



Republic of the Philippines
Sandiganbayan
Quezon City

FIFTH DIVISION

**PEOPLE OF THE PHILIPPINES,
*Plaintiff,***

**SB-18-CRM-0002
For: Violation of Section 3(e)
R.A. No. 3019 (The Anti-Graft
and Corrupt Practices Act)**

- versus -

**JONATHAN ANOYA BAYOGAN, *et al.*,
*Accused.***

***Present:*
Lagos, J., *Chairperson,*
Mendoza - Arcega and
Corpus - Mañalac, JJ.**

Promulgated:
August 28, 2018 *lal*

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RESOLUTION

CORPUS - MAÑALAC, J.:

For resolution is the prosecution's Motion for Reconsideration of the Resolution dated July 10, 2018 dismissing this case filed by the Office of the Ombudsman as against accused Airma Ladera, Vivian Labasano, and Erlinda Patosa for inordinate delay in investigation. The said accused filed their separate Comment/Opposition thereto on July 20, 2018 and July 26, 2018, respectively.

The prosecution alleges that:

- (a) The fact finding investigation should not be considered in the mathematical computation of delay in the proceedings as there was yet no jeopardy incurred by the accused at this stage of the proceedings;
- (b) The purported delay is not vexatious, capricious, and oppressive; and
- (c) The constitutional right must be raised at the earliest opportunity.

Allegedly, the "power to investigate" by the office of the Ombudsman includes both: (a) the fact-finding inquiry; and (b) the preliminary

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investigation proper, as provided in Section 2, Rule II of Ombudsman Administrative Order No. 7 and Memorandum Circular No. 5 Series of 2002. There is a “no-contact” policy during the fact-finding to avoid tampering, loss or destruction of the evidence. The investigators gather evidence, which is only a preparatory stage and cannot be considered to be part of preliminary investigation. Hence, no right is being violated during this stage as there is no deprivation of life, liberty, or property.

Too, the prosecution invokes the case of *Raro vs. Sandiganbayan*¹ and contends that the duty of the Office of the Ombudsman to act promptly on complaints before it should “not be mistaken with a hasty resolution of cases at the expense of thoroughness and correctness.” Though there is delay in the completion of the fact-finding investigation, it was explained that the Ombudsman exerted its utmost effort to determine the veracity of the allegations against the accused. It maintains that the purported delay is not vexatious, capricious, and oppressive considering that only one (1) year and five (5) months was utilized for the preliminary investigation. It was on January 20, 2016 that preliminary investigation started, the time when the accused were directed to submit their counter-affidavits pursuant to the Joint Order dated June 6, 2017 and July 11, 2017.

Also, the prosecution avers that the workload and continued filing of new cases with its office is a reality for a government which has limited time and resources. That speedy trial being “relative” and “flexible,” courts should maintain a delicate balance between the demands of due process and the right of the State to prosecute. Moreover, the accused allegedly failed to raise the issue of inordinate delay in their respective counter-affidavits during the preliminary investigation, which defeats their right to constitutional guarantee of speedy case disposition.

Accused Patosa opposes the move, arguing that the motion raises previous arguments which have been squarely ruled upon in the assailed Resolution. In disagreeing to the claim that no prejudice was caused to her by the delay, she asserts that the said issue was already ruled upon by this Court citing the case of *Torres vs. Sandiganbayan*, which held that right to speedy disposition of cases hinges not only on the speedy dispatch of cases but also “to prevent oppression of the citizen by holding a criminal prosecution suspended over him for an indefinite time,” which further declared that “this looming unrest as well as the tactical disadvantages carried by the passage of time should be weighed against the State and in favor of the individual.”

Accused Ladera and Labasano aver that: (1) it is pathetic for the OSP to argue that the delay in investigating the complaint against the accused at the Ombudsman level is still tolerable; (2) the Rules and Procedure of the Ombudsman do not ipso facto devalue the mandate of

¹Raro vs. Sandiganbayan, G.R. No. 108431, July 14, 2000.

Sec. 16, Art. III of the Constitution; (3) the Ombudsman was not struggling to avoid a “hasty investigation” against the respondents, but on the contrary, it “wallowed in bureaucratic lethargy and inertia to the jeopardy of accused;” (4) the allegation of conspiracy among all the accused negates the assertion that the earlier dismissal of the Information against their co-accused Jonathan A. Bayogan is peculiar only to him; and (5) the motion for reconsideration by the OSP is a feeble attempt to undermine the doctrine in Section 16, Article III of the Constitution and in the cases of *Tatad vs. Sandiganbayan*²; *Angchangco, Jr. vs. Ombudsman*³; and *Roque vs. Office of the Ombudsman*⁴ that an unreasonable delay of three years in the disposition a case violates the accused’s constitutional rights.

