

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
EN BANC**

FELIX P. GONZALES,
Petitioner,

-versus-

G.R. No. 94750
July 16, 1991

**THE HONORABLE SANDIGANBAYAN
(FIRST DIVISION), THE HONORABLE
OMBUDSMAN and ANTONIO B.
BALTAZAR,**

Respondents.

X-----X

DECISION

REGALADO, J.:

Through this Special Civil Action for Certiorari and Prohibition with Preliminary Injunction, petitioner seeks the annulment of the Resolution^[1] of the Sandiganbayan dated March 19, 1990 and promulgated on April 30, 1990 in Criminal Case No. 13563, entitled "People vs. Felix R. Gonzales," denying petitioner's Motion to Dismiss/Quash the amended information filed by respondent Ombudsman.

Petitioner Felix R. Gonzales is the former Director of the Bureau of Fisheries and Aquatic Resources (BFAR), while private respondent Antonio B. Baltazar is the former Chief of the Deep Sea Fishing Demonstration Division of the BFAR. Criminal Case No. 13563, subject of this petition, arose from an agreement^[2] entered into

between BFAR, represented by then Director Gonzales, and Roberto F. Palanca for the use of the “Otoshi-Ami Net,” also known as “Lambaklad,” for experimental test fishing. This net was subsequently installed by Palanca through the assistance of the BFAR.

The chronology of the undisputed facts and events that took place in this case follows.

On November 11, 1975, an affidavit-complaint^[3] was filed with the City Fiscal of Manila by Baltazar against Gonzales for malversation of public funds and property involving the alleged illegal use of M/V Albacora. This case was docketed therein as I.S. No. 75-29334.

On December 16, 1976, the said City Fiscal’s Office issued a resolution finding a prima facie case. However, Gonzales filed a petition for review with the Ministry of Justice which issued on December 16, 1976 a resolution^[4] dismissing the complaint.

Another Complaint Affidavit^[5] was filed by Baltazar charging Gonzales with illegal use of the M/V Albacora and loss of the Otoshi-Ami net, with the Tanodbayan (now Ombudsman) where it was docketed as TBP Case No. 83-01547. This was the precursor of and later became Criminal Case No. 13563 . Gonzales filed his counter-affidavit^[6] denying the accusations made against him.

On March 16, 1984, Tanodbayan (Ombudsman) Special Prosecutor Carlos D. Montemayor issued a resolution^[7] recommending that the first charge (for illegal use of the M/V Albacora) be dismissed for lack of merit and that a preliminary investigation be conducted for the second charge (for loss of Lambaklad). This resolution was approved by then Tanodbayan Bernardo P. Fernandez.

Pursuant to the resolution mentioned in the next preceding paragraph, Special Prosecutor Reynaldo L. Mendoza conducted a preliminary investigation against Gonzales and some other personnel of the BFAR for the loss of the Otoshi-Ami net.

On October 8, 1984, Special Prosecutor Mendoza issued a resolution^[8] recommending the dismissal of TBP Case No. 8301547 for insufficiency of evidence. This was approved by Tanodbayan

Bernardo P. Fernandez. On October 24, 1984, Baltazar filed a Motion for Reconsideration^[9] of said resolution.

On February 28, 1985, Tanodbayan Special Prosecutor Andres B. Reyes, Jr., acting on said motion for reconsideration, issued a resolution^[10] ordering the conduct of a preliminary investigation with respect to the charge for the illegal use of the government vessel (in effect modifying the March 16, 1984 resolution of the Tanodbayan), and the charge that there was negligence in failing to recover the fishing net. This order was approved by Tanodbayan Raul M. Gonzales.

Consonant with the above resolution, TBP Case No. 83-01547 was referred to Special Prosecutor Juan F. Templonuevo who consolidated it with TBP Cases Nos. 84-00787 and 84-02338 for violation of Sections 12 and 3(e), respectively, of Republic Act No. 3019, involving the same parties. On January 4, 1988, Special Prosecutor Templonuevo issued a resolution^[11] recommending the dismissal of all three cases. This was approved by Tanodbayan Special Prosecutor Raul M. Gonzales.

