

REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

**CRIM. CASE NO. SI-11-CRM-
0120**

*For: Violation of Section 52(g) in
relation to Section 6(b) of Republic
Act No. 8291*

- versus -

ANTONIO M. TALAUE, ET AL.,
Accused.

Present:
HERRERA, JR., J., Chairperson
MUSNGI, J., Associate Justice
PAHIMNA, J., Associate Justice

June 8, 2017

Promulgated *A*

RESOLUTION

MUSNGI, J.:

The Court resolves the following:

1. *Motion to Dismiss*¹ filed by accused Efren C. Guiyab (“Guiyab”) on 03 February 2017;
2. *Comment/Opposition (re: Motion to Dismiss)*² filed by the plaintiff on 06 March 2017;
3. *Reply (To Plaintiff’s Comment/Opposition)*³ filed by accused Guiyab on 21 March 2017; and
4. *Rejoinder (Reply dated March 20, 2017)*⁴ filed by the plaintiff on 03 April 2017.

¹ Sandiganbayan Records, Vol. 1, pp. 447-459.

² *Ibid.*, Vol. 2, pp. 485-498.

³ *Ibid.*, pp. 511-523.

⁴ *Ibid.*, pp. 526-528.

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On 27 May 2011, an *Information* for violation of Sec. 52(g) in relation to Section 6(b) of Republic Act No. 8291 ("R.A. No. 8291") was filed against, Antonio M. Talaue ("**Talaue**"), Guiyab and Florante A. Galasinao ("**Galasinao**"). The accusatory portion of the same reads, thus:

"That on or about 01 March 2006, or sometime prior or subsequent thereto, in Sto. Tomas, Isabela, Philippines, and within the jurisdiction of this Honorable Court, the accused, public officers, being then the Municipal Mayor, the Municipal Treasurer, and the Municipal Accountant, respectively, and as such has the legal obligation to timely remit to the Government Service Insurance System (GSIS) the GSIS premium contributions of the employees of the Municipal Government of Sto. Tomas, Isabela did there and then willfully, unlawfully, and criminally, fail to remit the said GSIS premiums, with an aggregate amount of Php22,436,546.10, for the period 01 January 1997 to 31 January 2004 within thirty (30) days from the date on which payment thereof has become due and demandable, to the damage and prejudice of the municipal employees."

The instant motion essentially prays for the dismissal of the case against accused Guiyab based on the alleged violation of his constitutional rights to due process, to speedy disposition of cases, and to equal protection of the law.

First, accused Guiyab posits that there was inordinate delay in the preliminary investigation conducted by the Office of the Ombudsman ("OMB"). He laments that it took the OMB more than five (5) years to conduct its preliminary investigation even though the facts and the issues of the case are simple and uncomplicated, without special circumstances or difficult details which require painstaking study and scrutiny.

Second, accused Guiyab asserts that the OMB failed to ascertain the correct provisions of law which have been allegedly violated. The indictment was for violation of Sec. 52(g) in relation to Sec. 6(b) of R.A. No. 8291. However, R.A. No. 8291 does not have Sections 6 and 52 because the same consists of only four (4) sections. Instead, the *Information* should have charged the accused with a violation of Sec. 52(g) in relation to Sec. 6(b) of Presidential Decree No. 1146 ("P.D. No. 1146"), as amended. Hence, the accused argues that the preliminary investigation has not yet been terminated.

Lastly, accused Guiyab claims that the OMB practiced selective investigation and prosecution, thereby violating his constitutional right to equal protection of the law. The concerned employees of the Government Service Insurance System ("GSIS") failed to promptly demand payment for the subject GSIS premium arrearages for the years 1997 up to 2004, as well as to initiate the proper criminal, civil, or administrative actions for the collection thereof. According to the accused, such failure constitutes neglect

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of duty on the part of said GSIS officials and employees, and is penalized under Sec. 52(j) of P.D. No. 1445. Hence, they should have also been investigated and prosecuted by the OMB.

In its *Comment/Opposition*, the plaintiff denies having violated any of the abovementioned constitutional rights of accused Guiyab, claiming that the instant motion "is a mere dilatory scheme that warrants denial."

