



Republic of the Philippines
Sandiganbayan
Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on April 25, 2018.

Present:

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

The following resolution was adopted:

Criminal Case Nos. SB-17-CRM-2152 to 2164 – People v. Milagrosa T. Tan, et al.

This resolves the following:

1. Accused [Milagrosa] T. Tan's "MOTION FOR RECONSIDERATION (OF THE MINUTE RESOLUTION DATED 20 FEBRUARY 2018)" dated February 27, 2018;
2. Accused Ariel G. Yboa and George G. Abrina's "MOTION FOR RECONSIDERATION (ON THE RESOLUTION DATED FEBRUARY 20, 2018)" dated February 27, 2018;
3. Accused Francasio Detosil's "MOTION FOR RECONSIDERATION (RE: RESOLUTION DATED [20] FEBRUARY 2018)" dated February 27, 2018;
4. Accused Bienvenido Sabenecio, Jr.'s "MOTION FOR RECONSIDERATION (RE: RESOLUTION DATED FEBRUARY 20, 2018)" dated February 27, 2018;
5. Accused Rolando Bolastig Montejo's "MOTION FOR RECONSIDERATION (RE: RESOLUTION DATED 20 FEBRUARY 2018)" dated February 27, 2018; and
6. Prosecution's "CONSOLIDATED COMMENT/OPPOSITION (TO THE MOTIONS FOR RECONSIDERATION)" dated March 8, 2018.

Accused Milagrosa T. Tan, Ariel G. Yboa, George G. Abrina, Bienvenido Sabenecio, Jr., and Rolando Bolastig Montejo [**the accused**] separately move for the reconsideration of this Court's Resolution dated

* Per Administrative Order No. 284-2017 dated August 18, 2017

Handwritten signature/initials

February 20, 2018,¹ which denied their respective motions to dismiss (on the ground of inordinate delay). As the grounds they cited in support of their motions intertwine, the same may be summed thusly:

The accused insist that the passage of a total of ten (10) years in the proceedings before the Office of the Ombudsman (“**Ombudsman**”) violated their constitutional right to speedy disposition of cases. This period ought to be reckoned from 2007, when the Commission on Audit (“**COA**”) issued the Notices of Disallowance (“**ND**”), until the filing of the present Informations before this Court in 2017. Citing *Tatad v. Sandiganbayan*, they aver that the Supreme Court has ruled that the delay of close to three (3) years is unreasonable. As a result of the long delay, the accused posit that they were prejudiced, such that the passage of time diminished their ability to prepare their defenses, among others. Furthermore, the accused emphasize that the fact-finding investigation conducted by the Field Investigation Office (“**FIO**”) of the Ombudsman must be *included* in the computation of the 10-year period, but the prosecution remained silent as to when said investigation commenced. The accused rely on the following oft-cited jurisprudence in support of their motions: *People v. Sandiganbayan*,² *Torres v. Sandiganbayan*,³ *Almeda v. Office of the Ombudsman (Mindanao)*⁴, and *Angchangco, Jr. v. Ombudsman*.⁵ The accused thus pray for the reversal of the challenged Resolution, and for the dismissal of the cases against them.

On the other hand, accused Francasio Detosil [“**accused Detosil**”] seeks the reversal of this Court’s Resolution dated February 20, 2018 insofar as it denied his Motion for Reinvestigation. Due process requires that he should have been actually notified of the preliminary investigation proceedings conducted by the Ombudsman. However, accused Detosil reiterates that he never received a copy of the Ombudsman’s Resolution dated October 6, 2016 finding probable cause to charge him of violation of Section 3 (e) *Republic Act No. 3019*, which ruling was mailed to his former office address at Capitol Building, Catbalogan City, Samar. In fact, he retired from public service on June 1, 2014, and thus was no longer holding office at said address. As a result of the lack of due process afforded him, he argues that his motion for reinvestigation was not a prohibited pleading under the *Revised Guidelines for Continuous Trial of Criminal Cases*. Accused Detosil thus prays that his motion for reinvestigation be granted.

