



Republic of the Philippines
Sandiganbayan
Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on 14 June 2018.

Present:

Justice ZALDY V. TRESPESES ----- Acting Chairperson
Justice BAYANI H. JACINTO ----- Member¹
Justice KEVIN NARCE B. VIVERO ----- Member²

The following resolution was adopted:

Crim. Case No. SB-18-CRM-0028 - People vs. BARTOLOME COGA-AY SACLA, SR., ET AL.,

This resolves the following:

1. Accused Virginia H. Kigisan's "MOTION TO DISMISS with MOTION TO DEFER ARRAIGNMENT" dated 4 May 2018;³ and
2. Prosecution's "OPPOSITION [TO MOTION TO DISMISS WITH MOTION TO DEFER ARRAIGNMENT DATED 04 MAY 2018]" dated 29 May 2018.⁴

Before the Court is accused Virginia H. Kigisan's (accused) motion seeking to dismiss the case and to defer her arraignment.

ACCUSED'S MOTION

In her five-page motion, accused claims that the Information should be dismissed on the ground of inordinate delay. She expounds that the Information was filed only on 27 September 2017, or more than six years from the time the Complaint was filed.

Accused preliminarily states that there is a violation of the right to speedy disposition of cases when proceedings are attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured, or when without cause or unjustifiable

¹ Per Administrative Order No. 284-2017 dated 18 August 2017.

² Per Administrative Order No. 301-2018 dated 31 May 2018.

³ *Rollo*, pp. 214-218.

⁴ *Id.* at 221-228.

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motive for a long period of time is allowed to elapse without the party having his case tried, citing *Ombudsman v. Jurado*.⁵

She argues that there was no justification as to why the Ombudsman took so long to resolve the case. Citing *People v. Sandiganbayan*,⁶ accused argues that a delay of six years in resolving the criminal charges amounted to a violation of their constitutional rights to due process and to a speedy disposition of cases against them, as well as, the Ombudsman's own constitutional duty to act promptly on complaints filed before him.⁷

Accused moreover complains that "the amount of stress is already becoming unbearable to the accused considering that she is appealing her administrative case alone because her co-respondents had already absconded, and here she is now, facing another criminal case when it could have been filed earlier so that when worse comes to worst, she could have endured it at the same time."⁸

Accused further prays that her arraignment be deferred until the pending motion is resolved.⁹

PROSECUTION'S OPPOSITION

In its Opposition, the prosecution emphasizes that the concept of speedy disposition is flexible, such that a mere mathematical reckoning of the time involved is insufficient. Particular regard must be taken of the facts and circumstances peculiar to each case. The rule is that in the determination of whether this right has been violated, the following factors may be considered and balanced: (1) the length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused, and (4) the prejudice caused by the delay.¹⁰

As to the length of delay, the prosecution argues that the six-year period it took before the case was filed with the Sandiganbayan is reasonable and defensible, considering the complication of the present case and the quantity of documents involved, including accused's own act of filing several motions, such as motions for additional time to file counter-affidavit.¹¹

Regarding the reasons for the delay, the prosecution points out that the 18 April 2011 Complaint filed with the Ombudsman had two aspects –

⁵ 583 Phil. 132-157 (2008).

⁶ G.R. No. 199151-56, 25 July 2016.

⁷ *Rollo*, pp.215-216.

⁸ *Id.* at 216.

⁹ *Id.* at 217.

¹⁰ *Id.* at 221-222.

¹¹ *Id.* at 222-223.

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administrative and criminal. On the criminal aspect of the case, the investigating prosecutor had to assess two possible charges – violation of Section 3 (e) and (g) of Republic Act No. 3019, in relation to Section 656.2.4 of Article XXI of the Implementing Rules and Regulations of Republic Act No. 9184, and falsification of public documents under Article 171 of the Revised Penal Code.¹²

The investigating prosecutor also had to review numerous pieces of evidence relating to the case. There were Annexes “A” to “HH” with sub-markings, presented by complainant. There were also four counter-affidavits filed. One of them contained 11 other documentary annexes with sub-markings. The investigating prosecutor had to determine each of several respondents’ different allegations and defenses.¹³

With respect to the assertion of the right by the accused, the prosecution underscores that this is the first time that accused asserted her right to speedy disposition. Notably, she never previously moved for an earlier resolution of the case.¹⁴

As regards the prejudice caused by the delay, the prosecution observes that there is nothing in accused’s motion to dismiss that indicated with specificity how the delay in the present case prejudiced her, except for the supposed stress in having to appeal her administrative case alone because her co-accused had already absconded. However, even such allegations are assumptions at best. There is nothing on record that would indicate that her co-accused really absconded, or that the latter’s failure to file an appeal in the administrative case would change its complexion.¹⁵

The prosecution also contends that *Ombudsman v. Jurado*,¹⁶ which accused cited, is inapplicable in the present case. *Jurado* concerns an appeal from the administrative aspect of an Ombudsman investigation. The Supreme Court held therein that for delay to be considered inordinate, it must be vexatious, capricious and oppressive, but these do not characterize the delay in *Jurado*’s case.¹⁷

The prosecution likewise counters that accused’s reliance on *People v. Sandiganbayan*¹⁸ is misplaced. In said case, 11 years have lapsed before the case was referred to the Ombudsman for assessment and the diverging views of the three successive heads of the Office was deemed by the Supreme Court as insufficient justification for the delay in the referral of the case to the Office of Legal Affairs of the Ombudsman. This means that it took even

¹² *Rollo*, p. 224.

¹³ *Id.*

¹⁴ *Id.*, p. 225.

¹⁵ *Id.*

¹⁶ *Supra* at note 5.

¹⁷ *Rollo*, p. 226.

¹⁸ *Supra* at note 6.

