

**SANDIGANBAYAN
QUEZON CITY**

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

YUSOPH B. MAMA,
Accused.

SB-18-CRM-0012

For: Violation of Article 217,
Revised Penal Code
(Malversation of Public Funds)

Present:

FERNANDEZ, SJ, J.,
Chairperson
MIRANDA, J.,
TRESPESES,* J.

Promulgated:

NOV 20 2018 

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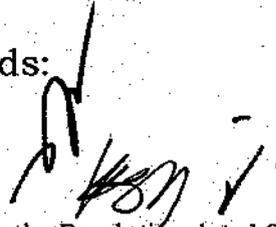
RESOLUTION

FERNANDEZ, SJ, J.:

This resolves accused Yusoph Mama's *Motion for Reconsideration (of the Resolution dated 18 September 2018),¹* together with the *Comment/Opposition²* filed on October 11, 2018 by the prosecution.

The September 18, 2018 *Resolution* denied accused Mama's *Urgent Omnibus Motion* which prayed for the dismissal of the present case on the ground of violation of his right to a speedy disposition of his case.

Accused Mama contends:



* Justice Zaldy V. Trespeses participated in the Resolution dated September 18, 2018.

¹ Dated September 26, 2018; Received through registered mail by the Court on October 1, 2018.

² (Re: *Accused Yusoph B. Mama's Motion for Reconsideration dated 26 September 2018*) dated October 11, 2018.

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- a. The delay is not justified. It took the Office of the Ombudsman more than four (4) years to come up with a 5-page resolution on malversation, which merely hinged on the presumption that accused misused the money of the government. Four years is too long a time for a simple case, which hinges on a presumption, to be resolved.³
- b. Accused seasonably asserted his rights. The accused has no duty to follow up on the prosecution of their case as it is the duty of the Ombudsman to expedite the disposition of the same. Accused' position is supported by *Coscolluela vs. Sandiganbayan*,⁴ *People vs. Sandiganbayan, Fifth Division*,⁵ and, *Remulla vs. Sandiganbayan*^{6;7}
- c. The prejudice to the accused is not limited to the pre-trial anxiety and expense. The prejudice to accused Mama is not limited to the witnesses and their memories, but also to the fact that he is being asked to recover evidence, such as receipts of transactions, and recall events that happened almost two (2) decades ago. The delay resulted in the impairment of his defense.⁸

In its *Comment/Opposition*, the prosecution argues:

- a. The matters raised by the accused have been passed upon by this Court. Accused failed to raise new matters and/or issues that would warrant reconsideration of the assailed resolution.
- b. The period of 4 years, 2 months, and 6 days for the Office of the Ombudsman to resolve the Complaint and file the first Information is justified. Likewise, the period of 2 months and 27 days for the Office of the Special Prosecutor to study whether prescription had set in is reasonable.
- c. The period, from the filing of the Affidavit of Complaint on 19 June 2013 to the filing of the Information against the accused on 23 January 2018, was utilized to conduct preliminary investigation, including the

³ Citing *Lopez vs. Sandiganbayan*, 364 SCRA 569 [2001]; Motion for Reconsideration dated September 26, 2018, p. 1.

⁴ 701 SCRA 188, 195 [2013].

⁵ 798 SCRA 36 [2016].

⁶ G.R. No. 218040, April 17, 2017.

⁷ Motion for Reconsideration dated September 26, 2018, pp. 2-4.

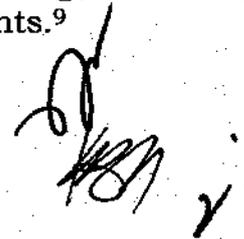
⁸ Citing *Corpuz, et al. vs. Sandiganbayan, Special Fourth Division*, 442 SCRA 294 [2004]; *People vs. Sandiganbayan, Fifth Division, Supra*; *Innocentes vs. People*, 796 SCRA 34 [2016]; Motion for Reconsideration dated September 26, 2018, pp. 5-8.

