



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

Fifth Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

SB-18-CRM-0249 to 0251

For: Article 171 of the Revised Penal
Code or Falsification of Public
Documents

ESTRELLITO A. POLLOSO, et
al.,

Accused.

Present:

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

Promulgated:

August 15, 2018 *lad*

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RESOLUTION

LAGOS, J.:

For resolution of this Court is accused Amelia T. Vispo's Omnibus Motion¹, accused Iris C. Mendoza, Salome T. Cuevas and Ritchelle S. Holanda-Atara's Motion to Dismiss², Esperanza Jimenez's Omnibus Motion³, accused Estrellito A. Polloso's Motion to Quash⁴ and the prosecution's Comment/Opposition⁵.

Accused Vispo seeks the dismissal of this case on the ground of inordinate delay in the conduct of the fact-finding and preliminary investigation before the Office of the Ombudsman (OMB). Allegedly, such delay amounted to the violation of the constitutional rights of the accused to due process of law and to speedy disposition of cases. Accused Vispo also seeks the quashal of the Informations in these consolidated cases on the following grounds:

¹ Records, Vol. II, pp. 279-308.

² Records, Vol. II, pp. 331-340.

³ Records, Vol. II, pp. 344-356.

⁴ Records, Vol. II, pp. 395-409.

⁵ Records, Vol. II, pp. 360-371.

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- a) The facts charged in the Informations do not constitute an offense; and
- b) The Informations do not conform substantially to the prescribed form. Such non-conformity violated the constitutional right of accused Vispo to be informed of the nature and cause of the accusation against her.

Accused Vispo alleges that whatever opportunity that she may have had to gather documentary evidence and secure witnesses may have already been compromised due to the delay. Allegedly, she dreads going back to the country for fear of arrest upon arrival. She also worries that this incident may affect her status or reputation abroad which would jeopardize her present job.

The accused-movant asserts that, as early as 2010, the OMB, jointly with the COA, started the fact-finding investigation. However, it took the Ombudsman's Field Investigation Office four years to file the complaints in 2014 and another four years to file the Informations on April 6, 2018. The fact-finding investigation and preliminary investigation by the Office of the Ombudsman lasted almost eight years.

The accused cites the case of **Lamberto Torres v. Sandiganbayan** (G.R. No. 221562-69, October 5, 2016) as being on all fours with the case at bar. The aforementioned ruling states that there was inordinate delay if the preliminary investigation conducted by the Office of the Ombudsman was based on the same COA Special Audit Report resulting from the latter's fact-finding investigation because the Office of the Ombudsman had the COA Report in its possession and had the opportunity to review the same. This is allegedly more so in this case where the Ombudsman was involved and participated in the fact-finding stage on account of the joint investigation with COA since 2010. The COA and the Office of the Ombudsman executed Memorandum of Agreement and issued a Joint Circular on Joint Investigations dated October 12, 2010, as stated in Office Order No. 2011-036 (Annex OO, Field Investigation Office (FIO) v. Hondrade, et al.)

According to accused-movant Vispo, in the instant case, the Office of the Ombudsman had control over the cases when, together with the COA, it started the fact-finding investigation in 2010, pursuant to the Memorandum of Agreement executed between the COA and the Office of the Ombudsman and the Joint Memorandum Circular on Joint Investigations indicated in COA Office Order No. 2011-036 (Annex OO, Field Investigation Office (FIO) v. Hondrade, et al.). As ratiocinated in this Court's Sixth Division resolution in **People of the Philippines v. Jenny D. De Asis, et al.** (SB-17-CRM-0284, November 29, 2017):

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“It is only proper to include the fact-finding investigation conducted by the Office of the Ombudsman in determining inordinate delay. Otherwise, the accused would be at the mercy of the Office of the Ombudsman if the fact-finding is prolonged and excluded in the preliminary investigation.”

According to the accused-movant, a reading of the Informations show that the first three elements of the offense of Falsification of Public Documents under Article 171, paragraph 4 are extant. However, the prosecution allegedly failed to state the fourth element, the perversion of truth in the narration of facts was made with the wrongful intent of injuring a third person. Absent any mention of this element, the facts indicated in the Informations are insufficient and do not constitute the offense of falsification of public documents. Accused-movant Vispo concludes that the Informations filed against her must be quashed. This omission allegedly also makes the Informations patently irregular and fatally flawed for not conforming substantially to the prescribed form.

