

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

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CTA CRIM. CASE NO. O-222

For: Violation of Sec. 3601 of the
of the TCCP in relation to
Executive Order 156

- versus -

Members:

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

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

Promulgated:

MAY 16 2012

✓ 4:00 p.m.

x -----x

RESOLUTION

This resolves accused Rodelito M. Biag's ***Motion to Dismiss*** filed on March 27, 2012, with plaintiff's ***Joint Comment/Opposition (To the Accused' Motion to Dismiss)*** filed on April 2, 2012.

Accused Biag alleges that more than five (5) months have elapsed since the Court acquired jurisdiction over his person and he still had not been brought for arraignment due to the inordinate failure of the prosecution to appear despite due notice. He claims that this case was reset four (4) times already or on October 26, 2011, January 18, 2012, February 15, 2012 and March 14, 2012 for failure of the public prosecutor to appear on the said scheduled date of arraignment. Thus, accused Biag submits that it is high time that his rights be now upheld and recognized, which has been grossly violated and prejudiced by the inveterate

absence of the prosecution to appear on four (4) successive hearing dates thereby causing unreasonable delay in its disposition. To support his allegation, Accused Biag cited Rule 116, Section 1(g) of the Revised Rules on Criminal Procedures, Republic Act No. 8493, otherwise known as the "Speedy Trial Act of 1998" and Supreme Court Circular No. 38-98, in conjunction with the constitutional right of the accused to due process and to speedy disposition of case. In view thereof, accused Biag now prays that the case against him be dismissed with prejudice for failure to prosecute.

On the other hand, the public prosecutor strongly and vigorously opposes accused Motion arguing that there were no capricious and oppressive delays that would justify the dismissal of the case. The prosecution explains that a recent structural reorganization at the Department of Justice, 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 of the case; and that there was temporary hiatus on the trial prosecutor who will continuously handle the active prosecution of the case due to pressures of work and heavy volumes of assignment at the NPS. To this the prosecution deeply apologizes.

The prosecution also attached to its Joint Comment/Opposition Office Order No. 246 dated March 26, 2012 designating Assistant State Prosecutor Ramon Chito R. Mendoza as the handling trial prosecutor of the case in lieu of Assistant State Prosecutor Michael A. Vito Cruz.

The prosecution further avers that even assuming for the sake of argument that there was "delay" in the proceedings, accused Biag does not appear to have

been unduly and excessively prejudice since he was never incarcerated in view of the fact that he had posed bail.

Lastly, the prosecution points out that the participation of the accused in the protracted proceeding such as his filing of a *Motion to Suspend Proceedings* also contributed in the delay. According to the prosecution, the accused is not entirely faultless.

In the case of *Corpuz vs. Sandiganbayan*¹, the Supreme Court expounded on the constitutional right of an accused to speedy trial and speedy disposition of a case, the pertinent portion of which reads:

It cannot be overstressed that the accused in all criminal prosecutions are entitled to due process as much as the prosecution. In *Tatad v. Sandiganbayan*, we held that substantial adherence to the requirements of the law governing the conduct of preliminary investigation, including substantial compliance with the time limitation prescribed by the law for the resolution of the case by the prosecutor, is part of the procedural due process constitutionally guaranteed by the fundamental law. This ruling clearly applies to reinvestigations authorized by the trial courts, including the Sandiganbayan.

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

¹ *Corpuz vs. Sandiganbayan*, 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. 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.²

The above-jurisprudence enumerated four factors in determining whether the accused has been deprived of his right to a speedy disposition of the case and to a speedy trial, namely: (a) length of delay; (b) the reason for the delay; (c) the defendant's assertion of his right; and (d) prejudice to the defendant. Thus, the Court shall determine whether accused Biag has been deprived of his right to a speedy disposition of the case and to a speedy trial on the basis of the four factors herein stated.

It should be recalled that the arraignment of accused Biag on October 26, 2011 was reset to December 14, 2011 in view of the Court's resolution granting accused Biag's Motion to Defer Further Proceedings. However, it should also be

² *Ibid*

noted that during the hearing set on December 14, 2011, the arraignment of the accused was again postponed, now due to the prosecution's failure to appear on the said hearing date. Likewise, the subsequent hearings on January 18, 2012, February 15, 2012 and March 14, 2012 set for the arraignment of the accused were also postponed still due to the prosecution's failure to appear on said hearing dates despite notice. We order the public prosecutor to explain, within fifteen days from receipt of the February 15, 2012 Resolution, the reason for his absence during the scheduled arraignment but the Court did not receive any response from the prosecution.

In its Joint Comment/Opposition, the prosecution finally and belatedly explained the alleged structural reorganization at the Department of Justice, NPS Task Force on Anti-Smuggling and the alleged pressures of work and heavy volumes of assignment at the NPS. While these reasons may justify the absence of the prosecution during the hearings set for arraignment³, the Court has no means to verify the truthfulness of such allegation. Accordingly, the same shall be considered as merely self-serving.

Moreover, the Court do not find merit in the prosecution's contention that accused Biag does not appear to have been unduly and excessively prejudice given the fact that he had posted bail and that he was never incarcerated during the almost five (5) months that elapsed.

³ In the case of *Castillo vs. Sandiganbayan G.R. No. 109271, March 14, 2000*, the Supreme Court held that while the petitioners in that case certainly have the right to a speedy disposition of their case, the structural reorganization of the prosecutorial agencies, the procedural changes brought about by the Zaldivar case as well as the Sandiganbayan's heavy caseload certainly are valid reasons for the delay in the disposition of petitioners' case. For those reasons, the delay certainly cannot be considered as vexatious, capricious and oppressive. Neither is it unreasonable nor inordinate.

To re-echo the ruling of the Supreme Court, prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, one of which is to minimize anxiety and concerns of the accused to trial. In fact, the Supreme Court stated that even if the accused is not imprisoned, 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.⁴

In view of all the foregoing, the Court is convinced that there was unreasonable delay in the proceedings of this case. Thus, accused Biag's constitutional right to speedy trial was indeed violated.

WHEREFORE, the instant *Motion to Dismiss* is hereby **GRANTED**.
Accordingly, the case against accused RODELITO M. BIAG is hereby **DISMISSED**.

SO ORDERED.


JUANITO C. CASTANEDA, JR.
Associate Justice


CAESAR A. CASANOVA
Associate Justice


CIELITO N. MINDARO-GRULLA
Associate Justice

⁴ Note 2, *supra*.