



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-17-CRM-1562 to 1564**
Plaintiff, For: Violation of Section 3(e)
of R.A. 3019, as amended

SB-17-CRM-1565 to 1566
For: Malversation

Present

- versus -

FERNANDEZ, SJ, J.,
Chairperson
MIRANDA, J. and
FERNANDEZ, B,* J.

RODOLFO V. VALDEZ,
ET AL.,

Accused.

Promulgated:

JUN 06 2018

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves the *Joint Humble Motion for Reconsideration*¹ of accused Rodolfo C. Valdez and Paz P. Fortunato.

Accused Valdez and Fortunato pray that this Court note their Motion for Reconsideration and dismiss the present cases on the ground of violation of their right to speedy disposition of cases. They contend:

1. Accused Valdez failed to file his counter-affidavit because he was attending to his ailing wife at the time. He only learned of the case against him when a warrant of arrest was issued against him.

* J. Fernandez, B. participated in the assailed Resolution. (Per Administrative Order No. 338-2017 dated October 2, 2017; Revised Internal Rules of the Sandiganbayan, Rule IX, Sec. 2[a])

¹ Dated March 15, 2018, Record, pp. 482-487

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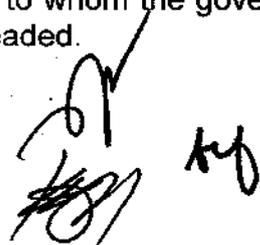
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2. This Court, in the Resolution dated February 27, 2018, should not have relied upon *Corpuz v. Sandiganbayan*, but rather, on the more recent cases decided by the Supreme Court.
3. *Remulla v. Sandiganbayan*, cited in said Resolution, actually dismissed the case against the accused therein.
4. They have lost the opportunity to secure evidence to support their defense due to the inordinate delay in the proceedings. Several pieces of documentary evidence could no longer be retrieved or reproduced.
5. Likewise, witnesses who could testify in their defense have already died or could not be located.
6. They have lived under a cloud of anxiety by virtue of the delay in the preliminary investigation in the present cases. Both of them, already of advanced age, have been suffering physically, mentally and emotionally for more than a decade now.
7. It took the Office of the Ombudsman eight (8) months from the time of the resolution denying their motion for reconsideration to file the Information in the present cases with the Court.
8. From the time of the initial investigation until the filing of the Informations, there was a lapse of eleven (11) years and five (5) months.
9. All three accused were mere subordinates who were simply tasked to perform ministerial duties. They should not have been made to answer for the subject transactions.
 - a. Governor Bartolome L. Marasigan, the public officer most responsible for having selected the mode of procurement and for approving the subject transactions, is already deceased.
 - b. Nestor A. Panahon and Simplicio I. Maramot, permanent members of the Bids and Awards Committee, participated in the subject transactions, but were absolved from the charges.
 - c. The private respondents, to whom the government funds were paid, were not impleaded.



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In its *Comment/Opposition (to accused Valdez and Fortunato's Joint Humble Motion for Reconsideration dated 15 March 2018)*,² the prosecution counters:

1. Accused Valdez and Fortunato did not indicate the date they received a copy of the assailed Resolution. From the records, it appears that the said accused received such copy of the assailed Resolution on March 1, 2018. Thus, they had only until March 6, 2018 within which to file their Motion for Reconsideration.
2. The Motion of accused Valdez and Fortunato was filed beyond the period for filing of a motion for reconsideration, and therefore, should be denied outright.
3. Even on the merits, their Motion should be denied because the matters raised therein have already been passed upon by the Court in the assailed Resolution.
4. In the cases cited by accused Valdez and Fortunato, the delays were manifestly oppressive. In contrast, the delay in the conduct of the preliminary investigation in the present cases are not vexatious, capricious and oppressive.

THE COURT'S RULING

The Court resolves to deny accused Valdez and Fortunato's Motion for Reconsideration.

Accused Valdez and Fortunato argue that this Court, in the assailed Resolution,³ should not have relied on *Corpuz v. Sandiganbayan*,⁴ but rather, on the more recent cases decided by the Supreme Court. They further argue that *Remulla v. Sandiganbayan*,⁵ cited in the assailed Resolution, actually dismissed the case against the accused therein. Therefore, applying the ruling in the said case, the present cases should likewise be dismissed. This Court disagrees.

First. That *Corpuz* was decided in 2004 does not mean that the Supreme Court's pronouncements therein cannot be relied upon. The Supreme Court itself, in *Remulla* – decided in 2017 – reiterated its pronouncements in *Corpuz*.

