Abadilla 5 on 11th Anniversary

Grave abuse by delay in disposing cases

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“All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.” - PHILIPPINE CONSTITUTION, Article III, Section 16

“Delays have dangerous ends.” – SHAKESPEARE, Henry VI, Part I, III, ii

“Delay always breeds anger, and to protract a great design is often to ruin it.” – CERVANTES, Don Quixote

The case(s) of the “Abadilla 5,” the five suspects and later death convicts for the ambush murder of former Philippine Constabulary (PC) Col. Rolando Abadilla while caught in traffic along Katipunan Avenue in Quezon City (QC) on 13 June 1996, have now reached the 11th anniversary of this event without final resolution, and in some cases even initial resolution. The Abadilla 5 are Lenido Lumanog, Rameses de Jesus, Cesar Fortuna, Joel de Jesus, and Augusto Santos, all residents of the Fairview area in QC at the time of their arrests.

At the outside, let me state as one of the lawyers for the Abadilla 5 that I am not commenting on the merits of their main cases but only on the grave delay in their disposition. I am not commenting here on their guilt or innocence, on their torture by the arresting police officers, on the role of the rebel Alex Boncayao Brigade (ABB) in the ambush, on other evidentiary matters, on the incompetence and negligence in preliminary investigation, and so on. Pursuant to the sub judice rule, I am not commenting on the merits of such case matters as these are still pending review.

But that is the operative word in this commentary – “pending” – signifying non-resolution after all these years, signifying delay in the disposition of cases, signifying delay in the dispensation of justice, signifying denial of justice, signifying instead infliction of injustice. Let us count the ways and the years.

3 (+1) Cases

There is not just one but three domestic cases plus one international case involving the Abadilla 5. The two main cases are domestic ones. First is the Abadilla murder case which resulted in death penalty convictions by the Regional Trial Court (RTC), which has since been elevated to the Supreme Court (SC) and then transferred to the Court of Appeals (CA) for review, still pending there.
Second is the Abadilla 5 complaints for torture and other human rights violations against their arresting police officers, the preliminary investigation of which was handled by the Department of Justice (DOJ), whose Resolution was then forwarded to the Office of the Ombudsman for approval, still pending there, including two separate Partial Motions for Reconsideration by the Abadilla 5 and by the Commission on Human Rights ( CHR) on the untouched torture aspect.

In those two main cases, one already sees practically the whole *dramatis personae* of the Philippine criminal justice system – police, CHR, DOJ, prosecutors, Ombudsman, courts, and so on. The third case is a minor one, an administrative complaint by the lawyer and relatives of the Abadilla 5 against the DOJ state prosecutor for delay, negligence and incompetence and in handling the preliminary investigation of their complaints for torture and other human rights violations.

The fourth (or “+1”) case is an international one, a complaint called an “individual communication” filed by lawyers of Lumanog and Santos with the United Nations (UN) Human Rights Committee (HRC) in Geneva for certain human rights violations committed by the SC in unduly transferring the Abadilla murder case on review to the CA, thus resulting in further delay in its disposition. So, this HRC case does not even cover the delay in the second and third cases referred to above.

**SC Delay in the Murder Case**

The Abadilla murder case (Crim. Case No. 96-66684) was on trial in the RTC of QC (mainly Branch 103) from about July 1996 to July 1999, a relatively quick three years by Philippine standards. The appellate review of the death penalty convictions of the Abadilla 5 has taken much longer, has become protracted, already seven-and-a-half years without final resolution or decision.

The case was in the SC (G.R. No. 141660-64) for automatic review of the death penalty convictions from February 2000 to January 2005, or five years. Of course, one must factor in a related intervening case in the SC which was heard and resolved first, in the meantime holding the automatic review in abeyance.

This related SC case was Lumanog’s petition for *certiorari* questioning the RTC’s denial of his Motion for New Trial therein in order to present additional exculpatory evidence and asking the SC for this chance, especially on the ABB’s responsibility for the Abadilla ambush murder (on the premise also that none of the Abadilla were ABB, aside from themselves being innocent of the murder). The Lumanog *certiorari* petition in the SC (G.R. No. 142065) lasted from March 2000 to September 2001, or one-and-a-half years, with the SC eventually deciding to deny it.

And so back to the automatic review. By June 2004, all defense and prosecution appeal briefs were filed, thus making the case ripe for decision. (The defense lawyers as well as the Abadilla 5 then filed two motions for early decision, first in July 2004 and then in December 2004.) But seven months after the case became ripe for decision, the SC instead transferred the
case to the CA in January 2005. The sole basis for this was the SC’s blanket application of its ruling in another case (a rape case), the Mateo decision of July 2004. The Mateo ruling in effect promulgated a new rule of court allowing an intermediate review by the CA of death penalty, reclusion perpetua or life imprisonment cases before elevation to the SC.

