



Republic of the Philippines  
**SANDIGANBAYAN**  
Quezon City

**SIXTH DIVISION**

PEOPLE OF THE PHILIPPINES,  
Plaintiff,

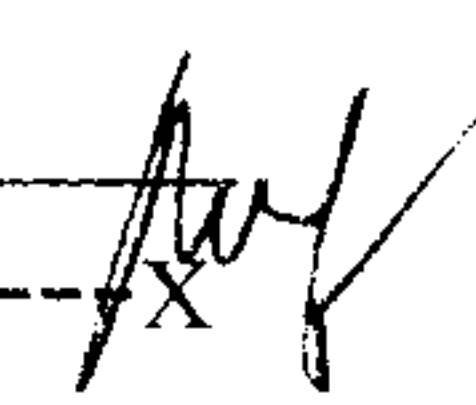
SB-16-CRM-0045

PRESENT:

PONFERRADA, J., Chairperson  
HERRERA, &  
MIRANDA, JJ.

EFREN D. TUNGOL,  
Accused.

Promulgated:

April 27, 2016 

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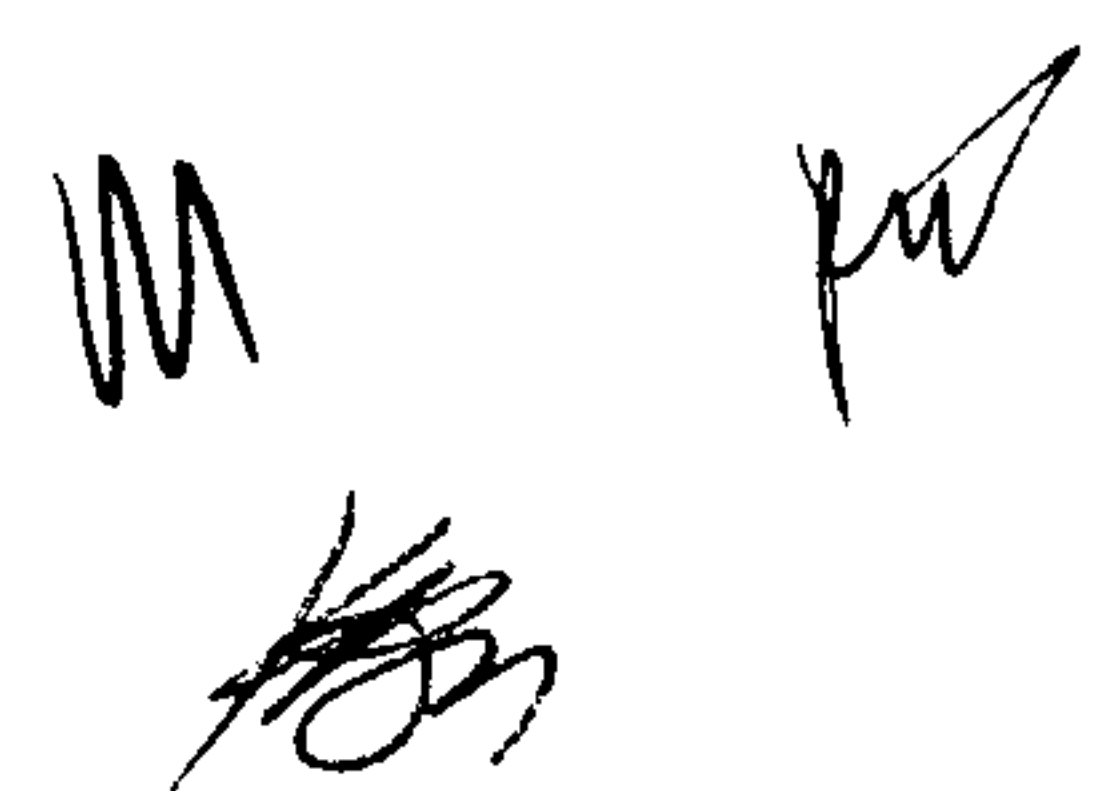
**RESOLUTION**

PONFERRADA, J.:

This resolves the *Motion to Dismiss* dated February 29, 2016, of accused Efren D. Tungol (accused-movant); the prosecution's *Comment/Opposition* thereto dated March 18, 2016; and accused-movant's *Reply (To Plaintiff's Comment/Opposition)* dated April 4, 2016.

