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SECOND DIVISION

[G.R. No. 189800. July 9, 2018]

PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, *petitioner, vs.* **HON. MA. MERCEDITAS GUTIERREZ, in her capacity as Ombudsman, RENATO D. TAYAG, ISMAEL REINOSO, JUAN TRIVINO, JUAN PONCE ENRILE, MARIO ORTIZ, GENEROSO TANSECO, FAUSTINO SY CHANGCO, VICENTE ABAD SANTOS, EUSEBIO VILLATUYA, MANUEL MORALES, JOSE ROÑO, TROADIO T. QUIAZON, RUBEN ANCHETA, FERNANDO MARAMAG, JR., GERONIMO VELASCO, EDGARDO L. TORDESILLAS, JAIME C. LAYA, GERARDO P. SICAT, ARTURO R. TANCO, JR., PLACIDO L. MAPA, JR., GILBERTO TEODORO, PANFILO DOMINGO, VICTORINO L. OJEDA, TEODORO DE VERA, ALEJANDRO LUKBAN, JR., ROMEO TAN, LUIS RECATO, BENITO S. DYCHIAO, ELPIDIO M. BORJA,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (REPUBLIC ACT NO. 3019); PRESCRIPTIVE PERIOD; THE PERIOD OF PRESCRIPTION FOR OFFENSES PUNISHABLE UNDER RA NO. 3019 IS TEN (YEARS) IF COMMITTED PRIOR TO THE PASSAGE OF BATAS PAMBANSA (B.P.) BLG. 195, WHILE OFFENSES COMMITTED AFTER THE EFFECTIVITY OF B.P. BLG. 195 SHALL PRESCRIBE IN FIFTEEN (15) YEARS; 10-YEAR PRESCRIPTIVE PERIOD APPLIED TO CASE AT BAR.— At the outset, it should be stressed that R.A. No. 3019, Section 11 provides that all offenses punishable under said law shall prescribe in ten (10) years. This period was later increased to fifteen (15) years with the passage of *Batas Pambansa* (BP) *Bilang* 195, which took effect on March 16, 1982. When the subject transactions took place, the period of prescription for all offenses punishable under R.A. No. 3019 was ten (10) years. As to

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which of the two periods should apply, the Court in *People v. Pacificador* explained that in the prescription of crimes, the period which appears more favorable to the accused is to be adopted, *viz.*: It can be gleaned from the Information that the respondent Pacificador allegedly committed the crime charged on or about during the period from December 6, 1975 to January 6, 1976. Section 11 of R.A. No. 3019, as amended by B.P. Blg. 195, provides that the offenses committed under the said statute shall prescribe in fifteen (15) years. It appears however, that prior to the amendment of Section 11 of R.A. No. 3019 by B.P. Blg. 195 which was approved on March 16, 1982, the prescriptive period for offenses punishable under the said statute was only ten (10) years. The longer prescriptive period of fifteen (15) years, as provided in Section 11 of R.A. No. 3019 as amended by B.P. Blg. 195, does not apply in this case for the reason that the amendment, not being favorable to the accused (herein private respondent), cannot be given retroactive effect. Hence, the crime prescribed on January 6, 1986 or ten (10) years from January 6, 1976. The loan transactions subject of this case were granted by the PNB to BISUDECO from 1977-1985. Applying this Court's pronouncement in *Pacificador*, the period of prescription for offenses committed prior to the passage of B.P. Blg. 195 is ten (10) years. The new 15-year period cannot be applied to acts done prior to its effectivity in 1982 because to do so would violate the prohibition against *ex post facto* laws. Transactions entered into and consummated prior to the effectivity of B.P. Blg. 195 on March 16, 1982 are exempt from its amendments. The new 15-year period shall only be applied to acts done after its effectivity.

2. ID.; ID.; ID.; ID; "BLAMELESS IGNORANCE" DOCTRINE; PRESCRIPTION SHALL BEGIN TO RUN FROM THE DAY OF THE COMMISSION OF THE VIOLATION OF THE LAW, AND IF THE SAME BE NOT KNOWN AT THE TIME, FROM THE DISCOVERY THEREOF.— While R.A. No. 3019 is silent as to when the period of prescription begins to run, R.A. No. 3326, specifically Section 2 thereof fills the gap. Section 2 provides in part: **Sec. 2**. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, **from the discovery thereof** and the institution of judicial proceeding for its investigation and punishment. x x x In the 1999 and 2011 cases of *Presidential Ad Hoc Fact-Finding Committee on Behest*