First, the plaintiff argues that there was no inordinate delay in the conduct of its preliminary investigation. If at all, the delay incurred was reasonable because (a) "As a matter of course, the draft *Resolution* of the investigating officer underwent a hierarchical review before finally reaching the desk of Overall Deputy Ombudsman Casimiro, acting as the Ombudsman," due to the untimely resignation of then Ombudsman Merceditas Gutierrez; (b) "There were intervening events carried out by the accused to settle the dispute by negotiating on how the unremitted GSIS premiums shall be paid." The Memorandum of Agreement ("**MOA**") signed between the GSIS and accused Talaue which approved the schedule of payment of the unremitted GSIS premiums "would affect the result of the preliminary investigation considering that the main subject of the case is the failure of the accused to remit the GSIS premiums of the employees of the Municipality of Sto. Tomas;" and (c) The case stemmed from two (2) complaints with different causes of action for which accused Talaue filed a motion to consolidate to simplify the cases presented to the OMB. Hence, plaintiff claims that there was no vexatious, capricious and oppressive delay in the conduct of preliminary investigation.

Moreover, the plaintiff highlights accused Guiyab's statement in the instant motion that his *Counter-Affidavit* was filed more than a year after being ordered by the OMB on 05 October 2005 to submit the same. Thus, the accused himself contributed to the alleged delay in the conduct of preliminary investigation.

Second, the plaintiff avers that the allegation that the preliminary investigation of the case is not yet terminated is both baseless and confusing. Initially, accused Guiyab alleged in the instant motion that it took the OMB more than five (5) years to conduct the preliminary investigation. He later on claims that the OMB has not yet terminated the same because it has not ascertained which provision of law has been violated. However, he already admitted in paragraph 22 of the instant motion the issuance and approval of the *Consolidated Resolution* dated 09 June 2010, which signified the conclusion of the preliminary investigation. The plaintiff further avers that accused Guiyab can no longer claim that the preliminary investigation is not yet terminated after having already been arraigned.

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Finally, the plaintiff asserts that it did not violate accused Guiyab's constitutional right to equal protection of the laws because "any violation committed by some of the GSIS officials in relation to the failure of the accused to remit the GSIS premiums of the employees of the Municipality of Sto. Tomas is a matter separate to the crime charged in the information. Shifting the blame to other personalities will not exonerate him from his liabilities from the charge." The plaintiff also notes that the GSIS is one of the complainants in the case at bar.

Accused Guiyab reiterates his allegations in his *Reply*. He adds that the plaintiff's *Comment/Opposition* "did not refute, but bolstered" his motion.

In its *Rejoinder*, the plaintiff cites the cases of *Adasa v. Abalos*⁵ and *Gandarosa v. Flores*⁶ in emphasizing that the arraignment of accused Guiyab "constitutes a waiver of the right to preliminary investigation or reinvestigation. Such waiver is tantamount to a finding of probable cause." Moreover, the plaintiff contends that the several extensions of time requested by the accused from the OMB for the submission of his *Counter-Affidavit* "in order to have more time to gather and organize his defense which actually lasted for more than a year" is contrary to his claim of non-complexity of the issues in this case.

The issue for resolution of the Court is whether the case against accused Guiyab should be dismissed for violation of his constitutional rights to due process, to speedy disposition of cases, and to equal protection of laws.

Ruling

The instant motion is denied for lack of merit.

Due Process and Speedy Disposition of Cases

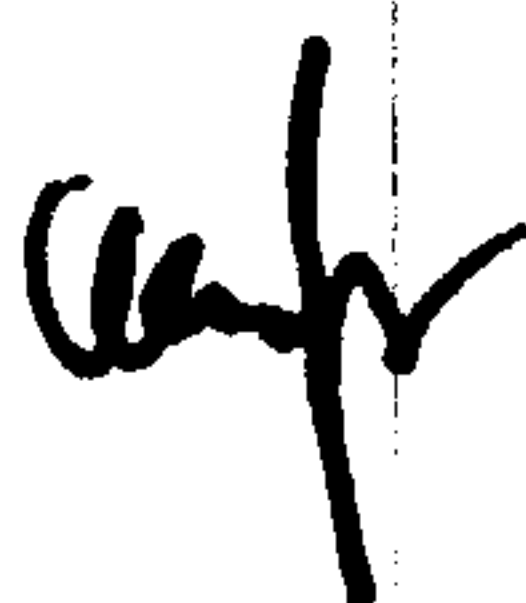
The Decision of the Supreme Court in the case of *Corpuz vs. Sandiganbayan*⁷ is instructive, thus:

"The right of the accused to a speedy trial and to a speedy disposition of the case against him was designed to prevent the oppression of the citizen by

⁵ 516 SCRA 261.

⁶ 527 SCRA 776.

⁷ G.R. No. 162214, 11 November 2004.



holding criminal prosecution suspended over him for an indefinite time, and to prevent delays in the administration of justice by mandating the courts to proceed with reasonable dispatch in the trial of criminal cases. Such right to a speedy trial and a speedy disposition of a case is violated only when the proceeding is attended by vexatious, capricious and oppressive delays. The inquiry as to whether or not an accused has been denied such right is not susceptible by precise qualification. The concept of a speedy disposition is a relative term and must necessarily be a flexible concept.