² Dated April 2, 2018; Record, pp. 488-491

³ Dated February 27, 2018; Record, pp. 456-466

⁴ G.R. No. 162214, November 11, 2004

⁵ G.R. No. 218040, April 17, 2017

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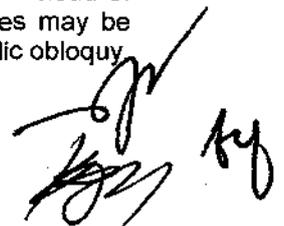
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Second. Indeed, in *Remulla*, it was found that there was a violation of the right to speedy disposition of cases. However, applying the ruling therein will not necessarily result in the dismissal of a case. It bears stressing that the Supreme Court, in *Remulla*, in harmonizing the rulings in older cases and those in the more recent cases, concluded that there was no conflict between the two sets of cases. Both sets of cases applied the balancing test, weighing the four factors and taking into consideration the peculiar circumstances surrounding each case. The difference lies in the fact that in the first set of cases, there was no inordinate delay because the prosecution was able to justify such delay, while in the second set of cases, the prosecution failed to give a satisfactory explanation for the delay. *Viz.:*

Based on the foregoing, there is no conflict between the first and the second set of cases. In the first set, the Court did not solely rely on the failure of the accused to assert his right; rather, the proper explanation on the delay and the lack of prejudice to the accused were also considered therein. In the same manner, the Court in the second set of cases took into account several factors in sustaining the right of the accused to a speedy disposition of cases, such as the length of delay, the failure of the prosecution to justify the period of delay, and the prejudice caused to the accused. The utter failure of the prosecution to explain the delay of the proceedings outweighed the lack of follow ups from the accused.

Accordingly, both sets of cases only show that "[a] balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy trial cases on an *ad hoc* basis." To reiterate, 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. *Corpus v. Sandiganbayan* thoroughly explained how the factors of the balancing test should be weighed, particularly the prejudiced caused by the delay, to wit:

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 subjected to public obloquy.

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Delay is a two-edge sword. It is the government that bears the burden of proving its case beyond reasonable doubt. The passage of time may make it difficult or impossible for the government to carry its burden. The Constitution and the Rules do not require impossibilities or extraordinary efforts, diligence or exertion from courts or the prosecutor, nor contemplate that such right shall deprive the State of a reasonable opportunity of fairly prosecuting criminals. As held in *Williams v. United States*, for the government to sustain its right to try the accused despite a delay, it must show two things: (a) that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay; and (b) that there was no more delay than is reasonably attributable to the ordinary processes of justice.

Closely related to the length of delay is the reason or justification of the State for such delay. Different weights should be assigned to different reasons or justifications invoked by the State. For instance, a deliberate attempt to delay the trial in order to hamper or prejudice the defense should be weighted heavily against the State. Also, it is improper for the prosecutor to intentionally delay to gain some tactical advantage over the defendant or to harass or prejudice him. On the other hand, the heavy case load of the prosecution or a missing witness should be weighted less heavily against the State. Corollarily, Section 4, Rule 119 of the Revised Rules of Criminal Procedure enumerates the factors for granting a continuance.

The rest of accused Valdez and Fortunato's arguments are a mere reiteration and rehash of those in their *Joint Manifestation and Motion to Dismiss*. These had already been judiciously considered and found to be without merit by this Court in the Resolution dated February 27, 2018. Thus, there is no need to discuss the same anew. In *Mendoza-Ong v. Sandiganbayan*,⁶ it was held:

Concerning the first ground abovesited, the Court notes that the motion contains merely a reiteration or rehash of arguments already submitted to the Court and found to be without merit. Petitioner fails to raise any new and substantial arguments, and no cogent reason exists to warrant a reconsideration of the Court's Resolution. It would be a useless ritual for the Court to reiterate itself.

For convenience, the pertinent portion ⁷ of the assailed Resolution is hereunder quoted:

As held in *Corpuz v. Sandiganbayan*, the right to speedy disposition of cases, guaranteed by Art. III, Sec. 16 of the Constitution, was designed to prevent oppression by holding criminal prosecution suspended over the citizen for an indefinite time. Such right is violated only when the proceedings are attended by vexatious, capricious and oppressive delays. The High Court's discussion on

⁶ G.R. Nos. 146368-69, October 18, 2004

⁷ Record, pp. 461-466 (Resolution dated February 27, 2018; pp. 6-11)

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the balancing test used to determine if there is a violation of the right to speedy disposition of cases is instructive. To wit:

X X X

In the present cases, an examination of the record reveals that Task Force Abono of the Field Investigation Office (FIO) of the Office of the Ombudsman filed the Complaint dated April 11, 2011 on July 1, 2011. The respondents were directed to file their respective counter-affidavits on July 20, 2011. Accused Puyat and Fortunato filed their respective Counter-Affidavits, while accused Valdez did not file his. On July 7, 2016, the Ombudsman approved the Resolution dated November 3, 2015 finding probable cause to charge accused Valdez, Puyat and Fortunato with three (3) counts of violation of Sec. 3(e) of R.A. No. 3019 and two (2) counts of Malversation. On December 21, 2016, the Ombudsman approved the Joint Order dated November 15, 2016 denying the respective Motions for Reconsideration filed by accused Puyat and Fortunato. Thereafter, the Informations were filed on August 14, 2017.