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Loans, et al. v. Hon. Desierto, et al., the Court ruled that the prescriptive period began to ran **from the date of discovery** of the subject transactions and not from the time the behest loans were transacted. In the 2011 *Desierto* case, the Court ruled that the "blameless ignorance" doctrine applies considering that the plaintiff at that time had no reasonable means of knowing the existence of a cause of action, *viz.*: Generally, the prescriptive period shall commence to run on the day the crime is committed. That an aggrieved person "entitled to an action has no knowledge of his right to sue or of the facts out of which his right arises," does not prevent the running of the prescriptive period. An exception to this rule is the "blameless ignorance" doctrine, incorporated in Section 2 of Act No. 3326. Under this doctrine, "the statute of limitations runs only upon discovery of the fact of the invasion of a right which will support a cause of action. In other words, the courts would decline to apply the statute of limitations where the plaintiff does not know or has no reasonable means of knowing the existence of a cause of action." x x x. Applying this to the present case, the date of discovery was April 4, 1994, the date of the Terminal Report that was submitted to President Fidel V. Ramos. The Terminal Report classified the subject BISUDECO loans as behest loans. Records show that the PCGG filed its affidavit-complaint before the Ombudsman only on January 28, 2005 or a little more than 10 years from the date of discovery. Clearly, the crimes imputed to private respondents for loans transacted in the years 1971 to 1981 have already prescribed. As to the loans covered by the years 1982 to 1985, the 15-year prescriptive period shall apply since B.P. Blg. 195 was then already in effect. Thus, insofar as the 1982 to 1985 loan transactions are concerned, the complaint was filed on time and without a doubt, within the prescriptive period.

3. ID.; ID.; SECTION 3 (e) THEREOF; GIVING UNWARRANTED BENEFITS, ADVANTAGE OR PREFERENCE TO A PRIVATE PARTY; ELEMENTS.— To justify an indictment under Section 3(e), the following elements must concur: (1) the accused is a public officer or a private person charged in conspiracy with the former; (2) he or she causes any undue injury to any party, whether the government or a private party; (3) the said public officer commits the prohibited acts during the performance of his or her official duties or in relation to his or her public positions; (4) such undue injury is caused by

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giving unwarranted benefits, advantage or preference to such parties; and (5) the public officer has acted with manifest partiality, evident bad faith or gross inexcusable negligence.

4. **ID.; ID.; SECTION 3 (g) THEREOF; ENTERING INTO A CONTRACT OR TRANSACTION WHICH IS MANIFESTLY AND GROSSLY DISADVANTAGEOUS TO THE GOVERNMENT; ELEMENTS.—** [S]ection 3(g) of R.A. No. 3019 lists the following elements: (1) the accused is a public officer; (2) he or she enters into a contract or transaction, on behalf of the Government; (3) such contract or transaction is manifestly and grossly disadvantageous to the Government, regardless of whether or not the public officer profited therefrom.

5. **ID.; ID.; PROBABLE CAUSE, DEFINED; THE APPROVAL OF A LOAN DURING INCUMBENCY AS DIRECTOR DOES NOT AUTOMATICALLY ESTABLISH PROBABLE CAUSE ABSENT A SHOWING OF PERSONAL PARTICIPATION IN ANY IRREGULARITY AS REGARDS APPROVAL OF THE LOAN.—** In the case of *Buchanan v. Viuda De Esteban,* probable cause has been defined as the existence of such facts and circumstances as would 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 prosecuted. A careful perusal of the records reveals that the only basis of PCGG for imputing liability on private respondents is the fact that the latter were members of PNB's Board of Directors at the time the loan transactions were entered into. While it is true that a finding of probable cause does not require a finding of guilt nor absolute certainty, PCGG cannot merely rely on the private respondents' membership in the Board to hold the latter liable for the acts complained of. In the case of *Kara-an v. Office of the Ombudsman,* the Court ruled that approval of a loan during incumbency as director does not automatically establish probable cause absent a showing of personal participation in any irregularity as regards approval of the loan.

6. **COMMERCIAL LAW; CORPORATIONS; A CORPORATION HAS A SEPARATE AND DISTINCT PERSONALITY FROM THOSE WHO REPRESENT IT, AS SUCH, PERSONAL LIABILITY WILL ONLY ATTACH TO A DIRECTOR OR OFFICER IF THEY ARE GUILTY OF WILLFULLY OR KNOWINGLY VOTE OR ASSENT TO**

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PATENTLY UNLAWFUL ACTS OF THE CORPORATION, OR GROSS NEGLIGENCE OR BAD FAITH.— As a general rule, a corporation has a separate and distinct personality from those who represent it. Its officers are solidarily liable only when exceptional circumstances exist, such as cases enumerated in Section 31 of the Corporation Code. The liability of the officers must be proven by evidence sufficient to overcome the burden of proof borne by the plaintiff. x x x. x x x [P]ersonal liability will only attach to a director or officer if they are guilty of any of the following: (1) willfully or knowingly vote or assent to patently unlawful acts of the corporation; (2) gross negligence; or (3) bad faith. PCGG failed to allege in the complaint and in the present petition the particular acts of private respondents which constitutes a violation of Sections 3(e) and (g) of R.A. No. 3019. It is not sufficient for PCGG to merely provide a list of names of the PNB Board members for the years covering the subject loans absent proof of the latter's individual participation in the approval thereof.

7. CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (REPUBLIC ACT NO. 3019); PRIVATE PERSONS WHO CONSPIRE WITH PUBLIC OFFICERS MAY BE INDICTED AND, IF FOUND GUILTY, HELD LIABLE FOR VIOLATION OF SECTION 3(e) AND (g) OF R.A. NO. 3019, BUT IF THERE WAS NO PROBABLE CAUSE TO CHARGE THE PUBLIC OFFICER WITH VIOLATION OF SECTION 3(e) AND (g), PRIVATE PARTIES WHO ALLEGEDLY CONSPIRE WITH THE SAID PUBLIC OFFICER ARE LIKEWISE CLEARED OF CRIMINAL LIABILITY.— Insofar as criminal liability of the BISUDECO officers is concerned, the Court likewise rules in the negative. Private respondents Ojeda, De Vera, Lukban, Tan, Recato, Dychiao, Borja and Cea (deceased) are not criminally liable under Section 3(g) and (e). The relevant provisions of R.A. No. 3019 and the Court's ruling in the cases of *Singian, Jr. v. Sandiganbayan (Third Division)* and *Domingo v. Sandiganbayan*, clarified that private persons who conspire with public officers may be indicted and, if found guilty, held liable for violation of Section 3(g) of R.A. No. 3019. In the case at bench, no violation was proven because there was no probable cause to charge the private respondents in the first place. Thus, there being no probable cause to charge the public officer involved herein with violation of Section 3(e) and (g),

private respondents who acted in their capacities as Officers of BISUDECO are likewise cleared of any criminal liability.

8. POLITICAL LAW; CONSTITUTIONAL LAW; OFFICE OF THE OMBUDSMAN; THE SUPREME COURT WILL NOT INTERFERE WITH THE OMBUDSMAN'S DETERMINATION OF PROBABLE CAUSE ABSENT A SHOWING OF GRAVE ABUSE OF DISCRETION COMMITTED BY THE LATTER; RATIONALE.— In *Dichaves v. Office of the Ombudsman*, the Court reiterated the rule on non-interference with the Ombudsman's determination of probable cause absent a showing of grave abuse of discretion committed by the latter, *viz.*: As a general rule, this Court does not interfere with the Office of the Ombudsman's exercise of its constitutional mandate. Both the Constitution and Republic Act No. 6770 (The Ombudsman Act of 1989) give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees. The rule on non-interference is based on the "respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman[.]" x x x. The Office of the Ombudsman is armed with the power to investigate. It is, therefore, in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause. As this Court is not a trier of facts, we defer to the sound judgment of the Ombudsman. It is not sound practice to depart from the policy of non-interference in the Ombudsman's exercise of discretion to determine whether or not to file information against an accused. As cited in a long line of cases, the Court has pronounced that it cannot pass upon the sufficiency or insufficiency of evidence to determine the existence of probable cause. The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Ombudsman, but upon practicality as well. If it were otherwise, the Court will be clogged with an innumerable list of cases assailing investigatory proceedings conducted by the Ombudsman with regard to Complaints filed before it, to determine if there is probable cause.

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APPEARANCES OF COUNSEL

M.M. Lazaro and Associates for respondents Sicat and Mapa, *Jr.*

Ponce Enrile Reyes & Manalastas for Juan Ponce Enrile.

Jaromay Laurente Pamaos Law Offices for respondent Lukban, Jr.

Office of the Solicitor General for petitioner.

D E C I S I O N

REYES, JR., *J.*:

Before this Court is a petition for *certiorari*[1] under Rule 65 of the Rules of Court, as amended. The petition seeks to nullify and set aside the Resolution[2] dated June 23, 2006 of the Office of the Ombudsman in OMB-C-C-05-0153-D, dismissing the complaint filed against Renato D. Tayag, Ismael Reinoso, Juan Trivino, Juan Ponce Enrile (Enrile), Mario Ortiz, Generoso Tanseco, Faustino Sy Changco, Vicente Abad Santos, Eusebio Villatuya, Manuel Morales, Jose Roño, Troadio T. Quiazon, Ruben Ancheta, Fernando Maramag, Jr., Geronimo Velasco, Edgardo L. Tordesillas, Jaime C. Laya, Gerardo P. Sicat, Arturo R. Tanco, Jr., Placido L. Mapa, Jr. (Mapa), Gilberto Teodoro, Panfilo Domingo, Victorino L. Ojeda (Ojeda), Teodoro De Vera (De Vera), Alejandro Lukban, Jr. (Lukban), Romeo Tan (Tan), Luis Recato (Recato), Benito S. Dychiao (Dychiao), Elpidio M. Borja (Borja) (collectively referred to as the private respondents), and the Order[3] dated January 7, 2009 which denied petitioner Presidential Commission on Good Government's (PCGG) Motion for Reconsideration.

The Facts

Bicolandia Sugar Development Corporation (BISUDECO) is a domestic corporation engaged in the business of sugarcane

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[1] *Rollo*, pp. 2-24.

[2] *Id*. at 29-41.

[3] *Id*. at 42-44.