In support of his motion, accused-movant, invoking *Coscolluela v. Sandiganbayan*,<sup>1</sup> claims that the Office of the Ombudsman's (OO) inordinate delay of more than **seven (7) years** from the filing of the complaint on **September 8, 2008**, up to the time the filing of the Information was approved by Ombudsman Conchita C. Morales on **January 11, 2016**, grossly violated his constitutional right to a speedy disposition of his case and due process, and hence, moves for the dismissal of this case.

<sup>1</sup> G.R. Nos. 191411 & 191871, July 15, 2013.



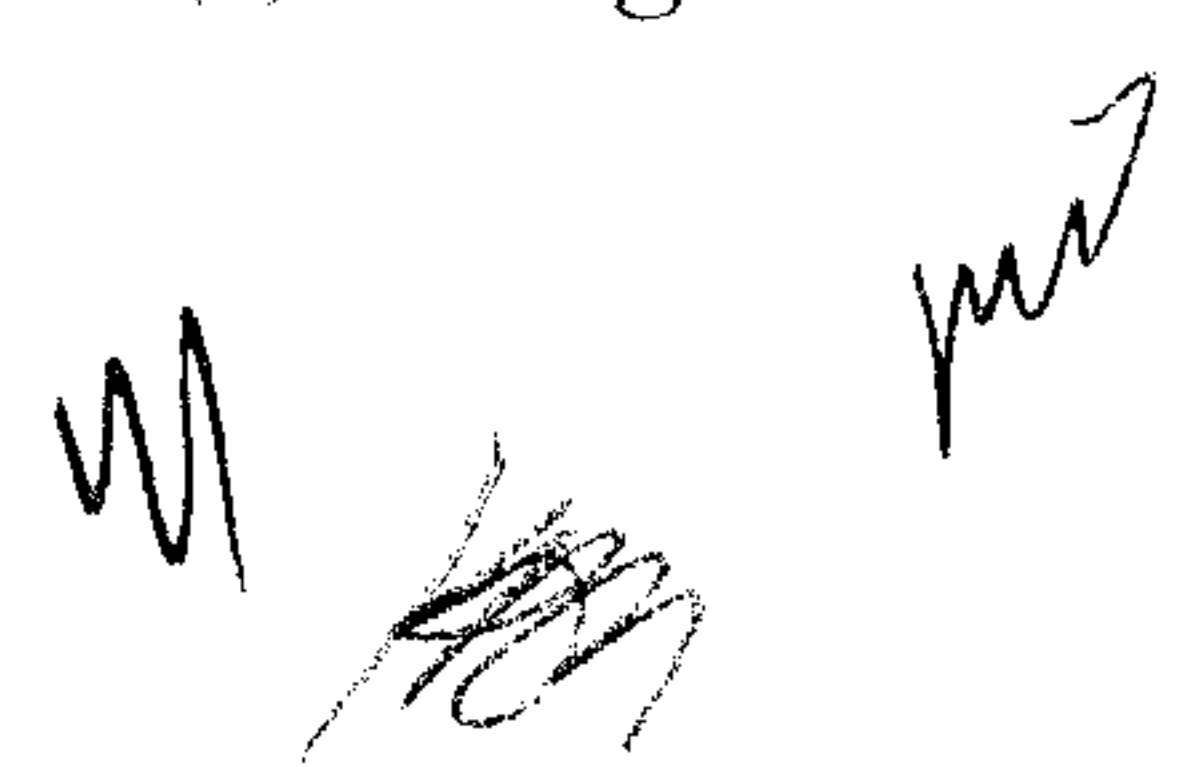
In its comment/opposition, the prosecution maintains that accused-movant's claim of inordinate delay was based solely on his mathematical computation of the time spent by the OO in the conduct of preliminary investigation and that the right to speedy disposition of cases is deemed violated only when the proceedings are attended by vexatious, capricious and oppressive delays. The prosecution claims that while the complaint-affidavit against accused-movant was filed before the OO for the Visayas on September 8, 2008, it was first treated as a mere Request for Assistance and not as a case, as shown by the docket number assigned to it – RAS-V-07-0663 – and it was elevated as a criminal case and subject to preliminary investigation only on **March 17, 2009**, when it was docketed as OMB-V-C-09-0139-E. Hence, the time spent in the conduct of the preliminary investigation from **March 17, 2009**, up to the time the Information was filed before the Court on **January 26, 2016**, was **six (6) years, and ten (10) months**, and **not more than seven (7) years** as claimed by accused-movant.

