REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

Fifth Division

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**SB-18-CRM-0249 to 0251** For: Article 171 of the Revised Penal Code or Falsification of Public Documents
- versus -	
ESTRELLITO A. POLLOSO, et al., *Accused.*	Present: **LAGOS, *J.*, *Chairperson,* MENDOZA-ARCEGA and CORPUS-MAÑALAC, *JJ.*** **Promulgated:** September 07, 2018

x----------x

RESOLUTION

LAGOS, J.:

For resolution of this Court is the prosecution's Motion for Reconsideration[1] of this Court's July 10, 2018 Resolution and accused Miriam Fulgueras' Opposition[2]. In the assailed resolution, this Court dismissed the charges against accused Fulgueras on account of violation of her right to speedy disposition of cases.

The prosecution submits that the circumstances surrounding the proceedings before the Office of the Ombudsman (OMB) warrants a reconsideration of the Resolution dated July 10, 2018. First, the prosecution alleges that the finding of delay of seven years is not supported by the facts. The prosecution posits that January 19, 2011 is not the correct reckoning period of the delay. As per the prosecution, while the Commission on Audit (COA) issued Office Order No. 2011-036 (JIT) on January 19, 2011, the same merely designates the COA officials and personnel who would compose the team which will conduct a joint audit investigation with the investigators of

---

[1] Records, Vol. II, pp. 415-427.
[2] Records, Vol. II, pp. 481-485.

the OMB. Allegedly, the second paragraph of COA Office Order No. 2011-036 is crucial as it lays down the mechanics of its actual implementation, including the assignment of tasks between the COA and the OMB. The paragraph, as quoted by the prosecution, states as follows:

> "The team shall complete the field work, prepare the audit highlights and conduct exit conference with management within twenty (20) working days. Thereafter, it shall submit a report thereon to the Chairman, this Commission, through the Director, Fraud Audit and Investigation Office (FAIO), Legal Services Sector (LSS). A certified copy of the report shall be furnished the Office of the Ombudsman for the Preparation of the JIT."

The prosecution points out that the "team" referred to in the abovequoted paragraph refers to the designated COA officers and personnel, namely, Nelia C. Villeza, Filomena Ilagan, Jocelyn Nokom, Ricelyn Barcelona, Donabelle Samson, Sharon Lee Guntang and Eduardo Acosta. Allegedly, it is this team which shall and actually did "complete the field work, prepare the audit highlights and conduct exit conference with management within twenty (20) working days."

The prosecution submits that a letter of the former COA Chairperson Ma. Grace Pulido Tan addressed to Ombudsman Conchita Carpio Morales would show that the report of said team dated September 15, 2011 was only received by the Office of the Ombudsman on January 12, 2012, a full year after the issuance of COA Office Order No. 2011-036.

The prosecution likewise notes that, in the same COA letter, former COA Chairperson Pulido Tan also stated that the Office of the Ombudsman is also being furnished a copy of the "Administrative Investigation Report of the Fraud Audit and Investigation Office, which also treats of the same subject matter, with the request that both reports be considered jointly for appropriate criminal investigation." The Administrative Investigation Report mentioned in the letter pertains to an earlier Report[3] dated June 24, 2010 submitted by a fact-finding team of the Fraud Audit and Investigation Office created in compliance with COA Office Order No. 2009-528 dated July 21, 2009[4].

---

[3] Annex B, Complaint dated May 20, 2014 docketed as OMB-C-C-14-0285 entitled FIO v. Norberto Cabibihan, et al.

[4] Annex A, Complaint dated May 20, 2014 docketed as OMB-C-C-14-0285 entitled FIO v. Norberto Cabibihan, et al.

The prosecution claims that, with the transmittal of the COA Report dated September 15, 2011 together with the earlier Report dated June 24, 2010, the OMB faced an enormous task of dealing with consolidated cases involving a complex issue, numerous parties and immense number of documentary evidence.

