Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ISABELO A. BRAZA,
Petitioner,

- versus -

THE HONORABLE SANDIGANBAYAN (1st Division),
Respondent.

G.R. No. 195032

Present:

VELASCO, JR., *J., Chairperson,*
LEONARDO DE-CASTRO,*
ABAD,
MENDOZA, and
LEONEN, *JJ.*

Promulgated:

February 20, 2013

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DECISION

MENDOZA, J.:

This is a petition for *certiorari* filed by petitioner Isabelo Braza *(Braza)* seeking to reverse and set aside the October 12, 2009 Resolution[1] of the Sandiganbayan in Criminal Case No. SB-08-CRM-0275, entitled *People v. Robert G. Lala, et al.,* as well as its October 22, 2010 Resolution,[2] denying his motion for reconsideration.

The Facts

The Philippines was assigned the hosting rights for the 12th Association of Southeast Asian Nations *(ASEAN)* Leaders Summit scheduled in December 2006. In preparation for this international diplomatic event with the province of Cebu as the designated venue, the Department of Public Works and Highways *(DPWH)* identified projects relative to the

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* Designated additional member in lieu of Associate Justice Diosdado M. Peralta, per Raffle dated February 18, 2013.

[1] Penned by Associate Justice Norberto Y. Geraldez with Associate Justice Rodolfo A. Ponferrada and Associate Justice Alexander G. Gesmundo, concurring; *rollo,* pp. 58-68

[2] Id. at 69-90.

improvement and rehabilitation of roads and installation of traffic safety devices and lighting facilities. The then Acting Secretary of the DPWH, Hermogenes E. Ebdane, approved the resort to alternative modes of procurement for the implementation of these projects due to the proximity of the ASEAN Summit.

One of the ASEAN Summit-related projects to be undertaken was the installation of street lighting systems along the perimeters of the Cebu International Convention Center in Mandaue City and the ceremonial routes of the Summit to upgrade the appearance of the convention areas and to improve night-time visibility for security purposes. Four (4) out of eleven (11) street lighting projects were awarded to FABMIK Construction and Equipment Supply Company, Inc. (*FABMIK*) and these were covered by Contract I.D. Nos. 06H0021, 06H00049, 06H00050, and 06H00052. Contract I.D. No. 06H00050, the subject transaction of this case, involved the supply and installation of street lighting facilities along the stretch of Mandaue-Mactan Bridge 1 to Punta Engaño Section in Lapu-Lapu City, with an estimated project cost of ₱83,950,000.00.

With the exception of the street lighting project covered by Contract I.D. No. 06H0021, the three other projects were bidded out only on November 28, 2006 or less than two (2) weeks before the scheduled start of the Summit. Thereafter, the DPWH and FABMIK executed a Memorandum of Agreement *(MOA)* whereby FABMIK obliged itself to implement the projects at its own expense and the DPWH to guarantee the payment of the work accomplished. FABMIK was able to complete the projects within the deadline of ten (10) days utilizing its own resources and credit facilities. The schedule of the international event, however, was moved by the national organizers to January 9-15, 2007 due to typhoon Seniang which struck Cebu for several days.

After the summit, a letter-complaint was filed before the Public Assistance and Corruption Prevention Office *(PACPO),* Ombudsman – Visayas, alleging that the ASEAN Summit street lighting projects were overpriced. A panel composing of three investigators conducted a fact-finding investigation to determine the veracity of the accusation. Braza, being the president of FABMIK, was impleaded as one of the respondents. On March 16, 2007, the Ombudsman directed the Department of Budget and Management *(DBM)* and the DPWH to cease and desist from releasing or disbursing funds for the projects in question.[3]

On March 23, 2007, the fact-finding body issued its Evaluation Report[4] recommending the filing of charges for violation of Section 3(e) of Republic Act *(R.A.)* No. 3019, otherwise known as the Anti-Graft and

[3] Id. at 9-13.
[4] Id. at 144-151.

Corrupt Practice Act, against the DPWH officials and employees in Region VII and the cities of Mandaue and Lapu-lapu, and private contractors FABMIK and GAMPIK Construction and Development, Inc. (*GAMPIK*). This report was filed before the Office of the Ombudsman-Visayas (*OMB-Visayas*) for the conduct of a preliminary investigation and was docketed therein as OMB-V-C-07-124-C, entitled *PACPO-OMB-Visayas v. Lala, et. al*.

