



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

THE PEOPLE OF THE
PHILIPPINES,

Petitioner,

G.R. Nos. 233061-62

Present:

-versus-

PERALTA, C.J., Chairperson,
CAGUIOA,
REYES, J.C., JR.,
LAZARO-JAVIER, and
LOPEZ, JJ.

THE HONORABLE
FOURTH DIVISION,
SANDIGANBAYAN and
RAUL Y. DESEMBRANA,

Respondent.

Promulgated:

JUL 28 2020

X-----X

DECISION

LAZARO-JAVIER, J.:

The Case

This special civil action for *certiorari* assails the following issuances of the Sandiganbayan – Fourth Division in Criminal Cases Nos. SB-14-CRM-0427 and SB-14-CRM-0428 both entitled “*People of the Philippines v. Raul Y. Desembrana, Assistant City Prosecutor, Department of Justice, Quezon City.*”

- 1) Resolution¹ dated April 12, 2017, granting private respondent Raul Y. Desembrana's motion to dismiss the charges against him for violation of his right to speedy disposition of cases, releasing his cash bond, and lifting the hold departure order against him; and
- 2) Resolution² dated May 22, 2017, denying petitioner's motion for reconsideration.

The Facts

In two Informations dated November 15, 2014, private respondent Raul Desembrana was charged with two (2) counts of violation of Section 7(d) in relation to Section 11 of Republic Act No. 6713³ (RA 6713), docketed Criminal Cases Nos. SB-14-CRM-0427 and SB-14-CRM-0428:

Criminal Case No. SB-14-CRM-0427:

That on November 14, 2014, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, accused RAUL DESEMBRANA y YAZON, a high ranking public officer, being an Assistant City Prosecutor of the Department of Justice (DOJ) and as such is tasked to resolve and recommend action to be taken on, among others, preliminary investigation for unjust vexation, grave coercion and threat filed before the Quezon City Prosecutor's Office, committing the crime in relation to his office and taking advantage of his position, did then and there willfully, unlawfully, and criminally solicit from Dr. Alexis Montes Eighty Thousand Pesos (Php80,000.00), and actually accept Four Thousand Pesos (Php4,000.00) which were placed on top of the "boodle money" from Atty. Ephraim B. Cortez, counsel of Dr. Alexis Montes in consideration for the dismissal of the case entitled "Rev. Col. (Ret) Reuben Espartinez vs. Dr. Alexis Montes and Dr. Connor Montes" docketed at the Quezon City Prosecutor's Office as NPS Docket No. XV03INV14F-05695, which was pending before him to the damage and prejudice of the public interest and the complainants herein.

Contrary to law.⁴

Criminal Case No. SB-14-CRM-0428:

That on November 14, 2014, or sometime prior or subsequent thereto in Quezon City, Philippines and within the jurisdiction of this Honorable Court, accused RAUL DESEMBRANO y YAZON, a high ranking public officer, being an Assistant City Prosecutor of the Department of Justice (DOJ) and as such is tasked to resolve and recommend action to be taken on, among others, a preliminary investigation for unjust vexation, grave coercion and threat filed before the Quezon City Prosecutor's Office, DOJ, committing the crime in relation to his office and taking advantage of his position, did then and there willfully, unlawfully, and criminally demand

¹ *Rollo*, pp. 39-46.

² *Id.* at 48-49.

³ Code of Conduct and Ethical Standards for Public Officials and Employees.

⁴ *Rollo*, p. 10.

A

from Dr. Alexis S. Montes, Eighty Thousand Pesos (Php80,000.00) and actually receive Four Thousand Pesos (Php4,000.00) which were placed on top of the “boodle money” from Atty. Ephraim B. Cortez, counsel of Dr. Alexis Montes, in consideration for the dismissal of the case entitled “Rev. Col. (Ret) Reuben Espartinez vs. Dr. Alexis Montes and Dr. Connor Montes” docketed at the Quezon City Prosecutor’s Office as NPSW Docket No. XV03INV14F-05695, which was assigned to him for preliminary investigation, an action he was not inclined to do without the amount demanded and delivered to him, which action is unjust as it is contrary to his mandated duty to resolve the case based on the evidence on record and applicable law, to the damage and prejudice of the public interest and complainants herein.

Contrary to law.⁵

On November 21, 2014, after posting bail, private respondent filed a Motion to Suspend Arraignment (Motion) with the Sandiganbayan to accommodate the Motion to Conduct Preliminary Investigation he had filed with the Office of the Special Prosecutor (OSP) on November 20, 2014.

The Sandiganbayan heard private respondent’s Motion on November 28, 2014 and directed the OSP to file its Comment/Opposition to accused’s Motion. The OSP filed its Comment/Opposition on December 4, 2014. Thereafter, on January 12, 2015, private respondent filed his Motion to Admit Reply (to Prosecution’s Comment/Opposition dated December 4, 2014).⁶

After hearing private respondent’s Motion to Admit Reply on January 23, 2015, the Sandiganbayan granted the Motion and noted the OSP’s Manifestation that it would no longer file any rejoinder.

In its Resolution⁷ dated July 8, 2015, the Sandiganbayan granted private respondent’s Motion and directed the OSP to conduct a “full and complete preliminary investigation” within sixty (60) days from notice or until September 11, 2015.

According to the Sandiganbayan, “[a] full and complete preliminary investigation includes proceedings which allow the respondent the opportunity to file, within the period prescribed by the rules, a motion for reconsideration against an adverse resolution issued by the Office of the Ombudsman finding probable cause to charge him before the Sandiganbayan.”

