



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

SB-17-CRM-2142
For: Violation of Section
3, Par. (e) of Republic Act
No. 3019, as amended

**ENRICO R. ECHIVERRI,
EDNA V. CENTENO,
EVELINA M. GARMA,
RUSSEL C. RAMIREZ, and
JESUSA C. GARCIA,**

Accused.

Present:
DE LA CRUZ, J., *Chairperson*
ECONG, J. and
CALDONA, J.

PROMULGATED:

JUN 20 2018

X ----- X

RESOLUTION

Econg, J:

On March 21, 2018, accused-movants Enrico R. Echiverri, Edna V. Centeno, Evelina M. Garma, Russel C. Ramirez, and Jesusa C. Garcia, through counsel, filed a Motion to Dismiss¹ (Motion) on the ground that the inordinate delay of the prosecution in conducting the preliminary investigation violated their right to due process and speedy disposition of cases. They aver the following:

¹ Urgent Motion to Dismiss, dated March 21, 2018 and filed on the same date.

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1. The Information was only filed on November 7, 2017 or two years and three months after the Complaint was filed by Jerrboy L. Mauricio on June 10, 2015. It took the Office of the Ombudsman almost three long years to terminate the preliminary investigation.
2. Applying the four-fold test in *Corpuz v. Sandiganbayan*², it is clear that the accused's right to speedy disposition of their cases was violated.
 - a. All the accused are asserting their right to speedy disposition at the earliest opportunity.
 - b. A delay of almost three years is a clear violation of the time prescribed by the Rules on Criminal Procedure. Section 3(f) of Rule 112 requires the investigating officer to determine within ten days whether or not there is sufficient ground to hold respondent for trial.
 - c. There is no acceptable reason for the delay as the Complaint is the 67th case covering the same set of accused for the same term as Mayor, Budget Officer and City Accountant.

The piecemeal resolution and filing of all these cases is vexatious, capricious and oppressive.

The filing of the 67 Informations were done gradually for reasons only the prosecution knows. The first wave of the 67 cases were filed as early as March 2017 and to this date, a new case is filed every week. There is no reason for the inordinate delay from the filing of the first Information on March 2017 to the filing of the subject Information on November 7, 2017.

The Order finding probable cause was resolved by the Ombudsman as early as September 5, 2016. It took them one year to file the subject Information.

- d. The constant anxiety and public humiliation of all the accused caused by the piecemeal filing of the numerous cases cannot be denied. This way of filing

² G.R. No. 162214, November 11, 2004.

prevents the possibility of consolidating the cases despite having the same facts and transactions.

The delay has caused tremendous prejudice to all the accused in addition to the fact that they have to periodically go through the anxiety of having warrants issued against them and posting bail so frequently that the combined amount will surely bankrupt them.

In its Comment/Opposition³, the plaintiff maintains that there is no violation of the accused-movants' right to speedy disposition of their cases.

The plaintiff argues that the length of the period that lapsed is reasonable and justified under the circumstances. From the time that this case was deemed submitted for resolution before the Office of the Ombudsman, the accused-movants did not demand any expeditious action thereon. They had not been subjected to any aggravating or annoying action to vex or harm them coming from the investigator of the Office of the Ombudsman. The plaintiff also points out that the last pleading that was filed was the Reply-Affidavit filed on August 27, 2015 by the private complainant. From said date, the Office of the Ombudsman only took 1 year and 1 month to resolve the preliminary investigation. It took the Office of the Ombudsman 2 years to terminate the preliminary investigation reckoned from the date of the filing of the Complaint until the approval of the Ombudsman of the Order denying the motions for reconsideration.

The plaintiff avers that Courts are called upon to conduct a balancing test in determining whether the right to speedy disposition is violated. The Courts are called to consider the equally important but opposed right of the State to prosecute crimes and rid society of criminals.

