

**FRANCISCO DELA PEÑA AND, TRANQUILINO BENIGNO,
PETITIONERS, VS. THE SANDIGANBAYAN, FOURTH DIVISION, THE
SPECIAL PROSECUTOR AND COMMISSION ON AUDIT, REGION XI,
RESPONDENTS.**

G.R. No. 144542. June 29, 2001

Ponente: DAVIDE, JR., C.J.

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DAVIDE, JR., C.J.:

In this petition for certiorari, petitioners ascribe to public respondent Sandiganbayan grave abuse of discretion in denying their motion to quash or dismiss Criminal Case No. 23662, which was premised on the ground of inordinate delay in the conduct of the preliminary investigation amounting to a violation of their constitutional rights to due process of law and to a speedy disposition of the case against them.

As culled from the pleadings of the parties, these facts are duly established:

In accordance with Regional Assignment Order No. 91-835 of 12 July 1991 the Commission on Audit (COA) created a Special Audit Team, which thereafter conducted an audit of the operations of a fishing vessel under the management of the Davao del Norte School of Fisheries, Panabo, Davao del Norte. The result of the audit was referred to the Office of the Ombudsman for Mindanao on 3 July 1992.

On 14 August 1992, Graft Investigation Officer (GIO) Marie Dinah Tolentino issued an order requiring herein petitioners and three other respondents, namely, Tomas Quijano, Domingo Ang, and Atty. Venancio Nava to file their respective counter-affidavits. After seeking for an extension of time to file their counter-affidavits, petitioners and their co-respondents filed their respective counter-affidavits, the last of which was filed on 3 December 1992. They never filed or sent any further pleadings, letters or queries to the Office of the Ombudsman for Mindanao.

On several occasions, however, Bernardino E. Placia and Vicente C. Hermoso, Vocational Instruction Coordinator Designate and Vocational School Administrator, respectively, of the Davao del Norte School of Fisheries, who were not parties to the case, sent letters regarding the case. Mr. Placia sent a letter[1] to the Deputy Ombudsman for Mindanao dated 9 March 1993 to ask for clearance to move to its homeport or dockyard the fishing boat subject of the graft case in order to repair and use it. On 7 April 1993,[2] GIO Tolentino sent a reply saying that her office had no objection to the transfer provided that sufficient safeguards be taken to protect the boat. Again, on 15 March 1994[3] Mr. Placia sent a letter to the Deputy Ombudsman for Mindanao asking for a copy of the clearance to the said transfer, as the original copy had been misplaced.

Mr. Hermoso, on the other hand, in his letter of 18 March 1994,[4] inquired from the Deputy Ombudsman for Mindanao about the status of the case in his capacity as the administrator of the school using the fishing vessel. On 4 May 1994, he wrote GIO Tolentino another letter[5] requesting that the case be given preferential attention, as one of the respondents therein had already retired. In his letter of 3 April 1995,[6] GIO Jovito Coresis, Jr.,

informed Mr. Hermoso that he was reviewing the voluminous records of the case with a view to resolving the same.

GIO Coresis came up with a resolution on 10 October 1996,[7] which was reviewed by Director Rodolfo M. Elman on 21 October 1996. The resolution was recommended for approval by Margarito P. Gervacio, Deputy Ombudsman for Mindanao, on 13 March 1997. It was finally approved by Ombudsman Aniano Desierto on 28 April 1997.

Based on that Resolution, an information was filed with the Sandiganbayan on 6 May 1997 charging petitioners with the violation of Section 3(g) of Republic Act No. 3019, as amended. The Information was docketed as Criminal Case No. 23662.

