



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, **SB-16-CRM-0324**
Plaintiff, For: Violation of Sec. 3(e) of R.A. No. 3019
(Anti-Graft and Corrupt Practices Act),
as amended

Present

- versus -

MAGDALENA K. LUPOYON,
ET AL.,

Accused.

CABOTAJE-TANG, P.J.,
Chairperson
FERNANDEZ, J. and
TRESPESES*, J.

Promulgated:

DECEMBER 7, 2016

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RESOLUTION

FERNANDEZ, J.

This resolves the *Motion to Quash and/or Motion to Dismiss*¹ filed by accused Clark Chatongna Ngaya, Edmundo Chaliis Sidchayao and Fernando Yacam-ma Cablog.

Accused Ngaya, Sidchayao and Cablog pray for the quashal of the Information and the dismissal of the present case against them on the following grounds:

1. There was inordinate delay in the termination of the preliminary investigation. Such delay violated their right to speedy disposition of cases.

a. It took the Office of the Ombudsman almost six (6) years from the filing of the complaint to terminate the preliminary investigation. Under the Rules of Court, it should have taken

*As per Administrative Order No. 227-2016 dated July 26, 2016

¹ Dated September 16, 2016; pp. 36-53, Record, Vol. 2

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only fifty (50) days, at most, to determine the existence of probable cause. On the other hand, in *People v. Sandiganbayan*,² it was held that the process of determining the existence of probable cause should take less than ninety (90) days.

b. There appears to be no justifiable reason for the delay. The present case for violation of Sec. 3(e) of R.A. No. 3019 does not involve complex issues which would warrant the delay of almost 6 years in the termination of the preliminary investigation.

c. The accused did not fail to assert their right to speedy disposition of cases. It is not their duty to follow-up on the prosecution of the case against them. They could not have urged the speedy resolution of the case before the Office of the Ombudsman because they were unaware that the investigation had not yet been terminated after 5 years from the time of the filing of the complaint.

d. The Supreme Court, in several cases, recognized that inordinate delay in the proceedings cause prejudice to the accused.

2. The arraignment of the accused on September 16, 2016 does not preclude them from filing a motion to dismiss on the ground of violation of their right to speedy disposition of cases.

3. The prosecution has not proved beyond reasonable doubt that the accused gave undue advantage to any private individual through evident bad faith, manifest partiality or gross inexcusable negligence in supervising the construction of the open gymnasium.

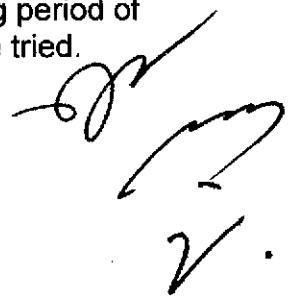
In its *Comment/Opposition to the Motion to Quash and/or Motion to Dismiss Dated September 16, 2016 of Accused Clark Ngaya, Edmundo Sidchayao and Fernando Cablog*,³ the prosecution counters that:

1. As held in *Coscolluela v. Sandiganbayan*,⁴ the right to speedy disposition of cases should be understood as a relative or flexible concept. The right 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 even without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried.

² G.R. Nos. 188165 and 189063, December 11, 2013

³ Dated November 3, 2016; pp. 54-61, Record, Vol. 2

⁴ G.R. Nos. 191411 and 191871, July 15, 2013

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2. There was no inordinate delay in the conduct of the preliminary investigation. The accused were given the opportunity to be heard. Because the complainants and respondents were from Barlig, Mountain Province, service of orders took some time due to the lack of an available fast courier. Moreover, the inclusion of accused Marafo as respondent was an intervening event.

3. The ninety-day period for completing the preliminary investigation does not apply because the Office of the Ombudsman is burdened with a large number of cases. Moreover, the number of the accused in the present case contributed to the length of time spent in the conduct of the preliminary investigation.

4. Length of time is not the only consideration. The Supreme Court, also in *Coscolluela*, recognized that other factors must be considered in determining if the right to speedy disposition of cases is violated.

5. The issue of whether or not the accused gave unwarranted benefit to any private individual is best addressed during the trial proper.

THE COURT'S RULING

The Court resolves to deny the motion of accused Ngaya, Sidchayao and Cablog.