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milling. It was incorporated on September 30, 1970, with an initial authorized capital stock worth ₱10,000,000.00 of which ₱2,010,000.00 worth of shares were subscribed and ₱510,000.00 worth were paid up. Its incorporators were private respondents Ojeda, de Vera, Lukban, Tan, Recato, Dychiao, Borja, and Edmund Cea (Cea) (Deceased).[4]

On August 12, 1972, BISUDECO's authorized capital stock was increased to ₱36,300,000.00, of which ₱5,260,000.00 worth of shares were subscribed and ₱1,315,000.00 worth were paid up.[5]

In 1971, BISUDECO filed a loan request with Philippine National Bank (PNB) for the issuance of a stand-by letter of credit. The loan request in the total amount of ₱172,583,125.00 was recommended to the PNB Board of Directors and was approved under PNB Resolution No. 157-D dated October 27, 1971. Allegedly, at this time, BISUDECO had no sufficient capital and collateral, and had assets amounting to only ₱510,000.00 as reflected in its Balance Sheet dated December 31, 1971.[6]

When BISUDECO failed to comply with the conditions imposed on the grant of loan, that it must have sufficient capital and collateral, it requested for modifications in the guarantee conditions, *viz.*:

WHEREAS, the above corporation (BISUDECO) has requested for the following:

I. That the aforequoted condition be amended so as to allow them to deposit only ₱500,000 before L/C opening, the balance of ₱15.1 million to be put up during the construction period as the need arises; and

II. That the bank accept as collateral for the accommodations their plant site, sugar mill machinery and equipment, farm equipment and implements and other assets to be acquired; and assignment of proceeds of their share in their sugar and molasses produced.[7]

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[4] *Id*. at 6.

[5] *Id*. at 7.

[6] *Id*.

[7] *Id*. at 80.

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PNB approved the requested modifications under Resolution No. 141-C.[8] Despite the amendments made, BISUDECO still failed to submit and comply with the guarantee conditions. Nonetheless, PNB further accommodated BISUDECO and passed PNB Resolution No. 137-C[9] approving modifications in the terms and conditions and facilitating the implementation and opening of the letter of credit, *viz.*:

RESOLVED, that in order to avoid further delay and to take advantage of the beneficial terms and conditions of the contract which they have entered into with its supplier, further amendment of the aforesaid resolution be approved as requested by BISUDECO:

1. To grant BISUDECO a period of 30 days from opening of the letter of credit within which to increase its authorized capital of ₱36.3 Million;

2. To delete the requirement for the joint and several signatures of BISUDECO's principal officers and stockholders, provided that BISUDECO will guarantee that it will pay its obligations to the bank to the extent of its interest in BISUDECO;

3. To grant BISUDECO a period of 30 days from opening of the letter of credit within which to deposit with the [PNB] the sum of ₱500,000.00, provided that they will execute a Deed of Undertaking that they are holding the aforementioned sum in trust for the Bank with the written conformity of depository bank and will turn over the money within said period;

4. That BISUDECO shall execute a Deed of Undertaking to mortgage to the Bank the aforesaid 111.3165 Has. of land in Himaao, Pili, Camarines Sur, free from all liens and encumbrances;

5. That BISUDECO shall submit to the Bank a copy of the Deed of Sale with assumption of mortgage covering the aforementioned property; and

6. That BISUDECO shall make an immediate payment of the encumbrance annotated at the back of the title of the property in favor of the [PNB].

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[8] *Id.* at 79.

[9] *Id.* at 81.

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All the terms and conditions of Res. No. 141-C of December 15, 1971 referred to above, not in conflict herewith, to remain in full force and effect.[10]

PCGG claims that despite continuously incurring losses in its milling operations resulting to capital deficiency, BISUDECO was extended by PNB undue and unwarranted accommodations from 1977 to 1985 by way of grant of the following loans:[11]

Resolution under which loan was granted	**Date**	**Amount of Loan**
Resolution #337	November 9, 1977	₱ 6,047,500.00
Resolution #449	March 19, 1979	₱ 7,750.000.00
(not indicated)	1979	₱26,100,000.00
Resolution #538	September 28, 1981	₱ 5,610,000.00
(not indicated)	1982	₱ 1,240,000.00
(not indicated)	1983	₱ 4,824,000.00
Resolution #155	January 9, 1984	₱18,470,000.00
Resolution #375	March 26, 1984	₱ 4,590,000.00
Resolution #517	July 23, 1984	₱15,040,000.00
Resolution #46	January 21, 1985	₱21,840,000.00

On February 27, 1987, PNB's rights, titles and interests were transferred to the Philippine Government through a Deed of Transfer, including the account of BISUDECO. In 1994, after study and investigation, the Presidential Ad Hoc Fact Finding Committee (Committee), in reference to Memorandum No. 61,[12] found that the loan accounts of BISUDECO were behest loans due to the following characteristics: a) the accounts were under collateralized; and b) the borrower corporation was undercapitalized.[13]

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[10] *Id*.

[11] *Id*. at 32-33.

[12] *Broadening the Scope of the Ad-Hoc Fact Finding Committee on Behest Loans Created Pursuant to Administrative Order No. 13, Dated 8 October 1992.*

[13] *Rollo*, p. 13.