In compliance therewith, the OSP directed private respondent to submit his counter-affidavit and other countervailing evidence. On September 3, 2015, private respondent submitted his Rejoinder-Affidavit, the last pleading received by the OSP.⁸

⁵ *Id.* at 11.

⁶ *Id.* at 139.

⁷ *Id.* at 165.

⁸ *Id.* at 139.

On two separate (2) occasions, on September 9, 2015 and October 12, 2015, the OSP filed a Motion for Extension of Time to Terminate a Complete and Full Preliminary Investigation of these Cases.

On October 19, 2015, private respondent manifested that on September 3, 2015, he filed a Rejoinder-Affidavit with the OSP.

On September 29, 2015, the OSP issued a recommendation finding probable cause against private respondent for violation of Article 210⁹ of *The Revised Penal Code* and requesting for the withdrawal of the information in Criminal Case No. SB-14-CRM-0427 and the substitution of the relevant Information in place thereof. The Ombudsman approved the recommendation in its Resolution dated October 21, 2015:

WHEREFORE, premises considered, the undersigned maintain that respondent Raul Desembrano y Yazon be held liable for the crime of Direct Bribery defined and penalized under Article 210 of the Revised Penal Code.

Further, it is hereby recommended that an information for violation of Section 3(e) of Republic Act No. 3019 is hereto attached be filed in lieu of the Information docketed as SB-14-CRM-0427, for violation of Section 7 (d) in relation to Section 11 of Republic Act No. 6713. Consequently, the Information docketed as SB-14-CRM-0427 is hereby recommended withdrawn.¹⁰

Private respondent filed his Motion for Reconsideration dated November 9, 2015 with the OSP.¹¹

On November 10, 2015, the OSP submitted the foregoing Resolution with the Sandiganbayan.

As narrated by the Sandiganbayan, the following series of events transpired:

On **November 10, 2015**, in compliance with the July 8, 2015 Resolution of the Court, the prosecution filed it's a "Compliance with

⁹ Article 210. Direct bribery. - Any public officer who shall agree to perform an act constituting a crime, in connection with the performance of this official duties, in consideration of any offer, promise, gift or present received by such officer, personally or through the mediation of another, shall suffer the penalty of *prision mayor* in its medium and maximum periods and a fine of not less than the value of the gift and] not less than three times the value of the gift in addition to the penalty corresponding to the crime agreed upon, if the same shall have been committed. If the gift was accepted by the officer in consideration of the execution of an act which does not constitute a crime, and the officer executed said act, he shall suffer the same penalty provided in the preceding paragraph; and if said act shall not have been accomplished, the officer shall suffer the penalties of *prision correccional*, in its medium period and a fine of not less than twice the value of such gift. If the object for which the gift was received or promised was to make the public officer refrain from doing something which it was his official duty to do, he shall suffer the penalties of *prision correccional* in its maximum period and a fine of not less than the value of the gift and not less than three times the value of such gift. In addition to the penalties provided in the preceding paragraphs, the culprit shall suffer the penalty of special temporary disqualification. The provisions contained in the preceding paragraphs shall be made applicable to assessors, arbitrators, appraisal and claim commissioners, experts or any other persons performing public duties.

¹⁰ *Rollo*, pp. 12-13.

¹¹ *Id.* at 13.

Omnibus Motion (for Withdrawal of Information docketed as SB-14-CRM-0427) and for the Lifting of the Resolution, dated July 8, 2015,” appending thereto the Resolution of the Office of the Ombudsman dated September 29, 2015 as approved by the Honorable Ombudsman on October 21, 2015.

On **November 24, 2015**, the Court directed accused Desembrana to file his comment on the prosecution’s motion. Accordingly, on December 3, 2015, the accused filed a “Comment (On the Compliance with Omnibus Motion filed by the Office of the Special Prosecutor dated November 10, 2015),” praying for the Court to hold in abeyance any action on the prosecution’s motion pending final resolution of the motion for reconsideration he filed on November 9, 2015 with respect to the September 29, 2015 Resolution of the [Office of the Special Prosecutor]. Subsequent to this, the prosecution filed its “Reply (to Comment, dated December 2, 2015)” on **January 12, 2016**, while the accused filed a “Rejoinder (To Reply, dated January 8, 2016 filed by the Office of the Special Prosecutor)” on **January 27, 2016**.

On **December 5, 2016**, in the interest of justice, the Court resolved to admit the prosecution’s Reply as well as the accused’s Rejoinder and submitted the prosecution’s Compliance with Omnibus Motion for resolution.

On **January 20, 2017**, the Court issued a Resolution sustaining the position taken by the accused and holding in abeyance the resolution of the prosecution’s “Compliance with Omnibus Motion (for Withdrawal of Information docketed as SB-14-CRM-0427 and for the Lifting of the Resolution, dated July 8, 2015)” until after the final resolution of accused Desembrana’s motion for reconsideration before the Office of the Ombudsman. It then directed the prosecution to inform the Court once the reconsideration sought by the accused has been resolved.¹²

In its Resolution dated January 20, 2017, the Sandiganbayan also directed the OSP to give an update on any incident pending with the Office of the Ombudsman relevant to the case.¹³

Consequently, the OSP issued a Resolution dated January 27, 2017 denying private respondent’s motion for reconsideration, which the Office of the Ombudsman approved in its Resolution dated February 8, 2017.¹⁴

Meantime, private respondent filed his Motion to Dismiss dated February 6, 2017. He pointed out that one (1) year and two (2) months had lapsed from the time of the filing of his motion for reconsideration before the Office of the Ombudsman. Further, two (2) years and two (2) months had lapsed from the Sandiganbayan’s directive on November 20, 2014 for the OSP to terminate the preliminary investigation within sixty (60) days from notice. By reason of these twin delays, his right to speedy disposition of cases was allegedly violated.¹⁵

¹² *Id.* at 140.

