

DATUKAN M. GUIANI, ULAMA S. BARAGUIR, GUALOSON A. MAMOGKAT, NELFA A. SUASIN, MARJUK A. IDRIS, SALIK A. ALI AND FAROUK ABUBAKAR, PETITIONERS, VS. SANDIGANBAYAN (FIRST DIVISION),...

G.R. Nos. 146897-917. August 06, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

After the creation of the Autonomous Region for Muslim Mindanao (ARMM), the regional Department of Public Works and Highways (DPWH-ARMM) began the implementation of regional, provincial and district impact projects to be funded from the infrastructure seed money of P615 Million from the Office of the Regional Governor of ARMM.

On October 15, 1992, the Commission on Audit-Special Audit Office (COA-SAO) conducted a physical inspection of the impact projects and found several irregularities therein. More specifically, the COA-SAO found that in relation to the concreting of the Cotabato-Lanao Road, the contractors bloated the accomplishment reports. This enabled them to claim on their progress billings, resulting in an overpayment by the government of P4,164,000.00, and concealed the negative slippage incurred by said contractors. It also discovered that mobilizations fees advanced to contractors amounting to P15,798,675.00 remained unrecouped, when these were supposed to be deducted from contractors' progress billings.

Furthermore, the COA-SAO found that the government made an advance payment of P13,520,000.00 and P880,000.00 in the form of prepayment of aggregate sub-base course, which was not among the items allowed under a pre-payment scheme. As regards the concreting of the Awang Nuro Road, the COA-SAO found that the surveys and designs for the project were prepared and submitted seven months after the bidding, in violation of Presidential Decree No. 1594 which requires that no bidding or award shall be conducted unless the detailed engineering surveys and designs have been made. Finally, it was disclosed that an engineering survey contract for the centerline relocation and profiling of the Cotabato-Lanao Road, which cost P200,000.00, was unnecessary because it was entered into seven months after the notices to proceed were issued to the contractors. The said contracts were intended to serve as basis for the preparation of the plans and specifications and the determination of the government estimate for purposes of conducting the bidding.

On December 8, 1992, the Office of the President, through then Executive Secretary Edelmiro A. Amante, asked the Ombudsman to conduct a preliminary investigation. Thus, the Commission on Audit, Autonomous Region in Muslim Mindanao, instituted a complaint for violation of the Anti-Graft and Corrupt Practices Act (Republic Act No. 3019) against regional officials of Cotabato City and DPWH-ARMM. The complaint was docketed as Case No. OMB-0-92-2771.

On July 31, 1998, Graft Investigation Officer II Gay Maggie F. Balajadia-Violan recommended the indictment of petitioners, among others, for various violations of RA 3019. The recommendation was approved by Deputy

Ombudsman for Mindanao Margarito P. Gervacio, Jr. on October 8, 1998, and by Ombudsman Aniano A. Desierto on October 16, 1998.[1] Immediately thereafter, 21 criminal informations were filed against petitioners before the Sandiganbayan as Criminal Cases Nos. 24963-24983.[2]

On November 10, 1998, the Sandiganbayan issued an Order stating that it was not persuaded at that time that probable cause exists against the accused, considering that the resolution of the Ombudsman merely relied on the report of the COA. It opined that the alleged irregularities must be shown by further documentary proof. Hence, the Sandiganbayan directed the prosecution to submit adequate proof of the existence of probable cause within sixty days therefrom.[3]

On May 20, 1999, Special Prosecution Officer Evelyn Taguba Lucero recommended the dismissal of Criminal Cases Nos. 24963-24969 and Criminal Cases Nos. 24972-24983 and the continuation of Criminal Cases Nos. 24970-71. Special Prosecutor Leonardo P. Tamayo concurred with SPO Lucero, however, Ombudsman Desierto disapproved the same and ordered the prosecution of the cases.[4]

