

REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

Fifth Division

PEOPLE OF THE PHILIPPINES,

Plaintiff,

SB-18-CRM-0336

- versus -

FOR: Violation of Sec. 3 (e) of
R.A. No. 3019, as amended

LUIS R. VILLAFUERTE, SR., *et al.*,
Accused.

Present:

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

Promulgated:

August 06, 2018 *lal*

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RESOLUTION

LAGOS, J.:

For the Court's consideration is the prosecution's July 11, 2018 *Motion for Reconsideration (On the Court's Resolution dated July 4, 2018)*.¹ In the said July 4, 2018 Resolution,² the Court granted herein accused Luis R. Villafuerte, Sr., Mario T. Alicaway, Jennifer B. Uy, and Leticia L. Aliorde's separate motions to dismiss in this case, which were all grounded on the Office of the Ombudsman's violation of their constitutional right to speedy disposition of cases.

Per its motion for reconsideration, "With due respect, the prosecution implores the indulgence of the Honorable Court to take a second look and to reconsider its findings in light of the following circumstances. First, that there was already a finding of probable cause among all the accused. It is thus respectfully argued that the State may not be deprived outright of the opportunity to fairly indict criminals. Second, while there may have been delay at the preliminary investigation stage, the same is not vexatious,

¹ Records, Vol. 2, p. 276; italics supplied, underscoring in the original.

² *Id.*, p. 232-249.

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capricious or oppressive. The delay[,] if any, is justified;³ that “[w]hat happened in this case, specifically the perceived delay could not be said to be willful on the part of the Office of the Ombudsman or was made to embarrass or annoy the accused”;⁴ that, “[a]t the **risk of being repetitive**, the prosecution respectfully begs the Honorable Court to pass anew the discussions mentioned above in applying the ‘*balancing test*’ to determine inordinate delay. It is humbly submitted that considering the peculiar circumstances to this case, the length and the reason for the delay at the preliminary investigation stage is reasonable and justified.”⁵ (Bold type supplied; italics in the original.)

Accused Uy, Alicaway and Aliorde filed their joint *Objections to Special Prosecutor’s Motion for Reconsideration of the Dismissal of the Instant Case*,⁶ dated July 19, 2018, contending, among other things, that “the Office of the Special Prosecutor focused merely on the period of the Preliminary Investigation by separating the fact-finding investigation period”, yet “there is still a clear violation of the constitutional right to speedy disposition of this case because the filing of the complaint that triggered the preliminary investigation period started on June 11, 2011 and[,] up to the filing of the information with the Sandiganbayan on April 27, 2018, a period of six (6) years, nine (9) months and twenty (20) days have elapsed which thereby still constitute a gross inordinate;” Quoting from *Torres vs. Sandiganbayan*, G.R. No. 221562-69, October 5, 2016, they maintain that “[t]he **lapse of time** in the conduct of the proceedings is tantamount to a **vexatious, capricious, and oppressive delay** which we find to be a violation of (Petitioner’s) Constitutional right to a speedy disposition of cases.” (Emphasis in the original.)

Accused Villafuerte, Sr. filed his *Comment/Opposition [Re: Motion for Reconsideration dated July 11, 2018]*,⁷ dated July 30, 2018, assailing the prosecution’s motion for reconsideration as “bereft of any compelling reason to warrant a reconsideration.” Against the prosecution’s argument that “State may not be deprived outright of the opportunity to fairly indict criminals,” he counters that, “First, the right of the State to prosecute and fairly indict criminals was never, and is not being questioned by accused Villafuerte, Sr. The prosecution, however,...has failed to provide the Honorable Court with any reasonable explanation why it should give primacy to the right of the State to prosecute over and above the constitutional right of accused Villafuerte, Sr. given the Prosecution’s clear violation of the latter’s right to a speedy disposition of his case.” In addition, he submits that, “...[T]he vague invocation by the Prosecution that the case is ‘technical in nature’...is a general averment which does not effectively explain the reason for the

³ Records, Vol. 2, *Motion for Reconsideration*, par. 3, p. 277.

⁴ *Id.*, par. 9, p. 278.

⁵ *Id.*, par. 14, p. 279.

⁶ *Id.*, p. 292.

⁷ *Id.*, p. 320.

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delay of eleven (11) years by the Ombudsman. Certainly, mere allegation is not equivalent to proof.”⁸ He urges the Court to consider, “it is crucial to point out that the eleven (11)-year delay puts the defense at a great disadvantage in terms of procuring their evidence, both testimonial and documentary.”

After due consideration, the Court finds the prosecution’s *Motion for Reconsideration* without merit.

The motion presents no substantial argument or cogent reason to warrant a reconsideration or modification of the Court’s resolution. With respect to the issue of probable cause raised by the prosecution, the Office of the Ombudsman or the Court’s earlier finding thereof in this case cannot be a bar to the accused’s claim of violation of their constitutional right to speedy disposition of cases guaranteed under Art. III (Bill of Rights), Sec. 16, of the Constitution.⁹ Such argument is “mixing apples and oranges.” First off, as explained in *Sec. De Lima vs. Reyes*, G.R. No. 209330, January 11, 2016, citing *People vs. Castillo and Mejia*:

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There are two kinds of determination of probable cause: executive and judicial. The **executive determination of probable cause** is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. *Whether or not that function has been correctly discharged by the public prosecutor, i.e., whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.*

The **judicial determination of probable cause**, on the other hand, is one made by the judge to ascertain whether a **warrant of arrest** should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant. The courts do not interfere with the prosecutor’s conduct of a preliminary investigation. The prosecutor’s determination of probable cause is solely within his or her discretion. Prosecutors are given a wide latitude of discretion to determine whether an information should be filed in court or whether the complaint should be dismissed. (Italics in the original; bold type supplied.)

⁸ Citing *De Jesus vs. Guerrero III*, 598 SCRA 341 (2009).

⁹ Article III, Sec. 16. “All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

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From the foregoing, it is clear that the determination of probable cause, whether executive or judicial, has its own domain, scope and purpose, much different and distinct from the cause, object and remedial purpose of a **motion to dismiss**, such as the ones filed by herein accused that was the subject of the Court's July 4, 2018 Resolution. It is well-settled that "[t]he determination of probable cause by the prosecutor is for the purpose different from that to be made by the judge. The **prosecutor** determines whether or not there is a reasonable ground to believe that the accused is guilty of the offense charged and should be held for trial for which an information is to be filed. The **judge**, on the other hand, determines whether a warrant of arrest should be issued so that the accused may be held in custody in order not to frustrate the ends of justice."¹⁰ The prosecution passes upon whether there is reasonable ground to believe that the accused is guilty of the offense charged and should be held for trial. The judge, on the other hand, determines whether a warrant of arrest should be issued against the accused, i.e, whether there is necessity for placing the accused under immediate custody in order not to frustrate the ends of justice.¹¹

Jurisprudence is clear that the power of disposition over a criminal case — such as its continuation or its dismissal or the exclusion of an accused — is reposed in the sound discretion of the trial court.¹² In this instance, the finding of probable cause by the Office of the Ombudsman, or by the Court itself, cannot infringe on or have any bearing on the Court's determination and the finding of inordinate delay in its July 4, 2018 Resolution, vis-à-vis the accused's motions to dismiss that their rights under the constitution have been violated. The Court is not estopped and the prosecution has not offered any authority to convince the Court to rule otherwise.

Likewise, the prosecution's claim that "the State may not be deprived outright of the opportunity to fairly indict criminals," which in essence pertains to the accused herein, is untenable. The people facing charges in this case should be more appropriately referred to as "accused," and they should not be simply labeled, or maybe out of convenience, called as "criminals." Whatever happened to the "presumption of innocence," also guaranteed under the Constitution, and the requisite "guilt beyond reasonable doubt" ingrained in our criminal justice system? As quoted in the Court's July 4, 2018 Resolution, "...[I]n 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."¹³

As duly noted in the July 4, 2018 Court's Resolution:

¹⁰ Florenz D. Regalado, Remedial Law Compendium, Vol. II, (11th ed.), p. 397.

¹¹ Oscar M. Herrera, Remedial Law, Vol. IV (2007 ed.), p. 353.

¹² <https://lawyerphilippines.org/2015/10/26/the-trial-courts-inherent-authority-to-dismiss-a-criminal-case/>; (viewed on August 1, 2018).

¹³ Records, Vol. 2, Resolution, p. 249, citing *Allado vs. Diokno*, 232 SCRA 210.

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There may be various documents involved, such as the Purchase Request (PR), Purchase Order (PO), Disbursement Voucher (DV); Sales Invoice (SI), Delivery Receipt (DR), and Acceptance and Inspection Report (AIR), but they cannot be considered numerous, much less voluminous. What complex issues were there, outside of the “negative” allegations of fact that there was no public bidding or “justification for the resort to direct contracting mode of procurement”, for purposes of finding probable cause in this case? Did it require such an inordinate amount of time to just verify the signatures of the accused on the various documents involved?

Based on what appears to be a thorough fact-finding investigation and the Complaint *cum* detailed report of the FIO, there were no other material facts or circumstances as to warrant the delay in the preliminary investigation of this case.¹⁴

As held by the Court:

Based on the peculiar facts and circumstances in this case, the Court finds that the length of time consumed during the Ombudsman’s conduct of the fact-finding and preliminary investigations in this case is inexorably inordinate....¹⁵

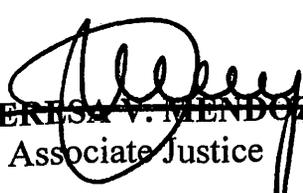
The prosecution’s plea that “considering the peculiar circumstances to this case, the length and the reason for the delay at the preliminary investigation is reasonable and justified,” is a rehash of the arguments raised and already ruled upon by the Court in its July 4, 2018 Resolution. The Court had judiciously considered and applied, on the “peculiar circumstances” of this case, each of the four (4) factors given in the “balancing test,” and there is no compelling reason for the Court to detract from its previous findings or reconsider its July 4, 2018 Resolution.

WHEREFORE, premises considered, the prosecution’s *Motion for Reconsideration* dated July 11, 2018 is **DENIED** for lack of merit.

SO ORDERED.


RAFAEL R. LAGOS
Associate Justice
Chairperson

WE CONCUR:


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice


MARYANN E. CORPUS-MAÑALAC
Associate Justice

¹⁴ Records, Vol. 2, Resolution, p. 245.

¹⁵ *Id.*, p. 241.