

# FIRST DIVISION

[ G.R. Nos. 235412-15, November 05, 2018 ]

## ELDRED PALADA TUMBOCON, PETITIONER, VS. HON. SANDIGANBAYAN SIXTH DIVISION AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

### DECISION

**TIJAM, J.:**

Before Us is a Petition for Review on *Certiorari*<sup>[1]</sup> filed by Eldred Palada Tumbocon (petitioner) assailing the Resolution<sup>[2]</sup> dated August 10, 2017 and the Resolution<sup>[3]</sup> dated November 10, 2017 of the Sandiganbayan in SB-17-CRM-0059-0062, denying petitioner's Motion to Dismiss the case on the ground of inordinate delay.

#### The antecedent facts

Sometime in the year 2007, an anonymous complaint was filed against the petitioner with the Office of the Ombudsman docketed as CPL-C-07-1600 for fact-finding investigation.<sup>[4]</sup>

On August 28, 2009, the fact-finding investigation of the Field Investigation Office (FIO) was concluded with the filing of a formal complaint against the petitioner for violation of Section 2 of Republic Act (R.A.) No. 1379<sup>[5]</sup>, in relation to Section 8 of R.A. No. 3019<sup>[6]</sup>, Article 172 in relation to Article 171 (4) of the Revised Penal Code (RPC)<sup>[7]</sup> and Section 8, in relation to Section 11 of the Code of Conduct and Ethical Standards for Public Officials, Serious Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service.<sup>[8]</sup>

On April 6, 2010, the Office of the Deputy Ombudsman for Luzon conducted the preliminary investigation and ordered the petitioner and his wife Camila, to submit their counter-affidavits.<sup>[9]</sup>

On May 21, 2010, the Office of the Deputy Ombudsman received the Joint Counter-Affidavit of the petitioner and his wife.<sup>[10]</sup>

On March 11, 2013, the GIPO II Irmina H. Bautista found probable cause against the petitioner for 8 counts of Perjury. On December 22, 2014, Ombudsman Conchita Carpio-Morales approved the resolution.<sup>[11]</sup>

Petitioner sought the reconsideration of the resolution, however, on March 6, 2015, the same was denied.<sup>[12]</sup>

On April 22, 2016, the Office of the Special Prosecutor drafted four (4) informations for Perjury. The said informations were filed on January 23, 2017 before the Sandiganbayan.<sup>[13]</sup>

On February 23, 2017, petitioner filed a Motion to Dismiss<sup>[14]</sup> seeking to dismiss the criminal cases for Perjury on the ground of inordinate delay.<sup>[15]</sup>

On August 10, 2017, the Sandiganbayan issued a Resolution denying the motion to dismiss and held that there is no inordinate delay. The Sandiganbayan found that the following periods should be excluded:

- a. The time spent by the FIO in issuing the *subpoena duces tecum* to several government agencies/offices, and the receipt of the certifications and letters by the FIO from November 13, 2007 to March 3, 2009, or one (1) year, three (3) months and eighteen (18) days<sup>[16]</sup>;
- b. The period from April 6, 2010 to May 23, 2012, or two (2) years, one (1) month and seventeen (17) days, should likewise be excluded since it was attributable to the petitioner and his wife for failing to submit their counter-affidavit and their option to adopt the counter-affidavit they filed in the administrative case<sup>[17]</sup>;
- c. The period from May 23, 2012 to December 22, 2014, or two (2) years, six (6) months and twenty-nine (29) days is excusable as they were used by the Office of the Deputy Ombudsman to thoroughly study the case<sup>[18]</sup>;
- d. The period from December 22, 2014 to February 26, 2015, or two (2) months and four (4) days, is attributable to the petitioner for seeking reconsideration of the resolution finding probable cause to indict him<sup>[19]</sup>; and,
- e. The period of one (1) year, seven (7) months and nineteen (19) days is justified because the resolution of the motion for reconsideration was thoroughly reviewed by the Ombudsman.<sup>[20]</sup>

The Sandiganbayan found that the delay of five (5) years, six (6) months, and twenty-nine (29) days can hardly be considered as inordinate, capricious, oppressive and vexatious.<sup>[21]</sup>

Aggrieved, petitioner filed a motion for reconsideration of the Sandiganbayan's Resolution dated August 10, 2017. However, the same was also denied. Hence, this petition.

### **Issue**

Whether or not there is inordinate delay that violated petitioner's constitutional right to a speedy disposition of a case.

### **Petitioner's Arguments**

Petitioner claimed that the delay of 10 years from the time an anonymous complaint was filed against him until the filing of four (4) informations against him before the Sandiganbayan constitutes inordinate delay which violated his constitutional right to a speedy disposition of cases. Petitioner further asserted that the cases against him only involved his alleged untruthful statements in his Statement of Assets, Liabilities and Net Worth involving a real property registered in 1995, a motor vehicle purchased in 2000 and a business interest registered in 2000.<sup>[22]</sup> The issues in the formal complaint were not complex and is within the expertise of the Office of the Ombudsman, hence a delay of 10 years cannot be considered as justified.

