REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, **CASE No. SB-15-CRM-0289**
Plaintiff,

- versus -

RAMIE B. ROSIT, ET AL.,
Accused.

Present:

DE LA CRUZ, *J.*, *Chairperson*
CRUZ, *J.*
MUSNGI*, *JJ.*

Promulgated on:

AUG 12 2016

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RESOLUTION

DE LA CRUZ, J.

This resolves the *Motion to Dismiss*, dated April 13, 2016, of accused Ramie B. Rosit (R. Rosit); the Comment, dated May 4, 2016, of accused Amie B. Monredondo, Judith B. Castres, Luisa C. Alac, Juvenil C. Linaza, Wilfredo C. Jubac, Levira B. Lintogonan, Norberto P. Dumaguete, Allen S. De Jesus, Nilo B. Rosit and Sotelo Vincent Caprera (Monredonto, et al.); and the prosecution's *Comment/Opposition,* dated May 5, 2016, to the said motion.

In his motion to dismiss, accused R. Rosit contends that during the preliminary conference, he realized that his constitutional right to speedy disposition of his case had been violated because of the 7-year delay from July 17, 2008, when the Office of the Ombudsman for Mindanao docketed the complaint as "CPL-C-08-1139" which signified the official start of the formal investigation, to November 13, 2015, when the Information was filed with the Sandiganbayan. To substantiate his contention, accused R. Rosit cites the following procedural antecedents.

On **June 12, 2008**, the Office of the Ombudsman, received a written complaint from certain Ricardo Reyes, dated May 16,

*Sitting as Special Member of the First Division as per Administrative Order No. 241-2016, dated August 9, 2016.

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2008 xxx, requesting the former to investigate herein accused, Ramie B. Rosit and other officials regarding the alleged questionable purchase of heavy equipment in **2005**.

On **<u>July 17, 2008</u>**, said complaint, docketed by the Office of the Ombudsman as CPL-C-08-1139 entitled "Ricardo Reyes vs. Ramie Rosit, et al., was indorsed to Atty. Elizabeth S. Zosa, General Counsel of COA, for the conduct of the necessary **Special Audit Investigation** xxx.

On **December 3, 2009**, the Commission on Audit, through its Legal and Adjudication Office, came out with a Memorandum on the subject: Report on the Audit/Investigation of the Acquisition of Heavy Equipment through Loan from the PNB by the Municipality of Boston, Davao Oriental xxx.

<u>On December 10, 2009</u>, the same Memorandum on the Audit Report was followed by another Memorandum signed by Director Leonor D. Roado with undertaking to furnish the Office of the Ombudsman a copy of the results of the audit investigation.

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On **<u>October 12, 2012</u>,** the Office of the Ombudsman for Mindanao, received the AFFIDAVIT of its COMPLAINT UNIT (CPL Unit), filed by its representative, Marco Anacleto P. Buena, dated April 14, 2010.

On **May 6, 2013**, the Office of the Ombudsman issued the order directing the respondents to submit their respective counter-affidavits.

On **April 11, 2013**, respondents submitted their Joint-Counter-Affidavit; they followed it up with their **Supplemental Joint Counter-Affidavit with <u>Motion for Early Resolution date</u>**<u>(d)</u> **<u>January 7, 2014</u>**. xxx

On **December 15, 2014**, the Hon. Ombudsman approved the Joint Resolution on the cases under preliminary investigation May 12, 2014 xxx.

On **June 23, 2015**, the Hon. Ombudsman approved the Joint Order dated May 5, 2015 xxx denying Ramie Rosit's Motion for Reconsideration as well as that of his co-respondents, and thus, paved the filing of the information in this instant case.

And finally, on **<u>November 13, 2015</u>**, the information against herein accused, et al., was filed with the Hon. Sandiganbayan, and

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this is now the above-entitled case assigned to this Hon. Court First Division.