On September 27, 1999, petitioners filed with the Sandiganbayan an Omnibus Motion to quash the informations, to defer the issuance of warrants of arrest and to defer their arraignment.[5] The Sandiganbayan did not act on the Omnibus Motion considering that petitioners had not submitted themselves to the jurisdiction of said court.[6]

Thus, petitioners voluntarily submitted themselves to the Sandiganbayan by posting their respective surety bonds.[7] Accordingly, the arraignment and pre-trial were set on February 22, 2001.[8]

At the hearing of petitioners' motion to quash on February 15, 2001, petitioners argued that the delay in the resolution of the complaint against them by the Ombudsman violated their constitutional right to speedy trial; hence, the criminal cases against them should be dismissed. The Sandiganbayan denied petitioners' motion to dismiss the cases[9] and on the same day, denied petitioners' motion for reconsideration.[10]

Petitioners are now before us on certiorari, seeking the annulment of the Orders of the Sandiganbayan dated February 15, 2001, based on the following grounds:

A. THE DELAY OF ALMOST SIX (6) YEARS TO RESOLVE THE PRELIMINARY INVESTIGATION DISREGARDED THE OMBUDSMAN'S DUTY, AS MANDATED BY THE CONSTITUTION AND REPUBLIC ACT NO. 6770, TO ACT PROMPTLY ON COMPLAINTS BEFORE HIM. SUCH DELAY VIOLATED THE ABOVE-MENTIONED ACCUSED'S RIGHTS TO DUE PROCESS AND TO A SPEEDY DISPOSITION OF THE CASES FILED AGAINST THEM.

B. THERE IS NO PRIMA FACIE EVIDENCE TO ESTABLISH PROBABLE CAUSE TO WARRANT THE FILING OF THE TWENTY ONE (21) INFORMATIONS AGAINST HEREIN PETITIONERS.

C. THE FAILURE TO ARRAIGN ACCUSED-PETITIONER DATUKAN GUIANI AFTER HE POSTED BAIL ON 18 FEBRUARY 2000 CONSTITUTES VIOLATION OF HIS RIGHT PURSUANT TO REPUBLIC ACT 8493 AS WELL AS SECTION 1 OF RULE 116 OF THE NEW RULES ON CRIMINAL PROCEDURE.[11]

On February 21, 2001, a resolution was issued requiring respondents to comment on the petition and temporarily restraining the Sandiganbayan from conducting further proceedings in Criminal Cases Nos. 24963-24983.[12]

The Office of the Special Prosecutor, on behalf of the Ombudsman, submitted its Comment.[13] It explained the delay in the preliminary investigation conducted by the Office of the Ombudsman, to wit:

On December 8, 1992, Edelmiro A. Amante, Sr., then Executive Secretary of the Office of the President, Malacañang requested the Office of the Ombudsman to conduct an investigation and take appropriate action of the report of the Commission on Audit (COA) on the various irregularities committed by the officers and/or

employees of the Autonomous Region in Muslim Mindanao (ARMM). Only two (2) pages of the COA report were attached to the letter request. The COA Report dealt with the investigation conducted on the concreting of Cotabato Lanao Road Section 1-13, Highway-Linek-Kusiong Road, Concreting/Rehabilitation of Highway-Sinuay Seashore Road and the Awang Muro Road Project. This case was docketed as OMB-0-92-2771 and entitled "COA vs. Concerned Officials of the ARMM."

In January 6, 1993, Evaluation Report GIO Antonio E. Valenzuela recommended to Assistant Ombudsman Abelardo L. Aportadera of the Evaluation and Investigation Office that the complaint be forwarded to the Office of the Ombudsman for Mindanao (OMB-MIN) on the ground that the subject of the investigation involves projects and personalities located in Muslim Mindanao. Assistant Ombudsman Aportadera approved this recommendation on January 15, 1993.

