

GUILLERMO T. DOMONDON AND VAN D. LUSPO, PETITIONERS, VS. HON. FIRST DIVISION, SANDIGANBAYAN, RESPONDENT.

G.R. No. 166606. November 29, 2005

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is a special civil action for certiorari under Rule 65 of the Rules of Court seeking to nullify the September 13, 2004 Resolution[1] of the Sandiganbayan denying petitioners' motion to dismiss and its January 11, 2005 Resolution[2] denying the motion for reconsideration.

The case arose from the investigation initiated by a letter-complaint of then Police Sr. Superintendent Romeo M. Acop to the Ombudsman where it appears that payrolls of 2,000 enlisted men of the Cordillera Regional Command (CRECOM), who were allegedly recipients of the P20,000,000 appropriated for combat, clothing, and individual equipment (CCIE) allowance, were falsified.

Subsequent investigations determined that petitioners Philippine National Police (PNP) Director for Comptrollership Guillermo Domondon, and Sr. Superintendent Van Luspo, together with other PNP officers, namely: Cesar Nazareno, Armand Agbayani, Joven Brizuela, Juan Luna and Danilo Garcia, conspired with one another in approving without budgetary basis, the release of Advice Allotment SN No. 4363 dated August 11, 1992 for P5,000,000 and Advice Allotment SN No. 4400 dated August 18, 1992 for P15,000,000, for the procurement of CCIE for the use of PNP personnel of the CRECOM, causing to be issued checks with an aggregate amount of P20,000,000 for payment of ghost purchases of the aforesaid CCIE items.

On May 4, 1994, an information was filed before the Sandiganbayan charging petitioners Domondon and Luspo, and the above-named accused, with violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act.

Their arraignment was reset for several times, hence, petitioners filed on December 3, 2003 a motion to dismiss claiming that the failure to arraign them within the period set under Republic Act (RA) No. 8493 or the Speedy Trial Act of 1998 have resulted in denial of their rights to speedy trial.

On September 13, 2004, the Sandiganbayan denied petitioners' motion to dismiss and on January 11, 2005, dismissed petitioners' motion for reconsideration.

Hence, the instant petition raising the sole issue of whether the Sandiganbayan acted with grave abuse of discretion in denying petitioners' motion to dismiss.

The procedural history of the case may be outlined as follows:

May 12, 1994 – Domondon moved for the consolidation of Crim. Case No. 20574 with Crim. Case Nos. 20185, 20191, 20192 and 20576.

May 17, 1994 – the Sandiganbayan issued an Order requiring the prosecution to demonstrate the probable complicity of petitioners Domondon and Luspo, and accused Cesar Nazareno in the transaction described in

the Information.

May 25, 1994 – Accused Rodrigo F. Licudine filed a motion for reconsideration.

June 8, 1994 – Sandiganbayan ordered prosecution to re-examine evidence and re-investigate.

June 13, 1994 – Luspo filed his motion to defer arraignment and motion for reinvestigation with Sandiganbayan.

November 8, 1994 – Prosecutor Erdulfo Q. Querubin issued Order resolving review and reinvestigation recommending that prosecution proceed against petitioners duly approved by Ombudsman Conrado Vasquez.

May 17, 1995 – Domondon filed his motion for reconsideration of the Order dated November 8, 1994 and for consolidation.

November 29, 1995 – Prosecutor Joselito R. Ferrer issued Order acting on the motion for reconsideration and consolidation of petitioner Domondon recommending, inter alia, that petitioners be exonerated.

September 2, 1996 – Then Overall Deputy Ombudsman (ODO) Francisco A. Villa issued memorandum recommending disapproval of recommendation of Prosecutor Ferrer.

February 19, 1997 – Ombudsman Aniano A. Desierto disapproved the reconsideration of Prosecutor Ferrer to exonerate petitioners as recommended by ODO Villa.

July 28, 1997 – Amended Information was issued by Prosecutor Ferrer dropping accused Prospero Noble, Nicasio Radovan, Jr., Rodrigo Licudine, Amparo Cabigas, and Juan Refe II from the instant charge in accordance with the approval by Ombudsman Desierto of his Memorandum dated July 29, 1997.

August 26, 1997 – Prosecutor Ferrer filed prosecution's Motion to Admit Amended Information.

September 5, 1997 – Hearing on the foregoing motion to admit Amended Information wherein the Sandiganbayan gave complaining witnesses fifteen (15) days from receipt of its Order within which to file their comments and/or opposition to the motion with the prosecution a like period from receipt thereof within which to file reply.