Ruling

The Court carefully considered the ratiocinations of the prosecution, but finds the same to be mere echoes of its arguments raised in its separate Oppositions⁵ to the respective Motions to Quash and/or Dismiss Information filed by accused Ladera, Labasano, Patosa. Verily, these arguments were already passed upon in the assailed Resolution, whereas the instant motion does not raise any new or substantial reason to justify the reconsideration sought. The pronouncement of the Supreme Court in the case of *Komatsu Industries (Phils.), Inc. vs. Court of Appeals*⁶ is referred to, viz:

“In the same manner, we readily found that, despite the lengthy and repetitious submissions of petitioner in its pleadings filed with this Court as earlier enumerated, all the arguments therein are also mere rehashed versions of what it posited before respondent court. We have patiently given petitioners postulates the corresponding thorough and objective review but, on the real and proper issues so completely and competently discussed and resolved by respondent court, petitioners’ obvious convolutions of the same arguments are evidently unavailing. Xxx

In *Shangri-la International Hotel Management, Ltd., et al. vs. Developers Group of Companies, Inc.*,⁷ the High Court ruled:

“Considering that the grounds presently raised have been sufficiently considered, if not squarely addressed, in the subject Decision, it behooves movant to convince the Court that certain findings or conclusions in the Decision are contrary to law. As it is, however, the instant motion does not

² *Tatad vs. Sandiganbayan*, 159 SCRA 70, March 21, 1988.

³ *Angchangco, Jr. vs. Ombudsman*, 268 SCRA 20, February 13, 1997.

⁴ *Roque vs. Office of the Ombudsman*, 307 SCRA 104, May 12, 1999.

⁵ Opposition to Ladera and Labasano’s Motion to Quash and/or Dismiss Information dated May; Opposition to Patosa’s Omnibus Motion: 1) To Dismiss the Case Due to Violation of the Right to Speedy Disposition of Case; and 2) To Defer/Cancel the Arraignment

⁶ *Komatsu Industries (Phils.), Inc. vs. Court of Appeals*, 289 SCRA 604, 620

⁷ *Shangri-la International Hotel Management, Ltd. vs. Developers Group of Companies, Inc.*, G.R. No. 159938, January 22, 2007

raise any new or substantial legitimate ground or reason to justify the reconsideration sought.”

In repetition, the prosecution insists that the fact-finding investigation should not be included in the determination of whether there is inordinate delay. The assailed Resolution ruled:

The factual antecedents particularly of the timeline leading to the filing of the Information are undisputed.

It took the Ombudsman more than four (4) years to complete the fact-finding proceeding between November 29, 2011 - the date when the Ombudsman received the anonymous complaint and December 18, 2015 - when the Field Investigation Unit (FIU) executed a Complaint charging herein accused Ladera, Labasano and Patosa, among others, of violation of RA 3019. Another period of one year (1) year and five (5) months, by the court's reckoning, was spent by the Ombudsman to conduct the preliminary investigation from January 20, 2016 - the date when it issued the Joint Order directing accused to file their counter-affidavits and June 6, 2017 and July 11, 2017 - when accused motions for reconsideration of its Resolution dated October 5, 2016 was denied. Whereas, the Information was filed on January 12, 2018 after an aggregate investigation period of more than six (6) years.

Considering the extended length of time that lapsed before the Ombudsman was able to dispose of the complaint before it, it is incumbent upon the prosecution to prove that the delay in investigation was reasonable, or that the delay was not attributable to it. Reviewing the anonymous complaint, it appears that more than enough documentary leads were specified to facilitate the conduct and earlier termination of the fact-finding investigation, but the FIU took more than four (4) years from its filing on November 29, 2011 up to January 20, 2016 to build the case and come up with a complaint for preliminary investigation.

