

RICARDO CASTILLO, DEMETRIO CABISON JR., AND RODOLFO AGDEPPA, PETITIONERS, VS. HONORABLE SANDIGANBAYAN (SECOND DIVISION), AND PEOPLE OF THE PHILIPPINES, REPRESENTED BY HONORABLE ...

G.R. No. 109271. March 14, 2000

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Before this Court is a Petition for Certiorari assailing two Orders dated February 18, 1993[1] and March 8, 1993[2] of the Sandiganbayan's Second Division denying petitioners' Motion to Dismiss and Motion for Reconsideration.

On August 25, 1986, concerned employees of the Commission on Audit (COA) filed a Complaint before the Tanodbayan,[3] against petitioners Ricardo Castillo, Rodolfo Agdeppa and Demetrio Cabison Jr., COA Auditor VIII, COA Auditor II, and COA Auditor III, respectively, all assigned at the National Housing Authority (NHA), for alleged "submittal of initial very derogatory reports which became the basis for the filing of cases with the Tanodbayan and the reversals of their initial recommendations for selected contractors." Petitioners were notified of the Complaint on September 22, 1986 when they were directed by the Tanodbayan to file their counter-affidavits, which they did on September 30, 1986.

In a resolution dated October 30, 1987, the Tanodbayan found a *prima facie* case against petitioners and accordingly recommended the filing of an Information against them for violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act (RA 3019).[4]

On November 27, 1987, petitioners promptly filed a Motion for Reinvestigation.[5] On March 21, 1988, they filed a Motion to Resolve their Motion for Reinvestigation.[6]

Without acting upon the Motion for Reinvestigation and Motion to Resolve Motion for Reinvestigation, an Information was filed on November 5, 1990, before the Sandiganbayan, which reads:

"That on or about August 5, 1986 or prior and subsequent thereto, in Quezon City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, accused namely, Ricardo R. Castillo, Rodolfo M. Agdeppa and Demetrio M. Cabison Jr., all public officers being then COA Auditor VIII, COA Auditor II and COA Auditor III, respectively, taking advantage of their official positions, while in the performance or discharge of their administrative official functions, with evident bad faith and manifest partiality, conspiring, confederating and confabulating with each other, did then and there willfully, unlawfully and fraudulently cause undue injury, damage and prejudice to the Government of the Republic of the Philippines, to wit: that two contracts were entered into by the NHA management with two private contractors relative to the complete development of Phase V-A Packages 3 & 4 which is being constructed by Sarmiento Construction Co., and likewise Phase IX Packages 7 & 7-A which is being constructed by the Supra Construction Co., both constructions are located at the Tala Estate Sites & Services, by causing to prepare, submit, issue and sign in the different inventory

reports/recommendation on various occasions that Sarmiento Construction had an overpayment in the amount of P362,591.98 for Phase V-A Packages 3 & 4 but later on said accused changed their inventory reports/recommendation and subsequently readjusted this as overpayment on physical work thereby prejudicing the government on account of accused's constant changes/reversals in the inventory reports prepared, signed and submitted by them; whereas in the second contract with Supra Construction, accused issued an inventory report by stating thereon that said contractor had a work deficiency in the amount of P788,806.94 but refraining from taking appropriate action on account of P1,873,091.40 withheld on Tala to pay a refund order on a Tondo contract issued by the COA main office. The said accused raised the deficiency in the amount of P855,281.50. Later on, another inventory report was issued and prepared by a Tri-Partite Team Committee composed of COA, NHA and the contractors stating a work deficiency in the amount of P352,121.40 only. Despite previous inventory reports/recommendation by the accused citing different amounts and another amount by the Tri-Partite Team Committee said accused later stated that the final deficiencies of Supra Construction is no longer P855,281.58 but was reduced only to P70,596.37, which reductions in the contractors' final deficiencies were not justified thereby giving unwarranted benefits, preference and advantage to the above-mentioned contractor to the damage and prejudice of the government in the amount of P231,523.00 and to the Sarmiento Construction for inventoried accomplishment were not duly credited by the said accused."[7]

Trial on the merits thereafter ensued. After the prosecution rested its case, petitioners filed a Demurrer to Evidence but the same was denied by the Sandiganbayan in a Resolution dated December 11, 1992.[8] Petitioners' Motion for Reconsideration was likewise denied in a Resolution dated January 20, 1993.[9]

Thereafter, petitioners filed a Motion to Dismiss[10] dated February 15, 1993 citing lack of jurisdiction and violation of due process, but the same was denied by the Sandiganbayan. Petitioners' Motion for Reconsideration[11] was also denied.

Hence, this petition for certiorari and prohibition, raising the following grounds:

The Honorable Respondent Sandiganbayan committed grave abuse of discretion in not dismissing the Information notwithstanding that there was a violation of petitioners' constitutional rights of "due process" and "speed disposition of cases" and there was use of the strong arm of the law in an oppressive and vindictive manner against the petitioners.