¹³ *Id.*

¹⁴ *Id.* at 14.

¹⁵ *Id.* at 42.

The OSP, through a Comment and/or Opposition (Motion to Dismiss dated February 6, 2017) filed on March 1, 2017 and a Reply (to Comment/Manifestation dated February 27, 2017) filed on March 7, 2017, countered that the constitutional violation asserted by private respondent was another dilatory tactic. Private respondent contributed to the delay in the termination of the preliminary investigation. Equally important, Section 7(a), Rule II of the Rules of Procedure of the Office of the Ombudsman requires leave of court before a motion for reconsideration may be allowed in cases where the criminal information has already been filed in court. Thus, there was no delay attributable to the OSP since it was only on January 20, 2017 when the Sandiganbayan directed it to give an update on what action had been taken by the Office of the Ombudsman on private respondent's motion for reconsideration.¹⁶

Previously, the OSP once again sought to have its Omnibus Motion dated November 10, 2015 resolved by the Sandiganbayan through another Omnibus Motion dated February 15, 2017. The Sandiganbayan treated this rather simple Omnibus Motion with another set of lengthy hearings from February 15, 2017 to March 7, 2017:

On **February 15, 2017**, the prosecution filed its "Compliance with Omnibus Motion (for Resolution of the Omnibus Motion, dated November 10, 2015 and for the Arraignment of the Accused)." The Court heard the Omnibus Motion on February 23, 2017 and gave the accused until March 2, 2017 to file its comment/opposition thereto. The Court likewise directed the prosecution to file its Reply within five (5) days from receipt of the accused's comment/opposition. Accordingly, on **March 2, 2017**, the accused filed his "Comment/Manifestation" to the prosecution's Compliance with Omnibus Motion. The prosecution filed its "Reply (on Comment/Manifestation, dated February 27, 2017)," on March 7, 2017.¹⁷

Ruling of the Sandiganbayan

In its first assailed Resolution¹⁸ dated April 12, 2017, the Sandiganbayan granted private respondent's motion to dismiss by reason of the unreasonable length of time in the conduct of preliminary investigation by the OSP. It held:

The attendant circumstances herein show that the Court directed the Office of the Ombudsman on July 8, 2015 to conduct a full and complete preliminary investigation. The Court, in its Resolution, clarified that a "**full and complete preliminary investigation**" includes the opportunity for the respondent to file a motion for reconsideration, to wit:

A full and complete preliminary investigation includes proceedings which allow the respondent the opportunity to file, within the period prescribed by the rules, a motion for reconsideration against an adverse resolution issued by the Office

¹⁶ *Id.* at 44.

¹⁷ *Id.* at 140.

¹⁸ *Id.* at 39-49.



of the Ombudsman finding probable cause to charge him before the Sandiganbayan.

The preliminary investigation in this case was deemed terminated on October 21, 2015 when the Honorable Ombudsman approved the Resolution dated September 29, 2015. Contrary to the directive of this Court, however, accused Desembrana has not yet been afforded the opportunity to file a motion for reconsideration when the prosecution filed its “*Compliance with Omnibus Motion (for Withdrawal of Information docketed as SB-14-CRM0427 and for the Lifting of the Resolution, dated July 8, 2015)*” on November 10, 2015 before this Court. Thus, in his “*Comment (On the Compliance with Omnibus Motion filed by the Office of the Special Prosecutor dated November 10, 2015)*” filed on December 3, 2015, the accused prayed for this Court to hold in abeyance any action on the prosecution’s Compliance with Omnibus Motion in view of the motion for reconsideration he filed on November 9, 2015 before the Office of the Ombudsman. Since then, and until the Court issued its January 20, 2017 Resolution directing the prosecution to notify the Court once the motion for reconsideration of the accused has been resolved, there has been no action from the Office of the Ombudsman as to the motion of the accused. As correctly pointed out by Desembrana, it has been 1 year and 2 months since he filed said motion.

The prosecution claims that the delay is caused by lack of compliance on the part of Desembrana to the procedural rule of the Office of the Ombudsman, specifically Section 7(a), Rule II thereof which states that the filing of a motion for reconsideration requires leave of court in cases where an information has already been filed in court, as in the instant case. It further averred that the said requirement was deemed met only when the Court issued its January 20, 2017 Resolution.

The Court will not stand for such ratiocination, which, if not flawed, is misleading. The Court has granted leave of court when it issued its Resolution on July 8, 2015 directing the prosecution to conduct a **full and complete** preliminary investigation and defining the same in clear and unequivocal terms, consistent with the pronouncement of the Supreme Court in *Sales vs. Sandiganbayan* that under the existing rules of the Office of the Ombudsman, the grant of a motion for reconsideration is an integral part of the preliminary investigation proper. Thus, the Supreme Court made the following pronouncement —

The filing of a motion for reconsideration is an integral part of the preliminary investigation proper. There is no dispute that the Information was filed *without* first affording petitioner-accused his right to file a motion for reconsideration. The denial thereof is tantamount to a denial of the right itself to a preliminary investigation. This fact alone already renders preliminary investigation conducted in this case *incomplete*. The inevitable conclusion is that the petitioner was not only effectively denied the opportunity to file a motion for reconsideration of the Ombudsman’s final resolution but also deprived of his right to a full preliminary investigation preparatory to the filing of the information against him....