After the preliminary investigation, the OMB-Visayas issued its Resolution,[5] dated January 24, 2008, finding probable cause to indict the concerned respondents for violation of Section 3(g) of R.A. No. 3019. It was found that the lampposts and other lighting facilities installed were indeed highly overpriced after a comparison of the costs of the materials indicated in the Program of Works and Estimates *(POWE)* with those in the Bureau of Customs *(BOC)* documents; and that the contracts entered into between the government officials and the private contractors were manifestly and grossly disadvantageous to the government.

Subsequently, the OMB-Visayas filed several informations before the Sandiganbayan for violation of Sec. 3(g) of R.A. 3019 against the officials of DPWH Region VII, the officials of the cities of Mandaue and Lapu-lapu and private contractors, FABMIK President Braza and GAMPIK Board Chairman Gerardo S. Surla *(Surla).* The Information docketed as SB-08-CRM-0275[6] *(first information)* which involved the street lighting project covered by Contract I.D. No. 06H00050 with FABMIK, was raffled to the First Division of the Sandiganbayan. It was alleged therein that Braza acted in conspiracy with the public officials and employees in the commission of the crime charged.

On June 6, 2008, Braza was arraigned as a precondition to his authorization to travel abroad. He entered a plea of "not guilty."

On August 14, 2008, the motions for reinvestigation filed by Arturo Radaza *(Radaza),* the Mayor of Lapu-lapu City, and the DPWH officials were denied by the Sandiganbayan for lack of merit. Consequently, they moved for the reconsideration of said resolution.[7] On August 27, 2008, Braza filed a motion for reinvestigation[8] anchored on the following grounds: (1) the import documents relied upon by the OMB-Visayas were spurious and falsified; (2) constituted new evidence, if considered, would overturn the finding of probable cause; and (3) the finding of overpricing was bereft of factual and legal basis as the same was not substantiated by any independent canvass of prevailing market prices of the subject lampposts. He prayed for

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[5] Id. at 163-192.
[6] Id. at 193-196.
[7] Id. at 60.
[8] Id. at 229-259.

the suspension of the proceedings of the case pending such reinvestigation. The Sandiganbayan treated Braza's motion as his motion for reconsideration of its August 14, 2008 Resolution.

On November 13, 2008, Braza filed a manifestation[9] to make of record that he was maintaining his previous plea of "not guilty" without any condition.

During the proceedings held on November 3, 2008, the Sandiganbayan reconsidered its August 14, 2008 resolution and directed a reinvestigation of the case.[10] According to the anti-graft court, the allegations to the effect that no independent canvass was conducted and that the charge of overpricing was based on falsified documents were serious reasons enough to merit a reinvestigation of the case. The Sandiganbayan said that it could be reasonably inferred from the July 30, 2008 Order of the Ombudsman in OMB-V-C-07-0124-C that the latter would not object to the conduct of a reinvestigation of all the cases against the accused.

Braza filed his Manifestation,[11] dated February 2, 2009, informing the Sandiganbayan of his intention to abandon his previous motion for reinvestigation. He opined that the prosecution would merely use the reinvestigation proceedings as a means to engage in a second unbridled fishing expedition to cure the lack of probable cause.

On March 23, 2009, Braza filed a motion[12] in support of the abandonment of reinvestigation with a plea to vacate Information, insisting that the further reinvestigation of the case would only afford the prosecution a second round of preliminary investigation which would be vexatious, oppressive and violative of his constitutional right to a speedy disposition of his case, warranting its dismissal with prejudice.

After concluding its reinvestigation of the case, the OMB-Visayas issued its Resolution,[13] dated May 4, 2009, *(Supplemental Resolution)* which upheld the finding of probable cause but modified the charge from violation of Sec. 3(g) of R.A. No. 3019[14] to violation of Sec. 3(e)[15] of the same law.

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[9] Id. at 305.
[10] Id. at 307-310.
[11] Id. at 317-319.
[12] Id. at 321-337.
[13] Id. at 357-419.
[14] (g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.
[15] (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.

Accordingly, the prosecution filed its Manifestation and Motion to Admit Amended Information[16] on May 8, 2009.