It also states that the right to speedy disposition of the case must be asserted. Assertion of the right is entitled to strong evidentiary weight and failure to claim the right will make it difficult to prove that there was a denial of a speedy trial. The accused-movants never raised the issue during the preliminary investigation. They even filed their Motion to Quash wherein

³ Comment/Opposition (To the Urgent Motion to Dismiss dated March 21, 2018), dated March 26, 2018 and filed on March 27, 2018.

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they alleged that the facts in the Information do not constitute an offense. The filing of the instant Motion is clearly an afterthought.

The plaintiff also avers that the case involves a multi-million amount and should not be disregarded by reason of an alleged violation of their right to speedy disposition of cases.

RULING

In *People v. Sandiganbayan (Fifth Division)*,⁴ the Supreme Court laid down the factors to be considered in the determination of whether or not there is inordinate delay. It said:

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. Hence, the doctrinal rule is that in the determination of whether that right has been violated, the factors that may be considered and balanced are as follows: (1) the length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.

In the determination of whether inordinate delay exists, the length of time for the Office of the Ombudsman to complete the preliminary investigation is not the only factor to be considered. Stated differently, it is not enough that there was delay in the conclusion of the preliminary investigation within a reasonable period of time. Not only must delay be for a considerable length of time, it must also be without any justifiable reason. Moreover, the accused-movant must invoke his or her right to the speedy disposition of cases against him/her and must show that they were prejudiced by the delay attributable to the prosecution.

Length and Reason for the Delay. Applying the test in this case, the following are the relevant dates that could be

⁴ G.R. Nos. 199151-56, July 25, 2016.

culled from the records of the case: The chronology of events are as follows:

1. **June 10, 2015** – A Complaint was filed by Jerrboy L. Mauricio against the accused for violation of Section 3(e) of R.A. No. 3019 and Article 217 of the Revised Penal Code.
2. **July 14, 2015** – An Order was issued by the Office of the Ombudsman directing them to file their counter-affidavits within 10 days from notice.
3. **July 29, 2015** – A Counter-Affidavit was filed by accused Echiverri.
4. **August 3, 2015** – Counter-Affidavits were filed by accused Garma and Ramirez.
5. **August 6, 2015** – Counter-Affidavits were filed by accused Centeno and Garcia.
6. **August 27, 2015** – A Reply-Affidavit was filed by complainant Mauricio.
7. **September 5, 2016** – The investigating officer submitted for approval a Resolution finding probable cause for violation of Section 3(e) of R.A. No. 3019. The charge for malversation was dismissed.
8. **September 29, 2016** – The Acting Director of the Preliminary Investigation and Administrative Adjudication Bureau (PIAB)-E of the Office of the Ombudsman reviewed the Resolution.
9. **October 4, 2016** – The Resolution was recommended for approval by the Assistant Ombudsman, Preliminary Investigation Administrative Adjudication and Monitoring Office (PAMO) II.
10. **November 29, 2016** – The Resolution was approved by Ombudsman Carpio Morales.
11. **January 30, 2017** – A Motion for Reconsideration was filed by accused Echiverri. A Joint Motion for Reconsideration was filed by accused Centeno, Garma and Garcia. A separate Motion for Reconsideration was filed by accused Ramirez.
12. **March 3, 2017** – A Comment was filed by Complainant Mauricio.
13. **June 9, 2017** – An Order resolving the motions was issued by the Office of the Ombudsman.
14. **June 18, 2017** – The Order was reviewed by the Acting Director of PIAB-E.

15. **June 27, 2017** – The Order was recommended for approval by the Assistant Ombudsman, PAMO II.
16. **July 14, 2017** – The Order was approved by Ombudsman Carpio Morales.
17. **November 7, 2017** – The Information was filed in this Court.

When the complaint was lodged against accused-movant before the Office of the Ombudsman, it took one (1) year and three (3) months for the said office to resolve the same and find probable cause. Counting from the Reply-Affidavit of private complainant, it took the Office of the Ombudsman one (1) year to resolve and find probable cause and for the Ombudsman, Conchita Carpio-Morales two (2) months to approve the Resolution finding probable cause.