1. Unexplained and unjustified delay of three (3) years before an Information is filed before the Honorable Respondent Sandiganbayan counting from the date of the resolution of the Ombudsman recommending the prosecution of the petitioners for violation of Rep. Act No. 3019 (or a total of four (4) years from initial investigation up to filing of information);
2. Motion for Reinvestigation and Motion to Resolve the Motion for Reinvestigation filed by the petitioners before the Office of the Honorable Respondent Ombudsman were not acted upon;
3. No reason or explanation was made by the prosecution on the delay in the filing of Information;
4. With no plausible explanation on hand, the petitioners are thus inclined to reason out, or even suspect, that there is connection between such delay and their past and contemporaneous official acts;
5. The lapse of three (3) years or a total of four (4) years from start of investigation up to filing of Information may result in the destruction of affirmative evidence tending to establish the innocence of the petitioners and that the passage of time may have produced an unfavorable effect on their defense;
6. Violation of constitutional rights divests the court of jurisdiction;
7. Lack of jurisdiction of the court may be raised at any time;

8. Criminal prosecution may be enjoined in order to afford adequate protection to constitutional rights and to prevent the use of the strong arm of the law in an oppressive and vindictive manner;
9. Subject of instant petition are the Orders of the Honorable Respondent Sandiganbayan denying the Motion to Dismiss of petitioners for violation of their constitutional rights and the use against them of the strong arm of the law in an oppressive and vindictive manner.

Petitioners submit that the Ombudsman oppressed and discriminated against them by not issuing any notice, reply or order denying their Motion for Reinvestigation as well as their Motion to Resolve their Motion for Reconsideration. They argue that the Ombudsman should have granted outright their Motion for Reinvestigation in view of the ruling in *Zaldivar v. Sandiganbayan*[12] wherein this Court held, thus:

Under the 1987 Constitution, the Ombudsman (as distinguished from incumbent Tanodbayan) is charged with the duty to:

Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient. (citation omitted)

x x x x x x x x

Now then, inasmuch as the aforementioned duty is given to the Ombudsman, the incumbent Tanodbayan (called Special Prosecutor under the 1987 Constitution and who is supposed to retain the powers and duties NOT GIVEN to the Ombudsman) is clearly without authority to conduct preliminary investigations and to direct the filing of criminal cases with the Sandiganbayan, except upon orders of the Ombudsman. This right to do so was lost effective February 2, 1987. From that time, he has been divested of such authority.

Petitioners' contention is misleading. In the aforecited case, this Court clearly held that the authority of the Tanodbayan to conduct preliminary investigations and to direct the filing of criminal cases was lost effective February 2, 1987. The inference, therefore, of such holding is that the Tanodbayan had such authority prior to February 2, 1987. In this case, the Tanodbayan issued petitioners a subpoena on September 22, 1986 directing them to file their counter-affidavits, which the latter complied with on September 30, 1986. In short, the preliminary investigation was conducted by the Tanodbayan before he lost his authority to do so.

Hence, there was no need for the Ombudsman to conduct another preliminary investigation as the one conducted by the former Tanodbayan was valid and legal. Presumably, the new Ombudsman recognized the results of the preliminary investigation conducted by the then Tanodbayan and adopted the conclusions reached therein when he ordered the filing of an Information against petitioners.

Consequently, there was no need for the Ombudsman to act on the petitioners' Motion for Reinvestigation. As stated, there was no need for the Ombudsman to conduct another preliminary investigation. Acctmis

Petitioners also submit that they were deprived of their constitutional right to a speedy trial by reason of the delay in the filing of the Information by the Ombudsman. They contend that the Sandiganbayan abused its discretion in not dismissing the Information filed against them on the ground that "there was unexplained and unjustified delay of more than three (3) years before an information was filed against them from the filing of the complaint on August 25, 1986 up to the filing of the Information on November 5, 1990." In fine, they point out that considering that the preliminary investigation was concluded as early as October 30, 1987, the first Ombudsman constituted under the 1987 Constitution should have filed the Information as soon as he was appointed on June 6, 1988. Instead, it took more than two years and 3,386 cases before Criminal Case No.16240 was filed against them on November 5, 1990. In other words, petitioners argue that since the Resolution of the Ombudsman recommending

the filing of the Information was issued on October 30, 1987, then the Information should have been filed immediately thereafter, considering that even before the promulgation of the Zaldivar case on April 27, 1988, thousands of Informations had been filed.[13]

Petitioners' contention is without merit.

