



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

FOURTH DIVISION

MINUTES of the proceedings held on 10 July 2018.

Present:

JUSTICE ALEX L. QUIROZ	-----	Chairperson
JUSTICE REYNALDO P. CRUZ	-----	Member
JUSTICE BAYANI H. JACINTO	-----	Member

The following resolution was adopted:

SB-17-CRM-0624 – PEOPLE OF THE PHILIPPINES v. JESUS O. TYPOCO, JR., et. al.

This resolves accused Jose T. Atienza's *Motion to Quash*¹ dated 27 April 2018.

Accused Atienza claims that the five years, 10 months, and nine days it took the Office of the Ombudsman (OMB) to resolve the preliminary investigation of this case – counted from the filing of the Complaint on 2 May 2011 up to the filing of the *Information* on 21 March 2017 – violated his Constitutional right to the speedy disposition of the case against him. He points out that such period cannot be justified since “the factual and legal issues involved xxxx are not complex xxxx. The issues are not novel, the records are readily available, and Task Force Abono was created specifically to investigate the case.”

He further asserts that the unreasonable length of time that has passed places him at a disadvantage, since his possible witnesses may not be able to accurately recall past events and documents pertinent to his defense may have already been lost. He states that pendency of this case also causes him severe anxiety and stress, which aggravates his ailment² despite medication, and that at his old age of 88, he could no longer stand the rigors of trial.

¹ Records, Vol. 2, pp. 76-105.

² Accused's notarized Medical Certificate states that he has been diagnosed with chronic kidney disease with anemia secondary, electrolyte imbalance, peptic ulcer, and status post coronary artery bypass graft. The same certificate states that he is unfit to travel.

He also points out that the cases against his co-accused have already been dismissed on the ground of inordinate delay – the same ground he is now invoking.³ Thus, being similarly situated with his co-accused, the case should also be dismissed as against him.

In its *Comment/Opposition*,⁴ the prosecution asserts that accused Atienza cannot be allowed to benefit from the previous dismissals since, unlike his co-accused, he belatedly invoked his right to the speedy disposition of his case.

As to the delay incurred during preliminary investigation, the prosecution opted to adopt the Comments/Oppositions it filed to the other accused's earlier motions, wherein it denies that the proceedings before the OMB were attended by inordinate delay. It points to the motions for extension of time to file counter-affidavit filed by several accused and the period given for them to submit their respective position papers - the last one of which was filed on 24 January 2012 - as factors contributing to the perceived delay.

As earlier adverted to, the Court already dismissed the cases against accused Typoco, Coreses, Paita, Salamero, and Ruidara in separate *Resolutions*.⁵ In said Resolutions, the Court found that the prosecution failed to justify the delay incurred during the OMB's preliminary investigation. Considering then that accused Atienza is similarly situated with the other accused and that the prosecution has advanced the same justifications as it had its previous done, it is unnecessary for the Court to expound on this matter any further.

Suffice it to state that the preliminary investigation of this case dragged on for almost six (6) years, and the reasons advanced by the prosecution to justify the said delay fail to persuade the Court. For one, the prosecution has not explained the lull between the filing of the last position paper on 24 January 2012 and the filing of the *Information* on 21 March 2017. In addition, the factual and legal issues involved in this case are not novel or complicated enough to justify the time it took the OMB to conclude its preliminary investigation.

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³ See *Minute Resolutions* dated 23 June 2017; 18 July 2017; 15 January 2018; and 27 February 2018.

⁴ Dated 8 May 2018, Records, Vol. 2, pp. 109-115.

⁵ See note 3.

X-----X

Further, considering that accused Atienza has not yet been arraigned, he cannot be considered as having waived his right to the speedy disposition of his case.

As to the matter of prejudice, the Court is aware that delay affects both parties – the prosecution and the accused. In this case, however, the Court considers accused's old age and ailing medical condition as personal circumstances that are in fact adversely affected by the protracted proceedings before the OMB.

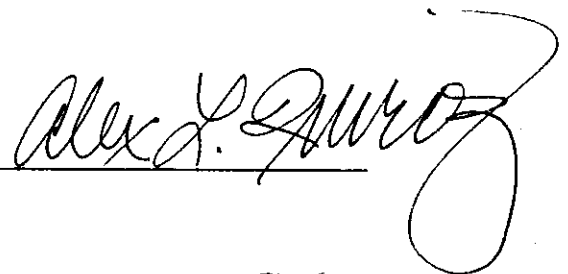
In sum, after considering the length of delay, reason for the delay, accused's assertion of his right to the speedy disposition of his case, the prejudice cause by the delay, and the previous Resolutions of the Court dismissing the cases as to the other accused, the Court is inclined to grant accused Atienza's motion.

WHEREFORE, under the foregoing premises, the the *Motion to Quash* filed by accused **JOSE T. ATIENZA** is **GRANTED** and Criminal Case No. **SB-17-CRM-0624** is hereby **DISMISSED** as against him. The **HOLD DEPARTURE ORDER (HDO)** issued against him is **LIFTED** and the **CASH BOND** he posted is ordered **RELEASED**, subject to the usual accounting and auditing procedures.

Further, the prosecution is given fifteen (15) days from notice to comply with the 26 March 2018 *Resolution*⁶ of the Court and confirm the reported death of accused Maribeth R. Malaluan.

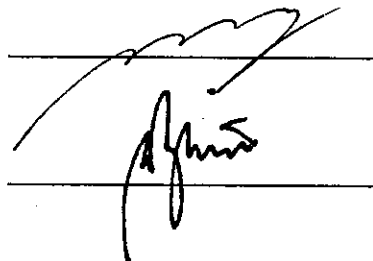
SO ORDERED.

QUIROZ, J., Chairperson



A handwritten signature in black ink, appearing to read "Alex J. Quiroz", written over a horizontal line.

CRUZ, J.



A handwritten signature in black ink, appearing to read "J. Cruz", written over a horizontal line.

JACINTO, J.

⁶ Records, Vol. II, p. 62.