In a letter dated March 2, 1993, GIO Rojas of OMB-MIN requested from COA Regional Director Rasol Mitmug of ARMM in Cotabato City for the complete report of the audit investigation conducted by the COA on the concreting of the Cotabato Lanao Road Section 1-13, Highway-Linek-Kusiong Road, Concreting/Rehabilitation of Highway-Sinuay Seashore Road and the Awang Muro Road Project.

In a 1st Indorsement dated March 11, 1993, Director Mitmug informed the Office of the Deputy Ombudsman for Mindanao that the subject report was probably the result of the special audit made by a Special Audit Team from the Special Audit Office, COA in Quezon City hence the request should be addressed to it.

In a letter dated April 27, 1993, GIO Rojas wrote the COA Chairman requesting for the complete result of the investigation conducted by the Special Audit Team.

Since no report was received by the Office of the Deputy Ombudsman for Mindanao, GIO Rojas wrote a letter dated May 5, 1994 addressed to the COA Chairman requesting for the COA report on the various irregularities in the ARMM.

On July 20, 1994, GIO Rojas received from the COA Chairman a copy of SAO Report No. 93-04 on the audit of the Department of Public Works and Highways, ARMM.

To be able to conduct the requisite preliminary investigation, GIO Rojas, on August 18, 1994, requested that the SAO Report be authenticated and that the concerned auditors execute a joint-affidavit to substantiate the report. A list of responsible officials/personnel, their positions and addresses was likewise requested.

The authenticated SAO Report was received by GIO Rojas only on November 16, 1994.

On May 5, 1995, GIO Rojas issued an Order requiring forty-one (41) respondents including petitioners herein to file their respective counter-affidavits.

Respondent Farouk B. Abubakar filed his counter-affidavit on May 30, 1995.

Thirty-five respondent (Mamogkot, et al., for brevity) represented by Atty. Remegio P. Rojas filed on June 1, 1995 a motion requesting for extension of time to file their counter-affidavit until June 30, 1995.

On June 2, 1995, respondents Zacaria A. Candao, Abas A. Candao, Nick L. Aduana, Datukan M. Guiani, Eduardo P. Hapitan and Ulama Baraguir represented by Atty. Jose Z. Casanova filed a motion requesting for an extension of thirty (30) days within which to file their counter-affidavit.

Respondent Eduardo S. Estella filed his Counter-Affidavit on June 2, 1995.

On June 6, 1995, respondents Ofelia Lippet, Seraya O. Codilla, Emraa Bulcan, Beverly Grace D. Villar, Rommel Galindo, Ma. Irma Sia and Ronel Quesada represented by Atty. J.M. Estaniel filed a motion to file his counter-affidavit until June 12, 1995.

On June 9, 1995, respondents Mangondaya M. Madid, Nasser G. Sinarimbo, Salik Ali, Datu Marjak Edris,

Kadil Dalantay, Emran B. Buisan, Bahama Andar, Nazer P. Ebus and Guiani B. Adam thru Atty. Little Sarah A. Agdeppa (Madid, et al., for brevity) filed an Omnibus Motion to Specify Alleged Violation of RA 3019 With The Specific Circumstances Constituting Accusation/Offense and To Be Furnished Copies of Evidences in Support Thereof and Extension of Time to File Counter-Affidavits and Evidences.

On June 9, 1995, respondent Ronel Quesada filed his Counter-Affidavit.

On June 19, 1995, respondents Ma. Irma Sia, Beverly Grace Villar and Rommel Galindo filed their Joint Counter-Affidavit.

In an Order dated June 23, 1995, GIO Rojas granted the Motions for Extension of Time to File Counter-Affidavits of the respondents. However, the motion for bill of particulars filed by Madid, et al. was denied.

Respondent Eduardo P. Hapitan, Nick L. Aduana, Dr. Abas A. Candao, Datu Zacaria A. Candao and Atty. Datukan M. Guiani filed their respective Counter-Affidavits on July 3, 1995.