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issuance of order, evaluation, examination and confirmation of allegations; and preparation of the investigation report, including the drafting and finalization of Resolution, to ensure due process. Thus, there was no inordinate delay and the Office of the Ombudsman was not remiss in its duties to accord accused his right to speedy disposition of cases.

- d. Accused Mama's claim that he seasonably asserted his right, is belied by the fact that he invoked his right to the speedy disposition of his case only on 16 April 2018 after this case has been filed. While accused claims that his non-participation in the preliminary investigation was due to his non-receipt of notice, the prosecution cannot be faulted for his non-receipt of the Joint Order dated 3 October 2013 as it exerted diligent efforts to ascertain his whereabouts. It had no knowledge of accused' retirement from government service.
- e. Since accused claims that he was not notified of the pendency of the complaint before the Office of the Ombudsman and of the Order to file his counter-affidavit, he cannot be said to have been prejudiced by the alleged delay. The cases cited and invoked by accused Mama do not support his argument. The prosecution stands equally prejudiced by the alleged delay in the preparation of the case.

The facts of this case do not demonstrate vexatious, capricious and oppressive delay in the disposition of the case.

- f. The balancing test is a judicial yardstick where the conduct of both the prosecution and the defense are weighed to determine whether an accused was denied his right to speedy disposition of his case. It secures to the accused his most cherished constitutional rights to due process, it does not eschew the right of the State to prosecute crimes. It is not a weapon, but a shield in his arsenal of constitutional protection. It is a powerful aid to the vigilant, but not to those who slumber in their rights for time runs against the indolent and those who neglect their rights.⁹
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⁹ Comment/Opposition dated October 11, 2018, pp. 1-3.

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RULING

The *Motion for Reconsideration* filed by accused Yusoph B. Mama is denied. The arguments raised therein are mere rehash and reiterations of the arguments in his *Urgent Omnibus Motion*, and which were already passed upon by this Court in its September 18, 2018 Resolution. This Court sees no need to address each argument anew.

This Court maintains that there was no violation of accused Mama's right to the speedy disposition of his case. This Court, likewise, maintains that the period to conduct preliminary investigation was reasonable under the circumstances and accused Mama was not able to establish that he suffered prejudice as a result of the alleged delay.

The Court will proceed to address the matters raised in the *Motion for Reconsideration*, which appear to have resulted from a misapprehension of the discussion in the assailed Resolution.

First. There should be no issue that mere mathematical reckoning of the time involved is not sufficient to justify the dismissal of a case on the ground of violation of an accused' right to a speedy disposition of his case. Even accused Mama's Motion for Reconsideration discussed, at length, the four (4) factors that must be considered and balanced to determine whether an accused has been deprived of his right to a speedy disposition of his case.

Notably, in the recent case of Cagang vs. Sandiganbayan, et al., G.R. Nos. 210141 to 210242, July 31, 2018, the Supreme Court ruled that there was no violation of the accused' right to speedy disposition of cases despite the lapse of 6 years from the filing of the Complaint. The Supreme Court reached its conclusion after finding that "there was a waiver of the delay of a complex case" during preliminary investigation.

Here, as this Court observed in the September 18, 2018 Resolution, the instant case involves numerous cash advances allegedly made by accused Mama in relation to 28 different incidents and/or items, *i.e.*, official local travels,

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petty operating expenses, and gas, oil, and lubricants expenses, during an 18-month period, or from August 28, 1997 until February 18, 1999.

Second. This Court did not throw any blame upon the accused for his non-participation in the preliminary investigation, nor did it take accused Mama's non-participation against him. In its discussion (of the length and reason for the delay in the conduct of the preliminary investigation), the Court recognized that accused Mama's failure to participate contributed to the delay in the conduct of the preliminary investigation, and that such failure to participate resulted because the *Notice* to file Counter-Affidavit was returned unserved. The Court likewise noted the prosecution's explanation that, in view of the non-participation of accused Mama, "the Office of the Ombudsman, in order to come up with a fair resolution, made several inquiries and conducted investigation to verify the allegations in the Affidavit of Complaint of Mark Torralda." For easy reference, the pertinent portion of the Resolution is hereunder reproduced:

a. The Length and Reason for the Delay.

