Republic of the Philippines
SANDIGANBAYAN
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,	
Plaintiff,	SB-17-CRM-0284 For: Violation of Section 3 (e) of R.A. No. 3019
-versus-	PRESENT:
	FERNANDEZ, SJ, *J.*,[1] *Chairperson* MIRANDA, *J,* & MUSNGI, *J.*[2]
JENNY D. DE ASIS, CESAR N. YU, JOVITO F. TORRERO, and EVELYN D. DAMASCO,	
Accused,	Promulgated:
	NOV 29 2017

x----------x

R E S O L U T I O N

MIRANDA, *J.*:

This resolves: 1) The Prosecution's Motion for Reconsideration (On the Resolution dated 28 June 2017) dated July 18, 2017; and 2) Accused Jenny D. De Asis (De Asis), Cesar N. Yu (Yu), Jovito F. Torrero (Torrero), and Evelyn D. Damasco's (Damasco) Comment/Opposition (Re: Prosecution's July 18, 2017 Motion for Reconsideration of the Resolution Promulgated on June 28, 2017) dated August 14, 2017.

In its motion for reconsideration, the Prosecution alleges that: 1) The Court erred in taking cognizance of the omnibus motion despite a defective

[1] J. Ponferrada, who participated in the assailed Resolution, retired on September 13, 2017. J. Fernandez, SJ will participate in the resolution of the present incident in view of her assumption as Chairperson of the 6th Division on the same date. (As per Administrative Order (A.O.) No. 314-2017 dated September 13, 2017; Revised Internal Rules of the Sandiganbayan, Rule XII, Section 3).
[2] J. Musngi participated in the assailed Resolution (Per Administrative Order No. 124-2017 dated April 4, 2017; Revised Internal Rules of the Sandiganbayan, Rule IX, Sec. 2[a]).

notice of hearing; 2) The Court erred in treating the fact-finding investigation and preliminary investigation as one and the same; 3) The Court erred in applying the cases of People v. Coscolluela and People v. Sandiganbayan; 4) The Court erred in appreciating the two (2) motions for early resolution filed by the accused during the fact-finding investigation; and 5) The Court erred in ruling that the accused have no duty to follow-up the prosecution of their case.

In their comment/opposition, the accused allege that the Court was correct in dismissing the case against them for violation of their right to speedy disposition of their case.

After a restudy of the grounds raised in the motion for reconsideration, the Court finds no valid reason to reconsider its Resolution dated June 28, 2017 dismissing the case against the accused for violation of their right to speedy disposition of their case. The issues and arguments raised by the Prosecution in its motion for reconsideration are a mere rehash and a repetition of the same issues and arguments raised in its Opposition (Re: Accused's Amended Motion to Quash) dated May 9, 2016 (*sic*). These issues and arguments have already been considered and passed upon by the Court in its Resolution dated June 28, 2017. There being no new matters or issues raised to warrant a reversal thereof, the motion for reconsideration must be **denied**.

To reiterate, procedural rules were conceived to aid the attainment of justice. If a stringent application of the rules would hinder rather than serve the demands of substantial justice, the former must yield to the latter.[3] Technicalities may be disregarded to resolve the case. After all, no party can even claim a vested right in technicalities. Litigations should, as much as possible, be decided on the merits and not on technicalities.[4]

In *Maturan v. Araula*,[5] the Supreme Court held that while the notice was addressed only to the clerk of court, the counsel of private respondents therein was furnished with a copy of the motion for reconsideration, and in fact, filed an opposition to the motion for reconsideration. Thus, private respondents therein were not denied their day in court with respect to the motion for reconsideration, and the rule requiring notice to the other parties had been substantially complied with.

---

[3] *Basco v. Court of Appeals*, G.R. No. 125290, August 9, 2000.
[4] *Goldloop Properties, Inc. v. Court of Appeals*, G.R. No. 99431, August 11, 1992.
[5] G.R. No. 57392, January 30, 1982.

