



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

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FIRST DIVISION

ESTELA TERESITA C. ROSETE
Executive Clerk of Court III

First Division *10-28-16*

PEOPLE OF THE PHILIPPINES, CASE NO. SB-15-CRM-0283

Plaintiff, For: Violation of Section 3(e) of RA 3019,

- versus -

Present:

**RENE L. RELAMPAGOS,
ET AL.,**

Accused.

DE LA CRUZ, J., *Chairperson*

CRUZ, J.

MUSNGI*, JJ.

Promulgated on:

JUN 23 2016

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RESOLUTION

DE LA CRUZ, J.

This resolves the following:

1. Accused Inocentes C. Lopez's *Omnibus Motion*, dated February 17, 2016;
2. Accused Exequiel A. Madriñan's *Urgent Omnibus Motion* 1.) *To Defer Arraignment* 2.) *To Adopt the Motion to Dismiss Filed by the Other Accused*, dated February 22, 2016;
3. The prosecution's *Consolidated Comment/Opposition*, dated March 2, 2016;
4. Accused Eufrasio M. Mascariñas' *Motion to Adopt the Motion to Dismiss Filed by the Other Accused*, dated March 14, 2016;
5. Accused Lopez' *Reply*, dated March 14, 2016; and

* *Sitting as Special Member of the First Division as per Administrative Order No. 190-2016, dated June 20, 2016.*

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6. The prosecution's *Comment/Opposition*, dated March 28, 2016.

Accused Lopez's Omnibus Motion

In his omnibus motion, accused Lopez repleads and adopts all the arguments contained in the motions to dismiss of his co-accused Rene L. Relampagos, Dennis C. Villareal, and Edgardo M. Chatto, Isabelito B. Tongco, Concepcion O. Lim, Tomas D. Abapo, Jr. and Felix R. Uy (Chatto, et al.), which the Court previously upheld. In addition, he contends that there is no factual or legal basis to find probable cause against him, and that the Information should be quashed for violation of his right to speedy disposition of his case.

Specifically, accused Lopez insists that he was never part of the *Sangguniang Panlalawigan* (SP) or of the PBAC which conducted the whole bidding process and execution of the contracts between the Provincial Government of Bohol and Salcon Consortium. He neither signed nor was he a privy to the questioned contracts in his capacity as provincial attorney of Bohol Province.

Accused Lopez also points out the absence of the third element of violation of Section 3(g) of Republic Act No. 3019, i.e., *that the contract or transaction is manifestly and grossly disadvantageous to the government*. According to him, the complainants failed to show how the province was disadvantaged by the joint venture agreements. In fact, the Regional Trial Court of Tagbilaran City, Court of Appeals, and even the Ombudsman for the Visayas and the then Acting Ombudsman, Orlando C. Casimiro already found that the complainants had failed to prove any cause of action against the accused. And to date, the Province of Bohol and the people of the Province have continued to reap the benefits of the questioned joint venture agreements.

Besides, according to him, the 14-year inordinate and oppressive delay of the Office of the Ombudsman from the filing of the complaint up to its latest resolution, which is double the period of delay which the Supreme Court chastised in the cases of *People v. Sandiganbayan*,¹ *Tatad v. Sandiganbayan*,² and

¹ G.R. No. 188165, December 11, 2013

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Coscolluela v. Sandiganbayan,³ violated his right to speedy disposition of his case. And the Office of the Ombudsman did not provide any justification or reason for such delay.

Accused Madriñan's Urgent
Omnibus Motion

Accused Madriñan also repleads and adopts the motions to dismiss of his co-accused, which the Court sustained in its January 21, 2016 Resolution.

According to accused Madriñan, he is similarly situated as that of his co-accused and, therefore, it is just and proper that the Court's ruling dismissing the case should also apply to him.

Prosecution's Consolidated
Comment/Opposition to the
Omnibus Motions of Accused
Lopez and Madriñan

By way of comment/opposition, the prosecution reiterates the arguments in its Consolidated Comment/Opposition, dated December 1, 2015. It maintains that the Office of the Ombudsman did not commit inordinate delay in the resolution of the complaint against the accused-movants. It insists that the delay was never intended to oppress the accused but to ensure that the Office issues a correct and valid resolution or order. It likewise points out that the accused-movants never moved for the early disposition of the complaint before the Office of the Ombudsman.

The prosecution also stands pat that all the elements of violation of Section 3(g) of RA 3019 are present to warrant the finding of probable cause for the filing of the Information against the accused.

In addition, the prosecution invokes the Resolution, dated September 23, 2015, of the Supreme Court, in *Relampagos v. Office of the Ombudsman*,⁴ the second paragraph of which reads:

In any event, petitioner failed to sufficiently show that any grave abuse of discretion was committed by the Ombudsman in

² G.R. No. 72335-39, March 21, 1988

³ 701 SCRA 188

⁴ G.R. No. 219546

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rendering the challenged resolution and order, which, on the contrary, appear to be in accord with the facts and the applicable law and jurisprudence.

The prosecution contends that, based on the said Resolution, the Office of the Ombudsman did not commit grave abuse of discretion when it took it fourteen (14) years to complete the preliminary investigation and resolve the case.

Lastly, the prosecution argues that accused Lopez is charged in conspiracy with his co-accused. The contract with Salcon passed thru and was reviewed by his office. His act of advising the provincial officials that the contract was in accordance with law was necessary for the consummation of the offense charged.

Accused Lopez' Reply

In his reply to the prosecution's comment/opposition, accused Lopez maintains that the delay of fourteen (14) years speaks for itself. An unjustifiable delay of that long is vexatious, capricious and oppressive.

Accused Lopez claims that the delay was unjustifiable. A change in leadership in the Office of the Ombudsman is not an excuse, considering that the case was not sensational but only involved a simple question of law which did not require four (4) Ombudsmen to resolve. In fact, since 2001, there was no additional evidence discovered, new pleadings submitted, or new witnesses offered.

Also, accused Lopez counters the allegation of the prosecution that he belatedly realized that his right to speedy disposition of his case was violated. He says that there was simply nothing to move because the complaint was already dismissed with finality in 2008, and that dismissal must be respected.

As to the petition for certiorari of accused Relampagos before the Supreme Court, accused Lopez posits that it has been rendered moot and academic in view of the cognizance of the instant case by the Sandiganbayan.

With respect to the conspiracy theory of the prosecution, accused Lopez rebuts that bare assertions of conspiracy cannot be

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countenanced. His supposed participation to the conspiracy, direct or indirect, was never alleged.

Accused Mascariñas' Motion to
Adopt the Motion to Dismiss
Filed by the Other Accused

The arguments in accused Mascariñas' motion are practically the same as those in accused Madriñan's Urgent Omnibus Motion, dated February 22, 2016.

The prosecution's comment/opposition to accused Mascariñas is but a repetition of its Consolidated Comment/Opposition, dated March 2, 2016, to the separate omnibus motions of accused Lopez and Madriñan.

Moreover, the prosecution asserts that accused Mascariñas, being then a member of the Provincial Board, cannot exculpate himself from being indicted in this case because he is charged as among the public officials of the Province of Bohol who conspired with the President of Salcon, accused Villareal.

DISCUSSION

Upon separate motions of accused Relampagos, Villareal, and Chatto, et al., the Court, in its Resolution, promulgated on January 21, 2016, resolved to dismiss this case as to them, for violation of their right to speedy disposition of their case. The Court found that the fifteen (15) years delay by the Office of the Ombudsman to complete the preliminary investigation of the case was inordinate, vexatious and oppressive. The prosecution sought reconsideration of the said resolution, which the Court denied in its Resolution, promulgated on June 1, 2013.

The accused-movants are charged with violation of Section 3(g) of RA 3019, otherwise known as the Anti-graft and Corrupt Practices Act, in conspiracy with accused Relampagos, Villareal, and Chatto, et al. The facts and circumstances upon which the Court based its conclusion that the Office of the Ombudsman indeed violated the right of accused Relampagos, Villareal, and Chatto, et al. to speedy disposition of their case are exactly the same facts and circumstances obtaining in the case of the accused-movants. In fact, all the accused were charged before

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this Court on the strength of the same Ombudsman's Resolution, dated August 5, 2013. The accused movants and accused Relampagos, Villareal, and Chatto, et al. being similarly situated, the Court has no choice but to apply the same ruling embodied in its Resolution, dated January 21, 2016,⁵ where the Court held:

The case of *People v. Coscolluela*,⁶ invoked by the accused-movants has emphasized the essential factors to determine whether the Office of the Ombudsman has violated the constitutional right of the accused to a speedy disposition of their case that will warrant its dismissal, thus:

[T]he right to speedy disposition of cases should be understood to be a relative or flexible concept such that a mere mathematical reckoning of the time involved would not be sufficient.⁷

[I]n the determination of whether the defendant has been denied his right to a speedy disposition of a case, the following factors may be considered and balanced: (1) the length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.⁸

[I]t was not the petitioners' duty to follow up on the prosecution of their case. Conversely, it was the Office of the Ombudsman's responsibility to expedite the same within the bounds of reasonable timeliness in view of its mandate to promptly act on all complaints lodged before it.⁹

[T]here is no complete resolution of a case under preliminary investigation until the Ombudsman approves the investigating officer's recommendation to either file an Information with the SB or to dismiss the complaint.¹⁰

Guided by the foregoing principles, the Court is convinced that the Office of the Ombudsman incurred inordinate and unjustified delay in the conduct of the preliminary investigation of this case in violation of the right of the accused to a speedy disposition of their case.

The above-enumerated material dates are not disputed. The criminal complaint was **filed on October 25, 2000** and

⁵ at pp. 3-5

⁶ supra

⁷ at p. 195

⁸ at pp. 195-196

⁹ at p. 199

¹⁰ at p. 196

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terminated only on October 23, 2015 with the filing of the Information before this Court, which means that it took the Office of the Ombudsman **fifteen (15) long years** to conclude the preliminary investigation. In this span of years, the Court does not see any intervening event that will excuse the Office of the Ombudsman to stretch the proceedings to such unreasonable length. In fact, the prosecution in its opposition has not even offered a plausible explanation for the delay. The prosecution simply harps on the argument that the February 22, 2001 Resolution dismissing the complaint and approved on July 2, 2008 has not attained finality for being void, because Acting Deputy Ombudsman Casimiro only signed a photocopy of the Resolution and there is no showing that he was authorized to sign the same. Be that as it may, this does not negate the fact that the Office of the Ombudsman committed capricious and vexatious delay.

Granting *ex-argumenti* that the February 22, 2001 Resolution approved on July 2, 2008 did not become final, however, the Office of the Ombudsman spent more than **five (5) years** counted from the approval of the dismissal in 2008 to reverse itself in a Resolution, dated August 5, 2013, prepared by ASP III Isaguirre-Singson, and another period of more than **two (2) years** from the reversal to file the Information with the Sandiganbayan on October 23, 2015. It is inconceivable that the Office of the Ombudsman needed five (5) years just to realize that Acting Deputy Ombudsman Casimiro signed only a photocopy of the subject Resolution and that he was not supposedly authorized to do so. Certainly, the bases of the Office of the Ombudsman for reversing itself did not involve difficult questions of law or complicated facts needing five (5) years to answer.

On the other hand, the procedural antecedents will reveal that the accused-movants have sensibly believed that the complaint against them was already terminated in 2008. After all, there was no motion for reconsideration or other actions filed assailing the dismissal of the complaint. It is ludicrous to expect from the accused-movants to assume that they could not rest on that dismissal despite the lack of further challenge and after the lapse of years.

The accused-movants are not precluded from challenging the inordinate delay of the Ombudsman before this Court merely because they did not do so when the complaint was still pending before the said office. As held in *Coscolluela*,¹¹ it is not the duty of the accused-movants to follow-up the prosecution of their case. "A defendant has no duty to bring himself to trial; the State

¹¹ supra

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has that duty as well as the duty of ensuring that the trial is consistent with due process.”¹²

Likewise, in its Resolution, dated June 1, 2016 (which denied the prosecution’s motion for reconsideration of the dismissal of the case as to accused Relampagos, Villareal, and Chato, et al.), the Court had opined that the September 23, 2015 Resolution of the Supreme Court in *Relampagos v. Office of the Ombudsman* (G.R. No. 219542), did not actually pronounce that the proceedings before the Office of the Ombudsman was not inordinate. This Court explained:

The Court is not persuaded that the second paragraph¹³ of the Supreme Court September 23, 2015 (Resolution) effectively settled that the Office of the Ombudsman did not violate the right of the accused to a speedy disposition of their case.

The said Resolution of the Supreme Court disposed of accused Relampagos’ petition for certiorari questioning the August 22, 2014 approval of Ombudsman Carpio-Morales of the August 5, 2013 resolution which reversed the dismissal of the complaint, and the June 4, 2015 order, which denied accused Relampagos’ motion for reconsideration, for having been allegedly issued with grave abuse of discretion. What was at issue in the said petition was the act of the Office of the Ombudsman, and not that of this Court. In fact, this Court was not restrained from proceeding with this case despite the pending petition. On this score, and in light of the principle that once a case is filed in court, the disposal of the case rests on its discretion and authority, it is this Court’s considered view that it may address, as it had addressed, the issue of inordinate delay, independent of the outcome of accused Relampagos’ petition. This, notwithstanding that accused Relampagos had also brought to the attention of the Supreme Court the issue of the Ombudsman’s delay. After all, the Office of the Ombudsman and this Court may be confronted with entirely the same issue, and address it independently within the realm of their authority and jurisdiction.

What is more, the dismissal of accused Relampagos’ petition was based on technicality, *i.e.*, for Relampagos’ “failure to accompany his petition with certified true copies of the assailed resolution and order, in violation of Section 1, Rule 65 and Section 3, Rule 46 in relation to Section 2, Rule 56, of the

¹² at p. 199, citing *Baker v. Wingo*, 407 U.S. 514 (1972)

¹³ “In any event, petitioner failed to sufficiently show that any grave abuse of discretion was committed by the Ombudsman in rendering the challenged resolution and order, which, on the contrary appear to be in accord with the facts and the applicable law and jurisprudence.”

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Rules of Civil Procedure,” and not on the merits of his arguments in his petition. While the Supreme Court also mentioned in its resolution that the petitioner failed to sufficiently show any grave abuse of discretion on the part of the Ombudsman in rendering the disputed resolution and order, however, the High Tribunal did not declare its reasons for ruling which renders it susceptible to varying interpretation. Thus, to the mind of this Court, the second paragraph of the said resolution is at best an *obiter dictum* rather than a doctrinal declaration.

An obiter dictum has been defined as an opinion expressed by a court upon some question of law which is not necessary to the decision of the case before it. It is a remark made, or opinion expressed, by judge, in his decision upon a cause, “by the way,” that is, incidentally or collaterally, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument. Such are not binding as precedent.¹⁴

Having settled the threshold issue, the Court finds it unnecessary to discuss the other issues.

WHEREFORE, in light of all the foregoing, the Court resolves to **GRANT** the separate motions to dismiss of accused Inocentes C. Lopez, Exequiel A. Madriñan and Eufrasio M. Mascariñas, and does hereby accordingly **DISMISS** this case as to them, for violation of their constitutional right to speedy disposition of their case.

The hold departure orders issued by the Court against the said accused are hereby **LIFTED** and **SET ASIDE**, and the bonds they posted for their provisional liberty are ordered **RELEASED**, subject to the usual accounting and auditing procedures.

SO ORDERED.

EFREN N. DE LA CRUZ
Associate/Justice

¹⁴ Villanueva v. Court of Appeals, 379 SCRA 463, 469

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WE CONCUR:


REYNALDO P. CRUZ
Associate Justice


MICHAEL FREDERICK L. MUSNGI
Associate Justice

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