Accused R. Rosit further invokes the cases of *People v. Hon. Sandiganbayan, First Division and Third Division, et al.* and *People v. Hon. Sandiganbayan, Second Division, et al.*[1] to support his contention.

In its comment/opposition, the prosecution denies that accused R. Rosit's right to speedy disposition of his case was violated. According to the prosecution, the Office of the Ombudsman did not incur vexatious, capricious or oppressive delay as it was only upon the filing of the Complaint Affidavit by Marco Anacleto Buena of the Complaint Unit of the Office of the Ombudsman for Mindanao on October 25, 2012 that the formal investigation started. The preliminary investigation cannot be said to have commenced on June 12, 2008, when a written complaint from a Ricardo O. Reyes was received by the Office of the Ombudsman, because at that time, the accused were not yet in jeopardy of being held for trial or punishment. In fact, the accused were not yet then aware of the investigation since at this fact-finding stage, the Office of the Ombudsman maintained a "no-contact" policy, meaning, that there was absolutely no communication or exchanges with the subject of the investigation while evidence were still being gathered.

The prosecution explains that pursuant to Section 2, Rule II of Administrative Order No. 07,[2] dated April 10, 1990, of the Office of the Ombudsman, the fact-finding investigation by its Field Investigation Office (FIO) is separate and distinct from preliminary investigation. A fact-finding investigation is simply a case build-up process where it is determined whether or not a complaint shall proceed to preliminary investigation. Thus, the preliminary investigation for purposes of ascertaining inordinate delay should not be reckoned from the fact-finding level but from the formal investigation. In this case, it only took the Office of the Ombudsman

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[1] 712 SCRA 359

[2] Section 2. Evaluation – Upon evaluating the complaint, the investigating officer shall recommend whether it may be:

a. Dismissed outright for want of palpable merit;
b. Referred to respondent for comment;
c. Indorsed to the proper government office or agency which has jurisdiction over the case;
d. Forwarded to the appropriate office or official for fact-finding investigation;
e. Referred to administrative adjudication; or
f. Subjected to preliminary investigation.

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three (3) years from the filing of the complaint by the FIO, through Buena, on October 25, 2012 to the filing of the Information with the Sandiganbayan on November 13, 2015.

The prosecution also posits that the cases of *People v. Hon. Sandiganbayan, First Division and Third Division, et al.* and *People v. Hon. Sandiganbayan, Second Division, et al.*[3] are not applicable to the present case because the facts upon which the Supreme Court based its conclusion that the Office of the Ombudsman committed inordinate delay in the said cases are not obtaining in the instant case. In both cases of *People v. Hon. Sandiganbayan,* the respondents therein already knew before the start of the formal investigation that they were being investigated because of the privileged speech of then Congressman Wilfredo B. Villarama. In fact, one of the accused, Secretary Perez, sought the dismissal of the complaint even before he was asked to submit a counter-affidavit. These circumstances negate the "no contact" nature of a fact-finding investigation which holds true in the present case.

Lastly, the prosecution claims that accused R. Rosit belatedly decry that his right to speedy disposition of his case was violated and points out that he did not present any argument or evidence that he was prejudiced during the pendency of the case against him before the Office of the Ombudsman. The accused was not even aware that he was a subject of a fact-finding investigation from 2008.

For their part, accused Monredondo, et al., in their comment, manifested that they are adopting the motion to dismiss of accused R. Rosit considering that the grounds thereof are not inconsistent with their defense.

In a Manifestation, dated May 13, 2016, the prosecution states that they are adopting their Comment/Opposition, dated May 6, 2016, to accused R. Rosit's motion to dismiss as its comment/opposition to accused Monredondo, et al.'s Comment, dated May 4, 2016.

The motion is impressed with merit.

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[3] *Supra*

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The accused's motion to dismiss is based solely on the lapse of time, while the prosecution takes exception to the reckoning date of the preliminary investigation asserted by the accused. The accused have not mentioned of any specific prejudice caused on them by the supposed delay, while the prosecution insists that from its perspective the period should be reckoned from the commencement of the preliminary investigation on October 25, 2012. Thus, the Office of the Ombudsman did not incur undue delay.