On July 1, 2009, Braza filed his Comment (to the motion to admit amended information) with Plea for Discharge and/or Dismissal of the Case.[17] He claimed that the first information had been rendered ineffective or had been deemed vacated by the issuance of the Supplemental Resolution and, hence, his discharge from the first information was in order. By way of an alternative prayer, Braza sought the dismissal of the case with prejudice claiming that his right to a speedy disposition of the case had been violated and that the Supplemental Resolution failed to cure the fatal infirmities of the January 24, 2008 Resolution since proof to support the allegation of overpricing remained wanting. Braza averred that he could not be arraigned under the second information without violating the constitutional proscription against double jeopardy.

On October 12, 2009, the Sandiganbayan issued the first assailed resolution admitting the Amended Information,[18] dated May 4, 2009, *(second Information)* and denying Braza's plea for dismissal of the criminal case. The Sandiganbayan ruled that Braza would not be placed in double jeopardy should he be arraigned anew under the second information because his previous arraignment was conditional. It continued that even if he was regularly arraigned, double jeopardy would still not set in because the second information charged an offense different from, and which did not include or was necessarily included in, the original offense charged. Lastly, it found that the delay in the reinvestigation proceedings could not be characterized as vexatious, capricious or oppressive and that it could not be attributed to the prosecution. The dispositive portion of the said resolution reads:

> **WHEREFORE**, premises considered, the *Motion to Admit Attached Amended Information* filed by the prosecution is hereby **GRANTED**. The Amended Information charging all the accused therein with violation of Sec. 3 (e) of R.A. 3019, being the proper offense, is hereby **ADMITTED**.
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> Consequently, accused Braza's *Alternative Relief for Dismissal* of the Case is hereby **DENIED**.
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> Let the arraignment of all the accused in the Amended Information be set on November 18, 2009, at 8:30 in the morning.
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> **SO ORDERED**.[19]

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[16] *Rollo*, pp. 342-346.
[17] Id. at 420-460.
[18] Id. at 349-353.
[19] Id. at 67-68.

On November 6, 2009, Braza moved for reconsideration with alternative motion to quash the information[20] reiterating his arguments that his right against double jeopardy and his right to a speedy disposition of the case were violated warranting the dismissal of the criminal case with prejudice. In the alternative, Braza moved for the quashal of the second information vigorously asserting that the same was fatally defective for failure to allege any actual, specified and quantifiable injury sustained by the government as required by law for indictment under Sec. 3(e) of R.A. 3019, and that the charge of overpricing was unfounded.

On October 22, 2010, the Sandiganbayan issued the second assailed resolution stating, among others, the denial of Braza's Motion to Quash the information. The anti-graft court ruled that the Amended Information was sufficient in substance as to inform the accused of the nature and causes of accusations against them. Further, it held that the specifics sought to be alleged in the Amended Information were evidentiary in nature which could be properly presented during the trial on the merits. The Sandiganbayan also stated that it was possible to establish the fact of overpricing if it would be proven that the contract price was excessive compared to the price for which FABMIK purchased the street lighting facilities from its supplier. Braza was effectively discharged from the first Information upon the filing of the second Information but said discharge was without prejudice to, and would not preclude, his prosecution for violation of Sec. 3(e) of R.A. No. 3019. It added that his right to speedy disposition of the case was not violated inasmuch as the length of time spent for the proceedings was in compliance with the procedural requirements of due process. The Sandiganbayan, however, deemed it proper that a new preliminary investigation be conducted under the new charge. Accordingly, the Sandiganbayan disposed:

> **WHEREFORE**, in the light of all the foregoing, the separate omnibus motions of accused-movant Radaza and accused-movants Bernido, Manggis and Ojeda, insofar as the sought preliminary investigation is concerned is **GRANTED**.
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> Accordingly, this case is hereby remanded to the Office of the Ombudsman/Special Prosecutor for preliminary investigation of violation of Section 3(e) of RA 3019. The said office/s are hereby ordered to complete the said preliminary investigation and to submit to the Court the result of the said investigation within sixty (60) days from notice.
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> However, the Motion for Bill of Particulars of accused-movants Lala, Dindin Alvizo, Fernandez, Bagolor, Galang and Diano, the Motion for Quashal of Information of accused-movants Bernido, Manggis and Ojeda, and accused-movant Braza's Motion to Quash, are hereby DENIED for lack of merit.
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> SO ORDERED.[21]

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[20] Id. at 481-524.
[21] Id. at 89-90.