In *Cojuangco Jr. v. Sandiganbayan*,^[14] this Court has held that the constitutional guarantee set forth in Section 16, Article III of the 1987 Constitution,^[15] of "(t)he right to a speedy disposition of a case, like the right to speedy trial, is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delays." "x x x (T)he concept of speedy disposition of cases is a relative term and must necessarily be a flexible concept. 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 the length of delay, the reason for such delay and the assertion or failure to assert such right by the accused, and the prejudice caused by the delay."^[16]

As pointed out by petitioners, the complaint was filed before the Tanobayan on August 25, 1986. On October 30, 1987, a Resolution was issued finding a prima facie case against petitioners and recommending the filing of an Information with the Sandiganbayan. However, it was only on November 5, 1990 when the Information was filed. Admittedly, it took three (3) years for the Ombudsman to file the Information against petitioners from the date of the Resolution recommending the filing thereof.

In explaining the delay in the filing of the Information, however, the Office of the Solicitor General averred, as follows:

It will be noted that the normal operations of the Office of the Special Prosecutor was affected by the Decision of this Honorable Court in *Zaldivar v. Sandiganbayan* and *Zaldivar v. Gonzalez*, 160 SCRA 843 dated April 27, 1988, where it was ruled that the incumbent Tanodbayan lost his right to conduct preliminary investigation and to direct the filing of criminal cases with the Sandiganbayan effective February 2, 1987. As a result, complaints (including that involved in the present petition), resolutions and other legal papers awaiting action during that period remained pending the appointment of an Ombudsman.

When the Ombudsman was appointed in 1988, it took some time still before his Office could become fully constituted and operational. Because of the unavoidable delay caused by the aforementioned circumstances, the corresponding Information in the criminal case involve was filed and approved only in 1990.

Prescinding from the foregoing, this Court finds no violation of petitioners' right to a speedy disposition of their case. The delay was not vexatious, capricious, nor oppressive, considering the factual milieu of this case, namely the structural reorganizations and procedural changes brought about by frequent amendments of procedural laws in the initial stages of this case. The complaint was filed on August 25, 1986. On October 30, 1987, the Ombudsman issued a Resolution finding a prima facie case and recommending the filing of an Information. Meanwhile, on April 27, 1988, the Zaldivar case was promulgated holding that the Tanodbayan lost his authority to conduct preliminary investigations and to direct the filing of Informations with the Sandiganbayan effective February 2, 1987. Then on November 5, 1990, the Information against petitioners was filed.

In the case *Binay v. Sandiganbayan* and *Magsaysay v. Sandiganbayan*,^[17] this Court has held that:

A mere mathematical reckoning of the time involved, therefore, would not be sufficient. In the application of the constitutional guarantee of the right to speedy disposition of cases, particular regard must also be taken to the facts and circumstances peculiar to each case.

In *Alvizo v. Sandiganbayan*,^[18] this Court has reiterated that it has taken 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, resulting in changes of personnel, preliminary jurisdiction, functions and powers of prosecuting agencies.

In addition, it is clearly apparent from the figures cited by petitioners that the Sandiganbayan was burdened with a heavy caseload. Parenthetically, this Court has taken judicial cognizance of the fact that the ever increasing caseload of courts has affected the speedy disposition of cases pending before the Sandiganbayan.[19]

While petitioners certainly have the right to a speedy disposition of their case, the structural reorganization of the prosecutorial agencies, the procedural changes brought about by the Zaldivar case as well as the Sandiganbayan's heavy caseload certainly are valid reasons for the delay in the disposition of petitioners' case. For those reasons, the delay certainly cannot be considered as vexatious, capricious and oppressive. Neither is it unreasonable nor inordinate.

WHEREFORE, in view of the foregoing, the instant petition is DENIED and the two Orders dated February 18, 1993 and March 8, 1993 of the Sandiganbayan's Second Division in Criminal Case No. 16240 are AFFIRMED. The Sandiganbayan is DIRECTED to proceed with dispatch in the disposition of this case.

No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, and Kapunan, JJ., concur.

Pardo, J., on official business abroad. Newmiso

[1] Annex "A", Rollo, p. 25.

[2] Annex "B", Rollo, p. 26.

[3] Now the Ombudsman.

[4] Rollo, pp. 63-71.

[5] Rollo, pp. 72-73.

[6] Rollo, pp. 74-75.

[7] Rollo, pp. 87-89.

[8] Rollo, pp. 90-91.

[9] Rollo, pp. 92-93.

[10] Rollo, pp. 94-101.

[11] Rollo, pp. 102-105.

[12] 160 SCRA 843 (1988).

[13] Memorandum for Petitioners, Rollo, pp. 180-182.

[14] 300 SCRA 367 [1998].

[15] "All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies." (Italics supplied).

[16] *Alvizo v. Sandiganbayan*, 220 SCRA 55 [1993].

[17] G.R. Nos. 120681-83, G.R. No. 128136, October 1, 1999.

[18] *Supra*.

[19] See note 4.

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