October 6, 1997 – Domondon filed his motion asking for additional period until November 7, 1997 within which to submit his comments and/or objections to the motion to Admit Amended Information.

November 26, 1997 – Sandiganbayan issued a Resolution deferring action on prosecution's motion to admit Amended Information while the petition for certiorari and prohibition of petitioner Domondon before the Supreme Court seeking to prevent the filing of the Amended Information is still pending.

October 23, 2000 – Sandiganbayan issued a Resolution granting prosecution's motion to admit Amended Information and setting the arraignment for, among others, petitioners on November 23, 2000 in the light of the finality of the judgment of the Supreme Court denying the aforementioned petition of petitioner Domondon.

November 17, 2000 – Domondon filed his Omnibus Motion seeking deferment of arraignment until resolution of the motion for dismissal for lack of due process, undue delay, violation of the right to speedy trial, and if the motion for dismissal is denied, to consolidate the instant case with Criminal Case No. 20191 pending before the Fifth Division of the Sandiganbayan.

November 23, 2000 – During the scheduled arraignment, Sandiganbayan again required prosecution to "show why the senior officers particularly Gen. Guillermo T. Domondon and General Cesar Nazareno should be included herein" thereby resetting the arraignment to January 5, 2001; during the same proceeding, petitioner Luspo failed to appear for which reason the Sandiganbayan issued a show-cause order.

January 5, 2001 – Arraignment did not proceed.

February 6, 2001 – The Sandiganbayan issued its Resolution requiring Domondon to furnish copies of his Manifestation (which was actually a motion to dismiss but was not set for hearing) to prosecution, which was given five (5) days from receipt to comment thereon.

February 27, 2001 – Accused Juan Luna filed his Motion to Quash.

February 15, 2002 – Arraignment again cancelled due to pendency of motion to dismiss of accused Danilo Garcia.

June 5, 2002 – Arraignment cancelled.

September 19, 2002 – Accused Joven Brizuela filed his Motion for Bill of Particulars.

September 30, 2000 – Arraignment cancelled; prosecution was given by the Sandiganbayan fifteen (15) days within which to file opposition to accused Brizuela's motion for bill of particulars.

October 9, 2002 – Prosecution filed its Opposition to accused Brizuela's motion for bill of particulars.

October 14, 2002 – Date of Domondon's motion for arraignment and pre-trial separate from that of their co-accused.

October 18, 2002 – Date of urgent motion for extension of time to file reply filed by accused Brizuela.

October 28, 2002 – Date of Reply to Opposition filed by accused Brizuela.

November 4, 2002 – Domondon filed his Motion for Separate Trial and to withdraw the October 14, 2002 motion and required prosecution to comment on the motion for separate trial filed by petitioner Domondon; the arraignment was again cancelled.

December 9, 2002 – The Sandiganbayan granted the Urgent Motion for Extension of Time to File Reply filed by accused Brizuela.

December 20, 2002 – Prosecution filed its Comment/Opposition to the Motion for Separate Trial and to Set Arraignment.

December 3, 2003 – Domondon filed Motion to Dismiss setting the same for hearing on December 15, 2003 until the end of the year due to Yuletide season.

January 22, 2004 – Domondon filed his Motion to Dismiss at bar.

February 3, 2004 – The Sandiganbayan heard the said motion to dismiss and gave prosecution fifteen (15) days within which to file its comment/opposition thereto.

February 10, 2004 – The prosecution filed its opposition to Motion to dismiss of petitioners.

March 3, 2004 – Petitioners filed their Comment to Opposition.

April 28, 2004 – Accused Danilo Garcia filed his leave to file comment regarding Motion to Dismiss.

May 13, 2004 – Accused Garcia filed his opposition to prosecution's motion for leave to file comment regarding Motion to Dismiss.

May 18, 2004 – Sandiganbayan admitted prosecution's opposition to accused Garcia's motion to dismiss.

August 31, 2004 – Prosecution filed its motion to resolve praying that the motion for bill of particulars of accused Brizuela, the motion for separate trial of petitioners herein, and the motion to dismiss of accused

Garcia be resolved.

September 13, 2004 – The Sandiganbayan promulgated its Resolution denying the motion to dismiss of petitioners herein and of accused Garcia, the motion for bill of particulars of accused Brizuela, and motion for separate trial of petitioners herein and setting the arraignment on October 5, 2004, the pre-trial on October 14 and 15, 2004 and trial on November 9, 11, 12 and every Tuesday, Thursday, and Friday thereafter.