In *Philippine National Bank v. Paneda*,[6] the Supreme Court held that even if the motion for reconsideration was defective for failure to address the notice of hearing to the parties concerned, the defect was cured by the court's taking cognizance thereof and the fact that the adverse party was otherwise notified of the existence of the said motion for reconsideration. There is substantial compliance with the rules if the counsel of private respondents therein was furnished with a copy of the said motion for reconsideration.

In *Jehan Shipping Corporation v. National Food Authority,*[7] the Supreme Court held that despite the lack of notice of hearing in a motion for reconsideration, there was substantial compliance with the requirements of due process where the adverse party actually had the opportunity to be heard and had filed pleadings in opposition to the motion.

The case before the Court involves an omnibus motion where the notice of hearing was addressed only to the clerk of court. Undeniably, the Prosecution was furnished with a copy of the omnibus motion, attended the hearing of the omnibus motion, and filed its comment/opposition thereto. In its comment/opposition, the Prosecution argued on inordinate delay and defective notice of hearing in the omnibus motion. Clearly, the defect in the lack of notice to the other party was cured since there was substantial compliance with the rules.

The speedy disposition of cases covers the period of conducting the preliminary investigation, and all stages to which the accused is subjected to including fact-finding investigations conducted prior to the preliminary investigation proper. This is because the right of an accused to the speedy disposition of his case includes the periods before, during, and after trial.[8] The fact-finding investigation should not be deemed separate from the preliminary investigation conducted by the Office of the Ombudsman if the aggregate time spent for both constitutes inordinate and oppressive delay in the disposition of any case.[9]

In *Blanco v. Sandiganbayan*,[10] the Supreme Court held that the preliminary investigation started when it was ordered by the Office of the Ombudsman, and not when the latter received the anonymous letter-complaint and the referral of the case to the National Bureau of Investigation (NBI) for fact-finding investigation.

---

[6] G.R. No. 149236, February 14, 2007.
[7] G.R. No. 159750, December 14, 2005.
[8] *People v. Torres*, G.R. Nos. 221562-69, October 5, 2016.
[9] *People v. Sandiganbayan*, G.R. Nos. 188165 and 189063, December 11, 2013.
[10] G.R. Nos. 136757-58, November 27, 2000.

Blanco, however, is not on all fours with the cases before the Court. Here, the fact-finding investigation was conducted by the Office of the Ombudsman, not by the NBI. The Office of the Ombudsman has control over the cases starting from the fact-finding investigation. It is only proper to include the fact-finding investigation conducted by the Office of the Ombudsman in determining inordinate delay. Otherwise, the accused would be at the mercy of the Office of the Ombudsman if the fact-finding investigation is prolonged and excluded in the preliminary investigation.

Similarly, *Ombudsman v. Jurado*[11] is not applicable. In the said case, the fact-finding investigation was excluded in the preliminary investigation against the respondent therein because he was neither investigated nor charged before the report and recommendation of the Fact-Finding Bureau. Prior to this period, the respondent therein had no case to speak of as he was neither the subject of any complaint nor investigation. Unlike in *Jurado*, the accused in this case were already the subjects of the fact-finding investigation by the Office of the Ombudsman. The Office of the Ombudsman had control over it. Thus, the fact-finding investigation is included in the determination of inordinate delay.

The provision in Memorandum Circular No. 5, Series of 2012, or the Guidelines on the Issuance of Ombudsman Clearance, that a fact-finding investigation is not considered a pending case is not binding on the Court. The memorandum circular pertains only to the issuance of an Ombudsman clearance which is internal in nature and does not affect relevant jurisprudence that fact-finding investigation forms part of the preliminary investigation for purposes of determining violation of the right to speedy disposition of the case.

