Republic of the Philippines
Sandiganbayan
Quezon City
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SEVENTH DIVISION

MINUTES of the proceedings held on November 7, 2017.

Present:

MA. THERESA DOLORES C. GOMEZ-ESTOESTA ----- Chairperson
ZALDY V. TRESPESES ----- Associate Justice
BAYANI H. JACINTO[1] ----- Associate Justice

The following resolution was adopted:

CRIMINAL CASES No. SB-17-CRM-0287 to 0290

PEOPLE v. JOSEFINO N. RIGOR

Before the Court are the following:

1. Accused Josefino N. Rigor's "**OMNIBUS MOTION TO QUASH AND DISMISS THE CASE FOR VIOLATION OF THE ACCUSED'S RIGHT TO SPEEDY DISPOSITION OF CASES**" dated September 20, 2017;[2] and

2. Prosecution's "**COMMENT/OPPOSITION**" dated October 12, 2017.[3]

In his *Omnibus Motion,* accused Josefino N. Rigor ["accused"] seeks the radical relief of a dismissal grounded on violation of his constitutional right to speedy disposition. Accused avers that the subject of the present charges for Perjury were the declarations made in his Statement of Assets, Liabilities, and Net Worth (SALN) for calendar years 2000, 2001, 2002 and 2003; yet, it took the Office of the Ombudsman a total of fourteen (14) long years to conduct its preliminary investigation. The General Investigation Bureau - A started its fact finding investigation in 2003 but it was only in January 25, 2017 when the finding of probable cause was approved, and the *Informations* filed on February 24, 2017. This was allegedly enough to constitute inordinate delay, following the doctrine laid down in *People v.*

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[1] Per Administrative Order No. 284-2017 dated August 18, 2017
[2] Records, pp. 155-165
[3] Ibid., pp. 171-178

Perez,[4] which accused quotes, thus: "*x x x the Office of the Ombudsman had taken an unusually long period of time just to investigate the criminal complaint and to determine whether to criminally charge the respondents in the Sandiganbayan. Such long delay was inordinate and oppressive, and constituted under the peculiar circumstances of the case an outright violation of the respondents' right under the Constitution to the speedy disposition of their cases. x x x*" Other than the fourteen (14) years it took the Ombudsman to complete its preliminary investigation, accused asseverates that the Office of the Ombudsman could not offer any justifiable reason why it took them such length of time to file the Informations when the charges were simple enough. He further contends that he raised the matter of oppressive delay when he filed his motion for reconsideration before the Office of the Ombudsman, and that, as invoked in the case of *Almeda v. Ombudsman,*[5] the long years of waiting was like a hangman's cord above him all these years, causing distress, anxiety and embarrassment. Lastly, accused claims that the *Informations* can be quashed considering that the crimes charged have been extinguished by prescription, citing *Jadewell Parking Systems Corporation v. Lidua, Sr.*[6] which held that "*a crime may prescribe even if the complaint is filed seasonably with the prosecutor's office if, intentionally or not, he delays the institution of the necessary judicial proceedings until it is too late.*"

In its *Comment/Opposition,* the Prosecution claims that no inordinate delay attended the conduct of the preliminary investigation. Any delay, if at all, cannot be considered vexatious, capricious, and oppressive as to apply the radical relief of a dismissal. In particular, the Prosecution downplays the prejudice claimed by the accused in the delay averring that his defenses are more legal and documentary in nature, negating the possibility that his defense will be impaired by the passage of time. In accused's claim of prescription, the Prosecution argued that the cited case of *Jadewell Parking Systems Corporation v. Lidua, Sr.* only applied to cases covered by the Revised Rules on Summary Procedure (or in that case, violation of a city ordinance) where only the filing of an Information tolls the prescriptive period. The prevailing rule in these charges is that the filing of the complaint or information in the office of the prosecutor for purposes of preliminary investigation interrupts the period of prescription. The Prosecution thus prays for the denial of the *Motion.*

We resolve to deny the *Omnibus Motion.*

The right to a speedy disposition of a case, like the right to a speedy trial, is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured; or even without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried. The balancing test used to determine whether a defendant has been denied his

[4] G.R. No. 188165, December 11, 2013
[5] G.R. No. 204267, July 25, 2016
[6] G.R. No. 169588, October 7, 2013

right to a speedy trial, or a speedy disposition of a case for that matter, in which the conduct of both the prosecution and the defendant is weighed, are: (1) the length of the delay; (2) the reasons for such delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay. The concept of a speedy disposition is a relative term and must necessarily be a flexible concept.[7]

In the recent case of *Remulla v. Maliksi*,[8] it was reiterated that "*none of the factors in the balancing test is either a necessary or sufficient condition; they are related and must be considered together with other relevant circumstances.*" The same case likewise gave heed that the factors must be weighed according to the different facts and circumstances of each case, compelling the court to approach speedy trial cases on an *ad hoc* basis. As *Uy v. Adriano*[9] phrased it, these factors have no talismanic qualities as courts must still engage in a difficult and sensitive balancing process.

