



Republic of the Philippines
Sandiganbayan
Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on 30 May 2017.

Present:

Justice ALEXANDER G. GESMUNDO ----- Chairperson
Justice MA. THERESA DOLORES C. GOMEZ-ESTOESTA --- Member
Justice ZALDY V. TRESPESES ----- Member

The following resolution was adopted:

Crim. Case No. SB-16-CRM-0529 - People vs. ROMEL P. YOGORE, ET AL.,

This resolves the following:

1. Accused Joseph Alfonso L. Manayon's "MOTION FOR RECONSIDERATION" dated 23 March 2017;¹
2. Accused Giovanni M. Robles, Ernesto S. Genobis, Daisy C. Galve and Merlene E. Magbanua's "MOTION FO RECONSIDERATION OF THE RESOLUTION DATED MARCH 6, 2017" dated 22 March 2017;²
3. Accused Jonie B. Nieve's "MOTION FOR RECONSIDERATION (Minute Resolution dated March 6, 2017)" dated 24 March 2017;³
4. Accused Romel P. Yogore's "MANIFESTATION" dated 10 April 2017;⁴
5. The prosecution's "CONSOLIDATED OPPOSITION" dated 21 April 2017;⁵ and
6. Accused Joseph Alfonso L. Manayon's "REPLY" dated 2 May 2017.⁶

For resolution are the accused's respective motions for reconsideration of this Court's Resolution dated 3 March 2017⁷ denying their respective motions to quash the Information.

MOTIONS OF THE ACCUSED

In his motion for reconsideration, accused Joseph Alfonso Manayon (Manayon) repleads all the allegations and arguments he raised in his previous pleadings. Accused claims that the period – five years and three

¹ *Rollo*, Vol. 2, pages 328-351,

² *Id.* at 379-391.

³ *Id.* at 367-378.

⁴ *Rollo*, Vol. 3, pp. 4-8.

⁵ *Id.* at 9-15.

⁶ *Id.* at 29-51.

⁷ *Rollo*, Vol. 2, pp. 256-264.

months – it took the Ombudsman to conduct its preliminary investigation is, by itself, vexatious, capricious and oppressive, considering the Ombudsman’s duty to promptly act on complaints. He also points out that he timely filed his motion to quash the information before he entered his plea, as the Rules require. Finally, he argues that prejudice should be assessed in light of the interest of the defendant.

Meanwhile, in his motion for reconsideration, accused Jonie B. Nieve (Nieve) similarly argues that he invoked his right to speedy disposition at the earliest possible opportunity. He also claims that there is no contributory delay on the part of the accused because only two months were added to the total duration of the preliminary investigation before the Ombudsman when the accused filed three motions for extension of time to file their counter-affidavit. Moreover, he argues that the Ombudsman failed to rebut the presumption that a lengthy delay is prejudicial, citing the dissenting opinion of Justice Angelina Sandoval-Gutierrez in *People v. Lacson*, which was erroneously cited in his motion as G.R. No. 140529, 6 September 2001.⁸

Accused Giovanni M. Robles (Robles), Ernesto S. Genobis (Genobis), Daisy C. Galve (Galve) and Merlene E. Magbanua (Magbanua) also jointly filed their motion for reconsideration, where they similarly claim that they timely invoked their right to speedy disposition. They reiterate that the delay in the preliminary investigation is attributable to the Ombudsman alone. They also stress that the Ombudsman failed to offer cogent reason for the said delay. Finally, they lament that the delay in the preliminary investigation caused undue prejudice to them.

Accused Romel P. Yogore (Yogore), meanwhile, filed a Manifestation declaring that he is adopting the motions for reconsideration of all his co-accused.

PROSECUTION’S OPPOSITION

In response, the prosecution filed its Consolidated Opposition, pointing out that the motions for reconsideration filed by the accused are clearly intended to delay the proceedings because the arraignment was already scheduled on 26 April 2017 and the accused did not really have sufficient basis for the reversal of the assailed Resolution. The prosecution alleges that the accused raised basically the same grounds as those in their motion to quash, and these have already been extensively discussed and ruled upon by the Court in the assailed Resolution. The prosecution reiterates that accused contributed to the delay in the conduct of the preliminary investigation when they thrice filed for extension of time to file their counter-affidavits.

⁸ Accused Nieve’s citation actually referred to *Lopez, Jr. v. Ombudsman*. The proper citation for *People v. Lacson* is 448 Phil. 317-463.

