



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

Fifth Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-18-CRM-0138 and 0139

FOR: Falsification of
Public Document under
Article 171 par. 4 of the
Revised Penal Code

– versus –

Present:
LAGOS, J., *Chairperson*
MENDOZA-ARCEGA, and
CORPUS-MAÑALAC, JJ.

DAMIAN GAVIOLA MERCADO,
Accused.

Promulgated:

June 26, 2018 *led*

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RESOLUTION

LAGOS, J.:

In the *Resolution* dated May 21, 2018, the Court granted accused Damian G. Mercado's *Motion to Quash*, and accordingly dismissed the criminal cases filed against him for falsification of public document. The Court likewise lifted and set aside the hold departure orders issued against him.

On June 6, 2018, the prosecution, through the Office of the Special Prosecutor, filed its *Motion for Reconsideration* of the Court's *Resolution* which it received on May 30, 2018, praying that the same be reversed and set aside, and a new one entered reinstating the above-entitled case against the herein accused.

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In its *Motion for Reconsideration*, the prosecution argues mainly that there was no inordinate delay in the instant case which amounts to a violation of the accused's constitutional right to speedy disposition of cases because there is no showing that the accused was prejudiced during the fact-finding phase conducted by the Field Investigation Group of the Ombudsman-Visayas Regional Office No. VIII.

Relying on jurisprudence that the constitutional guaranty on the right of the accused to speedy disposition of case is a flexible concept where due regard must be given to the facts and circumstances surrounding each case, the prosecution argues that the said right, like the right to speedy trial, is deemed violated only when the proceedings are attended by vexatious, capricious and oppressive delays. The prosecution points out that prior to the filing of the *Complaint-Affidavit* of the nominal complainant on April 12, 2014, accused Mercado was never the subject of any complaint or made to undergo any investigative proceedings, hence, there was no vexatious, capricious and oppressive delay.

Stressing that "prejudice", just like any allegations, requires clear and convincing evidence, which the accused failed to present in his *Motion to Quash*, the prosecution insists that there is no showing that accused was made to endure any vexatious process during the period of fact-finding phase conducted by the Field Investigation Group. The prosecution adds that if indeed there was inordinate delay, and he was prejudiced during the fact-finding phase, he should submit and present supporting evidence before the Court to prove that he was prejudiced and not rely on jurisprudence; that he who alleges must prove.

Accused Mercado filed on June 18, 2018 his *Opposition to the Prosecution's Motion for Reconsideration* arguing that since a dismissal based on violation of accused's constitutional right to speedy trial (and disposition) is tantamount to an acquittal, a motion for reconsideration by the prosecution from a judgment of acquittal is unavailing. By harmonizing Section 1, Rule 121 of the Rules of Court (RR)¹ which allows a new trial or reconsideration only to the accused when the judgment is one of conviction, on one hand, and the rule on new trial or reconsideration under Section 1 Rule IX of the

¹ Section 1, Rule 121 of the Rules of Court provides: "At any time before a judgment of conviction becomes final, the court may, on motion of the accused or at its own instance but with consent of the accused, grants a new trial or reconsideration."

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Revised Internal Rules (RIR)² of the Sandiganbayan which is silent as to who may file a motion for reconsideration, on the other hand, accused Mercado posits the view that Section 1, Rule 121 of the Rules of Court, being more specific and favorable to the accused, should prevail, thus, a motion for reconsideration by the prosecution is unavailing. The accused asserts that under both cited provisions of the Rules of Court and RIR of the Sandiganbayan, the right against double jeopardy and the legal principles and jurisprudence reinforcing it, is still the same.

Accused Mercado further reiterates his argument, citing *Coscuella vs. Sandiganbayan*³, and *People vs. Sandiganbayan, et.al.*⁴ that a preliminary investigation proceedings begins from the time the complaint is filed in the Ombudsman and ends, not upon the preparation of the Resolution and *Information*, but only at the time the Ombudsman finally approves the same for filing with the Sandiganbayan. He emphasizes that the letter-complaint was filed on March 7, 2008 and the *Information* was filed only on February 23, 2018; that it took the Ombudsman 10 long years to finish its investigation, and considering that the case is not complicated, as it involves only one piece of document, the delay is unjustifiable and intolerable; that from the moment the letter-complaint was received by the Office of the Ombudsman on March 7, 2008, he was already the subject of investigation.

