



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

FOURTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-17-CRM-2406 to 2407; and
2409 to 2410

For: (1) Violation of Section 3(e), R. A. No. 3019, as Amended, and (2) Malversation Of Public Funds or Property, defined and penalized under Article 217 of the Revised Penal Code.

-versus-

HECTOR M. SALES,
EMILIANA T. KARE,
ROSEMARIE C. CEÑA CAPUS,
LEONORA P. CAPUS,
Accused.

X ----- X

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-17-CRM-2408

For: Malversation of Public Funds or Property, defined and penalized under Article 217 of the Revised Penal Code.

- versus -

EMILIANA T. KARE,
NORBERTO R. RESONTOC,
Accused.

Present:

QUIROZ, J., *Chairperson*
CRUZ, J.
JACINTO, J.

Promulgated on:

May 9, 2018

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RESOLUTION

CRUZ, J.

This resolves the (1) Motion to Dismiss¹ dated 05 March 2018 of accused Leonora P. Capus ("Capus"); (2) Motion to Dismiss² dated 01 March 2018 of accused Hector M. Sales ("Sales"); (3) Motion to Dismiss³ dated 05 March 2018 of accused Rosemarie C. Cea-Capus ("Cea-Capus") and accused Norberto R. Resontoc ("Resontoc"); (4) Motion to Dismiss⁴ dated 12 March 2018 of accused Emiliana T. Kare ("Kare"); and (5) Prosecution's Consolidated Comment/Opposition⁵ dated 26 March 2018.

Accused Capus moves for the dismissal of the herein cases, stating that the Office of the Ombudsman's ("Ombudsman") inordinate delay of more than six (6) years in resolving the criminal complaint violated her constitutionally guaranteed rights to due process and to the speedy disposition of her cases. Citing Section 16, Article III of the 1987 Constitution and various jurisprudence on inordinate delay to support her claim, accused Capus maintains that the Ombudsman failed to act promptly and speedily to resolve the cases filed against her. Accused Capus points out that under the Rules of Procedure of the Office of the Ombudsman, a hearing officer has thirty (30) days to resolve a case after the conclusion of the formal investigation, but her cases were resolved only on 24 November 2015, which was more than three (3) years after the matter was deemed submitted for resolution on 25 May 2012. Furthermore, accused Capus asserts that after the Ombudsman's denial of her Motion for Reconsideration on 15 July 2016, the prosecution took more than a year, or only on 11 December 2017, to file the herein Informations. Accused Capus contends that the more than six (6) years delay in terminating the preliminary investigation is not justified, considering that the legal and factual issues involved therein are not novel or complex that it would require a meticulous and severe scrutiny. Accused Capus also argues that no delay can be attributed to her; neither can she be faulted for not asserting her

¹ Records, Vol. I, pp. 555-567

² Records, Vol. I, pp. 569-574

³ Records, Vol. I, pp. 576-582

⁴ Records, Vol. II, pp. 4-9

⁵ Records, Vol. II, pp. 32-37



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right to a speedy disposition of her cases since it is not her duty to follow up on the prosecution thereof. Finally, accused Capus alleges that such delay had caused her much prejudice, distress and anxiety as she is suffering the stigma of being tied to an unresolved criminal prosecution. On the basis of the foregoing propositions, accused Capus concludes that the dismissal of the herein cases is warranted.

In his motion, accused Sales also moves for the dismissal of the herein cases on the ground that his right to due process and speedy disposition of cases guaranteed by the 1987 Constitution has been violated. Quoting Section 16, Article III of the 1987 Constitution, and a litany of cases decided by the Supreme Court and the other divisions of this Court, accused Sales avers that the five (5) years and three (3) months of fact-finding investigation, plus the five (5) years and two (2) months of preliminary investigation, and the additional period of one (1) year and two (2) months to file the herein Informations, constitutes inordinate delay which violates his constitutional rights. Aside from the established length of delay, accused Sales mentions that the Ombudsman cannot cite a justifiable reason for such delay. Accused Sales affirms that he did not contribute to the delay, and as an accused he is not required to follow up on any case against him. Accused Sales also states that the delay in the preliminary investigation have prejudiced him, claiming that the documents in his former office has been misplaced, damaged and lost, and the witnesses who can testify on his innocence have either died or has become too old to travel to court. Thus, the attending delay in the preliminary investigation, leading to the violation of accused Sales' constitutional rights, justifies the dismissal of his cases.

In their motion, accused Cea-Capus and Resontoc mainly claim that the prosecution of the herein cases, after the lapse of thirteen (13) years, placed them at a disadvantage. They observe that the Ombudsman gave no justification why it took seven (7) years from 2004 to May 2011 to file a complaint-affidavit, and then, after six (6) years or on 11 December 2017 to file the herein Informations. Accused Cea-Capus and Resontoc explain that such unreasonable and unexplained delay prevented them from effectively defending their cases because the evidence that was then available to all accused is already beyond recovery, by reason of the loss of material documents and the inability to recall or death of material witnesses who can shed light on the transaction. Accused Cea-Capus and Resontoc also assert the provision of Section 16, Article III of the 1987 Constitution, in conjunction with jurisprudence

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upholding the doctrine of inordinate delay, which amounts to a violation of the accused's right to due process and speedy disposition of cases, as a legal ground for the dismissal of the herein cases.

Likewise, accused Kare invokes her right to the speedy disposition of her cases, enshrined under Section 16, Article III of the 1987 Constitution. Accused Kare contends that the period of more than six (6) years for the Ombudsman to investigate and file the herein Informations demonstrates inordinate delay in the proceedings, resulting in the violation of her constitutional right and entitling her to the dismissal of her cases. Accused Kare also underscores that the unreasonable delay in the investigation was prejudicial to all of the accused, considering that the documentary and testimonial evidence supporting their defense are no longer available.

In its Consolidated Comment/Opposition, the prosecution posits that the right to speedy trial must be asserted. As held in the case of *Dela Peña vs. Sandiganbayan*, the prosecution avers that there must be some overt acts to prove that the accused has seasonably asserted such right, otherwise his silence may be interpreted as a waiver thereof. Accordingly, the prosecution opines that all of the herein accused slept on their right, and that the delay in the proceeding is deemed to be with their acquiescence, considering that they only alleged their right after they have been arraigned. The prosecution also rejects the apprehension expressed by all of the accused regarding the loss or unavailability of witnesses and documents, claiming that they failed to demonstrate how the alleged delay prejudiced them. The prosecution insists that the right of the accused to speedy trial should not be utilized to deprive the State of a reasonable opportunity to fairly indict criminals. Thus, the right to speedy trial cannot be invoked if it would result in a clear denial of due process to the prosecution. On a final note, the prosecution quoted the ruling in the case of *Valencia vs. Sandiganbayan*, stating that it must be borne in mind that the rights of the accused given by the Constitution and the Rules of Court are shields, not weapons; hence, the courts should give meaning to that intent.

The respective Motions to Dismiss of accused Capus, Sales, Kare, Cea-Capus and Resontoc are meritorious.

The right to a speedy disposition of cases is proclaimed in Section 16, Article III of the 1987 Constitution which states that "all

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persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.”⁶

While the Constitution guarantees the observance of the right to a speedy disposition of cases, there are no hard and fast rules governing its application. Jurisprudence describes the concept of speed disposition as relative or flexible, such that a mere mathematical reckoning of the time involved would not be sufficient.⁷ Due regard must also be given to the facts and circumstances peculiar to each case.⁸ For this reason, a “balancing test” of applying societal interests and the rights of the accused necessarily compels the Court to approach such cases on an *ad hoc* basis.⁹ The conduct of both the prosecution and the accused are weighed *apropos* the four-fold factors, to wit: (1) length of delay; (2) reason for the delay; (3) accused’s assertion or non-assertion of his right; and (4) prejudice to accused resulting from the delay.¹⁰

In this case, the records confirm that it took the Ombudsman more than six (6) years to complete its preliminary investigation and eventually file the present cases in court. To note, the Task Force Abono, Field Investigation Office, Office of the Ombudsman (“Task Force Abono”), filed its Complaint¹¹ sometime in May 2011. Then, the Ombudsman, finding probable cause, issued its Resolution dated 24 November 2015, which was finally approved on 30 March 2016. After the filing of all of the accused’s respective motions for reconsideration, the Ombudsman denied all of their motions in an Order¹² dated 15 July 2016, which was finally approved on 16 August 2016. Thereafter, the herein Informations were filed in court only on 11 December 2017. Concomitantly, the Ombudsman through the prosecution did not give any adequate explanation as to why it took more than six (6) years for it to finish its preliminary investigation. Instead, the Ombudsman harped on the failure of all of the accused to assert their right to the speedy disposition of their cases and discounted their alleged apprehension on the loss of material documents and witnesses that can aid in their defense. This line of argument, however, fails to persuade and is looked upon with disfavor in the recent case of *Juanito Victor C. Remulla vs.*

⁶ Luz S. Almeda vs. Office of the Ombudsman (Mindanao) and People of the Philippines, 798 SCRA 131, (2016), p. 142

⁷ *Id.*, p. 144

⁸ *Id.*

⁹ *Id.*

¹⁰ *Juanito Victor C. Remulla vs. Sandiganbayan (Second Division) and Erineo S. Maliksi* (G. R. No. 218040, April 17, 2017)

¹¹ Records, Vol. I, pp. 67-85

¹² Records, Vol. I, pp. 53-65

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Sandiganbayan (Second Division) and Erineo S. Maliksi, where it was categorically ruled that there is no constitutional or legal provision which states that it is mandatory for the accused to follow up his case before his right to speedy disposition can be recognized.¹³ In the said case, the Supreme Court also reiterated that it is the duty of the prosecutor to expedite the prosecution of the case regardless of whether or not the accused objects to the delay.¹⁴ Accordingly, being the respondents in the preliminary investigation, it is not the duty of the herein accused to follow up on the prosecution of their cases.¹⁵ Rather, it is the Ombudsman's responsibility to expedite the proceedings within the bounds of reasonable timeliness consistent with its mandate to promptly act on all the complaints lodged before it.¹⁶