The Office of the Ombudsman spent a total of *nine (9) years, four (4) months and five (5) days* to finish its fact-finding investigation and preliminary investigation, and file the information in Court. The significant factors that contributed to the inordinate delay were the fact-finding investigation which lasted more than four (4) years, and the preliminary investigation which took almost four (4) years. The Court cannot tolerate this delay considering that this is only a simple case of violation of Section 3(e) of R.A. No. 3019. This is also true in the fact-finding investigation where the accused were formally charged with Malversation of Public Funds, violation of the Government Procurement Reform Act, State Audit Code of the Philippines, Code of Conduct and Ethical Standards for Public Officials and Employees, Section 3 (e) and (g) of the Anti-Graft and Corrupt Practices Act, Grave Misconduct, Dishonesty, and Conduct Prejudicial to

[11] G.R. No. 154155, August 6, 2008.

the Best Interest of the Service. These are only simple violations of different laws and the elements can be easily determined from the records. The issues for resolution were not complicated and the documents were not voluminous. In fact, the Resolution dated November 10, 2015 of the Office of the Ombudsman consisted only of ten (10) pages.

It is not the duty of the accused to follow-up the prosecution of their case. Rather, it is the responsibility of the Office of the Ombudsman to expedite the same within the bounds of reasonable timeliness in view of its mandate to promptly act on all complaints lodged before it. It is not the duty of the accused to bring himself to trial. The State has that duty as well as the duty of insuring that the trial is consistent with due process.[12] The allegation of the Prosecution that the accused waived their right to the speedy disposition of the case is belied by the fact that the accused twice sought the early resolution of their case during the fact-finding investigation of the Office of the Ombudsman.

Moreover, the right to speedy disposition of cases is not merely hinged towards the objective of spurring dispatch in the administration of justice but also to prevent the oppression of the citizen by holding a criminal prosecution suspended over him for an indefinite time. Akin to the right to speedy trial, its salutary objective is to assure that an innocent person may be free from the anxiety and expense of litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose.[13] The right to speedy disposition of the case guaranteed under Section 16, Article III of the Constitution includes the periods before, during and after trial, and affords broader protection than Section 14(2), which guarantees just the right to a speedy trial.[14]

A dismissal on the ground of violation of the right to speedy trial will have the effect of acquittal that would bar further prosecution of the accused for the same offense.[15] A judgment of acquittal is final, unappealable, and immediately executory upon its promulgation and cannot be recalled for correction or amendment because of the doctrine that nobody may be put twice in jeopardy of punishment for the same offense. This is known as the

---

[12] *Coscolluela v. Sandiganbayan*, G.R. No. 191411, July 15, 2013.
[13] *Id.*
[14] *Dansal v. Fernandez*, G.R. No. 126814, March 2, 2000.
[15] *Bonsubre, Jr. v. Yerro*, G.R. No. 205952, February 11, 2015.

"finality of acquittal rule."[16] A judgment of acquittal may be assailed only in a petition for certiorari under Rule 65 of the Rules of Court.[17]

Since a dismissal of a case on the ground of violation of the right to speedy trial results in acquittal that is barred by double jeopardy, it follows that the dismissal of a case based on violation of the right to speedy disposition of the case should also result in the acquittal of the accused in this case. Accordingly, the acquittal ends the case in which the accused are being prosecuted and the same cannot be appealed or reopened because of the doctrine of double jeopardy.

In sum, the notice to the other party was substantially complied with. The rights of the accused to due process and speedy disposition of their case were violated because of the failure of the Office of the Ombudsman to explain the delay of more than nine (9) years in terminating the preliminary investigation. The filing of the motion for reconsideration is barred by the constitutional proscription on double jeopardy.

WHEREFORE, the Motion for Reconsideration (On the Resolution dated 28 June 2017) dated July 18, 2017 is **DENIED** for lack of merit. The Resolution of the Court promulgated on June 28, 2017 is **AFFIRMED**.

SO ORDERED.

KARL B. MIRANDA
Associate Justice

WE CONCUR:

The Motion for Reconsideration will place the accused in double jeopardy.

SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

MICHAEL FREDERICK L. MUSNGI
Associate Justice

[16] *Chiok v. People*, G.R. No. 176814, December 7, 2015; *People v. Velasco*, G.R. No. 127444, September 13, 2000.
[17] *Villareal v. Aliga*, G.R. Nos. 166995, January 13, 2014.