Tested against the four (4) factors, no dismissal on ground of speedy disposition can be accorded the accused.

There is delay in this case which the prosecution does not refute.

In the absence of a timeline provided by the Prosecution, We can only assume that the General Investigation Bureau – A ["GIB-A"] commenced its fact-finding investigation in 2005, not 2003, as claimed by the accused, when Office Order No. 10, Series of 2005, created a special panel to handle an investigation against the accused. The Special Panel consisted of GIPO I Leilani T. Marquez as Chairman and GIPO I Genielyn S. Nataño and GIPO I Lolita M. Bravo as Members.[10] A *Complaint* was thereafter filed by GIB – A as nominal complainant against the accused on March 11, 2005 before the Office of the Ombudsman – Dibisyon ng Rekords Sentral.[11] It took the Office of the Ombudsman until October 17, 2016 to come up with its Joint Resolution recommending the filing of the present charges against the accused. The Joint Resolution was prepared by GIPO III Ruth Laura A. Mella who prefaced her resolution with the statement that the "*cases were handed to [her] for disposition on 27 July 2016.*" The Joint Resolution was then approved for filing by Overall Deputy Ombudsman Melchor Arthur H. Carandang on January 25, 2017. The *Informations* were subsequently filed before this Court on February 20, 2017.

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[7] *Binay v. Sandiganbayan*, G.R. Nos. 120681-83, October 1, 1999; *Dela Pea v. Sandiganbayan*, G. R. No. 144542, June 29, 2001, citing *Alvizo v. Sandiganbayan*, G.R. No. 101689, March 17, 1993
[8] G.R. No. 218040, April 17, 2017
[9] G.R. No. 159098, October 27, 2006
[10] Records, Volume 1, p. 585
[11] Ibid., pp. 281-313

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The pervading long interregnum, while disquieting at first glance, cannot simply be characterized as the "inordinate delay" which the cited case of *People v. Perez* has prevailed upon. Accused himself does not allude to having been vexed by the long interval, save for the mathematical reckoning he construed from the timeline. Speedy trial is a relative term and necessarily a flexible concept. In determining whether the right of the accused to a speedy trial was violated, the delay should be considered, in view of the entirety of the proceedings. Indeed, mere mathematical reckoning of the time involved would not suffice as the realities of everyday life must be regarded in judicial proceedings which, after all, do not exist in a vacuum.[12]

Why it took the Office of the Ombudsman a period of twelve (12) years to file the present charges, however, cannot be speculated by this Court. In truth, the precipitate dismissal of the present charge on this ground alone does not always follow.

In *Coscolluela v. Sandiganbayan, et al.,*[13] it was recognized that the Office of the Ombudsman was created under the mantle of the Constitution, mandated to be the "*protector of the people*" and as such, required to "*act promptly on complaints filed in any form or manner against officers and employees of the Government, or of any subdivision, agency or instrumentality thereof, in order to promote efficient service*" and that this great responsibility cannot be simply brushed aside by ineptitude.

Yet, in *Jacob, et al. v. Sandiganbayan, et al.,*[14] the Supreme Court tilted in the other direction in elucidating:

> In *Corpuz*,[15] we warned against the overzealous or precipitate dismissal of a case that may enable the defendant, who may be guilty, to go free without having been tried, thereby infringing the societal interest in trying people accused of crimes rather than granting them immunization because of legal error. Earlier, in *People v. Leviste*,[16] we already stressed that:
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> [T]he State, like any other litigant, is entitled to its day in court, and to a reasonable opportunity to present its case. A hasty dismissal such as the one in question, instead of unclogging dockets, has actually increased the workload of the justice system as a whole and caused uncalled-for delays in the final resolution of this and other cases. Unwittingly, the precipitate action of the respondent court, instead of easing the burden of the accused, merely prolonged the litigation and ironically enough, unnecessarily delayed the case — in the process, causing the very evil it apparently sought to avoid. Such action does not inspire public confidence in the administration of justice.