Jurisprudence instructs that "the right to speedy disposition of cases should be understood to be a relative or flexible concept such that a mere mathematical reckoning of the time involved would not be sufficient."[4] On this score, a summing up *per se* of the dates chronicled by the accused is not sufficient to conclude that the aggregate period of seven (7) years and five (5) months from receipt of the Office of the Ombudsman of the written request to investigate the accused-movants to the filing of the Information before this Court is oppressive, inordinate or obnoxious. What took place on these dates in relation to the entire proceedings before the Office of Ombudsman is essential to the determination of whether there is legal basis in the unjustified delay professed by the accused.

The procedural data before the Court, which are verifiable from the records, are only those which were presented by the accused in the motion to dismiss, which the prosecution neither rebutted nor supplemented. Other pertinent dates of the proceedings were also mentioned in the Joint Resolution, dated May 12, 2014, of the Office of the Ombudsman. From these pieces of information, it can be deduced that:

1. It took the Office of the Ombudsman **one (1) month** and **five (5) days** from **June 12, 2008** (receipt of written request to investigate) to docket the complaint and indorse it to the General Counsel of the Commission on Audit (COA) for special audit investigation on **July 17, 2008**.

2. From **July 17, 2008**, the COA came out with a result of its investigation in a Memorandum about **one (1) year** and **four (4) months** later or on **December 3, 2009.** On **December 10, 2009**,

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[4] People v. Coscolluela, 701 SCRA 188, 195

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Director Leonor D. Roado of the COA undertook to furnish the Office of the Ombudsman a copy of the results of the audit investigation.

3. There was a lapse of **two (2) years** and **ten (10) months** from the COA audit report in **December 2009** to the filing of the complaint-affidavit before the Office of the Ombudsman–Central Office by GIPO II Marco Anacleto P. Buena of the Complaint Unit on **October 25, 2012**. Interestingly, Buena's Affidavit was executed as early as **April 14, 2010**. Thus, the Complaint Unit filed the Affidavit after about **two (2) years** and **six (6) months** from its execution.

4. From **October 25, 2012**, the Office of the Ombudsman devoted about **three (3) years** to conclude the preliminary investigation with the filing of the Information before the Sandiganbayan on **November 13, 2015**.

Prescinding from the foregoing, the Court is convinced that the Office of the Ombudsman incurred unwarranted and inordinate delay in violation of the accused's right to speedy disposition of their case. Indeed, it took the Office of the Ombudsman **more than seven (7) years** from the docketing of the complaint on **July 17, 2008** to the filing of the Information in court on **November 13, 2015**.

In particular, the Court finds it unjustifiable why the Office of the Ombudsman waited more than **two (2) years and nine (9) months** from the COA audit report (**December 3, 2009**) to file Buena's Affidavit (on **October 25, 2012**), and two (2) years and six (6) months after its execution (**on April 14, 2010**) just to file the said affidavit before the Office of the Ombudsman. Stress should be made that it is incumbent on the part of the State to prove that the delay was reasonable, or that the delay was not attributable to it.[5] The prosecution did not provide any reason for the delay, but just brushed this aside as not being part of the preliminary investigation.

The Court is not persuaded by the stance of the prosecution that the time spent in the fact-finding investigation should not be considered. In the cases invoked by the accused, the Supreme Court held that "the fact-finding investigation and preliminary investigation by the Office of the Ombudsman lasted nearly five years and five months."[6] Indeed, the Supreme Court held:

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[5] Please see, People v. Hon. Sandiganbayan, *supra*, Note 1.
[6] *Id.*