The Court reiterates that the accused was no longer required to obtain leave of court because it has already been granted. But even assuming that there was no such leave, the lack of action by the prosecution on the motion for reconsideration of the accused cannot be justified because it

could have directed the respondent to obtain leave of court. It could have denied the motion, as well, if that were the case. In this situation, the prosecution chose to do nothing and left herein preliminary investigation vulnerable to being challenged for being constitutionally infirm.

The accused could not be faulted for the delay. As held in the case of *Coscolluela vs. Sandiganbayan*, congruent with the mandate of the Office of the Ombudsman to promptly act on complaints, it was its duty to expedite the prosecution of cases. Thus —

Being the respondents in the preliminary investigation proceedings, it was not the petitioners' duty to follow up on the prosecution of their case. Conversely, it was the Office of the Ombudsman's responsibility to expedite the same within the bounds of reasonable timeliness in view of its mandate to promptly act on all complaints lodged before it. As pronounced in the case of *Barker v. Wingo*:

A defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process.

Delay is prohibited by the Constitution when it is oppressive, unreasonable and arbitrary. Such kind of delay trifles with rights and renders them worthless, as in the instant case where the preliminary investigation took more than 2 years to complete because accused's motion for reconsideration was not acted upon for more than a year and would have remained to be so were it not promptly attended to by the Court, to the detriment of the accused.

As the Supreme Court has reminded in *Coscolluela*, the right to speedy disposition of cases does not merely concern itself with speedy dispatch, but also seeks to afford the accused freedom from anxiety and expense of litigation. It thus held as follows:

Lest it be misunderstood, the right to speedy disposition of cases is not merely hinged towards the objective of spurring dispatch in the administration of justice but also to prevent the oppression of the citizen by holding a criminal prosecution suspended over him for an indefinite time. Akin to the right to speedy trial, its "salutary objective" is to assure that an innocent person may be free from the anxiety and expense of litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose. (citation omitted)

All told, the Court finds the long delay in the termination of the preliminary investigation in the instant case to be violative of constitutional right of the accused to speedy disposition of cases.¹⁹ (Emphasis supplied)

Hence, the Sandiganbayan decreed:

WHEREFORE, finding the "Motion to Dismiss" filed by accused **RAUL Y. DESEMBRANA** to be meritorious, the same is hereby **GRANTED**. The cases against him are ordered **DISMISSED**. Let the cash

¹⁹ *Id.* at 44-45.

bond posted by the accused be **RELEASED** and **RETURNED**, subject to the usual accounting and auditing rules and procedures.

The Hold Departure Order issued by this Court against herein accused is **LIFTED** and **SET ASIDE**. The Commissioner of the Bureau of Immigration and Deportation is directed to cancel the name of accused Raul Y. Desembrana from the Bureau's Hold Departure List.

SO ORDERED.²⁰

Petitioner moved for reconsideration, which the Sandiganbayan denied through its second assailed Resolution dated May 22, 2017.

The Present Petition

The OSP, on behalf of the People of the Philippines, now faults the Sandiganbayan with grave abuse of discretion amounting to lack or excess of jurisdiction for dismissing the criminal cases against private respondent by reason of the alleged unreasonable length of time in the conduct of preliminary investigation.

In its Petition for *Certiorari*²¹ dated August 11, 2017 under Rule 65, Rules of Court, the OSP argues that after the two Informations had been filed, the Sandiganbayan assumed full control over the proceedings. The OSP complied with the Sandiganbayan's directive to conduct a preliminary investigation and resolve private respondent's motion for reconsideration thereof.

The Sandiganbayan whimsically and capriciously blamed it for the alleged delay in resolving private respondent's motion for reconsideration of his indictment for bribery under Section 210 of the RPC and violation of Section 3(e) of RA 3019. The Sandiganbayan already assumed jurisdiction over the case since the twin Informations had already been filed. After it terminated the preliminary investigation, it submitted a Compliance with Omnibus Motion for Withdrawal of Information on November 10, 2015 and it was only a little more than a year later, that is on December 12, 2016, that the Sandiganbayan declared that the same was submitted for resolution. Through a Reply dated January 8, 2016, it apprised the Sandiganbayan that it could not resolve private respondent's motion for reconsideration without leave of court. However, it was only on January 20, 2017 that the Sandiganbayan directed it to resolve said motion for reconsideration.²²

There were also no vexatious, capricious, and oppressive delays that attended the conduct of the preliminary investigation. Records show that its compliance with the Sandiganbayan's directives was not protracted. It should

²⁰ *Id.* at 46.

²¹ *Id.* at 7-29.

²² *Id.* at 21-22.

not be blamed for not resolving private respondent's motion for reconsideration because it had to await for leave from the Sandiganbayan to do so. The Sandiganbayan merely relied on its own mathematical computation and ignored the balancing test in determining whether there was indeed delay in the disposition of private respondent's case.²³

In his Comment²⁴ dated December 26, 2018, private respondent basically argued that **it was perfectly within the Sandiganbayan's discretion to ascertain whether the OSP truly violated** private respondent's right to speedy disposition of his case. There was no grave abuse of discretion on the Sandiganbayan's part. The fact that it took the OSP more than one (1) year and six (6) months to resolve his motion for reconsideration is the most glaring evidence that it violated the constitutional mandate to act promptly on complaints filed against public officials. Besides, the filing of a motion for reconsideration is an integral part of the preliminary investigation proper and the denial of such opportunity is tantamount to a violation of the right to a preliminary investigation. "*A defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process*". Indeed, the long delay in the termination of the preliminary investigation in the instant case is violative of his constitutional right to speedy disposition of his case.

In its Reply²⁵ dated July 1, 2019, the OSP reiterated its arguments.

Ruling

***The remedy of special civil action
for certiorari was properly availed in
assailing the Sandiganbayan's issuances***

Sections 1 and 2, Rule 45 of the Rules of Court read:

Section 1. Filing of petition with Supreme Court. **A party desiring to appeal by certiorari from a judgment, final order or resolution** of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

Section 2. Time for filing; extension. — The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion

²³ *Id.* at 26.

²⁴ *Id.* at 242-248.

²⁵ *Id.* at 256-274.

duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition. (Emphasis supplied)

The general rule is that orders granting motions to dismiss are subject to appeal or petition for review for they belong to the category of “*judgment, final order or resolution*” as they dispose of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing else to be done but to enforce by execution what has been determined by the court. It has been held that an order dismissing a case is a final order if no motion for reconsideration or appeal therefrom is timely filed.²⁶

Yet, in *People v. The Honorable Sandiganbayan (First Division)*,²⁷ it was declared that a special civil action for certiorari is the proper remedy against the Sandiganbayan’s order of dismissal of a criminal complaint by reason of undue delay, thus:

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. This doctrine was expounded in *People v. Sandiganbayan Fifth Division, et al.*, where the Court, citing the case of *People v. Hon. Asis, et al.*, 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.

Likewise, in *Javier v. Gonzales*, the Court stressed that “[d]ouble jeopardy is not triggered when the order of acquittal is void.” “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.” 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.

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.

²⁶ *Bañares II v. Balising*, 384 Phil. 567 (2000).

²⁷ G.R. Nos. 233557-67, June 19, 2019.

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. (Citations omitted. Emphasis supplied)

So must it be.

The Sandiganbayan gravely abused its discretion in dismissing the complaints below by reason of an alleged inordinate delay.

First. In its Resolution dated July 8, 2015, the Sandiganbayan directed the OSP to conduct a full and complete preliminary investigation within sixty (60) days from notice or until September 11, 2015. Thereafter, in its Resolution²⁸ dated April 12, 2017, the Sandiganbayan cited *Sales v. Sandiganbayan*²⁹ to interpret full and complete preliminary investigation as inclusive of resolving a motion for reconsideration filed with the OSP prior to the filing of the Information with the Sandiganbayan. As a result, in the same Resolution, the Sandiganbayan found as superfluous the OSP's requirement that private respondent had to seek and the Sandiganbayan to grant leave of court first before the OSP could resolve his motion for reconsideration.

The Sandiganbayan gravely abused its discretion in citing *Sales* to interpret full and complete preliminary investigation, and thereafter, to do away with leave of court as required in the Ombudsman's Rules of Procedure.

Elementary circumspection would have instructed the Sandiganbayan that this Court had already restricted the *Sales* ruling³⁰ only to the preliminary investigation of Ombudsman cases under the **then** Section 7 of the Ombudsman Rules of Procedure. As *Sales* relevantly stated:

Third, a person under preliminary investigation by the Ombudsman is entitled to file a motion for reconsideration of the adverse resolution. This right is provided for in the very Rules of Procedure of the Ombudsman, which states:

SEC. 7. Motion for Reconsideration.

- a) Only one motion for reconsideration or reinvestigation of an approved order or resolution shall be allowed, the same to be filed within fifteen (15) days from notice thereof with the Office of the Ombudsman or the Deputy Ombudsman as the case may be.
- b) No motion for reconsideration or reinvestigation shall be entertained after the information shall have been filed in court, except upon order of the court wherein the case was filed....

²⁸ *Rollo*, pp. 39-49.

²⁹ 421 Phil. 176 (2001).

³⁰ *Aguinaldo v. Ventus*, 755 Phil. 536-553 (2015); *Enriquez v. Caminade*, 519 Phil. 781-790 (2006).

The filing of a motion for reconsideration is an integral part of the preliminary investigation proper. There is no dispute that the Information was filed without first affording petitioner-accused his right to file a motion for reconsideration. The denial thereof is tantamount to a denial of the right itself to a preliminary investigation. This fact alone already renders preliminary investigation conducted in this case incomplete. The inevitable conclusion is that the petitioner was not only effectively denied the opportunity to file a motion for reconsideration of the Ombudsman's final resolution but also deprived of his right to a full preliminary investigation preparatory to the filing of the information against him.

Elementary diligence would also have dictated to the Sandiganbayan that the Section 7 referenced in *Sales* has long been amended to read now as follows:

Section 7. Motion for reconsideration -

a) Only one motion for reconsideration or reinvestigation of an approved order or resolution shall be allowed, the same to be filed within five (5) days from notice thereof with the Office of the Ombudsman, or the proper Deputy Ombudsman as the case may be, with corresponding leave of court in cases where information has already been filed in court;

b) The filing of a motion for reconsideration/reinvestigation **shall not bar the filing** of the corresponding information in Court on the basis of the finding of probable cause in the resolution subject of the motion. (As amended by Administrative Order No. 15, dated February 16, 2000)

Clearly, unlike in the old Section 7 upon which *Sales* was based, the governing Section 7 no longer bars the Office of the Ombudsman or more properly the OSP from filing the Information with the Sandiganbayan. As a result, it stands to reason that preliminary investigation as a matter of right is full and complete *immediately after* the opportunity to hear the parties and the finding of probable cause, since at that stage the Information may already be filed with the Sandiganbayan, without awaiting either the filing or the lapse of the period for filing any motion for reconsideration or reinvestigation, or if one has been filed, the resolution thereof. Further, once the Information has been filed with the Sandiganbayan, action by the OSP on the motion for reconsideration or reinvestigation is no longer a matter of right but a privilege, as the Sandiganbayan has to grant leave to the OSP in order for it to act on the motion for reconsideration or reinvestigation.

There is no legal right to move for reconsideration beyond what the rule allows. A motion for reconsideration is not inherent to due process but is merely granted subject to the conditions for its exercise or availability. It is a privilege and must be invoked only in the manner so provided.

The Sandiganbayan thus gravely abused its discretion in faulting the OSP for seeking leave of court before it could have acted on private respondent's motion for reconsideration. The OSP had already conducted full

and complete preliminary investigation when it filed with the Sandiganbayan on November 10, 2015 its "Compliance with Omnibus Motion (for Withdrawal of Information docketed as SB-14-CRM-0427) and for the Lifting of the Resolution, dated July 8, 2015," appending thereto the OSP's Resolution dated September 29, 2015 as approved by the Office of the Ombudsman on October 21, 2015. Private respondent's motion for reconsideration did not reduce the fullness or completeness of the preliminary investigation conducted by the OSP. For the OSP was within its right to file the Informations with or without private respondent's motion.

Second. The case of *People v. Hon. Sandiganbayan (First Division)*³¹ summarizes the principles and guidelines in determining inordinate delay in the disposition of cases:

The speedy disposition of cases before all judicial, quasi-judicial, or administrative bodies is a right Constitutionally-guaranteed to all persons. Juxtaposed with the right to speedy trial, **the right to a speedy disposition of cases is a right commonly invoked in fact-finding investigations and preliminary investigations conducted by the Ombudsman** because while these proceedings do not form part of the criminal prosecution proper **the respondent may already be prejudiced by such proceedings**, and **equally because the Ombudsman itself is constitutionally committed to act promptly** on complaints filed before it.

As tritely held in *Tatad v. Sandiganbayan*, an "undue delay in the conduct of a preliminary investigation cannot be corrected, for until now, man has not yet invented a device for setting back time." **Invariably, the underlying principle of the right to speedy disposition of cases** remains to be the **prevention not only of delay in the administration of justice but also of oppression of the citizen** by indefinitely suspending criminal prosecution. A violation of this right results to the grant of the "radical relief" of immediate dismissal of the case.

To determine whether a respondent's right to a speedy disposition of cases, the 1983 case of *Martin v. Ver* adopted the balancing test laid down in the U.S. case of *Barker v. Wingo*. The **balancing test** compels the courts to approach cases on an ad hoc basis, with the **conduct of both the prosecution and defendant weighed** using the **four-fold factors: (1) the 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.** These factors are to be considered together.

Due to the fact that **neither the Constitution nor the Ombudsman Act of 1989, provide for a specific period** within which the Ombudsman is mandated to conduct its fact-finding investigations or to act on complaints, other than "promptly," what was considered "prompt" or "inordinate delay" was instead given judicial interpretation, the leading case being *Tatad*. *Tatad* held that: the finding of inordinate delay applies in a case-to-case basis; political motivation is one of the circumstances to consider in determining inordinate delay; and that because of the attendant political color, the delay of three years in the termination of the preliminary investigation was inordinate. Thus, **to determine whether or not there was inordinate delay**, cases were consistently approached by the Court on an

³¹ G.R. No. 229656, August 19, 2019.

ad hoc basis using the **combination of Tatad and the Barker four-fold test.**

As to **when a case is deemed to have been commenced for purposes of determining inordinate delay**, *Dansal v. Fernandez* instructs that **the right to a speedy disposition of cases is available as early as the preliminary investigation or inquest.** *People v. Sandiganbayan* even went further in time as to **include the conduct of fact-finding investigation prior to the filing of a formal complaint.**

On July 31, 2018, a **definitive ruling on the concept of inordinate delay** was laid down by the Court en banc in *Cagang v. Sandiganbayan* as follows:

(1) The right to speedy disposition of cases is different from the right to speedy trial.

The [latter] may only be invoked in criminal prosecutions against courts of law while the [former] may be invoked before any tribunal as long as the respondent may already be prejudiced by the proceeding.

(2) For purposes of determining **inordinate delay**, a case is **deemed to have commenced from the filing of the formal complaint and the subsequent conduct of the preliminary investigation.**

Cagang, thus, abandoned *People v. Sandiganbayan* [which ruled to include the conduct of fact-finding investigation prior to the filing of a formal complaint]. The **Ombudsman should set reasonable periods for preliminary investigation and delays beyond this period will be taken against the prosecution.**

(3) Courts must determine which party carries the burden of proof.

If it has been alleged that there was **delay within the time periods** (i.e., according to the **time periods that will be issued** by the Ombudsman), the **burden is on the defense to show that there has been violation** of their rights to speedy disposition of case or to speedy trial. The **defense must prove: (a) that the case took much longer than was reasonably necessary to resolve; and (b) that efforts were exerted to protect their constitutional rights.**

If the **delay occurs beyond the given time period and the right is invoked**, the **prosecution has the burden of justifying the delay.** The **prosecution must prove: (a) that it followed the prescribed procedure in the conduct of preliminary investigation and case prosecution; (b) the delay was inevitable due to the complexity of the issues and volume of evidence; and (c) accused was not prejudiced by the delay.**

(4) Determination of the **length of delay is never mechanical.**

Courts **must consider the entire context of the case, the amount of evidence and the complexity of issues involved.** An **examination of the delay is no longer necessary to justify the dismissal** of the case if the **prosecution of the case was solely motivated by malice.**

(5) The **right to speedy disposition of cases (or the right to speedy trial) must be timely raised.**