The accused filed their separate Motions for Reconsideration thereafter. The private complainant filed his Comment two (2) months after. After three (3) months, the Office of the Ombudsman resolved the motions in the Order issued on June 9, 2017. Said Order was approved by Ombudsman Carpio Morales a month after. Four months later, the Information was filed before this Court.

From the facts stated above, this Court believes that there was delay in the resolution of the complaint lodged and in the conduct of preliminary investigation. And, why would this be so?

It should be emphasized that the purpose of a preliminary investigation is for the Office of the Ombudsman to make a determination of probable cause that the offense was committed and that the persons charged are probably guilty thereof. Having this purpose in mind, the proceeding should not be so lengthy and elaborate as its purpose is simply to find reasonable ground to believe that the persons so investigated and eventually charged should stand the rigors of trial.

It may be argued by the Office of the Ombudsman that there is no clear and definitive period set for it to complete its preliminary investigation and that delay in the disposition of the proceeding may be incurred for as long as such is reasonable or not inordinate. But, what is the rule that the Office of the Ombudsman must observe as its guide? The Office of the Ombudsman is certainly bound by its own rules of procedure, particularly Rule II, Section 4 of Administrative Order (A.O.) No. 7 or the Rules of Procedure of the Office of the Ombudsman).

In this rule, there is an explicit adoption of the procedure set in Rule 112, Section 3 of the Rules of Court, which states:

Section 3. Procedure. — The preliminary investigation shall be conducted in the following manner:

(a) The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish probable cause. They shall be in such number of copies as there are respondents, plus two (2) copies for the official file. The affidavits shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath, or, in their absence or unavailability, before a notary public, each of who must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.

(b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he finds no ground to continue with the investigation, or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents.

The respondent shall have the right to examine the evidence submitted by the complainant which he may not have been furnished and to copy them at his expense. If the evidence is voluminous, the complainant may be required to specify those which he intends to present against the respondent, and these shall be made available for examination or copying by the respondent at his expense.

Objects as evidence need not be furnished a party but shall be made available for examination, copying, or photographing at the expense of the requesting party.

(c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of this section, with copies thereof furnished by him to the complainant. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit.

(d) If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the ten (10) day period, the investigating officer shall resolve the complaint based on the evidence presented by the complainant.

(e) The investigating officer may set a hearing if there are facts and issues to be clarified from a party or a witness. The parties

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can be present at the hearing but without the right to examine or cross-examine. They may, however, submit to the investigating officer questions which may be asked to the party or witness concerned.

The hearing shall be held within ten (10) days from submission of the counter-affidavits and other documents or from the expiration of the period for their submission. It shall be terminated within five (5) days.

(f) Within ten (10) days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial.

Rule II, Section 4 of A.O. No. 7 states that:

Section 4. Procedure - The preliminary investigation of cases falling under the jurisdiction of the Sandiganbayan and Regional Trial Courts shall be conducted in the manner prescribed in Section 3, Rule 112 of the Rules of Court, subject to the following provisions:

a) If the complaint is not under oath or is based only on official reports, the investigating officer shall require the complainant or supporting witnesses to execute affidavits to substantiate the complaints.

b) After such affidavits have been secured, the investigating officer shall issue an order, attaching thereto a copy of the affidavits and other supporting documents, directing the respondents to submit, within ten (10) days from receipt thereof, his counter-affidavits and controverting evidence with proof of service thereof on the complainant. The complainant may file reply affidavits within ten (10) days after service of the counteraffidavits.

c) If the respondents does not file a counter-affidavit, the investigating officer may consider the comment filed by him, if any, as his answer to the complaint. In any event, the respondent shall have access to the evidence on record.

d) No motion to dismiss shall be allowed except for lack of jurisdiction. Neither may a motion for a bill of particulars be entertained. If respondents desires any matter in the complainant's affidavit to be clarified, the particularization thereof may be done at the time of clarificatory questioning in the manner provided in paragraph (f) of this section.

