



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

FOURTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-13-CRM-0863 and 0819

-versus-

ANTONIO P. BELICENA,
DAVE P. SAHIJWANI, ET AL.,
Accused.

X-----X

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-13-CRM-0838 and 0882

-versus-

ANTONIO P. BELICENA,
SUNIL DEEPAK, ET AL.,
Accused.

X-----X

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-13-CRM-0832, 0834,
0842, 0876, 0878 & 0886

-versus-

ANTONIO P. BELICENA,
MANUEL TAN, ET AL.,
Accused.

X-----X

RESOLUTION

PP vs. Antonio P. Belicena, et al.

Case Nos. 0819, 0820, 0821, 0822, 0823, 0831,
0832, 0834, 0838, 0842, 0846, 0863, 0864, 0865
0866, 0867, 0875, 0876, 0878, 0882, 0886, 0890.

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X ----- X

PEOPLE OF THE PHILIPPINES,
Plaintiff,

**SB-13-CRM-0822, 0823,
0846, 0866, 0867 & 0890**

-versus-

**ANTONIO P. BELICENA,
NENITA M. LAYSON, ET AL.,**
Accused.

X ----- X

PEOPLE OF THE PHILIPPINES,
Plaintiff,

**SB-13-CRM-0820, 0821,
0831, 0864, 0865 & 0875**

-versus-

**ANTONIO P. BELICENA,
SIONY ELVAMBUENA, ET AL.,**
Accused.

Present:

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

Promulgated on:

July 13, 2018 anh

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RESOLUTION

CRUZ, J.

This resolves the following:

(1) Joint Omnibus Motion to Dismiss and to Quash the Information dated 10 May 2018 of accused Devidass "Dave" P. Sahijwani (hereinafter "Sahijwani"), Sunil Deepak a.k.a. Deepak Sahijwani (hereinafter "Sunil"), Manuel Tan (hereinafter "Tan"), and Nenita M. Layson (hereinafter "Layson");

(2) Omnibus Motion to Dismiss and to Quash the Information dated 17 May 2018 of accused Siony Elvambuena (hereinafter "Elvambuena" for brevity); and *mt*

(3) the prosecution's Joint Comment/Opposition (to: 1. Accused Dave Sahijwani, Sunil Deepak, Manuel Tan, and Nenita Layson's (Sahijwani, et al.) *Joint Omnibus Motion to Dismiss and to Quash the Information* dated 10 May 2018, and 2. Accused Siony Elvambuena's (hereinafter "Elvambuena") *Omnibus Motion to Dismiss and to Quash the Information* dated 21 May 2018) dated 30 May 2018.

Accused Sahijwani, Sunil, Tan and Layson, in their Joint Omnibus Motion,¹ and accused Elvambuena, in her separate but identical Omnibus Motion² (hereinafter collectively referred to as "the accused") seek the dismissal of the cases filed against them arguing that they are similarly situated with their other co-accused whose respective motions for dismissal and/or quashal have previously been granted. The accused further argue that they are, in fact, *worse-off* than their co-accused since they were not notified that they were part of an on-going preliminary investigation, and were not given the opportunity to question the Resolution of the Ombudsman through a motion for reconsideration.

In support of their arguments, the accused cite the following rulings of the Court dismissing the cases against the accused therein due to the nine (9) year delay in concluding the preliminary investigation:

1. Resolution dated 10 August 2017 (accused Tia Tua Sun, Peter So Kim Suy, Teresita S. Tiu, Valentino Depano, Sison G. Pua, and Higinio Fabian) in Criminal Case Nos. SB-13-CRM-1812, 0824, 0825, 0827, 0828, 0832, 0856, 0868, 0869, 0871, 0872, 0876; and

¹ Records, Vol. IX, pp. 93-106.

² Records, Vol. IX, pp. 239-250.

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2. Resolution dated 06 October 2017 (accused Ricardo G. Cuartero) dismissing Case Nos. SB-13-CRM-0836, 0837, 0880, 0881.

The accused also cite the Court's Resolution dated 28 July 2017 which took note of the fact that there was no proof that the accused were notified of the preliminary investigation, as admitted by the plaintiff. They decry the two (2) decades that had elapsed before they were allowed to contest the charges against them. Based on this, the accused argue that the inordinate delay in the prosecution of their cases justifies the dismissal thereof.

The accused also posit that the lapse of two (2) decades removes the factor of fair-play as it skews their chances of properly preparing for their defenses. They cite the violation of their right to due process and right to a speedy trial. They further maintain that their defense has been prejudiced because of the natural decline of memory and the likelihood of inability to recall events and circumstances that occurred two (2) decades ago. The accused also mention that when they attempted to serve the complainant - Special Presidential Task Force, with a copy of their pleadings, it could no longer be located and appears to have ceased its operations. They note that the prosecution could not locate documents relevant to the case.

