

MADELEINE MENDOZA-ONG, PETITIONER, VS. HON. SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. Nos. 146368-69. October 18, 2004

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

In this Motion for Reconsideration,[1] petitioner Madeleine Mendoza-Ong seeks a reversal of this Court's October 23, 2003, Resolution dismissing her petition for certiorari and upholding the Sandiganbayan's denial of her motion to quash. She contends that the Court erred in:

I

...holding that the information filed against [her] in Criminal Case No. 23848 has alleged the essential ingredients of the offense charged [and in]

II

...failing to resolve the fundamental issue of whether the excessive or inordinate delay in the conduct of the preliminary investigation and filing of the informations after three (3) years had deprived [her] of her Constitutional and statutory right to due process and speedy determinations and disposition of the cases against her warranting dismissal thereof.[2]

Concerning the first ground abovesited, the Court notes that the motion contains merely a reiteration or rehash of arguments already submitted to the Court and found to be without merit. Petitioner fails to raise any new and substantial arguments, and no cogent reason exists to warrant a reconsideration of the Court's Resolution. It would be a useless ritual for the Court to reiterate itself.[3]

As to the second ground, we find it raises arguments that have already been passed upon. Reconsideration on that ground may also be denied summarily. Nevertheless, we shall take time to explain why her motion must be set aside for lack of merit, if only to clear any lingering doubt on the matter.

Petitioner laments that although the complaint was filed with the Office of the Deputy Ombudsman for the Visayas as early as December 13, 1994, the informations were filed with the Sandiganbayan only on August 1, 1997, and the amended informations, on October 27, 1998. According to her, the delay of nearly three years to finish the preliminary investigation violated her constitutional rights to due process and speedy disposition of cases. The established facts of this case, however, show no such violation.

The right to speedy disposition of cases, like the right to speedy trial, is violated only when the proceedings are attended by vexatious, capricious and oppressive delays.[4] In the determination of whether said right has been violated, particular regard must be taken of the facts and circumstances peculiar to each case.[5] The conduct of both the prosecution and the defendant, the length of the delay, the reasons for such delay, the assertion or failure to assert such right by the accused, and the prejudice caused by the delay are the factors to consider and balance.[6] A mere mathematical reckoning of time involved would not be sufficient.[7]

In this case, the Graft Investigation Officer released his resolution finding probable cause against petitioner on August 16, 1995, less than six months from the time petitioner and her co-accused submitted their counter-affidavits. On October 30, 1995, only two and a half months later, Ombudsman Aniano Desierto had reviewed the case and had approved the resolution. Contrary to petitioner's contention, the lapse of only ten months from the filing of the complaint on December 13, 1994, to the approval of the resolution on October 30, 1995, is by no means oppressive. "Speedy disposition of cases" is consistent with reasonable delays.[8] The Court takes judicial notice of the fact that the nature of the Office of the Ombudsman encourages individuals who clamor for efficient government service to lodge freely their complaints against alleged wrongdoing of government personnel.[9] A steady stream of cases reaching the Ombudsman inevitably results.[10] Naturally, disposition of those cases would take some time. Moreover, petitioner herself had contributed to the alleged delay when she asked for extension of time to file her counter-affidavit.

That the informations were filed only on August 1, 1997, also did not violate petitioner's constitutional rights. The delay was not without valid reasons. The Special Prosecutor in charge of preparing the informations felt a genuine need to specify in the informations (1) the value of the five drums of fuel petitioner received as gift in violation of the anti-graft law and (2) the amount of the subsistence allowance of heavy-equipment operators that the municipality of Laoang, Northern Samar, paid for when petitioner used heavy equipment rented by the municipality to develop her private property. The recommendation to specify these two amounts then had to undergo levels of review and was approved by Ombudsman Desierto only on January 29, 1996. Unfortunately, the needed information was not in the records, so the Deputy Special Prosecutor sought it from the Office of the Deputy Ombudsman for the Visayas. As that office also did not possess the needed information, it issued an Order on June 10, 1996, directing petitioner to supply the needed information.

When petitioner received a copy of the Order, however, she sought additional time to comply with the Order. She waited for two months before filing on August 23, 1996, a verified statement supplying none of the information required of her. She claimed that the five drums of fuel were merely donated to her and that she did not know their value. She also alleged that it was she and her husband, and not the government, who spent for the subsistence allowance of the heavy-equipment operator in the development of her private property. She did not object to the delay in the termination of the proceedings against her, nor did she seek at that time to expedite its resolution.

Petitioner's refusal to supply the information prompted the handling investigator at the Office of the Deputy Ombudsman for the Visayas to recommend on August 28, 1996, that the price of the five drums of fuel be estimated instead. Notably, the Office of the Special Prosecutor could have filed the informations then, but petitioner had filed with the said office a motion for reassessment of evidence on June 25, 1996, and a supplemental motion on August 20, 1996. These motions, which incidentally also failed to raise the issue of delay, effectively suspended the filing of the informations.

Subsequently, the case had to be reassigned to another Special Prosecutor because the original handling prosecutor was appointed Resident Ombudsman for the Bureau of Internal Revenue. Petitioner's motion for reassessment was resolved only on June 27, 1997. The resolution again went up for further review.