Accused Mendoza, Cuevas and Atara move to dismiss the instant case or quash the Informations therein for violation of their right to speedy disposition of cases due to inordinate delay. Allegedly, it took the Ombudsman eight years to complete its investigation against the accused. Considering that the special audit team started its investigation with regard to the subject matter in July 2010, and the complaint was resolved and the Informations filed before the Sandiganbayan eight years or close to a decade later, the accused claim that it is manifest that the delay is unjustifiable.

With regard to the reason for the delay, accused-movants allege that the Ombudsman has failed to provide any plausible explanation which could justify why the Informations were filed before this Court almost a decade after the acts were allegedly committed in 2005 to 2008. The accused also claim that they cannot be faulted for their alleged failure to assert their right because the Supreme Court has emphasized that the accused had no duty to follow up on the prosecution of their case. It is the responsibility and obligation of the Ombudsman, in view of its mandate to promptly act on all cases lodged before it, to expedite the case and act on the same within the bounds of reasonable timeliness. Further, the accused posits that it cannot be gainsaid that they suffered great prejudice because of the delay. Considering that the events that gave rise to the case transpired over a decade ago, it is understandable, and even expected, that there would be difficulty in securing and preserving evidence.

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Accused Jimenez, in her Omnibus Motion, states that the Informations should be quashed on the ground that the facts charged do not constitute an offense with respect to her. As per accused Jimenez, a perusal of the Informations reveals that she was charged with conspiring with six other accused in making a false narration of facts in the eNGAS Journal Entry Vouchers but there was no mention or even the slightest hint of her participation in the said conspiracy or the overt act that she committed that was constitutive of the crime. Apart from this, the accused questions the lack of the date of the commission of the crime. The accused asserts that the depiction of merely the year in the Informations violates her right to be informed of the nature and cause of the accusation against her. Accused Jimenez also claims that the crime of falsification has allegedly prescribed.

Accused Jimenez asserts that the length of time that the Ombudsman took to resolve the case violated her right to speedy disposition of cases warranting the outright dismissal of the present cases. According to the accused, applying the balancing test to this cases, it is clear that her right to speedy disposition was violated. First, it took the Ombudsman more than three years from the filing of the grievance form before this Court. Second, the prosecution failed to advance any reason why it took the OMB such an unreasonably long period of time before indictment. Third, the accused suffered prejudice as a result of the delay. Considering the passage of time, and the fact that she had long left MWSS, she no longer has any means to scour for any evidence or witness that she can use in her defense. In addition, she has been completely taken by surprise since she did not even know that there was an Ombudsman Complaint pending.

According to accused Polloso, it took the Office of the Ombudsman a period of close to seven (7) years in concluding its investigation and filing these cases before the Sandiganbayan, which is a clear violation of his constitutional right to speedy disposition of the case.

On the other hand, in its Consolidated Comment and/or Opposition, the prosecution denies the allegation of inordinate delay stating that mere mathematical reckoning of the time involved is not sufficient to establish inordinate delay in violation of the right of the accused to speedy disposition. The prosecution alleges that the length of the purported delay should be reckoned from the start of the preliminary investigation and not from the fact-finding phase. As per the prosecution, the accused-movants erred in reckoning the purported delay from the commencement of the investigation by the COA special audit team in 2010. Allegedly, the proper reckoning period should be from the filing of the complaint on March 21, 2014 by the Field Investigation Office (FIO) of the Office of the Ombudsman.

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The prosecution also adds that whatever delay occurred in the preliminary investigation phase was partly due to the sufficient opportunity accorded to the accused to present their side and submit their own evidence. The prosecution points out that several accused were even granted several extensions of time to submit their counter-affidavits.

As per the prosecution's own computation, counting from the filing of the Complaint by the FIO on March 21, 2014 up to the issuance of the Joint Resolution dated November 23, 2016, the entire period merely consisted of two years and eight months, which, allegedly, could hardly be considered as unreasonable delay.

As regards the claim of prejudice, the prosecution asserts that the claim of resulting prejudice without a clear factual basis is not sufficient to establish any alleged prejudice suffered by the accused-movants. Hence, the claim of accused Jimenez of prejudice due to the passage of time and that she no longer has any means to scour for evidence or witness is not sufficient to establish that she suffered prejudice.

The prosecution alleges that, contrary to the accused-movants' claims, the Informations are complete and sufficient to hold the accused liable as charged. According to the prosecution, the manner by which the Informations alleged the acts or omissions complained of was sufficient to apprise all the accused of the nature and cause of the accusation against them.

Finally, as regards prescription, the prosecution states that the records show that earnest efforts were exerted to serve the Order to file counter-affidavit to accused Jimenez at her last known address.

DISCUSSION AND RULING

In the previous Resolution promulgated on July 10, 2018, this Court found accused-movants' co-accused Miriam Fulgueras' right to speedy disposition of cases had been violated due to the unjustified length of time the OMB took to resolve the complaint against her, to wit:

After considering all four factors of the right to speedy disposition of cases, this Court finds that circumstances of these consolidated cases lead to the conclusion that the said Constitutional right to speedy disposition of cases of accused Fulgueras had been violated and, therefore, she is entitled to the dismissal of the present charges filed against her. xxx



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Upon examination of the records of these consolidated cases, this Court finds that the present accused-movants are similarly situated as accused Fulgueras and, therefore, merit the same ruling as regards the violation of their right to speedy disposition of cases.

As this Court held in its previous resolution:

The right to speedy disposition of cases is enshrined in Article III of the Constitution, which states that:

Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial or administrative bodies.

The constitutional right of speedy disposition is not limited to the accused in criminal proceedings but extends to all parties in all cases, be it civil or administrative in nature, as well as all proceedings, either judicial or quasi-judicial. In this accord, any party to a case may demand expeditious action from all officials who are tasked with the administration of justice.⁶

The Supreme Court in the case of **Rafael Coscolluela v. Sandiganbayan**⁷ and the more recent case of **Commo. Lamberto Torres v. Sandiganbayan**⁸ has reiterated that, in determining whether an accused has been deprived of the right to speedy disposition of cases, four factors must be considered: (a) length of delay; (b) reason of the delay; (c) the defendant's assertion of his right; and, lastly, (d) prejudice of the defendant. Furthermore, in the even more recent case of **Juanito Victor Remulla v. Sandiganbayan**⁹, the High Court emphasized that none of these factors is either a necessary or sufficient condition. The aforesaid four factors are related and must be considered together with other relevant circumstances. *The right to a speedy disposition of cases is a relative concept.* Each invocation of the right to speedy disposition must be approached by the courts on an *ad hoc* basis where the conduct of both the prosecution and defendant are weighed *apropos* the four-fold factors. Hence, given the

⁶ People of the Philippines v. Sandiganbayan, Fifth Division and Lt. Gen. Leopoldo S. Acot, et al. (G.R. No. 199151-56, July 25, 2016).

⁷ G.R. No. 191411, July 15, 2013.

⁸ G.R. Nos. 221562-69, October 5, 2016.

⁹ G.R. No. 218040, April 17, 2017.

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pronouncement of the Supreme Court in *Remulla*, this Court must collectively consider all four factors of the right to speedy disposition as well as other relevant peculiar circumstances present in this case, should there be any, to resolve the present motion.

