

## FIRST DIVISION

[ G.R. Nos. 232197-98, April 16, 2018 ]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HONORABLE  
SANDIGANBAYAN (FOURTH DIVISION), ALEJANDRO E. GAMOS,  
AND ROSALYN G. GILE, RESPONDENTS.**

### DECISION

**TIJAM, J.:**

This is a Petition for *Certiorari*<sup>[1]</sup> under Rule 65 of the Rules of Court, assailing the Resolutions dated February 1, 2017<sup>[2]</sup> and April 26, 2017<sup>[3]</sup> of the Sandiganbayan (Fourth Division) in SB-15-CRM-0090 and SB-15-CRM-0091.

#### The Factual Antecedents

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.<sup>[4]</sup>

On March 31, 2008 Gamos, Gile, and Laco were directed to submit their counter-affidavits in response to the said complaint.<sup>[5]</sup> On April 28, 2008, Gamos, Gile, and Laco filed a motion for extension of time to file the required counter-affidavit.<sup>[6]</sup> 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.<sup>[7]</sup> On June 26, 2008, Gallanosa and Robillos filed their Reply<sup>[8]</sup> thereto. Gamos and Gile then filed a Joint Rejoinder-Affidavit<sup>[9]</sup> dated July 14, 2008. On August 20, 2009, Gallanosa filed a Manifestation and Urgent Motion for Preventive Suspension.<sup>[10]</sup>

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.<sup>[11]</sup>

On February 23, 2010, Gamos, Gile, and Laco were directed to file their counter-affidavits to the Second Complaint.<sup>[12]</sup> On March 26, 2010, Gamos, Gile, and Laco filed a motion for extension of time to file counter-affidavits.<sup>[13]</sup> On April 23, 2010, they filed a second motion for extension to file the counter-affidavits.<sup>[14]</sup> Gamos, Gile, and Laco asked for the dismissal of the Second Complaint in a Joint Counter-Affidavit (with Motion to Dismiss)<sup>[15]</sup> dated May 7, 2010. On June 1, 2010, Gallanosa filed a Reply<sup>[16]</sup> thereto.

On September 1, 2010, Gamos filed a Comment/Opposition<sup>[17]</sup> 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,<sup>[18]</sup> requesting for the review of the audit reports on which the complaints were based.

Thus, in a Consolidated Resolution<sup>[19]</sup> 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 refile 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.<sup>[20]</sup>

Gallanosa and Robillos moved for the reconsideration of the said October 19, 2010 Consolidated Resolution in a Motion for Reconsideration<sup>[21]</sup> dated June 26, 2011, which was received by the OMB-Luzon on July 7, 2011. On October 11, 2011, Gamos, Gile, and Laco were required to file a comment to the motion for reconsideration.<sup>[22]</sup> On November 17, 2011, Gamos, Gile, and Laco filed a motion for extension of time to file comment.<sup>[23]</sup> Their Comment-Opposition (to the Motion for Reconsideration)<sup>[24]</sup> was filed on December 5, 2011.

On January 9, 2012, OMB-Luzon received Gallanosa and Robillos' Verified Position Paper,<sup>[25]</sup> 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.<sup>[26]</sup>

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.<sup>[27]</sup>

On February 13, 2014, the OMB-Luzon received Gamos' Motion for Reconsideration<sup>[28]</sup> followed by a Supplement to the Motion for Reconsideration<sup>[29]</sup>

received on April 3, 2014.

In an Order<sup>[30]</sup> dated June 20, 2014, Gamos' motion for reconsideration was denied. The said Order was approved by the OMB on February 20, 2015.<sup>[31]</sup>

Thus, on March 30, 2015, two Informations for malversation of public funds were filed against Gamos, Gile, and Laco before the Sandiganbayan.<sup>[32]</sup>

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.<sup>[33]</sup>

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].<sup>[34]</sup>

### **The Resolutions of the Sandiganbayan**

On February 1, 2017, the Sandiganbayan issued its assailed Resolution,<sup>[35]</sup> dismissing the cases, on the ground of delay, depriving the respondents-accused Gamos, Gile and Laco of their right to a speedy disposition of their cases.

The Sandiganbayan found that seven years had 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 said court cited that the OMB investigating officer issued the Consolidated Resolution only on October 19, 2010, which was approved much later on May 17, 2011 by then Acting OMB. The court *a quo* did not accept petitioner's justification of the interval between the October 19, 2010 Consolidated Resolution to its approval, *i.e.*, the resignations of the Deputy OMB for Luzon and the OMB. According to the court *a quo*, it took another two years before the OMB investigating officer resolved to grant the motion for reconsideration of Gallanosa and Robillos, a delay which has not been satisfactorily explained by the prosecution.<sup>[36]</sup>

Sandiganbayan disposed, thus:

**WHEREFORE**, in view of the foregoing, the Court **GRANTS** the "Motion to Dismiss" filed by [respondents], and the cases against them are accordingly **DISMISSED**.

**SO ORDERED.**<sup>[37]</sup>

The People then filed a motion for reconsideration, which was denied by the court *a quo* in its assailed Resolution<sup>[38]</sup> dated April 26, 2017, thus:

**WHEREFORE**, in light of the foregoing, this Court **DENIES** the Motion for Reconsideration filed by the prosecution. The assailed Resolution promulgated on February 1, 2017 **STANDS**.

## **SO ORDERED.**<sup>[39]</sup>

Hence, this Petition, wherein petitioner imputes grave abuse of discretion against the Sandiganbayan when it dismissed the cases before it on the ground of delay.

### **The Issue**

Was there a violation of respondents Gamos and Gile's right to speedy disposition of their cases to warrant the dismissal thereof?

### **The Court's Ruling**

This right to speedy disposition of cases is enshrined in Section 16, Article III of the 1987 Constitution, which declares:

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

Time and again, this Court has held that although the Constitution guarantees the right to the speedy disposition of cases, it is a flexible concept.<sup>[40]</sup> A mere mathematical reckoning of the time involved is not sufficient. Particular and due regard must be given to the facts and circumstances peculiar to each case.<sup>[41]</sup> Further, the right to speedy disposition of a case, like the right to speedy trial, is deemed violated only 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 cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried.<sup>[42]</sup>

The petitioner correctly argues that in the determination of whether such right is violated or not, equally applicable is the balancing test, which weighs the conduct of both the prosecution and the defendant.<sup>[43]</sup> In the case of *Remulla v. Sandiganbayan and Maliksi*,<sup>[44]</sup> this Court explained:

More than a decade after the 1972 leading U.S. case of *Barker v. Wingo* was promulgated, this Court, in *Martin v. Ver*, began adopting the "balancing test" to determine whether a defendant's right to a speedy trial and a speedy disposition of cases has been violated. As this test necessarily compels the courts to approach such cases on an *ad hoc* basis, the conduct of both the prosecution and defendant are weighed apropos the four-fold factors, to wit: (1) length of the delay; (2) reason for the delay; (3) defendant's assertion or non-assertion of his right; and (4) prejudice to defendant resulting from the delay. None of these elements, however, is either a necessary or sufficient condition; they are related and must be considered together with other relevant circumstances. These factors have no talismanic qualities as courts must still engage in a difficult and sensitive balancing process. (citations omitted)

Thus, the doctrinal rule is that in the determination of whether that right has been violated, the factors that may be considered and balanced are as follows: (1) the length of delay; (2) the reason/s for the delay; (3) the assertion or failure to assert

such right by the accused; and (4) the prejudice caused by the delay.<sup>[45]</sup>

In this case, the court *a quo*'s sweeping conclusion that it took the OMB seven years from the filing of the First Complaint in 2008 before the complaints were filed with the court and that as such, respondents Gamos and Gile were subjected to uncertainty with regard to their cases, was not well-taken.

A careful review of the series of events and the circumstances surrounding the proceedings before the OMB would show that there was, in fact, no delay contemplated under the Constitution to support respondent Gamos and Gile's assertion that their right to speedy disposition of the cases against them were violated.

Consider:

The First Complaint was filed on February 18, 2008. Contrary to the court *a quo*'s conclusion, by March 1, 2008, the OMB already acted upon the said complaint by directing the respondents to respond thereto. In the next proceeding months from April to June of the same year, pleadings from both the complainants and the respondents were filed. Pending the investigation of the First Complaint, the Second Complaint was filed on December 30, 2009. Again, several exchanges of pleadings were filed by both parties thereafter from February to October of 2010, until the investigating officer issued the October 19, 2010 Consolidated Resolution, recommending for the dismissal of the cases on the ground of prematurity, considering the request lodged by the respondents before the COA to review its audit reports upon which the complaints were based. In view of the consecutive resignations of the Deputy OMB for Luzon and the OMB on April 7, 2011 and May 6, 2011, the Consolidated Resolution was approved by the then Acting OMB only 11 days after the former OMB's resignation or on May 17, 2011.

GaiJanosa and Robillos' motion for reconsideration of the said Consolidated Resolution was received by the OMB on July 7, 2011. Respondents' required comment thereto was filed on December 5, 2011, after respondents moved for an extension of time to file the same. The following month, or on January 9, 2012 Gallanos and Robillos, in their Verified Position Paper, submitted COA Chairman's letter-response to respondents' request for review of COA's audit reports, informing the latter of the denial of such request. Yet again, a Supplemental Position Paper was filed on March 9, 2012.

With such developments to the cases after the dismissal thereof, which dismissal was notably without prejudice to the refiling if warranted considering the outcome of the COA's review of the pertinent audit reports as requested by the respondents, We do not find it unreasonable for the investigating officer to embark into the detailed investigation of the cases. As alleged, there were 63 cash advance transactions in the two complaints to investigated upon, covering the period of 2004 to 2007. Notably, it took the investigating officer only a year and three months from the receipt of the last pleading on March 9, 2012 to conclude the investigation and find probable cause against respondents as reflected in the grant of Gallanosa and Robillos' motion for reconsideration on June 13, 2013.

Respondent Gamos' motion for reconsideration was filed only on February 13, 2014 while a supplement thereto was filed on April 3, 2014. The said motion was already