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Third, it appears that accused Mama failed to file any counter-affidavit. According to the prosecution, since the first *Notice* was returned unserved, they had to send, through the Department of Agrarian Reform, another *Order* for the accused to file his Counter-Affidavit. The prosecution also explained that "the Office of the Ombudsman, in order to come up with a fair resolution, made several inquiries and conducted investigation to verify the allegations in the Affidavit of Complaint of Mark Torralda".

The Court did not declare accused Mama to have waived his right to a speedy disposition of his case. For convenience, the Court's discussion on said factor is hereunder quoted:

The Defendant's Assertion of his Right

It appears from the records that accused Mama did not participate in the proceedings before the Office of the Ombudsman. Neither of the parties alleged that accused Mama invoked in SB-17-CRM-1667 his right to the speedy disposition of his case. Hence, it is only in the instant *Motion to Quash* that accused Mama first invoked his right to the speedy disposition of his case.



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Third. Accused Mama's argument that this Court mistakenly limited the prejudicial effects of the delay to oppressive pre-trial anxiety and expense, is misplaced.

As the accused extensively discussed in his *Motion for Reconsideration*, prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired.

The reason for this Court's conclusion that accused Mama was not able to establish that the alleged delay prejudiced him, is the absence, in his *Omnibus Motion*, of any allegation, much less supporting evidence, of prejudice caused to him by reason of the supposed delay in the preliminary investigation before the Office of the Ombudsman. The Court merely pointed to the logical conclusion that there was no pre-trial anxiety and expense to speak of, because accused Mama did not participate and claims to be unaware of the preliminary investigation, viz:

Prejudice to the Defendant

As accused had no participation in, and according to him had no knowledge of, the pending preliminary investigation before the Office of the Ombudsman, there is no oppressive pre-trial anxiety and expense to speak of.

Indeed, apart from his claim that the acts complained of occurred more than 20 years ago, accused Mama did not point to any prejudice caused to him by reason of the supposed delay in the disposition of the instant case.

Clearly, accused was not able to establish that the alleged delay prejudiced him.

Even accused Mama's belated claim, in his *Motion for Reconsideration*, that he was prejudiced because of the inability of the witnesses to recall accurately the details of the distant past, thus, rendering it difficult for him to adequately prepare his defense, is not supported by proof.

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There is no showing that documents necessary to establish his defense are no longer available. There were no names of witnesses who could no longer recall or are having difficulty in recalling incidents and/or events in support of his defense. As in his *Urgent Omnibus Motion*, there is no showing that accused was prejudiced by the delay in the conduct of the preliminary investigation.

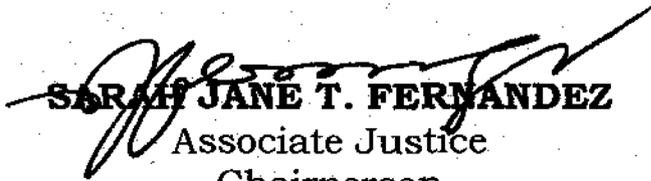
In fine, accused Mama failed to convincingly show that a reversal or modification of the questioned *Resolution* is warranted.

WHEREFORE, the *Motion for Reconsideration (of the Resolution dated 18 September 2018)* filed by accused Yusoph B. Mama is **DENIED** for lack of merit.

The *Manifestation* dated September 28, 2018 filed by accused Mama is **NOTED**.

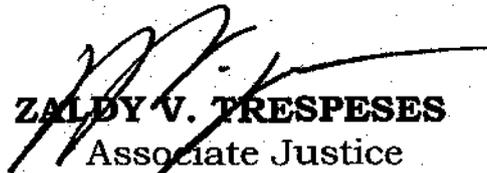
SO ORDERED.

Quezon City, Metro Manila.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

WE CONCUR:


KARL B. MIRANDA
Associate Justice


ZALDY V. TRESPESES
Associate Justice