



Republic of the Philippines
Sandiganbayan
Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on 15 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-0297, 0308, 0311, 0312, 0313, 0316, 0317, 0320, 0321 and 0324 - People vs. RODERICK MENDENILLA PAULATE, et al.

This resolves the following:

1. Accused Roderick Paulate and Vicente Bajamunde's "MOTION FOR RECONSIDERATION (Of the Resolution dated 09 July 2018)" dated July 16, 2018;¹
2. The prosecution's "OPPOSITION [Re: Motion for Reconsideration dated 16 July 2018]" dated July 23, 2018.²

TRESPESES, J.

For resolution is the Motion for Reconsideration filed by accused Roderick Mendenilla Paulate and Vicente Esquilon Bajamunde of the Resolution dated 09 July 2018³ granting the Prosecution's Motion to Expunge (the Reply dated 18 June 2018), and denying accused's Urgent Omnibus Motion to Quash/Dismiss the Criminal Informations Due to Inordinate Delay.

ACCUSED'S MOTION

On the granting of the prosecution's motion to expunge, accused argue that the Revised Guidelines on Continuous Trial in Criminal Cases

¹ *Rollo*, Vol. 2, pp. 220-231.

² *Id.* at 234-239.

³ *Id.* at 167-192.

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does not categorically prohibit the filing of a Reply. Therefore, its filing is considered permissive and as such, a party may or may not file his or her reply.

On the denial of accused's motion to quash/dismiss, accused aver that the delay of five years and 11 months is already considered inordinate. In support of their argument, accused cite the following cases: *Tatad v. Sandiganbayan*,⁴ which involves a delay of almost three years in the conduct of the preliminary investigation; *Angchangco, Jr. v. Ombudsman*⁵ and *Roque v. Office of the Ombudsman*,⁶ where the Supreme Court held that the delay of almost or more than six years in resolving the criminal charges amounted to violation of the right to speedy disposition of cases; *Coscolluela v. Sandiganbayan*,⁷ where the delay of six years amounted to violation of petitioners' right to speedy disposition of cases; *Duterte v. Sandiganbayan*,⁸ where the preliminary investigation was delayed to four years; and *Cervantes v. Sandiganbayan*,⁹ where the Supreme Court declared that there was inordinate delay when the OSP filed the Information with the Sandiganbayan only after almost six years.

Accused add that all pertinent documents were already in the possession of the prosecution since 2011, yet no explanation was given as to why the case was resolved only in 2014. It was also not shown whether the 60 alleged potential witnesses took an active participation in the preliminary investigation that contributed to the delay in the disposition of the case.

As to the assertion of right, accused invoke *Coscolluela v. Sandiganbayan*¹⁰ and *Barker v. Wingo*,¹¹ and maintain that the accused has no duty to bring himself to trial.

PROSECUTION'S OPPOSITION

The prosecution filed its Opposition and avers that accused's motion failed to point out any supposed error committed by the Court in issuing the assailed resolution.

The prosecution argues that while the Revised Guidelines on Continuous Trial in Criminal Cases does not prohibit the filing of the reply, it is still the Court which has the absolute discretion in allowing its filing. It

⁴ 242 Phil. 563-577 (1998).

⁵ 335 Phil. 766-772(1997).

⁶ 366 Phil. 568 (1999).

⁷ 714 Phil. 55-69 (2013).

⁸ 352 Phil. 557-584 (1998).

⁹ 366 Phil. 602 (1999).

¹⁰ Supra note 7.

¹¹ 407 U.S. 514 (1972).

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must be recalled that during the 25 May 2018 hearing, accused already requested for time to file reply but was denied by the Court. Instead of moving for a reconsideration of said denial or asking for leave from the Court to admit the filing of the reply, accused disobeyed the Court's Order and proceeded to file a Reply.

On the issue of inordinate delay, the prosecution asserts that the assailed Resolution already discussed why the cases cited by accused are inapplicable to the instant case.

The prosecution further argues that the length of delay is not the only factor to be considered in determining whether there is inordinate delay. It alleges that while the documents were available, they were however voluminous thus, entailing a considerable amount of time to study. Also, considering that there were 60 alleged ghost employees, they had to verify their existence, necessitating an on-site visit to various barangays where they were allegedly residing. They had to secure from the Philippine Statistics Office copies of the birth certificates of the alleged employees. The investigating panel also had to cross-check with the National Bureau of Investigation as to their existence. All these factors contributed to the time it took to conclude the preliminary investigation.

