

SPECIAL FIRST DIVISION

[G.R. Nos. 232197-98, December 05, 2018]

**PEOPLE OF THE PHILIPPINES, PETITIONER, V. HONORABLE
SANDIGANBAYAN [FOURTH DIVISION], ALEJANDRO E. GAMOS,
AND ROSALYN G. GILE, RESPONDENTS.**

D E C I S I O N

TIJAM, J.:

This resolves respondents Alejandro E. Gamos and Rosalyn G. Gile's Motion for Reconsideration^[1] dated July 18, 2018 of our Decision^[2] dated April 16, 2018, wherein we reversed and set aside the Resolutions dated February 1, 2017^[3] and April 26, 2017^[4] of the Sandiganbayan in SB-15-CRM-0090 and SB-15-CRM-0091.

In the said motion, respondents pray that the above-cited Decision be reconsidered, insisting that their right to speedy disposition was violated due to the undue delay in the preliminary investigation before the Office of the Ombudsman (OMB). The motion also clarified that, contrary to petitioner's assertion in its petition^[5] that respondents were not yet arraigned due to their refusal to appear therein, they have already been arraigned, as evidenced by a Certificate of Arraignment^[6] dated January 27, 2016 attached in the instant motion. Hence, respondents argue that their right against double jeopardy was also violated with the reinstatement of the criminal cases against them.

Such paramount considerations merit a second look at the facts of the case and the various arguments propounded by the parties.

The factual backdrop of the case, as synthesized by this Court in its April 16, 2018 Decision, are as follows:

Two separate complaints were filed against former Sta. Magdalena, Sorsogon Mayor Alejandro E. Gamos (Gamos), Municipal Accountant Rosalyn E. Gile (Gile), and Municipal Treasurer Virginia E. Laco (Laco) for violation of Section 3(e) of Republic Act No. 3019 (First Complaint) and of Article 217 of the Revised Penal Code (Second Complaint), arising from alleged illegal cash advances made in the years 2004 to 2007.

The First Complaint was filed on February 18, 2008 before the Deputy Ombudsman (OMB) for Luzon by Jocelyn B. Gallanosa (Gallanosa) and Joselito G. Robillos (Robillos), then Sangguniang Bayan Members, alleging that Gamos, in conspiracy with Gile and Laco, made illegal cash advances in the total amount of P6,380,725.84 in 2004 and 2006 as per Commission on Audit (COA) Audit Observation Memorandum (AOM) No. 2007-01 to 2007-06 dated September 18, 2007.

On March 31, 2008 Gamos, Gile, and Laco were directed to submit their counter-affidavits in response to the said complaint. On April 28, 2008, Gamos, Gile, and Laco filed a motion for extension of time to file the required counter-affidavit. On May 12, 2008, Gamos, Gile, and Laco filed the said counter-affidavits, wherein they prayed for the dismissal of the cases against them for being malicious, baseless, and premature. On June 26, 2008, Gallanosa and Robillos filed their Reply thereto. Gamos and Gile then filed a Joint Rejoinder-Affidavit dated July 14, 2008. On August 20, 2009, Gallanosa filed a Manifestation and Urgent Motion for Preventive Suspension.

On December 3, 2009, Gallanosa, becoming then elected-mayor, filed a Second Complaint against Gamos, Gile, and Laco, alleging that Gamos, in conspiracy with Gile and Laco, made illegal cash advances in the total amount of P2,226,500 made in January to May 2007 per COA's Report on the Special Audit/Investigation on Selected Transactions of the Municipality of Sta. Magdalena, Sorsogon.

On February 23, 2010, Gamos, Gile, and Laco were directed to file their counter-affidavits to the Second Complaint. On March 26, 2010, Gamos, Gile, and Laco filed a motion for extension of time to file counter-affidavits. On April 23, 2010, they filed a second motion for extension to file the counter-affidavits. Gamos, Gile and Laco asked for the dismissal of the Second Complaint in a Joint Counter-Affidavit (with Motion to Dismiss) dated May 7, 2010. On June 1, 2010, Gallanosa filed a Reply thereto.

On September 1, 2010, Gamos filed a Comment/Opposition to the earlier motion praying for his preventive suspension.

On October 7, 2010, Gamos, Gile, and Laco filed an Ex-Parte Manifestation and Motion to Admit Letter to COA Chairman dated June 21, 2010, requesting for the review of the audit reports on which the complaints were based.

Thus, in a Consolidated Resolution dated October 19, 2010, the OMB investigating officer found that it is premature to determine criminal and administrative liabilities considering that the COA audit reports, upon which the complaints were based, were not yet final. Thus, the dismissal of the complaints was recommended without prejudice to the outcome of the review requested by Gamos, Gile, and Laco to the COA and to the refiling of the complainants if circumstances warrant.

In view of the resignation of then Deputy OMB for Luzon, Mark E. Jalandoni, on April 7, 2011 and the resignation of then OMB Ma. Merceditas N. Gutierrez on May 6, 2011, the said October 19, 2010 Consolidated Resolution was approved on May 17, 2011 by the then Acting OMB Orlando C. Casimiro.

Gallanosa and Robillos moved for the reconsideration of the said October 19, 2010 Consolidated Resolution in a Motion for Reconsideration dated June 26, 2011, which was received by the OMS-Luzon on July 7, 2011. On October 11, 2011, Gamos, Gile, and Laco were required to file a comment to the motion for reconsideration. On November 17, 2011,

Gamos, Gile, and Laco filed a motion for extension of time to file comment. Their Comment-Opposition (to the Motion for Reconsideration) was filed on December 5, 2011.

On January 9, 2012, OMB-Luzon received Gallanosa and Robillos' Verified Position Paper, wherein COA Chairman's Letter dated September 8, 2010 effectively denying the request for the review of the audit reports, was attached, among others. On March 9, 2012, the OMB received the Supplemental to the Position Paper.

Thus, on June 13, 2013, Gallanosa and Robillos' June 26, 2011 motion for reconsideration was finally resolved, granting the same, finding probable cause to indict Gamos, Gile, and Laco for malversation of public funds.

On February 13, 2014, the OMB-Luzon received Gamos' Motion for Reconsideration followed by a Supplement to the Motion for Reconsideration received on April 3, 2014.

In an Order dated June 20, 2014, Gamos' motion for reconsideration was denied. The said Order was approved by the OMB on February 20, 2015.

Thus, on March 30, 2015, two Informations for malversation of public funds were filed against Gamos, Gile, and Laco before the Sandiganbayan.

For several times, however, Gamos failed to appear before the said court for his arraignment despite notice. Thus, Sandiganbayan issued a Resolution dated May 19, 2016, directing Gamos to show cause why he should not be cited in contempt.

On November 22, 2016, Gamos and Giles filed a Motion to Dismiss on the ground of capricious and vexatious delay in the OMB's conduct of preliminary investigation to the damage and prejudice of the accused. On December 7, 2016, the petitioner filed a Comment/Opposition [to the Motion to Dismiss].^[7]

In its February 1, 2017 Resolution,^[8] the Sandiganbayan dismissed the cases, finding undue delay in the preliminary investigation before the OMB to the prejudice of respondents' right to a speedy disposition of their cases. The Sandiganbayan found that seven years have passed since the filing of the First Complaint in 2008 until the filing of the Informations before it. According to the said court, while the accused may have contributed to the delay for filing several motions for extension to file their pleadings, it took the OMB two years to act upon the complaints. The graft court did not accept petitioner's justification of the interval between the October 19, 2010 Consolidated Resolution^[9] to its approval, i.e., the resignations of the Deputy OMB for Luzon and the OMB. According to the graft court, it took another two years before the OMB investigating officer resolved to grant the motion for reconsideration of Jocelyn B. Gallanosa (Gallanosa) and Joselito G. Robillos (Robillos), a delay which has not been satisfactorily explained by the prosecution.^[10]

In our assailed Decision, we found no undue delay in the conduct of preliminary investigation, mainly due to the fact that several exchanges of pleadings were filed by both parties from the filing of the First Complaint, as well as after the filing of the

Second Complaint. Hence, this Court was of the impression that if there was any delay in the sequence of events, it was due to the constant development to the preliminary investigation caused by the constant filing of motions and responsive pleadings from both parties.^[11]

Finding that the graft court's dismissal of the criminal cases was void, we ruled that there was no acquittal or dismissal to speak of, hence, respondents' right against double jeopardy will not be violated in the reinstatement of said criminal cases. Further, we considered the petitioner's misleading assertion that respondents were not yet arraigned and were even directed to show cause why they should not be cited in contempt for their refusal to appear in the arraignment, as well as the fact that the dismissal of the cases was at their instance, thus ruling out the attachment of double jeopardy.^[12]

The issues for our resolution in the instant motion are: (1) whether or not there was undue delay in the conduct of preliminary investigation, violating respondents' right to a speedy disposition of cases; and (2) whether or not respondents' right against double jeopardy was violated.

Ruling of the Court

The Court grants the motion for reconsideration.

A second hard look at the sequence of events reveals that the Sandiganbayan did not err in finding undue delay in the OMB's conduct of the preliminary investigation. Indeed, while there may be no gap in the sequence of events and developments in the preliminary investigation that may be considered as delays in the conduct thereof, a wholistic view of the entire preliminary investigation would disclose certain shortcomings on the part of the OMB, resulting undue delays in the proceedings, which, as correctly found by the Sandiganbayan, were not satisfactorily explained by the prosecution.

First. While there were constant resolutions from the OMB directing the parties to file certain responsive pleadings, it took the investigating officer two (2) years and eight (8) months from the filing of the First Complaint on February 18, 2008 to the issuance of the Consolidated Resolution dated October 19, 2010, only to issue a resolution stating that it found out that it was premature for the OMB to determine criminal and administrative liabilities considering that the Commission on Audit (COA) was, at that time, still reviewing its findings.

Second. It took seven (7) months before the Acting OMB approved the said October 19, 2010 Consolidated Resolution and the only reason given by the prosecution was the resignation of the then Deputy OMB for Luzon on April 7, 2011 and then OMB Gutierrez on May 6, 2011. If an acting officer may act upon such important matters, we find the resignation of the said officers irrelevant and unreasonable to justify the delay in the proceedings to the prejudice of respondents' paramount right to a speedy disposition of case.

Third. If prudence and efficiency were exercised by the investigating officer in conducting the preliminary investigation, taking into consideration the Constitutional right of the respondents to a speedy disposition of cases, it would not have dismissed the cases in its October 19, 2010 Consolidated Resolution, due to pendency of the review before COA considering that as of September 8, 2010,