On July 4, 1995, Mamogkot, et al. filed a second motion requesting that he be allowed to file his counter-affidavit until July 30, 1995.

On July 6, 1995, respondents Guialoson A. Mamogkot and Pendatun J. Jauhali filed their respective Motions for Extension of Time to File Counter-Affidavit and Other Controverting Evidence until July 10, 1995.

On July 6, 1995, respondent Nelfa M. Suasin filed a motion praying for an additional period of fifteen (15) days within which to file counter-affidavit.

On July 10, 1995, respondent Pendatun J. Jauhali filed his Counter-Affidavit.

On July 11, 1995, respondent George C. Jabilo filed his Counter-Affidavit with Motion to Drop and Exclude him as respondent in the case.

On July 16, 1995, respondents Irene D. Silla, Juanita S. Saglayan, Ruby K. Pamellon and Ofelia P. Lippet filed their respective Counter-Affidavits.

On July 18, 1995, respondent Taungan S. Masandag filed his Counter-Affidavit.

On July 19, 1995, respondents Guiaber Pasigan and Guialoson A. Mamogkot filed their respective Counter-Affidavits.

On July 25, 1995, respondent Taungan S. Masandag filed his Counter-Affidavit.

On August 1, 1995, respondent Nelfa M. Suasin filed her Counter-Affidavit.

On August 4, 1995, respondent Soraya O. Codilla filed her Counter-Affidavit.

On August 15, 1995, respondent Abdul M. Mamadsual filed his Counter-Affidavit.

On August 24, 1995, respondent Sofonias V. Fernal filed his Counter-Affidavit.

On August 28, 1995, respondents Mangondaya M. Madid, Salik A. Ali, Kadil D. Dalantay, Bahama A. Andar, Nasser G. Sinarimbo, Datu Marjuk A. Idris, Emran B. Buisan, Nazer P. Ebus and Guiani B. Adam filed their respective Counter-Affidavit with Motion to Dismiss.

On February 24, 1996, the OCA filed a Reply to the Counter-Affidavit of respondent Farouk B. Abubakar.

On March 19, 1996, respondent George C. Jabido filed a reiteration on the MOTION TO DROP AND EXCLUDE HIM AS RESPONDENT IN THE CASE.

On May 29, 1996, the OCA filed a Reply-Affidavit to the Counter-Affidavit of respondent Pendatun Jakia

Jaumali.

On July 31, 1998 GIO Gay Maggie Balajadia-Violan issued a Resolution xxx xxx xxx.[14]

Petitioners thereafter filed their Reply,[15] after which the case was deemed submitted for decision.

In support of the claim that their constitutional right to a speedy disposition of cases has been violated, petitioners invoke the rulings in *Tatad v. Sandiganbayan*,[16] *Angchangco, Jr. v. Ombudsman*,[17] *Roque v. Office of the Ombudsman*,[18] and *Cervantes v. Sandiganbayan*. [19] In all of these cases, the dismissal of the criminal complaints against petitioners was ordered because the delay in the proceedings therein violated their constitutional right to a speedy disposition of the cases filed against them.

However, a close scrutiny of the above-entitled cases reveals the existence of circumstances therein which rendered the delay oppressive, and which circumstances do not obtain in the case at bar. Hence, the rulings cited by petitioners find no application in the case before us.

In *Tatad*, it was clearly shown that the delay in the resolution of the criminal cases against Francisco S. Tatad, who had resigned as Secretary of Public Information, was politically motivated. In the said case, we pointed out the following:

