

CARLITO U. ALVIZO, PETITIONER, VS. THE SANDIGANBAYAN (THIRD DIVISION), RESPONDENT.*G.R. No. 101689. March 17, 1993*

Ponente: REGALADO, J.

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This petition for certiorari and prohibition with preliminary injunction seeks to annul and set aside the resolutions of respondent Sandiganbayan, dated November 22, 1990[1] and June 20, 1991,[2] for allegedly having been issued with grave abuse of discretion and in excess of jurisdiction, and to restrain respondent court from proceeding with petitioner's arraignment and trial in Criminal Case No. 14893 thereof.

The records show that in a communication dated May 4, 1989,[3] then Congressman Ernesto T. Estrella of the Second District of Surigao del Sur called the attention of then Secretary of Justice Sedfrey A. Ordoñez to the apparent inability of the Provincial Fiscal of Surigao del Sur to prosecute herein petitioner Carlito Y. Alvizo, who was then a member of the Surigao del Sur Sangguniang Panlalawigan. It appears that petitioner had been dismissed as Clerk of Court of the Court of First Instance of Surigao del Sur when he was found to have incurred a deficiency in his accounts in the amount of P31,612.50, pursuant to a decision of the Supreme Court in Administrative Matter No. 818-TEL, promulgated on April 18, 1979. Petitioner's dismissal was without prejudice to his criminal prosecution.[4]

Acting on Congressman Estrella's letter, on June 7, 1989 then Chief State Prosecutor Fernando de Leon, on behalf of Justice Secretary Ordoñez, referred the matter to the Provincial Fiscal of Surigao del Sur for appropriate action. Consequently, a preliminary investigation, docketed as OMB-0-89-01717, was conducted by Second Assistant Provincial Prosecutor Vicente L. Suarez who thereafter recommended the filing of an information for malversation against herein petitioner. This recommendation was, however, reversed by Provincial Prosecutor Pretextato Montenegro but whose recommendation was in turn overruled by Ombudsman Conrado M. Vasquez.[5] Thus, on May 17, 1990 an information[6] was accordingly filed with respondent Sandiganbayan, initiating the present Criminal Case No. 14893 which charges petitioner with malversation of public funds.

On August 29, 1990, petitioner filed a motion to quash the information[7] allegedly for failure of the same to include a certification by the investigating fiscal that he conducted a personal examination of the complainant and his witnesses during the preliminary investigation. Then, on October 17, 1990, petitioner filed a supplemental motion to quash[8] this time contending that the filing of the information in this case is violative of his constitutional rights to due process and the speedy disposition of the case against him, as enunciated in *Tatad vs. Sandiganbayan*,[9] in an obvious appeal to libertarian inclinations or affectations.

Petitioner avers therein that as early as 1979, a criminal investigation had already been commenced against him for malversation of public funds by the then Tanodbayan, which was docketed as TBP Case No. 8003-05-05. However, it was only on May 17, 1990, or twelve years after the initial preliminary investigation was conducted, that an information was filed against him with the Sandiganbayan. Hence, petitioner claims, by allowing the

preliminary investigation to remain pending for eleven years without taking any action whatsoever, the Tanodbayan clearly violated his rights to due process and speedy disposition of his cases.

In a resolution promulgated on November 22, 1990, respondent Sandiganbayan denied petitioner's motion and supplemental motion to quash. Petitioner's motion for reconsideration was likewise denied in a resolution dated June 20, 1991.

Consequent thereto, petitioner is now before us contending that respondent court committed a grave abuse of discretion in denying his aforesaid motions despite the timely objection to the lack of a certification in the information that the complainant and his witnesses had been personally examined by the investigating officer, and in spite of the inordinate delay in the filing of the information in violation of petitioner's constitutional rights to due process and speedy trial.

The petition is devoid of merit and the extraordinary writs sought by petitioner cannot justifiably issue.

Petitioner initially avers that the information is defective because it does not contain a certification by the investigating prosecutor that the latter personally examined the complainant and his witnesses, in contravention of the requirement under Section 4, Rule 112 of the Rules of Court which provides:

"Sec. 4. Duty of the investigating fiscal. - If the investigating fiscal finds cause to hold the respondent for trial he shall prepare the resolution and corresponding information. He shall certify under oath that he has examined the complainant and his witnesses, x x x."

