



Republic of the Philippines  
*Sandiganbayan*  
Quezon City  
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SEVENTH DIVISION

*MINUTES of the proceedings held on August 18, 2017.*

Present:

MA. THERESA DOLORES C. GOMEZ-ESTOESTA ----- Chairperson  
ZALDY V. TRESPESES ----- Associate Justice  
BAYANI H. JACINTO\* ----- Associate Justice

The following resolution was adopted:

**CRIMINAL CASES NO. SB-11-CRM-0302, 0303 & 0441**

**PEOPLE v. AMELIA R. DE PANO, et al.**

Before the Court are the following:

1. Accused Angelito A. Rodriguez and Noel G. Jimenez's "MOTION TO DISMISS" dated May 31, 2017 (Records, Vol. 4, pp. 87-150) in SB-11-CRM-0441;
2. Accused Angelito A. Rodriguez and Noel G. Jimenez's "MOTION TO DISMISS" dated May 31, 2017 in SB-11-CRM-0302 & 0303 (Records, Vol. 4, pp. 157-226);
3. Accused Amelia R. De Pano's "MANIFESTATION ADOPTING THE MOTION TO DISMISS FILED BY ACCUSED ANGELITO RODRIGUEZ AND NOEL JIMENEZ" dated June 8, 2017 in SB-11-CRM-0302 to 0303 (Records, Vol. 4, pp. 232-236);
4. Accused Amelia R. De Pano's "MANIFESTATION ADOPTING THE MOTION TO DISMISS FILED BY ACCUSED ANGELITO RODRIGUEZ AND NOEL JIMENEZ" dated June 8, 2017 in SB-11-CRM-0441 (Records, Vol. 4, pp. 237-241);
5. The Prosecution's "CONSOLIDATED OPPOSITION" dated June 23, 2017 (Records, Vol. 4, pp. 255-259);
6. Accused Angelito A. Rodriguez and Noel Jimenez's "REPLY TO CONSOLIDATED OPPOSITION (RE: MOTION TO DISMISS (SB-11-CRM-0302 & 0303) AND MOTION TO DISMISS (SB-11-CRM-0441)) WITH MOTION TO ADMIT AND TO SET CASE FOR ORAL ARGUMENTS" dated July 30, 2017 and received by the OCC on August 1, 2017 (Records, Vol. 4, pp. 260-263); and

\* Per A.O. No. 284-2017 dated August 18, 2017

7. Accuse Bernardo T. Capistrano's "MANIFESTATION ADOPTING THE MOTION TO DISMISS FILED BY ACCUSED ANGELITO A. RODRIGUEZ AND NOEL G. JIMENEZ" dated August 3, 2017.

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Before this Court are accused Angelito Rodriguez and Noel Jimenez's separate *Motions to Dismiss* Crim. Cases No. SB-11-CRM-0302 and 0303,<sup>1</sup> and SB-11-CRM-0441,<sup>2</sup> which were both adopted by accused Amelia De Pano.<sup>3</sup> Accused Bernardo Capistrano<sup>4</sup> adopted the *Motion to Dismiss* in Crim. Case No. SB-11-CRM-0441.<sup>5</sup>

In both *Motions*, which raise essentially identical arguments, the accused alleged that the inordinate delay of six years<sup>6</sup> before the Office of the Ombudsman constituted a violation of their constitutional right to the speedy disposition of the cases against them, citing *Tatad v. Sandiganbayan*,<sup>7</sup> *Angchangco v. Ombudsman*,<sup>8</sup> *Duterte v. Sandiganbayan*,<sup>9</sup> and *Roque v. Ombudsman*.<sup>10</sup> The accused also adverted to the Resolution of the Special Second Division of this Court in *People v. Roman* (Crim. Case No. SB-16-CRM-0100), which arose from the same complaint-affidavit as the *Information* in Crim. Case No. SB-11-CRM-0441, granting therein accused Leonardo B. Roman's Motion to Quash on the ground that preliminary investigation took five years to complete. The accused claimed that they were entitled to the same treatment as a matter of due process, equal protection, and interest of justice.