The respondent or the accused **must file the appropriate motion upon the lapse of the statutory or procedural periods**, otherwise, they are deemed to have waived their right. (Emphasis supplied)

The guidelines to be observed in resolving the instant case are: *“If the delay occurs beyond the given time period and the right is invoked, the prosecution has the burden of justifying the delay. The prosecution must prove: (a) that it followed the prescribed procedure in the conduct of preliminary investigation and case prosecution; (b) the delay was inevitable due to the complexity of the issues and volume of evidence; and (c) accused was not prejudiced by the delay.”* This is because the Sandiganbayan has set the time-limit of 60 days from its directive to conduct a preliminary investigation. Additionally, it must be stressed that the *“[d]etermination of the length of delay is never mechanical.”*

In the case at bar, the timeline started on July 8, 2015 and the deadline for the completion of the preliminary investigation was pegged initially on September 11, 2015. While the OSP exceeded the time limit of 60 days, the OSP in two occasions sought additional time to complete the preliminary investigation. These motions were neither opposed by private respondent nor rebuffed by the Sandiganbayan. They were therefore deemed granted. Moreover, private respondent was himself a party to this delay because up until September 3, 2015, he was still filing a Rejoinder-Affidavit with the OSP.

The next events and the periods these were accomplished are uneventful. On September 29, 2015, the OSP completed the preliminary investigation by finding probable cause against private respondent for violation of Article 210³² of *The Revised Penal Code*, and requesting for the withdrawal of the information in Criminal Case No. SB-14-CRM-0427 and the admission of the relevant Information in lieu thereof. The Office of the Ombudsman approved the recommendation in its Resolution dated October 21, 2015. On November 10, 2015, the OSP filed with the Sandiganbayan its “Compliance with Omnibus Motion (for Withdrawal of Information docketed as SB-14-CRM-0427) and for the Lifting of the Resolution, dated July 8, 2015,” appending thereto the OSP’s Resolution dated September 29, 2015 as approved by the Office of the Ombudsman on October 21, 2015.

All in all, from July 8, 2015 to November 10, 2015, in less than 120 days, the OSP was able to complete the preliminary investigation. On its face, and especially with the circumstances driving this preliminary investigation, we cannot say that the timeline of 120 days constituted inordinate delay. It is a very reasonable period to complete a preliminary investigation.

The trajectory of the succeeding timelines is regrettable. After the OSP filed its “Compliance with Omnibus Motion (for Withdrawal of Information docketed as SB-14-CRM-0427) and for the Lifting of the Resolution, dated

³² Supra note 9.

July 8, 2015” on November 10, 2015, the Sandiganbayan procrastinated for over a year to resolve this “Compliance with Omnibus Motion.”

On **November 24, 2015**,³³ the Sandiganbayan directed private respondent to comment on the “Compliance with Omnibus Motion.” On **December 3, 2015**,³⁴ private respondent filed his “Comment (On the Compliance with Omnibus Motion filed by the Office of the Special Prosecutor dated November 10, 2015).” He argued that the Sandiganbayan should hold in abeyance any action on the “Compliance with Omnibus Motion” until the OSP resolved his motion for reconsideration of its September 29, 2015 Resolution. On **January 12, 2016**, the OSP filed its “Reply (to Comment, dated December 2, 2015).” On **January 27, 2016**, private respondent filed a “Rejoinder (To Reply, dated January 8, 2016 filed by the Office of the Special Prosecutor).”

The Sandiganbayan left the matter hanging for almost a year. Neither the OSP nor private respondent called the Sandiganbayan’s attention to this freeze.

Finally, on **December 15, 2016**,³⁵ the Sandiganbayan resolved to admit the OSP’s Reply as well as private respondent’s Rejoinder, and alas, submitted the “Compliance with Omnibus Motion” for resolution.

On **January 20, 2017**,³⁶ somewhat anti-climactically, the Sandiganbayan issued a Resolution sustaining the position taken by private respondent and holding in abeyance the resolution of the OSP’s “Compliance with Omnibus Motion (for Withdrawal of Information docketed as SB-14-CRM-0427 and for the Lifting of the Resolution, dated July 8, 2015)” until after the OSP’s resolution of private respondent’s motion for reconsideration. The Sandiganbayan also directed the OSP to inform it of the OSP’s action on the motion for reconsideration.

Three things stand out from the foregoing trajectory of timelines.

For one, the Sandiganbayan is responsible for the delay. It could have easily said what it ruled on January 20, 2017 on November 10, 2015 or at the latest November 24, 2015. **There was nothing complex about the issues presented** in the “Compliance with Omnibus Motion” to justify a timeline of more than a year to resolve it. By exercising ordinary diligence, the Sandiganbayan could have decided the motion within just a week, as in fact it was able to issue its Resolution just two weeks from the end of our famous long and festive holiday break in December. In any event, as explained above, the Sandiganbayan gravely abused its discretion in blindly relying upon *Sales* to justify its ruling or stance that “*we did not have to tell you so*,” as regards the leave of court for the OSP to resolve private respondent’s motion for

³³ *Rollo*, p. 18.

³⁴ *Id.*

³⁵ *Id.* 19.

³⁶ *Id.*

reconsideration.

For another, private respondent **did not assert his right to the speedy disposition of his cases** during the impasse at the Sandiganbayan. From November 2015 to January 2017, he sat idly by, which to us in hindsight smacks of traces of bad faith, because he waited in ambush. Moreover, though the proceedings were sluggish, he was given every opportunity to be heard. He vigorously participated in the proceedings before the Sandiganbayan and filed his share of pleadings. His motions and pleadings likewise contributed to the delay in this case. It is reasonable to infer from these circumstances that private respondent suffered no damage as a result of the delay.