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[12] *Uy v. Adriano,* supra
[13] G.R. No. 191411, July 15, 2013
[14] G.R. No. 162206, November 17, 2010
[15] *Corpuz v. Sandiganbayan,* G.R. No. 162214, November 11, 2004
[16] 325 Phil. 525 (1996)

> **Thus, even though we acknowledge the delay in the criminal proceedings, as well as the prejudice suffered by petitioners and their co-accused by reason thereof, the weighing of interests militate against a finding that petitioners' right to speedy trial and disposition of the cases involving them would have justified the dismissal of Criminal Case Nos. 25922-25939.** We agree with the Sandiganbayan Special Fourth Division that Justice Nario's dismissal of the criminal cases was unwarranted under the circumstances, since the State should not be prejudiced and deprived of its right to prosecute the criminal cases simply because of the ineptitude or nonchalance of the Office of the Ombudsman. x x x. [Emphasis supplied]

Under the premise of a balancing test, the delay present in this case cannot result in the outright dismissal of the charge. To reiterate, the People should not be deprived of its right to prosecute the criminal charges simply because of the ineptitude or nonchalance of the Office of the Ombudsman.

No reason was advanced by the Prosecution to justify the delay.

The *Comment/Opposition* submitted by the Prosecution is conspicuously silent on the lull it took the Office of the Ombudsman in filing the present charges. The Prosecution was simply satisfied in concluding that "*[a]ny delay, if at all, cannot be considered vexatious, capricious and oppressive so as to justify the application by this Honorable Court of the radical relief of dismissing the instant case[s].*"

While this may be taken against the Prosecution, it is still not enough, without considering the other balancing factors, to order a dismissal on ground of speedy disposition.

Accused failed to assert his right to speedy disposition to accelerate the process of terminating the preliminary investigation.

Accused has known, at the outset, of the preliminary investigation being conducted against him. The Order issued by GIB-A requiring him to file his counter-affidavit was dated May 12, 2005.[17] Apparently pursuant thereto, he filed his *Counter-Affidavit* on July 7, 2005.[18] All this time, he has neither invoked nor asserted his right to speedy disposition. Accused was never heard to complain on the perceived delay of his preliminary investigation. It was only after the Joint Resolution was issued, and during

[17] Records, Volume 1, pp. 586-587
[18] Ibid., pp. 47-64

the filing of his motion for reconsideration, that he *"raised the matter of oppressive delay."*[19]

Such belated invocation wanes in significance in considering inordinate delay.

The case of *Coscolluela v. Sandiganbayan, et al.* may have reinforced the concept that it was not the duty of the respondents in the preliminary investigation proceedings to follow up on the prosecution of their case. The ruling, however, came in the light of the factual circumstance that the respondents were unaware that the investigation against them was still on-going. In said case, the respondents were only informed of the March 27, 2003 Resolution and Information against them only after the lapse of six (6) long years, or when they received a copy of the latter after its filing with the SB on June 19, 2009. In this regard, they could have reasonably assumed that the proceedings against them have already been terminated which thus served as a plausible reason as to why said respondent **never followed-up on the case altogether.**

Contrary to these cases, accused has known of the ongoing preliminary investigation since 2005. Years passed but never did he cavil on the violation of his constitutional right to speedy disposition. He allowed himself to be drifted in the slow current moving his cases at snail pace at the Office of the Ombudsman. Unlike *Almeda v. Ombudsman,*[20] the petitioner in that case was observed to have *"had no hand in the delay. As a matter of fact, she sent a letter and filed written manifestations seeking the immediate resolution of her case. While they were filed only in 2010 and 2011, petitioner's letter and manifestations cannot be considered late, and no waiver or acquiescence may be attached to the same, as she was not required as a rule to follow up on her case; instead, it is the State's duty to expedite the same."* The same cannot be said of the accused. It was only *after* he had known of the adverse resolution of the Ombudsman when he invoked his right to speedy trial.

Verily, the delay in the assertion of such right merely ripples a stance that cannot effect, by itself, a dismissal of the charges.

The "hangman's cord" alluded by the accused lacked substantiation.

Accused makes an insinuation that he has to endure *"distress, anxiety, and embarrassment,"* equated to a hangman's cord hanging above him, as in *Almeda v. Ombudsman,* to highlight the long waiting period he had to endure before the present charges were finally filed. Accused's generalization on the effects of the pendency of the preliminary investigation and later, the delay

[19] Vide: *Omnibus Motion,* par. 8
[20] supra, footnote #4

which attended it, is not the prejudice that could be considered by this Court in its balancing test.

The cited case of *Angchonco, Jr. v. Ombudsman* sets the precedent.

In said case, the Office of the Ombudsman has failed to resolve the criminal charges against petitioner for more than six years which took a toll on the petitioner who has since retired and has been deprived of the fruits of his retirement after serving the government for over 42 years all because of the inaction of respondent Ombudsman. The Supreme Court thus ruled that should it wait any longer, it may be too late for petitioner to receive his retirement benefits, not to speak of clearing his name. This was thus a case of plain injustice which called for the issuance of the writ prayed for.