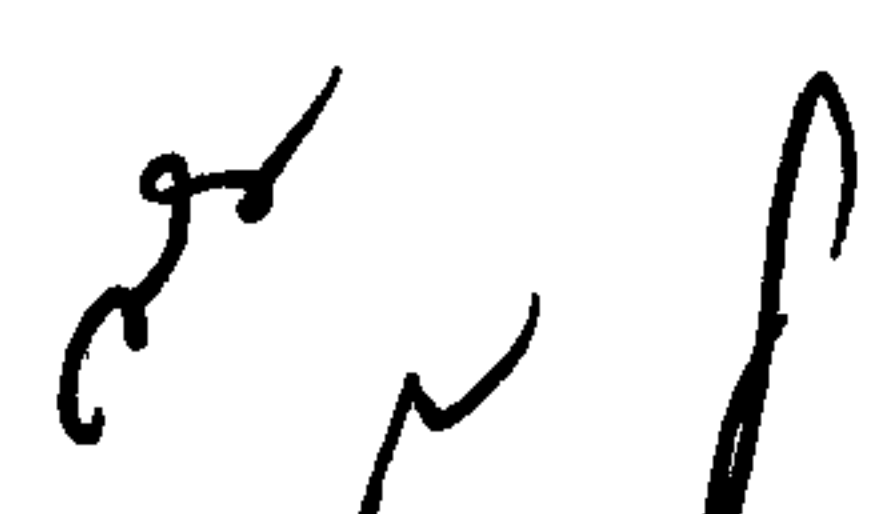
To this, the prosecution merely argues that a complaint under case build-up shall not be considered, and that there is no inordinate delay since there is yet no jeopardy to the accused during the fact-finding proceeding.

The Court does not agree. In the case of *People vs. Sandiganbayan*, the Supreme Court ruled:

The State further argues that the fact-finding investigation should not be considered a part of the preliminary investigation because the former was only preparatory in relation to the latter; and that the period spent in the former should not be factored in the computation of the period devoted to the preliminary investigation.

The argument cannot pass fair scrutiny.

The guarantee of speedy disposition under Section 16 of Article III of the Constitution applies to all cases pending before all judicial, quasi-judicial or administrative bodies. The guarantee would be defeated or rendered inutile if the hair-splitting distinction by the State is accepted. Whether or not the fact-finding investigation was separate from the preliminary investigation conducted by the Office of the Ombudsman



should not matter for purposes of determining if the respondents' right to the speedy disposition of their cases had been violated.

A similar issue of whether or not the fact-finding proceeding should be excluded in determining inordinate delay in the disposition of cases was raised and ruled upon in the case of *Torres vs. Sandiganbayan*," viz:

We find it necessary to emphasize that the speedy disposition of cases covers not only the period within which the preliminary investigation was conducted, but also all stages to which the accused is subjected, even including fact-finding investigations conducted prior to the preliminary investigation proper.

The prosecution, again, argues the delay is not vexatious, capricious, and oppressive. The assailed Resolution had ruled:

In this case, the Information was filed in 2018 or about twelve (12) years after the alleged irregular procurement took place in 2006. While the anonymous complaint was filed only in 2011, it is with more reason that the FIU should have doubled its time in completing its fact-finding. The period of more than four (4) years to finish the same is disadvantageous to the accused, who may have failed to recount the events and retrieve their witnesses and documentary evidence. Indeed, it is simply unreasonable and oppressive.

Similarly, the prosecution avers that the constitutional right must be raised at the earliest opportunity which the accused failed to do. This Court had ruled:

Neither should the accused be blamed for not raising inordinate delay as an issue before the Ombudsman. In *Corpuz vs. Sandiganbayan*, the Supreme Court held:

Being the respondents in the preliminary investigation proceedings, it was not the petitioners' duty to follow up on the prosecution of their case. Conversely, it was the Office of the Ombudsman's responsibility to expedite the same within the bounds of reasonable timelines in view of its mandate to promptly act on all complaints lodged before it.

In *Enriquez vs. Office of the Ombudsman*, the Supreme Court consistently pronounced that the Ombudsman is primarily tasked to be the "protector of the people" and thus, required to act promptly on all complaints filed in any form or manner against government officials and employees in order to promote efficient service. Regrettably, this duty was not observed in the present case. There appears to be no justifiable basis as to why the Ombudsman could not have earlier completed the disposition of this case against the accused.

Let it be added that this is not to demean the State's right to prosecute, which only requires that said right be exercised with due regard to the Constitutional rights of the persons under investigation. In this case, such right was not taken away from the State which had its opportunity to investigate and prosecute, except that its delay in doing so transgressed the accused's right to a speedy disposition of their case. In *Allado vs.*

Diokno,⁸ the Supreme Court pronounced that “in the hierarchy of rights, the Bill of Rights takes precedence over the right of the State to prosecute, and when weighed against each other, the scales of justice tilt towards the former.”

WHEREFORE, the prosecution’s “*Motion for Reconsideration (Re: Resolution dated June 27, 2018)*” is **DENIED** for lack of merit.

SO ORDERED.


MARYANN E. CORPUS – MAÑALAC
Associate Justice

WE CONCUR:


RAFAEL R. LAGOS
Associate Justice
Chairperson


MARIA THERESA V. MENDOZA – ARCEGA
Associate Justice

⁸ G.R. No. 113630, May 5, 1994