



Republic of the Philippines
Sandiganbayan
 Quezon City

SPECIAL SEVENTH DIVISION

MINUTES of the proceedings held on 29 August 2018.

Present:

Justice MA. THERESA DOLORES C. GOMEZ-ESTOESTA----- Chairperson
Justice ZALDY V. TRESPESES----- Member
Justice GEORGINA D. HIDALGO----- Member

The following resolution was adopted:

Crim. Case No. SB-18-CRM-0013 - People vs. AUGUSTO "BOBOY" LIMCACO SYJUCO, ET AL.

This resolves the following:

1. Accused Augusto L. Syjuco's "MOTION FOR RECONSIDERATION" (Re: Resolution dated 20 June 2018)" dated July 9, 2018;¹
2. The prosecution's "MOTION FOR LEAVE TO ADMIT OPPOSITION [TO MOTION FOR RECONSIDERATION DATED 09 JULY 2018]" DATED August 8, 2018.²

TRESPESES, J.

This resolves the Motion for Reconsideration filed by accused Augusto L. Syjuco (Syjuco) and the prosecution's Motion for Leave to Admit Opposition to the Motion for Reconsideration.

ACCUSED'S MOTION

Accused Syjuco moves to reconsider the Resolution dated 20 June 2018,³ denying his Motion to Quash Information.

Accused Syjuco insists that the instant case stemmed from the Complaint-Affidavit filed by Annie Geron with the Ombudsman on 16

¹ *Rollo*, Vol. 3, pp. 5-44.

² *Id.* at 121-133.

³ *Rollo*, Vol. 2, pp. 433-438.

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February 2010. He contends that the issue presented in the said complaint-affidavit, particularly the “highly irregular E-TESDA portal prepaid card-enabled portal 2007-2008 contracts amounting to ₱36.34 Million,” is the same being confronted by him in this case.

As such, accused argues that the counting of delay should reckon from the filing of the complaint-affidavit of Geron in 2010 and not from the time accused filed his counter-affidavit in 2012 during the fact-finding investigation. Accused avers that from February 2010 until the filing of the Information in Court in January 2018, it took the Ombudsman a total of seven years and 11 months to complete the investigation. He believes that this constitutes oppressive, capricious and vexatious delay.

In support of his argument, accused invokes *People v. Hon. Sandiganbayan, et al.*,⁴ where it was held that the fact-finding investigation should not be deemed separate from the preliminary investigation if the aggregate time spent for both constitutes inordinate and oppressive delay in the disposition of any case. He also cites *People of the Philippines v. Sandiganbayan, et al.*,⁵ which held that the investigatory process was deemed to be set in motion from the time the complaint was filed with the Ombudsman.

Following the ruling in *Remulla v. Sandiganbayan*⁶ and *Almeda v. Office of the Ombudsman, et al.*,⁷ accused Syjuco argues that he has no duty to follow up his case as it is imperative upon the Ombudsman to expedite the proceedings and to promptly act on all complaints lodged before it.

As to the prejudice caused, accused Syjuco avers that because of his illness, he needs to undergo chemotherapy in Singapore. But due to the pendency of the instant case, which involves transaction that happened way back in 2007, his right to travel is being restricted.

**PROSECUTION’S MOTION
FOR LEAVE TO ADMIT OPPOSITION**

In its motion for leave, the prosecution implores the indulgence of the Court to grant and admit, as part of the records, their Opposition belatedly filed on 8 August 2018. The prosecution alleges that the unloading of the case from the Seventh Division to the First Division also resulted in the unloading of the case to a different handling prosecutorial division. The process of

⁴ G.R. Nos. 188165 and 189063, 11 December 2013.

⁵ G.R. No. 199151-56, 25 July 2016.

⁶ G.R. No. 218040, 17 April 2017.

⁷ G.R. No. 204267, 25 July 2016.

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unloading and transmittal of records caused the prosecution to overlook the filing of the Comment/Opposition.

On the substantial aspect, the prosecution counters that there is nothing in the records which mentions of a complaint filed by Annie Geron. As averred by accused himself, the complaint of Geron was docketed as OMB-C-A-10-0136-C, which is entirely different with the complaint filed by the FIO docketed as OMB-IC-OC-15-0144.