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> The State further argues that the fact-finding investigation should not be considered a part of the preliminary investigation because the former was only preparatory in relation to the latter; and that the period spent in the former should not be factored in the computation of the period devoted to the preliminary investigation.
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> The argument cannot pass fair scrutiny.
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> The guarantee of speedy disposition under Section 16 of Article III of the Constitution applies to *all* cases pending before *all* judicial, quasi-judicial or administrative bodies. The guarantee would be defeated or rendered inutile if the hair-splitting distinction by the State is accepted. Whether or not the fact-finding investigation was separate from the preliminary investigation conducted by the Office of the Ombudsman should not matter for the purpose of determining if the respondent's right to the speedy disposition of their cases had been violated.
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> There was really no sufficient justification tendered by the State for the long delay of more than five years in bringing the charges against the respondents before the proper court. xxx.[7]

In light of this pronouncement, the Court is of the view that in appreciating inordinate delay, it is of no moment at what stage of the proceedings—fact-finding or preliminary investigation—was the delay incurred. For as long as the delay is incurred without valid justification, it can be considered in determining whether the right to speedy disposition of one's case has been violated.

Contrary to the prosecution's contention, there is nothing in the cases cited by the accused that will show that the period spent for the fact-finding investigation should be excluded in computing delay just because the respondents therein did not know before the start of the preliminary investigation that they were being investigated. Indeed, there is nothing in the pronouncement of the Supreme Court, whether expressly or by implication, that the period for purposes of determining excessive delay shall begin only at the time the accused becomes aware of the investigation.

It is the Court's view that the constitutional right to a speedy disposition of one's case becomes operative at the moment the person becomes the subject of an investigation, whether or not he or she is aware of it. The risk of a protracted investigation may attach

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[7] *Id.*, at pages 415-416

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notwithstanding the respondent's lack of knowledge about it. For example, the passage of time may limit one's defense, e.g., the accused may have *difficulty in securing documents and witnesses*. Time may render documents irretrievable and the memory of a witness unreliable. The unaware may already be exposed to this danger, but he or she cannot arrest it.

It was recognized in *Coscolluela*[8] that the impairment of a person's defense is the most serious of all dangers of inordinate delay.

> xxx. Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired. **Of these, the most serious is the last because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past**.[9]

Thus, the Court is constrained to order the dismissal of this case on the ground of violation of the right of the accused to speedy disposition of their case.

Nevertheless, the dismissal of this case does not necessarily free the accused from civil liability if proven in a subsequent proceeding which the Municipality of Boston, Davao Oriental may choose to pursue. This was made clear in Coscolluela,[10] citing Section 2, Rule 111 of the Rules of Court, which provides that an acquittal in a criminal case does not bar the private offended party from pursuing a subsequent civil case based on the delict, unless the judgment of acquittal explicitly declares that the act or omission from which the civil liability may arise did not exist, and the cases of *Abejuela v. People*[11] and *Banal v. Tadeo, Jr.*[12] Thus:

> While the foregoing pronouncement should, as a matter of course, result in the acquittal of the petitioners, it does not necessarily follow that petitioners are entirely exculpated from any

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[8] *Supra*, Note 4
[9] At p. 200, citing Corpuz v. Sandiganbayan, 484 Phil. 899
[10] *Supra*
[11] 200 SCRA 806, 814-815
[12] 240 Phil. 326, 331 (1987)

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civil liability, assuming that the same is proven in a subsequent case which the Province may opt to pursue.[13]

WHEREFORE, in light of all the foregoing, this case is hereby ordered DISMISSED, for violation of the right of accused Ramie B. Rosit, Monredondo, Castres, Alac, Linaza, Jubac, Lintogonan, Dumaguete, De Jesus, Nilo B. Rosit and Cabrera to speedy disposition of their case, without prejudice to any civil action which the Municipality of Boston, Davao Oriental may file against them.

SO ORDERED.

EFREN N. DE LA CRUZ
Associate Justice/Chairperson

WE CONCUR:

REYNALDO P. CRUZ
Associate Justice

MICHAEL FREDERICK L. MUSNGI
Associate Justice

[13] At page 202