The prosecution opposes the Motions for Reconsideration of the accused claiming that the arguments raised therein are a mere rehash of the discussions contained in their motions to dismiss. The computation of delay begins from the filing of the Complaint on July 15, 2015, not from the issuance of the NDs, absent any demonstration by the accused that any fact-finding

¹ Records, Vol. 2, pp. 335-347

² G.R. Nos. 188165 & 189063, December 11, 2013

³ G.R. Nos. 221562-69, October 5, 2016

⁴ G.R. No. 204267, July 25, 2016

⁵ Which cited *Tatad v. Sandiganbayan*, G.R. Nos. 72335-39, March 21, 1988

127 . 7

investigation was conducted. Moreover, the accused have not shown that there was unreasonable delay in the disposition of their cases. It underscores that the preliminary investigation only took a little over two (2) years, which is not tantamount to inordinate delay. The prosecution thus prays that the motions be denied.

OUR RULING

The motions for reconsideration of accused Tan, Yboa, Abrina, Sabenecio, Jr., and Montejo are not well-taken, there being no undue delay committed by the prosecution in the resolution of the cases before it.

To stress, the time taken by the Ombudsman should not be reckoned from the issuance of the NDs by the COA on August 7, 2007, but from the commencement of the preliminary investigation which was initiated by the filing of the Complaint on **July 15, 2015**. Absent any evidence to the contrary, the evaluation of the cases presumably went through the standard procedures, which culminated in the filing of the Informations before this Court on **November 24, 2017**.

From the foregoing, the lapse of only *two (2) years and four (4) months* cannot be considered as delay, much less unreasonable delay, which would prejudice the constitutional rights of the accused. **Said period even falls short of the three-year unreasonable delay which the Supreme Court held to be violative of the accused's constitutional right to speedy disposition in the landmark case of *Tatad v. Sandiganbayan*.**⁶

While the accused insist that the time used in the fact-finding be tacked in to the abovementioned period, they themselves could not even allude to a precise date on which said investigation commenced for purposes of computation due to its apparent secrecy or no-contact-policy. As it is, the case records do not disclose that a fact-finding investigation was conducted by the Ombudsman prior to the filing of said Complaint. In any event, the cases of *People v. Sandiganbayan*,⁷ *Torres v. Sandiganbayan*,⁸ and *Almeda v. Office of the Ombudsman (Mindanao)*⁹, which the accused cited find no application to the present controversy.

In *People v. Sandiganbayan*, then Secretary of Justice Hernando B. Perez was one of the respondents implicated in a controversy pertaining to alleged acts of bribery. Relative thereto, Secretary Perez was able to

⁶ G.R. Nos. 72335-39, March 21, 1988, which was cited by *Angchangco, Jr. v. Ombudsman*, G.R. No. 122728, February 13, 1997

⁷ G.R. Nos. 188165 & 189063, December 11, 2013

⁸ G.R. Nos. 221562-69, October 5, 2016

⁹ G.R. No. 204267, July 25, 2016

17.8

participate in a fact-finding investigation conducted by the FIO of the Ombudsman. During said investigation, Secretary Perez had requested the Ombudsman to “verify from the Coutt's Bank whether he (Secretary Perez) had ever held any account in that bank to which the sum of US\$2 Million had been remitted by Cong. Jimenez.” Subsequently, Secretary Perez had been informed of the developments of his investigation, specifically that there was a letter from Coutts Bank stating that "Hernando B. Perez" had no account with it. Secretary Perez, therefore, knew of the conduct of the fact-finding investigation being held against him.

To reiterate, in *Torres v. Sandiganbayan*, the Highest Court ruled that the **splitting** of the investigations prejudiced the rights of Torres. The Ombudsman possessed and had reviewed the necessary documents pertaining to the alleged overpricing of medicines of the Philippine Navy for at least eight (8) years before another investigation was ordered, following which at least sixteen (16) years lapsed before probable cause was found.

In *Almeda v. Office of the Ombudsman (Mindanao)*, Almeda was one of the several public officers charged before the Ombudsman in connection with the alleged improper use of the Countrywide Development Fund. After probable cause had been found to indict Almeda and her co-accused, the corresponding Information was prepared, which was then indorsed and forwarded, together with the Ombudsman's Resolution, to the Provincial Prosecutor of Surigao del Norte for appropriate filing in court. Although Almeda had filed her Motion for Reconsideration praying for the reversal of the Ombudsman's ruling, the case was ultimately **neglected** by prosecution officials. This neglect was characterized as “administrative ‘ping-pong’” of Almeda’s case: there were repeated indorsements back and forth between the internal divisions of the Ombudsman, which was then compounded by the fact that the handling graft investigation prosecution officer went on official study leave, and no other officer had been re-assigned to the case.