The prosecution likewise asserts that the assailed Resolution already discussed why the cases cited by accused are inapplicable to the instant case.

RULING

We **deny** accused's Motion for Reconsideration for lack of merit.

On the motion to expunge

At the outset, the prosecution correctly points out that accused's request for time to file reply has already been denied during the hearing on the motion to quash/dismiss held on 25 May 2015, the pertinent portion of the transcript of stenographic note reads:

AJ JACINTO

Anything to add to your motion?

ATTY. LIBATIQUE

We will just have to ask for the same period, your Honor.

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PROSEC.TAN

Your Honor, we will be objecting to that, this is already a 58-page motion, your Honor.

AJ TRESPESSES

No more, no more.

CHAIRPERSON

It's contrary to the Revised Guidelines.

AJ TRESPESSES

We'll just give them twenty (20) days to file their comment and/or opposition, thereafter, it will be deemed submitted for resolution.

And then, we'll just have a tentative setting, whatever the outcome of the resolution.

Accused did not move for reconsideration of the denial of the filing of reply thus, warranting its expungement from the records.

Also, it must be pointed out that the motion to quash/dismiss has already been resolved in the Resolution dated 09 July 2018. Hence, the question of whether or not to admit accused's Reply (to the Comment filed by the prosecution on the motion to quash/dismiss) has already become moot and academic. The issue having ceased to present a justiciable controversy, a determination thereof would be without practical value and use.¹² Accordingly, the admission of accused's Reply at this point must be denied as it will serve no other purpose.

On the motion to quash/dismiss

The arguments raised by accused with respect to the reconsideration of their motion to quash/dismiss likewise failed to persuade. Notably, they merely replead the same arguments advanced in their motion to quash/dismiss which had been sufficiently considered and passed upon in the assailed Resolution. Thus, the Court maintains its findings that there was no violation of accused's right to speedy disposition of cases.

¹² *Funa v. Agra*, 704 Phil. 205-235 (2013).

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It is settled that the concept of speedy disposition is relative or flexible. A mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case.¹³ It is the peculiarity of the case that necessitates the courts to adopt the balancing test. It bears reiterating that in *Remulla v. Sandiganbayan (Second Division)*,¹⁴ which we cited in the assailed resolution, the Supreme Court held:

More than a decade after the 1972 leading U.S. case of *Barker v. Wingo* was promulgated, this Court, in *Martin v. Ver*, began adopting the "balancing test" to determine whether a defendant's right to a speedy trial and a speedy disposition of cases has been violated. *As this test necessarily compels the courts to approach such cases on an ad hoc basis, the conduct of both the prosecution and defendant are weighed apropos the four-fold factors, to wit: (1) length of the delay; (2) reason for the delay; (3) defendant's assertion or non-assertion of his right; and (4) prejudice to defendant resulting from the delay.* None of these elements, however, is either a necessary or sufficient condition; they are related and must be considered together with other relevant circumstances. *These factors have no talismanic qualities as courts must still engage in a difficult and sensitive balancing process.* (emphasis supplied)

It must be emphasized that each case is unique and thus, cases must be decided based on their distinct facts and circumstances.

In this case, after weighing the four factors, the Court finds the length of time it took to complete the preliminary investigation reasonable as there was no showing that the delay in the proceedings was attended by vexatious, capricious and oppressive acts on the part of the Ombudsman. The Court notes the explanation given by the prosecution: that the case involves at least 60 employees whose existence needs to be investigated and verified; and that the documents which have to be examined and evaluated are voluminous. These reasons are acceptable, as they are deemed reasonable and logical.

In addition, accused failed to refute the prosecution's claim that they filed several motions for reconsideration and supplemental motion for reconsideration during the preliminary investigation, thus adding to the number of days to the computation of the period.

It is also undisputed that accused did not assert their right to speedy disposition of cases before the Ombudsman. To justify their inaction,

¹³ *People v. Sandiganbayan (Fifth Division)*, G.R. Nos. 199151-56, 25 July 2016.

¹⁴ G.R. No. 218040, 17 April 2017.