Accused Mercado contends that contrary to the claim of the prosecution, he has been prejudiced. He reasons out that although he suffered no restraint on his liberty for the duration of the protracted investigation conducted by the Ombudsman, still, for that same period (of) time, he has lived under a cloud of anxiety, suspicion and hostility, his financial resources substantially drained, his association curtailed, and he was subjected to public obloquy.

DISCUSSION AND RULING

The motion for reconsideration is DENIED for lack of merit.

There is authority for the rule, as held in *Bonsubre vs. Yerro*⁵, a 2015 case decided by the Supreme Court, citing the case of *People*

² Section 1, Rule IX of the Revised Internal Rules of the Sandiganbayan provides: "A Motion for New Trial or Reconsideration of a decision or final order may be filed within fifteen (15) days from promulgation of the judgment or from notice of the final order or judgment, and such Motion shall be decided within thirty (30) days from its submission."

³ G.R. No. 191411, September 15, 2013.

⁴ G.R. No. 199151-56, July 25, 2016.

⁵ G.R. No. 205952, February 11, 2015.

N/g

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*vs. Judge Hernandez*⁶ that a dismissal grounded on the denial of the right of the accused to speedy trial has the effect of acquittal that would bar the further prosecution of the accused for same offense, hence, the motion of the prosecution must be denied outright. In *People vs. Hernandez*,⁷ the Supreme Court categorically explained, thus:

“As a general rule, the prosecution cannot appeal or bring error proceedings from a judgment in favor of the defendant in a criminal case in the absence of a statute clearing conferring that right. Thus, errors of judgment are not appealable by the prosecution. Appeal by the prosecution from the order of dismissal of the criminal case by the trial court may be allowed only on errors of jurisdiction when there was denial of due process resulting in loss or lack of jurisdiction. This is so as while it is true that double jeopardy will attach in case the prosecution appeals a [D]ecision acquitting the accused, an acquittal rendered in grave abuse of discretion amounting to lack or excess of jurisdiction des not really ‘acquit’ and therefore does not terminate the case as there can be no double jeopardy based on a void indictment.

“In the case at bar, the trial court dismissed the cases against private respondents for the denial of their right to speedy trial. In a long line of cases, we held that a dismissal on the ground of the denial of the accused’s right to a speedy trial will have the effect of acquittal that would bar further prosecution of the accused for the same offense. Thus, we have held that where after such dismissal the prosecution moved for reconsideration of the order of dismissal and the court re-set the case for trial, the accused can successfully claim double jeopardy as the said order was actually an acquittal, was final and cannot be reconsidered. x x x.”⁸
[Emphasis and underscoring supplied]

The right of the accused to speedy trial guaranteed under Section 14 par. (2), Article III (Bill of Rights) and the right of the accused to speedy disposition of the case enshrined under Section 16, Article III of the 1987 Constitution are two (2) separate constitutional concepts but used interchangeably in a long line of decisions of the Supreme Court since both are intertwined as a judicial process and in its operative effects in case of violation. Both are treated similarly by the Supreme Court as they involve the right to due process and the effects of their violations are likewise similar.

Nonetheless, even if the ground raised by the prosecution that there is no clear evidence shown by the accused that he was

⁶ G.R. No.154218 and 154372, 531 Phil 289 (2006).

⁷ Id.

⁸ Citations omitted

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prejudiced during the fact-finding investigation is considered by the Court, the same does not warrant a reconsideration of the assailed *Resolution*.

The reliance of the prosecution on its argument that there were no vexatious, capricious and oppressive delays because “[P]rior to the filing of the *Complaint-Affidavit* of the Nominal Complainant on April 2, 2014, accused Mercado was never the subject of any complaint or investigation” is misleading. As borne out by the records of the case, it took ten (10) long years for the Ombudsman to finish its investigation from the time the letter-complaint was received on March 7, 2008 until the *Informations* were filed on February 23, 2018.