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The prosecution further echoes the Court's ruling that while the accused do not have a legal duty to follow up the resolution of the case, their failure to do so raises doubts on whether they raise the alleged violation of their right to speedy disposition only as an afterthought, to defeat the rights of public justice. Finally, citing *People v. Tampal*,⁹ the prosecution emphasizes that as significant as the right of an accused to speedy trial is the right of the State to prosecute people who violate its penal laws and who constitute a threat to the tranquility of the community.

ACCUSED MANAYON'S REPLY

Accused Manayon further filed a Reply to the prosecution's Consolidated Comment. Therein, accused Manayon alleges that there is in fact no violation of Section 3(e) of Republic Act No. 3019 that would warrant the finding of probable cause and continuance of this case. He then proceeds to discuss at length the alleged facts of the case and merits of his defenses.

THE COURT'S RULING

We **deny** the motions for reconsideration for lack of merit.

We note that accused are apparently confused about the Court's assailed ruling on the promptness of their invocation of their right to speedy disposition.

To clarify, this Court never ruled that the accused's motions to quash were not filed on time. In fact, failure to timely file the accused's respective motions to quash was *not* the ground cited for their denial, as may be gleaned from the dispositive portion of the assailed Resolution.

Rather, the accused's failure to raise the alleged violation of their right to speedy disposition at the earliest opportunity (and not simply within the prescribed period) was considered by the Court as one of the elements in the balancing test.

On this score, *Perez v. People*,¹⁰ citing *Barker v. Wingo*,¹¹ states that the manner by which an accused asserts his right to speedy disposition affects the ease or difficulty of proving its denial:

We have already discussed the third factor, the defendant's responsibility to assert his right. Whether and how a defendant asserts his right is closely related to the other factors we have mentioned. The strength of his efforts will be affected by the length of the delay, to some extent by

⁹ 314 Phil. 35-45 (1995).

¹⁰ 568 Phil. 491-526 (2008).

¹¹ 407 US 514, 33 L. Ed. 2d 101, 92 S. Ct. 2182 (1972).

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the reason for the delay, and most particularly by the personal prejudice, which is not always readily identifiable, that he experiences. The more serious the deprivation, the more likely a defendant is to complain. The defendant's assertion of his speedy trial right, then, is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right. We emphasize that failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial.

Going further, promptness in invoking the right to speedy disposition also lends weight to the claim of prejudice – one of the four factors considered in employing the balancing test. Simply put, an accused's claim of prejudice is weakened by his failure to raise the issue promptly. Thus, the longer it takes an accused to complain of the alleged violation, the more difficult it is for him to prove personal prejudice resulting from the delay.

In *Valencia v. Sandiganbayan*,¹² the Supreme Court after making a survey of related cases on the right to speedy disposition, concluded that the accused must positively and openly object to the sluggish disposition of the case in order to successfully invoke the right to speedy disposition, thus:

The rule as consistently applied in this jurisdiction is that objections to the sluggish disposition of the case must be positively invoked by the accused and a demand therefor must be openly made. The Court ruled in *Corpuz v. Sandiganbayan*, that dismissal of a case is not justified simply because the prosecutor had gone to sleep at the switch while the defendant and his counsel rested in silence. The accused must not be rewarded by the dismissal of the case and the State and society punished by the neglect of the prosecutor unless the accused himself calls the attention of the court on the matter.

In several instances when the Supreme Court did not apply the above rule, there were circumstances justifying the same. For instance, in *Coscolluella v. Sandiganbayan*,¹³ (which was cited in *People v. Sandiganbayan*¹⁴), the Supreme Court observed that "(r)ecords show that they could not have urged the speedy resolution of their case because they were unaware that the investigation against them was still on-going." Similarly, in *Duterte v. Sandiganbayan*,¹⁵ the High Court explained that "(p)etitioners in this case, however, could not have urged the speedy resolution of their case because they were completely unaware that the investigation against them was still on-going."

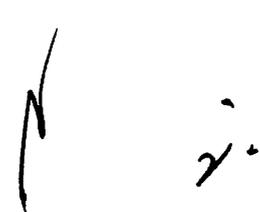
Contrary to accused's claim, the mere fact that it took the Ombudsman five years and three months to complete the preliminary investigation and file the Information before the Sandiganbayan, cannot, by itself, characterize the delay as vexatious, capricious and oppressive. The appreciation of what

¹² 510 Phil. 70-91(2005).