The prosecution submits that there is sufficient basis to warrant a reconsideration of the Resolution dated July 10, 2018 insofar as the ruling that the fact-finding audit investigation conducted by the COA (pursuant to COA Office Order No. 2011-036 issued on January 19, 2011) should be tacked or reckoned with in determining the total period of delay. The prosecution, instead, asserts that the internal investigation conducted by the COA should be deemed a distinct phase in the sequence of events in the instant case since it should be borne in mind that members of the COA Resident Audit Team of the MWSS were also involved in the controversy and had to face the investigation carried out by the COA Proper which has administrative jurisdiction over its personnel who were implicated in the controversy. Therefore, as per the prosecution's theory, the fact-finding aspect of these cases should not be reckoned from January 19, 2011, but, at the very least, from the time the official copy of the COA Report was transmitted to the Office of the Ombudsman on January 12, 2012 reducing the computed length of time to six years instead of seven but the prosecution still maintains the position that the proper reckoning period is from the filing of the Complaint by the Field Investigation Office on March 21, 2014.

According to the prosecution, the records of these cases shows the following material dates:

> May 19, 2014 - Order dated May 19, 2014 was issued directing all the respondents in OMB-C-C-14-0138 and OMB-C-C-14-0139 to file their respective counter-affidavits within ten days from receipt of the said Order.
>
> June 5, 2014 to July 30, 2014 – Submission of Counter-Affidavits of various respondents in OMB-C-C-14-0138 and OMB-C-C-14-0139
>
> September 12, 2014 – Submission of Supplemental Counter-Affidavit of Janet Nacion
>
> April 1, 2016 – the Office of the Ombudsman received a handwritten letter from Evangeline C. Sison and Nymia M. Cabantug requesting for a copy of the Complaint Affidavit in

OMB-C-C-14-0138 and OMB-C-C-14-0139 and Order dated May 19, 2014.

April 14, 2016 – the Office of the Ombudsman received a Motion for Extension of Time to File Counter-Affidavit dated April 11, 2016 from Evangeline C. Sison and Nymia M. Cabantug.

April 29, 2016 - Evangeline C. Sison and Nymia M. Cabantug filed their Joint Counter-Affidavit.

September 6, 2016 – Graft Investigator C. Labor-Lay-At issued the draft Joint Resolution in OMB-C-C-14-0138, OMB-C-C-14-0139 and OMB-C-C-14-0285.

November 23, 2016 – Ombudsman Conchita Carpio Morales approved and signed the Joint Resolution.

July 31, 2017 – a Joint Order was issued which Denied the following Motions for Reconsideration filed by:

(1) Janet Nacion;
(2) Estrellito Polloso, Iris Mendoza, Ritchelle Hollanda-Atara and Salome Cuevas;
(3) Miriam Fulgueras;
(4) Merly Figueras Jaro;
(5) Evelinda Pinto;
(6) Evangeline Sison;
(7) Efren Ayson, Vilma Tiongson, Lilia Ronquillo, Godofredo Villegas, Pacita Velasquez;
(8) Norberto Cabibihan; and
(9) Anna Liza Galindo.

The prosecution concludes that the abovementioned sequence of events shows that these cases involve numerous parties which the Court failed to take into account in its Resolution dated July 10, 2018. The prosecution emphasizes that the numerous respondents filed their respective counter-affidavits on various dates and that many of them even asked for and were granted extensions of time thereby prolonging the preliminary investigation process.

Further, there are other circumstances that are beyond the control of the OMB that nevertheless caused delay according to the prosecution. The prosecution specifically cites the Process Server's Return dated May 30, 2014 which shows that Evangeline Sison could not be located at her official

address. As stated above, Evangeline Sison and Nymia Cabantug were only able to submit their Joint Counter-Affidavit on April 29, 2016.

In sum, the prosecution asserts that whatever perceived delay was incurred by the OMB during the fact-finding aspect and preliminary investigation of these cases, it was largely due to the numerous personalities involved in these consolidated cases who were afforded sufficient opportunity to be heard and to submit controverting evidence. Moreover, while there may have been perceived delay, the same is not vexatious, capricious or oppressive. The delay, if any, was justified by the sheer number of parties and the complexities of the issues involved.