With regard to the quashal of the information, the accused contend that quashal is proper since the crimes charged against them have already prescribed. Relying on jurisprudence, they submit that the alleged violation of Section 3(e) of Republic Act No. 3019 (hereinafter "RA 3019"), as amended, prescribes fifteen (15) years from the commission of the crime or from its discovery. Moreover, the complex crime of Estafa through Falsification of Public Documents also prescribes in fifteen (15) years under Article 90 of the Revised Penal Code (hereinafter "RPC"). Based on the complainant's own Investigation Report, the supposed discovery of the commission of the crimes was on November 2000, or when the audit of Victory Textiles Corporation was conducted. The same Investigation Report also cites the plant inspection conducted on 27 July 2000. Thus, the accused argue that the crimes charged against them must have prescribed at around 27 July 2015 or November 2015 - fifteen (15) years after the alleged discovery. In relation to the foregoing, the accused insist that the filing of the Information before the Honorable Court did not toll the period of prescription as there was no proper preliminary investigation conducted before the cases were forwarded to the Court.

In its Joint Comment/Opposition,³ the prosecution counters that this is the first time the accused are raising their right to the speedy disposition of their cases. They point out that the accused did not even file any motion

³ Records, Vol. IX, pp. 315-323.

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for speedy resolution before the Office of the Ombudsman (hereinafter "Ombudsman"). The prosecution cites jurisprudence which held that a petitioner, who did not take any step to accelerate the disposition of his case, may be considered to have slept on his right and waived it.

The prosecution further argues that the instant case required a thorough evaluation considering that the circumstances and documents are related to the Tax Credit Scam. They submit that the procedure observed cannot be considered vexatious, capricious and oppressive absent any proof that the delay was deliberately done to harass or violate the accused's right to due process and speedy disposition of cases. They cite jurisprudence that takes judicial notice of the duty of the Ombudsman to act promptly, but not hastily, on cases lodged before it. They also insist that considering the levels of review that the case had to go through, the period of time is reasonable and no constitutional right of the accused had been violated.

The prosecution further contends that the accused failed to show any prejudice caused to them by the alleged delay. Aside from the accused, the prosecution also stands equally prejudiced by the possible inability of its own witnesses to give accurate accounts of events. They point to the fact that the accused are all free on bail and are at liberty to move and do as they wish. They likewise maintain that despite the inexistence of the complainant, Special Presidential Task Force 156, some of its members are still alive and some have already testified in the other Tax Credit Scam cases before the Honorable Court.

As to the alleged prescription of the offenses charged, the prosecution contends that the reckoning date must be 2013 or when the Informations against the accused were filed, which was well within the fifteen (15) year period provided in RA 3019 and the RPC. Moreover, jurisprudence states that the prescriptive period is interrupted by the filing of a complaint or information, and shall commence again once the proceedings were terminated without conviction or acquittal of the accused, or unjustifiably stopped for any reason not falling under double jeopardy. Finally, the prosecution notes that the invocation of prescription in the accused's motion to quash may be construed as an admission of the commission of the offenses imputed against them.

DISCUSSION

The motions of the accused are meritorious.

It has been held that the right to the speedy disposition of cases is not merely hinged towards the objective of spurring dispatch in the administration of justice, but also to prevent the oppression of the citizen by holding a criminal prosecution suspended over him for an indefinite

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time.⁴ Thus, its objective is to assure that an innocent person may be free from the anxiety and expense of litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose.⁵

The Court finds that the accused herein are similarly situated with accused Ricardo G. Cuartero in Criminal Case Nos. SB-13-CRM-0836, 0837, 0880, and 0881, as well as accused Tia Tua Sun, Peter So Kim Suy, Teresita S. Tiu, Valentino Depano, Sison G. Pua, and Higinio Fabian in Criminal Case Nos. SB-13-CRM-1812, 0824, 0825, 0827, 0828, 0832, 0856, 0868, 0869, 0871, 0872, and 0876, whose cases have already been dismissed due to the inordinate delay in their disposition by the Ombudsman.

An examination of the records in the present cases establishes the following circumstances, among others:

1. there was no proof that accused Sahijwani, Tan and Elvambuena were notified of the preliminary investigation;⁶
2. accused Sunil and Layson, although notified of the preliminary investigation, were not furnished with copies of the Ombudsman's resolution;⁷ and
3. more than nine (9) years elapsed before the Ombudsman concluded the preliminary investigation of the present cases; from 8 July 2004, the date of the filing of the Complaint, to 2 August 2013, when the Informations were filed before the Court.⁸

To emphasize, it is incumbent on the prosecution to prove that the delay was reasonable, or that the delay was not attributable to it.⁹ This the prosecution failed to do in both regards. It is a well-settled principle that the 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.¹⁰ Clearly, the prosecution in the present cases failed to observe this duty and violated the accused's right to the speedy disposition of their cases.