In the same vein, the apprehensions expressed by all of the accused on the harm caused by the long delay in the proceedings to the availability of evidence that can aid in their defense are more real than imagined. Such problem was recognized in the case of *Marielen C. Corpuz and Antonio H. Roman, Sr., vs. Sandiganbayan and People of the Philippines*,¹⁷ viz.:

"xxx Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is

 ¹³ G. R. No. 218040, April 17, 2017


¹⁴ *Juanito Victor C. Remulla vs. Sandiganbayan (Second Division) and Erineo S. Maliksi*, (G. R. No. 218040, April 17, 2017)

¹⁵ *Rafael L. Coscolluela vs. Sandiganbayan and People of the Philippines*, 701 SCRA 188, (2013), p. 199

¹⁶ The case of *Rafael L. Coscolluela vs. Sandiganbayan and People of the Philippines*, [701 SCRA 188, (2013), p. 197], is instructive:

"xxx Verily, 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. xxx Precisely, the Office of the Ombudsman has the inherent duty not only to carefully go through the particulars of cases but also to resolve the same within the proper length of time. Its dutiful performances should not only be gauged by the quality of the assessment but also by the reasonable promptness of its dispensation xxx" (*emphasis ours*)

¹⁷ 442 SCRA 294, (2004), p. 313



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subjected to public obloquy. xxx”

Thus, taking in consideration the length of delay, the lack of adequate explanation from the prosecution as to why the proceedings took so long and the harm caused by the delay to all of the herein accused, the Court finds that the period of more than six (6) years taken by the prosecution to investigate and file the herein cases constitutes inordinate delay. Consequently, the Court is constrained to order the dismissal of all of the present cases on the ground of the violation of the accused’s right to speedy disposition of their cases.

Nevertheless, the dismissal of the herein cases does not automatically release all of the accused from any civil liability which the Municipality of Malinao, Albay may prove in a subsequent civil proceeding. Such recourse is permitted under Section 2, Rule 111 of the Rules of Court, which states that “an acquittal in a criminal case does not bar the private offended party from pursuing a subsequent civil case based on the delict, unless the judgment of acquittal explicitly declares that the act or omission from which the civil liability may arise did not exist.”¹⁸ The case of *Rafael L. Coscolluela vs. Sandiganbayan and People of the Philippines*¹⁹ citing the case of *Banal vs. Tadeo, Jr.*, is instructive:

“xxx Based on the violation of petitioners’ right to speedy disposition of cases as herein discussed, the present case stands to be dismissed even before either the prosecution or the defense has been given the chance to present any evidence. Thus, the Court is unable to make a definite pronouncement as to whether petitioners indeed committed the acts or omissions from which any civil liability on their part might arise as prescribed under Section 2, Rule 120 of the Rules of Court. Consequently, the Province is not precluded from instituting a subsequent civil case based on the delict if only to recover the amount of P20,000,000.00 in public funds attributable to the petitioner’s alleged malfeasance. xxx”

WHEREFORE, premises considered, the respective Motions to Dismiss of accused Leonora P. Capus, Hector M. Sales, Emiliana T. Kare, Rosemarie C. Cea-Capus and Norberto R. Resontoc are hereby **GRANTED**. Accordingly, the cases against them are ordered **DISMISSED**, for violation of their rights to speedy

¹⁸ *Rafael L. Coscolluela vs. Sandiganbayan and People of the Philippines*, 701 SCRA 188, (2013), pp. 202-203

¹⁹ *Id.*, p. 204

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disposition of their cases, without prejudice to any civil liability which the Municipality of Malinao, Alabay may file against them.

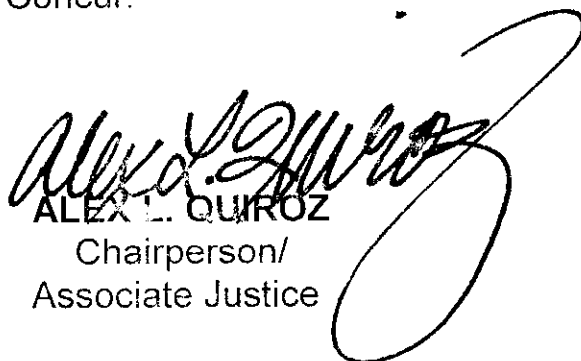
The respective surety bonds²⁰ posted by accused Kare, Sales, Gea-Capus and Capus are hereby **CANCELLED**. The cash bond²¹ posted by accused Resontoc is hereby ordered **RELEASED**.

The Hold Departure Order²² issued by this Court against all of the accused is hereby **LIFTED** and **SET ASIDE**. Let the Commissioner of the Bureau of Immigration be notified accordingly.

SO ORDERED.


REYNALDO P. CRUZ
Associate Justice

We Concur:


ALEX L. QUIROZ
Chairperson/
Associate Justice


BAYANI H. JACINTO
Associate Justice

²⁰ Records, Vol. I, pp. 264-265, 344-345, 413-414

²¹ Records, Vol. I, pp. 393-394

²² Records, Vol. I, pp. 259-260