

REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

SPECIAL THIRD DIVISION

PEOPLE OF THE PHILIPPINES,

THE
Plaintiff,

Criminal Cases Nos. SB-12-CRM-0129

For: Malversation of Public Funds through Falsification of Public Documents

-versus -

MIGUEL D. ESCOBAR, et. al.,
Accused.

Criminal Cases Nos. SB-12-CRM-130

For: Violation of Section 3 (e) of R. A. No. 3019

Present:

CABOTAJE-TANG, P.J.,
Chairperson
MARTIRES, J.
QUIROZ, J.
MUSNGI,¹ J. and
CRUZ,² J.

Promulgated:

NOVEMBER 22, 2016



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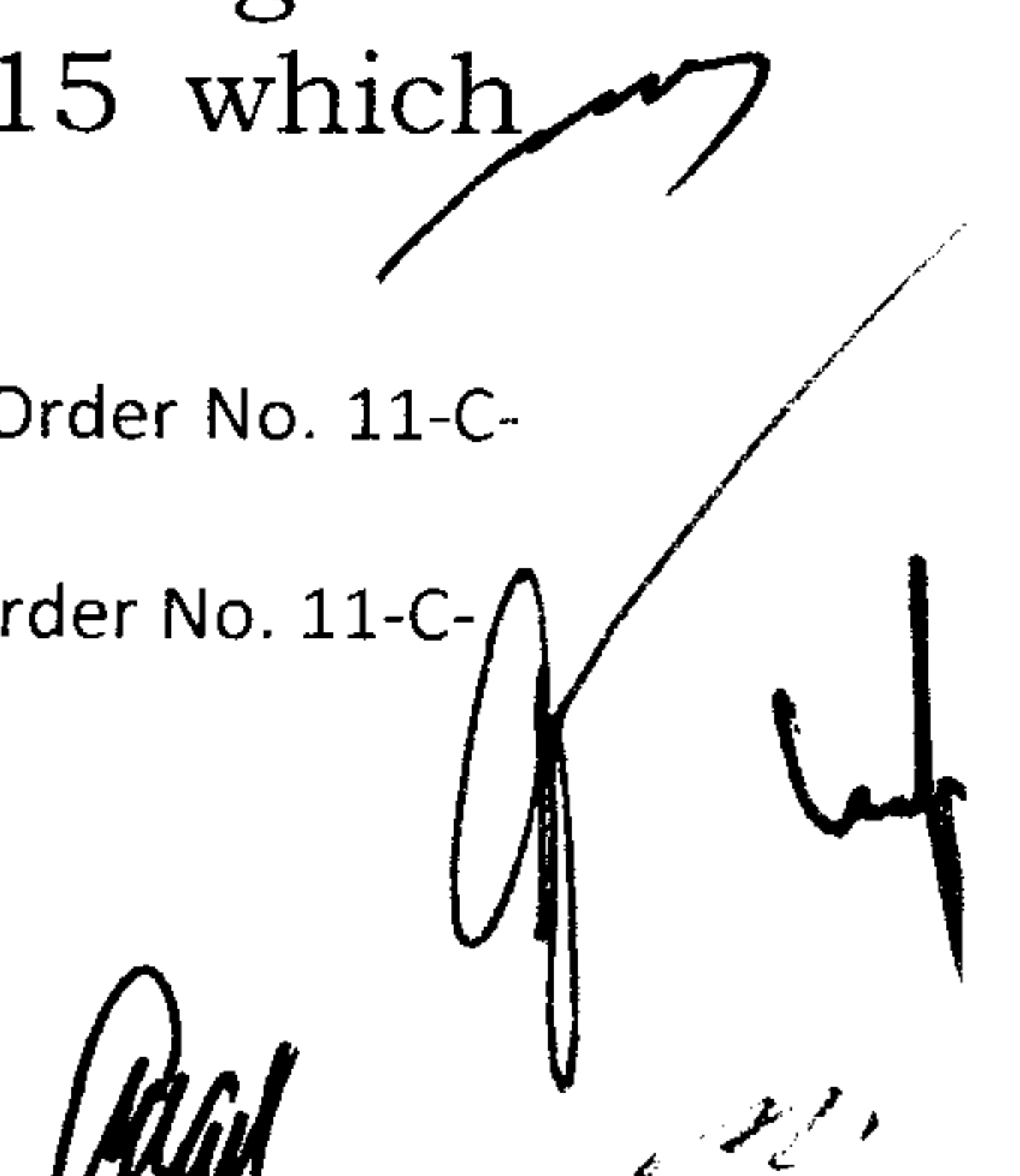
RESOLUTION

CABOTAJE-TANG, P.J.:

For resolution are the following motions filed by accused Miguel D. Escobar and Reynaldo F. Constantino assailing the Court's Resolution promulgated on January 13, 2015 which

¹ Designated as a Special Member of a Special Division of Five Justices per Administrative Order No. 11-C-2016 dated September 19, 2016

² Designated as a Special Member of a Special Division of Five Justices per Administrative Order No. 11-C-2016 dated September 19, 2016



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denied their separate omnibus motions for quashal of Informations, dismissal of cases and/or reinvestigation:

1. *Motion for Reconsideration (Re: Resolution promulgated on 13 January 2015) dated March 13, 2015 filed by accused Escobar;*³ and

2. *Manifestation With Urgent Motion for Reconsideration dated March 9, 2015 filed by accused Constantino.*⁴

In his motion for reconsideration, accused Escobar contends that because of the alleged violation of his right to due process and speedy disposition of cases, the Office of the Ombudsman had lost its authority to file these cases. Accused Escobar insists that the period of six (6) years from the time the Office of the Ombudsman issued its resolution finding probable cause against the accused until the filing of the Informations in Court constitutes inordinate delay. He argues that the Court's findings that the alleged delay in the filing of the Informations is not inordinate "does not conform with the evidence on record" and contravenes the several rulings of the Supreme Court. He also argues that the factors which the Court considered in justifying the delay apply only to circumstances which are attendant in the conduct of a preliminary investigation. The said causes of delay do not apply in these cases where the preliminary investigation had already been terminated in 2004, with the Ombudsman's finding of the existence of probable cause and what is left to be done is only to file the corresponding Informations. In further support of his motion for reconsideration, accused Escobar invokes **Cervantes vs. Sandiganbayan**⁵ and **Roque vs. Office of the Ombudsman**.⁶ Accused Escobar also invokes "*People vs. Marcelo, et. al.*"⁷ where the Third Division of this Court granted therein accused Amelia Carmela C. Zoleta's omnibus motion and dismissed the case on the ground that the

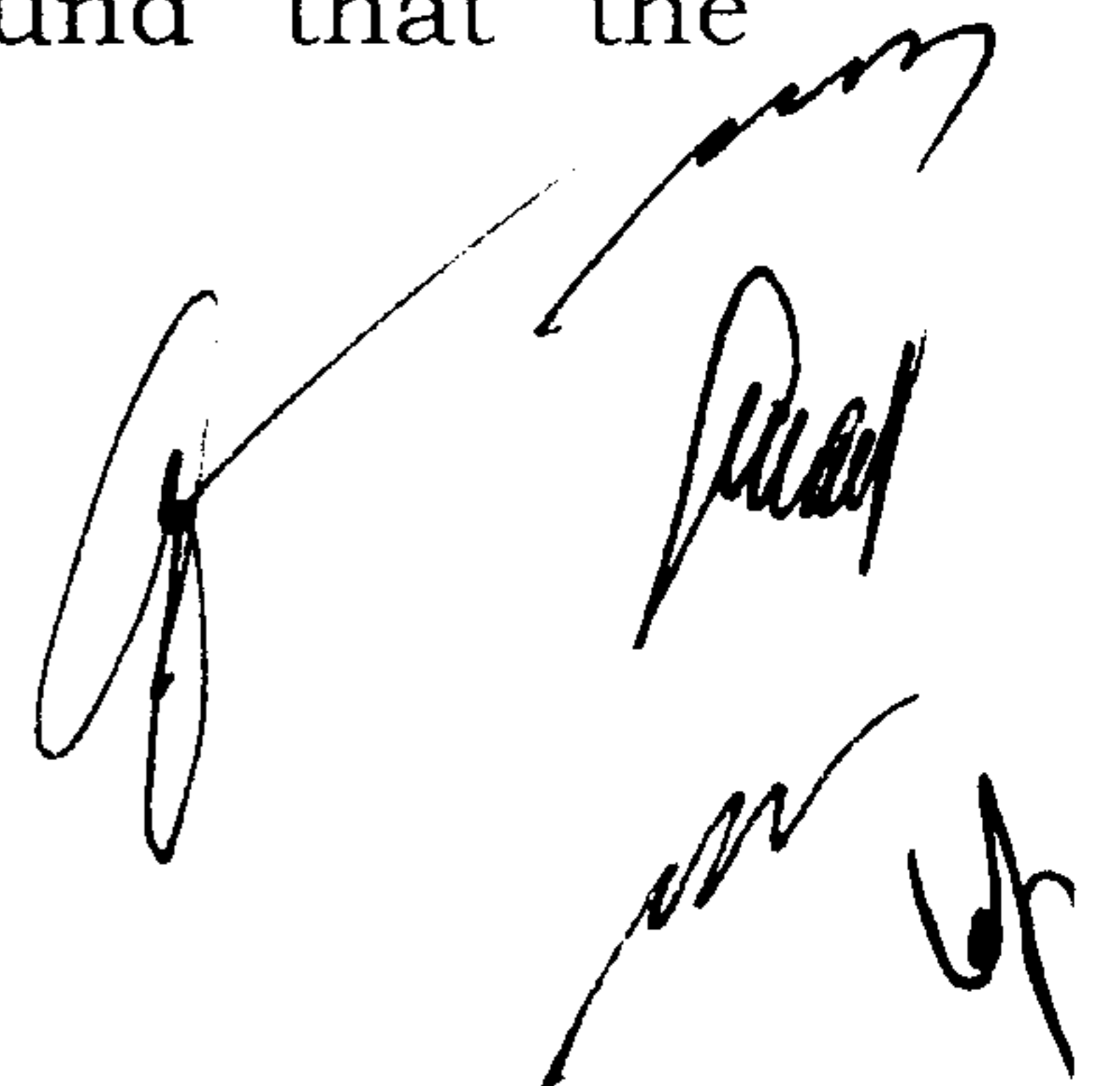
³ pp. 101-139, Record, Vol. III

⁴ pp. 140-156, Record, Vol. III

⁵ 307 SCRA 149 (1999)

⁶ 307 SCRA 104 (1999)

⁷ Criminal Cases Nos. SB-11-CRM-0452 to 0453



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unexplained delay in the filing of the cases against therein accused violated her right to speedy disposition of cases. According to accused Escobar, the said case was filed on the basis of the same Ombudsman's Resolution dated August 11, 2004.

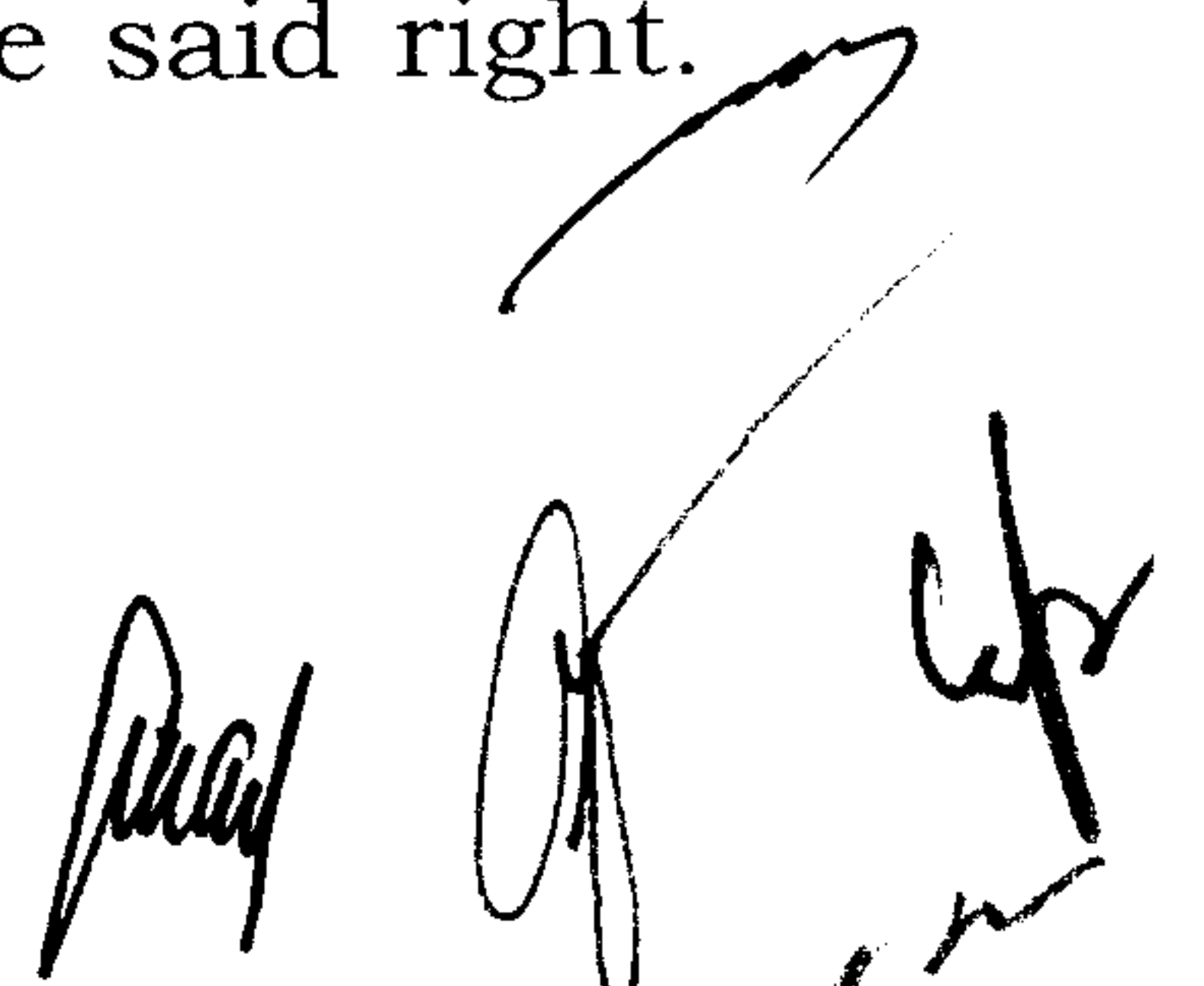
Furthermore, accused Escobar claims that the Ombudsman violated Section 4 of Administrative Order No. 07⁸ dated April 10, 1990, which provides that the investigating officer shall resolve the case within ten (10) days from the conclusion of the investigation. According to him, this further violated his right to speedy trial and due process. He further argues that the alleged anomalous transactions were exhaustively investigated by the COA and its findings were embodied in its COA report. Thus, the issues do not require a painstaking and grilling scrutiny as would justify the Ombudsman a delay of more than eight (8) years before filing the Informations. He also claims that the Ombudsman never presented evidence establishing the serious prejudice which he suffered because of its failure to file the Information for more than eight (8) years.

Invoking **Coscoluella vs. Sandiganbayan**⁹ accused Constantino claims a violation of his right to speedy disposition of cases and thus moves for the dismissal of these cases and quashal of the Informations. He maintains that the termination of the preliminary investigation after eight (8) years is violative of his right to speedy disposition of cases. Allegedly, the findings of the Court that the prosecution's delay was due to the fact that it had to undergo a careful review of the cases and revision through the different levels in the Office of the Ombudsman is unjustified.

The prosecution filed a consolidated comment/opposition to the subject motions. It argues that mere delay and/or even a total absence of preliminary investigation will not affect the validity and/or legality of the filing of an Information. Citing several jurisprudence, the prosecution claims that accused Escobar and Constantino are deemed to have waived their right to speedy trial when they failed to assert the said right.

⁸ Rules of Procedure of the Office of the Ombudsman

⁹ 701 SCRA 188 (2013)



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It also invokes "*People vs. Escobar, et. al.*,"¹⁰ where the Sandiganbayan denied accused Escobar's omnibus motion on the ground, among others, that there was no showing of a vindictive, capricious, vexatious and oppressive cause of the delay. Further, the prosecution claims that the issues raised are mere rehash of the accused's earlier motions which were amply and meticulously passed upon by the Court in its assailed Resolution.¹¹

Accused Constantino filed a reply to the prosecution's comment. Citing **Coscolluela**,¹² he insists that he cannot be faulted for his alleged failure to assert his right because it is 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. It maintains that the Ombudsman lost its authority to file the cases because of the inordinate delay of more than eight (8) years in filing the Informations in these cases.¹³

Accused Escobar likewise filed his reply. He argues that he was not directed by the Ombudsman to submit countervailing evidence during the preliminary investigation. Instead, the Ombudsman allegedly merely relied on the self-serving statement of prosecution witness Mary Ann Gadian. Allegedly, this violates his right to due process. Accused Escobar also points to the alleged testimony of Gadian given in the other divisions of the Court that accused Escobar did not receive a single centavo from the anomalous transactions. According to him, the said testimony was not considered by the investigator. Allegedly, his indictment was based on his signature appearing on the disbursement vouchers (DVs). He contends, however, that it is not his duty to review every detail of the papers brought to him for signature and that he can rely on good faith on the performance of duties of his subordinate officials. In support thereof, he invokes **Arias vs. Sandiganbayan**¹⁴ and **Magsuci vs. Sandiganbayan**.¹⁵ Further, he relies on Criminal Case No. 28329 entitled "*People vs. Escobar, et. al.*" and Criminal Case No. 28331 entitled

¹⁰ SB-11 CRM-0458 to 0459

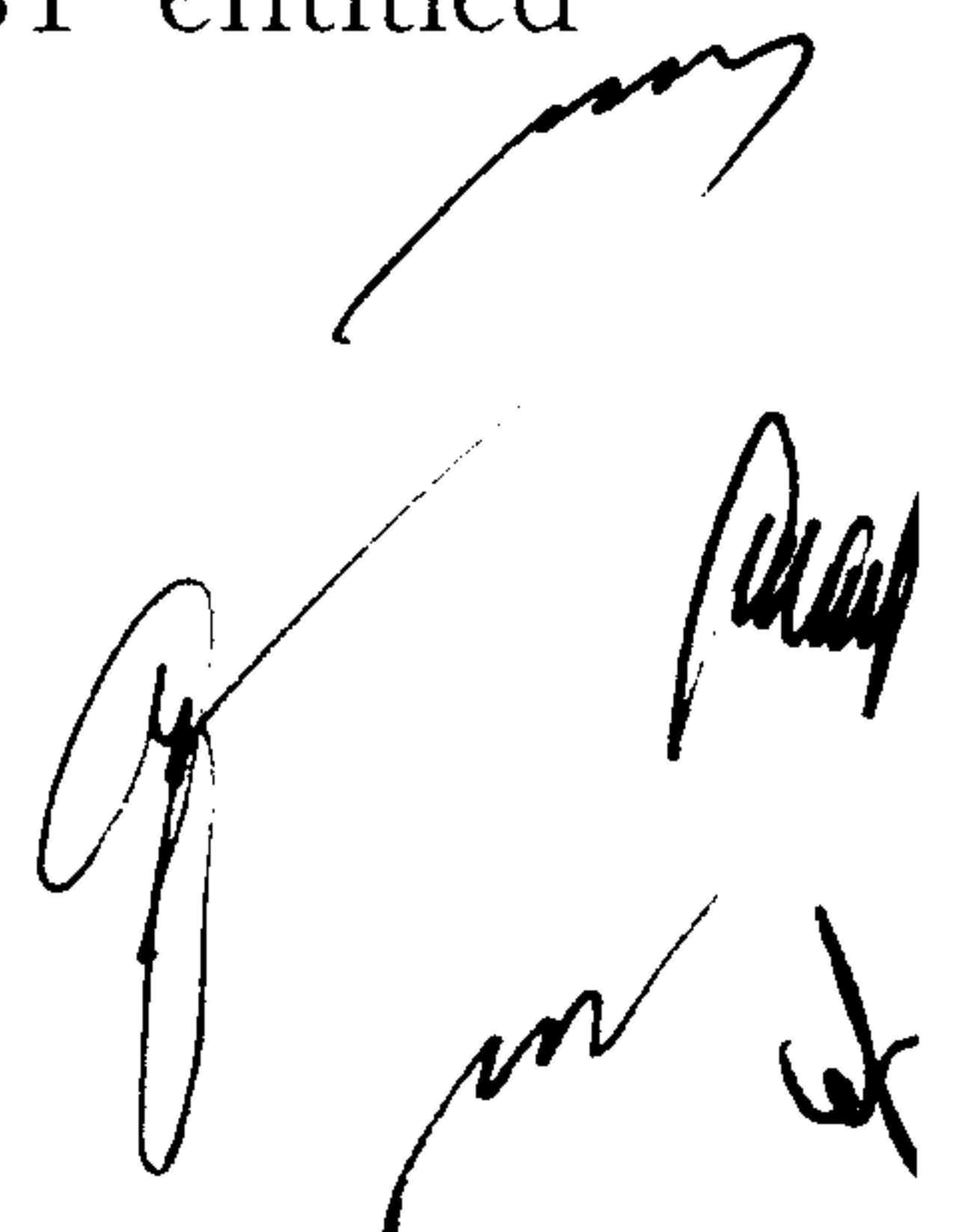
¹¹ pp. 1-7, Consolidated Comment/Opposition; pp. 174-180, Record, Vol. III

¹² *supra* note 9

¹³ pp. 221-228, Record, Vol. III

¹⁴ 180 SCRA 309 (1989)

¹⁵ 240 SCRA 13 (1995)



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“People vs. Escobar, *et. al.*” which allegedly involve the same set of facts, issues and circumstances and where the Second and Fourth Divisions of this Court, respectively, rendered its decision acquitting him and the other accused therein.¹⁶

After an assiduous examination of the parties’ arguments, the Court finds the motions bereft of merit.

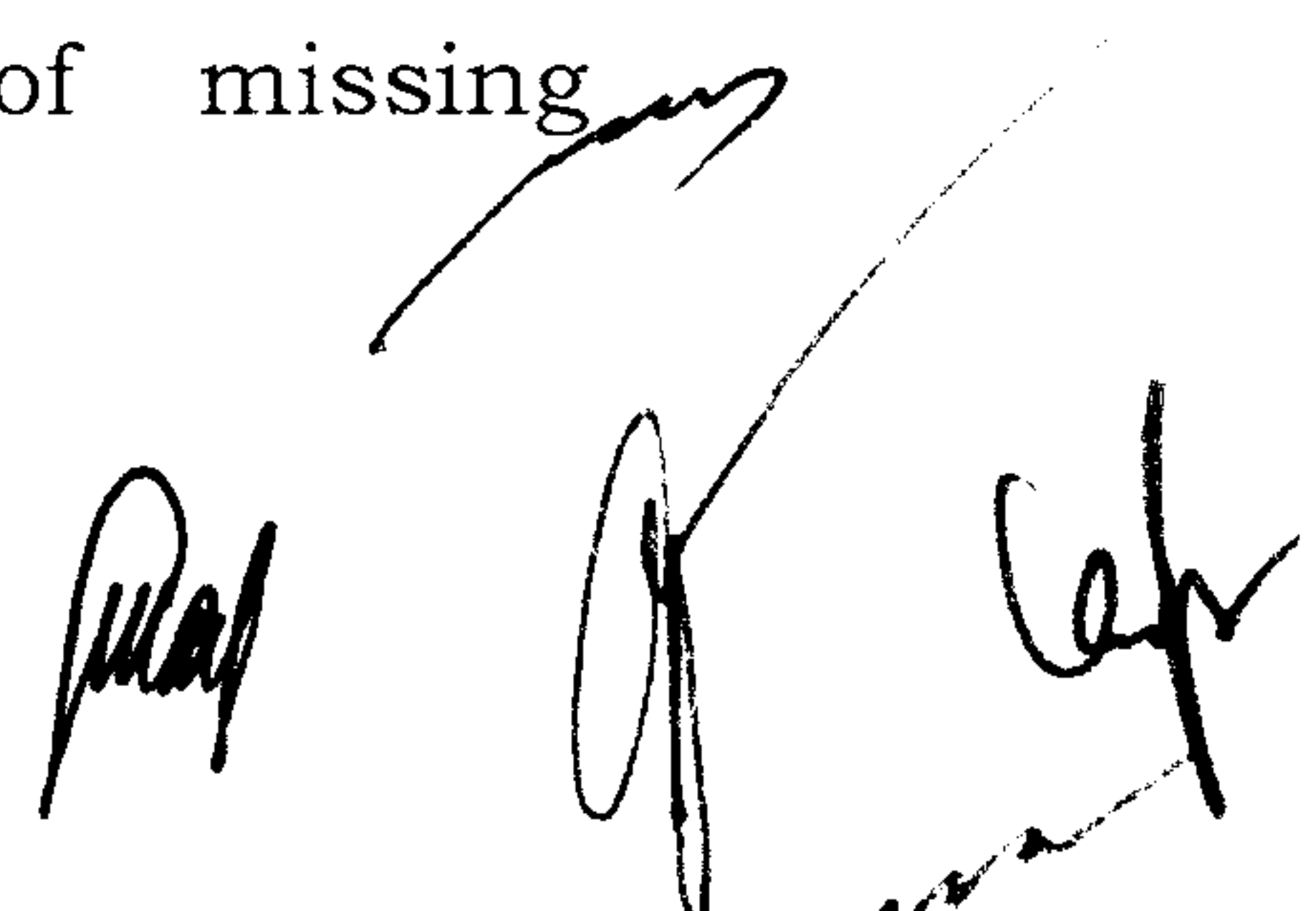
First. While the concept of speedy disposition is relative or flexible such that a mere mathematical reckoning of the time involved is not sufficient, the right to the speedy disposition of a case, like the right to speedy trial, is deemed violated when the proceedings are attended by vexatious, capricious, and oppressive delays; 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.¹⁷

In this case, the delay was not vexatious, capricious, and oppressive. In fact, this issue on the alleged delay in the conduct of the preliminary investigation and the filing of the Informations, which allegedly violated the accused’s right to speedy disposition of cases, had been considered and extensively passed upon by the Court in its assailed Resolution:

Based on the chronology of events in these cases, which will later on be enumerated, this Court finds that the alleged delay in the Information is not inordinate so as to warrant the dismissal of the cases for violation of the case of Tatad vs. Sandiganbayan. Clearly, the delay, if any, was caused by the prosecution’s limited resources; volume of case record which needs to be reproduced to be furnished to the respondents; the further fact finding investigation ordered by then Tanodbayan Simeon V. Marcelo as regards the persons who used fictitious names in encashing checks, the person who signed the purported letter-requests and project proposals/ designs, gathering of missing

¹⁶ pp. 275-279, Record, Vol. III

¹⁷ People vs. Sandiganbayan, 712 SCRA 359 (2013)



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documents, deference of resolution as regards the other persons involved due to lack of documentary evidence, and persons who should likewise be subjected to preliminary investigation to enable them to explain their apparent involvement in these cases. The time lapsed cannot be considered as violation of the right of the accused to a speedy disposition of cases. The is part of a careful analysis and scrutiny of the documents, evidence, resolutions submitted by the respondents and the investigating prosecutors to enable the Office of the Ombudsman to come up with the appropriate resolution in these cases.

Accused failed to present evidence to prove that the delay was due to an intentional, capricious, whimsical, or probable politically-motivated (as present in the *Tatad* case) delaying tactics employed by the prosecutors. For this reason, the prayer to dismiss these cases and quash the Informations necessarily fails.¹⁸

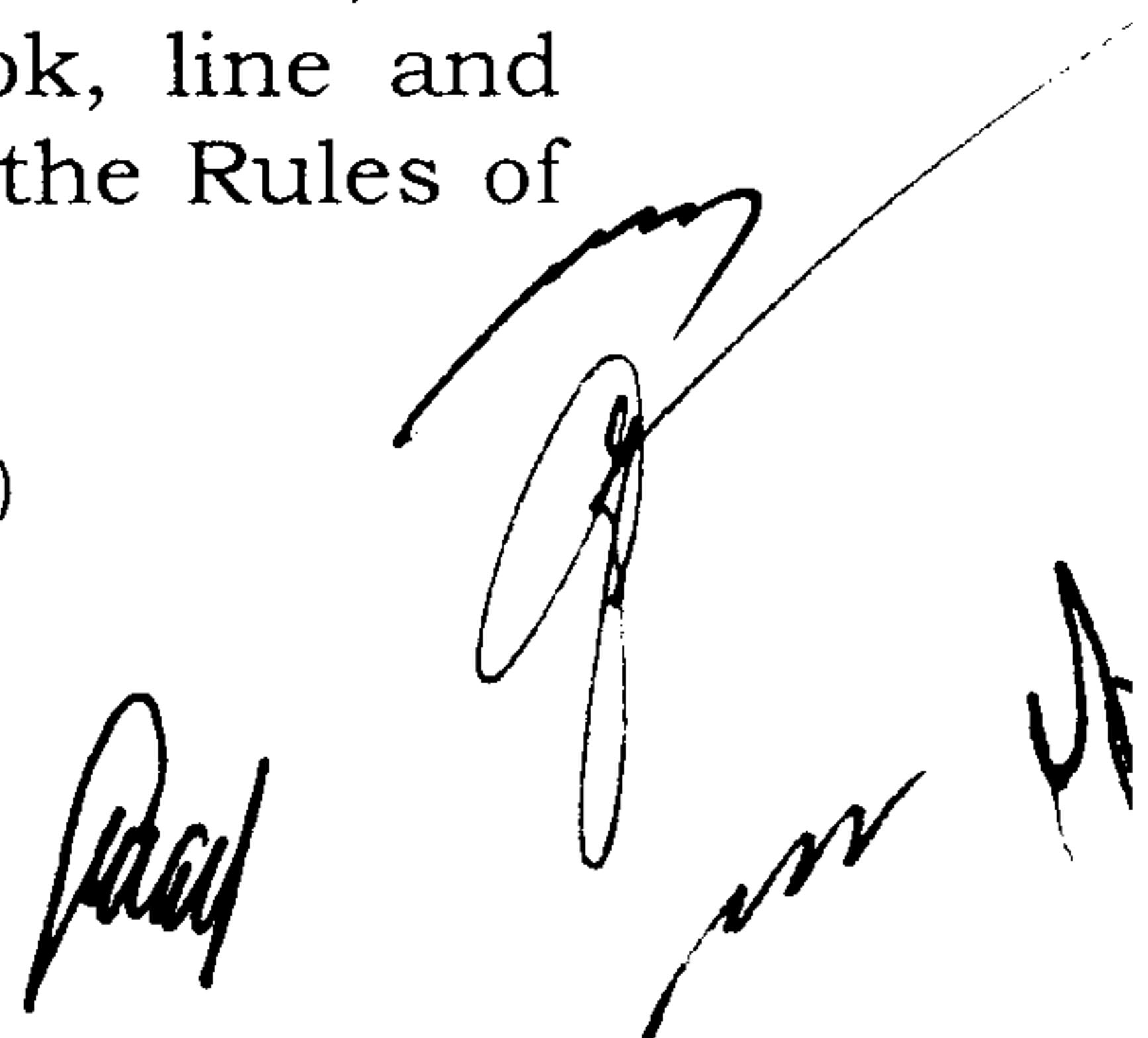
Since the delay in the filing of the Informations is consistent with reasonable delay, the rulings in **Cervantes**, **Roque** and **Coscolluela** do not apply in these cases.

Second. The ten-day period for the investigating officer to resolve the case is merely directory as held by the Supreme Court in **Raro vs. Sandiganbayan**:¹⁹

The length of time it took before the conclusion of the preliminary investigation may only be attributed to the adherence of the Ombudsman and the NBI to the rules of procedure and the rudiments of fair play. The allegations of Abaño's complaint had to be verified; the Ombudsman did not believe the same hook, line and sinker. Recently, the Court held that while the Rules of

¹⁸ pp. 14-15, Resolution promulgated on January 13, 2015

¹⁹ 335 SCRA 581 (2000), citing **Dansal vs. Hon. Fernandez**, 327 SCRA 145 (2000)



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Court provides a ten-day period from submission of the case within which an investigating officer must come out with a resolution, that period of time is merely directory. Thus:

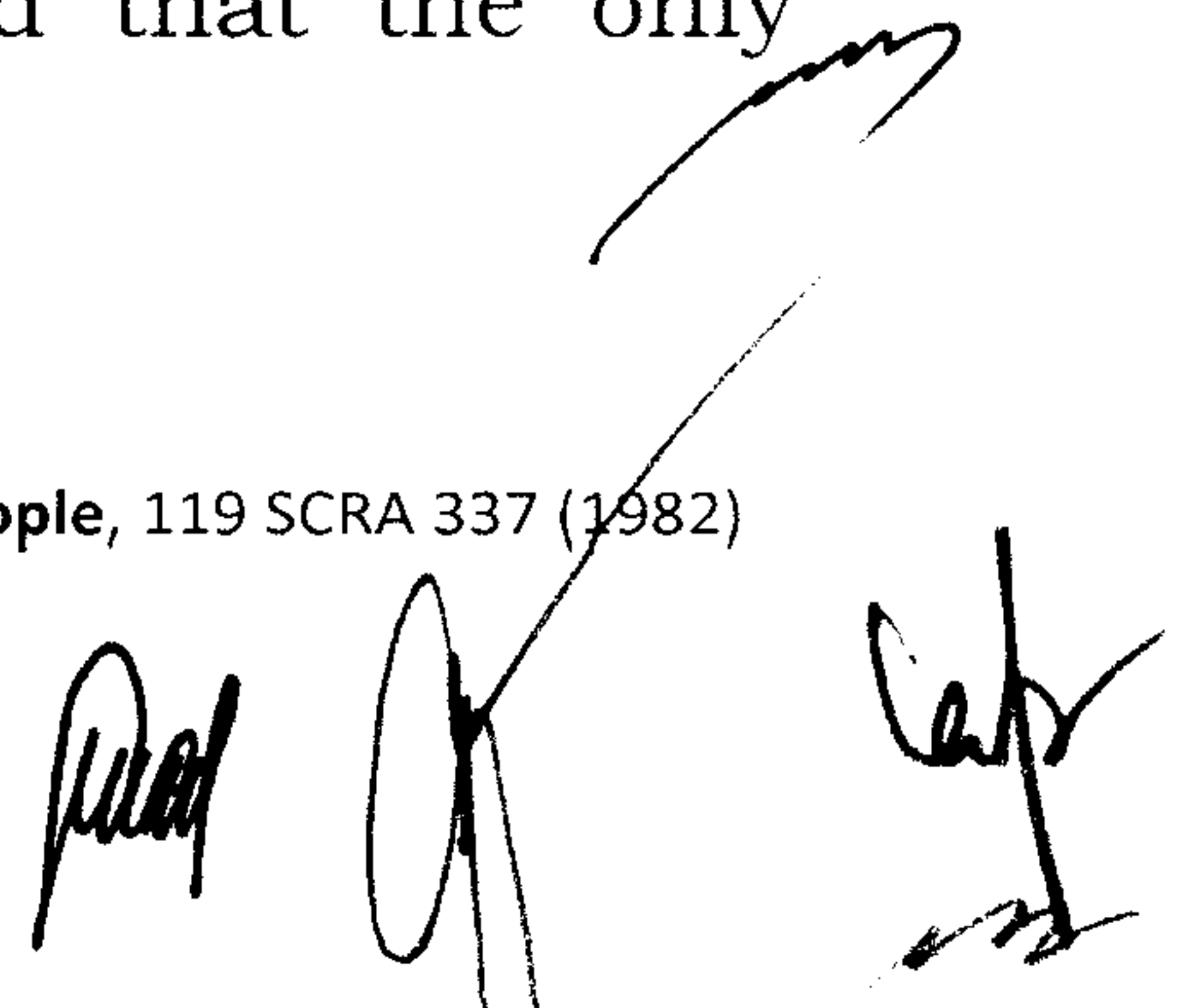
The Court is not unmindful of the duty of the Ombudsman under the Constitution and Republic Act No. 6770 to act promptly on Complaints brought before him. But such duty should not be mistaken with a hasty resolution of cases at the expense of thoroughness and correctness. Judicial notice should be taken of the fact that the nature of the Office of the Ombudsman encourages individuals who clamor for efficient government service to freely lodge their Complaints against wrongdoings of government personnel, thus resulting in a steady stream of cases reaching the Office of the Ombudsman.

Third. The Sandiganbayan's ruling in "*People vs. Escobar*" (SB-11-CRM-0458 to 0459) and "*People vs. Marcelo*" (SB-11-CRM-0452 to 0453) cannot be taken into consideration as this Court's Division is not bound by the said rulings, and the adjudication of these cases must be done based on their peculiar facts and circumstances.

To be sure, the Sandiganbayan functions in Divisions of three (3) Justices each and each Division functions independently of the other.²⁰ The Supreme Court had the occasion to declare that while a ruling of a particular division of the Court of Appeals may be taken cognizance of in some cases, it cannot bind or prejudice a ruling of another division thereof, the former being a co-ordinate authority.²¹ Applying this ruling by analogy to the Sandiganbayan, the ruling of one division of this Court therefore has no binding force on the other divisions. Further, it must be stressed that the only

²⁰ *Preagido vs. Sandiganbayan*, 476 SCRA 143 (2005), citing *De Guzman vs. People*, 119 SCRA 337 (1982)

²¹ *Francisco vs. Rojas*, G.R. No. 157120, April 23, 2014



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judicial decisions that form part of our legal system are the decisions of the Supreme Court.²²

Fourth. The Court had likewise passed upon the issue on the alleged testimony of Gadian that accused Escobar is not involved in the illegal transactions subject of these cases. Consider:

With respect to the open court admission of the state witnesses in all other five (5) cases filed before the different divisions of this Court, it must be stressed that Courts are required to take judicial notice of the decisions of the appellate courts but not the decisions of coordinate trial courts, nor even of a decision or the facts involved in another case tried by the same court itself, unless the parties introduce the same in evidence or where the court as a matter of convenience may decide to do so, as these are facts capable of questionable demonstration.²³

Fifth. Accused Escobar's claim that his indictment cannot be based on his signature appearing on the DVs is a matter of defense, the truth of which can be best passed upon after a full-blown trial. In **Nava vs. Commission on Audit**,²⁴ the Supreme Court declared:

Petitioner's argument that he could not be indicted for violation of Section 3(g) of RA 3019, because he acted in good faith when he approved the disbursement voucher, purchase order, invitation to bid and signed the checks after the same had been processed by his subordinates, are evidentiary in nature and are matters of defense, the truth of which can be best passed upon after a full-blown trial on the merits. A preliminary investigation is conducted for the purpose of determining whether a crime has been committed, and whether there is probable cause to believe that the accused is guilty thereof and should be held for trial. It is not the occasion for full and exhaustive display of the

²² **Quasha Peña Ancheta & Nolasco Law Office vs. Court of Appeals**, 607 SCRA 712 (2009)

²³ pp. 15-16, Resolution promulgated on January 13, 2015

²⁴ 419 SCRA 544 (2001), cited in **Redulla vs. Sandiganbayan**, 517 SCRA 110 (2007)

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parties' evidence; it is for the presentation of such evidence only as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof.

Obviously, accused Escobar cannot successfully invoke the rulings in **Arias** and **Magsuci** as the issue he raises pertains to his defenses.

In sum, accused Escobar and Constantino failed to show that the conduct of the preliminary investigation was attended by vexatious, capricious, and oppressive delays. Thus, they cannot successfully invoke a violation of their right to speedy disposition of cases.

WHEREFORE, the *Motion for Reconsideration (Re: Resolution promulgated on 13 January 2015)* dated March 13, 2015 filed by accused Miguel D. Escobar and *Manifestation With Urgent Motion for Reconsideration* dated March 9, 2015 filed by accused Reynaldo F. Constantino is DENIED for lack of merit and for being *pro forma*.

SO ORDERED.

Quezon City, Metro Manila.


AMPARO M. CABOTAJE TANG

Presiding Justice
Chairperson

WE CONCUR:


ALEX L. QUIROZ

Associate Justice


REYNALDO P. CRUZ

Associate Justice



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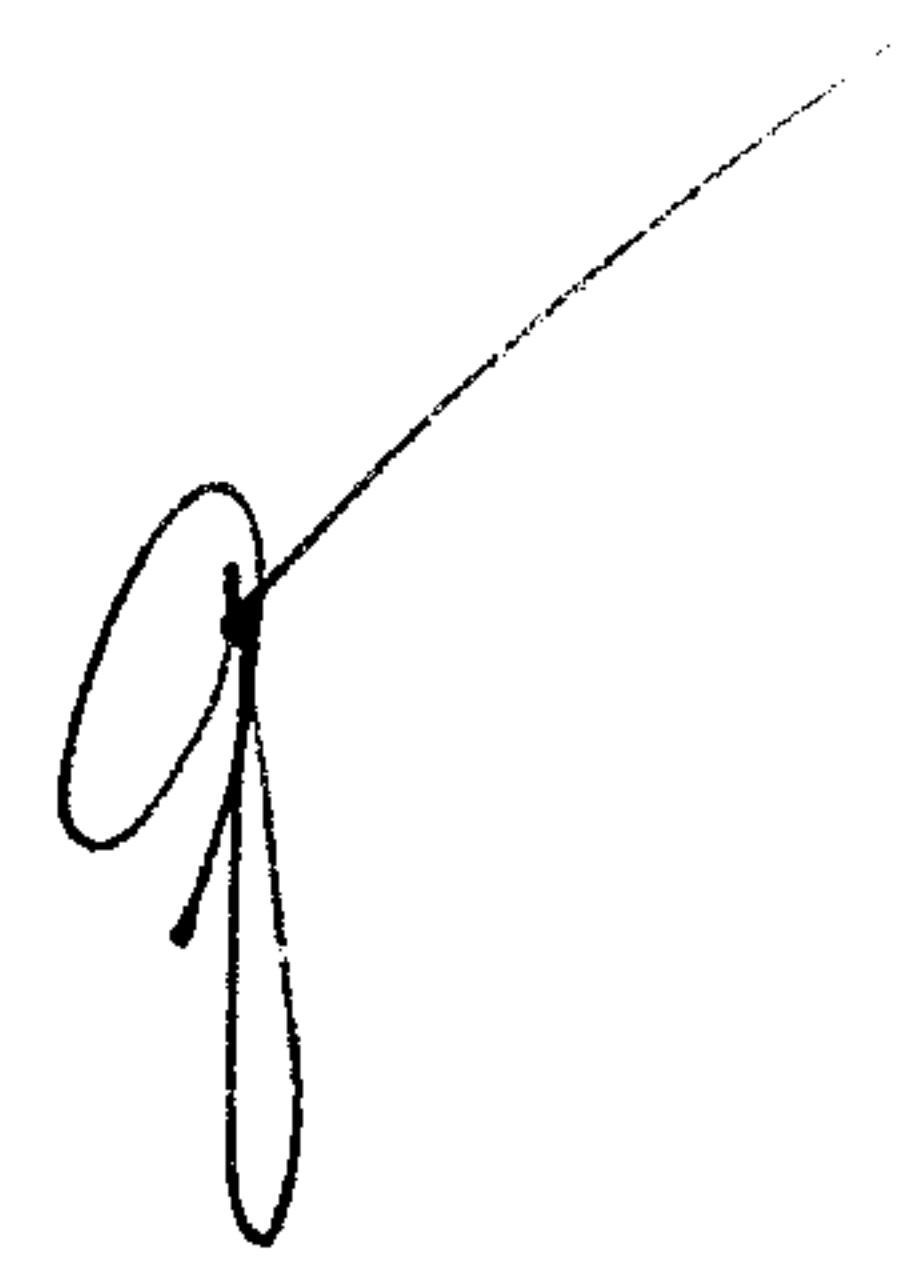
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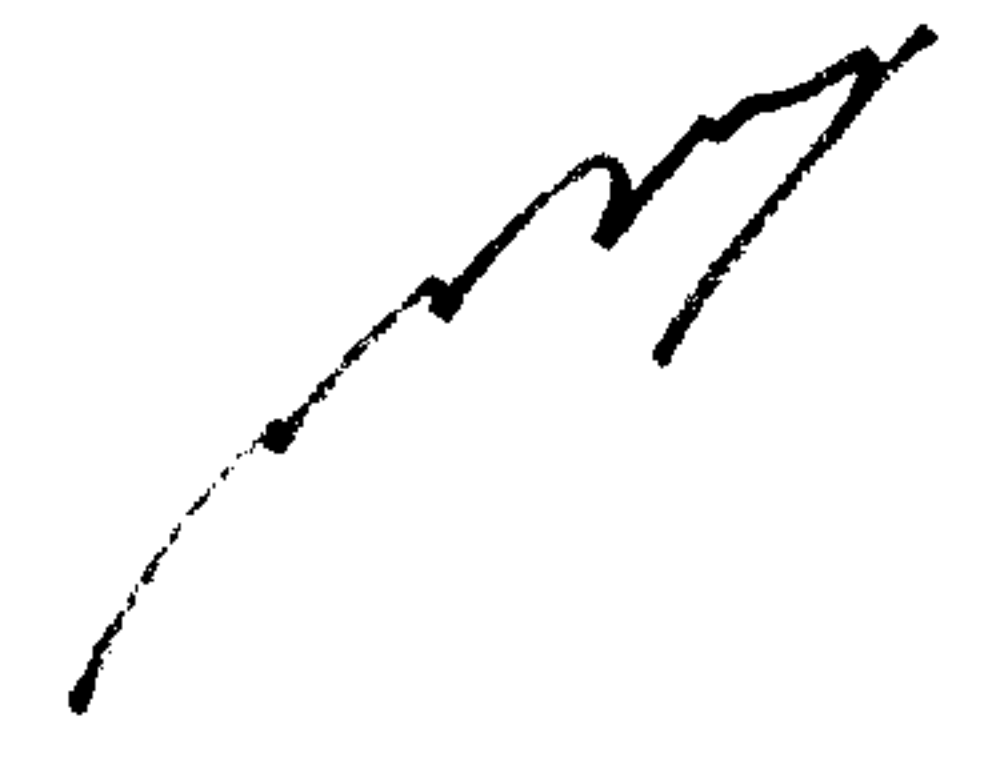
WE DISSENT:


SAMUEL R. MARTIRES
Associate Justice


MICHAEL FREDERICK L. MUSNGI
Associate Justice







DISSENTING OPINION

Martires, J.:

Accused Miguel D. Escobar (*Escobar*) and Reynaldo F. Constantino (*Constantino*) filed separate Motions for Reconsideration. They assail this Court's Resolution¹ finding lack of merit on their Omnibus Motions² seeking for Dismissal/Prohibition, Quashal of Information, and Reinvestigation, of these instant cases for the crime of Malversation of Public Funds through Falsification of Public Documents and Violation of Sec. 3 (e) of Republic Act No. 3019.

In his Motion³, accused Escobar contests the findings of this Court for two reasons, *to wit*: (1) it does not conform with the evidence on record, and (2) it contravenes the rulings of the Supreme Court in *Cervantes v. Sandiganbayan*⁴, and *Roque v. Ombudsman*⁵. Accused submits that there is nothing on record or in any pleadings submitted by the parties that justifies the long-overdue filing of the Information. He stressed that the Ombudsman committed undue delay of almost seven (7) to eight (8) years in filing the Information on May 7, 2012 reckoned from the filing of the complaints, or the time when the Resolution finding probable cause against the accused was issued on August 11, 2004, or from the subsequent Resolution dated April 15, 2005. Further, he invokes the cases of *Cervantes* and *Roque* which took a shorter delay of six (6) years, and the case of *Tatad*⁶, wherein the delay of only close to three (3) years has been declared unreasonable or unjustifiable.

Furthermore, accused likewise relies on the pronouncement of the Third Division of this Court in the case of *People v. Marcelo*⁷, which arose from the same Resolution dated August 11, 2004 but whose Information were filed on an earlier date, November 17, 2011. In that case, the Third Division dismissed the charges against the movant and upheld her right to a speedy disposition of cases.



¹ Promulgated on January 13, 2015.

² For accused Escobar, dated July 19, 2012, and accused Constantino, dated September 22, 2012.

³ Dated March 13, 2015, Records Vol. III, pp. 101-139.

⁴ G.R. No. 108595, May 18, 1999.

⁵ G.R. No. 129978, May 12, 1999.

⁶ *Tatad v. Sandiganbayan*, G.R. No. 72335-39, March 21, 1988.

⁷ Crim. Cases Nos. SB-11-CRM-0452 to 0453, August 23, 2012;

In sum, accused stresses that the Ombudsman and the Office of the Special Prosecutor are barred or have lost the authority to file these instant cases due to violation of the constitutionally guaranteed right of the accused to due process and to the speedy disposition of cases against him.

On the other hand, accused Constantino anchors his Motion⁸ on a similar ground of undue delay. Accused reiterates that the delay of more than (8) years in terminating the preliminary investigation, solely attributable to the Ombudsman, constitutes unreasonable, arbitrary and oppressive delay, which clearly renders the rights to due process and to speedy disposition of cases of the accused nugatory, warranting the dismissal of these instant cases. The accused relies heavily on the very recent ruling of the Supreme Court in *Coscoluella v. Sandiganbayan*⁹, which reversed the findings of the Sandiganbayan and upheld the right of the petitioner to a speedy disposition of cases. In the said case, the High Court enunciated that it was not the petitioner's 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. It further ruled that the 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. He likewise relies on the ruling in the cases of *Duterte v. Sandiganbayan*¹⁰, and *Salonga v. Pano*¹¹ which stressed the purpose, importance and promptness of a preliminary investigation.

In its consolidated Comment/Opposition¹², the prosecution avers that there are no new issues or evidence raised by the accused, and that the main arguments in the Motions for Reconsideration were all a rehash of their earlier motions which were amply and meticulously passed upon by this Honorable Court. It advances the ruling in *Valencia v. Sandiganbayan*¹³, which settled that mere delay and/or even a total absence of preliminary investigation will not affect the validity and/or legality of the filing of information. It cites the

⁸ Dated March 9, 2015, Records Vol. III pp. 140-151.

⁹ *Coscoluella v. Sandiganbayan*, G.R. No. 191411, July 15, 2013 and *Nacionales v. Sandiganbayan*, G.R. No. 191871, July 15, 2013

¹⁰ G.R. No. 130191, April 27, 1998.

¹¹ G.R. No. L-59524, February 18, 1985.

¹² Dated April 8, 2015 Records pp. 174-180.

¹³ G.R. No. 165996, October 17, 2005.



doctrines laid down in the cases of *Corpuz v. Sandiganbayan*¹⁴, *People v. Tampal*¹⁵, *Hipolito v. CA*¹⁶, *Guerrero v. CA*¹⁷, *Dela Peña v. Sandiganbayan*¹⁸, and *Bernat v. Sandiganbayan*¹⁹, to be squarely applicable in the cases of accused Escobar and Constantino. Finally, it notes that the First Division of this Court denied a similar omnibus motion of accused Escobar containing the same issues and arguments in the case of *People v. Escobar*²⁰.

After taking a thorough review of the records of these cases, I find a cogent reason to reconsider my earlier stand. The issues averred in the Motions are not just trivial, but one involving a constitutional right that warrant a deviation from this Court's earlier findings.

The issues and arguments raised by both parties unavoidably present a contrast between the right of the people to public justice through the power of the State to investigate and prosecute people who violate its penal laws, and the right of an accused to a speedy disposition of cases, which has constitutional origins. As to what right is supreme and inferior, the determination would have to depend on the factual and unique circumstances of each case brought before a court of justice for adjudication.

As illustrated in the numerous cases relied upon by the defense and prosecution, the application clearly varies in every case. The cited cases show concrete and actual scenarios upholding the primacy and dominance of one right over the other, and *vice versa*. Essentially, those cases were adjudicated in consideration of its separate and distinct facts. A balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy disposition of cases on an *ad hoc* basis.²¹ Therefore, the balance between these rights are tilted to either side not on the sole basis of the ruling in another case, but primarily in consideration of the peculiar circumstances of each cases.



¹⁴ G.R. No. 162214, November 11, 2004.

¹⁵ G.R. No. 102485, May 23, 1995.

¹⁶ G.R. No. 108478-79, February 21, 1994.

¹⁷ G.R. No. 107211, June 28, 1996.

¹⁸ G.R. No. 144542, June 29, 2001.

¹⁹ G.R. No. 158018, May 20, 2004.

²⁰ Crim. Cases No. SB-11-CRM-0458 to 0459, June 26, 2012.

²¹ See *Corpuz*, *supra*, Note 4.

While, the cases of *Cervantes*, *Roque*, and *Coscoluella* which strongly relied upon by accused Escobar and Constantino have no exact factual milieu in the case at bar, the ruling may be applied nonetheless with respect to the existence of inordinate delay. In the case at bar, the mere fact that it took an unexplained 9 long years from the time preliminary investigation was initiated to the filing of the Information before this Court spells a whole lot of difference.

Culled for from the records, various complaints was filed with the Ombudsman on February 10, 2003. The preliminary investigation was initiated thereafter, and in just over a year on August 11, 2004 a resolution was issued finding probable cause against accused Escobar among others, and on a later date another resolution was issued on April 15, 2005 against accused Constantino, among others. Finally, a Memorandum was issued on August 8, 2011 approving the filing of Information, which was filed before this Court on May 7, 2012.

In the case of *Alvizo v. Sandiganbayan*²², the High Court provides the factors in the determination whether the right to speedy disposition of cases of an accused has been violated:

Hence, the doctrinal rule is that in the determination of whether or not that right has been violated, the factors that may be considered and balanced are the length of delay, the reasons for such delay, the assertion or failure to assert such right by the accused, and the prejudice caused by the delay. [Barker vs. Wingo, 407 U.S. 514 (1972)]; (*Emphasis and underscoring supplied*)

(1) the length of delay

There is no question as to the length of delay. This is very evident from the case records. The Ombudsman took 9 years from the time the complaints were filed on February 10, 2003 up to the time it filed the Information on May 7, 2012. Even reckoning the period up to the time the resolution was approved for filing on August 11, 2011 the delay would still be 8 years, or even if the period to be considered is from April 15, 2005 when the resolution was issued to August 8, 2011 when it was approved, still the delay of 6 years is surprisingly long.



²² G.R. No. 101689, March 17, 1993.

Needless to say, delay is not reckoned only from the filing of complaint to the resolution of the case. The cases of *Duterte* and *Tatad* taught us that the determination of inordinate delay was reckoned from the time the investigation was initiated up to the filing of information before this Court. In other words, delay is not tolled by the issuance of the resolution finding probable cause or the approval by the proper authority of the recommendation for filing of information in court.

In the recent case of *People v. Sandiganbayan*²³, the Supreme Court elucidated:

The State further argues that the fact-finding investigation should not be considered a part of the preliminary investigation because the former was only preparatory in relation to the latter; and that the period spent in the former should not be factored in the computation of the period devoted to the preliminary investigation.

The argument cannot pass fair scrutiny.

The guarantee of speedy disposition under Section 16 of Article III of the Constitution applies to *all* cases pending before *all* judicial, quasijudicial or administrative bodies. ***The guarantee would be defeated or rendered inutile if the hair-splitting distinction by the State is accepted. Whether or not the fact-finding investigation was separate from the preliminary investigation conducted by the Office of the Ombudsman should not matter for purposes of determining if the respondents' right to the speedy disposition of their cases had been violated. (Emphasis and italics supplied)***

The Ombudsman cannot rely on the fact that it took only a year to conduct the investigation and disregard the fact that it took 8 years just to file the Informations. Clearly, the delay can be considered already as inordinate, vexatious, capricious and oppressive.



(2) the reasons for the delay

²³ G.R. 188165 & 189063, December 11, 2013.

As to the reason of delay, none was offered by the Honorable Ombudsman. Though what can be deduced from the records is that on August 11, 2004 and April 15, 2005 the Ombudsman has already resolved the existence of probable cause against the accused. This period may be reasonable. However, from April 15, 2005 up to May 7, 2012, a span of 7 years, no action was taken by the Ombudsman, except for the approval of the filing of an Information on August 8, 2011 which still took 6 years. Thus, without offering a shred of explanation, the Ombudsman cannot be said to have acted with reasonable promptness in resolving the cases, and clearly caused unwarranted delay.

To emphasize, it is incumbent on the Ombudsman to prove that the delay was reasonable, or that the delay was not attributable to it.²⁴ In both regards, the Ombudsman miserably failed.

***(3) the assertion or
failure to assert such
right by the accused***

The existence or availability of a right and the enforcement or exercise of it are two different concepts. While it is true that in our jurisdiction, the failure to timely and validly invoke or exercise a right may result in waiver, estoppel or laches as the case maybe, the same cannot be applied in the case at bar. This is because under our recent jurisprudence it is not the duty of the accused as respondents in a preliminary investigation to follow up their cases, especially so when the rights involved are those guaranteed by the Constitution.

In the latest cases of *Coscoluella and Nacionales*²⁵, the High Court ruled that:

Being the respondents in the preliminary investigation proceedings, **it 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



²⁴ See *People v. Sandiganbayan*.

²⁵ See *Coscoluella v. Sandiganbayan*, G.R. No. 191411, July 15, 2013 and *Nacionales v. Sandiganbayan*, G.R. No. 191871, July 15, 2013.

promptly act on all complaints lodged before it. As pronounced in the case of *Barker v. Wingo*:

A defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process.

(Emphasis supplied; citations omitted)

As can be gleaned from the records, the accused have invoked their right to speedy disposition of cases immediately after the Informations were filed before this Court. This is the earliest opportunity for the accused to have raised such right. The non-filing of motion to resolve or similar pleadings before the Ombudsman by the accused cannot be construed as hibernating on their right. To stress, it is neither the obligation of accused as respondent to do so, nor the filing of such is required by the rules. Further, the finding of probable cause was already done as early as 2004 and 2005, as such there is nothing left to be done except for the filing of the Informations in court. Accused at that point in time will logically just wait for Informations to be filed in court. It is the Ombudsman that must actively and promptly prepare the necessary Informations, as part of its solemn mandate. Needless to say, that even without the filing of a motion or pleading from the accused, the Ombudsman is duty bound to act. It would be absurd for a respondent or any ordinary person to file a reminder before the Honorable Ombudsman to do its job, and failing to do so, the respondents will suffer the dire consequences of the Ombudsman's failure to act.