Further, the prosecution maintains that while it may be true that said period of **six (6) years, and ten (10) months** can be considered a long period to conduct a preliminary investigation, the attendant circumstance in this case that led to such period of time to finish the preliminary investigation cannot be considered inordinate delay that would warrant the outright dismissal of this case because after the Resolution dated October 25, 2012, of the OO for the Visayas (which found probable cause against accused-movant for malversation for public funds) was approved by the Ombudsman on **April 26, 2013**, accused-movant filed on **January 28, 2014**, a motion for reconsideration which was denied by the Ombudsman in an Order dated **February 13, 2015**. And on **January 27, 2016**, the subject Information for Malversation of Public Funds was filed before the Court.

According to the prosecution, from the time the complaint became a criminal case on **March 17, 2009**, up to the time the Ombudsman approved the October 25, 2012 Resolution of the OO for the Visayas on **April 26, 2013**, it took the OO a period of only **four (4) years and one (1) month** to file this case, deducting the period accused-movant's motion for reconsideration dated January 28, 2014, was pending resolution by the OO.

Thus, the prosecution submits that based on the attendant facts and circumstances, the conduct of the preliminary investigation is far from being vexatious, capricious or oppressive and it did not cause prejudice to the accused and his constitutional right to a speedy disposition of his case was not violated despite the length of time spent in the conduct of the preliminary investigation because the right of the accused to a speedy disposition of his case should be balanced with the right of the State to prosecute violators of its laws. In support thereof, the prosecution invoked the case of *Ong v. Sandiganbayan*<sup>2</sup> wherein it was ruled that “(t)he right to

<sup>2</sup> G.R. No. 146368-146369. October 18, 2004.





*a speedy disposition of cases, like the right to speedy trial, is violated only when the proceedings are attended by vexatious, capricious and oppressive delays. In the determination of whether said right has been violated, particular regard must be taken of the facts and circumstances peculiar to each case. The conduct of both the prosecution and defendant, the length of the delay, the reason for such delay, the assertion or failure to assert such right by the accused, and the prejudice caused by the delay are the factors to consider and balance. A mere mathematical reckoning of time involved would not be sufficient.”*