As can be gleaned from the aforecited cases of *People v. Sandiganbayan*, *Torres*, and *Almeda*, what spurred the Supreme Court’s pronouncement that the time taken in fact-finding investigations should be taken into account in determining if undue delay existed in the disposition of a case were the presence of the following circumstances: (a) when the fact-finding investigation of the Ombudsman required the participation of an accused; (b) when there is an obvious fractionalization of investigations resulting in the filing of several cases against the accused; and (c) when unreasonable delay plagues the administrative case disposal process resulting in untoward neglect.

In the present cases, none of the aforecited circumstances which pervaded in *People v. Sandiganbayan*, *Torres*, and *Almeda* obtain as to the accused. The accused were not made an integral part of the fact-finding investigation conducted by the FIO. As a matter of fact, it bears emphasizing that the accused themselves admitted that the silence of the prosecution

12.7

rendered them unable to indicate the precise date when said investigation supposedly started and/or terminated. Neither were the accused made to suffer undue vexation during the investigation due to the neglect or fractionalization of their case. For this reason, this Court opines and so holds that the time taken by the prosecution in conducting a fact-finding investigation should not be counted in determining the presence of inordinate or undue delay in the proceedings.

In fine, the lapse of only *two (2) years and four (4) months* in preliminary investigation proceedings leads to the conclusion that no undue delay was committed by the prosecution in the resolution of the cases.

The motion for reconsideration of accused Detosil fails to persuade, it being evident that he was given sufficient notice of the proceedings before the Ombudsman.

Regarding the Motion of accused Detosil, the arguments he proffered have already been carefully weighed and sufficiently passed upon in the Resolution sought to be considered.

To repeat, the Ombudsman's Official Mailing List dated December 1, 2016 disclosed that accused Detosil was furnished a copy of the Ombudsman's Resolution dated October 6, 2016, which had been sent to his office address. While accused Detosil averred that he had already retired from government service, the Ombudsman was not beholden to track down his whereabouts. In fact, Section 4 of the *Rules of Procedure of the Office of the Ombudsman* specifically provides that "[i]f the respondents cannot be served with the order mentioned in paragraph 6 hereof, or having been served, does not comply therewith, the complaint shall be deemed submitted for resolution on the basis of the evidence on the record."

Furthermore, it cannot be emphasized enough that the motion for reinvestigation of accused Detosil falls under the pleadings prohibited by the *Revised Guidelines for Continuous Trial of Criminal Cases*, and consequently, its outright denial is warranted.¹⁰

¹⁰ The cited provision reads:

2. Motions

xxx

xxx

xxx

(b) Prohibited Motions. - Prohibited motions shall be denied outright before the scheduled arraignment without need of comment and/ or opposition.

The following motions are prohibited:

xxx

xxx

xxx

iii. Motion for reinvestigation of the prosecutor recommending the filing of information once the information has been filed before the court (1) if the motion is filed without prior leave of court; (2) when preliminary investigation is not required under Sec. 8, Rule 112;

Absent any strong or cogent reason, no deviation of this Court's previous legal stand is warranted.

WHEREFORE, the *Motions for Reconsideration* respectively filed by accused Milagrosa T. Tan, Ariel G. Yboa, George G. Abrina, Bienvenido Sabenecio, Jr., Rolando Bolastig Montejo, and Francasio Detosil, are **DENIED**.

Let the regular arraignment and pre-trial proceed as scheduled on April 27, 2018 at 8:30 am.

SO ORDERED.

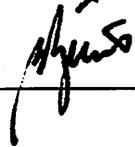
GOMEZ-ESTOESTA, J., Chairperson



TRESPESES, J.



JACINTO, J.



and (3) when the regular preliminary investigation is required and has been actually conducted, and the grounds relied upon in the motion are not meritorious, such as issues of credibility, admissibility of evidence, innocence of the accused, or lack of due process when the accused was actually notified, among others.