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Thus, on January 28, 2005, PCGG filed with the Ombudsman a complaint against private respondents (in their capacities as members of PNB's Board of Directors and Officers of BISUDECO) for violation of Sections 3(e) and (g) of Republic Act (R.A.) No. 3019 or the Anti-Graft and Corrupt Practices Act.

In its Resolution[14] dated June 23, 2006, the Ombudsman dismissed the Complaint on the grounds of lack of probable cause and prescription. The pertinent portions of the assailed resolution read as follows:

> Before the passage of Batas Pambansa Bilang 195 on 16 March 1982, the prescription of offenses punishable under the Anti-Graft and Corrupt Practices Act was ten (10) years. The Supreme Court in the case of "***People vs. The Hon. Sandiganbayan and Ceferino S. Paredes, Jr.***" in ruling that the new prescriptive period cannot be given retroactive effect succinctly stated that Batas Pambansa Bilang 195 which was approved on March 16, 1982 amending Section 11 of RA 3019 by increasing from ten (10) to fifteen (15) years the period for the prescription or extinguishment of a violation of the Anti-Graft and Corrupt Practices Act, may not be given retroactive application to the crime which was committed by Paredes in January 1976 yet, for it would be prejudicial to the accused. It would deprive him of the substantive benefit of the shorter (10 years) prescriptive period under Section 11 of RA 3019 which was an essential element of the crime at the time he committed it.
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> x x x x x x x x x
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> Therefore, applying the two rulings of the Supreme Court mentioned earlier, the loans granted by the PNB to BISUDECO from 1971 to 1981 are already barred by prescription with respect to the criminal liability of the respondents.
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> As to the other loans/accommodations extended by PNB to BISUDECO, the complaint and its supporting papers do not show the individual or collective participation of the respondents in the acts complained of.
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> x x x x x x x x x

[14] *Id*. at 29-40.

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WHEREFORE, the foregoing considered, it is respectfully recommended that the Complaint for violation of Section 3 (e) and (g) of RA 3019 filed against all respondents be dismissed.

SO RESOLVED.[15]

PCGG filed a Motion for Reconsideration but the same was denied by the Ombudsman in an Order[16] dated January 7, 2009.

Hence, the instant Petition.

The Issue

For resolution is the issue on whether the Ombudsman acted with grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing PCGG's Complaint on the ground of (a) prescription and (b) lack of probable cause.

Ruling of the Court

At the outset, it should be stressed that R.A. No. 3019, Section 11[17] provides that all offenses punishable under said law shall prescribe in ten (10) years. This period was later increased to fifteen (15) years with the passage of *Batas Pambansa* (BP) *Bilang* 195,[18] which took effect on March 16, 1982.

When the subject transactions took place, the period of prescription for all offenses punishable under R.A. No. 3019 was ten (10) years. As to which of the two periods should apply, the Court in *People v. Pacificador*[19] explained that in the prescription of crimes, the period which appears more favorable to the accused is to be adopted, *viz.*:

It can be gleaned from the Information that the respondent Pacificador allegedly committed the crime charged on or about during

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[15] *Id.*

[16] *Id*. at 42-44.

[17] **Sec. 11**. *Prescription of Offenses*. — All offenses punishable under this Act shall prescribe in ten years.

[18] Please note that as of July 21, 2016, R.A. No. 10910 has increased the period of prescription to twenty (20) years.

[19] 406 Phil. 774 (2001).

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the period from December 6, 1975 to January 6, 1976. Section 11 of R.A. No. 3019, as amended by B.P. Blg. 195, provides that the offenses committed under the said statute shall prescribe in fifteen (15) years. It appears however, that prior to the amendment of Section 11 of R.A. No. 3019 by B.P. Blg. 195 which was approved on March 16, 1982, the prescriptive period for offenses punishable under the said statute was only ten (10) years. The longer prescriptive period of fifteen (15) years, as provided in Section 11 of R.A. No. 3019 as amended by B.P. Blg. 195, does not apply in this case for the reason that the amendment, not being favorable to the accused (herein private respondent), cannot be given retroactive effect. Hence, the crime prescribed on January 6, 1986 or ten (10) years from January 6, 1976.[20]

The loan transactions subject of this case were granted by the PNB to BISUDECO from 1977-1985. Applying this Court's pronouncement in *Pacificador*, the period of prescription for offenses committed prior to the passage of B.P. Blg. 195 is ten (10) years. The new 15-year period cannot be applied to acts done prior to its effectivity in 1982 because to do so would violate the prohibition against *ex post facto* laws. Transactions entered into and consummated prior to the effectivity of B.P. Blg. 195 on March 16, 1982 are exempt from its amendments. The new 15-year period shall only be applied to acts done after its effectivity.

When does the 10-year period begin to run?

While R.A. No. 3019 is silent as to when the period of prescription begins to run, R.A. No. 3326,[21] specifically Section 2 thereof fills the gap. Section 2 provides in part:

Sec. 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, **from the discovery thereof** and the institution of judicial proceeding for its investigation and punishment. x x x (Emphasis Ours)

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[20] *Id*. at 782.