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longer before the case was filed before the Sandiganbayan. In contrast, the period it took to complete the preliminary investigation and to be referred to the Sandiganbayan in the instant case, is nowhere near that which occurred in *People v. Sandiganbayan*.¹⁹

OUR RULING

We deny the motions for lack of merit.

I. On the Motion to Dismiss

For several decades now, the Court has been utilizing the “balancing test” to determine whether the right to a speedy trial and a speedy disposition of cases has been violated. This test necessarily compels the courts to approach cases on an *ad hoc* basis, weighing the conduct of both the prosecution and defendant/accused based on the following factors: (1) length of the delay; (2) reason for the delay; (3) defendant's assertion or non-assertion of his right; and (4) prejudice resulting from the delay. None of these elements, however, is either a necessary or sufficient condition; they are related and must be considered together with other relevant circumstances. These factors have no talismanic qualities, as courts must still engage in a difficult and sensitive balancing process.²⁰

Thus, we proceed to evaluate the present case based on the above factors.

On *the length of delay*, it is undisputed that it took the Office of the Ombudsman over six years to investigate the complaint and file the present Information before the Sandiganbayan. However, it has been repeatedly held in this jurisdiction that “speedy trial” or “speedy disposition” is a relative term and necessarily a flexible concept. Mere mathematical reckoning of the time involved would not suffice, as the realities of everyday life must be regarded in these proceedings.²¹

Regarding *the reason for the delay*, we note that accused’s own filing of several motions, including motions for additional time to file counter-affidavit, contributed to the length of time it took to resolve the preliminary investigation. Further, the records show that there had been multiple respondents when the complaint was instituted, each of whom had adduced various pieces of evidence to support their respective assertions and defenses. Also, the complaint filed with the Office of the Ombudsman had two facets – administrative and criminal. Meanwhile, the criminal aspect

¹⁹ *Rollo*, p. 227.

²⁰ *Remulla v. Sandiganbayan*, G.R. No. 218040. April 17, 2017.

²¹ *Saldariega v. Panganiban*, G.R. Nos. 211933 & 211960, 15 April 2015.

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comprised of two possible charges (i.e., Section 3 (e) and (g) of Republic Act No. 3019 and falsification of public documents under Article 171 of the Revised Penal Code), both of which the prosecutor had to evaluate in light of the arguments and evidence presented by the parties. Given these circumstances, the reason for the delay of over six years is not capricious but is anchored on the complexity of issues and the number of respondents involved in the instant case.

With regard *accused's assertion or non-assertion of the right*, it has been held that generally, respondents in preliminary investigation proceedings are not required to follow up on their cases; it is the State's duty to expedite the same "within the bounds of reasonable timeliness." Moreover, a defendant has no duty 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. In fact, it is the duty of the prosecutor to speedily resolve the complaint, as mandated by the Constitution, regardless of whether the respondent did not object to the delay or that the delay was with his acquiescence, provided that it was not due to causes directly attributable to him.²²

With respect to the *prejudice resulting from the delay*, the prosecution correctly observed that the only prejudice cited by accused in her motion is that her stress is becoming unbearable because she is currently appealing the administrative case by herself, as her co-defendants have allegedly absconded. She bemoans that had the present case been filed earlier, then she could have endured both cases at the same time.

Accused's above argument fails to persuade. The prejudice resulting from delay in the context of the right to speedy disposition has been expounded on by the Supreme Court, as follows:

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.²³

²² *Almeda v. Office of the Ombudsman (Mindanao)*, G.R. No. 204267, 25 July 2016.

²³ *Torres v. Sandiganbayan*, G.R. Nos. 221562-69, 5 October 2016.

Thus, for the purpose of determining whether there was a violation of the right to speedy disposition, the prejudice resulting from the delay does not simply pertain to the accused's feelings or convenience.

Rather, it primarily relates to the concerns of the accused regarding trial, foremost of which is the impairment of his defense due to the significant lapse of time. This includes, for instance, the inability of the defense witnesses to accurately recall the past, or the loss or degradation of documentary or object evidence. To a lesser extent, this prejudice may also extend to accused's pre-trial incarceration, the draining of his financial resources or the cloud of doubt on his reputation due to protracted litigation. Notably, however, none of these material issues have been raised, much less, substantiated, by accused in her motion.

In sum, this Court finds that accused has not sufficiently shown that her right to speedy disposition has been violated as to warrant the radical relief of dismissal of the present case.

II. On the Motion to Defer Arraignment

As to accused's motion to defer her arraignment, we note that this was anchored on the pendency of her motion to dismiss the case on the ground of alleged violation of her right to speedy disposition. In view of the present denial of the said motion to dismiss, there is no longer any basis to defer accused's arraignment.

WHEREFORE, in view of all the foregoing, the motions to dismiss the case and to defer arraignment filed by accused Virginia H. Kigisan are **DENIED** for lack of merit. Set the arraignment of accused Kigisan on 22 June 2018 at 8:30 in the morning as previously scheduled.

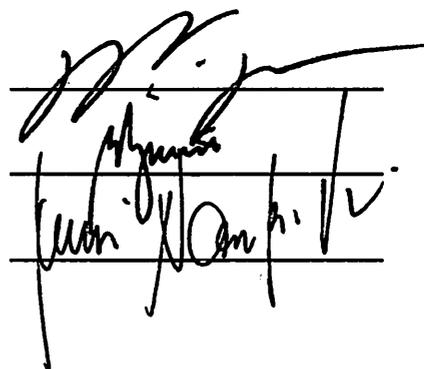
SO ORDERED.

Approved:

TRESPESES, J., Acting Chairperson

JACINTO, J.

VIVERO, J.

Handwritten signatures of the court members over horizontal lines. The top signature is the most prominent, followed by two others below it.