On the other hand, the People of the Philippines, through the Office of the Special Prosecutor, argued that there is no inordinate delay in which it amounted to a violation of petitioner's constitutional right to a speedy disposition of his case. Petitioner has merely shown a mere mathematical reckoning of the period that lapsed during the fact-finding and preliminary investigation of his cases before the Office of the Ombudsman. Further, the People claimed that petitioner failed to assert his right to speedy disposition of his case before the Office of the Ombudsman.

### **The Court's ruling**

#### ***The petition is meritorious.***

The Constitution 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.

The right to a speedy disposition of a case, is deemed violated 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 justifiable cause, a long period of time is allowed to lapse without the party having his case tried.<sup>[23]</sup> Inordinate delay in the resolution and termination of a preliminary investigation will result in the dismissal of the case against the accused. Delay, however, is not determined through mere mathematical computation but through the examination of the facts and circumstances peculiar in each case.<sup>[24]</sup>

In resolving cases involving inordinate delay this Court has been adopting the "balancing test" to determine whether the defendant's right to speedy disposition of cases has been violated. The four-fold factors are: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion or non-assertion of his right; and (4) the prejudice to defendant resulting from the delay.<sup>[25]</sup> However, none of these factors is either necessary or sufficient condition, they must be considered together with other relevant circumstances.<sup>[26]</sup> The totality of the particular facts peculiar to a case must be determined and weighed.

As held in the case of *Marialen C. Corpuz, et. al., v. The Sandiganbayan, et al.*<sup>[27]</sup>:

**xxxPrejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past.** Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.

Delay is a two-edge sword. It is the government that bears the burden of proving its case beyond reasonable doubt. The passage of time may make it difficult or impossible for the government to carry its burden. The Constitution and the Rules do not require impossibilities or extraordinary efforts, diligence or exertion from courts or the prosecutor, nor contemplate that such right shall deprive the State of a reasonable opportunity of fairly prosecuting criminals. As held in *Williams v. United States*, for the government to sustain its right to try the accused despite a delay, it must show two things: (a) that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay; and (b) that there was no more delay than is reasonably attributable to the ordinary processes of justice.

Closely related to the length of delay is the reason or justification of the State for such delay. Different weights should be assigned to different reasons or justifications invoked by the State. For instance, a deliberate attempt to delay the trial in order to hamper or prejudice the defense should be weighted heavily against the State. Also, it is improper for the prosecutor to intentionally delay to gain some tactical advantage over the defendant or to harass or prejudice him. On the other hand, the heavy case load of the prosecution or a missing witness should be weighted less heavily against the State. Corollarily, Section 4, Rule 119 of the Revised Rules of Criminal Procedure enumerates the factors for granting a continuance.<sup>[28]</sup> (Emphasis Ours)

In this case, sometime in 2007, an anonymous complaint was filed against herein petitioner. On August 28, 2009, the fact-finding investigation of the FIO was concluded by the filing of a formal complaint against the petitioner for violation of Section 2 of R.A. No. 1379<sup>[29]</sup>, in relation to Section 8 of R.A. No. 3019<sup>[30]</sup>, Article 172 in relation to Article 171 (4) of the RPC<sup>[31]</sup> and Section 8, in relation to Section 11 of the Code of Conduct and Ethical Standards for Public Officials, Serious Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the

Service.<sup>[32]</sup>

It took the FIO around 2 years to conclude its fact-finding investigation. As held in the recent case of *Cesar Matas Cagang v. Sandiganbayan*<sup>[33]</sup>, the fact-finding investigation conducted by the Office of the Ombudsman should be separate and distinct from the preliminary investigation for purposes of determining whether there was inordinate delay, to wit:

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*, the ruling that fact-finding investigations are included in the period for determination of inordinate delay is abandoned.

Thus, the 2 years spent for the fact-finding investigation prior to the filing of the formal complaint should be excluded from determining whether inordinate delay was incurred.

On August 28, 2009, a formal complaint was filed against the petitioner. On April 6, 2010, the Office of the Deputy Ombudsman for Luzon conducted the preliminary investigation.<sup>[34]</sup> On March 11, 2013, the GIPO II Irmina H. Bautista (GIPO II Bautista) found probable cause against the petitioner for 8 counts of Perjury. On December 22, 2014, Ombudsman Conchita Carpio-Morales approved the resolution.<sup>[35]</sup>

It took 5 years, 3 months and 24 days to conclude the preliminary investigation and for the Ombudsman to approve the resolution of GIPO II Bautista. The said period for determining probable cause for a case of perjury is beyond the reasonable period of ninety (90) days to determine probable cause.<sup>[36]</sup> The purpose of a preliminary investigation is only to determine whether there are reasonable grounds to believe