#### *DISCUSSION AND RULING*

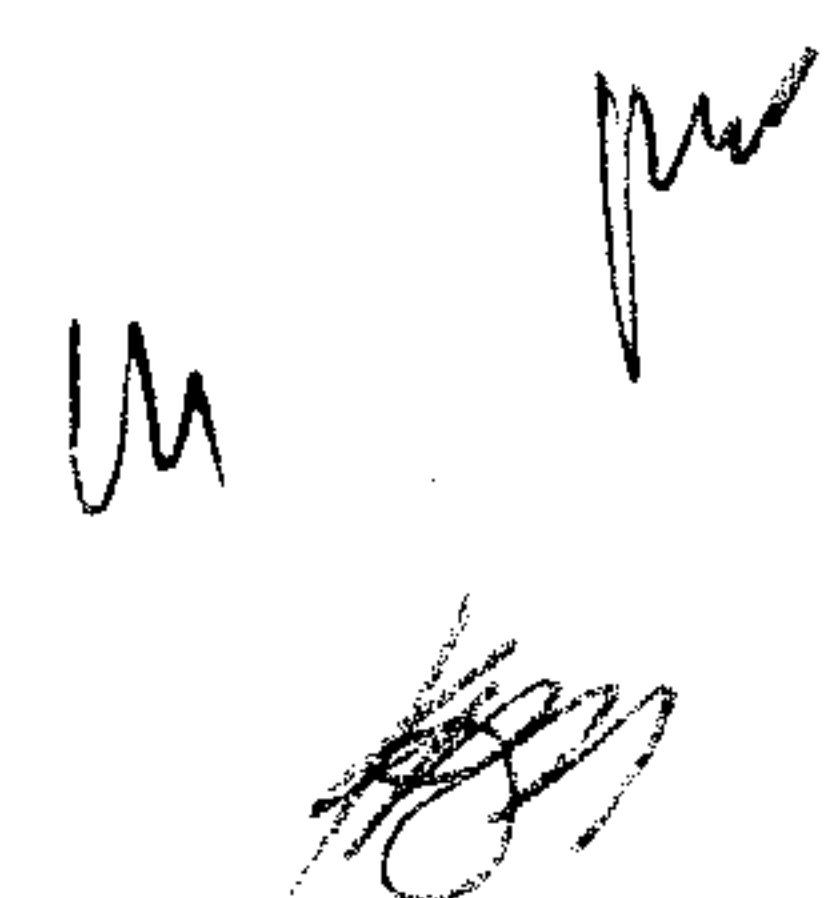
The records show that on **September 8, 2008**, the OO for the Visayas received the Complaint-Affidavit of Mayor Ugdoracion, Jr. regarding the failure of accused-movant to turn-over one (1) unit power sprayer owned by the Municipality of Albuquerque, Bohol, that he received when he was still the municipal mayor of the said municipality. This case was docketed as **RAS-V-07-0663**.

In a Memorandum dated **March 17, 2009**, of Graft Investigation Officer I Rosemarie S. Tongco, the above complaint was upgraded into a criminal case for Malversation of Public Funds or Property defined and penalized under Article 217 of the Revised Penal Code and the case was docketed as **OMB-V-C-09-2009**.

In an Order dated **August 4, 2009**, the OO for the Visayas directed accused-movant to submit his counter-affidavit and controverting evidence to the complaint. This Order was sent to accused-movant thru registered mail, but the same was returned for the reason “*RTS party out of the Philippines.*”

On **June 22, 2012**, or after **two (2) years and ten (10) months** after the first letter was sent to accused-movant, the OO for the Visayas re-sent the said Order via registered mail to the accused-movant, but despite receipt of the Order on **July 11, 2012**, accused-movant still failed to submit his counter-affidavit and controverting evidence.

Hence, on **October 25, 2012**, the OO for the Visayas issued a Resolution finding probable cause to indict accused-movant for Malversation of Public Property defined and penalized under Article 217 of the Revised Penal Code.



On **April 26, 2013**, or after **four years and seven months** after the criminal complaint was filed on **September 8, 2008**, the above Resolution of the OO for the Visayas was approved by Ombudsman Conchita C. Morales.

The records further show that after receipt of the approved **October 25, 2012 Resolution**, accused-movant filed on **January 28, 2014**, a motion for reconsideration of the said resolution, which was denied by Ombudsman Conchita C. Morales in an Order dated **February 13, 2015**; and that on **January 27, 2016**, the Information against accused-movant for Malversation of Public Property was filed before the Court.

Based on the foregoing antecedent facts, and pursuant to the latest jurisprudence on the matter as hereinafter discussed, the Court, while it agrees with the prosecution that the time spent from the filing of the complaint-affidavit on **September 8, 2008**, for fact finding investigation up to the time it was elevated into a criminal case on **March 17, 2009**, should *not* be included in counting the length of the delay, finds that the time spent by the OO in the conduct of the preliminary investigation from **March 17, 2009**, up to the time the Information was filed on **January 27, 2016**, or after a period of **six (6) years and ten (10) months**, constitutes inordinate delay which is in violation of the constitutional right of the accused-movant to a speedy disposition of the case against him. The period of time that accused-movant's motion for reconsideration on the approved **October 25, 2012 Resolution** was pending resolution by the OO should be included in the computation of the duration of the preliminary investigation as it is an integral part of the preliminary investigation proper.<sup>3</sup>

Besides, the Court cannot see any valid or justifiable reason why the OO failed to resolve the preliminary investigation of this case without unnecessary delay as there appears no difficult questions of law involved therein and notwithstanding the fact that accused-movant did not even submit his counter-affidavit and controverting evidence.