Coming to the case at bar, the following relevant facts appear on record and are largely undisputed. The complainant, Antonio de los Reyes, originally filed what he termed “a report” with the Legal Panel of the Presidential Security Command (PSC) on October 1974, containing charges of alleged violations of Rep. Act No. 3019 against then Secretary of Public Information Francisco S. Tatad. The “report” was made to “sleep” in the office of the PSC until the end of 1979 when it became widely known that Secretary (then Minister) Tatad had a falling out with President Marcos and had resigned from the Cabinet. On December 12, 1979, the 1974 complaint was resurrected in the form of a formal complaint filed with the Tanodbayan and docketed as TBP Case No. 8005-16-07. The Tanodbayan acted on the complaint on April 1, 1980 – which was around two months after petitioner Tatad’s resignation was accepted by Pres. Marcos – by referring the complaint to the CIS, Presidential Security Command, for investigation and report. On June 16, 1980, the CIS report was submitted to the Tanodbayan, recommending the filing of charges for graft and corrupt practices against former Minister Tatad and Antonio L. Cantero. By October 25, 1982, all affidavits and counter-affidavits were in and the case was ready for disposition by the Tanodbayan. However, it was only on July 5, 1985 that a resolution was approved by the Tanodbayan, recommending the filing of the corresponding criminal informations against the accused Francisco Tatad. Five (5) criminal informations were filed with the Sandiganbayan on June 12, 1985, all against petitioner alone.

A painstaking review of the facts can not but leave the impression that political motivations played a vital role in activating and propelling the prosecutorial process in this case. Firstly, the complaint came to life, as it were, only after petitioner Tatad had a falling out with President Marcos. Secondly, departing from established procedures prescribed by law for preliminary investigation, which require the submission of affidavits and counter-affidavits by the complainant and the respondent and their witnesses, the Tanodbayan referred the complaint to the Presidential Security Command for fact-finding investigation and report.

We find such blatant departure from the established procedure as a dubious, but revealing attempt to involve an office directly under the President in the prosecutorial process, lending credence to the suspicion that the prosecution was politically motivated. We cannot emphasize too strongly that prosecutors should not allow, and should avoid, giving the impression that their noble office is being used or prostituted, wittingly or unwittingly, for political ends or other purposes alien to, or subversive of, the basic and fundamental objective of serving the interest of justice evenhandedly, without fear or favor to any and all litigants alike, whether rich or poor, weak or strong, powerless or mighty. Only by strict adherence to the established procedure may the public’s perception of the impartiality of the prosecutor be enhanced.[20]

In the cases of Angchangco and Roque, on the other hand, the Ombudsman offered no explanation for the delay of six years in resolving the complaints and completing the preliminary investigation.

In the case of Cervantes, the delay was unjustified because both the complaint and respondent's counter-affidavit were filed in 1986, while the informations were filed in 1992. Likewise, the delay of six years was not sufficiently explained.

As meticulously detailed by the Ombudsman above, the period of time that elapsed during the conduct of the preliminary investigation in this case was warranted by the sequence of events. Because of the complexity of the transactions complained of which were contained in a two-page report from the COA, the Graft Investigation Officer (GIO) sought further substantiation of the allegations therein and requested for the complete report of the COA Special Audit Office. The authenticated SAO Report No. 93-04 was received by the GIO on November 16, 1994. It was only then that the GIO required all forty-one respondents to file their counter-affidavits.

Most of the respondents, including some of petitioners herein, moved for extensions of time. All the counter-affidavits were received in August 1995, owing to the number of respondents. Thereafter, the COA filed reply-affidavits on February 24, 1996 and May 29, 1996. It was only after the submission of the last pleading, i.e., the reply-affidavits, that the preliminary investigation can be said to have been concluded. The time to resolve the cases commences from this date.