Considering the number of times that the case had to be reviewed, the levels of review that the case had to undergo, and petitioner's own motions for additional time, the period that lapsed -- roughly two years and five months (from the time petitioner and her co-accused submitted their counter-affidavits on March 29, 1995, to the time the informations were filed on August 1, 1997) to terminate the proceedings against petitioner -- could not be considered vexatious, capricious, and oppressive delay. They were necessitated by exigency of the actions taken on the case. The period to terminate the proceedings, in our view, had not violated petitioner's constitutionally

guaranteed rights to due process and to a speedy disposition of cases.[11]

Neither could the delay be said to have been prejudicial to her considering that she herself is guilty of delay.[12] The Court has held that if the long delay in the termination of the preliminary investigation was not solely the prosecution's fault, but was also due to incidents attributable to the accused and his counsel, the right of the accused to speedy disposition of cases is not violated.[13] Petitioner cannot now seek the protection of the law to benefit from what she now considers the adverse effects of her own conduct in this case.

Petitioner's reliance on the doctrines in *Tatad v. Sandiganbayan*,[14] *Duterte v. Sandiganbayan*,[15] and *Angchangco, Jr. v. Ombudsman*[16] is misplaced.

In *Tatad v. Sandiganbayan*, the cases against petitioner remained dormant for almost three years. In ruling that the long delay violated not only Tatad's constitutional right to due process but also his right to speedy disposition of the cases against him, the Court considered three factors. First, political motivation played a vital role in activating and propelling the prosecutorial process. Second, there was a blatant departure from established procedures prescribed by law for the conduct of a preliminary investigation. And third, the long delay in resolving the preliminary investigation could not be justified on the basis of the records.[17]

Worth noting, in *Duterte v. Sandiganbayan*, petitioners were denied the right to a preliminary investigation altogether. They were not served copies of the complaint-affidavits and were not given the chance to file counter-affidavits. The Graft Investigator merely required them to comment on a civil complaint against them and on a Special Audit Report of the Commission on Audit, both of which were not equivalent to the complaint-affidavits required by the applicable administrative rules. In fact, the petitioners were unaware and were never informed that a preliminary investigation was being conducted against them. The recommendations in the COA Special Audit Report were already accepted even before the report came out, and the civil complaint had already long been dismissed before the Graft Investigator required petitioner's comment on it.

Additionally, in *Duterte*, although the petitioners had filed the manifestation in lieu of the required comment on February 18, 1992, it was only on February 22, 1996, or four years later, that they received the resolution recommending the filing of informations against them. Then, also, informations were filed against petitioners in that case even in the absence of sufficient ground to hold them liable for the crime charged.

In *Angchangco, Jr. v. Ombudsman*, the delay lasted for six years despite the fact that Angchangco, Jr., had filed several omnibus motions for early resolution. Angchangco, Jr., even filed a motion to dismiss. Sadly, however, the Office of the Ombudsman failed to act on said motion.[18]

Unlike in the *Tatad*, *Duterte*, and *Angchangco, Jr.*, cases where the delays were manifestly oppressive, the facts of this case do not evince vexatious, capricious and oppressive delay in the conduct of the preliminary investigation. There appears, therefore, no persuasive much less compelling reason to grant in this case the same radical relief granted in those three cases that petitioner cited.[19]

WHEREFORE, petitioner's Motion for Reconsideration is hereby DENIED for lack of merit.

SO ORDERED.

Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.
Azcuna, J., on leave.

[1] Rollo, pp. 262-274.

- [2] Id. at 262-263.
- [3] *Ortigas and Company Limited Partnership v. Velasco*, G.R. Nos. 109645 & 112564, 4 March 1996, 254 SCRA 234, 242.
- [4] *Dimayacyac v. CA*, G.R. No. 136264, 28 May 2004, p. 11.
- [5] *Rodriguez v. Sandiganbayan*, G.R. No. 141710, 3 March 2004, p. 8.
- [6] *Ty-Dazo v. Sandiganbayan*, G.R. Nos. 143885-86, 21 January 2002, 374 SCRA 200, 203.
- [7] *Bernat v. Sandiganbayan*, G.R. No. 158018, 20 May 2004, p. 4.
- [8] *Caballero v. Alfonso, Jr.*, No. L-45647, 21 August 1987, 153 SCRA 153, 163.
- [9] *Raro v. Sandiganbayan*, G.R. No. 108431, 14 July 2000, 335 SCRA 581, 608.
- [10] *Dansal v. Fernandez, Sr.*, G.R. No. 126814, 2 March 2000, 327 SCRA 145, 156.
- [11] See *Rodriguez v. Sandiganbayan*, G.R. No. 141710, 3 March 2004, p. 9.
- [12] See *Dela Rosa v. CA*, G.R. No. 116945, 9 February 1996, 253 SCRA 499, 505.
- [13] *Gonzales v. Sandiganbayan*, G.R. No. 94750, 16 July 1991, 199 SCRA 298.
- [14] No. L-72335, 21 March 1988, 159 SCRA 70, 82-83.
- [15] G.R. No. 130191, 27 April 1998, 289 SCRA 721, 740-741.
- [16] G.R. No. 122728, 13 February 1997, 268 SCRA 301, 304.
- [17] *Rodriguez v. Sandiganbayan*, G.R. No. 141710, 3 March 2004, p. 8; *Blanco v. Sandiganbayan*, G.R. Nos. 136757-58, 27 November 2000, 346 SCRA 108, 114.
- [18] *Angchangco, Jr. v. Ombudsman*, G.R. No. 122728, 13 February 1997, 268 SCRA 301, 306.
- [19] See *Dela Peña v. Sandiganbayan*, G.R. No. 144542, 29 June 2001, 360 SCRA 478-488.

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