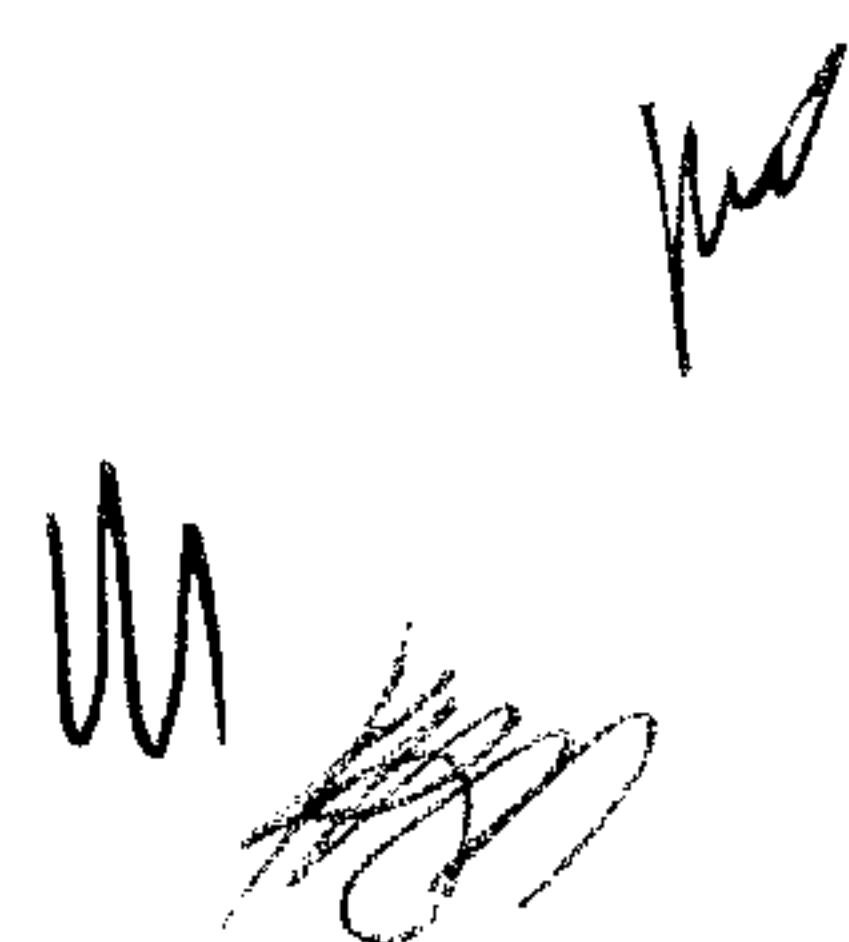
And even if the period of time that accused-movant's motion for reconsideration was pending resolution up to time it was denied by Ombudsman Conchita C. Morales in an Order dated **February 13, 2015**, is *excluded* in the computation of the period of delay in the resolution of the preliminary investigation, the remaining period of **four (4) years and seven (7) months** still constitutes inordinate delay.

Thus, in several cases decided by the Supreme Court, it was ruled that a delay of close to a period of three (3) years,<sup>4</sup> or four (4) years,<sup>5</sup> or six (6)

<sup>3</sup> Sales v. Sandiganbayan, G.R. No. 143802, November 16, 2001, 369 SCRA 293, 306.

<sup>4</sup> Tatad v. Sandiganbayan 159 SCRA 70 [1988].

<sup>5</sup> Duterte v. Sandiganbayan, 289 SCRA 723 [1998].





years<sup>6</sup> for the OO to conduct and terminate the preliminary investigation of cases filed before it was inordinate, unreasonable and unjustified, and hence, constitutes a violation of the constitutionally guaranteed right of the accused to a speedy disposition of cases.