ISSUES

Undaunted, Braza filed this petition for certiorari ascribing grave abuse of discretion on the Sandiganbayan for issuing the Resolutions, dated October 12, 2009 and October 22, 2010, respectively. Braza raised the following issues:

> **A) The Sandiganbayan committed grave abuse of discretion in sustaining the withdrawal of the Information in violation of the constitutional guarantee against double jeopardy, the petitioner having entered a valid plea and vigorously objected to any further conduct of reinvestigation and amendment of Information.**
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> **B) The Sandiganbayan acted with grave abuse of discretion in allowing the withdrawal and amendment of the Information without prejudice, the proceedings being fraught with flip-flopping, prolonged and vexatious determination of probable cause, thereby violating petitioner's constitutional right to speedy disposition of his case, warranting his discharge with prejudice regardless of the nature of his previous arraignment.**
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> **C) The Sandiganbayan acted with grave abuse of discretion in denying the motion to quash Amended Information, there being no allegation of actual, specified, or quantifiable injury sustained by the government as required by law (in cases involving Sec. 3 (e) of RA 3019) with the Reinvestigation Report itself admitting on record that the government has not paid a single centavo for the fully-implemented project.**
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> **D) The Sandiganbayan acted with grave abuse of discretion in sustaining the new indictment under Sec. 3(e) of R.A. 3019 without threshing out the fatal infirmities that hounded the previous finding of overpricing – the erroneous reliance on spurious import documents and lack of price canvass to establish prevailing market price – thereby rendering the new Resolution fatally defective.**[22]

Essentially, Braza posits that double jeopardy has already set in on the basis of his "not guilty" plea in the first Information and, thus, he can no longer be prosecuted under the second Information. He claims that his arraignment was unconditional because the conditions in the plea were ineffective for not being unmistakable and categorical. He theorizes that the waiver of his constitutional guarantee against double jeopardy was not

[22] Id. at 22.

absolute as the same was qualified by the phrase "as a result of the pending incidents." He argues that even granting that his arraignment was indeed conditional, the same had become simple and regular when he validated and confirmed his plea of "not guilty" by means of a written manifestation which removed any further condition attached to his previous plea.

Braza submits that the prolonged, vexatious and flip-flopping determination of probable cause violated his right to a speedy disposition of the case which would justify the dismissal of the case with prejudice. Further, he assails the sufficiency of the allegation of facts in the second Information for failure to assert any actual and quantifiable injury suffered by the government in relation to the subject transaction. He points out that the admission in the Reinvestigation Report to the effect that the government had not paid a single centavo to FABMIK for the fully implemented project, had rendered as invalid, baseless and frivolous any indictment or prosecution for violation of Sec. 3(e) of R.A. 3019. Braza insists that the Supplemental Resolution of the OMB-Visayas was fatally defective considering that the Ombudsman did not conduct an independent price canvass of the prevailing market price of the subject lampposts and merely relied on the spurious and false BOC documents to support its conclusion of overpricing.

By way of comment,[23] the Office of the Special Prosecutor *(OSP)* retorts that the withdrawal of the first information and the subsequent filing of the second information did not place Braza in double jeopardy or violate his right to speedy disposition of the case. The OSP reasons that Braza waived his right to invoke double jeopardy when he agreed to be conditionally arraigned. It further argues that even granting that the arraignment was unconditional, still double jeopardy would not lie because the charge of violation of Section 3(e) of R.A. 3019 in the second information is a different offense with different elements from that of the charge of violation of Sec. 3(g) in the first Information. The OSP posits that his right to a speedy disposition of the case was not violated as the delay in the proceedings cannot be considered as oppressive, vexatious or capricious. According to the OSP, such delay was precipitated by the many pleadings filed by the accused, including Braza, and was in fact incurred to give all the accused the opportunities to dispute the accusation against them in the interest of fairness and due process.

The OSP also submits that proof of the actual injury suffered by the government and that of overpricing, are superfluous and immaterial for the determination of probable cause because the alleged mode for committing the offense charged in the second Information was by giving any private party unwarranted benefit, advantage or preference. The second Information sufficiently alleges all the elements of the offense for which the accused were indicted.

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[23] Id. at 716-747.