The accused submitted that a charge for falsification of public documents under Art. 171(4) of the Revised Penal Code involved simple issues that did not necessitate a period of more than 6 years to resolve. The accused have consistently asserted that there was no probable cause to prosecute them for the crimes charged, and absolutely no evidence of conspiracy among them. Moreover, private complainant Enrique Garcia has submitted an Affidavit of Desistance through a manifestation, stating his lack of interest in pursuing these cases, further weakening them.

The accused, who are advanced in age and have served the government for a long time, bemoaned that they are forced to "remain under a cloud and deprived of the fruits of their service" because of the inordinate delay in the

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<sup>1</sup> *Records*, Vol. 4, pp. 157-225

<sup>2</sup> *Id.*, pp. 97-149

<sup>3</sup> Accused De Pano's Manifestations Adopting the Motion to Dismiss Filed by Accused Angelito Rodriguez and Noel Jimenez both dated June 8, 2017, *Records*, Vol. 4, pp. 232-241

<sup>4</sup> Accused in Crim. Case No. SB-11-CRM-0441 only

<sup>5</sup> Accused Capistrano's Manifestation Adopting the Motion to Dismiss Filed by Accused Angelito A. Rodriguez and Noel G. Jimenez, *Records*, Vol. 4, pp. 268-274

<sup>6</sup> For Crim. Case No. SB-11-CRM-0441, and 6 years and 7 months for Crim. Cases No. SB-11-CRM-0302 and 0303

<sup>7</sup> G.R. No. 72335-39, March 21, 1988

<sup>8</sup> 268 SCRA 301

<sup>9</sup> G.R. No. 130191, April 27, 1998

<sup>10</sup> G.R. No. 239978, May 12, 1999

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conduct of preliminary investigation. Further, the filing of two separate *Informations* for Crim. Cases No. SB-11-CRM-0302 and 0303 for the continuing offense of falsification of the Accomplishment Report and Certificate of Completion, respectively, issued for the same project, put them twice in jeopardy for the same offense.

In its *Consolidated Opposition*,<sup>11</sup> the Prosecution countered that while the accused have previously filed motions to quash the *Informations*, they merely alleged the lack of probable cause, violation of the equal protection clause, and the duplicity of Information for a single continuing offense. They never asserted inordinate delay, signifying that they were not convinced that there was a violation of their right to the speedy disposition of cases against them. Besides, the accused have already been arraigned and pre-trial is about to be terminated, and it is too late to seek the dismissal of these cases. The accused should have invoked their right to the speedy disposition of cases at the first reasonable opportunity, lest they waive it. Finally, the complainant's Affidavit of Desistance should not be a reason to dismiss these cases, as the Prosecution can still present evidence to prove the guilt of the accused beyond reasonable doubt.

In their *Reply*,<sup>12</sup> the accused maintained that they were not estopped from raising inordinate delay, as in fact they raised the issue of equal protection in their *Motion to Quash*. In any event, such inordinate delay has deprived this Court of jurisdiction to prosecute them, and lack of jurisdiction may be raised at any stage of the proceedings. They reiterated that like Governor Roman, they were entitled to a dismissal of these cases. They likewise moved that these cases be set for oral argument.

### *Proceedings before the Office of the Ombudsman*

Crim. Cases No. SB-11-CRM-0302 and 0303, and Crim. Case No. SB-11-CRM-0441 were both filed by then Bataan Governor Enrique Garcia against former Governor Leonardo Roman and the accused, among others. Below are the material dates in the preliminary investigation of both cases, based on the Records:

a. Crim. Cases No. SB-11-CRM-0302 and 0303

| Date             | Incident  |
|------------------|---|
| December 1, 2004 | Governor Enrique Garcia filed a Complaint against former Governor Leonardo Roman and several others, including accused De Pano, Rodriguez and Jimenez                                     |
| May 10, 2011     | Resolution of the Ombudsman (a) dismissing the charges against Roman, and (b) finding probable cause against accused De Pano, Rodriguez and Jimenez for Falsification of Public Documents |
| July 13, 2011    | Informations were filed   |