[21] AN ACT TO ESTABLISH PERIODS OF PRESCRIPTION FOR VIOLATIONS PENALIZED BY SPECIAL ACTS AND MUNICIPAL ORDINANCES AND TO PROVIDE WHEN PRESCRIPTION SHALL BEGIN TO RUN. Approved on December 4, 1926.

In the 1999[22] and 2011[23] cases of *Presidential Ad Hoc Fact-Finding Committee on Behest Loans, et al. v. Hon. Desierto, et al.*, the Court ruled that the prescriptive period began to ran **from the date of discovery** of the subject transactions and not from the time the behest loans were transacted. In the 2011 *Desierto* case, the Court ruled that the "blameless ignorance" doctrine applies considering that the plaintiff at that time had no reasonable means of knowing the existence of a cause of action, *viz.*:

> Generally, the prescriptive period shall commence to run on the day the crime is committed. That an aggrieved person "entitled to an action has no knowledge of his right to sue or of the facts out of which his right arises," does not prevent the running of the prescriptive period. An exception to this rule is the "blameless ignorance" doctrine, incorporated in Section 2 of Act No. 3326. Under this doctrine, "the statute of limitations runs only upon discovery of the fact of the invasion of a right which will support a cause of action. In other words, the courts would decline to apply the statute of limitations where the plaintiff does not know or has no reasonable means of knowing the existence of a cause of action." It was in this accord that the Court confronted the question on the running of the prescriptive period in *People v. Duque* which became the cornerstone of our 1999 Decision in Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto (G.R. No. 130149), and the subsequent cases which Ombudsman Desierto dismissed, emphatically, on the ground of prescription too. Thus, we held in a catena of cases, that if the violation of the special law was not known at the time of its commission, the prescription begins to run only from the discovery thereof, *i.e.*, discovery of the unlawful nature of the constitutive act or acts.[24]

In *Disini v. Sandiganbayan*,[25] the Court reiterated that the prescriptive period commenced to run not on the date of commission of the crime or offense, rather, from the discovery

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[22] 375 Phil. 697 (1999).

[23] 664 Phil. 16 (2011).

[24] *Id*. at 27-28.

[25] 717 Phil. 638 (2013).

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thereof, *i.e.* date of discovery of the violation after the PCGG's exhaustive investigation.

In the more recent case of *PCGG v. The Ombudsman, et al.*[26] likewise involving behest loans, the Court applied the same rule in determining whether or not prescription had already set in, *viz.*:

> In the case at bar, involving as it does the grant of behest loans which We have recognized as a violation that, by their nature, could be concealed from the public eye by the simple expedient of suppressing their documentation, the second mode applies. We, therefore, count the running of the prescriptive period from the date of discovery thereof on January 4, 1993, when the Presidential Ad Hoc Fact-Finding Committee reported to the President its findings and conclusions anent RHC's loans. This being the case, the filing by the PCGG of its Affidavit-Complaint before the Office of the Ombudsman on January 6, 2003, a little over ten (10) years from the date of the discovery of the crimes, is clearly belated. Undoubtedly, the ten-year period within which to institute the action has already lapsed, making it proper for the Ombudsman to dismiss petitioner's complaint on the ground of prescription.[27]

Applying this to the present case, the date of discovery was April 4, 1994, the date of the Terminal Report that was submitted to President Fidel V. Ramos. The Terminal Report classified the subject BISUDECO loans as behest loans. Records show that the PCGG filed its affidavit-complaint before the Ombudsman only on January 28, 2005 or a little more than 10 years from the date of discovery. Clearly, the crimes imputed to private respondents for loans transacted in the years 1971 to 1981 have already prescribed. As to the loans covered by the years 1982 to 1985, the 15-year prescriptive period shall apply since B.P. Blg. 195 was then already in effect. Thus, insofar as the 1982 to 1985 loan transactions are concerned, the complaint was filed on time and without a doubt, within the prescriptive period.

It bears stressing, however, that the crux of the present petition is the propriety of the Ombudsman's dismissal of PCGG's

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[26] 746 Phil. 995 (2014).

[27] *Id*. at 1009.

complaint on the ground that there was no probable cause to indict respondents for alleged violation of R.A. No. 3019.

As a general rule, courts do not interfere with the discretion of the Ombudsman to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts.[28]

When the Ombudsman dismissed the case for lack of probable cause, it explained that the Complaint and its supporting papers failed to establish probable cause both as to the commission of the crime and the guilt of the private respondents, to wit:

> As to the other loans/accommodations extended by PNB to BISUDECO, the complaint and its supporting papers do not show the individual or collective participation of the respondents in the acts complained of. As a matter of fact, they do not show the names of the members of the PNB Board who approved said loans/ accommodations in favor of BISUDECO. Paragraph "16" of the complaint merely provided the names of the members of the PNB Board at the time of the application and approval of the loans, and its Annex "K" listed the names of the PNB Board from 1964 to 1986. Moreover, there is no copy of the PNB Board Resolution in the record. The Board Resolutions referred to by the complainant in the complaint are actually excerpts of the Minute of the Board Meetings during which the Resolutions were approved. Thus, we cannot make a presumption that all the members of the PNB Board from 1964 to 1986 unanimously approved the loan in favor of BISUDECO.[29]

To recapitulate, the private respondents were charged with violation of Sections 3(e) and (g) of R.A. No. 3019 which provides:

> **Sec. 3**. *Corrupt practices of public officers*.— In addition to acts or omissions 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:
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> x x x x x x x x x

[28] *Principio v. Judge Barrientos*, 514 Phil. 799, 811 (2005).