October 1, 2004 – Accused Garcia filed his motion for reconsideration on the foregoing denial of his motion to dismiss by Sandiganbayan setting the same for hearing on October 5, 2004, with a Manifestation and Motion praying that the arraignment, pre-trial and trial be cancelled pending his motion for reconsideration.

October 13, 2004 – Petitioners herein filed their motion for reconsideration on the foregoing denial of their motion to dismiss.

October 15, 2004 – Prosecution filed its consolidated opposition to the foregoing motions of petitioners herein, accused Garcia and Brizuela.

November 3, 2004 – Petitioners herein filed their Rejoinder/ Comment to the foregoing consolidated opposition of prosecution.

January 11, 2005 – Sandiganbayan promulgated the Resolution denying the motions for reconsideration of petitioners herein, accused Garcia and Brizuela and setting the arraignment on January 11, 2005 and the preliminary conference on February 8, 2005. On the same day, the Sandiganbayan, in open court, cancelled the arraignment and reset the same to February 4, 2005 considering that the accused concerned, including herein petitioners, only received their copies of the foregoing Resolution on the morning of that date (January 11, 2005).

January 27, 2005 – Petitioners herein filed the instant petition for certiorari with the Supreme Court.

January 29, 2005 – Accused Garcia filed his motion to defer arraignment and to suspend further proceedings due to his intended petition for certiorari with the Supreme Court.

February 3, 2005 – Accused Garcia filed his petition for certiorari with the Supreme Court.

February 4, 2005 – Arraignment after more than ten (10) years from the filing of the original informations on May 4, 1994, proceeded except for petitioner Luspo who was allegedly ill. After arraignment, the preliminary conference was set for March 4, 2005, the pre-trial for March 15, 2005, and the trial for April 15, May 5, 6, 17, and 19, 2005.

February 22, 2005 – Petitioner Luspo was arraigned.

March 2, 2005 – The prosecution filed its Pre-Trial Brief.

March 4, 2005 – The preliminary conference proceeded with no agreement between the parties. Prosecution marked its exhibits.

March 7, 2005 – Accused Garcia filed his motion to reset preliminary conference and to resolve his pending motion to suspend further proceedings.

March 11, 2005 – Preliminary conference continued.

March 14, 2005 – The prosecution filed its Amended Pre-Trial Brief correcting some typographical errors in its original Pre-Trial Brief and adding some exhibits.

March 15, 2005 – During the intended pre-trial, the parties signified the need to continue the preliminary conference and the Sandiganbayan set the continuation thereof after the court proceedings, which the parties

actually held.

April 13, 2005 – The prosecution filed its Re-Amended Pre-Trial Brief adding some witnesses.

April 15, 2005 – During the intended trial, the same was considered as continuation of the pre-trial as no pre-trial order and minutes of the preliminary conference had as yet been completed which the Sandiganbayan stated would be released before the intended trial on May 5, 2005.

To date – The prosecution is ready to present its first witness.

As earlier mentioned, the denial by the Sandiganbayan of petitioners' motion to dismiss prompted the filing of the instant petition on the ground that the failure to arraign them within the time set by the Speedy Trial Act of 1998 constitutes a violation of their right to a speedy trial.

Petitioners allege that speedy trial is not a flexible concept. They explained that prior to the enactment of RA 8493, as implemented by Supreme Court (SC) Circular No. 38-98, the concept of speedy trial was deemed flexible because the number of days to determine whether an accused is deprived of his constitutional right to speedy trial, was not specified. The courts were given enough latitude to make a judicial determination of whether the delays could be considered as "vexatious, capricious, and oppressive" to constitute a violation of the right to speedy trial. Petitioners claim that with the enactment of RA 8493, any delay in excess of the allowable number of days within which trial should be conducted will give rise to the violation of the accused's right to speedy trial. Petitioners also contend that they cannot be faulted for the delays which resulted in the failure to arraign them on time. They point out that the Sandiganbayan erroneously anchored the denial of their motion to dismiss on the ground that the failure to resolve accused Brizuela's motion for bill of particulars cannot be utilized in computing the period of delay.

The petition lacks merit.

While the Speedy Trial Act of 1998 sets the time limit for the arraignment and trial of a case, these however do not preclude justifiable postponements and delay when so warranted by the situation. Section 2 of SC Circular 38-98 provides that the period of the pendency of a motion to quash, or for a bill of particulars, or other causes justifying suspension of arraignment, shall be excluded.