Moreover, accused Syjuco has been insisting that delay should reckon from 2010 but merely invoked his right to speedy disposition in 2018, after the Information has been filed in court. The prosecution alleges that the other accused in this case invoked their right to speedy disposition by filing motions to quash as early as February 2018 but accused Syjuco filed his motion to quash only on 22 May 2018, when all the other motions have already been resolved. The prosecution likewise claims that during the preliminary investigation, most accused filed their respective motions for extension to file counter-affidavit which contributed to the delay.

Finally, the prosecution argues that seeking the court's permission to travel is a normal consequence of a law suit and does not translate to the prejudice as an element of inordinate delay. It further argues that a person facing criminal charges may be restrained from leaving the country or, if abroad, compelled to return.

OUR RULING

*On the prosecution's Motion
for Leave to Admit Opposition*

The prosecution's motion is impressed with merit.

The Court finds the explanation advanced by the prosecution justified. Although 11 days late, there is no showing that the belated filing of the motion which incorporates the Opposition was intended to vex or oppress accused. Therefore, in the interest of substantial justice, the Court resolves to **admit** the prosecution's Opposition.

*On accused Syjuco's
Motion for Reconsideration*

The Court resolves to **deny** accused Syjuco's Motion for Reconsideration for lack of merit.

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After a careful perusal of the arguments raised by accused, the Court finds no valid reason to disturb its earlier findings. Notably, no new matters have been raised in the instant motion for reconsideration. It merely repleads the same arguments, which had been considered and passed upon in the Resolution sought to be reconsidered.

The Court maintains its previous ruling that the instant case stemmed from the filing of the Complaint by the Field Investigation Office (FIO) on 02 February 2015⁸ with the Ombudsman for purposes of preliminary investigation. Therefore, the computation of the period to determine inordinate delay should reckon from February 2015, and not with the filing of the complaint by Geron in 2010. Counting from 02 February 2015 until the filing of the Information on 23 January 2018, the Ombudsman only took *two years and 11 months* to complete the preliminary investigation. This period was far from inordinate.

Accused Syjuco's argument that the counting of the period of delay should reckon from the filing of the complaint-affidavit of Geron on 16 February 2010 deserves scant consideration.

It bears to stress that there is nothing in the FIO Complaint that would show that the fact-finding investigation was prompted by the filing of the complaint of Geron. As correctly observed by the prosecution, the Complaint-Affidavit filed by Geron in 2010 was docketed as OMB-C-A-10-0136-C⁹ while that filed by the FIO was docketed as OMB-IC-OC-15-0144. Thus, they are two different cases.

It also bears to stress that a fact-finding investigation is simply a case build-up process to determine whether or not a complaint should proceed to preliminary investigation. Thus, the subject of the fact-finding investigation is not yet in jeopardy of being held for trial and punishment. Accordingly, this period should not be included in the computation for purposes of determining whether there was delay.

In *Biraogo v. The Philippine Truth Commission of 2010*,¹⁰ the Supreme Court explained that:

Under the third objective, the fact-finding investigation is merely a gathering and evaluation of facts to determine whether there is sufficient basis to proceed with a formal administrative charge, or the filing of a criminal complaint before the prosecutor who will conduct a preliminary investigation. This purely fact-finding investigation does not determine administrative culpability or the existence of probable cause.

⁸ Rollo, Vol. 1, pp. 54-92.

⁹ Rollo, Vol. 3, pp. 15-20.

¹⁰ 651 Phil. 374-773 (2010).

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The fact-finding investigation comes before an administrative investigation or preliminary investigation, where administrative culpability or probable cause, respectively, is determined. (emphasis supplied)

Notwithstanding, in the assailed Resolution, the Court held that even if We are to include the period spent for the fact-finding investigation, that is, from September 2012 until the filing of the Information in January 2018, that would only make a total of *five years and four months*. Still, this period is not unreasonable, arbitrary or oppressive considering the circumstances attending the case.