<sup>11</sup> Records, Vol. 4, pp. 255-259

<sup>12</sup> *Id.*, pp. 260-263

*D. J. M.*

|               |   |
|---------------|---|
| June 30, 2011 | Gov. Garcia's Motion for Reconsideration of the Ombudsman Resolution  |
| June 14, 2012 | Resolution on Gov. Garcia' MR (Ombudsman's disapproval of the Resolution reversing the May 10, 2011 Resolution) |

|                   |  |
|-------------------|--|
| 6 years, 7 months | Filing of Complaint to Resolution of the Ombudsman                                       |
| 6 years, 9 months | Filing of Complaint to filing of Informations  |
| 7 years, 8 months | Filing of Complaint to Resolution on MR (MR was filed after the Informations were filed) |
|                   | [1 year, 1 month – Ombudsman Resolution to resolution of MR]                             |

b. Crim. Case No. SB-11-CRM-0411

| Date              | Incident  |
|-------------------|---|
| January 18, 2005  | Governor Enrique Garcia filed a Complaint against former Governor Leonardo Roman and several others, including accused De Pano, Rodriguez, Jimenez and Capistrano                                     |
| May 30, 2006      | Resolution of the Ombudsman (a) dismissing the charges against Roman, and (b) finding probable cause against accused De Pano, Rodriguez, Jimenez and Capistrano for Falsification of Public Documents |
| September 1, 2008 | Motion for Reconsideration filed by De Pano, Rodriguez, and Jimenez   |
| October 9, 2009   | Order denying De Pano, Rodriguez, and Jimenez' Motion for Reconsideration   |
| August 18, 2011   | Information was filed   |

|                   |   |
|-------------------|---|
| 1 year, 4 months  | Filing of Complaint to Resolution of the Ombudsman              |
| 4 years, 8 months | Filing of Complaint to Resolution of MR                         |
|                   | [3 years, 4 months – Ombudsman Resolution to resolution of MR]  |
| 6 years, 7 months | Filing of Complaint to filing of Information                    |
|                   | [1 year, 10 months – Resolution of MR to filing of Information] |

This Court observes the considerable time it took the Office of the Ombudsman to conduct preliminary investigation in these cases. In Crim. Cases No. CRM-11-SB-0302 to 0303, there was a gap of **6 years and 7 months** between the filing of the complaint up to the issuance of the Resolution finding probable cause against the accused. The Office of the Ombudsman acted with somewhat more dispatch in resolving the complaint in Crim. Case No. CRM-11-SB-0411, taking only 1 year and 4 months to render its Resolution, but for some reason, took a much longer period of **3 years and 4 months** just to resolve the accused's motion for reconsideration thereof. Notably, the Prosecution did not offer any explanation for the protracted preliminary investigation in both cases.

The mere length of delay, however, is not the sole basis in determining whether there was a violation of the accused's right to the speedy disposition of cases.

*T. J. [Signature]*

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. Hence, the doctrinal rule is that in the determination of whether that right has been violated, the factors that may be **considered and balanced** are as follows: (1) the length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.<sup>13</sup>

*It is too late in the day for the accused to invoke their right to the speedy disposition of cases.*

While primarily grounded on their constitutional right to the speedy disposition of cases, the accused's *Motions to Dismiss* draw strength, if not insight, from the dismissal of the charge against Gov. Roman in SB-15-CRM-0100, which stemmed from the same complaint as SB-11-CRM-0441, by the Special Second Division of this Court on the same ground. The accused claim that with the dismissal of SB-15-CRM-0100 against Gov. Roman, the dismissal of these cases should follow, as a matter of "due process, equal protection of the law, and interest of justice".

At the outset, the dismissal of SB-15-CRM-0100 cannot be treated as precedent for either case, being a *Resolution of this Court*. Only decisions of the Supreme Court constitute binding precedents, forming part of the Philippine legal system.<sup>14</sup>

While this Court may agree with the Resolution of the Special Second Division that there was considerable delay in the conduct of the same preliminary investigation that led to the filing of the *Information* in SB-11-CRM-0441, especially in the absence of an attempt on the part of the Prosecution to explain the reason for such delay, it finds no merit in the accused's insistence that they are likewise entitled to a dismissal, because contrary to their claim, **they are not similarly situated** as Gov. Roman, who **promptly** filed a *Motion to Quash* to assert his right to the speedy disposition of cases. Necessarily, the accused have no basis to invoke the equal protection clause.