Sometime in December 1999, when the case was set for arraignment, petitioners, through counsel, manifested that they would file a Motion to Quash. A Motion to Quash/Dismiss the Present Case[8] was indeed filed by them on 21 December 1999. They averred that after the filing of their respective counter-affidavits, the last of which was filed on 14 November 1992, petitioners did not file any motion for postponement or other dilatory motions. Yet, it was only on 28 April 1997, or after the lapse of four (4) years and six (6) months, that the Office of the Ombudsman for Mindanao came out with its resolution and information. Such an unreasonable length of time in the conduct of the preliminary investigation constituted "inordinate delay" amounting to "a clear and flagrant violation of the constitutional right[s] to due process and speedy disposition of cases." They invoked this Court's ruling in *Tatad vs. Sandiganbayan*,[9] *Angchangco vs. Sandiganbayan*,[10] and *Roque vs. Office of the Ombudsman*.^[11]

In its Comment/Opposition to the Motion to Quash/Dismiss,[12] the prosecution, through the Office of the Special Prosecutor, asserted that there was neither inordinate delay in the preliminary investigation nor any violation of any right of the petitioners. From the time the last counter-affidavit was filed, or from 3 December 1992 (not 14 November 1992 as alleged in the motion) other incidents, letter-queries, requests and other communication were taken into consideration and acted upon by GIO Tolentino. Thereafter the case was reassigned to GIO Coresis.

In its Resolution[13] of 21 March 2000, the Sandiganbayan (Fourth Division) denied the Motion to Quash/Dismiss for lack of merit. It ratiocinated thus:

In the application of the right to speedy disposition of cases, particular regard should be taken of the facts and circumstances peculiar to each case.[14] The doctrines established in the said cases of *Tatad vs. Sandiganbayan* (159 SCRA 70) and *Angchanco vs. Sandiganbayan* (268 SCRA 301) cannot be applied blindly to the instant case, without considering the facts and circumstances obtaining herein.

The prosecution in its Opposition clearly narrated what transpired during the preliminary investigation. The respondents sought on several occasions for the extension of time to file their counter-affidavits, and several letter queries and communications were also considered and taken up by the Ombudsman during the preliminary investigation.

The Court finds the justification of the prosecution to be well taken. It is clear that, in the instant case, there are several accused charged with violating Sec. 3(g) of R.A. 3019. The Court also takes note of the fact that most of the counter-affidavits filed by the respondents, as well as that of the Report submitted by the Commission on Audit consist of several pages and there are numerous receipts submitted in the course of the preliminary investigation, and these entailed considerable time to evaluate and consider. In fact, the Office of the Ombudsman for Mindanao came up with a rather lengthy resolution on October 10, 1996 which was approved by the Ombudsman on April 28, 1997.

Petitioners filed a Motion for Reconsideration[15] alleging that while it is true that all them had requested for an extension of time to file their respective counter-affidavits, it is undisputed that it took them only about three (3) months to complete the submission of their respective counter-affidavits. From 3 December 1992 when the last counter-affidavit was filed, the Office of the Ombudsman for Mindanao had the capability to resolve the case. Yet, it took the Office four (4) years, one (1) month, and twenty-six (26) days to terminate the preliminary investigation. Anent the letters and queries of Vicente Hermoso and Bernardino Placia, who were not parties or respondents in this case, the same were not necessary for the Office of the Ombudsman for Mindanao to resolve and terminate the preliminary investigation. Nevertheless, it still took that office another two (2) years and five (5) months from the last letter of Vicente Hermoso to finally terminate the preliminary investigation.

In its Order[16] of 29 May 2000 the Sandiganbayan denied the motion for reconsideration. Hence, this petition wherein petitioners impute to the Sandiganbayan grave abuse of discretion amounting to lack or excess of jurisdiction when it

- ... FAILED TO DISMISS CRIM. CASE NO. 23662 ON GROUND OF VIOLATION OF CONSTITUTIONAL RIGHT TO SPEEDY DISPOSITION OF THE CASES.
- ... REFUSED TO APPLY THE RULINGS OF THE HONORABLE SUPREME COURT IN THE CASES OF FRANCISCO TATAD VS. SANDIGANBAYAN (159 SCRA 70) AND ANCHANGCO VS. SANDIGANBAYAN (268 SCRA 301) TO THE CASE OF HEREIN PETITIONERS.
- ... RULED THAT THE DELAY IN THE CONDUCT OF PRELIMINARY INVESTIGATION WHICH LASTED FOR FOUR (4) YEARS, ONE MONTH AND TWENTY-SIX DAYS, IS SOLELY ATTRIBUTABLE TO THE ACCUSED NOW PETITIONERS.
- ... RULED THAT THE MOTION FOR RECONSIDERATION IN CRIM. CASE NO. 23662 FILED BY THE HEREIN PETITIONERS IS MERELY "A REHASH OF THE SAME POINTS ALREADY RAISED BY SAID ACCUSED IN THEIR MOTION TO QUASH/DISMISS THE PRESENT CASE.