It took over five (5) years from the filing of the Complaint to the approval of the Resolution dated November 3, 2015. From the approval of said Resolution, it took another five (5) months and fourteen (14) days to approve the Joint Order denying accused Puyat and Fortunato's respective Motions for Reconsideration. Finally, the Informations were filed seven (7) months and twenty-four (24) days from the approval of the Joint Order. Adding up the foregoing, the Informations were filed with this Court around six (6) years and one (1) month from the time Task Force Abono filed its Complaint.

In *Tatad v. Sandiganbayan*, it was held that a delay of close to three (3) years cannot be deemed reasonable in light of the circumstances obtaining in that case. If only the length of the delay will be used to determine whether or not the proceedings were attended by inordinate delay, then no doubt that a period of more than five (5) years – which is certainly more than “close to three (3) years” – will constitute inordinate delay. However, as previously discussed, the factors in the balancing test are related, and must be considered together with the circumstances peculiar to each case.

Closely related to the length of delay is the reason for such delay. In *Corpuz*, it was held that different weights should be assigned to different reasons or justifications invoked by the State. To wit:

X X X

Here, there is no indication that the charges against the accused were brought for the purpose of harassing them. Likewise, there is no evidence showing that the Office of the Ombudsman

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deliberately caused delay in the proceedings to cause prejudice to the accused

The Court notes that the Complaint filed by Task Force Abono was for the following offenses: (1) violation of Sec. 3(e) of R.A. No. 3019, (2) violation of Sec. 3(g) of R.A. No. 3019, (3) Malversation under Art. 217 of the Revised Penal Code (RPC), and (4) violation of Sec. 65.2.4 of the Implementing Rules and Regulations of R.A. No. 9184, in relation to Sections 10 and 18 of R.A. No. 9184. Said Complaint involved three (3) transactions and twelve (12) respondents

That the respondents were being charged with the aforementioned offenses necessarily resulted in the Office of the Ombudsman having more documents to evaluate. Moreover, the Office of the Ombudsman, affording the respondents due process, gave them an opportunity to explain by directing them to file their respective counter-affidavits. There being twelve (12) respondents, the Office of the Ombudsman had to evaluate each of the counter-affidavits, as well as the controverting evidence of said respondents.

The present cases are only a few of those related to the so-called Fertilizer Fund Scam. Aside from the present cases, the Office of the Ombudsman, at the same time, also handled other cases, both related and not related to said Fertilizer Fund Scam. This was recognized in *Mendoza-Ong v. Sandiganbayan*, Viz.:

x x x

To be sure, cases involving several transactions, different charges and several respondents will take longer to resolve than simpler cases, i.e., those involving only a single transaction, fewer respondents and documents. Adding to this the steady stream of cases reaching the Office of the Ombudsman, the time it took to terminate the preliminary investigation in the present cases does not appear to be unreasonable.

Finally, accused Puyat, Valdez and Fortunato claim that they suffered prejudice as a result of the delay. According to them, their defense has been impaired because they can no longer locate documents and witnesses. As held in *Coscolluela v. Sandiganbayan*, citing *Corpuz*:

x x x

Indeed, an accused' defense may be impaired by inordinate delay, but such impairment may likewise be caused by the passage of time in the absence of unreasonable delay, such as in the present cases. Like the other factors, prejudice to the accused must be taken

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together with the other factors and circumstances obtaining in the case.

In fine, it cannot be said that the delay in the termination of the preliminary investigation in the present cases was vexatious, capricious and oppressive. Thus, there was no violation of accused Puyat, Valdez and Fortunato's right to speedy disposition of cases.

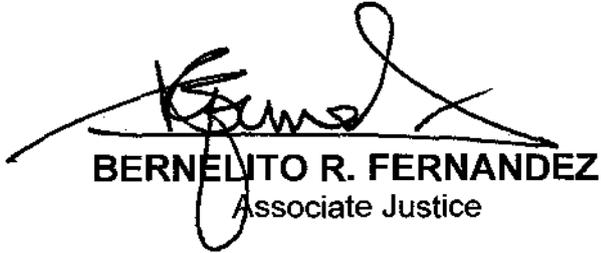
WHEREFORE, the Motion for Reconsideration of accused Valdez and Fortunato is hereby denied.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA
Associate Justice


BERNELITO R. FERNANDEZ
Associate Justice