Thus in *People v. Tee*,^[3] we held that the right to a speedy trial is deemed violated only when: 1) the proceedings are attended by vexatious, capricious, and oppressive delays; 2) when unjustified postponements are asked for and secured; 3) when without cause or justifiable motive a long period of time is allowed to elapse without the party having his case tried.

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 of the facts and circumstances peculiar to each case.^[4]

In *Gonzales v. Sandiganbayan*,^[5] the Court emphasized that:

... [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; or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive a long period of time is allowed to elapse without the party having his case tried. Equally applicable is the balancing test used to determine whether a defendant has been denied his right to a speedy trial, or a speedy disposition of a case for that matter, in which the conduct of both the prosecution and the defendant are weighed, and such factors as length of the delay, reason for the delay, the defendant's assertion or non-assertion of his right, and prejudice to the defendant resulting from the delay, are considered.

We further explained that in determining whether the constitutional right to speedy trial of petitioners has been violated, the factors to consider and balance are the duration of the delay, reason therefor, assertion of the right or failure to assert it and the prejudice caused by such delay.[6]

In the light of the above guiding principles, we must inquire whether in the present case there was unreasonable delay in the conduct of the arraignment which resulted in violation of the right to speedy trial of the petitioners. It must be recalled that in the application of the constitutional guaranty of the right to speedy trial, particular regard must also be taken of the facts and circumstances peculiar to each case.

In justifying the denial of petitioner's motion to dismiss, the Sandiganbayan reasoned that although the scheduled arraignments were postponed several times, they were however postponed for valid reasons. The respondent court cited a number of justifiable causes of postponements, thus:[7]

... [O]ne of the postponements was due to the request of one of the accused to reset the arraignment since the counsel of record is not available on the scheduled date. To proceed with the arraignment despite the noted absence of one of the counsels would result in inequity on one of the accused-movants' co-defendants. Another postponement, as pointed out by the accused-movants, was the time given by the Court to allow the prosecutor to file an opposition to Brizuela's Bill of Particulars. The comment made by accused-movants is discriminatory and unjust. They claim that the delay caused by the filing of a motion for bill of particulars by a co-accused should not be attributable to them as they did not join the same, and consequently such is a violation of their right to speedy trial. They have forgotten that they themselves had caused a long delay in this case by filing a motion for reinvestigation and the petition for certiorari and prohibition with the Honorable Supreme Court, which is, if such reasoning is to be followed, to the detriment of the other accused in this case.

We find no reason to deviate from the findings and conclusions of the respondent court. A careful examination of the records would show that the postponements were caused by numerous pending motions or petitions. The delays caused by the filing and resolution of these motions and petitions cannot be categorized as vexatious, capricious or oppressive. After all, it is the judicious and deliberate determination of all the pending incidents of a case, with a genuine respect for the rights of all parties and the requirements of procedural due process, that should be the primordial consideration in the full resolution of a case, more than the mere convenience of the parties or of the courts, so that justice and fairness would be served thereby.

There being no oppressive delay in the proceedings, and no postponements unjustifiably sought, we concur with the conclusion reached by the Sandiganbayan that petitioners' right to speedy trial had not been violated. Hence, the dismissal of petitioners' motion to dismiss must be upheld.

WHEREFORE, the petition is DISMISSED. The Resolution of the Sandiganbayan dated September 13, 2004 denying petitioners' motion to dismiss and its Resolution dated January 11, 2005 denying the motion for reconsideration, are AFFIRMED.

SO ORDERED.

Davide, Jr., C.J., Quisumbing, Carpio, and Azcuna, JJ., concur.

[1] Rollo, pp. 29-50. Penned by Associate Justice Teresita Leonardo-De Castro and concurred in by Associate Justices Diosdado M. Peralta and Roland B. Jurado.

[2] Id. at 51-57.

[3] G.R. Nos. 140546-47, January 20, 2003, 395 SCRA 419, 442.

[4] Ty-Dazo v. Sandiganbayan, 424 Phil. 945, 951 [2002].

[5] G.R. No. 94750, July 16, 1991, 199 SCRA 298, 307.

[6] Abardo v. Sandiganbayan, G.R. Nos. 139571-72, March 28, 2001, 355 SCRA 641, 654.

[7] Rollo, pp. 41-42.

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