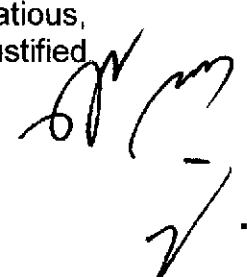
Art. III, Sec. 16 of the Constitution, which provides for the right to speedy disposition of cases, reads:

Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

In *Coscolluela v. Sandiganbayan*,⁵ it was held that the right to speedy disposition of cases should be understood to be a relative or flexible concept. The mere mathematical reckoning of the time involved is insufficient. *Viz.:*

It must be noted, however, 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. Jurisprudence dictates that the right is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays; or when unjustified

⁵ *Ibid.*



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postponements of the trial are asked for and secured; or even without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried.

Here, from the time of the filing of the *Joint Affidavit* on November 11, 2010, to the time of the filing of the Information in the present case, a period of almost six (6) years passed.

In *Tatad v. Sandiganbayan*,⁶ it was held that a delay of close to three (3) years cannot be deemed reasonable. To wit:

x x x. A delay of close to three (3) years can not be deemed reasonable or justifiable in light of the circumstance obtaining in the case at bar. x x x

However, it must be stressed that the Supreme Court found the 3-year period unreasonable in light of the circumstances surrounding the case, and not in all cases, without exception. In *Tatad*, the Supreme Court found that there was a blatant departure from established procedure and that the prosecution of the accused was politically motivated. Such circumstances do not obtain in the case at bar.

The right to speedy disposition of cases is not violated by the mere fact of delay. The length of delay is but one of the factors considered by the Court. In determining whether the right to speedy disposition of cases was violated, other factors must also be considered. In *Corpuz v. Sandiganbayan*,⁷ the Supreme Court held:

While justice is administered with dispatch, the essential ingredient is orderly, expeditious and not mere speed. It cannot be definitely said how long is too long in a system where justice is supposed to be swift, but deliberate. It is consistent with delays and depends upon circumstances. It secures rights to the accused, but it does not preclude the rights of public justice. Also, it must be borne in mind that the rights given to the accused by the Constitution and the Rules of Court are shields, not weapons; hence, courts are to give meaning to that intent.

A balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy trial cases on an ad hoc basis.

⁶ G.R. No. 72335-39, March 21, 1988

⁷ G.R. No. 162214, November 11, 2004

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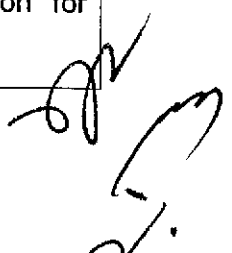
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In determining whether the accused has been deprived of his right to a speedy disposition of the case and to a speedy trial, four factors must be considered: (a) length of delay; (b) the reason for the delay; (c) the defendant's assertion of his right; and (d) prejudice to the defendant. x x x

(underscoring supplied)

According to the prosecution, the eleven (11) respondents in the case before the Office of the Ombudsman were afforded the opportunity to file not only their respective counter-affidavits, but also other pleadings. Hereunder are some of the events, as narrated by the prosecution, that transpired from the filing of the complaint before the Office of the Ombudsman until the filing of the Information before the Sandiganbayan:

November 11, 2010	Joint Affidavit filed by complainants before the Office of the Ombudsman
February 18, 2011	Date of the Order to submit counter-affidavits
April to May 20, 2011	Accused-movants moved for extension of time to submit their counter-affidavits and filed their respective counter-affidavits
July 14, 2011	Accused-movants filed a Motion to Admit Newly Discovered Documentary Evidence
December 21, 2011	Complainants Naulgan and Constancio filed a Rejoinder
July 17, 2013	Accused Marafo was ordered to file his counter-affidavit
August 13, 2013	Accused Marafo filed his counter-affidavit
September 2, 2013	OMB-Luzon received a Reply with Urgent Prayer for the issuance of a Preventive Suspension Order
December 11, 2013	OMB-Luzon received Comments and Opposition Re: Complainants' Reply dated August 27, 2013
September 15, 2015	Approval of Resolution dated August 10, 2015 finding probable cause to indict the respondents
December 8, 2015	The Office of the Ombudsman received accused-movants' Motion for Reconsideration of the August 10, 2015 Resolution
January 29, 2016	The Office of the Ombudsman denied the Motion for Reconsideration of the accused-movants



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June 1, 2016	Information filed before the Sandiganbayan
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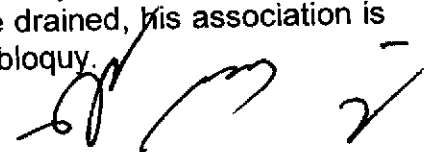
Moreover, the prosecution avers that the inclusion of accused Marafo as respondent and the lack of an available fast courier further contributed to the delay.