Contrary to petitioner's submission, respondent court made a finding that the investigating officer who conducted the preliminary investigation personally examined the witness for the prosecution. Thus:

"With respect to the ground raised in the Motion to Quash that the Certification appearing in the Information failed to state that the Special Prosecutor or any authorized officer has personally examined the complainant and his witnesses, the records of the Office of the Ombudsman disclose that Nereo A. Sales, COA Auditor, who examined the cash and accountabilities of the accused, was personally examined by Second Assistant Provincial Prosecutor Vicente L. Suarez of Surigao del Sur, by taking down his statement which the witness subscribed and swor(e) to before said assistant prosecutor on December 8, 1989, and who certified as follows: 'THIS IS TO CERTIFY that I have personally examined the affiant and that I am satisfied that he voluntarily executed and understood his affidavit.'

"Actually, therefore, Second Assistant Provincial Prosecutor Vicente L. Suarez who conducted the preliminary investigation in this case personally examined the witnesses of the prosecution. That the fact was not stated in the Information itself is merely a formal defect which does not prejudice the substantial rights of the accused and, hence, does not warrant the quashal of the information. x x x." [10]

It bears mention that this finding of the Sandiganbayan was never convincingly refuted nor controverted with cogency by herein petitioner.

The certification appearing in the information filed in Criminal Case No. 14893 of the Sandiganbayan reads as follows:

"THIS IS TO CERTIFY that a preliminary investigation has been conducted in this case; that there is reasonable ground to engender a well-founded belief that the crime charged has been committed; and that the accused is probably guilty thereof." [11]

Definitely settled is the rule that notwithstanding the absence in the information of a certification as to the holding of a preliminary investigation, the information is nonetheless considered valid for the reason that such certification is not an essential part of the information itself and its absence cannot vitiate it as such. [12]

Accordingly, we held in *People vs. Marquez*[13] that:

“x x x It should be observed that section 3 of Rule 110 defines an information as nothing more than ‘an accusation in writing charging a person with an offense subscribed by the fiscal and filed with the court.’ Thus, it is obvious that such certification is not an essential part of the information itself and its absence cannot vitiate it as such. True, as already stated, section 14 of Rule 112 enjoins that ‘no information x x x shall be filed without first giving the accused a chance to be heard in a preliminary investigation’, but, as can be seen, the injunction refers to the non-holding of the preliminary investigation, not the absence of the certification. In other words, what is not allowed is the filing of the information without a preliminary investigation having been previously conducted, and the injunction that there should be a certification is only a consequence of the requirement that a preliminary investigation should first be conducted. x x x.”

In the case at bar, it is clear that there is a certification to the effect that a preliminary investigation had been conducted. What is allegedly lacking is the statement that the investigating prosecutor has personally examined the complainant and his witnesses. We find no compelling reason why the aforementioned doctrinal rules should not be made applicable to the present case where the alleged violation alluded to by petitioner merely consists of a failure to state compliance with a part of the proceedings involved in the conduct of a preliminary investigation, that is, the personal examination by the fiscal of the complainant and his witnesses but which examination was actually conducted. The fact alone that the certification contains a statement that a preliminary investigation had been conducted renders nugatory petitioner’s arguments on the supposed nullity of the indictment.

We now proceed to the second issue raised by petitioner.

Invoking the ruling enunciated in the *Tatad* case, petitioner asseverates that his right to speedy trial has been violated when the information was filed before respondent court only after the lapse of eleven years from the time the preliminary investigation of the present criminal charge against him was supposedly conducted in 1979. Petitioner’s theory is erroneously premised.

He insists that the preliminary investigation which led to the filing of the information in Criminal Case No. 14893 was commenced way back in 1979. But there is nothing in the records to show that indeed a preliminary investigation was initiated and/or conducted in that year. The documents[14] presented by petitioner purporting to be the records of the alleged earlier preliminary investigation do not show that such an investigation has in fact been conducted in 1979. If at all, a perusal thereof reveals that the documents merely contain a directive for the transmittal of the pertinent records to the investigating fiscal and an authority for him to conduct a preliminary investigation. It utterly fails, however, to establish that a preliminary investigation had been actually commenced and conducted.

