

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,

Plaintiff,

CTA CRIM CASE NO. O-228

For: Violation of Sec. 3602 in
rel. to Sec. 2530, pars. (f) and
(l), 3,4 & 5 of the TCCP

-versus-

Members:

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

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

Accused.

Promulgated:

MAY 24 2012

3:30 p.m.

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RESOLUTION

For resolution of this Court is accused Rodelito M. Biag's Motion to Dismiss¹ filed on March 27, 2012, praying for the dismissal of the instant case with prejudice, for failure to prosecute. A Joint Comment/Opposition (To the Accused' Motion to Dismiss)² was filed by the State, thru the Public Prosecutor, on April 2, 2012.

Accused Rodelito M. Biag contends that the criminal case filed against him should have been dismissed on the ground that more than five (5) months had elapsed since the accused appeared and submitted himself to the jurisdiction of this Court and, yet, he still had not been brought for arraignment due to the inordinate failure of the prosecution to appear, despite due notice, on four (4) successive hearing dates: "October 26, 2011,

¹ Docket, pp. 0000284-000286.

² Ibid., pp. 000280-000283.

January 18, 2012, February 15, 2012 and March 14, 2012" scheduled dates for arraignment. Accused proffers that the unreasonable delay in his arraignment constitutes a violation of his constitutional right to due process as well as his right to speedy trial, invoking Section 1(g), Rule 116 of the Revised Rules on Criminal Procedure, the provisions of Republic Act (RA) No. 8493, otherwise known as the "Speedy Trial Act of 1998" and Circular No. 38-98 of the Supreme Court, as support to his allegation. In view of the foregoing, accused Biag now comes before this Court and prays for the dismissal with prejudice of the case at bench, for failure to prosecute.

The State, thru the Public Prosecutor, on the other hand, strongly and vigorously opposes the Motion filed by the accused, alleging that contrary to the assertions of accused Rodelito M. Biag, there were no capricious and oppressive delays that would justify the dismissal of the present case and that courts are required to show more than a mathematical computation of the number of postponement of the scheduled hearings and a particular regard must be given to the facts and circumstances peculiar to each case.

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 (ASP) Michael A. Vito Cruz, the supposed handling trial prosecutor of the present case; and that there was a 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.

Finally, prosecution submits that accused did not appear to have been unduly and excessively prejudiced, given the fact that he had posted bail and was never incarcerated; and that accused Biag's Motion to Suspend Proceedings likewise contributed in the delay. It is the prosecution's position that the accused is not entirely faultless in the delay in the present proceedings.

Prosecution, likewise, attached to its Motion a copy of Office Order No. 246 dated March 26, 2012, designating ASP Ramon Chito R. Mendoza to handle/continue the prosecution of the present case in lieu of ASP Michael Vito A. Cruz who is no longer a member of the DOJ Task Force on Anti-Smuggling.

This Court finds merit in the Motion to Dismiss filed by the accused.

An arraignment is that stage wherein the mode and manner required by the rules, an accused, for the first time, is granted the opportunity to know the precise charge that confronts him. The accused is formally informed of the charges against him, to which he enters a plea of guilty or not guilty. As an indispensable requirement of due process, an arraignment cannot be regarded lightly or brushed aside peremptorily.³

Rule 116 of the Revised Rules on Criminal Procedure provides for the proper conduct of arraignment. Section 1(g) specifically states the period within which the accused should be arraigned, to wit:

"(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 or particulars or other causes justifying suspension of the arraignment shall be excluded in computing the period.

In the case of *Solar Entertainment, Inc. vs. How*⁴, the Supreme Court explained that the thirty-day period is not absolute:

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

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³ Ramon A. Albert vs. The Sandiganbayan and the People of the Philippines, G.R. No. 164015, February 26, 2009 *citing* Borja v. Mendoza, 168 Phil. 83, 87 (1977) and People v. Espinosa, 456 Phil. 507, 516 (2003).

⁴ G.R. no. 140863, August 22, 2010.

x x x **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, the Supreme Court, in the case of *Marialen C. Corpuz and Antonio H. Roman, Sr., vs. The Sandiganbayan (Special Fourth Division) and The People of the Philippines*⁵, expounded on the right of the accused to a speedy trial and speedy disposition of a case, stating that Section 16, Article III of the 1987 Constitution provides that all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial or administrative bodies; that the right to speedy trial and speedy disposition of a case is violated when the proceeding is attended by vexatious, capricious and oppressive delays; that there are four factors to be considered in determining whether such right of the accused is violated; and that the concept of speedy disposition is a relative term, 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 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

⁵ G.R. No. 162214, November 11, 2004.