*Corpuz v. Sandiganbayan*³⁷ objectifies the element of prejudice that an accused suffers:

x x x Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to **prevent oppressive pre-trial incarceration**; to **minimize anxiety and concerns of the accused to trial**; and to **limit the possibility that his defense will be impaired**. Of these, the most serious is the last, because the **inability of a defendant adequately to prepare his case skews the fairness of the entire system**. There is also prejudice **if the defense witnesses are unable to recall accurately** the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by **restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility**. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.

Here, private respondent is **out on bail**. As observed by his active participation in the proceedings below, it can be said that steps had been taken to mitigate any anxiety and concerns that he may have about the preliminary investigation and his trial. As importantly, there is definitely no possibility that his defense will be impaired because he had taken advantage of every opportunity to be heard available to him. We see **no prejudice** to private respondent as objectified above.

Lastly, the Sandiganbayan gravely abused its discretion not only in imputing blame to the OSP for the delay on the basis of an inapplicable case law, but also in failing to move the case forward upon the lapse of the period to conduct preliminary investigation. *Garcia v. Sandiganbayan*³⁸ requires this action from the Sandiganbayan:

From the filing of information, any disposition of the case such as its dismissal or its continuation rests on the sound discretion of the court, which becomes the sole judge on what to do with the case before it. Pursuant to said authority, the court takes full authority over the case, including the manner of the conduct of litigation and resort to processes that will ensure the preservation of its jurisdiction. Thus, it may issue warrants of arrest,

³⁷ 484 Phil. 899 (2004).

³⁸ G.R. Nos. 205904-06, October 17, 2018.

HDOs and other processes that it deems warranted under the circumstances.

In this case, **the Sandiganbayan acted within its jurisdiction when it issued the HDOs against the petitioner. That the petitioner may seek reconsideration of the finding of probable cause against her by the OMB does not undermine nor suspend the jurisdiction already acquired by the Sandiganbayan.** There was also no denial of due process since the petitioner was not precluded from filing a motion for reconsideration of the resolution of the OMB. In addition, **the resolution of her motion for reconsideration before the OMB and the conduct of the proceedings before the Sandiganbayan may proceed concurrently.**

*Aguinaldo v. Ventus*³⁹ similarly instructs:

Finally, in order to avoid delay in the proceedings, judges are reminded that the pendency of a motion for reconsideration, motion for reinvestigation, or petition for review is not a cause for the quashal of a warrant of arrest previously issued because the quashal of a warrant of arrest may only take place upon the finding that no probable cause exists. Moreover, judges should take note of the following:

1. If there is a **pending motion for reconsideration** or motion for reinvestigation **of the resolution of the public prosecutor, the court may suspend** the proceedings upon motion by the parties. **However, the court should set the arraignment of the accused and direct the public prosecutor to submit the resolution** disposing of the motion on or before the period fixed by the court, which in no instance could be more than the period fixed by the court counted from the granting of the motion to suspend arraignment, **otherwise the court will proceed with the arraignment as scheduled and without further delay.**
2. If there is a pending petition for review before the DOJ, the court may suspend the proceedings upon motion by the parties. However, the court should set the arraignment of the accused and direct the DOJ to submit the resolution disposing of the petition on or before the period fixed by the Rules which, in no instance, could be more than sixty (60) days from the filing of the Petition for Review before the DOJ, otherwise, the court will proceed with the arraignment as scheduled and without further delay.

The Sandiganbayan was obliged to move the cases forward. It should have thus set a date for private respondent's arraignment and directed the OSP to resolve private respondent's motion for reconsideration within a period not exceeding sixty (60) days. If the OSP had failed to do within the prescribed period, the Sandiganbayan should have proceeded with the arraignment and thereafter the trial.

Indubitably, neither the OSP nor the Office of the Ombudsman is guilty of inordinate delay in the disposition of the cases against private respondent. The ball was already in the Sandiganbayan's court, so to speak. Instead of

³⁹ 755 Phil. 536 (2015).

A

proceeding with the arraignment of private respondent and the rest of the rigmarole, the Sandiganbayan procrastinated, and worse, on the basis of a case law that has been overtaken by time and legal developments.

ACCORDINGLY, the petition is **GRANTED**. The assailed Resolutions dated April 12, 2017 and May 22, 2017 are **REVERSED** and **SET ASIDE**. The Sandiganbayan is **DIRECTED** to **IMMEDIATELY RESOLVE** the Office of the Special Prosecutor's "Compliance with Omnibus Motion (for Withdrawal of Information docketed as SB-14-CRM-0427) and for the Lifting of the Resolution, dated July 8, 2015," and to **PROCEED** with hearing the criminal cases with reasonable dispatch.

SO ORDERED.

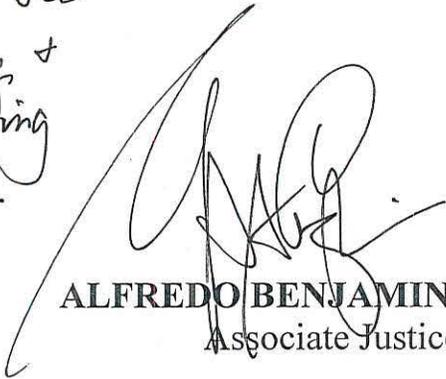

AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR:



DIOSDADO M. PERALTA
Chief Justice
Chairperson

*Please See
Concurring &
Dissenting
Opinion.*



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



JOSE C. REYES, JR.
Associate Justice



MARIO V. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Chief Justice