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.

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.** 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.

Delay is a two-edge 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 a 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.

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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. Corollarily, Section 4, Rule 119 of the Revised Rules of Criminal Procedure enumerates the factors for granting a continuance.”⁸ (Emphasis supplied and citations omitted)

Hence, the following factors should be considered in determining whether an accused’s right to speedy disposition of cases had been violated: (1) length of delay; (2) the reason for the delay; (3) the defendant’s assertion of his right; and (4) prejudice to the defendant.

Applying the aforesaid factors to this case, the Court holds that accused Guiyab’s right to a speedy disposition of his criminal case had not been violated.

Length and Reason for the Delay. The following dates and proceedings are uncontroverted:

04 Sept. 2005

Complaint filed by the GSIS

05 Oct. 2005

Order was issued by the OMB to file counter-affidavits

19 Jan. 2006

Accused filed an *Urgent Motion* stating that series of meetings with the Manager were held to establish payment scheme on the premium arrearages

26 July 2006

Another *Complaint Affidavit* was filed by Mateo G. Malabug

23 Aug. 2006

Order was issued by the OMB to file counter-affidavits

19 Sept. 2006

Accused Guiyab moved for additional extension of time to file counter-affidavit

⁸ *Supra* note 7.

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04 Oct. 2006	Accused Guiyab moved for additional extension of time to file counter-affidavit
18 Oct. 2006	Accused Guiyab filed an <i>Urgent Motion for Additional Extension of Time to File Counter-Affidavit</i>
06 Nov. 2006	Accused Guiyab filed his <i>Counter-Affidavit</i>
22 Nov. 2006	Accused Talaue filed a <i>Motion for Consolidation</i> praying that the complaints filed by Mateo Malabug and the GSIS be consolidated
11 July 2007	Complainant GSIS filed its <i>Manifestation and Motion to Resolve</i>
15 Aug. 2007	Accused Talaue wrote a letter to then General Manager Winston Garcia requesting that the interest and other surcharges be waived
10 Mar. 2008	<i>Decision</i> on the action for collection of sum of money filed some time in 2006 was rendered by RTC Branch 118, Pasay City in favor of the plaintiff, ordering the Municipal Government of Sto. Tomas, Isabela to pay the unremitted GSIS premium
19 Nov. 2008	MOA was signed between GSIS and the Municipality of Sto. Tomas
04 Feb. 2009	Complainant GSIS submitted to the OMB a copy of the <i>Decision</i> rendered by RTC Branch 118, Pasay City, pertaining to the approval of the settlement of the unpaid GSIS premiums

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09 June 2010

Resolution was signed by the handling investigating lawyer of the OMB

06 Oct. 2010

Motion to Execute was filed by the GSIS before RTC Branch 118, Pasay City

17 May 2011

Resolution was approved by the acting Ombudsman Casimiro

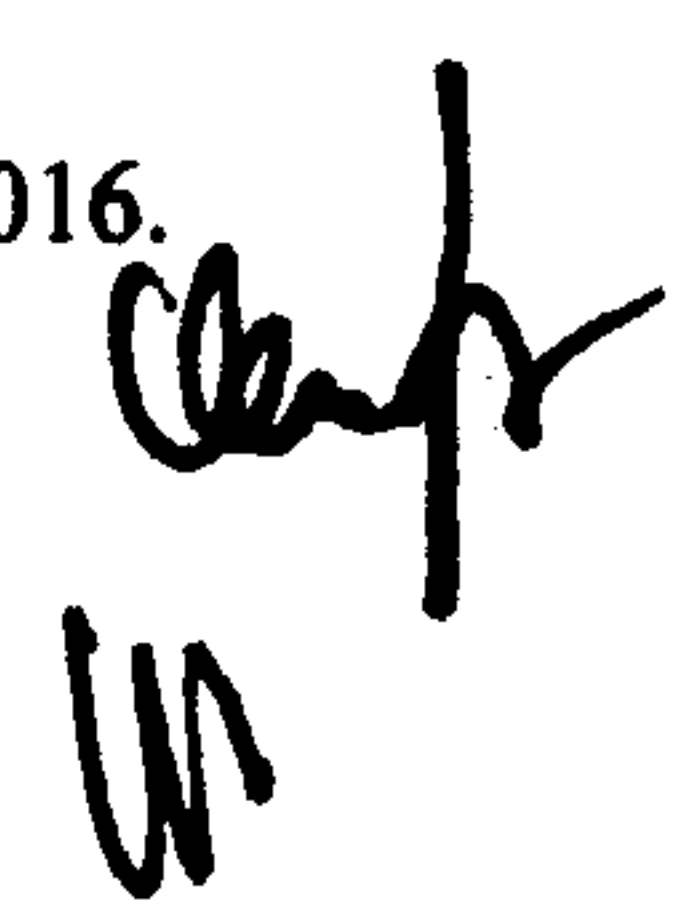
Undoubtedly, five (5) years and eight (8) months have elapsed from the time the initial complaint was filed with the OMB up to the filing of the *Information* before the Court. However, "the concept of speedy disposition is relative or flexible. A mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case."⁹