The prosecution, however, sought to justify the aforesaid delay by claiming that the OO only made sure that accused-movant was given the chance to answer the charges against him as part of his right to due process but it is just unfortunate that he waived his right by not submitting his countervailing evidence despite given the chance to do so.

The Court cannot agree. The delay of **three (3) years and two (2) months** from **August 4, 2009**, up to **October 25, 2012**, just for the purpose of waiting for the accused-movant to submit his counter-affidavit and controverting evidence for purposes of the preliminary investigation, is clearly unreasonable and unjustified. And it is with more reason that the delay of **six (6) years and ten (10) months** to complete and terminate the preliminary investigation is definitely inordinate.

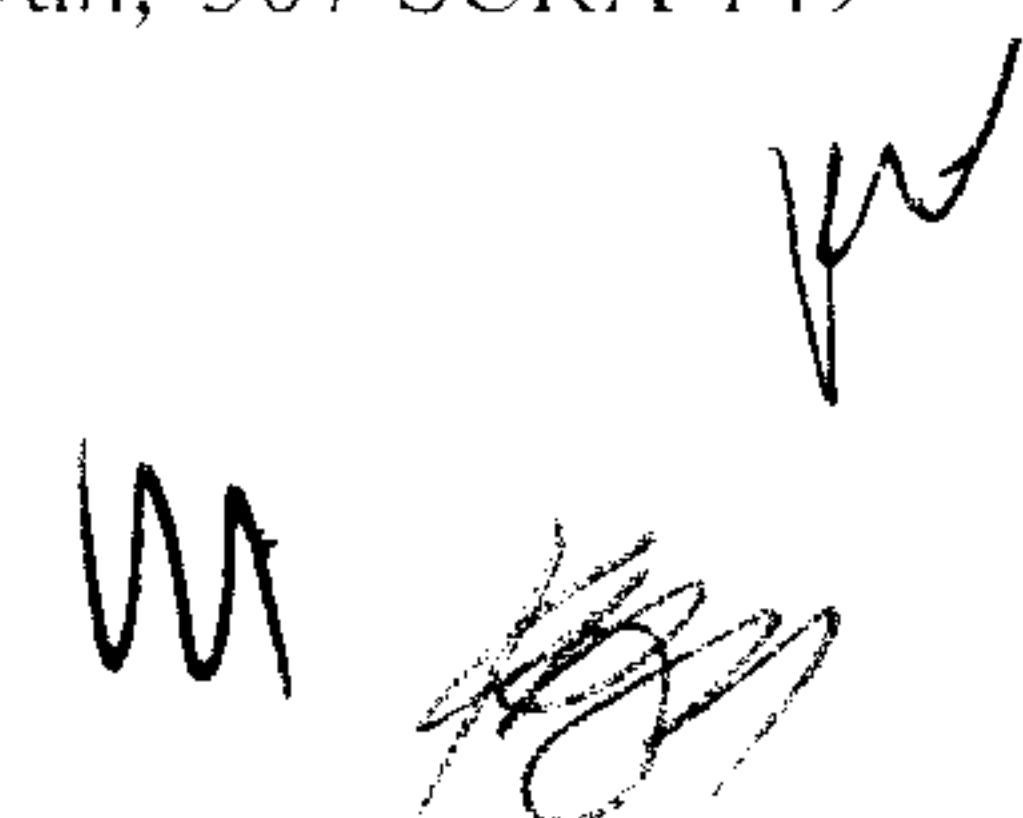
The case of *Rafael L. Coscolluela v. Sandiganbayan (First Division)*<sup>7</sup> is very instructive. Thus, the Supreme Court said –

*“(V)erily, the Office of the Ombudsman was created under the mantle of the Constitution, mandated to be the ‘protector of the people’ and as such, required to ‘to act promptly on complaints filed in any form or manner against officers and employees of the Government, or of any subdivision, agency or instrumentality thereof, in order to promote efficient service.’ This great responsibility cannot be simply brushed aside by ineptitude. Precisely, the Office of the Ombudsman has the inherent duty not only to carefully go through the particulars of a case but also to resolve the same within the proper length of time. Its dutiful performance should not only be gauged by the quality of the assessment but also by the reasonable promptness of its dispensation. Thus, barring any extraordinary complication, such as the degree of difficulty of the questions involved in the case or any event external thereto that effectively stymied its normal work activity – any of which have not been adequately proven by the prosecution in the case at bar – there appears to be no justifiable basis as to why the Office of the Ombudsman could not have earlier resolved the preliminary investigation proceedings against the petitioners.”*