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)

The above quoted jurisprudence enumerated four factors that shall 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: (a) length of delay; (b) the reason for the delay; (c) the defendant's assertion of his right; and (d) prejudice to the defendant.

Upon careful consideration of the four factors enumerated above and its applicability to the case at bench, We find that there was an unreasonable delay in the conduct of the arraignment of accused Biag, which led to the violation of his right to speedy trial and speedy disposition of his case.

The records of the case reveal that the arraignment of accused Biag was reset for four (4) times, specifically on December 14, 2011, January 18, 2011, February 15, 2011 and March 24, 2011; and, except for the first re-setting which was in relation to the Court's resolution granting accused Biag's Motion to Defer Proceedings, all the other re-settings were on account of the prosecution's failure to appear on the scheduled hearings despite due notice from this Court. Prosecution failed to provide an acceptable explanation for the said failure to appear. In the January 18, 2012 hearing, Atty. Dy Buco of the Bureau of Customs merely manifested that ASP Vito Cruz, the handling prosecutor, is no longer a member of the DOJ Task Force on Anti-Smuggling and that he will coordinate with the DOJ as to who will substitute ASP Vito Cruz. No explanation as to the non-appearance was provided by Atty. Dy Buco.

In its Joint Comment/Opposition (To the Accused' Motion to Dismiss), the prosecution albeit belatedly, provided an explanation regarding the absence of the handling trial prosecutor in the scheduled hearing dates for the arraignment of accused Biag. The prosecution explained that the alleged recent structural reorganization at the DOJ, NPS Task Force on Anti-Smuggling brought about the replacement of ASP Vito Cruz as the handling trial prosecutor of the case. As support to its contention, prosecution even attached a copy of Office Order No. 246 which designates ASP Mendoza as the new handling trial prosecutor of case at bench.

While prosecution's explanation maybe true, We do not find the same meritorious. Prosecution failed to convince this Court as to the truth of the alleged structural reorganization. Other than the contentions stated in its Joint Comment/Opposition, prosecution did not present any persuasive evidence or document to attest to the truth of such structural reorganization and its supposed effects on the instant case. If the said reorganization indeed took place, respect and courtesy to the Court and due consideration to accused Biag's right to speedy trial should have prompted the prosecution to file a manifestation before this Court with regard to the delay that the reorganization could bring about. Moreover, Office Order No. 246, likewise, failed to adequately prove the alleged reorganization as it merely indicates that a new handling trial prosecutor in the person of ASP Mendoza is assigned to the instant case in lieu of ASP Vito Cruz who is no longer a member of the DOJ Task Force on Anti-Smuggling.

Prosecution further 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. The Supreme Court, in the case of *Monico V. Jacob and Celso L. Legarda vs. Hon. Sandiganbayan Fourth Division and the Office of the Ombudsman*⁶ held 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:

⁶ G.R. No. 162206, November 17, 2010.

"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:

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, as to prosecution's allegation that accused Biag is not entirely faultless in the delay in his arraignment as he participated in the protracted proceeding when he filed a Motion to Suspend Proceedings, this Court finds that the delay brought about by the filing such Motion is justifiable due to the pendency of the Motion for Reconsideration before the DOJ, pursuant to Section 11(c)⁷ of Rule 116 of the Revised Rules of Criminal Procedure.

In light of the foregoing, applying the balancing test for determining whether the accused has been denied his constitutional right to a speedy disposition of his case and considering the four factors mentioned above, this Court finds that there is a considerable length of delay in the arraignment of the accused; that the delay was unreasonable; that the accused asserted his

⁷ Sec. 11. Suspension of Arraignment. – Upon motion by the proper party, the arraignment shall be suspended in the following cases:

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(c) A petition for review of the resolution of the prosecutor is pending at either the Department of Justice, or the Office of the President; provided, that the period of suspension shall not exceed sixty (60) days counted from the filing of the petition with the reviewing office.

right to speedy disposition of his case; and there was prejudice to the accused resulting from the said delay. Hence, We find that accused Biag has been unduly and excessively prejudiced by the delay in his arraignment. Consequently, his right to a speedy trial and to a speedy disposition of his case has been violated.

WHEREFORE, in view of the foregoing, accused'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


CAESAR A. CASANOVA
Associate Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice