

SECOND DIVISION

[G.R. No. 218040, April 17, 2017]

**JUANITO VICTOR C. REMULLA, PETITIONER, VS.
SANDIGANBAYAN (SECOND DIVISION) AND ERINEO S.
MALIKSI, RESPONDENTS.**

DECISION

MENDOZA, J.:

This is a petition for *certiorari* seeking to annul and set aside the February 2, 2015^[1] and March 20, 2015^[2] Resolutions of the Sandiganbayan Second Division in Criminal Case No. SB-14-CRM-0432, which dismissed the case filed by Juanito Victor C. Remulla (*Remulla*) against respondent Erineo S. Maliksi (*Maliksi*) for violation of Section 3 (e) of Republic Act (R.A.) No. 3019 or the Anti-Graft and Corrupt Practices Act.

On August 12, 2005, Remulla filed a criminal complaint against Maliksi before the Office of the Ombudsman (*Ombudsman*) for violation of Section 3 (e) of R.A. No. 3019. He alleged that Maliksi, as governor of Cavite, caused the purchase of certain medical supplies from Allied Medical Laboratories Corporation in November 2002 without conducting any public bidding, thereby giving unwarranted benefit or preference to it. On December 15, 2005, Maliksi filed his counter-affidavit.^[3]

The Ombudsman Ruling

After almost nine (9) years, in a resolution, dated August 27, 2014, the Ombudsman found probable cause against Maliksi for violation of Section 3 (e) of R.A. No. 3019.^[4]

Maliksi filed his motion for reconsideration, arguing that there was no probable cause and that there was a violation of his right to a speedy disposition of his case.^[5] In its order, dated October 22, 2014, the Ombudsman denied the said motion for reconsideration.^[6]

In November 2014, the Ombudsman filed an information for violation of Section 3 (e) of R.A. No. 3019 against Maliksi before the Sandiganbayan. Maliksi then filed his Motion to Dismiss,^[7] dated November 20, 2014, alleging that the finding of probable cause against him was null and void, and that his constitutional right to a speedy disposition of his case was violated. According to him, the 9-year delay in the proceedings caused him undue prejudice.

The Sandiganbayan Ruling

In its February 2, 2015 Resolution, the Sandiganbayan found that Maliksi's right to a

speedy disposition of his case was violated. Thus, it dismissed the case against him. It stated that the explanation provided by the Ombudsman, through the Office of the Special Prosecutor (OSP), was insufficient to justify its 9-year delay in the resolution of Maliksi's case. The Sandiganbayan noted that the interval was caused by the delay in the routing or transmission of the records of the case, which was unacceptable. Citing *Coscolluela v. Sandiganbayan*,^[8] (*Coscolluela*), it wrote that it was inconsequential to determine whether an accused had followed up on his case because it was not his duty to do so. The Sandiganbayan opined that it was the Ombudsman's responsibility to expedite the resolution of the case within a reasonable time.

On February 12, 2015, the OSP filed a Motion for Partial Reconsideration^[9] arguing that the delay in the preliminary investigation was neither whimsical nor capricious, considering that Maliksi did not complain on the delay.

In its assailed resolution, dated March 20, 2015, the Sandiganbayan denied the motion for partial reconsideration. It reiterated that the fact-finding of the case, which lasted for three (3) years, and the preliminary investigation, which lasted for six (6) years, were due to mechanical routing and avoidable delay. The Sandiganbayan found that such delays were unnecessary and unacceptable. It also echoed *Coscolluela* that it was not the duty of the respondent in a preliminary investigation to follow up on the prosecution of his case.

Hence, this petition.

Issue

WHETHER THE SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISMISSING THE CRIMINAL CASE AGAINST RESPONDENT.^[10]

Remulla argues that the Sandiganbayan should not have dismissed the case as there was a finding of probable cause; that there was no violation of Maliksi's right to a speedy disposition of his case because he did not promptly assert his right; that mere mathematical reckoning of the time involved is not sufficient to invoke inordinate delay; that in *Tilendo v. Ombudsman*^[11] (*Tilendo*), there must be an active assertion of the right to a speedy disposition of cases before the Ombudsman; and that *Coscolluela* is inapplicable because the petitioner therein was completely unaware of his pending case.

In his Comment,^[12] Maliksi countered that the petition was defective because it was filed by Remulla, a private party. He underscored that only the Office of the Solicitor General (OSG), or, in certain instances, the OSP, may bring or defend actions for or on behalf of the Republic of the Philippines. Maliksi also pointed out that the delay of nine (9) years in the preliminary investigation of his case was clearly an inordinate delay. He cited the cases of *Tatad v. Tanodbayan*^[13] and *People v. Sandiganbayan*,^[14] where even delays of even shorter period of years were considered violations of the right to speedy disposition of cases. Finally, Maliksi argued that the petition was a violation of his constitutional right against double jeopardy because a dismissal of criminal case due to the right to speedy disposition of a case is tantamount to an acquittal.

In his Reply,^[15] Remulla averred that he had the legal standing to file this subject petition as a taxpayer or a citizen because public funds were illegally disbursed. He contended that the length of delay was not the only factor that must be considered in determining inordinate delay. Remulla invoked the cases of *Guerrero v. CA*^[16] (*Guerrero*), *Bernat v. Sandiganbayan*^[17] (*Bernat*) and *Tello v. People*^[18] (*Tello*), where the failure of the accused to assert his right to a speedy disposition of his case was deemed a waiver for such right. He pointed out that Maliksi knew that there was a pending case against him but he never asserted his right to a speedy disposition of his case during the preliminary investigation. Finally, Remulla claimed that there was no violation of the right against double jeopardy as the dismissal of Maliksi's case was tainted with grave abuse of discretion.

In its Comment,^[19] the Ombudsman, through the OSP, argued that Court must provide a definitive ruling on the concept of inordinate delay because the current model was still in a state of perpetual flux. It opined that *Coscolluela* was inapplicable in the present case as Maliksi was aware of the pending case against him before the Ombudsman. The OSP also emphasized that the Sandiganbayan merely dismissed the case against Maliksi by considering the sole factor of length of delay. It cited the case of *Barker v. Wingo*,^[20] where the defendant's assertion of, or failure to assert, his right to a speedy trial was one of the factors to be considered in an inquiry whether there was deprivation of such right. The OSP echoed the argument of Remulla that an accused who does not take any step whatsoever to accelerate the disposition of the case was deemed to have slept on his right and have given acquiesces to the supervening delays.

The Court's Ruling

The petition is bereft of merit.

The petition was filed by a private party

Procedural law mandates that all criminal actions, commenced by a complaint or an information, shall be prosecuted under the direction and control, of a public prosecutor. In appeals of criminal cases before the Court of Appeals (CA) and before this Court, the OSG is the appellate counsel of the People, pursuant to Section 35 (I), Chapter 12, Title III, Book IV of the 1987 Administrative Code.^[21] In certain instances, the OSP represented the People, when it involved criminal cases within the jurisdiction of the Sandiganbayan.^[22]

The present case challenges the dismissal of a criminal case due to the violation of the right to speedy disposition of cases. The petition filed before this Court was initiated by Remulla in his capacity as a private complainant without the intervention of either the OSG or the OSP. Although he claims that he has legal standing as a taxpayer, the present case is criminal in nature and the People is the real party in interest.^[23] Remulla captioned his petition as "People of the Philippines v. Sandiganbayan (Second Division) and Erineo S. Maliksi"^[24] but it is clear that he does not represent the People.

Only on rare occasions when the offended party may be allowed to pursue the

criminal action on his own behalf such as when there is a denial of due process,^[25] or where the dismissal of the case is capricious shall *certiorari* lie.^[26] As will be discussed later, Remulla failed to qualify in any of these exceptional circumstances. Accordingly, he has no legal personality to assail the dismissal of the criminal case against Maliksi on the ground of violation of the right to a speedy disposition of his case.