Moreover, with such lengthy delay of **six (6) years and ten (10) months** in the conduct of the preliminary investigation proceedings against the accused-movant, the Court cannot overlook the prejudice and tactical

<sup>6</sup> *Angchangco, Jr. v. Ombudsman*, 268 SCRA 301[1997]; *Cervantes v. Sandiganbayan*, 307 SCRA 149 [1999]; *Roque v. Office of the Ombudsman*, 307 SCRA 104 [1999].

<sup>7</sup> G.R. Nos. 191411 and 191871, July 15, 2013.



disadvantages that are carried by the passage of time upon the ability of the accused-movant to adequately prepare for his defense.

As further stated by the Supreme Court, “*the right to speedy disposition of cases is not merely hinged towards the objective of spurring dispatch in the administration of justice but also to prevent oppression of the citizen by holding a criminal prosecution suspended over him for an indefinite time. Akin to the right to speedy trial, its ‘salutary objective’ is to assure that an innocent person may be free from anxiety and expense of litigation or, if otherwise, of having his guilt determined within shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose. This looming unrest as well as the tactical disadvantages carried by the passage of time should be weighed against the State and in favor of the individual.*”<sup>8</sup>

Thus, the Court believes and so holds that the constitutional right of the accused-movant to a speedy disposition of his case had been seriously infringed or encroached upon due to the unreasonable length of time that the prosecution took to complete its preliminary investigation in this case. Hence, this case should be dismissed for being in violation of the constitutional right of the accused-movant to a speedy disposition of his case under Section 16, Article III of the 1987 of the Constitution which provides -

*“SEC. 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.”*

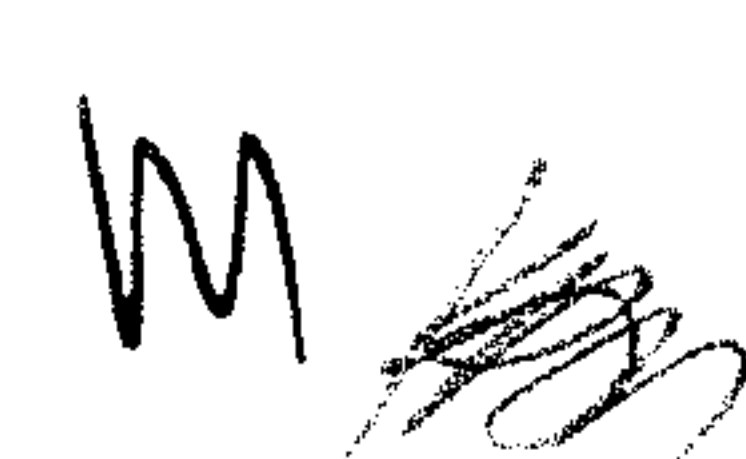
**WHEREFORE**, the *Motion to Dismiss* of accused-movant Efren D. Tungol is **GRANTED** and this case against him is **DISMISSED** for violation of his constitutional right to a speedy disposition of his case.

The hold-departure order issued by the Court against the accused-movant in this case is hereby **LIFTED** and **SET ASIDE**, and the cash bond posted by him for his provisional liberty is ordered **RELEASED**, subject to the usual accounting and auditing procedures.


**SO ORDERED.**

  
**RODOLFO A. PONFERRADA**  
Associate Justice  
Chairperson

<sup>8</sup> Id, citing Corpuz v. Sandiganbayan, 442 SCRA 296, 312 [2004]; Mari v. Gonzales, 657 SCRA 414 [2011].



**WE CONCUR:**

  
**OSCAR C. HERRERA, JR.**  
Associate Justice

  
**KARL B. MIRANDA**  
Associate Justice