

Republic of the Philippines
SANDIGANBAYAN
Quezon City

Sixth Division

People of the Philippines,
Plaintiff,

Crim. Case No. SB-16-CRM-0769

For: Violation of Section 3(e) of
R.A. 3019

-versus-

Present:
Ponferrada, J. *Chairperson*
Herrera, Jr., J. &
Miranda, J.

Benjamin Abalos, Sr.
Accused.

Promulgated: **91 2017** 

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RESOLUTION

HERRERA, JR., J:

For resolution of the Court is a ***Motion For Leave Of Court To Admit Attached Second Motion For Reconsideration (of the Resolution dated May 18, 2017)***¹ dated June 7, 2017, filed by accused Benjamin S. Abalos, Sr. (Abalos for short), through counsel, to which is attached said accused's ***Second Motion For Reconsideration (of the Resolution dated May 15, 2017)***² dated June 6, 2017.

In connection with the foregoing, the following were also filed:

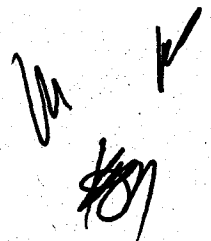
- a) ***Compliance with Manifestation***³ dated June 15, 2017, filed by accused Abalos, through counsel, submitting as Annex "1" thereto a copy of the ***Complaint***⁴ dated October 9, 2008 of the Field Investigation Office, Office of the Ombudsman, signed by Associate Graft Investigation Officer I Corinne Joie M. Garillo;

¹ Record, Vol. 1, pp. 211-213

² Id, pp. 214-219

³ Id, pp. 224-226

⁴ Id, pp. 227-239



b) **Comment/Opposition**⁵ dated June 20, 2017, filed by the prosecution, through the Office of the Special Prosecutor, Office of the Ombudsman;

c) **Motion For Leave To File And To Admit Reply (to the Comment/Opposition dated June 20, 2017)**⁶ dated June 29, 2017, filed by accused Abalos, through counsel, to which is attached accused Abalos' **Reply (to the Comment/Opposition dated June 20, 2017)**⁷ dated June 29, 2017; and

d) **Comment/Opposition (On Motion for Leave to File and to Admit Reply dated June 20, 2017)**⁸ dated June 20, 2017, filed by the prosecution, through the Office of the Special Prosecutor, Office of the Ombudsman.

Although a second motion for reconsideration is prohibited and the one filed by accused Abalos is admittedly out of time, the Court hereby grants the **Motion For Leave Of Court, etc.** and admits his **Second Motion For Reconsideration (of the Resolution dated May 18, 2017)**. The Court also hereby grants the **Motion For Leave To File And To Admit Reply, etc.** and admits accused Abalos' **Reply (to the Comment/Opposition dated June 20, 2017)**.

The Court will now tackle the **Second Motion For Reconsideration (of the Resolution dated May 18, 2017)**.

In the aforesaid **Second Motion, etc.**, accused Abalos mainly contends that:

- 1) The investigation started in October 2008;

⁵ Id, pp. 240-245

⁶ Id, pp. 254-255

⁷ Id, pp. 256-280

⁸ Id, pp. 505-507

Handwritten initials 'M' and 'K' are visible in the lower right quadrant of the page. Below them is a signature that appears to be 'M. K.' or similar, written in dark ink.

- 2) There is no inconsistency in Abalos' awareness of the Ombudsman's investigation – Abalos knew in 2008 that the Ombudsman was conducting an investigation; and
- 3) The Ombudsman has not offered any reasonable explanation for its inordinate delay in resolving the case.

The aforementioned contentions of accused Abalos were already addressed by the Court in its *Resolution*⁹ of February 2, 2017, which denied his *Motion To Quash Information, etc.*¹⁰ dated November 11, 2016, and *Resolution*¹¹ dated May 18, 2017, which denied his *Motion For Reconsideration (of the Resolution dated February 2, 2017)*.¹²

Accused Abalos asserts that the Court is incorrect in stating that he merely assumed that the investigation started in October 2008. He further asserts that it started in October 2008. The Court, however, disagrees with his assertions.

In the *Resolution* of May 18, 2017, the Court pointed out:

“Movant asserts that the Ombudsman investigation of this case must have started in October 9, 2008 because the FIO Complaint against him is dated October 9, 2008. Hence, he avers that:

“7. Thus, at the very least, the earliest admitted recorded date of the Ombudsman's investigation involving this case is 9 October 2008 when the Complaint was dated and subscribed to by the FIO-Ombudsman.”