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accused invoke *Coscolluela*¹⁵ and aver that a respondent has no duty to follow up his case in preliminary investigation. It should be noted, however, that the right to speedy disposition, just like any other right conferred by the Constitution or statute, except when otherwise expressly so provided, may be waived when not positively asserted. Such failure on the part of accused constitutes waiver of their right to speedy disposition of cases against them. As such, accused cannot now seek protection of the law to benefit from what they now consider the adverse effect of their own conduct in the case.

The foregoing circumstances give peculiarity to the present case which sets it apart from the cases cited by accused. Thus, in the assailed Resolution, this Court discussed why the circumstances in the cases cited by accused do not apply to the instant case. In this regard, it is well to restate herein the pertinent portion of the assailed resolution:

In *Tatad v. Sandiganbayan*, the cases against petitioner therein remained dormant for almost three years. In declaring that the long delay violated the right of petitioner to speedy disposition of the cases against him, the Supreme Court considered three factors: 1) the political motivation which played a vital role in activating and propelling the prosecutorial process; 2) there was a departure from established procedures prescribed by law for the conduct of a preliminary investigation; and 3) the long delay in resolving the preliminary investigation could not be justified on the basis of the records.

The circumstances present in *Tatad*, which justified the application of the "radical relief" are not present in *Trenas* case, and more so in the instant case.

The several cases invoked by accused-movants, which they claim are applicable to the instant case also do not help persuade this Court to rule in their favor.

In *Anchangco*, the delay was close to six years despite several motions for early resolution filed by Angchangco. Also, during those periods, Angchangco was deprived of his retirement benefits. The prejudice to the accused as a result of the delay in this case is concrete.

On the other hand, in *Duterte*, the petitioners were denied the right to a preliminary investigation because they were not served with copies of the complaint-affidavit. They were also not given the opportunity to file their counter-affidavits, since they were merely ordered to file Comment instead of counter-affidavit. As such, they were not aware that a preliminary investigation was being conducted against them. Effectively, this deprived them of the constitutional right to be apprised of the charges against them by the State.

In *Roque v. Office of the Ombudsman* the delay of more or less six (6) years in resolving the criminal charges against the petitioners

¹⁵ Supra note 7.

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therein amounted to a violation of their constitutional rights to due process and to a speedy disposition of the cases against them. In the said case, the Ombudsman did not give an explanation why it took them almost six years to resolve the Complaints against petitioners. Clearly, the prejudice here was established.

In *Almeda v. Office of the Ombudsman (Mindanao)*, the preliminary investigation proceedings in said case took more than 11 long years to resolve. The delay therein was caused by the repeated indorsement of the Ombudsman and the OSP, which may be attributed to the Ombudsman's failure to realize that the petitioner was not under the jurisdiction of the OSP or the Sandiganbayan. While in *Torres v. Sandiganbayan (First Division)*, the Ombudsman took 16 years in the conduct of the preliminary investigation. Again, the length of time it took for the Ombudsman to conduct its preliminary investigation is capricious and oppressive.¹⁶

*Coscolluela*¹⁷ and *Cervantes*¹⁸ also do not apply to the instant case. In *Coscolluela*, the Ombudsman could not give sufficient justification why it took six years before it approved the resolution of the graft investigator. In *Cervantes*, the delay was not sufficiently explained. These circumstances do not obtain in the instant case.

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

WHEREFORE, premises considered, the Motion for Reconsideration filed by accused Roderick Mendenilla Paulate and Vicente Esquilon Bajamunde is **DENIED** for lack of merit. Consequently, let the arraignment and pre-trial proceed on **31 August 2018 at 8:30 in the morning at the Fourth Division Courtroom.**

SO ORDERED.

Quezon City, Philippines.


ZALDY V. TRESPESES
Associate Justice

¹⁶ Rollo, Vol. 2, pp. 184-186 (Resolution dated 09 July 2018, pp. 18-20).

¹⁷ Supra note 7.

¹⁸ Supra note 9.

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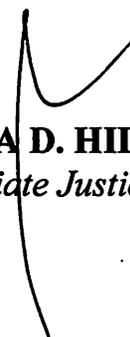
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WE CONCUR:


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


GEORGINA D. HIDALGO
Associate Justice

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