The Court's Ruling

Simply put, the pivotal issue in this case is whether the Sandiganbayan acted with grave abuse of discretion in denying Braza's plea for the dismissal of Case No. SB-08-CRM-0275 and his subsequent motion to quash the second Information, particularly on the grounds of double jeopardy, violation of his right to a speedy disposition of the case, and failure of the Information to state every single fact to constitute all the elements of the offense charged.

The petition is devoid of merit.

It is Braza's stance that his constitutional right under the double jeopardy clause bars further proceedings in Case No. SB-08-CRM-0275. He asserts that his arraignment under the first information was simple and unconditional and, thus, an arraignment under the second information would put him in double jeopardy.

The Court is not persuaded. His argument cannot stand scrutiny.

The June 6, 2008 Order[24] of the Sandiganbayan reads:

> This morning, accused Isabelo A. Braza was summoned to arraignment **as a precondition** in authorizing his travel. The arraignment of the accused was **conditional** in the sense that **if the present Information will be amended as a result of the pending incidents herein, he cannot invoke his right against double jeopardy and he shall submit himself to arraignment anew under such Amended Information.** On the other hand, his conditional arraignment shall not prejudice his right to question such Amended Information, if one shall be filed. These conditions were thoroughly explained to the accused and his counsel. After consultation with his counsel, the accused willingly submitted himself to such conditional arraignment.
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> Thereafter, the accused, **with the assistance of counsel**, was arraigned by reading the Information to him in English, a language understood by him. Thereafter, he pleaded Not Guilty to the charge against him. [Emphases supplied]

While it is true that the practice of the Sandiganbayan of conducting "provisional" or "conditional" arraignment of the accused is not specifically sanctioned by the Revised Internal Rules of the Procedure of the Sandiganbayan or by the regular Rules of Procedure, this Court had tangentially recognized such practice in *People v. Espinosa*,[25] provided that the alleged conditions attached to the arraignment should be "unmistakable,

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[24] Id. at 64.
[25] 456 Phil. 507 (2003).

express, informed and enlightened." The Court further required that the conditions must be expressly stated in the order disposing of arraignment, otherwise, it should be deemed simple and unconditional.[26]

A careful perusal of the record in the case at bench would reveal that the arraignment of Braza under the first information was conditional in nature as it was a mere accommodation in his favor to enable him to travel abroad without the Sandiganbayan losing its ability to conduct *trial in absentia* in case he would abscond. The Sandiganbayan's June 6, 2008 Order clearly and unequivocally states that the conditions for Braza's arraignment as well as his travel abroad, that is, that if the Information would be amended, he shall waive his constitutional right to be protected against double jeopardy and shall allow himself to be arraigned on the amended information without losing his right to question the same. It appeared that these conditions were duly explained to Braza and his lawyer by the anti-graft court. He was afforded time to confer and consult his lawyer. Thereafter, he voluntarily submitted himself to such conditional arraignment and entered a plea of "not guilty" to the offense of violation of Sec. 3(g) of R.A. No. 3019.

Verily, the relinquishment of his right to invoke double jeopardy had been convincingly laid out. Such waiver was clear, categorical and intelligent. It may not be amiss to state that on the day of said arraignment, one of the incidents pending for the consideration of the Sandiganbayan was an omnibus motion for determination of probable cause and for quashal of information or for reinvestigation filed by accused Radaza. Accordingly, there was a real possibility that the first information would be amended if said motion was granted. Although the omnibus motion was initially denied, it was subsequently granted upon motion for reconsideration, and a reinvestigation was ordered to be conducted in the criminal case.

Having given his conformity and accepted the conditional arraignment and its legal consequences, Braza is now estopped from assailing its conditional nature just to conveniently avoid being arraigned and prosecuted of the new charge under the second information. Besides, in consonance with the ruling in *Cabo v. Sandiganbayan,*[27] this Court cannot now allow Braza to renege and turn his back on the above conditions on the mere pretext that he affirmed his conditional arraignment through a pleading denominated as Manifestation filed before the Sandiganbayan on November 13, 2008. After all, there is no showing that the anti-graft court had acted on, much less noted, his written manifestation.

Assuming, in *gratia argumenti*, that there was a valid and unconditional plea, Braza cannot plausibly rely on the principle of double

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[26] *Albert v. Sandiganbayan*, G.R. No. 164015, February 26, 2009, 580 SCRA 279, 288.
[27] 524 Phil. 575, 584 (2006)

jeopardy to avoid arraignment under the second information because the offense charged therein is different and not included in the offense charged under the first information. The right against double jeopardy is enshrined in Section 21 of Article III of the Constitution, which reads:

> No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

This constitutionally mandated right is procedurally buttressed by Section 17 of Rule 117[28] of the Revised Rules of Criminal Procedure. To substantiate a claim for double jeopardy, the accused has the burden of demonstrating the following requisites: (1) a first jeopardy must have attached prior to the second; (2) the first jeopardy must have been validly terminated; and (3) the second jeopardy must be for the same offense as in the first.[29] As to the first requisite, the first jeopardy attaches only (a) after a valid indictment; (b) before a competent court; (c) after arraignment, (d) when a valid plea has been entered; and (e) when the accused was acquitted or convicted, or the case was dismissed or otherwise terminated without his express consent.[30] The test for the third element is whether one offense is identical with the other or is an attempt to commit it or a frustration thereof; or whether the second offense includes or is necessarily included in the offense charged in the first information.

Braza, however, contends that double jeopardy would still attach even if the first information charged an offense different from that charged in the second information since both charges arose from the same transaction or set of facts. Relying on the antiquated ruling of *People v. Del Carmen*,[31] Braza claims that an accused should be shielded against being prosecuted for several offenses made out from a single act.

It appears that Braza has obviously lost sight, if he is not altogether aware, of the ruling in *Suero v. People*[32] where it was held that the same criminal act may give rise to two or more separate and distinct offenses; and that no double jeopardy attaches as long as there is variance between the elements of the two offenses charged. The doctrine of double jeopardy is a revered constitutional safeguard against exposing the accused from the risk of being prosecuted twice for the same offense, and not a different one.

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[28] Sec. 7, Rule 117. Former conviction or acquittal; double jeopardy. - When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

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[29] *Dimayacyac v. Court of Appeals,* G.R. No. 136264, May 28, 2004, 430 SCRA 121, 129.

[30] *Pacoy v. Cajigal*, G.R. No. 157472, September 28, 2007, 534 SCRA 338, 352.

[31] 88 Phil. 51, 53 (1951).

[32] 490 Phil.760, 771 (2005).

There is simply no double jeopardy when the subsequent information charges another and different offense, although arising from the same act or set of acts.[33] Prosecution for the same act is not prohibited. What is forbidden is the prosecution for the same offense.

In the case at bench, there is no dispute that the two charges stemmed from the same transaction. A comparison of the elements of violation of Sec. 3(g) of R.A. No. 3019 and those of violation of Sec. 3(e) of the same law, however, will disclose that there is neither identity nor exclusive inclusion between the two offenses. For conviction of violation of Sec. 3(g), the prosecution must establish the following elements:

1. The offender is a public officer;
2. He entered into a contract or transaction in behalf of the government; and
3. The contract or transaction is manifestly and grossly disadvantageous to the government.[34]

On the other hand, an accused may be held criminally liable of violation of Section 3(e) of R.A. No. 3019, provided that the following elements are present:

1. The accused must be a public officer discharging administrative, judicial or official functions;
2. The accused must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and
3. His action caused undue injury to any party, including the government or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.[35]

Although violation of Sec. 3(g) of R.A. No. 3019 and violation of Sec. 3(e) of the same law share a common element, the accused being a public officer, the latter is not inclusive of the former. The essential elements of each are not included among or do not form part of those enumerated in the other**.** For double jeopardy to exist, the elements of one offense should ideally encompass or include those of the other. What the rule on double jeopardy prohibits refers to identity of elements in the two offenses.[36]

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[33] *People v. Deunida*, G.R. Nos. 105199-200, March 28, 1994, 231 SCRA 520, 530.
[34] *Ingco v. Sandiganbayan*, 338 Phil. 1061, 1072 (1997); *Dans, Jr. v. People*, 349 Phil. 434, 460 (1998).
[35] *People v. Atienza,* G.R. No. 171671, June 18, 2012.
[36] *People v. Reyes*, G.R. Nos. 101127-31, November 18, 1993, 228 SCRA 13, 17.