The right to a speedy disposition of cases is a relative concept

The right to a speedy disposition of a case, like the right to a speedy trial,^[27] 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. Equally applicable is the balancing test used to determine whether a defendant has been denied his right to a speedy trial, or a speedy disposition of a case for that matter, in which the conduct of both the prosecution and the defendant are weighed.^[28]

More than a decade after the 1972 leading U.S. case of *Barker v. Wingo*^[29] was promulgated, this Court, in *Martin v. Ver*,^[30] 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.^[31]

In this case, Remulla argues that the cases of *Tilendo*, *Guerrero*, *Bernat*, and *Tello* dictate that it is mandatory for a respondent or accused to actively assert his right to a speedy disposition of his case before it may be dismissed on the said ground. He insists that Maliksi failed to follow up on his case during the preliminary investigation, hence, he cannot invoke his right to a speedy disposition of his case. Further, he avers that the doctrine in *Coscolluela*, where the Court held that there was no need for the respondent to follow up his case, is not controlling and it is only applicable when the respondent is completely unaware of the preliminary investigation against him.

To resolve these issues, the first set of cases cited by Remulla must be examined to determine whether it is mandatory for a respondent or accused to assert his right to a speedy disposition of his case. Also, the case of *Coscolluela* and its related cases must be evaluated whether the respondent or accused has the obligation to follow up his case.

Tilendo, Guerrero, Bernat, and Tello cases

In *Tilendo*, the petitioner therein invoked his right to a speedy disposition of his case because the preliminary investigation by the NBI lasted for three (3) years before it

filed a complaint before the Ombudsman. In denying his petition, the Court held that there was no unreasonable delay to speak of because the preliminary investigation stage only began after the NBI filed its complaint against Tilendo. Even assuming there was delay in the termination of the preliminary investigation, Tilendo did not do anything to accelerate the disposition of his case.

In *Guerrero*, the last pleading before the Court of First Instance was filed on December 21, 1979. The case was later re-assigned to two other judges, and on March 14, 1990, the last judge found out that the transcript of stenographic notes (TSN) was incomplete and ordered the parties to have the same completed. The petitioner therein filed a motion to dismiss on the ground that his right to a speedy trial had been violated. The Court ruled that there was no such violation because it was only after the new judge reset the retaking of the testimonies that the petitioner asserted his right. It was also held that a judge could hardly be faulted for the delay because he could not have rendered the decision without the TSN. The Court observed that the conduct of the case could have a different dimension had the petitioner made some overt act to assert his right.

Later, in *Bernat*, the criminal case against the petitioner therein was submitted for resolution before the Sandiganbayan on August 23, 1994. It was reassigned to Justice Ma. Cristina G. Cortez-Estrada upon her assumption of office on November 3, 1998; and sometime in 2002, she found out that some of the TSN were missing. Thus, the parties were ordered to attend a conference to discuss the matter. Instead of attending the conference, the petitioner therein filed a motion asserting his right to a speedy trial. In dismissing his argument, the Court cited the case of *Guerrero* where the TSN were also lost and the judge had to retake the testimonies. It noted that the petitioner failed to assert his rights. The Court also reiterated the ruling in *Guerrero* that the case could have taken a different dimension had the petitioner actively asserted his right to a speedy trial.

Similarly, *Tello* echoed the doctrine in *Bernat* because the petitioner therein did not take any step to accelerate the disposition of his case. He only invoked his right to speedy trial after the Sandiganbayan promulgated its decision convicting him for malversation of public funds.

Coscolluela and its related cases

In *Coscolluela*, the petitioners therein were investigated for violation of Section 3(e) of R.A. No. 3019. In a resolution, dated March 27, 2003, the assigned graft investigator found probable cause against the petitioners. The Ombudsman, however, only approved the said resolution on May 21, 2009 and filed the information on June 19, 2009. The petitioners sought to dismiss the case as the delay of six (6) years violated their right to a speedy disposition of their case. In upholding the position of the petitioners, the Court ruled that there was unjustified delay in the preliminary investigation of the case. The Ombudsman could not give a sufficient justification why it took six (6) years before it approved the resolution of the graft investigator. The Court also held that it was not the petitioners' duty to follow up on the prosecution of their case. The petitioners therein were not informed of the ongoing preliminary investigation against them.

Coscolluela relied on the case of *Duterte v. Sandiganbayan*^[32] (*Duterte*) to justify that there was no requirement to follow up a case. In the said case, the petitioners