Lastly, the prosecution invites this Court to revisit its application of ***Remulla v. Sandiganbayan and Maliksi***[5] in light of the ruling of the Supreme Court in ***Republic v. Sandiganbayan***[6] where the latter cited ***Remulla*** in its application of the balancing test.

In her Opposition, accused Fulgueras asserts that the dismissal of a case for violation of the accused's right to speedy disposition of cases or speedy trial amounts to an acquittal and is immediately final and executory.[7] Thus, a reconsideration thereof would constitute a violation of the accused's right against double jeopardy. On this score alone, the accused asserts that the motion of the prosecution should be dismissed outright consistent with this Court's rulings in ***People v. Mercado*** (Resolution dated June 26, 2018 in SB-18-CRM-0138 and 0139) and ***People v. Estrella*** (Resolution dated February 18, 2018 in SB-17-CRM-0674 to 0676 and the Supreme Court's ruling in ***People v. Judge Hernandez*** (531 Phil. 289).

Furthermore, the accused alleges that the prosecution failed to sufficiently point at specific errors in this Court's resolution. Allegedly, the arguments in the motion are mere rehash of the prosecution's arguments in their Opposition dated June 11, 2018 and were already rejected by the Court in the assailed Resolution.

The accused likewise adds that the motion of the prosecution lacks merit and should still be denied. According to the accused, while the prosecution claims that the Ombudsman only incurred a delay of six (6) years because the audit investigation conducted by the special audit team pursuant to COA Office Order No. 2011-036 issued on January 29, 2010 should be excluded from the computation, the accused asserts that there is

---

[5] G.R. No. 218040, April 17, 2017.
[6] G.R. No. 232197-98, April 16, 2018.
[7] Accused cites the case of Wilfred N. Chiok v. People of the Philippines and Rufina Chua, G.R. No. 179814, December 7, 2015.

no reason to exclude the same. The accused points out that it is settled that the period of the fact-finding investigation should be included in the computation as an accused's right to speedy disposition of his cases also extends to all cases, including civil and administrative, and in all proceedings, judicial and quasi-judicial.

Even assuming the audit investigation of the special investigation team were to be excluded, the accused asserts that a delay of six years still warrants the dismissal of the case. The accused cites ***Angchangco v. Ombudsman*** (268 SCRA 301 [1997]) and ***Roque v. Ombudsman*** (307 SCRA 104 [1999]). According to the accused, in those two cases, the Supreme Court held that the inordinate delay of six years was violative of the accused's right to speedy disposition of cases. The accused adds that, in ***People v. Sandiganbayan*** (G.R. No. 188165, December 11, 2013), the Supreme Court even sustained the Sandiganbayan's ruling quashing the Information and dismissing the case on account of inordinate delay of five years and five months.

The accused submits that the excuse of the prosecution that the consolidated cases involve a complex issue, numerous parties and immense number of documentary evidence does not excuse the Ombudsman from performing its duties. Allegedly, the Joint Resolution dated September 6, 2016 of the Ombudsman finding probable cause against the accused for Falsification of Public Documents show that the same was merely lifted from the special audit team's report. It also appears, as per the accused, that the Ombudsman did not even make its own thorough investigation for failing to consider that the COA itself cleared and excluded the accused from liability. The submissions by the other respondents which were cited by the prosecution are also not indispensable to the Ombudsman's duty and capability to resolve the complaint.

On the assertion of accused's right, the accused stresses that it is the Constitutional duty of the Ombudsman to speedily resolve the case regardless of whether or not the accused objects to the delay, provided that the delay was not due to causes directly attributable to the latter.

