

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CTA CRIMINAL CASE NO. 0-227

*For: Violation of Section 3601 of the
Tariff and Customs Code of the
Philippines in relation to Executive Order
No. 156*

- versus -

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, and
MINDARO-GRULLA, JJ.

**REYNALDO A. PAZCOGUIN and
RODELITO M. BIAG,**
Accused.

Promulgated:

MAY 14 2012

2:45 p.m.

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RESOLUTION

This resolves accused **RODELITO M. BIAG's "MOTION TO DISMISS"** filed on March 27, 2011, with the prosecution's **"JOINT COMMENT/OPPOSITION (To the Accused's Motion to Dismiss)"** filed on April 2, 2012.

In the instant Motion to Dismiss, accused Biag prays that the case against him be dismissed with prejudice for failure to prosecute.

In support thereof, accused Biag alleges that more than five (5) months have elapsed and he still had not been brought for arraignment due to the inordinate

failure of the prosecution to appear despite due notice. Accused Biag also posits that the public prosecutor was already ordered by the Court to explain his absence but the public prosecutor failed to respond thereto. Moreover, accused Biag claims that his arraignment was reset for four (4) times on account of the public prosecutor's failure to appear on the scheduled dates of arraignment. Thus, accused Biag invokes Section 1(g), Rule 116 of the Revised Rules on Criminal Procedure, the provisions of Republic Act (RA) No. 8493 and Circular No. 38-98 of the Supreme Court as well as his constitutional right to due process and to the speedy disposition of his case.

On the other hand, the prosecution argues that there were no capricious and oppressive delays that would justify a dismissal of the above-captioned case. The prosecution claims that a recent structural reorganization at the Department of Justice (DOJ), National Prosecution Service (NPS) Task Force on Anti-Smuggling occurred which led to the replacement of one of its members Assistant State Prosecutor Michael A. Vito Cruz, the supposed handling trial prosecutor in the above-captioned case. The prosecution also avers that due to pressures of work and heavy volumes of assignment at the National Prosecution Service, there was a temporary hiatus on the trial prosecutor who will continuously handle the active prosecution of the present case. The prosecution likewise contends that accused Biag does not appear to have been unduly and excessively prejudiced by the delay in his arraignment since he was not incarcerated during the almost five (5) months that elapsed as he had posted bail. In addition, the prosecution argues that the thirty-day period for arraignment as stated in RA No. 8493 is not absolute as certain justified delays were allowed by law and excluded from the computation of the time within

which trial must commence. Finally, the prosecution asseverates that accused Biag is not entirely faultless as he participated in the protracted proceeding by filing a Motion to Suspend Proceedings.

Arraignment is a vital stage in criminal proceedings in which the accused are formally informed of the charges against them. The proper conduct of the arraignment is provided in Rule 116 of the Revised Rules on Criminal Procedure. A perusal of the provision shows that arraignment is not a mere formality, but an integral part of due process. Particularly, it implements the constitutional right of the accused to be informed of the nature and cause of the accusation against them and their right to speedy trial.¹

Section 1 (g), Rule 116 of the Revised Rules on Criminal Procedure states that:

"SECTION 1. Arraignment and plea; how made. –

(g) Unless a shorter period is provided by special law or Supreme Court circular, the arraignment shall be held within thirty (30) days from the date the court acquires jurisdiction over the person of the accused. The time of the pendency of a motion to quash or for a bill of particulars or other causes justifying suspension of the arraignment shall be excluded in computing the period."

In the case of **Solar Team Entertainment, Inc. vs. How**², the Supreme Court explained that the thirty-day period is not absolute, to wit:

"Xxx xxx xxx the view espoused by petitioner that the thirty-day period prescribed by Section 7 of the Speedy Trial Act must be strictly observed so as not to violate its right to a speedy trial finds no support in the law itself. The exceptions provided in the Speedy Trial Act of 1998 reflect the

¹ John Joseph Lumanlaw y Bulinao vs. Hon. Eduardo B. Peralta, Jr., G.R. No. 164953, February 13, 2006, citing Agpalo, Handbook on Criminal Procedure (2001), p. 331 and People vs. Estomaca, 326 Phil 429, April 22, 1996

² G.R. No. 140863, August 22, 2000

fundamentally recognized principle that the concept of "speedy trial" is "a relative term and must necessarily be a flexible concept." Xxx
xxx xxx

Xxx xxx xxx, **the length of delay is not the lone criterion to be considered, several factors must be taken into account in determining whether or not the constitutional right to a speedy trial has been violated. The factors to consider and balance are the duration of the delay, reason thereof, assertion of the right or failure to assert it and the prejudice caused by such delay.**" (Emphasis supplied)

Furthermore, in the case of **Corpuz vs. The Sandiganbayan**³, the Supreme Court expounded that the right to a speedy trial and speedy disposition of a case is violated when the proceeding is attended by vexatious, capricious and oppressive delays; that the concept of a speedy disposition is a relative term, and that there are four factors to be considered in determining whether the accused has been deprived of his right to a speedy disposition of the case and to a speedy trial, to wit:

"The right of the accused to a speedy trial and to a speedy disposition of the case against him was designed to prevent the oppression of the citizen by holding criminal prosecution suspended over him for an indefinite time, and to prevent delays in the administration of justice by mandating the courts to proceed with reasonable dispatch in the trial of criminal cases. **Such right to a speedy trial and a speedy disposition of a case is violated only when the proceeding is attended by vexatious, capricious and oppressive delays.** The inquiry as to whether or not an accused has been denied such right is not susceptible by precise qualification. **The concept of a speedy disposition is a relative term** and must necessarily be a flexible concept.