On February 8, 1988, Baltazar filed a Motion for Reconsideration and Manifestation^[12] regarding the above-stated resolution.

Acting on said motion for reconsideration, on March 20, 1989 Special Investigation Officer Teresita V. Diaz-Baldos, recommended a reversal of the January 4, 1988 resolution and the filing of an information against Gonzales and Palanca for violation of Section 3(e) of Republic Act No. 3019.^[13] This was approved by Ombudsman Conrado M. Vasquez.

On the basis of the aforesaid resolution, Special Investigation Officer Diaz-Baldos filed an information^[14] on May 5, 1989 before the Sandiganbayan charging Gonzales and Palanca with violation of Section 3(e) of Republic Act No. 3019 which was docketed as Criminal Case No. 13563. However, on September 12, 1989, an amended information^[15] was filed, excluding Palanca from the charge.

On December 12, 1989, Gonzales filed a Motion to Dismiss/Quash the information^[16] before the Sandiganbayan on the ground that there

has been a long delay on the part of the Tanodbayan (Ombudsman) in the termination of the preliminary investigation of the case and that there was more than one motion for reconsideration filed by Baltazar in violation of Rule 13(c) of Administrative Order No. 3 issued by the Tanodbayan on December 1, 1979.

On March 19, 1990, the Sandiganbayan issued the questioned resolution denying the motion to dismiss/quash.

On May 7, 1990, the Sandiganbayan issued a resolution^[17] granting the prosecution's motion to amend the information and granting the dismissal of the case against Roberto Palanca.

In his present recourse, petitioner adduces the following grounds for the issuance of the writs prayed for:

“I

The long delay of the Tanodbayan Ombudsman in the termination of the preliminary investigation violates the constitutional rights of the accused to due process and speedy termination of cases that will warrant the dismissal of the instant case conformably with the doctrine laid down by this Honorable Court in *Tatad vs. Sandiganbayan*, G.R. No. L-72335-39, March 21, 1988, 159 SCRA 70, which the respondent court fails to consider when it issued the questioned resolution in grave abuse of its discretion tantamount to lack of jurisdiction which is correctible by the issuance of the writ herein prayed for;

“II

The recommendation to file the information now pending before the Honorable Respondent Court was filed after more than one motion for reconsideration had been filed by the private complainant in violation of Rule 13(c) of Administrative Order No. 3, promulgated by the Tanodbayan on December 1, 1979.”^[18]

Petitioner contends that he filed his counter-affidavit to the complaint-affidavit of respondent Baltazar, docketed as TBP Case No. 83-01547 which is now the subject of Criminal Case No. 13563, on May 29, 1984. Therefore, as of that date, the case had to be considered submitted for resolution.

The question now posed before this Court is whether there had been a considerable delay in terminating the preliminary investigation of TBP Case No. 83-01547 which was submitted for resolution as of May 29, 1984, up to the time when the amended information was admitted by respondent court on May 7, 1990, or a period of more than six (6) years. Petitioner invokes the ruling laid down in the aforesaid case of *Tatad vs. Sandiganbayan*.

The Solicitor General submits that there was no inordinate delay because from the time that Antonio Baltazar filed his Complaint Affidavit on June 29, 1983^[19] up to the filing of the information on April 20, 1989,^[20] numerous incidents presented themselves for resolution during the preliminary investigation; that the delay was not caused by inaction on the part of the investigating officials but, instead, the intervening period was consumed by the investigations and reinvestigations conducted; and that the preliminary investigation conducted in the consolidated cases did not become ripe for resolution, until October 27, 1987 when the affidavit of Roberto Palanca was submitted on behalf of Gonzales to the Investigation and Prosecution Office of the Tanodbayan.

In the *Tatad* case relied upon by petitioner Gonzales, we there held that a delay of three (3) years in the termination of the preliminary investigation by the Tanodbayan constitutes a violation not only of the constitutional right of the accused under the broad umbrella of the due process clause but also under the constitutional guarantee of speedy disposition of cases as embodied in Section 16 of the Bill of Rights (both under the 1973 and 1987 Constitutions).

In so ruling, we took into consideration the peculiar circumstances attendant to that particular case, namely, that political motivations played a vital role in activating and propelling the prosecutorial process; that there was a blatant departure from established procedures prescribed by law for preliminary investigations; and that

the long delay in resolving the case under preliminary investigation cannot be justified on the basis of the facts on record. It is apparent, from a perusal of the records, that such considerations do not obtain in the case at bar, hence, the doctrine enunciated in *Tatad* is clearly inapplicable hereto.

While there may seem to have been a delay in the termination of the preliminary investigation involved in the case at bar, the same cannot be imputed solely to the prosecution. In its questioned resolution, the Sandiganbayan recounted the incidents which contributed largely to the delay and which are attributable to petitioner Gonzales and his counsel. Thus:

- “a) That after the consolidation of TBP Case No. 83-01547, where the acts complained of are (a) using the M/V Albacora for a public use other than that for which it was intended, thus constituting a violation of Article 220 of the Revised Penal Code and (b) the negligence for respondent’s failure to recover the Lambaklad from Palanca after the expiration of the one year term of the Agreement, and ever (sic) thereafter until its total destruction, thus constituting a violation of R.A. 3019, with two other cases filed by complainant against accused-movant which were earlier assigned to Special Prosecutor Juan T. Templonuevo for preliminary investigation, namely, TBP Case No. 84-02338, where the act complained of is the accused-movant’s entering into an agreement regarding the Lambaklad which is disadvantageous to the government and over which he had no power to do and TBP Case No. 84-00787, where the act complained of is accused-movant’s allowing Victorio San Antonio to retire in spite of the pendency of the administrative charge against him instituted by the complainant. Hon. Juan Templonuevo scheduled these cases for clarificatory examination on July 10, 1987.

- “b) Atty. Doroteo B. Daguna, counsel for accused-movant Gonzales, in his letter dated July 10, 1987, to Special Investigator Juan T. Templonuevo of the then Office of the Tanodbayan, urgently moved for the resetting of the hearing scheduled on that day for clarificatory examination

in connection with TBP Cases Nos. 8301547, 84-00787 and 84-02338. (xerox copy of the letter is herewith attached as Annex 'B' for easy reference)

- “c) On account of this urgent motion, Special Prosecutor Juan T. Templonuevo issued an order dated July 10, 1987, resetting the clarificatory examination to August 6 and 7, 1987, (xerox copy of the said Order is herewith attached as Annex 'C' for ready reference) In addition, he issued subpoenas to concerned officials of the Bureau of Fisheries and Aquatic Resources, namely, Mrs. Carmencita Bicol, the then Acting Chief Accountant; Aniana Abella, the Auditor; and the Chief Personnel Officer. (a copy of the subpoena is herewith attached as Annex 'D' for ready reference)

- “d) On August 6, 1987, Hon. Juan T. Templonuevo issued another subpoena addressed to and duly received by concerned officials of the BFAR, namely, Feliza L. Poniente, Finance; Rebecca Badiola, Personnel; Aniana Abella, Administrative Div.; Don Mondragon, Finance; and Carmelita Bicol, Accounting, summoning them to appear at bar at the clarificatory examination session scheduled on August 7, 1987. (xerox copy of the subpoena is herewith attached as Annex 'F' for ready reference)

- “e) On August 7, 1987, Hon. Juan T. Templonuevo issued another subpoena addressed to accused Felix Gonzales and his counsel, Atty. Daguna, and four officials of the BFAR, namely, Carmelita Bicol, Rebecca Badiola, Aniana Abella and Don Mondragon, all of whom were duly served a copy thereof, summoning them to appear before him on August 28, 1989, (xerox copy of the subpoena is herewith attached as Annex 'F' for ready reference)