From the narration of events, it can be seen that from the time of the filing of the *Joint Affidavit* on November 11, 2010, until the filing of the *Comments and Opposition Re: Complainants' Reply* of the respondents on December 11, 2013, the complainants and the respondents were fully afforded their right to due process by allowing them to file their respective counter-affidavits and other pleadings. Thereafter, it took only one (1) year, nine (9) months and four (4) days for the Ombudsman to approve the Resolution finding probable cause.

Considering the right of the respondents to due process and Rule 110, Sec. 2 of the Rules of Court,⁸ which mandates that the information must be filed against all persons who appear to be responsible for the offense involved, it was not unreasonable for the Office of the Ombudsman to wait until all the respondents had been heard before issuing the resolution finding the existence of probable cause.

To show that accused Ngaya, Sidchayao and Cablog suffered prejudice, they cite the Supreme Court's ruling in *Corpuz v. Sandiganbayan*.⁹ To wit:

x x x. 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. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.



⁸ Sec. 2. *The complaint or information.* – The complaint or information shall be in writing, in the name of the People of the Philippines and against all persons who appear to be responsible for the offense involved.

⁹ *Supra.* Note 7

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Delay is a two-edged sword. It is the government that bears the burden of proving its case beyond reasonable doubt. The passage of time may make it difficult or impossible for the government to carry its burden. The Constitution and the Rules do not require impossibilities or extraordinary efforts, diligence or exertion from courts or the prosecutor, nor contemplate that such right shall deprive the State of a reasonable opportunity of fairly prosecuting criminals. As held in *Williams v. United States*, for the government to sustain its right to try the accused despite delay, it must show two things: (a) that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay; and (b) that there was no more delay than is reasonably attributable to the ordinary processes of justice.

Closely related to the length of delay is the reason or justification of the State for such delay. Different weights should be assigned to different reasons or justifications invoked by the State. For instance, a deliberate attempt to delay the trial in order to hamper or prejudice the defense should be weighted heavily against the State. Also, it is improper for the prosecutor to intentionally delay to gain some tactical advantage over the defendant or to harass or prejudice him. On the other hand, the heavy case load of the prosecution or a missing witness should be weighted less heavily against the State. x x x

Verily, the Supreme Court, in *Corpuz*, recognized that delays in the termination of the preliminary investigation inevitably make it more difficult for the accused to prepare their defense. However, it also held in the same case that there are instances where despite delays, the government may still try the accused. The particular portion of the High Court's Decision is quoted hereunder:

x x x. As held in *Williams v. United States*, for the government to sustain its right to try the accused despite delay, it must show two things: (a) that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay; and (b) that there was no more delay than is reasonably attributable to the ordinary processes of justice.

Here, the prejudice being claimed by the accused is merely an effect of the passage of time. Assuming that a criminal case was initiated near the end of the prescriptive period of the offense, and the preliminary investigation promptly terminated, it will still be more difficult to prepare a defense, but the right to speedy disposition of cases cannot be said to have been violated. Hence, the aforementioned accused have not shown how they suffered serious prejudice by reason of the delay in the termination of the preliminary

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investigation. Furthermore, as previously discussed, the Court finds the prosecution's explanation for the delay satisfactory.

In fine, there was no violation of the right to speedy disposition of cases of accused Ngaya, Sidchayao and Cablog.

That accused Ngaya, Sidchayao and Cablog did not act with evident bad faith, manifest partiality or gross inexcusable negligence in supervising the construction of the open gymnasium is a matter of defense which should be passed upon after trial on the merits.

WHEREFORE, the Motion to Dismiss of accused Sidchayao, Ngaya and Cablog is hereby **DENIED** for lack of merit.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice

WE CONCUR:


AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson


ZALDY V. TRESPESSES
Associate Justice