Clearly, movant merely assumed that the investigation started in October 2008. No supporting document or paper was submitted to support such assumption. In fact, movant himself already acknowledged this in the *Motion To Quash*

⁹ Id, pp. 119-129

¹⁰ Id, pp. 69-83

¹¹ Id, pp. 196-203

¹² Id, pp. 135-145

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he earlier filed, where he categorically declared, *inter alia*, that:

"22.3 In this case, the Ombudsman spent **AT LEAST EIGHT YEARS** from its fact-finding investigation, ***in what one can safely assume started sometime on a date earlier than October 9, 2008, up until*** it filed the Information before the Honorable Court on **October 7, 2016**.

22.4 Due the undeniable fact that the Ombudsman allowed the case to drag for at least eight years, in clear violation of Abalos' right to the speedy disposition of his case, the Information must be quashed."

Over and above movant's mere assumption regarding the start of the investigation is the fact that the FIO Complaint was filed only August 13, 2013 for preliminary investigation and consequently docketed on August 26, 2013 under OMB-C-13-0250, as shown in the timeline provided by the plaintiff. This is also stated in the ***Joint Resolution*** dated July 30, 2015 of the Office of the Ombudsman."¹³

The assumption is that the investigation started on or before October 2008. Hence, in the ***Second Motion For Reconsideration, etc.*** where he contends that the investigation stated in October 2008, he also alleges that:

"8. It is this power which the Ombudsman exercised during its fact-finding investigation, which in turn, led it to the drafting and execution of the 2008 Complaint. In fact, the 2008 Complaint was signed by Corinne Joie M. Garillo, Associate Graft Investigation Officer I, and subscribed before Caesar D. Asuncion, Assistant Special Prosecutor II, both of whom are from the Ombudsman's office. **It is therefore reasonable to assume that in this case, the Ombudsman executed the 2008 Complaint after it conducted a fact-finding investigation. Otherwise, it would be guilty of malicious prosecution.**

9. **Presumptively, allegations contained in a complaint dated October 9, 2008 were investigated earlier than October 9, 2008.** How else could the Ombudsman executed a Complaint that was signed and notarized on October 9, 2008."¹⁴

¹³ Id, pp. 198-199

¹⁴ Id, p. 215

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On his disclaimer of inconsistency allegedly because he knew of the investigation since 2008 and he has since been experiencing stress and anxiety, the Court, in pointing out that this could not be so, merely referred to his own statement and explained in the *Resolution* of May 18, 2017 that:

“The foregoing averments of movant are inconsistent with the allegations in the *Motion To Quash* that he earlier filed. There, he stated that he could not have asserted his right to speedy disposition of cases before he was directed to submit his counter-affidavit because he was not aware that the case existed. He declared:

“23.2 In fact, Abalos was shocked and dismayed to have received the 2nd Order from the Ombudsman in 2014, directing him to submit his Counter- Affidavit. He does not even remember, to the best of his ability, having received a 1st Order.

23.3 Having been away from public service for seven (7) years, he asked for an extension as he could not even recall the allegations stated in the 2008 Complaint, and thus needed more than ten (10) days to intelligently answer the same.

24. Third, ABALOS DID NOT FAIL TO ASSERT HIS RIGHT to the speedy disposition of his case.

24.1 It is clear that Abalos could not have asked for the resolution of the case pending before the Ombudsman, as he did not even know that it existed.

24.2 As in the *Coscolluela case*, Abalos could not have urged for the speedy disposition of his case as he was even unaware that the investigation was still on-going.”¹⁵

Finally, the Court already explained in its *Resolution* of February 2, 2017 and reiterated in the *Resolution* dated May 18, 2017 that there was

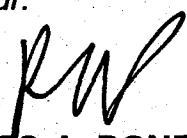
¹⁵ Id, p. 201


no inordinate delay in the investigation of the case. The Court rules that the findings and conclusions contained in the two (2) **Resolutions** stand.

WHEREFORE, premises considered, the **Second Motion For Reconsideration (of the Resolution dated May 18, 2017)**, filed by accused Benjamin S. Abalos, Sr., is hereby denied.


OSCAR HERRERA, JR.
Associate Justice

We concur:


RODOLFO A. PONFERRADA
Chairperson


KARL E. MIRANDA
Associate Justice