Even before the filing on April 12, 2014 of the two (2)-page *Complaint-Affidavit* by the Field Investigation Group, Ombudsman-Visayas, as nominal-complainant, the Ombudsman-Visayas had already commenced the fact-finding investigation from the time the letter-complaint was received on March 7, 2008; otherwise, there would be no factual bases for Atty. Janice G. Gabrito-Agullo, Associate Graft Investigation Officer III, to prepare, draft and finalize the formal *Complaint-Affidavit*. In fact, it took the Field Investigation Group of the Ombudsman six (6) years to conduct the fact-finding investigation before a *Complaint-Affidavit* was formalized on April 12, 2014 and another four (4) years to file the *Informations* before the Sandiganbayan on February 23, 2018, or a total of 10 long years.

A delay of ten (10) years highlighted by the lack of any acceptable reason to justify the inordinate delay, as in the instant cases, is taken heavily against the accountable office, the Ombudsman. Understandably, government offices, like the Office of the Ombudsman, are expected to act swiftly, and for that reason, the concerned offices should be able to fully and satisfactorily explain any delay, failing which the legal effects of such delay should be observed. More so in the instant case where, as the Court pointed out in the assailed *Resolution*, the task of the Ombudsman is simply to verify if indeed accused intentionally falsified his Personal Data Sheet (PDS) and Elective Local Official's Personal Director (ELOPD) by declaring that he was a Civil Engineer. The issue was overly simple enough that a *prima facie* determination should not have taken ten (10) long years to resolve.

The Office of the Ombudsman, which was specifically created to protect the people and address graft and corruption in the

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government⁹ is mandated under Section 13 of R.A. 6770, otherwise known as "The Ombudsman Act of 1989," which provides:

Section 13. Mandate. — The Ombudsman and his Deputies, as protectors of the people, **shall act promptly on complaints** filed in any form or manner against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people. (Emphasis supplied)

Given the statutory responsibility and obligation of the Ombudsman "to act promptly on complaints filed in any form or manner" under the aforementioned provision, the insistence of the prosecution that accused Mercado failed to present evidence that he was prejudiced during that 10-year period fails to convince the Court to reconsider the assailed Resolution. It must be noted that in resolving the *Motion to Quash*, the Court engaged in a sensitive balancing test of applying societal interests and rights of the accused within the parameters of all the four (4) factors first adopted by the Supreme Court in *Martin vs. Ver*,¹⁰ namely: (1) length of delay; (2) reason for the delay; (3) defendant non-assertion of this right; and (4) prejudice to defendant resulting from the delay.

The Court is mindful of the prejudicial effects cited by the Supreme Court in *Corpuz vs. Sandiganbayan*¹¹ to accused Mercado. The subject of his case allegedly occurred ten (10) years ago. Through all those years, he has been living under a cloud of anxiety, suspicion and hostility when the threat of criminal prosecution and liability continuously hang over his head. Like any other person haled to court in a criminal accusation, his financial resources were substantially drained, his association curtailed, and he was subjected to public obloquy.

All the other related issues and arguments raised by the prosecution in its *Motion for Reconsideration*, being mere reiterations and rehashed, have been considered and thoroughly passed upon by this Court in the assailed *Resolution*. Notably, no new matters have been raised by the prosecution which would warrant reconsideration of the *Resolution* rendered in this case.

⁹ Enriquez vs. Office of the Ombudsman, G.R. Nos. 174902-06, February 15, 2008

¹⁰ G.R. L-62810, July 25, 1983 209 Phil 658 (1983), citing Barker vs. Wingo, 407 US 514, 92 Sct 2182 (1982)

¹¹ G.R. No. 162214, November 11, 2004

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Given that the other issues raised and the arguments adduced by the prosecution have been exhaustively discussed and resolved in the assailed *Resolution*, this Court finds no plausible and cogent reason invoked in its *Motion for Reconsideration* which would convince this Court to reconsider, reverse or set aside the *Resolution* sought to be reconsidered.

WHEREFORE, in light of the foregoing, the Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.


RAFAEL R. LAGOS
Chairperson
Associate Justice

WE CONCUR:


MARIA THERESA V.
MENDOZA-ARCEGA
Associate Justice


MARYANN E.
CORPUS-MAÑALAC
Associate Justice