Next, Braza contends that the long delay that characterized the proceedings for the determination of probable cause has resulted in the transgression of his constitutional right to a speedy disposition of the case. According to him, the proceedings have unquestionably been marred with vexatious, capricious and oppressive delay meriting the dismissal of Case No. SB-08-CRM-0275. Braza claims that it took the OMB more than two (2) years to charge him and his co-accused with violation of Section 3(e) in the second information.

The petitioner's contention is untenable.

Section 16, Article III of the Constitution declares in no uncertain terms that "[A]ll persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies." The right to a speedy disposition of a case is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays, or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried.[37] The constitutional guarantee to a speedy disposition of cases is a relative or flexible concept.[38] It is consistent with delays and depends upon the circumstances. What the Constitution prohibits are unreasonable, arbitrary and oppressive delays which render rights nugatory.[39]

In *Dela Peña v. Sandiganbayan,*[40] the Court laid down certain guidelines to determine whether the right to a speedy disposition has been violated, as follows:

> The concept of speedy disposition is relative or flexible. A mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case. Hence, the doctrinal rule is that in the determination of whether that right has been violated, the factors that may be considered and balanced are as follows: (1) the length of the 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.

Using the foregoing yardstick, the Court finds that Braza's right to speedy disposition of the case has not been infringed.

Record shows that the complaint against Braza and twenty-three (23) other respondents was filed in January 2007 before the PACPO-Visayas.

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[37] *Perez v. People*, G.R. No. 164763, February 12, 2008, 544 SCRA 532, 558, citing *Gonzales v. Sandiganbayan*, 276 Phil. 323, 333-334 (1991).
[38] *Enriquez v. Office of the Ombudsman*, G.R. Nos. 174902-06, February 15, 2008, 545 SCRA 618, 626.
[39] *Caballero v. Alfonso, Jr.*, 237 Phil. 154, 163 (1987).
[40] 412 Phil. 921, 929 (2001).

After the extensive inquiries and data-gathering, the PACPO-Visayas came out with an evaluation report on March 23, 2007 concluding that the installed lampposts and lighting facilities were highly overpriced.[41] PACPO-Visayas recommended that the respondents be charged with violation of Section 3(e) of R.A. No. 3019. Thereafter, the investigatory process was set in motion before the OMB-Visayas where the respondents filed their respective counter-affidavits and submitted voluminous documentary evidence to refute the allegations against them. Owing to the fact that the controversy involved several transactions and varying modes of participation by the 24 respondents and that their respective responsibilities had to be established, the OMB-Visayas resolved the complaint only on January 24, 2008 with the recommendation that the respondents be indicted for violation of Section 3(g) of R.A. 3019. The Court notes that Braza never decried the time spent for the preliminary investigation. There was no showing either that there were unreasonable delays in the proceedings or that the case was kept in idle slumber.

After the filing of the information, the succeeding events appeared to be part of a valid and regular course of the judicial proceedings not attended by capricious, oppressive and vexatious delays. On November 3, 2008, Sandiganbayan ordered the reinvestigation of the case upon motion of accused Radaza, petitioner Braza and other accused DPWH officials. In the course of the reinvestigation, the OMB-Visayas furnished the respondents with the additional documents/papers it secured, especially the Commission on Audit Report, for their verification, comment and submission of countervailing evidence.[42] Thereafter, the OMB-Visayas issued its Supplemental Resolution, dated May 4, 2009, finding probable cause against the accused for violation of Section 3(e) of R.A. 3019.

Indeed, the delay can hardly be considered as "vexatious, capricious and oppressive." The complexity of the factual and legal issues, the number of persons charged, the various pleadings filed, and the volume of documents submitted, prevent this Court from yielding to the petitioner's claim of violation of his right to a speedy disposition of his case. Rather, it appears that Braza and the other accused were merely afforded sufficient opportunities to ventilate their respective defenses in the interest of justice, due process and fair investigation. The re-investigation may have inadvertently contributed to the further delay of the proceedings but this process cannot be dispensed with because it was done for the protection of the rights of the accused. Albeit the conduct of investigation may hold back the progress of the case, the same was essential so that the rights of the accused will not be compromised or sacrificed at the altar of expediency.[43] The bare allegation that it took the OMB more than two (2) years to terminate the investigation and file the necessary information would not

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[41] *Rollo*, p. 167.
[42] Id. at 387.
[43] *Matalam v. The Second Division of the Sandiganbayan*, 495 Phil. 664, 679-680 (2005).

suffice.[44] As earlier stated, mere mathematical reckoning of the time spent for the investigation is not a sufficient basis to conclude that there was arbitrary and inordinate delay.