Finally, the accused emphasizes that it cannot be denied that she has suffered great prejudice. Considering that the transactions involved in these cases transpired between 2006 to 2008 or at least ten to twelve years ago, there will be difficulty in securing documentary and testimonial evidence. The prosecution also cannot downplay the agony and anxiety suffered by the accused as she had to endure the prosecution of this case despite having been exculpated by COA as early as 2013.

RULING

The prosecution posits that January 19, 2011 is not the correct reckoning period of the delay. As per the prosecution, while the Commission on Audit or COA issued Office Order No. 2011-036 (JIT) on January 19, 2011, the same merely designates the COA officials and personnel who would compose the team which will conduct a joint audit investigation with the investigators of the OMB. The prosecution theorizes that the acts of the COA team designated by the said office order, specifically, the field work, the preparation of the audit highlights and the conduct exit conference are acts which cannot be connected to the OMB as to commence the reckoning period of the investigation against the accused.

This reckoning, the prosecution claims, only occurred with the transmittal of the COA Report[8] together with the earlier Administrative Investigation Report of the Fraud Audit and Investigation Office Report[9], on January 12, 2012, a full year after the issuance of COA Office Order No. 2011-036 and even thereafter the OMB faced an enormous task of dealing with consolidated cases involving a complex issue, numerous parties and immense number of documentary evidence.

The prosecution's novel theory reduces the computed length of time to six years instead of seven. However, the prosecution still maintains the position that the proper reckoning period is from the filing of the Complaint by the Field Investigation Office on March 21, 2014.

Upon consideration of the prosecution's position as to the alleged correct reckoning date, this Court finds that the same fails to persuade. As mentioned by the prosecution, COA Office Order No. 2011-036 (JIT) designates the COA officials and personnel who will compose the team which will conduct a **joint audit investigation** with the investigators of the OMB. A plain and simple reading of the office order imparts the cooperative and, indeed, **joint nature** of the efforts of COA and the OMB in investigating the anomalous transactions that ultimately became the subject of these cases. As it is a joint endeavor, the OMB cannot sever and disavow the phase of the investigation that was conducted by the COA team.

Assuming for the sake of argument that the period of delay is reckoned from the receipt of the OMB of the COA Report, the same is still six long years, an unreasonably lengthy period of time even considering the number of respondents and the complexity of the issues involved. As accused Fulgueras pointed out, the reasons cited by prosecution for the delay the do

---

[8] Dated September 15, 2011.
[9] Dated June 24, 2010.

not excuse the Ombudsman from performing its duties in a timely manner. In the same vein, the difficulty of locating a respondent and the belated submission of a counter-affidavit of the same does not negate the OMB's duty to resolve the complaint with dispatch. These complications, while inconvenient, are neither extraordinary nor exceptional as to justify such a lengthy delay as in these cases.

Lastly, the prosecution invites this Court to revisit its application of ***Remulla v. Sandiganbayan and Maliksi***[10] in light of the ruling of the Supreme Court in ***Republic v. Sandiganbayan***[11] where the latter cited ***Remulla*** in its application of the balancing test.

The prosecution again fails to persuade. The case in ***People of the Philippines v. Sandiganbayan (Fourth Division), Alejandro E. Gamos, and Rosalyn G. Gile***[12] involves a whole set of facts distinct and unique to that case. In fact, as highlighted in that case, the Supreme Court has held that the right to speedy disposition is a flexible concept. Particular and due regard must be given to the facts and circumstances peculiar to each case. The facts and circumstances of the case at bar simply do not justify such a long period of delay of seven years given that the Complaint of the FIO and the Joint Resolution of the OMB finding probable cause against the accused heavily cited COA Report No. 2011-005.

Considering the failure of the prosecution to justify the length of delay, the doctrine in ***Remulla*** still holds true. Applying the balancing test, the failure of the prosecution to justify the delay of seven years still outweighs the accused's the lack of follow-ups with the OMB and the Constitution requires no such condition for the invocation of the right to speedy disposition of cases.

In any case, aside from the failure of the prosecution to provide a plausible reason for this Court to reconsider its previous ruling, the motion for reconsideration of the prosecution must be denied on the ground of double jeopardy. A dismissal grounded on the denial of the right of the accused to speedy trial has the effect of acquittal that would bar further prosecution of the accused for the same offense[13]. While the right of the accused to speedy trial guaranteed under Section 14 par. (2), and the right of the accused to speedy disposition of the case, enshrined under Section 16, Article III of the 1987 Constitution, are two separate constitutional concepts, the two are used interchangeably in a long line of decisions of the Supreme

---

[10] G.R. No. 218040, April 17, 2017.
[11] G.R. No. 232197-98, April 16, 2018.
[12] G.R. Nos. 232197-98, April 16, 2018.
[13] Atty. Segundo Bonsubre Jr. v. Edwin Yerro, et al. (G.R. No. 205952, February 11, 2015).

Court since both are intertwined as a judicial process and in its operative effects in case of violation. Akin to the right to speedy trial, the salutary objective of the right to speedy disposition of cases is to ensure that an innocent person may be free from the anxiety and expense of litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose.[14] Thus, as the violation of the right to speedy trial results in an acquittal, the same must be held in this instance where the right of the accused to speedy disposition of cases was violated.

In *Marcos v. Sandiganbayan*,[15] the Supreme Court had the following discussion:

> "xxx To remand the case to the Sandiganbayan will not sit well with her constitutional right to its speedy disposition. Section 16, Article III of the Constitution assures "all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies." This right expands the right of an accused to have a speedy, impartial, and public trial..." in criminal cases guaranteed by Section 14(2) of Article III of the Constitution. It has a broadening effect because Section 16 covers the periods before, during and after trial whereas Section 14(2) covers only the trial period. Heretofore, we have held that an accused should be acquitted when his right to speedy trial has been violated. xxx
>
> xxx xxx xxx
>
> The rationale for both Section 14(2) and Section 16 of Article III of the Constitution is the same: 'justice delayed is justice denied.' **Violation of either section should therefore result in the acquittal of the accused**." (Emphasis supplied; footnotes omitted).

The 1987 Constitution likewise provides, in Section 21, Article III, that:

> **Section 21. No person shall be twice put in jeopardy of punishment for the same offense. x x x**

---

[14] Rafael L. Coscolluela v. Sandiganbayan (G.R. No. 191411, July 15, 2013).
[15] G.R. No. 126995 (Resolution), 06 October 1998. This resolved a motion for reconsideration of a decision that was issued by the Court's Third Division (See Dans v. People, G.R. No. 127073 & 126995, 29 January 1998).

In accordance with the abovesaid constitutional provision, as a rule, a judgment of acquittal cannot be reconsidered because it places the accused twice in jeopardy for an offense which he has already been absolved. In criminal cases, the full power of the State is ranged against the accused. If there is no limit to attempts to prosecute the accused for the same offense after he has been acquitted, the infinite power and capacity of the State for a sustained and repeated litigation would eventually overwhelm the accused in terms of resources, stamina, and the will to fight.[16]

A motion for reconsideration after an acquittal is possible only on exceptional and narrow grounds as in cases when the court gravely abused its discretion, resulting in loss of jurisdiction, or when a mistrial has occurred. In any of such cases, the State may assail the decision by special civil action of *certiorari* under Rule 65.[17]

In the case at bar, the prosecution did not invoke either exception to the prohibition against double jeopardy nor is this Court the venue for the same. That remedy lies with the Supreme Court. Consequently, this Court is therefore constrained to deny the prosecution's motion lest it runs afoul of the Constitution.

WHEREFORE, premises considered, the prosecution's Motion for Reconsideration is hereby DENIED for lack of merit.

SO ORDERED.

RAFAEL R. LAGOS
Chairperson
Associate Justice

WE CONCUR:

MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

MARYANN E. CORPUS-MAÑALAC
Associate Justice

---

[16] Antonio Lejano v. People of the Philippines (G.R. No. 176389, January 18, 2011).
[17] Lejano, *supra*.