As properly pointed out by the Prosecution, both in SB-11-CRM-0302 to 0303 and SB-11-CRM-0411, the accused have already filed *Motions to Quash*, none of them even hinting on the delay in the conduct of preliminary investigation. Instead, they raised the following grounds:

<sup>13</sup> *Dela Peña v. Sandiganbayan*, G. R. No. 144542. June 29, 2001

<sup>14</sup> *Nippon Express (Philippines) Corporation v. CIR*, G.R. No. 196907, March 13, 2013

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|                                | SB-11-CRM-0302 to 0303   | SB-11-CRM-0441  |
|--------------------------------|--|---|
| Capistrano                     | (not an accused)   | No jurisdiction, as none of the accused held a salary grade of 27 or higher <sup>15</sup>                             |
| De Pano, Rodriguez and Jimenez | a. The Informations charge one continuing offense, putting the accused twice in jeopardy<br>b. No probable cause<br>c. Equal Protection – other respondents were exonerated for lack of probable cause <sup>16</sup> | a. Arias Doctrine<br>b. Equal Protection – other respondents were exonerated for lack of probable cause <sup>17</sup> |

All the accused have likewise been arraigned in both cases. When Gov. Garcia filed a *Motion for Reinvestigation* in SB-11-CRM-0441, they interposed no objection.<sup>18</sup> In fact, accused De Pano, Rodriguez, and Jimenez filed their own *Motion for Reinvestigation*.<sup>19</sup> In SB-11-CRM-0302 and 0303, on the other hand, notwithstanding that preliminary investigation took more than 6 years, the accused were silent as the Prosecution filed multiple motions for extension while awaiting the Office of the Ombudsman's Resolution on Gov. Garcia's *Motion for Reconsideration*. Apparently, the accused took their cue from the dismissal of another case and first exerted efforts to assert their right to the speedy disposition of cases only after such dismissal, well into the pendency of these cases.

In *Dela Peña v. Sandiganbayan*,<sup>20</sup> the Supreme Court imparts:

Moreover, it is worthy to note that it was only on 21 December 1999, after the case was set for arraignment, that petitioners raised the issue of the delay in the conduct of the preliminary investigation. As stated by them in their Motion to Quash/Dismiss, [o]ther than the counter-affidavits, [they] did nothing. Also, in their petition, they averred: Aside from the motion for extension of time to file counter-affidavits, petitioners in the present case **did not file nor send any letter-queries addressed to the Office of the Ombudsman for Mindanao** which conducted the preliminary investigation. They slept on their right a situation amounting to laches. The matter could have taken a different dimension if during all those four years, they showed signs of asserting their right to a speedy disposition of their cases or at least made some overt acts, like filing a motion for early resolution, to show that they were not waiving that right. Their silence may, therefore be interpreted as a waiver of such right. As aptly stated in *Alvizo*, the petitioner therein was insensitive to the implications and contingencies of the projected criminal prosecution posed against him by not taking any step whatsoever to accelerate the disposition of the matter, which inaction conduces to the perception that the supervening delay seems to have been without his objection, [and] hence impliedly with his acquiescence. (boldface in the original; underscoring supplied)

<sup>15</sup> Motion to Quash in SB-11-CRM-0441 dated October 27, 2011, *Records*, Vol. 1, pp. 163-169  
<sup>16</sup> Motion to Quash in SB-11-CRM-0302 to 0303 dated August 16, 2012, *Records*, Vol. 1, pp. 290-296  
<sup>17</sup> Motion to Quash in SB-11-CRM-0441 dated November 21, 2011, *Records*, Vol. 1, pp. 195-200  
<sup>18</sup> Order dated September 15, 2011 in SB-11-CRM-0441, *Records*, Vol. 1, p. 127  
<sup>19</sup> *Records*, Vol. 1, pp. 295-297  
<sup>20</sup> G. R. No. 144542, June 29, 2001

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The *Informations* in these cases were filed in 2011. It took the accused 6 years from the filing of the *Informations*, and even longer, if We consider the length of time that they were silent during preliminary investigation, to assert their right to the speedy disposition of cases. In their *Motions*, the accused averred that they “consistently asserted their rights, availed of available remedies and manifested before the Honorable Court the fact of desistance of Private Complainant”, conveniently omitting to mention whether what they asserted was their right to the speedy disposition of cases, which, indeed, they never did.