The right to "a speedy disposition of cases" is guaranteed by the Constitution. Section 16 of Article III thereof provides: "All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial or administrative bodies." This right, however, like the right to a speedy trial, is deemed violated only when the proceedings is attended by vexatious, capricious, and oppressive delays.[17]

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.[18] 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.[19]

In *Tatad v. Sandiganbayan*,[20] which petitioners invoked, there was a delay of almost three (3) years in the conduct of the preliminary investigation by the Tanodbayan. In ruling that such delay constituted a violation of the constitutional rights of the accused to due process and to a speedy disposition of cases, this Court took into account the following circumstances: (1) the complaint was resurrected only after Tatad had a falling out with the former President Marcos, and hence, political motivations played a vital role in activating and propelling the prosecutorial process; (2) the Tanodbayan blatantly departed from the established procedure prescribed by law for the conduct of preliminary investigation; and (3) the simple factual and legal issues involved did not justify the delay.

Likewise in *Anchangco vs. Ombudsman* [21] and *Roque vs. Office of the Ombudsman*,[22] this Court held that the delay of almost or more than six (6) years in resolving the criminal charges against the petitioners therein

amounted to a violation of their constitutional rights to due process and to a speedy disposition of the cases against them, as well as the Ombudsman's own constitutional duty to act promptly on complaints filed before him.

However, in *Santiago vs. Garchitorena*[23] and *Cadalin vs. POEA's Administrator*,[24] the complexity of the issues, coupled with the accused's failure to invoke the right to a speedy disposition of cases (in *Santiago*) and the "squabble" between the lawyers of the claimants (in *Cadalin*), prevented this Court from yielding to the claims of violation of the constitutionally-guaranteed right to a speedy disposition of cases. Similarly, in *Alvizo vs. Sandiganbayan*[25] and *Castillo vs. Sandiganbayan*[26] this Court held as valid reasons for the delay in the disposition of the cases "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 change of personnel, preliminary jurisdiction, [and] functions and powers of prosecuting agencies." Also considered in *Castillo* was the Sandiganbayan's heavy caseload; and in *Alvizo*, the accused's failure to assert such right and the lack of prejudice caused by the delay to the accused.

In the case at bar, the investigatory process was set in motion on 14 August 1992, and the last counter-affidavit was filed on 3 December 1992. The Graft Investigation Officer came up with a resolution on 10 October 1996, or after four (4) years, one (1) month and twenty-six (26) days from the start of the investigation proceedings or three (3) years, ten (10) months and seven (7) days from the time the last counter-affidavit was filed. The resolution thereafter underwent the hierarchy of review and was finally approved by Ombudsman Aniano Desierto on 28 April 1997.

The prosecution, in its Comment/Opposition to the Motion to Quash/Dismiss, explained the delay in the conduct of the preliminary investigation by claiming that (a) herein petitioners and their co-accused sought on several occasions for an extension of time to file their counter-affidavits; (b) GIO Tolentino received queries, requests, and other communication, which she had to take into consideration, reply to, and act upon; and (c) the case was transferred to GIO Coresis, who thereafter terminated the investigation.

The first two reasons cited do not justify the delay. Indeed, as pointed out by petitioners, it took them only three months to complete their counter-affidavits. If we reckon the length of delay from the time of the filing of the last affidavit, a period of three (3) years, ten (10) months and seven (7) days had elapsed before the investigation was terminated. Anent the letters (a) requesting the transfer of the fishing boat to its homeport for repair; (b) requesting a copy of the clearance for such transfer; (3) inquiring about the status of the case; and (4) requesting preferential attention to the case, the same could have hardly contributed to the delay. Not much time was needed to act on those inquiries or requests. Besides, they had no relation to the issue of the innocence or guilt of the petitioners and were made by individuals who were not parties to the case. One of such letters even requested "preferential action on the case," since one of the accused had already retired.