- “f) On September 1, 1987, Hon. Juan. T. Templonuevo issued another subpoena summoning the addressees to appear before him on September 8, 1987. Served with this subpoena were Carmelita Bicol, Accountant; Aniana Badiola, Personnel; and the Auditor, all of the BFAR. (xerox copy of the subpoena is herewith attached as Annex 'G' for

ready reference) In connection with this setting, Hon. Templonuevo sent a telegram to Atty. Doroteo Daguna, counsel of accused-movant, informing him thereof. (xerox copy of the telegram is herewith attached as Annex 'H' for ready reference)

- “g) On September 8, 1987, Hon. Templonuevo reset the hearing of the cases to September 30, 1987, due notice of which was given to complainant; respondent, through his counsel, and the concerned officials of the BFAR as shown by their respective signatures appearing in a subpoena, a copy of which is herewith attached as Annex 'T' for ready reference.
- “h) Atty. Doroteo Daguna, in his handwritten letter dated September 30, 1987, prayed for the resetting of the clarificatory examination scheduled that day on account of a letter he received from Mr. Roberto Palanca and the hearing was reset to October 15, 1987, with the conformity of complainant Baltazar and due notice to the concerned officials of the BFAR (xerox copy of the 'handwritten letter of Atty. Daguna is herewith attached as Annex 'J' and xerox copy of the letter of Roberto Palanca is herewith attached as Annex 'J-1' for ready reference).
- “i) On October 27, 1987, the affidavit of Roberto F. Palanca dated October 26, 1987, was submitted by respondent through counsel, to the Investigation and Prosecution Office of the Tanodbayan. A xerox copy of the said affidavit is herewith attached as Annex 'K' only for the purpose of showing its date of filing as well as its contents without admitting the truth thereto nor waiving such valid objections as may be available to the prosecution later on.
- “j) And a little over two months after the submission on October 29, 1987 of the affidavit of Roberto Palanca, which tended to favor greatly the exoneration of accused-movant Gonzales, Hon. Juan Templonuevo on January 4, 1988, submitted his consolidated Resolution for dismissal to

Honorable Raul M. Gonzales who approved it on January 28, 1988.

- “k) Complainant Baltazar filed on February 8, 1988, a Motion for Reconsideration and Manifestation, attacking the correctness of the consolidated Resolution dated January 4, 1988 penned by Honorable Juan Templonuevo and approved by Hon. Raul M. Gonzales. This Motion was assigned to Special Investigation Officer Teresita Diaz-Baldos, who, in her ORDER dated March 20, 1989, recommended the reversal of the aforesaid consolidated Resolution and the filing of an Information against Director Felix Gonzales and Roberto Palanca for violation of Sec. 3(e) of RA No. 3019, as amended. Said Order having been approved by Hon. Conrado M. Vasquez, the Ombudsman, on April 4, 1989, was filed with the Sandiganbayan on May 5, 1989.”^[21]

It must be here emphasized that the right to a speedy disposition of a case,^[22] like the right to speedy trial,^[23] is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delays;^[24] 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.^[25] Equally applicable is the balancing test used to determine whether a defendant has been denied his right to a speedy trial, or a speedy disposition of a case for that matter, in which the conduct of both the prosecution and the defendant are weighed, and such factors as length of the delay, reason for the delay, the defendant’s assertion or non-assertion of his right, and prejudice to the defendant resulting from the delay, are considered.^[26]

In the present case, it will be noted that it was only on August 22, 1988 when the complaint including Roberto Palanca as an accused, together with herein petitioner, was filed. The original information charging petitioner and Palanca with a violation of Section 3(e) of Republic Act No. 3019, as amended, was filed on May 5, 1989. After the filing of said information, petitioner filed several motions^[27] before the Office of the Ombudsman and the Sandiganbayan seeking reconsideration and re-evaluation of the case and praying for the

suspension of the proceedings in Criminal Case No. 13563 during the pendency of the resolution of these motions. Thereafter, the Sandiganbayan ordered the conduct of a preliminary investigation against Palanca and, subsequently, the amended information was filed. It is, therefore, apparent and irremissible that the delay is equally chargeable to petitioner. Hence, he cannot now seek the protection of the law to cover up for his own actuations or benefit from what he now considers the adverse effects of his own conduct in the case.

Finally, the postulation of petitioner that the information in the present case was filed only after the filing of a second motion for reconsideration, supposedly contrary to Rule 13(c) of Administrative Order No. 3 issued by the Tanodbayan on December 1, 1979, is devoid of merit. The alleged second motion for reconsideration referred to by herein petitioner involves the resolution of dismissal of the three consolidated cases (TBP Case Nos. 83-01547, 84-00787 and 84-02338) issued by Special Prosecutor Templonuevo, the first being the motion to reconsider the resolution of Special Prosecutor Mendoza ordering the dismissal of TBP Case No. 83-01547. We hold, however, that while there were two motions for reconsideration filed, it is erroneous to consider the later motion as a second motion for reconsideration by reason of the fact that the two motions for reconsideration were filed against two different resolutions issued after the conduct of two different preliminary investigations.

In effect, therefore, the first motion for reconsideration was filed by virtue of a preliminary investigation conducted by Prosecutor Mendoza whereas the subsequent motion for reconsideration was filed as a result of the preliminary investigation conducted by Prosecutor Templonuevo which is different and distinct from that conducted by Prosecutor Mendoza. The concept of a second motion for reconsideration is one which seeks a further reconsideration of an order or resolution which denied the first motion for reconsideration. Such is not the case here as above explained. Consequently, there was no violation of the administrative order adverted to by petitioner.

ACCORDINGLY, on the aforestated premises, the instant petition is **DISMISSED** for lack of merit.

SO ORDERED.

**Fernan, C. J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Padilla, Bidin, Sarmiento, Griño-Aquino, Medialdea and Davide, Jr., JJ., concur.
Gancayco, J., on leave.**

- [1] Penned by Associate Justice Regino Hermosisima, Jr., with Justices Francis E. Garchitorena and Augusto M. Amores, concurring; Annex A, Petition; Rollo, 20.
- [2] Annex D, Petition; Rollo, 36.
- [3] Annex F, Petition; Rollo, 44-46.
- [4] Annex G, id., *ibid.*, 47-49.
- [5] Annex H, id.; *ibid.*, 50-51.
- [6] Annex I, id.; *ibid.*, 52.
- [7] Annex I-1, id.; *ibid.*, 53-57.
- [8] Annex J, id.; *ibid.*, 58-59.
- [9] Annex K, id.; *ibid.*, 60-61.
- [10] Annex L, id.; *ibid.*, 62-67.
- [11] Annex N, id.; *ibid.*, 70-76.
- [12] Annex O, id.; *ibid.*, 77-79.
- [13] Annex R, id.; *ibid.*, 84-90.
- [14] Annex S, id.; *ibid.*, 91-92.
- [15] Annex C, id.; *ibid.*, 33-34.
- [16] Annex B, id.; *ibid.*, 27-32.
- [17] Annex RR, id.; *ibid.*, 157.
- [18] Rollo, 13.
- [19] *Ibid.*, 182.
- [20] This is the date of the information which was actually filed in the Sandiganbayan as Criminal Case No. 13563 on May 5, 1980. See Footnote 14.
- [21] *Ibid.*, 23-25.
- [22] Sec. 16, Art. III, 1987 Constitution.
- [23] Sec. 14(2), Art. III, 1987 Constitution.
- [24] *Kalaw vs. Apostol, et al.*, 64 Phil. 852 (1937); *Que, et al. vs. Cosico, et al.*, 177 SCRA 410 (1989).
- [25] *Andres, et al. vs. Cacdac, Jr., et al.*, 113 SCRA 216 (1981).
- [26] *Martin vs. Ver, et al.*, 123 SCRA 745 (1983).
- [27] Annexes, T, U, V, Petition; Rollo, 93, 97, 101.