Length of Delay

In the previous resolution, this Court noted that while these cases initially appear to have originated from the Office of the Ombudsman Field Investigation Office (FIO) Complaint dated March 17, 2014, a closer look at the records unveil the Office of the Ombudsman's (OMB) involvement in the earliest phases of these consolidated cases. To reiterate this Court's earlier finding, the OMB's investigation into the transactions involved in these cases date as far back as January 19, 2011. The said date was when the Commission on Audit (COA), pursuant to the Memorandum of Agreement between the COA and the OMB and to the Joint Memorandum Circular on Joint Investigations dated October 12, 2010¹⁰, formed a Special Audit Team to compose the COA Group for the Joint Investigation Team with the OMB with the purpose of conducting a joint audit of the Metropolitan Waterworks and Sewerage System (MWSS). From said date, a formal fact-finding audit investigation commenced which, under the case of *Torres*, should be tacked or reckoned with in determining the total period of delay. As this Court earlier found, in fulfillment of its mandate, the Special Audit Team formed under COA Office Order No. 2011-036 (JIT) issued COA Report No. 2011-005 on September 15, 2011 finding accused Fulgueras and herein accused-movants liable for violation of Article 171 of the Revised Penal Code. Both the Complaint and even the Joint Resolution of the OMB¹¹ finding probable cause against the accused, referred and cited COA Report No. 2011-005 using the data in the report as the foundation of the charges against accused Fulgueras and present accused-movants thereby further proving the origin of these consolidated cases. It was only on April 6, 2018 when these cases were finally filed by the OMB with this Court. Thus, from the creation of the Special Audit Team by the FIO with the OMB to the filing of the Informations by the OMB with this Court, it took the OMB more than seven years to investigate and resolve the case against the accused and, subsequently, file charges against them in court. Even if We limit the period of alleged day starting only from the filing of the complaint by the FIO on March 21, 2014 up to the filing of these cases with the Court, i.e. on April 6, 2018, it would be easily recognizable that more than four (4) years was spent on the

¹⁰ COA Office Order No. 2011-036 (JIT)

¹¹ Dated September 6, 2016.

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preliminary investigation alone, without tackling the fact-finding period. This more than four (4) years of delay by itself is unreasonable.

Reason for the Delay

In resolving accused Fulgueras' motion, this Court previously held that the right to speedy disposition is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delays. To date, the prosecution still has not succeeded in providing this Court with a plausible explanation behind the considerable delay in the investigation of these cases.

The duty to dispatch cases with efficacy and timeliness is inherent in the Ombudsman. A delay of more than seven years, such as in this case, creates a presumption that this duty has not been fulfilled and, therefore, creates a concomitant duty to justify the delay on the part of the prosecution. Therefore, this Court must find that the same is unjustified.

The Defendant's Assertion of His Right

In the previous resolution, this Court previously held that, in light of the circumstances of this case, great weight could not be given to the accused's alleged lack of objection over the delay during the preliminary investigation because the prosecution, as in *Remulla*, utterly failed to defend the OMB's inaction. On matter of accused-movants' present motions, the prosecution did not take issue as to the former's assertion of their right, which conveys to this Court the latter's lack of objection with regard to this factor. This fact, coupled with the High Court's pronouncement in *Remulla*, that there is no constitutional or legal provision which states that it is mandatory for the accused to follow up her case before her right to its speedy disposition can be recognized and the present motions in which the accused-movants asserted their right to speedy disposition, leads this Court to rule in accused's favor as regards the abovementioned factor.

Prejudice to the Defendant

The prosecution asserts that the claim of resulting prejudice without a clear factual basis is not sufficient to establish any alleged prejudice suffered by the accused. As previously held in this Court's earlier resolution, however, this Court must consider the prejudice that the accused suffered due to the prolonged delay of the OMB's investigation. This protracted period of

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uncertainty over accused-movants' criminal case caused them prejudice, living under a cloud of anxiety, suspicion and even hostility.¹²

With this Court's finding of violation of the right of the accused-movants to speedy disposition, resolution of other issues raised are rendered unnecessary.

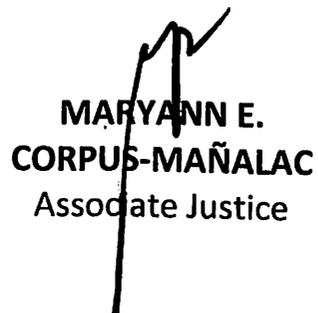
WHEREFORE, premises considered, accused-movant's motions to dismiss are hereby GRANTED. The charges against accused Amelia T. Vispo, Iris C. Mendoza, Salome T. Cuevas, Ritchelle S. Holanda-Atara, Esperanza Jimenez and Estrellito A. Polloso in SB-18-CRM-0249 to 0251 are hereby DISMISSED for violation of their right to speedy disposition of cases. The hold-departure orders issued against them are ordered recalled and set aside.

SO ORDERED.


RAFAEL R. LAGOS
Chairperson
Associate Justice

WE CONCUR:


**MARIA THERESA Y.
MENDOZA-ARCEGA**
Associate Justice


**MARYANN E.
CORPUS-MAÑALAC**
Associate Justice

¹² *Remulla, supra.*