The delay in the determination of probable cause in this case should not be cause for an unfettered abdication by the anti-graft court of its duty to try and determine the controversy in Case No. SB-08-CRM-0275. The protection under the right to a speedy disposition of cases should not operate to deprive the government of its inherent prerogative in prosecuting criminal cases.

Finally, Braza challenges the sufficiency of the allegations in the second information because there is no indication of any actual and quantifiable injury suffered by the government. He then argues that the facts under the second information are inadequate to support a valid indictment for violation of Section 3(e) of R.A. No. 3019.

The petitioner's simple syllogism must fail.

Section 3 (e) of R.A. No. 3019 states:

> Sec. 3. Corrupt practices of public officers – In addition to acts or omission of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
>
> (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.

In a catena of cases, this Court has held that there are two (2) ways by which a public official violates Section 3(e) of R.A. No. 3019 in the performance of his functions, namely: (1) by causing undue injury to any party, including the Government; or (2) by giving any private party any unwarranted benefit, advantage or preference.[45] The accused may be charged under either mode or under both. The disjunctive term "or" connotes that either act qualifies as a violation of Section 3(e) of R.A. No. 3019.[46] In other words, the presence of one would suffice for conviction.

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[44] *Ty-Dazo v. Sandiganbayan*, 424 Phil. 945, 952 (2002).
[45] *Velasco v. Sandiganbayan*, 492 Phil. 669, 677 (2005); *Constantino v. Sandiganbayan*, G.R. Nos. 140656 & 154482, September 13, 2007, 533 SCRA 205, 221.
[46] *Cabrera v. Sandiganbayan*, 484 Phil. 350, 360 (2004).

It must be emphasized that Braza was indicted for violation of Section 3(e) of R.A. No. 3019 under the second mode. "To be found guilty under the second mode, it suffices that the accused has given unjustified favor or benefit to another, in the exercise of his official, administrative and judicial functions."[47] The element of damage is not required for violation of Section 3(e) under the second mode.[48]

In the case at bench, the second information alleged, in substance, that accused public officers and employees, discharging official or administrative function, together with Braza, confederated and conspired to give FABMIK unwarranted benefit or preference by awarding to it Contract I.D. No. 06H00050 through manifest partiality or evident bad faith, without the conduct of a public bidding and compliance with the requirement for qualification contrary to the provisions of R.A. No. 9184 or the Government Procurement Reform Act. Settled is the rule that private persons, when acting in conspiracy with public officers, may be indicted and, if found guilty, held liable for the pertinent offenses under Section 3 of R.A. No. 3019.[49] Considering that all the elements of the offense of violation of Sec. 3(e) were alleged in the second information, the Court finds the same to be sufficient in form and substance to sustain a conviction.

At any rate, the presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits.[50] It is not proper, therefore, to resolve the issue right at the outset without the benefit of a full-blown trial. This issue requires a fuller ventilation and examination.

All told, this Court finds that the Sandiganbayan did not commit grave abuse of discretion amounting to lack or excess of jurisdiction, much less did it gravely err, in denying Braza's motion to quash the information/dismiss Case No. SB-08-CRM-0275. This ruling, however, is without prejudice to the actual merits of this criminal case as may be shown during the trial before the court *a quo*.

WHEREFORE, the petition for certiorari is **DENIED**. The Sandiganbayan is hereby **DIRECTED** to dispose of Case No. SB-08-CRM-0275 with reasonable dispatch.

SO ORDERED.

JOSE CATRAL MENDOZA
Associate Justice

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[47] *Ambil, Jr. v. Sandiganbayan*, G.R. No. 175457, July 6, 2011, 653 SCRA 576, 602.
[48] *Sison v. People*, G.R. Nos. 170339, 170398-403, March 9, 2010, 614 SCRA 670, 681.
[49] *Go. v. Fifth Division, Sandiganbayan*, G.R. No. 172602, April 13, 2007, 521 SCRA 270, 287.
[50] *Andres v. Cuevas*, 499 Phil. 36, 49-50 (2005).

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ROBERTO A. ABAD
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice