

SECOND DIVISION

[G.R. Nos. 238579-80, July 24, 2019]

WILFREDO M. BAUTISTA, GERRY C. MAMIGO, AND ROWENA C. MANILA-TERCERO, PETITIONERS, VS. THE HONORABLE SANDIGANBAYAN, SIXTH DIVISION, AND THE OFFICE OF THE OMBUDSMAN, RESPONDENTS.

DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for *certiorari*^[1] are the Resolutions dated December 15, 2017^[2] and February 19, 2018^[3] of the Sandiganbayan (SB) in SB-17-CRM-1407 and SB-17-CRM-1408 denying the Urgent Omnibus Motion to Dismiss and Motion to Suspend Arraignment filed by petitioners Wilfredo M. Bautista, Gerry C. Mamigo, and Rowena C. Manila-Tercero (petitioners) praying for the dismissal of the aforementioned cases for violation of their right to speedy disposition of cases.

The Facts

The instant case stemmed from petitioners' involvement in the Pola Watershed, a foreign-assisted project of the Department of Environment and Natural Resources (DENR) funded by the Asian Development Bank, which spanned an area of 15,000 hectares. On November 22, 1999, after purported compliance with the required bidding procedures, the project of conducting the final perimeter survey and mapping of the watershed (project) was awarded to Antonio M. Lacanienta (Lacanienta) through a Contract of Service^[4] with a project cost in the amount of P5,250,000.00. Thereafter, petitioners were designated as members of the Technical Inspection Committee tasked with monitoring the project and ensuring Lacanienta's compliance with his contractual obligations.^[5] On January 6, 2000, the project was completed and petitioners correspondingly issued a certification^[6] stating that they had "inspected [the project] in accordance with the Job Order^[7] dated Nov. 3, 1999."^[8]

On **September 11, 2001**, a DENR Fact-Finding Team was created to investigate alleged irregularities in the project. In a Fact-Finding Investigation Report^[9] dated March 12, 2002, the team concluded that, contrary to petitioners' certification, no perimeter survey or mapping was actually conducted.^[10] The report was eventually forwarded to the Office of the Ombudsman (Ombudsman) for its own fact-finding investigation.^[11]

On **August 27, 2013**, the Field Investigation Office of the Ombudsman (FIO) filed a complaint^[12] alleging that petitioners, in conspiracy with several others, defrauded

the government, in the amount of P5,250,000.00, by simulating the bidding in favor of Lacanienta and making it appear that the latter had accomplished a perimeter survey and mapping of the project, when none was actually made.^[13] Subsequently, the Ombudsman conducted a preliminary investigation and came up with a Resolution^[14] dated **August 26, 2016** finding probable cause to indict petitioners for violation of Section 3 (e) of Republic Act No. 3019, otherwise known as the "Anti-Graft and Corrupt Practices Act," and Falsification of Public Documents.^[15] Later, on **July 14, 2017**, the corresponding Informations^[16] were filed before the SB charging petitioners of the foregoing crimes.^[17]

On November 7, 2017, petitioners filed an Urgent Omnibus Motion to Dismiss and Motion to Suspend Arraignment,^[18] praying for the dismissal of their case for violation of their right to speedy disposition of cases.^[19]

The SB's Ruling

In a Resolution^[20] dated December 15, 2017, the SB denied petitioners' motion for lack of merit.^[21] It held that for purposes of determining inordinate delay, only the period for preliminary investigation – from the filing of the complaint with the Ombudsman on August 27, 2013 until the filing of the Informations on July 14, 2017 – should be aptly considered. Pertinently, it found that a period of almost four (4) years was reasonable in view of the number of respondents^[22] impleaded in the complaint.^[23]

Aggrieved, petitioners moved for reconsideration,^[24] which was denied in a Resolution^[25] dated February 19, 2018. Hence, this petition.

The Issue Before the Court

The sole issue raised for the Court's resolution is whether the SB gravely abused its discretion in finding that there was no violation of petitioners' right to speedy disposition of their cases.

The Court's Ruling

A person's right to the speedy disposition of his case is guaranteed under Section 16, Article III of the 1987 Philippine Constitution which provides that:

Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

This constitutional right is not limited to the accused in criminal proceedings but extends to all parties in all cases, be it civil or administrative in nature, as well as all proceedings, either judicial or quasi-judicial. In this accord, any party to a case may

demand expeditious action from all officials who are tasked with the administration of justice.^[26]

Notably, it is settled that the right to speedy disposition of cases should be understood to be a relative or flexible concept such that a mere mathematical reckoning of the time involved would not be sufficient.^[27] Pertinent jurisprudence dictates that the right is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured; or even without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried.^[28]

Hence, in the determination of whether the defendant has been denied his right to a speedy disposition of a case, the following factors may be considered and balanced: (1) the length of the 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.^[29] In this regard, the Court laid down the parameters in establishing the existence of inordinate delay, which, in turn, is conclusive as to whether or not the aforesaid right was violated, to wit:

To summarize, inordinate delay in the resolution and termination of a preliminary investigation violates the accused's right to due process and the speedy disposition of cases, and may result in the dismissal of the case against the accused. The burden of proving delay depends on whether delay is alleged within the periods provided by law or procedural rules. If the delay is alleged to have occurred during the given periods, the burden is on the respondent or the accused to prove that the delay was inordinate. If the delay is alleged to have occurred beyond the given periods, the burden shifts to the prosecution to prove that the delay was reasonable under the circumstances and that no prejudice was suffered by the accused as a result of the delay.

The determination of whether the delay was inordinate is not through mere mathematical reckoning but through the examination of the facts and circumstances surrounding the case. Courts should appraise a reasonable period from the point of view of how much time a competent and independent public officer would need in relation to the complexity of a given case. If there has been delay, the prosecution must be able to satisfactorily explain the reasons for such delay and that no prejudice was suffered by the accused as a result. The timely invocation of the accused's constitutional rights must also be examined on a case-to-case basis.^[30]

In insisting that their right to speedy disposition of cases was violated, petitioners argue that the SB should have considered the sheer amount of time they were subjected to investigation, *i.e.*, the fact-finding investigations of the DENR and FIO which spanned for almost 12 years, or from September 11, 2001 to August 27, 2013, plus the preliminary investigation proper before the Ombudsman from August 27, 2013 until July 14, 2017 when the Informations against them were finally filed

before the SB, which would account for another four (4) years, or a total of 16 years.^[31] Moreover, petitioners contend that they suffered grave and irreparable prejudice during this lengthy period, claiming that the passage of time had impaired their ability to obtain evidence and secure the presence of witnesses in support of their defenses.^[32]

Petitioners' contentions are untenable.

Anent the fact-finding investigation conducted by the DENR, *Cagang v. Sandiganbayan*^[33] instructs that the period devoted for fact-finding investigations **prior to the filing of a formal complaint** should be excluded in the determination of whether or not inordinate delay exists, viz.:

When an anonymous complaint is filed or the Office of the Ombudsman conducts a *motu proprio* fact-finding investigation, **the proceedings are not yet adversarial. Even if the accused is invited to attend these investigations, this period cannot be counted since these are merely preparatory to the filing of a formal complaint.** At this point, the Office of the Ombudsman will not yet determine if there is probable cause to charge the accused.

This period for case build-up cannot likewise be used by the Office of the Ombudsman as unbridled license to delay proceedings. If its investigation takes too long, it can result in the extinction of criminal liability through the prescription of the offense.

Considering that fact-finding investigations are not yet adversarial proceedings against the accused, the period of investigation will not be counted in the determination of whether the right to speedy disposition of cases was violated. Thus, this Court now holds that for the purpose of determining whether inordinate delay exists, a case is deemed to have commenced from the filing of the formal complaint and the subsequent conduct of the preliminary investigation. In *People v. Sandiganbayan, Fifth Division* [723 Phil. 444 (2013)], the ruling that fact-finding investigations are included in the period for determination of inordinate delay is abandoned.^[34] (Emphases and underscoring supplied)

Hence, the period constituting the fact-finding investigation conducted by the DENR and the FIO should not be considered for purposes of determining whether petitioners' right to the speedy disposition of their cases was violated. This is especially considering that such investigation was non-adversarial and was only determinative of whether or not formal charges should be filed against petitioners. As such, it cannot be said that petitioners suffered any vexation during these proceedings.

As to the proceedings before the Ombudsman, the Court rules that the SB did not gravely abuse its discretion in finding that the period of almost four (4) years, or from August 27, 2013 when the formal complaint was filed until July 14, 2017 when

the Informations were finally filed in court, was justified under the circumstances. In view of the considerable number of parties impleaded in the complaint filed before the Ombudsman, which comprised of 11 respondents, the SB correctly observed that it would take more time to properly evaluate the parties' respective arguments and allegations. It is also reasonable to discern that other factors, such as the significant size of the project, which spanned an area of 15,000 hectares, and its technical nature, which necessarily involved scientific expertise, demanded more time in conducting the investigation. Likewise, it bears to stress that the cases against petitioners are not the only ones pending before the Ombudsman. Indeed, the Court has previously taken judicial notice of the fact that the Ombudsman handles a considerable amount of cases as a result of the nature of its office, which encourages individuals who clamor for efficient government service to freely file their complaints against alleged/suspected wrongdoings of government personnel.

[35]

Furthermore, records are bereft of showing that the delay caused any material prejudice to petitioners which would warrant serious consideration. The SB fittingly held that the alleged loss of documents in the DENR office was not caused by the mere passage of time, but by intervening events such as heavy rains and termite attacks.^[36] In any case, the Court observes that the prejudicial circumstances alleged by petitioners had all occurred during the fact-finding stage, which for reasons earlier discussed, are irrelevant for purposes of determining the existence of inordinate delay.

In sum, the SB did not gravely abuse its discretion in essentially holding that petitioners' right to speedy disposition of cases was not violated. It bears pointing out that grave abuse of discretion refers to such "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility,^[37] which does not obtain in this case.

WHEREFORE, the petition is **DENIED**. The Resolutions dated December 15, 2017 and February 19, 2018 of the Sandiganbayan in SB-17-CRM-1407 and SB-17-CRM-1408 are hereby **AFFIRMED**.

SO ORDERED.

Carpio, (Chairperson), J. Reyes, Jr., and Lazaro-Javier, JJ., concur.
Caguioa, J., see dissenting opinion.

[1] With prayer for issuance of writ of preliminary injunction or temporary restraining order. *Rollo*, pp. 3-37.

[2] *Id.* at 39-49. Penned by Associate Justice Sarah Jane T. Fernandez with Associate Justices Karl B. Miranda and Bernelito R. Fernandez, concurring.

[3] *Id.* at 51-57.