[29] *Rollo*, pp. 37-38.

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e. Causing 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.

x x x x x x x x x

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.[30]

To justify an indictment under Section 3(e), the following elements must concur: (1) the accused is a public officer or a private person charged in conspiracy with the former; (2) he or she causes any undue injury to any party, whether the government or a private party; (3) the said public officer commits the prohibited acts during the performance of his or her official

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[30] In *Singian, Jr. v. Sandiganbayan (Third Division),* 514 Phil. 536, 546-547 (2005), we enumerated the elements of these offenses:

The elements of the offense defined under Section 3(e) of Rep. Act No. 3019 are the following:

1) that the accused are public officers or private persons charged in conspiracy with them;

2) that the prohibited act/s were done in the discharge of the public officer's official, administrative or judicial, functions;

3) that they cause undue injury to any party, whether Government or a private person;

4) that such injury is caused by giving any unwarranted benefits, advantage or preference to such party; and

5) that the public officers acted with manifest partiality, evident bad faith or gross inexcusable negligence.

To be indicted of the offense under Section 3(g) of Rep Act No. 3019, the following elements must be present:

1) that the accused is a public officer;

2) that he entered into a contract or transaction on behalf of the government; and

3) that such contract or transaction is grossly and manifestly disadvantageous to the government.

duties or in relation to his or her public positions; (4) such undue injury is caused by giving unwarranted benefits, advantage or preference to such parties; and (5) the public officer has acted with manifest partiality, evident bad faith or gross inexcusable negligence.

On the other hand, Section 3(g) of R.A. No. 3019 lists the following elements: (1) the accused is a public officer; (2) he or she enters into a contract or transaction, on behalf of the Government; (3) such contract or transaction is manifestly and grossly disadvantageous to the Government, regardless of whether or not the public officer profited therefrom.

Private respondents Mapa and Enrile, in their respective Comments,[31] maintain that the complaint failed to state the particular acts for which they are individually or collectively liable as Directors of PNB. PCGG, however, insists that there is probable cause to hold the private respondents liable and that it was capricious for the Ombudsman to require that they indicate the participation of every private respondent in the commission of the offense- preliminary investigation not being the occasion for the full and exhaustive display of the parties' evidence.

In the case of *Buchanan v. Viuda De Esteban,*[32] probable cause has been defined as the existence of such facts and circumstances as would 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 prosecuted.[33]

A careful perusal of the records reveals that the only basis of PCGG for imputing liability on private respondents is the fact that the latter were members of PNB's Board of Directors at the time the loan transactions were entered into. While it is true that a finding of probable cause does not require a finding of guilt nor absolute certainty, PCGG cannot merely rely on the private respondents' membership in the Board to hold the latter liable for the acts complained of.

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[31] *Rollo*, pp. 1043-1049, 1411-1423.

[32] 32 Phil. 365 (1915).

[33] *Id.*

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In the case of *Kara-an v. Office of the Ombudsman,*[34] the Court ruled that approval of a loan during incumbency as director does not automatically establish probable cause absent a showing of personal participation in any irregularity as regards approval of the loan, *viz.*:

> The Court cannot likewise sustain petitioner's contention that the Ombudsman gravely abused his discretion in dismissing the charge against Farouk A. Carpizo (Carpizo). The Ombudsman explained his reasons for finding that there was no sufficient ground to engender a well-founded belief that Carpizo is liable under RA 3019. True, Carpizo, who was appointed in March 1981, was already a director when the Islamic Bank approved the CAMEC loan in 1986. However, the fact that the Islamic Bank processed and approved the CAMEC loan during his incumbency as director does not automatically establish probable cause against him absent a showing that he personally participated in any irregularity in the processing and approval of the loan. As the Ombudsman stated in the assailed Order, there were subordinate officials who studied and favorably endorsed the loan to the Banks Board for approval.[35]

As a general rule, a corporation has a separate and distinct personality from those who represent it. Its officers are solidarily liable only when exceptional circumstances exist, such as cases enumerated in Section 31 of the Corporation Code. The liability of the officers must be proven by evidence sufficient to overcome the burden of proof borne by the plaintiff.[36]

Section 31 of the Corporation Code states:

> Sec. 31. *Liability of Directors, Trustees or Officers.*— Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such

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[34] 476 Phil. 536 (2004).

[35] *Id.* at 550.