The third cited reason could have been one of the causes of the delay. The case was transferred to GIO Coresis sometime between the last quarter of 1994 and first quarter of 1995 as can be gleaned from the letters on record. He had to go over the lengthy COA report and counter-affidavits of the five respondents, as well as the numerous receipts and other evidence forming part of the "voluminous records." It took him more or less two years to evaluate the evidence and come up with a resolution. In any event, the delay could scarcely be considered as "vexatious, capricious and oppressive."

Moreover, it is worthy to note that it was only on 21 December 1999, after the case was set for arraignment, that petitioners raised the issue of the delay in the conduct of the preliminary investigation. As stated by them in their Motion to Quash/Dismiss, "[o]ther than the counter-affidavits, [they] did nothing." Also, in their petition, they averred: "Aside from the motion for extension of time to file counter-affidavits, petitioners in the present case did

not file nor send any letter-queries addressed to the Office of the Ombudsman for Mindanao which conducted the preliminary investigation." They slept on their right - a situation amounting to laches. The matter could have taken a different dimension if during all those four years, they showed signs of asserting their right to a speedy disposition of their cases or at least made some overt acts, like filing a motion for early resolution, to show that they were not waiving that right. Their silence may, therefore be interpreted as a waiver of such right.[27] As aptly stated in *Alvizo*, the petitioner therein was "insensitive to the implications and contingencies" of the projected criminal prosecution posed against him "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, [and] hence impliedly with his acquiescence."

In *Angchangco*, relied upon by herein petitioners, the petitioner therein filed several omnibus motions for the early resolution of the case and even filed a motion to dismiss, which was itself unacted upon. In *Roque*, when there was no resolution yet on the preliminary investigation, the petitioner therein filed before this Court a petition for mandamus to dismiss the case. In both, the criminal complaints were ordered dismissed on the ground of inordinate delay of six (6) years amounting to a transgression of the right to a speedy disposition of cases. We cannot grant the same "radical relief" to petitioners in the absence of a clear showing that the delay was unreasonable or arbitrary and was seasonably objected to by them.

WHEREFORE, the petition is DENIED for failure to show that respondent Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction when it denied petitioners' Motion to Quash/Dismiss the case against them. The Sandiganbayan is hereby DIRECTED to dispose of Criminal Case No. 23662 with reasonable dispatch.

Costs against petitioners.

SO ORDERED.

Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Gonzaga-Reyes, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.

Ynares-Santiago, J., abroad on official business.

[1] Rollo, 53.

[2] *Id.*, 54.

[3] *Id.*, 55.

[4] Rollo, 56.

[5] *Id.*, 57.

[6] *Id.*, 58.

[7] *Id.*, 69.

[8] *Id.*, 35.

[9] 159 SCRA 70 [1988].

[10] 268 SCRA 301 [1997].

[11] 307 SCRA 106 [1999].

[12] Original Record, vol. I, 219.

[13] Rollo, 43. Per Ferrer, N., .., with Nario, N., and Palattao, R., JJ., concurring.

[14] Citing Socrates vs. Sandiganbayan, 253 SCRA 773 [1996].

[15] Rollo, 48.

[16] Id., 52.

[17] Cojuangco v. Sandiganbayan, 300 SCRA 367, 393 [1998]; Blanco v. Sandiganbayan, G.R. Nos. 136757-58, 27 November 2000.

[18] Binay v. Sandiganbayan, 316 SCRA 65, 93 [1999]; Castillo v. Sandiganbayan, 328 SCRA 69, 76 [2000].

[19] Alvizo v. Sandiganbayan, 220 SCRA 55, 63 [1993]; Dansal v. Fernandez, 327 SCRA 145, 153 [2000]; Blanco v. Sandiganbayan, Supra note 17.

[20] Supra note 9.

[21] Supra note 10.

[22] Supra note 11.

[23] 228 SCRA 214 [1993].

[24] 238 SCRA 721 [1994].

[25] Supra note 19, at 64.

[26] Supra note 18.

[27] See Guerrero v. Court of Appeals, 257 SCRA 703, 715-716 [1996].

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