

## THIRD DIVISION

[ G.R. Nos. 233557-67, June 19, 2019 ]

### PEOPLE OF THE PHILIPPINES, PETITIONER, VS. THE HONORABLE SANBIGANBAYAN (FIRST DIVISION) AND CESAR ALSONG DIAZ, RESPONDENTS.

#### DECISION

**REYES, A., JR., J.:**

*The right of an accused to the speedy disposition of cases is a sacrosanct right that must not only be respected by courts and tribunals, but must also be invoked only in clear instances of vexatious, capricious, and oppressive delays. This sacred right is a shield, not a weapon to be used against the State, and should not preclude the rights of public justice.*<sup>[1]</sup>

This treats of the Petition for *Certiorari*<sup>[2]</sup> filed by herein petitioner People of the Philippines, seeking to reverse and set aside the Resolutions dated April 18, 2017<sup>[3]</sup> and July 3, 2017,<sup>[4]</sup> both issued by the Sandiganbayan, granting the Motion to Quash and the Supplemental Motion to Quash the Information filed by private respondent Cesar Alsong Diaz (Diaz).

#### The Antecedents

On January 18, 2011, State Auditor III and Audit Team Leader Oscar C. Lerio (Lerio) of the Commission on Audit (COA), Municipality of Tagana-an, Surigao del Norte sent a Demand Letter to Diaz requiring him to liquidate and account for his cash advances amounting to P5,223,014.00.<sup>[5]</sup>

In compliance with the said demand, Diaz made a liquidation on January 18, 2011 and April 5, 2011 in the total amount of PI 10,987.00, thereby leaving a balance of P5,172,227.24.<sup>[6]</sup>

Meanwhile, on April 18, 2011 and September 2, 2011, Diaz incurred additional cash advances on the Intelligence Fund in the sum of P202,500.00. Again, he failed to liquidate the same amount within the prescribed period, prompting Lerio to send another Demand Letter dated June 9, 2011.<sup>[7]</sup> Thus, as of March 31, 2012, Diaz's cash advances amounted to P5,374,727.24.<sup>[8]</sup>

On August 6, 2012, Lerio filed an Affidavit before the Office of the Ombudsman-Mindanao (OMB-Mindanao), accusing Diaz of violating Article 218 of the Revised Penal Code (RPC) for failing to liquidate his cash advances amounting to P5,374,727.24.<sup>[9]</sup> Attached to Lerio's Affidavit were 76 different documents, checks, receipts and other papers.<sup>[10]</sup> The case was docketed for preliminary investigation

as OMB-M-C-13-0003, entitled *Oscar C. Lerio v. Cesar A. Diaz*.<sup>[11]</sup>

On January 30, 2013, the OMB-Mindanao released the Order dated January 29, 2013, directing Diaz to submit his counter-affidavit.<sup>[12]</sup>

On March 5, 2013, Diaz filed a Motion for Extension of Time to Submit Counter-Affidavit requesting for an extension of 10 days.<sup>[13]</sup>

On March 19, 2013, the OMB-Mindanao received Diaz's Counter-Affidavit, which included 10 Annexes consisting of Liquidation Reports, among others.<sup>[14]</sup> In his Counter-Affidavit, Diaz admitted obtaining the cash advances. However, he claimed that he submitted the liquidation reports for eight of his cash advances from the Intelligence Fund, amounting to P762,500.00.<sup>[15]</sup> Diaz further averred that he had liquidated all of his cash advances, but he incurred difficulties retrieving the said records from the Municipal Accountant's Office and the Municipal Treasurer's Office, considering that the records from January 2004 to September 2011 were no longer available in the said offices.<sup>[16]</sup>

### **Ruling of the Ombudsman**

In a Resolution<sup>[17]</sup> dated February 7, 2014, the OMB found probable cause to indict Diaz for violation of Article 218 of the RPC. The OMB found that all the elements of Article 218 were present, considering that while Diaz was the Municipal Mayor of Tagana-an, Surigao del Norte, he received the public funds and failed to account for the same within the specified periods required by law.<sup>[18]</sup>

The dispositive portion of the OMB ruling reads:

WHEREFORE, this Office finds probable cause to indict respondent for thirteen counts of violation of Article 218 of the [RPC]. Let the corresponding Information be filed with the Sandiganbayan.

SO ORDERED.<sup>[19]</sup>

Diaz filed a Motion for Reconsideration<sup>[20]</sup> dated November 5, 2014. Thereafter, he filed a Supplemental Motion for Reconsideration<sup>[21]</sup> dated November 25, 2014.

In an Order<sup>[22]</sup> dated December 8, 2014, the OMB denied Diaz's Motion for Reconsideration.

Later, on January 30, 2017, Diaz filed a "Motion to Quash the Information and/or Dismiss These Cases on Account of Gross Violation By the Office of the Ombudsman of Accused'[s] Right to Speedy Disposition of His Cases."<sup>[23]</sup>

On February 22, 2017, the OMB filed its Comment/Opposition<sup>[24]</sup> to the Motion to Quash filed by Diaz.

### **Ruling of the Sandiganbayan**

On April 18, 2017, the Sandiganbayan issued the assailed Resolution,<sup>[25]</sup> granting Diaz's Motion to Quash. The Sandiganbayan found that there was an inordinate delay in the conduct of the preliminary investigation against Diaz, which lasted for four (4) years, five (5) months, and ten (10) days.<sup>[26]</sup> The Sandiganbayan observed that there were lulls during the conduct of the preliminary investigation. Specifically, it took the OMB six (6) months and twenty-four (24) days to issue an Order directing Diaz to file his Counter-Affidavit;<sup>[27]</sup> one (1) year, six (6) months, and twenty-one (21) days (from the filing of Diaz's Counter Affidavit) to sign and approve the Resolutions recommending the filing of the Information against Diaz;<sup>[28]</sup> one (1) year and three (3) months to resolve Diaz's Motion for Reconsideration;<sup>[29]</sup> and eleven (11) months and eleven (11) days (from the denial of Diaz's Motion for Reconsideration) to file the Information. The Sandiganbayan found the reasons for the said delays to be unjustified.<sup>[30]</sup>

Moreover, the Sandiganbayan noted that Diaz asserted his right to the speedy disposition of his case at the earliest opportunity, by filing a Motion to Quash immediately after the Informations were filed against him.<sup>[31]</sup>

Finally, the Sandiganbayan opined that the prejudice suffered by Diaz is "obvious[,]"<sup>[32]</sup> as "[t]he cases against Diaz has [sic] been pending for a considerable period."<sup>[33]</sup> This prejudice was evident from the fact that Diaz suffered "dire circumstances consisting of difficulties in the preparation of his defense, owing the lapse of memories and probable dissipation of documentary evidence and witnesses."<sup>[34]</sup> In addition, Diaz was "unable to secure the necessary clearances from government agencies, and endured financial drain, restrained freedom of movement, public ridicule, embarrassment, anguish, sleepless nights, restless moments, and isolation from friends and other people."<sup>[35]</sup>

The decretal portion of the assailed Sandiganbayan ruling reads:

**WHEREFORE**, in view of the violation of the constitutional right of accused Diaz to the speedy disposition of the cases against him, the instant cases are hereby **DISMISSED**.

The bond which the accused posted in the amount of Sixty-Six Thousand Pesos (Php 66,000.00) in Cash is hereby ordered released, subject to the liability of the bond, if there be any, as well as the usual accounting procedures.

The Hold Departure Order (HDO) dated January 20, 2017 is hereby recalled.

**SO ORDERED.**<sup>[36]</sup> (Emphases in the original)

Aggrieved, the OMB filed a Motion for Reconsideration, which the Sandiganbayan denied in its Resolution<sup>[37]</sup> dated July 3, 2017.

Dissatisfied with the ruling, the OMB filed the instant Petition for Certiorari under

Rule 65 of the Revised Rules of Court.

### **Issue**

The main issue raised for the Court's consideration rests on whether or not the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction in granting Diaz's Motion to Quash.

The People of the Philippines, through the Office of the Special Prosecutor (OSP), decries the dismissal of the criminal cases filed against Diaz. The OSP claims that the Sandiganbayan acted with grave abuse of discretion amounting to lack or excess of jurisdiction when the latter arbitrarily rejected the fact that the period that lapsed in the preliminary investigation was necessitated by the demands of due process and was forced by the surrounding circumstances of the case. According to the OSP, the Sandiganbayan simply ventured into a mere mathematical computation of the period involved, and completely abandoned its task of conducting a balancing test. Instead, the Sandiganbayan arbitrarily set aside the doctrinal rule of considering the four-fold factors that should be assessed in determining whether there was in fact a violation of the right to speedy disposition.