Complaint to the UN HRC

It is this undue transfer of the Abadilla murder case on review by the SC to the CA which is the subject of the individual communication/complaint in the UN HRC (Communication No. 1466/2006) filed in March 2006 in Geneva, and is currently awaiting decision or resolution referred to as “Views.” The main human rights invoked here under the International Covenant on Civil and Political Rights are the right against undue delay in the trial (applied to appeal) and the right to a(n) (effective) review by a higher tribunal by the SC.

Of what use is the review by the SC if, after five long years including seven months ripeness for decision, it will just pass the buck to the CA? Must the Mateo ruling or new rule be applied in so blanket a manner without sound discretionary regard to the circumstances of particular pending cases? Aside from the years and ripeness of the Abadilla murder case review in the SC, there is also the situation of the accused-appellants, the Abadilla 5, languishing in jail then prison since June 1996, or about 11 years now, including one (Lumanog) who is a kidney transplant patient since April 2003. And not to forget: their constitutional right to a speedy disposition of their cases.

CA Delay in the Murder Case

The transfer of the Abadilla murder case review to the CA (CA-G.R. CR-H.C. No. 00667), where it will practically start from scratch, can only mean further delay. This has already proven to be the case so far since the transfer in January 2005. Two-and-half years hence (or so far one-half of the number of years consumed in the SC), still no decision in the CA. In fact, it was “considered as SUBMITTED for Decision” only in November 2006, almost two years after the transfer.

Of course, one must factor in the wait until June 2006 for the appeal brief of Joel de Jesus who, while the case was in the CA, decided to file his own separate appeal brief after earlier already adopting the appeal brief of Lumanog and Santos while the case was in the SC. Still, it took from June to November 2006, or five months, for the case to be “considered “SUBMITTED for Decision.”

One peculiar factor of delay in the CA is what might be called the rigodon of assigned justices or ponentes. In a period of about two years from January 2005 to January 2007, there have been, by our count, six successive assigned justices to the Abadilla murder case review. The last or latest assigned justice is just practically starting to settle into the case, if at all. Like other assigned justices, she might yet inhibit herself or “unload” the case.

The said latest assigned justice had an Initial Case Load of 350 earlier in the year (2007). The prospects of a speedy disposition in the CA do not look too good because of the CA’s heavy
case load, including backlog. Early this year, the CA Presiding Justice Ruben Reyes was quoted as saying that the CA had about 10,000 pending cases this year but he foresaw a drastic increase in its case load because the SC has thrown to the CA all appealed administrative cases filed before the Office of the Ombudsman. This is on top of the death penalty, reclusion perpetua or life imprisonment cases which the SC has thrown to the CA pursuant to the Mateo ruling, like the Abadilla murder case review. The Presiding Justice further said that that CA Justices have managed to markedly improve or reduce their average number of years to decide cases from 15-20 years (!) before to two years now. Given the drastically increased CA case load, this remains very much to be seen for the Abadilla murder case review.

DOJ Delay in the Torture Case

If the Abadilla murder case may yet see final resolution in the CA, the Abadilla murder suspects torture case may never see the light of day as a court case. This can be attributed mainly to the “Pan’s Labyrinth” which is the DOJ, a labyrinth where case records get lost and where it is often difficult the particular handling official or unit in order to check the status of and follow up cases. After 11 years or so of preliminary investigation of the complaints by the Abadilla murder suspects of torture and other human rights violations committed by their arresting police officers, no case has been filed in court.

The CHR had speedily enough conducted its own investigation of those complaints, found prima facie evidence of some violations, and forwarded its Resolution to the DOJ in July 1996 “to file the appropriate criminal and/or administrative actions.” But any further speedy disposition ended there at the DOJ preliminary investigation (I.S. No. 96-663). To make a very long and tortuous (or torturous) story short, the DOJ finally came out with a preliminary investigation Resolution in March 2005, almost eight years after it was brought there!

But, after nearly eight years, the DOJ in its Resolution still did not rule on the torture aspect (or what amounts to it in terms of Philippine criminal law felonies of physical injuries and/or grave coercion) of the Abadilla murder suspects’ complaints. It only recommended the indictment of certain police officers for lesser violations like delay in the delivery of detained persons to the proper judicial authorities (holding the suspects without charges way beyond the maximum period of 36 hours) and violations of the law on custodial investigation (not allowing the suspects to be visited by their families and lawyers).