e) If the respondents cannot be served with the order mentioned in paragraph 6 hereof, or having been served, does not comply therewith, the complaint shall be deemed submitted for resolution on the basis of the evidence on the record.

f) If, after the filing of the requisite affidavits and their supporting evidences, there are facts material to the case which the

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investigating officer may need to be clarified on, he may conduct a clarificatory hearing during which the parties shall be afforded the opportunity to be present but without the right to examine or cross-examine the witness being questioned. Where the appearance of the parties or witnesses is impracticable, the clarificatory questioning may be conducted in writing, whereby the questions desired to be asked by the investigating officer or a party shall be reduced into writing and served on the witness concerned who shall be required to answer the same in writing and under oath.

g) Upon the termination of the preliminary investigation, the investigating officer shall forward the records of the case together with his resolution to the designated authorities for their appropriate action thereon.

No information may be filed and no complaint may be dismissed without the written authority or approval of the Ombudsman in cases falling within the jurisdiction of the Sandiganbayan, or of the proper Deputy Ombudsman in all other cases.

Unlike Section 3 of Rule 112, Section 4, Rule II of A.O. No. 7 did not specify the period within which the investigating prosecutor may call for a clarificatory hearing, when necessary, as well as the period for the investigating prosecutor/officer to determine probable cause. The absence of periods set (for clarificatory hearing and determination of probable cause) in A.O. No. 7 does not, however, mean that the investigating prosecutor/officer can drag its feet, take his time between actions using as excuse the case intake of their office, multiple respondents involved, the numerous documentary exhibits or annexes and even the time required to obtain the necessary approvals from different officers within the Office of the Ombudsman. The Office of the Ombudsman should be more circumspect in putting in place several steps and persons to sign off on a disposition of a case, being the protector of the people. This solemn duty of the Office of the Ombudsman was declared by the Supreme Court, through Mme. Justice Angelina Sandoval-Gutierrez in *Enriquez v. Office of the Ombudsman*⁵, wherein it held that the Ombudsman was:

x x x constitutionally created to be the "protector of the people," with the expressed mandate that it "shall act promptly on complaints filed in any form or manner against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case

⁵ G.R. Nos. 174902-06, February 15, 2008, 569 Phil 309-323.

where the evidence warrants in order to promote efficient service by the Government to the people."

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These powers, functions and duties are aimed to enable respondent to be "a more active and effective agent of the people in ensuring accountability in public office." Unfortunately, respondent has transgressed its constitutional and statutory duties. When the Constitution enjoins respondent to "act promptly" on any complaint against any public officer or employee, it has the concomitant duty to speedily resolve the same. But respondent did not act promptly or resolve speedily petitioners' cases. The Rules of Procedure of the Office of the Ombudsman requires that the hearing officer is given a definite period of "not later than thirty (30) days" to resolve the case after the formal investigation shall have been concluded. Definitely, respondent did not observe this 30-day rule.

The 30-day rule provided in the above-cited decision, however, is not applicable in this case as the former involves an administrative case resolved by the Office of the Ombudsman.

As stated above, the rules of procedure of the Office of the Ombudsman did not specifically provide for a more definitive period for its investigating prosecutors/officers to complete preliminary investigation of criminal cases.

However, further scrutiny of A.O. No. 7, specifically Section 3 of Rule V, provides for the suppletory application of the Rules of Court. It states:

"In all matters not provided in these rules, the Rules of Court shall apply in a suppletory character, or by analogy whenever practicable and convenient."

Because of the suppletory application of the Rules of Court, specifically the 2000 Revised Rules of Criminal Procedure "in all matters not provided" by A.O. No. 7, then it would be practicable and convenient for most actors, including the complainants, respondents, the officials of the Office of the Ombudsman monitoring the performance of the investigating prosecutors, and even to this Court that the period indicated in Sections 3 and 4, Rule 112 should apply. Thus, the investigating prosecutor/officer should always be mindful of the timelines indicated in Sections 3 and 4, Rule 112 in resolving cases for probable cause as they are bound by it.