It is settled that the concept of speedy disposition is relative or flexible such that a mere mathematical reckoning of the time involved is not sufficient.¹¹ Therefore, particular regard must be given to the facts and circumstances surrounding each case.¹²

In determining whether that right has been violated, the factors that may be considered and balanced are as follows: 1) the length of the delay; 2) the reasons for the delay; 3) the aggrieved party's assertion or failure to assert such right; and 3) the prejudice caused by the delay.¹³ In the instant case, the Court considered and weighed the factors based on the circumstances surrounding the filing of the Information.

As can be gleaned from the assailed Resolution, the Court considered the complexity of the case; amount involved; number of respondents charged in the complaint; and the voluminous documents that the Ombudsman evaluated. The Court likewise noted that some of the accused even requested for extension of time during preliminary investigation to file counter-affidavit, which necessarily consumed a considerable amount of time.

On the assertion of right, accused Syjuco's argument that he has no duty to follow up his case is without merit. Record shows that accused was aware of the case against him as of 17 September 2012, the time he filed his counter-affidavit with the Ombudsman during the fact-finding investigation. However, despite knowledge, he failed to assert his right to speedy disposition of his case.

In *Perez v. People*,¹⁴ the Supreme Court declared that accused's failure to seasonably assert his right to speedy disposition of his case is deemed a waiver of such right. Thus:

¹¹ *Ombudsman v. Jurado*, 583 Phil. 132-157 (2008).

¹² *Almeda v. Ombudsman*, G.R. No. 204267, 25 July 2016.

¹³ *Id.*

¹⁴ 568 Phil. 491-526 (2008).

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More important than the absence of serious prejudice, petitioner himself did not want a speedy disposition of his case. Petitioner was duly represented by counsel *de parte* in all stages of the proceedings before the Sandiganbayan. From the moment his case was deemed submitted for decision up to the time he was found guilty by the Sandiganbayan, however, petitioner has not filed a single motion or manifestation which could be construed even remotely as an indication that he wanted his case to be dispatched without delay.

Petitioner has clearly slept on his right. The matter could have taken a different dimension if during all those twelve years, petitioner had shown signs of asserting his right to a speedy disposition of his case or at least made some overt acts, like filing a motion for early resolution, to show that he was not waiving that right.

Currit tempus contra decides et sui juris contempores: Time runs against the slothful and those who neglect their rights. ***Ang panahon ay hindi panig sa mga tamad at pabaya sa kanilang karapatan. Vigilantis sed non dormientibus jura in re subveniunt.*** The law aids the vigilant and not those who slumber in their rights. ***Ang Batas ay tumutulong sa mga mapagbantay at hindi sa mga humihimbing sa kanilang karapatan.***

With respect to prejudice, the Supreme Court in *Remulla v. Sandiganbayan (Second Division)*,¹⁵ explained that prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: 1) to prevent oppressive pre-trial incarceration; 2) to minimize anxiety and concerns of the accused to trial; and 3) to limit the possibility that his defense will be impaired. None of the prejudice mentioned are attendant in the instant case.

The alleged illness suffered by accused Syjuco is a prejudice not attributable to the pendency of the case. Moreover, the restriction on travel is not a prejudice contemplated by jurisprudence on inordinate delay. While the right to travel is guaranteed by the Constitution, such right of an accused is restricted to keep him within the reach of the courts as a consequence of the pendency of the criminal case filed against him. This is a legal restriction. It is also worthy to note that accused was never prevented by the Court from leaving the country whenever he asks for leave to travel abroad for treatment.

Hence, accused's claim of prejudice is without basis.

In view of the foregoing, the Court finds no cogent reason to reconsider its assailed resolution.

¹⁵ G.R. No. 218040, 17 April 2017, citing *Corpuz v. Sandiganbayan*, 484 Phil. 899, 917 (2004).

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WHEREFORE, premises considered, the Motion for Reconsideration filed by accused August L. Syjuco is hereby **DENIED** for lack of merit. Consequently, let the arraignment and pre-trial proceed on **October 12, 2018 at 8:30 in the morning at the First Division Courtroom.**

SO ORDERED.

Quezon City, Philippines.



ZALDY V. PRESPESES
Associate Justice

WE CONCUR:



MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Associate Justice
Chairperson



GEORGINA D. HIDALGO
Associate Justice