And so, both the CHR and the Abadilla 5 filed separate Partial Motions for Reconsideration in September 2004 of the DOJ Resolution only in so far as it did not rule on the complaints for torture. When followed up with the DOJ Secretary of Justice, the DOJ reply was that those motions should instead be submitted to the Office of the Ombudsman because the DOJ Resolution was already forwarded there in also September 2004 for approval of the recommended indictment or filing of the appropriate cases in court. You guessed it – no court cases have yet been filed, nor have the said motions been resolved.

Ombudsman Delay in the Torture Case
The DOJ Resolution was submitted to the Office of the Ombudsman (OMB-P-C-04-1269/ CPL-C-04-1965) in September 2004. The CHR and Abadilla 5 Partial Motions for Reconsidered were (re-)submitted to the Ombudsman herself under a follow-up letter in February 2006. This letter was then quickly enough indorsed to the Deputy Ombudsman for Military and Other Law Enforcement Offices (MOLEO) in March 2006 for “whatever appropriate action.” There has been none to date.

In the meantime, at least two of the arresting police officers, including those recommended for indictment, have passed away due to natural causes. They will never be brought to justice (including the clearing of their names, if warranted). It almost reminds one of the recent cases of war criminals like Pol Pot or Slobodan Milosevic who passed away before a court judgment one way or the other. One of the Abadilla 5, Lumanog, a kidney transplant patient since 2003, is in clear and present danger of passing away before he can finally clear his name of murder he did not commit, never mind getting redress for torture committed against him.

This all seems to be a cruel and unusual game of delaying to death, delaying it to the grave – whether it be cases buried in the criminal (in)justice labyrinth or it be the parties themselves not just passing away the time but passing away period. Grave abuse of discretion through delay in the disposition of cases. Grave delay.

DOJ Delay in Administrative Case

This sad story of justice delay would be incomplete without the delay caused by the DOJ State Prosecutor who was first assigned to conduct the preliminary investigation of the torture and related complaints of the Abadilla murder suspects in 1996. By the end of 2002, or six years later, she had yet to resolve the matter. Her inaction despite at least five indorsement-follow ups from her superiors was further aggravated by her inept keeping of the case records, resulting in the misplacement or loss of certain papers filed by the complainants.

The complainants eventually had no recourse but to ask for her replacement. This came in January 2003 in the form of a five-person DOJ investigating panel led by an Assistant Chief State Prosecutor. It was this panel which finally came out with a preliminary investigation Resolution in March 2005, albeit not ruling on the torture aspect.

On suggestion of the DOJ Chief State Prosecutor himself, the Abadilla 5 relatives and their lawyer filed an administrative complaint against the erring State Prosecutor in June 2001 (Adm. Case No. 02-0019-FS). This was already considered submitted for resolution as of May 2003. It was brought to an “evaluator” in November 2004. As of February 2004, the draft resolution was “still pending review.” In June 2005, the draft resolution was submitted to the DOJ Secretary “for his consideration.” That was two years ago. Nothing has come out of “Pan’s Labyrinth” to date.

Conspiracies of Delay
In the end, what else can one say or do in a situation like that of the Abadilla 5 cases? In these times of conspiracy theories, one is quite tempted to imagine a conspiracy against the Abadilla 5. A conspiracy of the Abadilla family and his/their friends in corridors of power? To uphold a death penalty/life imprisonment conviction as satisfaction of “Justice for Abadilla” even if innocent men suffer for his murder which they did not commit? Can there not be “Justice for Abadilla” without “Injustice to the Abadilla 5”? Can there not be “Justice for Abadilla, Justice for the Abadilla 5”? An imagined conspiracy of Abadilla family and friends to vengefully keep the Abadilla 5 down might be giving them too much credit in terms of Marcos loyalist connections and residual power.

The more feasible conspiracy to us, because it has other many other victims aside from the Abadilla 5, is the flawed Philippine criminal justice system itself. Practically its whole *dramatis personae* from the police to the high courts can be indicted for “conspiring” to inflict various injustices suffered by the Abadilla 5. We have mainly spoken only about delays in the disposition of their cases. But “to protract a great design is often to ruin it,” even if we can assume that the Philippine justice system is of “great design” in the Constitution, relevant laws and the rules of court. “Delays have dangerous ends.” “Delay always breeds anger.”

What else can one say or do? Quoting the Constitution, Shakespeare and Cervantes seems a bit too wistful in the face of a formidable conspiracy. It seems an impossible, quixotic dream. To fight the unbeatable foe. But to do this, one must believe and act like the unbeatable can be beaten. Justice for Abadilla, Justice for the Abadilla 5, Justice for the Philippine Justice System.

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