If the yardstick of delay is the period set in Sections 3 and 4 of Rule 112 of the Rules of Court, then certainly there is a delay in the determination of probable cause in this case. The more than two (2) years pendency of the preliminary investigation at the Office of the Ombudsman—i.e., from June 15, 2015 until the filing of the Information on November 7, 2017, should already be considered unreasonable delay since the timelines in resolving preliminary investigations provided in Secs. 3 and 4 of Rule 112 is only ten (10) days in every phase. In all the movements of this case from one case event to another, the ten (10) day period to complete the phase was never complied. For instance, it took more than one (1) year or more than 365 days for the investigating prosecutor to come up with a resolution of the complaint. Even the approval of the Ombudsman of the resolution took more than fifty (50) days. The Ombudsman took around a hundred (100) days just to file the Information before the Court from the time of the denial of the motion for reconsideration. The consistent non-observance of the timelines provided in A.O. No. 7 show the neglect and wanton disregard by the investigators and officials of the Office of the Ombudsman of its very own rules.

The only issue left for determination is whether the delay is inordinate or not.

The Supreme Court consistently held that there is no hard and fast rule in the determination of whether the delay is inordinate or not. Rather, it used the 4-point test of period, reason for the delay, timeliness and prejudice caused by the delay⁶.

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. Hence, the doctrinal rule is that in the determination of whether that right has been violated, the factors that may be considered and balanced are as follows: (1) the length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.

That there are several officers that need to sign off on the recommendation and findings of the investigating prosecutor/officer is not enough reason to delay the finding of

⁶ People v. Sandiganbayan, G.R. Nos. 199151-56, July 25, 2016.

probable cause. Instead, the Office of the Ombudsman should conduct a self-examination of their own rules of procedure bearing in mind their primordial function of being the protector of the people and the timelines set for the prosecution arm to resolve cases for probable cause pending before the Department of Justice and even the given timelines set by the Supreme Court for courts like the Sandiganbayan to dispose of cases on the merits (not a mere preliminary examination) filed before it.

Assertion of the Right and the Prejudice Caused by the Delay. The prosecution maintains that the invocation of the accused-movants of their constitutional right at this stage of the criminal prosecution is merely an afterthought. Also, the accused did not raise the issue of inordinate delay during the preliminary investigation and even in their Motion to Quash wherein they only alleged that the facts in the Information do not constitute an offense.

In the case of *Remulla v. Sandiganbayan and Erineo Maliksi*⁷, it is not required that accused invoke this right before the Office of the Ombudsman and held that this may be correctly raised before the trial court. Applying this ruling in this case, the accused cannot be faulted for not raising the matter of inordinate delay during the preliminary investigation stage as it is just proper that this be raised in the first instance before the trial court.

Lastly, the fact that cases are filed against the accused and pending before this Court where they are made to defend themselves, secure services of paid counsels, and spend for their bail is enough trouble and prejudice to them. The Supreme Court has held in *Corpuz v. Sandiganbayan*⁸:

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. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and

⁷ G.R. No. 218040, April 17, 2017.

⁸ 484 Phil. 899, 917 (2004).

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often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.

WHEREFORE, in view of the foregoing, the Urgent Motion to Dismiss filed by the accused Enrico R. Echiverri, Evelina M. Garma, Russel C. Ramirez, Edna V. Centeno, and Jesusa C. Garcia is hereby **GRANTED** and the instant case against them is hereby **DISMISSED**.

The bonds posted by the accused are hereby ordered released, subject to the usual accounting and auditing procedures. The Hold Departure Order (HDO) dated November 10, 2017 issued against them are set aside and declared *functus officio*.

SO ORDERED.

Quezon City, Metro Manila, Philippines.

Geraldine Faith A. Econg
GERALDINE FAITH A. ECONG
Associate Justice

WE CONCUR:

Efren N. De La Cruz
EFREN N. DE LA CRUZ
Associate Justice
Chairperson

Edgardo M. Caldona
EDGARDO M. CALDONA
Associate Justice