For the same reason, and further based on negative considerations of both its admissibility and weight, neither does the additional evidence adduced on this score by petitioner advance his lost cause, as aptly demonstrated by respondent court in denying his motion for reconsideration:

“To support his said Motion for Recon-sideration, the accused, per his Manifestation/Motion to Admit, dated December 20, 1990, submitted to this Court the Affidavit dated December 3, 1990 of the Provincial Prosecutor of Surigao del Norte, Hon. Quintin E.L. Paredes, who stated therein that sometime in 1980 when he was the the Senior Deputized Tanodbayan Special Prosecutor of that province, he began the preliminary investigation of TBP Case No. 8003-05-05 against herein accused Carlito Alvizo, for malversation of funds; that he sent out subpoena(e) to witnesses but the complainant and his witnesses failed to appear; that eventually the then Tanodbayan, Hon. Vicente ERICTA deputized the Provincial Fiscal of Surigao del Sur as Tanodbayan Special Prosecutor so that he forwarded the record of the case to said Tanodbayan in Manila who in turn directed the deputized Tanodbayan Prosecutor/Provincial Fiscal of Surigao del Sur, sometime in the middle of 1980, to conduct the preliminary investigation of this case against the herein accused. However, the said affidavit of

Prosecutor Quintin E.L. Paredes is considered hearsay because he was not presented on the witness stand to be cross-examined by the prosecution; moreover, it has also to be taken with caution inasmuch as it was executed only on December 3, 1990 or after the promulgation of our Resolution of November 22, 1990 which is now sought to be reconsidered.”[15]

Perforce, the Tatad case may not properly be invoked in this case. There was no violation of petitioner’s right to speedy trial for the simple reason that a fair and rational consideration on both counts of the aforestated evidence on record shows that the preliminary investigation in the present case was begun not in 1979 but only in 1989; and the corresponding information was in due time filed in 1990.

Nor are we persuaded by petitioner’s pretension that in this case the prosecution arm of the Government allowed itself to be used for political purposes as to put this case within the ambit of the pronouncements in Tatad. The mere fact that here it was a congressman who called the attention of the then Secretary of Justice to the failure of the corresponding prosecutorial agency to comply with its duty, although that was pointedly indicated by this Court itself in Administrative Matter No. 818-TEL, does not mean that the prosecution spurred thereby was politically motivated. Assuming *arguendo* the existence of personal differences between petitioner and Congressman Estrella, the unassailable fact remains that the latter’s communication to the Secretary of Justice primarily and justifiedly sought a clarification and gave a reminder of the directive of this Court which had not then been complied with.

Petitioner insistently harps on his main thesis that he was denied his constitutional right to the speedy disposition of his case. He admits, however, that delays *per se* are understandably attendant to all prosecutions and are constitutionally permissible,[16] with the monition that the attendant delay must not be oppressive.[17] Withal, it must not be lost sight of that the concept of speedy disposition of cases is a relative term and must necessarily be a flexible concept.[18] Hence, the doctrinal rule is that in the determination of whether or not that right has been violated, the factors that may be considered and balanced are the length of delay, the reasons for such delay, the assertion or failure to assert such right by the accused, and the prejudice caused by the delay.[19]

While, regrettably, the prosecuting officers appear to have been enmeshed in bureaucratic ennui and miscommunications in pursuing the prosecution of this case, we are not oblivious of the confusion and handicaps under which they had to operate and with which they had to contend under a martial law regime during the parlous period material to this case. We take judicial cognizance of the frequent amendments of procedural laws by presidential decrees, the structural reorganizations in existing prosecutorial agencies and the creation of new ones by executive fiat,[20] resulting in changes of personnel, preliminary jurisdiction, functions and powers of prosecuting agencies.

Petitioner was definitely not unaware of the projected criminal prosecution posed against him by the indication of this Court as a complementary sanction in its resolution of his administrative case. He appears, however, to have been insensitive to the implications and contingencies thereof by not taking any step whatsoever to accelerate the disposition of the matter, which inaction conduces to the perception that the supervening delay seems to have been without his objection hence impliedly with his acquiescence.

We recognize the concerns often invoked that undue delay in the disposition of cases may impair the ability of the accused to defend himself,[21] the usual advertence being to the possible loss or unavailability of evidence for the accused. We do not apprehend that such a difficulty would arise here. The records of this Court in the administrative case earlier discussed refer to the same offense charged in the present criminal case, with identical facts and evidence being involved, aside from the significant consideration that the determinative evidence therein presented and which would necessarily be submitted in the prospective proceedings before respondent court are principally documentary in nature.

