

THIRD DIVISION

[G.R. Nos. 230950-51, July 23, 2018]

**ELPIDIO TAGAAN MAGANTE, PETITIONER, V. SANDIGANBAYAN,
(THIRD DIVISION) AND PEOPLE OF THE PHILIPPINES,
RESPONDENTS.**

DECISION

VELASCO JR., J.:

Like the proverbial sharp sword of Damocles, the protracted pendency of a case hangs overhead by the slenderest single strand. And as Cicero quipped: "*...there can be nothing happy for the person over whom some fear always looms.*"

Nature of the Case

For this Court's resolution is the Petition for *Certiorari* and Prohibition under Rule 65 of the Rules of Court assailing the Resolutions dated January 9, 2017^[1] and March 24, 2017^[2] of herein respondent Sandiganbayan, 3rd Division, in Criminal Case Nos. SB-16-CRM-0773-0774, denying petitioner Elpidio Tagaan Magante's Motion to Dismiss the two separate informations filed against him, and the subsequent Motion for Reconsideration thereof.

The antecedents, as found by the Sandiganbayan, are as follows:

In view of the Office of the Ombudsman's Resolution^[3] dated April 25, 2016^[4] in OMB-V-C-11-0008-A, two separate informations for Falsification of Public Documents,^[5] docketed as SB-16-CRM-0773,^[6] and for Splitting of Contracts,^[7] docketed as SB-16-CRM-0774,^[8] were filed against petitioner and his five (5) co-respondents therein on October 7, 2016 before the Sandiganbayan.

Thereafter, petitioner filed a Motion to Dismiss^[9] the cases against him on the ground that inordinate delay attended the conduct of the preliminary investigation of his alleged crimes, in violation of his constitutional right to a speedy disposition of cases. In concrete, petitioner claimed that it took the Ombudsman about seven (7) years, reckoned from the commencement of the fact-finding investigation in 2009 up to 2016, to issue its Resolution directing the filing of two separate informations against him. Petitioner reckoned the period from April 21, 2009, the date of the Affidavit and Narrative Audit Report that was submitted by Delfin P. Aguilar, Regional Director of the Commission on Audit Regional Office No. VII, which led to the commencement of a fact-finding investigation by the Ombudsman.

Petitioner likewise asserted that even if the period were to be counted from February 15, 2011, which is the date when the Ombudsman issued an Order directing him and his co-respondents therein to submit their respective counter-affidavits, up to the approval of its Resolution, still, there is a clear inordinate delay of five (5) years and two (2) months in resolving his case. He even cited several

cases wherein this Court held that the delay of three, five, six, or eight years in the termination of the preliminary investigation of the case amounts to a violation of the constitutional rights of the accused to due process and to a speedy disposition of cases.^[10] Specifically, petitioner invoked the Court's pronouncements in *Tatad v. Sandiganbayan*,^[11] *Angchangco v. Ombudsman*,^[12] *Roque v. Ombudsman*,^[13] *Coscolluela v. Sandiganbayan*,^[14] and *People v. Sandiganbayan*^[15] to advance his theory.

In response thereto, the prosecution (herein respondent People of the Philippines) filed its Comment/Opposition averring that petitioner's Motion to Dismiss deserved scant consideration and maintained that the Ombudsman did not incur inordinate delay in the conduct of the preliminary investigation.

The prosecution stressed the fact that there was neither hiatus, inaction, nor any intentional delay on the part of the Ombudsman from the time that the letter-complaint of Delfin P. Aguilar^[16] against petitioner was received by the OMB-Visayas on September 1, 2009, until the approval of the Final Evaluation Report dated June 30, 2010 by the then Ombudsman Merceditas Gutierrez (Gutierrez) on November 18, 2010. The Final Evaluation Report recommended the upgrading of the fact-finding investigation into a criminal and administrative case before the Ombudsman. Pursuant thereto, the Public Assistance and Corruption Prevention Office of the Deputy Ombudsman for Visayas (PACPO-OMB-Visayas) filed a formal complaint against petitioner on January 7, 2011.

The Ombudsman had taken proper action in the ordinary course of things and in accord with its mandate. However, the Resolution finding probable cause was only promulgated on April 15, 2016 due to the fact that there were ten (10) respondents in the complaint and each of them was afforded the right to explain themselves. The records of the case were also voluminous that entailed considerable time to study and analyze.^[17]

The prosecution further claimed that petitioner failed to assert his right to a speedy disposition of his cases all throughout the proceedings, and, thus, like any other constitutional right, the same may be waived. The prosecution likewise disputed the applicability of the cases cited by petitioner in his Motion to Dismiss as their factual milieu differs with the present cases.^[18]

Ruling of the Sandiganbayan

On January 9, 2017, the Sandiganbayan rendered its first assailed Resolution denying the petitioner's Motion to Dismiss for utter lack of merit. In disposing of the case, the Sandiganbayan made the following disquisitions:

The Court agrees with the prosecution [herein respondent People of the Philippines] that the rulings in the cases cited by [herein petitioner] in his [Motion to Dismiss] are inapplicable to the cases at bar because of the material differences in their factual milieu. To stress, the Supreme Court has consistently held that in the application of the constitutional guarantee of the right to a speedy disposition of cases, particular regard must also be taken of the facts and circumstance peculiar to each case.

x x x x

x x x in **Tatad**, there were peculiar circumstances attendant to the three-year delay in terminating the preliminary investigation against him. According to the Supreme Court, "*political motivations played a vital role in activating and propelling the prosecutorial process;*" and, there was a departure from the established procedure in conducting the preliminary investigation and that the issues involved were simple.

Unlike in **Tatad**, the present cases involve no imputation of any political motivation in the filing of the present *Informations* against the [petitioner].

Likewise in **Roque**, the High Tribunal declared as violation of therein petitioner's right to due process and speedy disposition of cases the delay of six (6) years on the part of the Office of the Ombudsman in resolving the complaints against the petitioner. The Supreme Court so ruled because "*no explanation was given why it took almost six years for the [Ombudsman] to resolve the complaints.*" Similarly, in **People v. Sandiganbayan** (citation omitted), the Supreme Court held that there was inordinate delay on the part of the Office of the Ombudsman when it resolved a complaint-affidavit only on April 15, 2008, notwithstanding the fact that it was filed on December 23, 2002.

In contrast to the abovementioned cases, **the attendant circumstances in these cases do not show a deliberate attempt to delay the proceedings.** The prosecution appropriately explained the circumstances surrounding the drafting of the two (2) *Informations* against the ten (10) respondents, all of whom were accorded their constitutional right to be heard. Based thereon, this Court does not find that the proceedings before the Office of the Ombudsman were attended by any vexatious, capricious and oppressive delays.

x x x x

In **Achangco, Jr.**, the Supreme Court x x x held the delay of more than six (6) years in resolving the complaints x x x amounted to a violation of the accused's constitutional right to due process and speedy disposition of cases for two (2) reasons, namely: [1] the administrative aspect of the case had already been dismissed; and [2] petitioner's several motions for early resolution and motion to dismiss remained unacted even at the time of the petition for mandamus before the Supreme Court.

The factual circumstances of the abovementioned case differ substantially from the cases at bar. Here, the [petitioner] did not file any *motion* or letter seeking the early resolution of the case against him and signifying that he was not waiving his right to its speedy disposition.

Also, [petitioner's] reliance on **Coscolluela** is misplaced.

In the said case, x x x the circumstances x x x showed that the petitioners therein were unaware that a preliminary investigation against them was on-going; hence, the Court ruled that they could not be faulted for their alleged failure to assert their right to speedy disposition of cases.

Here, [petitioner] was very much aware that there was a pending investigation against him, as in fact he filed his counter-affidavit before the OMB-Visayas on May 6, 2011. He also later filed a *Motion for Reconsideration* of an adverse *Resolution* of the Office of the Ombudsman on May 31, 2015. Surely he cannot now invoke ***Coscolluela*** for he actively participated in the proceedings before the Office of the Ombudsman and failed to assert his right to a speedy disposition of cases.

x x x **the [petitioner] must be deemed to have waived said right for his failure to assert it with reasonable promptitude.** The Supreme Court held in the case of ***Philippine Coconut Producers, Inc. v. Republic*** (citation omitted), that the right to speedy disposition of cases is lost unless seasonably invoked x x x^[19] (Emphasis partly in the original and partly supplied; italics in the original.)

The petitioner moved for its reconsideration but it was also denied in the second assailed Resolution dated March 24, 2017 for being *pro forma* and/or lack of merit.

Hence, this Petition.

The Issue

The sole issue raised in the petition is framed in the following manner:

WHETHER OR NOT THE SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE ASSAILED RESOLUTIONS WITHOUT REGARD TO THE CONSTITUTIONAL RIGHT OF THE PETITIONER TO SPEEDY DISPOSITION OF THE INVESTIGATION OF THE CASE AS PRESCRIBED IN SECTION 16, ARTICLE III OF THE 1987 CONSTITUTION AND TO THE VARIOUS SUPREME COURT DECISIONS UPHOLDING SAID CONSTITUTIONAL RIGHT.^[20]

Succinctly, petitioner calls upon this Court to guard his constitutionally enshrined right to speedy disposition of cases^[21] against the perceived inordinate delay of the Ombudsman in conducting the preliminary investigation pertaining to the pending criminal action.

The Court's Ruling

We find merit in the petition.

The right to speedy disposition of cases and the Ombudsman's bounden duty to observe the same

The constitutional guarantee to speedy disposition of cases was first introduced in the 1973 Philippine Constitution^[22] and was reproduced verbatim in Article III, Sec. 16 of the 1987 version. Presently, the provision pertinently provides:

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

The guarantee recognizes the truism that justice delayed can mean justice denied.^[23] It expanded the speedy trial guarantee afforded to the accused in a criminal proceeding, which was already in place in the 1935 Constitution.^[24] Though both concepts are subsumed under the more basic tenet of procedural due process, the right to speedy disposition of cases, to contrast with the right to speedy trial, sweeps more broadly as it is not confined with criminal cases; it extends even to other adversarial proceedings before any judicial, quasi-judicial, and administrative tribunals. No branch of government is, therefore, exempt from duly observing the constitutional safeguard and the right confirms immunity from arbitrary delay. Hence, under the Constitution, any party to a case may demand expeditious action on all officials who are tasked with the administration of justice,^[25] including the Ombudsman.

Coincidentally, the seminal case on the speedy disposition of cases involved the conduct of preliminary investigation by the Tanodbayan, the predecessor of the OMB. Even though the right to speedy disposition of cases had been preserved under the Bill of Rights as early as 1973, the 1989 case of *Tatad v. Sandiganbayan (Tatad)*^[26] was the first to have applied the provision as a personal right against the conduct of a proceeding, rather than as a constitutional challenge against a statute.^[27]

In the said case, a "report" was filed with the Legal Panel of the Presidential Security Command in October 1974, containing charges for alleged violations of RA 3019 against then Secretary of Public Information Francisco S. Tatad (Tatad). No action was taken on the "report" until it became publicly known that Tatad had a falling out with then President Ferdinand Marcos. Following Tatad's resignation from the cabinet, the 1974 complaint was resurrected on December 12, 1979 in the form of a formal complaint filed with the Tanodbayan. All affidavits and counter-affidavits were already submitted by October 25, 1982 and the case was already for disposition by then. However, it was only on June 5, 1985 when the Tanodbayan approved the resolution finding probable cause and ordering the filing of five (5) criminal informations against Tatad before the Sandiganbayan. Thereafter, Tatad filed a motion to quash the information on the ground that the prosecution deprived him of his right to due process of law and to a speedy disposition of the cases filed against him. The motion was denied by the anti-graft court, prompting Tatad to interpose a petition for certiorari before this Court to enforce his constitutional right.

In granting the petition in *Tatad*, the Court held that the trumped up charges against Tatad were politically motivated. More importantly, the three-year (3-year) delay from the day the investigation was submitted for resolution up to the date the informations were filed in Court was found to be a clear violation of Tatad's right to speedy disposition of cases. The Court observed there was not even substantial compliance with Presidential Decree No. (PD) 911 which prescribed a 10-day period for a prosecutor to resolve a case under preliminary investigation. And that although the period is merely directory, it cannot be disregarded with absolute impunity, lest it become meaningless dead letter. As ratiocinated in the case:

We are not impressed by the attempt of the Sandiganbayan to sanitize the long delay by indulging in the speculative assumption that "the delay may be due to a painstaking and gruelling scrutiny by the Tanodbayan as to whether the evidence presented during the preliminary investigation merited prosecution of a former high ranking government official." In the