[36] *Pioneer Insurance & Surety Corp. v. Morning Star Travel & Tours, Inc., et al.*, 763 Phil. 428, 436 (2015), citing *Solidbank Corporation v. Mindanao Ferroalloy Corporation,* 502 Phil. 651, 664 (2005).

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directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

From the foregoing it can be deduced that personal liability will only attach to a director or officer if they are guilty of any of the following: (1) willfully or knowingly vote or assent to patently unlawful acts of the corporation; (2) gross negligence; or (3) bad faith.

PCGG failed to allege in the complaint and in the present petition the particular acts of private respondents which constitutes a violation of Sections 3(e) and (g) of R.A. No. 3019. It is not sufficient for PCGG to merely provide a list of names of the PNB Board members for the years covering the subject loans absent proof of the latter's individual participation in the approval thereof.

In its Resolution[37] dated June 23, 2006, the Ombudsman likewise observed that the affiant seemed to have no personal knowledge of the allegations in the complaint. The relevant portion of the resolution reads as follows:

> Finally, it appears that the Affiant has no personal knowledge of the allegations in the complaint as its penultimate paragraph states that "The foregoing may be attested to by, among others, PCGG Legal Counsel Orlando L. Salvador and/or PCGG Director Danilo R. Daniel, PCGG members of the TWG that examined the foregoing accounts." None of the above-mentioned personalities executed an Affidavit to attest to the allegations in the complaint.[38]

Insofar as criminal liability of the BISUDECO officers is concerned, the Court likewise rules in the negative. Private respondents Ojeda, De Vera, Lukban, Tan, Recato, Dychiao, Borja and Cea (deceased) are not criminally liable under Section 3(g) and (e).

The relevant provisions of R.A. No. 3019 and the Court's ruling in the cases of *Singian, Jr. v. Sandiganbayan (Third*

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[37] *Rollo*, pp. 29-40.

[38] *Id.* at 39-40.

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Division)[39] and *Domingo v. Sandiganbayan*,[40] clarified that private persons who conspire with public officers may be indicted and, if found guilty, held liable for violation of Section 3(g) of R.A. No. 3019. In the case at bench, no violation was proven because there was no probable cause to charge the private respondents in the first place. Thus, there being no probable cause to charge the public officer involved herein with violation of Section 3(e) and (g), private respondents who acted in their capacities as Officers of BISUDECO are likewise cleared of any criminal liability.

Although the Court has ruled in previous cases that a preliminary investigation is not the occasion for the full and exhaustive display of the prosecution's evidence, the particular act or omission constituting the offense charged must still be alleged in the complaint otherwise it would amount to nothing more than a fishing expedition. Simply put, the evidence adduced by PCGG was not sufficient to establish probable cause.

In *Dichaves v. Office of the Ombudsman*,[41] the Court reiterated the rule on non-interference with the Ombudsman's determination of probable cause absent a showing of grave abuse of discretion committed by the latter, *viz.*:

> As a general rule, this Court does not interfere with the Office of the Ombudsman's exercise of its constitutional mandate. Both the Constitution and Republic Act No. 6770 (The Ombudsman Act of 1989) give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees. The rule on non-interference is based on the "respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman[.]"
>
> An independent constitutional body, the Office of the Ombudsman is "beholden to no one, acts as the champion of the people[,] and [is] the preserver of the integrity of the public service." Thus, it has the sole power to determine whether there is probable cause to warrant

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[39] 514 Phil. 536 (2005).

[40] 510 Phil. 691 (2005).

[41] G.R. Nos. 206310-11, December 7, 2016, 813 SCRA 273.

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the filing of a criminal case against an accused. This function is *executive* in nature.

The executive determination of probable cause is a highly factual matter. It requires probing into the "existence of such *facts and circumstances* as would 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 [or she] was prosecuted."

The Office of the Ombudsman is armed with the power to investigate. It is, therefore, in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause. As this Court is not a trier of facts, we defer to the sound judgment of the Ombudsman.[42] (Citations omitted)

It is not sound practice to depart from the policy of non-interference in the Ombudsman's exercise of discretion to determine whether or not to file information against an accused. As cited in a long line of cases, the Court has pronounced that it cannot pass upon the sufficiency or insufficiency of evidence to determine the existence of probable cause. The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Ombudsman, but upon practicality as well. If it were otherwise, the Court will be clogged with an innumerable list of cases assailing investigatory proceedings conducted by the Ombudsman with regard to Complaints filed before it, to determine if there is probable cause.[43]

WHEREFORE, the petition for *certiorari* is **DISMISSED.** The Office of the Ombudsman's Resolution dated June 23, 2006 and Order dated January 7, 2009 in OMB-C-C-05-0153-D are hereby **AFFIRMED.**

SO ORDERED.

Peralta (*Acting Chairperson*), *Bersamin,*[*] *Perlas-Bernabe,* and *Caguioa, JJ.,* concur.

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[42] *Id*. at 297-299.

[43] *Galario v. Office of the Ombudsman (Mindanao)*, 554 Phil. 86, 103 (2007).

[*] Designated as additional member per Raffle dated July 9, 2018 *vice* Associatee Justice Francis H. Jardeleza.