Consequently, whatever apprehension petitioner may have over the availability of such documents for his defense is inevitably shared in equal measure by the prosecution for building its case against him. This case, parenthetically, is illustrative of the situation that what is beneficial speed or delay for one side could be harmful speed or delay for the other, and vice-versa. Accordingly, we are not convinced at this juncture that petitioner has been or shall be disadvantaged by the delay complained of or that such delay shall prove oppressive to him. The just albeit belated prosecution of a criminal offense by the State, which was enjoined by this very Court, should not be forestalled either by conjectural supplications of prejudice or by dubious invocations of constitutional rights.

WHEREFORE, there being no showing that the impugned resolutions of respondent Sandiganbayan are tainted by grave abuse of discretion or jurisdictional defect, the instant petition is DISMISSED for lack of merit.
SO ORDERED.

Narvasa, C.J., Cruz, Padilla, Bidin, Griño-Aquino, Davide, Jr., Romero, Nocon, Bellosillo, Melo, Campos, Jr., and Quiason, JJ., concur.

Gutierrez, Jr., J., on terminal leave.

Feliciano, J., no part.

[1] Annex H, Petition; Rollo, 49.

[2] Annex J, id.; ibid., 59.

[3] Annex A, id.; ibid., 27.

[4] In said administrative case, entitled “Re: Report on the Shortage of the Accountabilities of Clerk of Court Carlito U. Alvizo, respondent,” the Court en banc held: “WHEREFORE, in view of the foregoing, the Court finds respondent Carlito U. Alvizo guilty of dishonesty and neglect of duty (Rule XVIII, Section 19 [c & g] of the Civil Service Rules and Regulations, and Section 1 [a & d], Presidential Decree No. 6), and hereby orders his DISMISSAL from the service, effective from the date of his suspension, with forfeiture of retirement gratuity, if any, with prejudice to reinstatement, and without prejudice to criminal prosecution.”

Makasiar, J. concurred in a separate opinion as follows: “The act committed by respondent constitutes malversation of public funds penalized by Article 217 of the Revised Penal Code and he should accordingly be prosecuted, aside from being barred from reinstatement or re-employment in the government, its local political subdivisions, and other agencies, including government-owned or controlled corporations. Mere dismissal would be too lenient for such a serious crime and would place a premium on the commission of graft by public officers.

“Hence, the dispositive portion should include ‘with prejudice to his reinstatement or re-employment in the government or any of its local political subdivisions or agencies, including government-owned or controlled corporations, but without prejudice to his criminal prosecution.’” (89 SCRA 426 [1979]; emphases supplied.)

[5] Rollo, 8-9.

[6] Annex C, Petition; Rollo, 31.

[7] Annex F, id.; ibid., 41.

[8] Annex G, id.; ibid., 45.

[9] 159 SCRA 70 (1988).

[10] Rollo, 50-51.

[11] Rollo, 34.

[12] Estrella vs. Ruiz, etc., et al., 58 SCRA 779 (1974); People vs. Arbois, et al., 138 SCRA 24 (1985).

[13] 27 SCRA 808 (1969).

[14] Rollo, 136-149.

[15] Ibid., 60-61.

[16] Beavers vs. Haubert, etc., 198 U.S. 77 (1905).

[17] Pollard vs. United States, 352 U.S. 354 (1957).

[18] See Bernas, The Constitution of the Republic of the Philippines, Vol. I, First Ed., 421.

[19] Barker vs. Wingo, 407 U.S. 514 (1972).

[20] For that matter, the Office of the Tanodbayan created by P.D. No. 1487 on June 11, 1978 was successively revised by P.D. No. 1607 on December 10, 1978, P.D. No. 1630 on July 18, 1979, and P.D. No. 1826 on January 16, 1981; and, thereafter, amended by E.O. No. 762 on January 8, 1982, E.O. No. 152-A on March 25, 1987, and E.O. No. 244 on July 24, 1987, until it was eventually replaced by the Office of the Ombudsman created by R.A. No. 6770 on November 17, 1989.

[21] United States vs. Ewell, et al., 38 ????? 116 (1966).

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