In the case at bar, the delay in the preliminary investigation conducted by the OMB is attributable not only to the agreement entered into by the parties for the settlement of the subject unpaid GSIS premiums of the Municipality of Sto. Tomas, Isabela, but also to accused Guiyab himself. The plaintiff correctly pointed out that the execution of the MOA "would affect the result of the preliminary investigation considering that the main subject of the case is the failure of the accused to remit the GSIS premiums." This intervening negotiation was initiated by accused Talaue. Although accused Guiyab did not initiate the same, the proposed settlement would nevertheless have affected him.

The timeline cited above reveals that accused Guiyab requested thrice for extension of time to file his *Counter-Affidavit*. To reiterate, the OMB ordered the accused on 05 October 2005 and 23 August 2006 to file their counter-affidavits for the first and second complaints, respectively. Prior to accused Talaue's *Motion for Consolidation* of the two (2) complaints, accused Guiyab requested extensions of time to file his counter-affidavit on 19 September 2006, 04 October 2006, and 18 October 2006. Evidently, the additional delay of more than a year for the conduct of preliminary investigation had been caused by the accused himself.

Moreover, accused Guiyab's assertion that the preliminary investigation has not yet been terminated is misplaced. Contrary to his claim that the OMB has not yet determined which specific provisions of law have

⁹ *People of the Philippines vs. Sandiganbayan, et al.*, G.R. No. 199151-56, 25 July 2016.



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been violated, the Court finds that the *Information* sufficiently averred the acts or omissions constituting the offense committed by the accused. The acts or omissions complained of were stated in an ordinary and concise language, in terms sufficient to enable a person of common understanding to know what offense is being charged.¹⁰ True, R.A. No. 8291 contains only four (4) sections. Nevertheless, the provisions of P.D. No. 1146, which have been allegedly violated by the accused, are reproduced in R.A. No. 8291. Of paramount consideration is that the accused was informed of the nature and cause of the charge against him in order to enable him to prepare his defense. Thus, it was held in the case of *People of the Philippines v. PO2 Eduardo Valdez and Edwin Valdez*:¹¹

“From a legal point of view, and in a very real sense, it is of no concern to the accused what is the technical name of the crime of which he stands charged. It in no way aids him in a defense on the merits. x x x. **That to which his attention should be directed, and in which he, above all things else, should be most interested, are the facts alleged. The real question is not did he commit a crime given in the law some technical and specific name, but did he perform the acts alleged in the body of the information in the manner therein set forth. If he did, it is of no consequence to him, either as a matter of procedure or of substantive right, how the law denominates the crime which those acts constitute. The designation of the crime by name in the caption of the information from the facts alleged in the body of the pleading is a conclusion of law made by the fiscal. In the designation of the crime the accused never has a real interest until the trial has ended. For his full and complete defense he need not know the name of the crime at all. It is of no consequence whatever for the protection of his substantial rights. The real and important question to him is, ‘Did you perform the acts alleged in the manner alleged?’ not ‘Did you commit a crime named murder. (sic)’ If he performed the acts alleged, in the manner stated, the law determines what the name of the crime is and fixes the penalty therefor. x x x”** (emphasis theirs)

Assertion of Right. Accused Guiyab did not timely assert his right to the speedy disposition of his case. It is clear from the records that none of the accused bothered to move for the early resolution of the preliminary investigation for whatever reasons they have. The Court can only surmise that they must have relied on the result of the MOA executed between the parties because had the outstanding obligation been settled at the time, then there would no longer be a basis for a finding of probable cause against the accused. It was even the plaintiff who initiated to move for the conclusion of the preliminary investigation when it filed its *Manifestation and Motion to Resolve* with the OMB on 11 July 2007.

¹⁰ Sec.9, Rule 110 of the Revised Rules of Criminal Procedure.

¹¹ G.R. No. 175602, 18 January 2012, citing the case of United States v. Lim San.