While justice is administered with dispatch, the essential ingredient is orderly, expeditious and not mere speed. It cannot be definitely said how long is too long in a system where justice is supposed to be swift, but deliberate. It is consistent with delays and depends upon circumstances. It secures rights to the accused, but it

³ G.R. No. 162214, November 11, 2004

does not preclude the rights of public justice. Also, it must be borne in mind that the rights given to the accused by the Constitution and the Rules of Court are shields, not weapons; hence, courts are to give meaning to that intent.

A balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy trial cases on an ad hoc basis.

In determining whether the accused has been deprived of his right to a speedy disposition of the case and to a speedy trial, four factors must be considered: (a) length of delay; (b) the reason for the delay; (c) the defendant's assertion of his right; and (d) prejudice to the defendant."
(Emphasis supplied)

Thus, the right to a 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.⁴

Guided with the foregoing principles, the Court has determine that in the present case there was unreasonable delay in the conduct of the arraignment which resulted in violation of the right to speedy trial of accused Biag.

As aptly pointed out by accused Biag, his arraignment was reset for (4) four times, specifically on December 14, 2011, January 18, 2012, February 15, 2012 and March 14, 2012, on account of the prosecution's failure to appear on said dates, without any single word or explanation on the part of the prosecution. In fact, the Court already ordered the public prosecutor to explain the reason for his absence

⁴ Gonzales vs. Sandiganbayan, G.R. No. 94750, July 16, 1991

during the scheduled arraignment on February 15, 2012 but the Court did not receive any response, compliance or manifestation from the prosecution.

In its Joint Comment/Opposition, the prosecution finally and belatedly explained the alleged recent structural reorganization at the DOJ, NPS Task Force on Anti-Smuggling which led to the replacement of Assistant State Prosecutor Michael A. Vito Cruz as the handling trial prosecutor of the case. The prosecution, however, failed to establish the fact of existence of said reorganization and when the reorganization actually took place. If there was indeed a reorganization at the DOJ, NPS Task Force on Anti-Smuggling, respect and courtesy to the Court and due consideration to accused Biag's rights to speedy trial should have prompted the prosecution to file a manifestation before the Court with regard to the delay that said reorganization could bring about. Also, while the prosecution attached a copy of Office Order No. 246 dated March 26, 2012 to its Joint Opposition/Comment, the Court finds the same insufficient to establish the existence of said reorganization.

The prosecution contends that accused Biag does not appear to have been unduly prejudiced by the delay in his arraignment since he was not detained on account of the bail he posted. In the case of **Jacob vs. Sandiganbayan Fourth Division**⁵, the Supreme Court explained that even if the accused was not imprisoned, the unjustified delay in the disposition of the case was still prejudicial to the accused, to wit:

"We went on to lay down in Corpuz the test for determining whether an accused was indeed deprived of his right to a speedy trial and disposition of the case against him:

⁵ G.R. No. 162206, November 17, 2010, citing Corpuz vs. Sandiganbayan, G.R. No. 162214, November 11, 2004

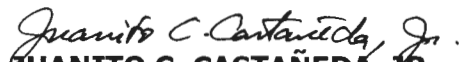
In determining whether the accused has been deprived of his right to a speedy disposition of the case and to a speedy trial, four factors must be considered: (a) length of delay; (b) the reason for the delay; (c) the defendant's assertion of his right; and (d) prejudice to the defendant. Prejudice should 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.**" (Emphasis supplied)

Finally, the prosecution claims that accused Biag is not entirely faultless as he participated in the protracted proceeding by filing a Motion to Suspend Proceedings. The delay in the proceedings brought about by the filing of the accused's Motion to Suspend Proceedings is justifiable. The pendency of the Motion for Reconsideration before the DOJ justified the filing by the accused of the Motion to Suspend Proceedings pursuant to Section 11(c), Rule 116 of the Revised Rules on Criminal Procedure.

Accordingly, applying the balancing test for determining whether an accused has been denied his constitutional right to a speedy disposition of his case, and considering the four factors such as: 1) the length of the delay; 2) the reason for the delay; 3) the accused assertion or non-assertion of his right; and, 4) the prejudice to the accused resulting from the delay, the Court finds accused Biag to have been unduly and excessively prejudiced by the delay in his arraignment.

WHEREFORE, premises considered, accused RODELITO M. BIAG's **MOTION TO DISMISS** is hereby **GRANTED**. Accordingly, the case against accused RODELITO M. BIAG is hereby **DISMISSED WITH PREJUDICE**, for failure to prosecute.

SO ORDERED.


JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Leave)
CAESAR A. CASANOVA
Associate Justice


CIELITO N. MINDARO-GRULLA
Associate Justice