In the application of the constitutional guaranty of the right to speedy disposition of cases, particular regard must be taken of the facts and circumstances peculiar to each case.[21] Well-settled is the rule that the right to a speedy disposition of cases, like the right to a speedy trial, is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delay. 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.[22]

The records of this case show that petitioners raised their objections to the perceived delay in the resolution of the complaints against them only on September 27, 1999, when they filed their Omnibus Motion with the Sandiganbayan. It would appear, therefore, that petitioners impliedly acquiesced in the delay in the proceedings.[23]

The right to a speedy trial as well as other rights conferred by the Constitution or statute, except when otherwise expressly so provided by law, may be waived. It must therefore be asserted. Thus, if there was a delay in the trial of the case, petitioners are not entirely without blame.[24]

Furthermore, the right of an accused to a speedy trial is guaranteed to him by the Constitution but the same shall not be utilized to deprive the State of a reasonable opportunity of fairly indicting criminals. While accused persons do have rights, many of them choose to forget that the aggrieved also have the same rights. It secures rights to a defendant but it does not preclude the rights of public justice. A party's individual rights should not work against and preclude the people's equally important right to public justice.[25]

Given the particular facts of this case, we find that there was no unreasonable, vexatious and oppressive delay in the preliminary investigation. Therefore, petitioners' right to speedy disposition of the case was not infringed.

On the second issue raised by petitioners, suffice it to state that the complaints before the Sandiganbayan involve complex sets of facts which entail a careful evaluation and assessment of documentary and testimonial evidence. We shall not preempt the original jurisdiction of the Sandiganbayan to receive evidence and resolve the merits of the criminal cases now pending before it. The Supreme Court is not a trier of facts.[26]

The third contention is likewise untenable. Petitioner Guiani can not complain that he was not promptly arraigned by the Sandiganbayan after he participated in the filing by all petitioners of an Omnibus Motion praying, inter alia, for the deferment of their arraignment. These are diametrically inconsistent positions. Moreover, the Sandiganbayan had scheduled the arraignment of petitioners on February 22, 2001, and would have proceeded had it not been for the issuance by this Court of a Temporary Restraining Order.

All told, we find that the Sandiganbayan did not commit any grave abuse of discretion in denying petitioners' motion to quash the informations against them on the ground of violation of their constitutional right to a speedy disposition of the case. It correctly held that the Tatad doctrine does not apply in this case. Therefore, the instant petition should be dismissed.

WHEREFORE, in view of the foregoing, the petition is DISMISSED. The Temporary Restraining Order dated February 21, 2001 is LIFTED. The Sandiganbayan is directed to proceed with the arraignment of the accused in Criminal Cases Nos. 24963-24983 and to conduct further proceedings therein.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Sandoval-Gutierrez, Carpio, Austria-Martinez, and Corona, JJ., concur.

[1] Rollo, pp. 43-78.

[2] Ibid., pp. 79-121.

[3] Id., p. 122.

[4] Id., pp.123-126.

[5] Id., pp. 127-144.

[6] Id., pp. 147, 157-158.

[7] Id., pp. 159, 161-166.

[8] Id., p. 167.

[9] Id., pp. 40-41.

[10] Id., p. 42.

[11] Id., pp. 14-15.

[12] Id., pp. 173-174.

[13] Id., pp. 188-207.

[14] Comment, pp. 2-7; Rollo, pp. 189-194; citations of pages of the record omitted.

[15] Rollo, pp. 213-340.

[16] 159 SCRA 70 1988 .

[17] 268 SCRA 301 1997 .

[18] 307 SCRA 104 1999 .

[19] 307 SCRA 149 1999.

[20] Tatad v. Sandiganbayan, supra, at 80-81.

[21] Almario v. Court of Appeals, 355 SCRA 1, 8 2001 .

[22] Blanco v. Sandiganbayan, 346 SCRA 108 2000 .

[23] Alvizo v. Sandiganbayan, 220 SCRA 55, 64 1993.

[24] Sumbang, Jr. v. General Court Martial PRO-Region 6, Iloilo City, 337 SCRA 227, 233 2000

[25] Ibid., citing Bermisa v. Court of Appeals, 92 SCRA 136 1979 and Guerrero v. Court of Appeals, 257 SCRA 703 1996 .

[26] *Jacutin v. People of the Philippines*, G.R. No. 140604, March 6, 2002.

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