¹³ 714 Phil. 55-69 (2013).

¹⁴ G.R. No. 199151-56, 25 July 2016.

¹⁵ 352 Phil. 557-584 (1998).



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constitutes vexatious, capricious and oppressive delay on the part of the prosecution is more than a mere measurement of time. In *Corpuz v. Sandiganbayan*,¹⁶ the Supreme Court explained:

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 caseload of the prosecution or a missing witness should be weighted less heavily against the State.

What constitutes vexatious, capricious and oppressive delay is illustrated in *Tatad v. Sandiganbayan*.¹⁷ A more circumspect reading thereof will show that the delay of almost three years in the conduct of preliminary investigation was held to be a violation of the right to speedy disposition, not only because the simple factual and legal issues involved did not justify the delay. The Supreme Court also found that the Tanodbayan therein had departed from the established procedure prescribed by law. More importantly, the High Tribunal noted that the complaint had been resurrected only after the accused had a falling out with then President Marcos, indicating that political motivations played a vital role in activating and prolonging the prosecutorial process, thus:

A painstaking review of the facts cannot but leave the impression that political motivations played a vital role in activating and propelling the prosecutorial process in this case. Firstly, the complaint came to life, as it were, only after petitioner Tatad had a falling out with President Marcos. Secondly, departing from established procedures prescribed by law for preliminary investigation, which require the submission of affidavits and counter-affidavits by the complainant and the respondent and their witnesses, the Tanodbayan referred the complaint to the Presidential Security Command for fact-finding investigation and report.

We find such blatant departure from the established procedure as dubious, but revealing attempt to involve an office directly under the President in the prosecutorial process lending credence to the suspicion that the prosecution was politically motivated. We cannot emphasize too strongly that prosecutors should not allow, and should avoid, giving the impression that their noble office is being used or prostituted, wittingly or unwittingly, for political ends, or other purposes alien to, or subversive of, the basic and fundamental objective observing the interest of justice evenhandedly, without fear or favor to any and all litigants alike whether rich or poor, weak or strong, powerless or mighty. Only by strict adherence to the established procedure may be public's perception of the impartiality of the prosecutor be enhanced.

¹⁶ 484 Phil. 899 (2004).

¹⁷ 242 Phil. 563-577 (1988).

Regarding accused Nieve's claim that a lengthy delay is presumptively prejudicial (apparently based on the dissenting opinion of Justice Sandoval-Gutierrez in *People v. Lacson*¹⁸), a more comprehensive reading thereof will show that Justice Sandoval-Gutierrez's dissent merely states that a lengthy delay triggers the examination of other factors to determine whether rights have been violated. In the instant case, such an examination has been undertaken together with other factors. This Court has, thereafter, concluded that accused's right to speedy disposition have not been violated.

Finally, regarding accused Manayon's discussion of his defenses in his motion, such is premature at this time. The validity and merits of a party's defense or accusation, as well as admissibility of testimonies and evidence, are better ventilated during trial proper.¹⁹

WHEREFORE, in view of the foregoing, the respective motions for reconsideration by accused Joseph Alfonso L. Manayon, Giovanni M. Robles, Ernesto S. Genobis, Daisy C. Galve, Merlene E. Magbanua, Jonie B. Nieve, Romel P. Yogore and are **DENIED** for lack of merit.

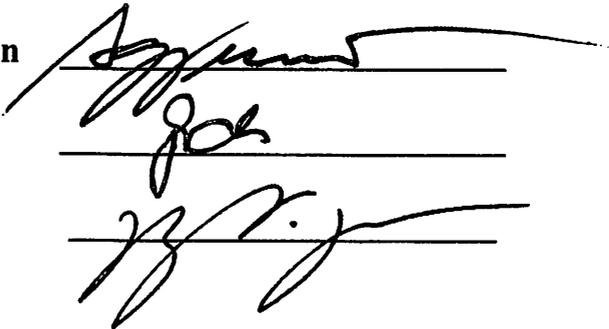
SO ORDERED.

Approved:

GESMUNDO, Chairperson

GOMEZ-ESTOESTA, J.

TRESPESES, J.



Three handwritten signatures are present, each written over a horizontal line. The first signature is for Gesmundo, the second for Gomez-Estoesta, and the third for Trespeses.

¹⁸ Id. at note 8.

¹⁹ *Clay & Feather International, Inc., et al. v. Lichaytoo*, G.R. No. 193105, 30 May 2011.