable whenever his/her whereabouts are known but his/her presence for trial cannot be obtained by due diligence or he/she resists appearing at or being returned for trial.

(c) Any period of delay resulting from the fact that the accused is mentally incompetent or physically unable to stand trial.

(d) If the information is dismissed upon motion of the prosecution and thereafter a charge is filed against the accused for the same offense, or any offense required to be joined with that offense, any period of delay from the date the charge was dismissed to the date the time limitation would commence to run as to the subsequent charge had there been no previous charge.

(e) A reasonable period of delay when the accused is joined for trial with a co-accused over whom the court has not acquired jurisdiction, or as to whom the time for trial has not run and no motion for severance has been granted.

(f) Any period of delay resulting from a continuance granted by any justice or judge *motu* [*proprio*] or on motion of the accused or his/her counsel or at the request of the public prosecutor, if the justice or judge granted such continuance on the basis of his/her findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial. No such period of delay resulting from a continuance granted by the court in accordance with this subparagraph shall be excludable under this section unless the court sets forth, in the record of the case, either orally or in writing, its reasons for finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the accused in a speedy trial. [italics ours]

[26] RA 8493, Section 6; and RULES OF COURT, Rule 119, Section 2.

Under Section 13 of RA 8493, the information shall be dismissed on motion of the accused if he is not brought to trial within the time limits required by Section 7,[27] as extended by Section 9 of RA 8493.[28] The accused should ask for the continuation of the case if he desires to exercise his right to a speedy trial during trial. Thereafter, the court shall proceed with the trial if the prosecution unjustly asks for the postponement of the hearing. The court shall dismiss the case, upon motion of the accused, if the prosecution fails to prove the case against the accused or is ill-prepared during trial.[29]

The dismissal of the criminal case for violation of the accused's right to a speedy trial is equivalent to an acquittal. Double jeopardy will apply even if the dismissal is made with the express consent of the accused, or upon his own motion.[30]

As earlier discussed, the extraordinary delays of the proceedings in this case are unjustified. These undue delays, too, are not covered by the exclusions under Section 10 of RA 8493. To reiterate, under Section 7 of RA 8493, the arraignment of the accused shall be held within thirty (30) days from the filing of the information, or from the date the accused appeared before the justice, judge or court in which the charge is pending, whichever date last occurs. In the present case, it took eighteen (18) years for the issue of probable cause to be resolved with finality in seesaw developments that transpired after the filing of the informations. While certainty of the probable cause is the requisite for the validity of the informations filed, the extreme circumstances of the case demand that no less than the right to a

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27 Section 7 of RA 8493 provides:

> Time Limit Between Filing of Information and Arraignment and Between Arraignment and Trial. - The arraignment of an accused shall be held within thirty (30) days from the filing of the information, or from the date the accused has appeared before the justice, judge or court in which the charge is pending, whichever date last occurs. Thereafter, where a plea of not guilty is entered, the accused shall have at least fifteen (15) days to prepare for trial. Trial shall commence within thirty (30) days from arraignment as fixed by the court.
>
> If the accused pleads not guilty to the crime charged, he/she shall state whether he/she interposes a negative or affirmative defense. A negative defense shall require the prosecution to prove the guilt of the accused beyond reasonable doubt, while an affirmative defense may modify the order of trial and require the accused to prove such defense by clear and convincing evidence.

28 Section 9 of RA 8493 provides:

> Extended Time Limit. - Notwithstanding the provisions of Section 7 of this Act, for the first twelve-calendar-month period following its effectivity, the time limit with respect to the period from arraignment to trial imposed by Section 7 of this Act shall be one hundred eighty (180) days. For the second twelve-month period the time limit shall be one hundred twenty (120) days, and for the third twelve-month period the time limit with respect to the period from arraignment to trial shall be eighty (80) days.

29 *Salcedo v. Judge Mendoza,* 177 Phil. 749, 754, citing *Gandicela v. Lutero,* 88 Phil. 299, 307 (1951).

30 *Almario v. Court of Appeals*, 407 Phil. 279, 286 (2001).

speedy trial be recognized; to do any less is to allow this right to be negated by the People and by the very same adjudication arms of government against whom the guarantee of the right is addressed.

For all these reasons, I vote to deny the petitions.

ARTURO D. BRION
Associate Justice