Due to the similarity between the cases currently before the Court, and the aforementioned cases that were already dismissed, the Court is

⁴ People v. Sandiganbayan et al., 25 July 2016, G.R. No. 199151-56.

⁵ *Ibid.*

⁶ Records, Vol. VII, p.219.

⁷ *Ibid.*

⁸ Records, Vol. VII, p.251.

⁹ People v. Sandiganbayan et al., 712 SCRA 359, (2013), p. 413.

¹⁰ Barker v. Wingo, 407 U.S. 514, (1972).

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constrained to apply its ruling in the Resolutions dated 10 August 2017 and 6 October 2017, where the Court held:

Length of the delay:

Nine (9) years to conclude the preliminary investigation is unreasonably long by any standard considering that the determination of probable cause “merely entails weighing of facts and circumstances, relying on the calculus of common sense, without resorting to the calibrations of technical rules of evidence.” Thus, there is no doubt that the preliminary investigation before the OMB can only be characterized as having been attended by inordinate delay.

Reason for the delay:

The Court is not convinced by plaintiff’s justifications. While there are indeed 117 respondents in the complaint filed before the OMB, only 38 filed their counter-affidavits. Based on the records, the last counter-affidavits were filed in February 2005. Yet, the OMB Resolution was only issued some seven (7) years later, or on 6 March 2012.

The Court is also unmoved by plaintiff’s claim that the subject matter of the complaint – the Tax Credit Scam, justifies the 9-year delay. The Court takes judicial notice that the Tax Credit Scam has been the subject of several cases before the OMB and this Court. Although the cases involve different private corporations and individuals, the public officials and the scheme involving the issuance and transfer of Tax Credit Certificates despite the alleged irregularities in the supporting documents remain essentially the same. In other words, the case under preliminary investigation did not involve a novel issue and plaintiff may no longer cite the “complexity” thereof to justify the nine years it took for its resolution.¹¹

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Prejudice caused by the delay:

Finally, the plaintiff claims that accused have not suffered any prejudice since “[they are] currently free on bail and [are] relatively at liberty to move and do as [they will].”

¹¹ Records, Vol. VII, pp. 262-263.

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However, as held in *Corpuz v. Sandiganbayan*:¹²

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.

In consideration of the foregoing discussion, the Court finds that the other issues raised by the accused in their motions have become moot.

WHEREFORE, premises considered, the Joint Omnibus Motion to Dismiss and to Quash the Information of accused Devidass "Dave" P. Sahijwani, Sunil Deepak a.k.a Deepak Sahijwani, Manuel Tan and Nenita M. Layson, as well as the Omnibus Motion to Dismiss and to Quash the Information of accused Siony ^{MAK} Elvambuena are **GRANTED**. Criminal Case Nos. 0819, 0820, 0821, 0822, 0823, 0831, 0832, 0834, 0838, 0842, 0846, 0863, 0864, 0865, 0866, 0867, 0875, 0876, 0878, 0882, 0886, and 0890 are hereby **DISMISSED** as against said accused-movants, for violation of their right to the speedy disposition of their cases, without prejudice to any civil action which the Department of Finance may file against them.

The respective bail bonds of the afore-listed accused are hereby ordered **RELEASED** subject to the usual accounting and auditing procedures.

The Hold Departure Order¹³ issued by this Court against said accused is also **LIFTED** and **SET ASIDE**. Let the Commissioner of the Bureau of Immigration be notified accordingly.

The arraignment set on 18 July 2018 is hereby **CANCELLED**.

SO ORDERED.


REYNALDO P. CRUZ
Associate Justice

¹² Corpuz v. Sandiganbayan, 442 SCRA 294, (2004), p. 313.

¹³ Records, Vol. 1-A, pp.415-417.

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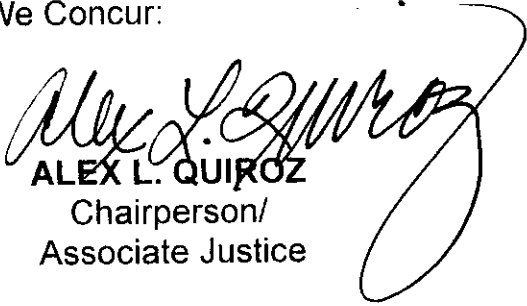
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We Concur:


ALEX L. QUIROZ
Chairperson/
Associate Justice


BAYANI H. JACINTO
Associate Justice