I cannot recognize the stand of the Ombudsman deflecting the fault to the accused for doing what is logically incumbent upon them, which is to wait, and in turn cover for its own ineptitude in sleeping at the switch.

***(4) the prejudice caused
by the delay***

The Supreme Court in *Corpuz* illumined:

x x x 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; citations omitted*)

Further, in the recent pronouncement in *Coscoluella and Nacionales*, the High Court ruled that:

Fourth, the Court finally recognizes the prejudice caused to the petitioners by the lengthy delay in the proceedings against them.

Lest it be misunderstood, 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 the 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 the anxiety and expense of litigation or, if otherwise, of having his guilt determined within the 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. x x x (*Emphasis, Italics and underscoring supplied*)

As early as 2005, Informations against the accused Escobar were already filed. Having been formally charged before this Court at that year, the accused could not have guessed that after 7 years another information will again be filed arising from the same Ombudsman resolution. For accused Constantino, he could not have guessed that after charges were filed on 2005 against his co-respondents, he will suddenly be charged only after a span of 7 years. This is not only unfair, but also prejudicial against the right of the accused. What is

puzzling is the fact that the Ombudsman has not offered any shred of explanation for the inordinate delay, which instead kept on harping that accused have not invoked their right to speedy disposition at earlier time.

Thus, prejudice certainly exists for accused Escobar to be charged on a piecemeal basis. Having to endure the rigorous, stressful and expensive litigation for the charges filed in 2005 and to begin anew after the lapse of 7 years for another charge filed in 2012 is already beyond the bounds of fair play. For accused Constantino, the impending unrest as well as the tactical disadvantages carried by the passage of time is clearly prejudicial to him. In the case of *People v. Sandiganbayan*²⁶, the Supreme Court explained:

We should frown on the reason for the inordinate delay because **the State would thereby deliberately gain an advantage over the respondents during the preliminary investigation.** At no time should the progress and success of the preliminary investigation of a criminal case be made dependent upon the ratification of a treaty by the Senate that would provide to the prosecutorial arm of the State, already powerful and overwhelming in terms of its resources, an undue advantage unavailable at the time of the investigation. **To allow the delay under those terms would definitely violate fair play and nullify due process of law – fair play,** because the field of contest between the accuser and the accused should at all times be level; and due process of law, because no less that our Constitution guarantees the speedy disposition of the case.
(Emphasis supplied)

The right of the accused to a speedy disposition of their cases is enshrined in the Bill of Rights. As a right specially intended to protect any person against the vast powers of the State, it may be invoked at any stage, phase or time. This right is the only weapon granted by the Constitution to any ordinary person facing the full force of the prosecuting arm of the State to shield themselves against vexatious, capricious, and oppressive delay in the disposition of cases. Needless to say, that the State, considering the enormous resources and the overwhelming power it wields compared to the infinitesimal resources of a single person, is the one burdened to act promptly and to actively pursue the speedy administration of justice. The incompetence of the

²⁶ *Supra*, Note 23.

Ombudsman resulting to inordinate delay should not make the accused suffer further, their right to liberty and property having hanged in the balance the moment a criminal complaint was filed against them.

It is likewise prudent to take notice of the fact that numerous cases arising from the very same Ombudsman resolution in these cases were filed before Us, and raffled to the different divisions of this Court. To cite a few, four cases docketed as Criminal Cases Nos. 28293, 28328, 28333 (all with the First Division), and 28326 (before the Fourth Division) were filed in July 2005. Also, the case of *People v. Escobar* cited by the Ombudsman in its Comment/Opposition was docketed as Criminal Cases No. SB-11-CRM-0458 to 0459, before the First Division. This Court's Division however as a rule, is not bound by the rulings of the other Divisions, and the adjudication of cases involving the right to speedy disposition of cases must be done based on their peculiar facts and circumstances, and must be approached on an *ad hoc* basis.

On the other hand, in the fairly and similarly situated cases of *People vs. Marcelo* docketed as *Criminal Case Nos. SB-11-CRM-0452 to 0453*, which stemmed from the very same resolution in the cases at bar, dated August 11, 2004 and the Information being only filed in 2011, this Court's Division, upon motion, dismissed the cases for violation of the right of the accused to speedy disposition of cases in three (3) separate resolutions dated August 23, 2012 (Penned by Villaruz, Jr., PJ, Chairperson; Concurred by Martires, J., and Quiroz, J.), May 24, 2013 (Penned by Villaruz, Jr., PJ, Chairperson; Concurred by Martires, J., and Quiroz, J.),, and October 1, 2013 (Penned by Hernandez, J., Chairperson; Concurred by Martires, J., and Cornejo, J.), that were invoke by three different accused on separate occasions.

Certainly, it can never be overly emphasized and stressed that the right of the accused to speedy disposition of cases in these cases outweighs the right of the State to prosecute. The dismissal of these cases is not a reward or premium in favor of the accused for the neglect of the Ombudsman to perform its mandate, but rather an activation of the protection afforded to the accused by no less the fundamental law of the land. The right the People and the State to seek public justice is not inherent, unlimited or absolute for the Constitution sets strict limitations and guidelines, which among them are intended precisely and exclusively to prevent the abuse of the immense powers wielded

Dissenting Opinion

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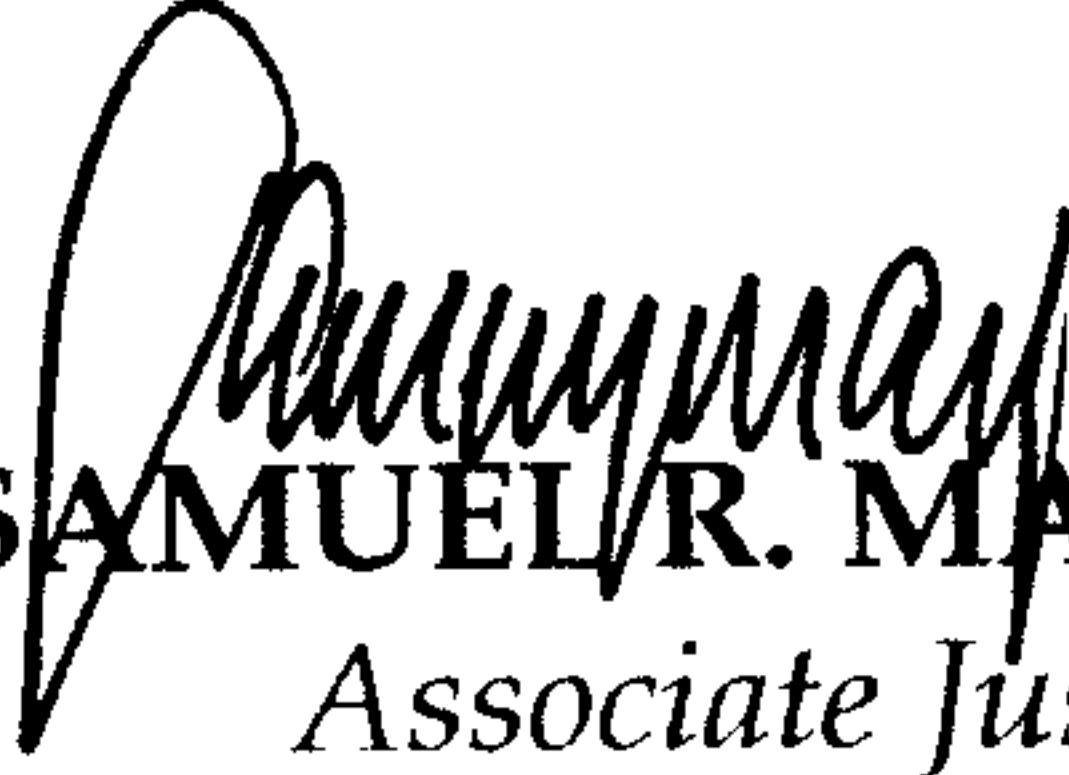
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by the government and to protect the weak and powerless individuals. Logically, the balance must be tilted to uphold the individual rights of the accused to speedy disposition of cases.

Thus, guided by the prevailing principle that cases involving the right to speedy disposition of cases must be approached on an *ad hoc* basis and in view of the peculiar circumstance of these cases, I am inclined to grant the motions for reconsideration and vote to the dismissal of these cases.


SAMUEL R. MARTIRES
Associate Justice