The same cannot be said of the accused. His misgivings are, at most, griping sentiments faced by all accused who have to contend with the foreboding criminal prosecution that sets the inevitable. Besides, as the Prosecution contends, the defenses raised by the accused during preliminary investigation are more legal and documentary in nature, negating the possibility that his defense will be impaired by the passage of time. We can only agree. Accused did not allude to documents that went missing over the passage of time nor of witnesses who may have had difficulty recalling events for his defense. In truth, considering the volume of documentary exhibits produced during the preliminary investigation of his cases, accused seemed to have already collated his documentary evidence without a snag.

We did not fail to notice, however, that the Office of the Ombudsman completed its preliminary investigation in twelve (12) years. Should this be seen as a glitch in the bureaucratic intricacies of the Office, We can only extenuate the seeming handicap by considering that in the prosecution of cases, it is public interest which is at stake. In *Office of the Ombudsman v. Quimbo, et al.,* the Supreme Court reiterated that:

> x x x the Ombudsman is in a league of its own. It is different from other investigatory and prosecutory agencies of the government because the people under its jurisdiction are public officials who, through pressure and influence, can quash, delay or dismiss investigations directed against them. Its function is critical because public interest (in the accountability of public officers and employees) is at stake.

In thus balancing the parallel rights of the Prosecution and the defense, it is only right that the criminal proceedings ensue.

Prescription has not set in.

Section 1 of Rule 110 of the Revised Rules of Criminal Procedure provides:

> **Section 1.** *Institution of criminal actions.* — Criminal actions shall be instituted as follows:

> (a) For offenses where a preliminary investigation is required pursuant to section 1 of Rule 112, by filing the complaint with the proper officer for the purpose of conducting the requisite preliminary investigation.
>
> xxx xxx xxx xxx.
>
> **The institution of the criminal action shall interrupt the running period of prescription of the offense charged unless otherwise provided in special laws.** (1a) [Emphasis supplied]

Despite the clear context of such provision, accused asserts that "*a crime may prescribe even if the complaint is filed seasonably with the prosecutor's office if, intentionally or not, he delays the institution of the necessary judicial proceedings until it is too late,*" citing the case of *Jadewell Parking Systems Corporation v. Lidua, Sr.*[21]

The citation is misplaced.

The facts of *Jadewell Parking Systems Corporation v. Lidua, Sr.* are too variant to impose an equal application of the same ruling. Said case involved a violation of a city ordinance which was covered by the Revised Rules on Summary Procedure. Hence, pursuant to Section 11 thereof, only the filing of an Information in court tolls the prescriptive period where the crime charged is involved in an ordinance, applying the rule laid down in *Zaldivia v. Reyes.*[22]

The present charges, however, vastly differ. For one, it was by authority of the Office of the Ombudsman that the preliminary investigation was conducted. The other being that accused is a public officer charged with the commission of an offense cognizable within the jurisdiction of this Court. Accordingly, since these are cases not governed by the Revised Rules on Summary Procedure, the filing of the complaint against the accused with the Office of the Ombudsmans effectively *tolled* the running of the period of prescription.[23]

The records reveal that GIB-A filed its *Complaint* with the Office of the Ombudsman on March 11, 2005 for violations of Article 183 (Perjury) and 171 (Falsification) of the Revised Penal Code. The SALNs subject of the charges were filed in 2000, 2001, 2002, and 2003, respectively. Eventually, it is for violation of Article 183 (Perjury)[24] that was filed against

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[21] Supra, at footnote #5

[22] G.R. No. 102342, July 3, 1992, En Banc

[23] *Llenes v. Dicdican,* G.R. No. 122274., July 31, 1996

[24] Art. 183. ***False testimony in other cases and perjury in solemn affirmation.*** — The penalty of arresto mayor in its maximum period to prision correccional in its minimum period shall be imposed upon any person, who knowingly makes untruthful statements and not being included in the provisions of the next preceding articles, shall testify under oath, or make an affidavit, upon any material matter before a competent person authorized to administer an oath in cases in which the law so requires. x x x.

the accused which is punishable by *arresto mayor* in its maximum period to *prision correccional* in its minimum period, classified as a correctional penalty under Article 25 of the same Code. Necessarily, under Article 90 thereof, the offense prescribes in ten (10) years.

Clearly, therefore, prescription has not yet set in.

IN VIEW OF THE FOREGOING, the *Omnibus Motion to Quash and Dismiss* filed by accused Josefino N. Rigor is **DENIED** for lack of merit.

Let the arraignment of said accused **PROCEED**, as scheduled, on ***November 17, 2017 at 8:30 in the morning*** at the Fourth Division Courtroom.

SO ORDERED.

GOMEZ-ESTOESTA, J., ***Chairperson***

TRESPESES, J.

JACINTO, J.

Any person who, in case of a solemn affirmation made in lieu of an oath, shall commit any of the falsehoods mentioned in this and the three preceding articles of this section, shall suffer the respective penalties provided therein.