As explained in *Perez v. People*:<sup>21</sup>

The Court went on to adopt a middle ground: the **balancing test**, in which the conduct of both the prosecution and defendant are weighed. Mr. Justice Powell, *ponente*<sup>22</sup>, explained the concept, thus:

**A balancing test necessarily compels courts to approach speedy trial cases on an *ad hoc* basis. We can do little more than identify some of the factors which courts should assess in determining whether a particular defendant has been deprived of his right. Though some might express them in different ways, we identify four such factors: Length of delay, the reason for the delay, the defendants assertion of his right, and prejudice to the defendant.**

x x x We have already discussed the third factor, the defendants 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 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 defendants 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.** (boldface in the original, underscoring supplied.)

As the violation of the right to the speedy disposition of cases is clearly time-bound, there is clearly no merit in the accused’s theory that it is a matter of jurisdiction that may be raised at any stage of the proceedings.

Likewise, these cases are not affected by the lack of interest on the part of Governor Garcia to pursue them, as in these cases, he is merely a witness,<sup>23</sup> and is not indispensable for these cases to proceed.

Finally, as to the *prejudice* caused by the delay, the accused lament that they are advanced in age and it may be too late to salvage their reputations, which were tainted by these cases. In SB-11-CRM-0302 and 0303, they reiterate that they stand to be put twice in jeopardy for being charged twice

<sup>21</sup> G.R. No. 164763, February 12, 2008

<sup>22</sup> *i.e.*, of *Barker v. Wingo*, 407 US 514, 33 L. Ed. 2d 101, 92 S. Ct. 2182 (1972).

<sup>23</sup> *Leviste v. Alameda, et al.*, G.R. No. 182677, August 3, 2010

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for one continuous offense, *i.e.*, for the falsification of the Accomplishment Report (0302) and Certification (0303).

This Court has already put to rest the matter of double jeopardy in charging two separate cases for one continuous offense in its *Resolution* dated October 30, 2012.<sup>24</sup> In any event, this issue is not related, much less attributable to, the length of time spent on the conduct of preliminary investigation.

Preliminary investigation and criminal indictment, to a certain degree, imposes hassles and restrictions upon the accused, regardless of age or years in service. While this Court commiserates with the accused who are facing these charges later in life, they have not shown that they have suffered any more prejudice than is attributable to the nature of preliminary investigation.

WHEREFORE, in view of the foregoing, the accused's *Motion to Dismiss* is **DENIED** for lack of merit.

The accused's *Motion to Set Case for Oral Arguments* incorporated in their *Reply* is likewise **DENIED**.

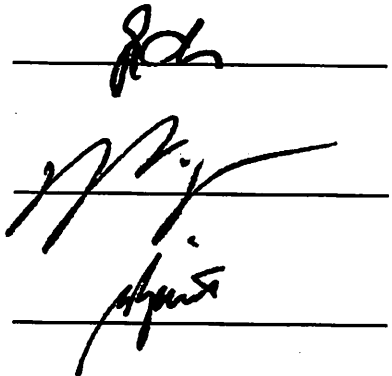
Let the Preliminary Conference set on August 24, 2017 at 2:00 p.m. proceed, as previously scheduled.

**SO ORDERED.**

GOMEZ-ESTOESTA, J., *Chairperson*

TRESPESES, J.

JACINTO, J.

Three handwritten signatures are written on three horizontal lines. The top signature is in dark ink and appears to be 'J. Gomez-Estoesta'. The middle signature is in dark ink and appears to be 'J. Trespeses'. The bottom signature is in dark ink and appears to be 'J. Jacinto'.

<sup>24</sup> *Records of Crim. Cases No. SB-11-CRM-0302 to 0303, Vol. 1, pp. 335-340*