Moreover, the OSP avers that Diaz did not assert his right to speedy disposition, and that he failed to show any overt acts proving that he is not abandoning his right to the speedy disposition of his case at any time during the actual preliminary investigation.

The OSP further contends that there was no conclusive factual evidence presented to substantiate Diaz's purported claim of prejudice that he suffered during the alleged delay in the preliminary investigation.

On the other hand, Diaz counters that the period during which the COA conducted its fact-finding investigation should be included in counting the period of the delay.<sup>[38]</sup> He avers that the delay in resolving the case was in no way justified, which resulted in a violation of his right to the speedy disposition of his case.<sup>[39]</sup>

### **Ruling of the Court**

#### ***An Acquittal That Is Rendered with Grave Abuse of Discretion Amounting to Lack or Excess of Jurisdiction May Be Questioned Through a Special Civil Action for Certiorari under Rule 65 of the Rules of Court***

It must be noted at the outset that a judgment of acquittal may be assailed by the People in a petition for *certiorari* under Rule 65 of the Rules of Court without placing the accused in double jeopardy. However, in such case, the prosecution is burdened to establish that the court *a quo*, in this case, the Sandiganbayan, acted without jurisdiction or grave abuse of discretion amounting to excess or lack of jurisdiction or a denial of due process.<sup>[40]</sup> This doctrine was expounded in *People v. Sandiganbayan Fifth Division, et al.*,<sup>[41]</sup> where the Court, citing the case of *People v. Hon. Asis, et al.*,<sup>[42]</sup> further explained that:

A petition for *certiorari* under Rule 65, not appeal, is the remedy to question a verdict of acquittal whether at the trial court or at the

appellate level. In our jurisdiction, We adhere to the finality-of-acquittal doctrine, that is, a judgment of acquittal is final and unappealable. The rule, however, is not without exception. In several cases, the Court has entertained petitions for *certiorari* questioning the acquittal of the accused in, or the dismissals of, criminal cases. x x x.<sup>[43]</sup> (Citations omitted)

Likewise, in *Javier v. Gonzales*,<sup>[44]</sup> the Court stressed that "[d]ouble jeopardy is not triggered when the order of acquittal is void."<sup>[45]</sup> "An acquittal rendered in grave abuse of discretion amounting to lack or excess of jurisdiction does not really 'acquit' and therefore does not terminate the case as there can be no double jeopardy based on a void indictment."<sup>[46]</sup> Simply stated, a decision rendered with grave abuse of discretion amounts to lack of jurisdiction. In turn, this lack of jurisdiction prevents double jeopardy from attaching.<sup>[47]</sup>

Applying the foregoing pronouncements to the case at bar, the instant petition for *certiorari* is the correct remedy in seeking to annul the Resolutions of the Sandiganbayan.

With this, the Court shall now proceed to determine whether the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the criminal case filed against Diaz due to the Ombudsman's violation of his right to the speedy disposition of his case.

### ***The Determination of Delay in the Proceedings Is Not Subject to a Mere Mathematical Reckoning***

No less than the 1987 Constitution guarantees to all persons accused of crimes the right to a speedy disposition of their case. Article III, Section 16 in no uncertain terms mandates that "[a]ll persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies."<sup>[48]</sup>

The term "speedy disposition" is a relative term and necessarily a flexible concept. Mere mathematical reckoning of the time involved would not suffice, as the realities of everyday life must be regarded in judicial proceedings which, after all, do not exist in a vacuum. As such, any alleged delay in the disposition of the case should be considered in view of the entirety of the proceedings.<sup>[49]</sup>

Accordingly, in determining whether the right has been violated, the following factors may be considered and balanced, namely, (i) the length of delay; (ii) the reasons for the delay; (iii) the assertion or failure to assert such right by the accused; and (iv) the prejudice caused by the delay.<sup>[50]</sup>

Added to this, the Court, in the recent en bane case of *Cesar Matas Cagang v. Sandiganbayan, Fifth Division, Quezon City, Office of the Ombudsman, and People of the Philippines*,<sup>[51]</sup> laid down the following guidelines in determining whether the delay in the disposition of the case constitutes a violation of the accused's right to speedy disposition of cases, to wit:

- (i) The right to speedy disposition of cases is different from the right to speedy trial;