



REPUBLIC OF THE PHILIPPINES  
SANDIGANBAYAN  
Quezon City

Fifth Division

PEOPLE OF THE  
PHILIPPINES,  
*Plaintiff,*

CRIMINAL CASE NOS. SB-16-  
CRM-0134 and 0135

FOR: Violation of Secs. 3(e) and (g)  
of R.A. 3019

- versus -

*Present:*  
LAGOS, J., Chairperson,  
CRUZ\*, and  
MENDOZA-ARCEGA, JJ.

*Promulgated:*

May 31, 2017 *led*

ZENAIDA S. AZCUNA, ET  
AL.,

*Accused.*

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RESOLUTION

**LAGOS, J.:**

For resolution is accused Alberto T. Aquino's *Motion to Dismiss on Jurisdictional Grounds*<sup>1</sup> dated May 5, 2017 and the prosecution's *Comment/Opposition*<sup>2</sup> thereto, dated May 23, 2017.

As grounds in support of his motion, movant asserts:

1. By its **March 6, 2017** Resolution, this Honorable Court has found that there was inordinate delay in the preliminary

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\*Designated as Special Member, per Administrative Order No. 025-2017 dated February 1, 2017.

<sup>1</sup> Records, Vol. 2, p. 278.

<sup>2</sup> *Id.*, p. 309.

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investigation that violated the constitutional rights of Bonales [sic] *et al.* to speedy disposition of their cases and due process and thereby dismissed these cases as to them.<sup>3</sup>

2. The Supreme Court has ruled in *Torres vs. Sandiganbayan* that an accused who failed to participate in the preliminary investigation (like the herein accused) has the same rights to speedy disposition of cases and to due process. Thus, these cases should likewise be dismissed as to the herein accused. (Emphasis supplied.)

Movant points out in particular that, “Candidly, the herein accused earlier filed a motion to dismiss the above-entitled cases on the ground of inordinate delay in the preliminary investigation but this was denied by the Resolution dated **July 18, 2016** as the Honorable Court ruled that the herein accused cannot claim to have been oppressed or vexed by any delay in the preliminary investigation that he did not take part in, **rendering unnecessary a ruling on the issue as to whether or not there was inordinate delay in the preliminary investigation.** xxx” (Emphasis supplied.) In the said **July 18, 2016** Resolution, this Court held, “In sum; movant totally never had any participation, as respondent or in any other capacity whatsoever, in the preliminary investigation of these cases. Whether he avoided the preliminary investigation or was simply unaware of the proceedings, is right now unascertainable. To presume that he secreted himself to avoid it would be pure conjecture and unfair to him. However, by parity or reasoning, how could he now claim to be a victim or subjected to “vexatious, capricious and oppressive delays” when he was not part of the whole process? xxx Neither can malice be presumed against the Ombudsman investigator(s) in these cases. On the contrary, good faith – the honest intention to avoid taking advantage of another, is presumed.”<sup>4</sup> Coincidentally, the prosecution refers to the same ruling of this Court in support of its *Comment/Opposition*.

Movant asserts that:

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2. After the promulgation of the July 18, 2016, Resolution, certain decisions applicable to the herein accused and in these cases

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<sup>3</sup> The March 6, 2017 Resolution involved a motion to dismiss filed jointly by accused Marietes Bunga Bonalos, Aurora Bantilan Alon, Marcial Ocaj Lamoste, Homer Yumol Lariba, and Alicia Maglente Penales. (Records, Vol. 2, p. 106.)

<sup>4</sup> Further, We then ruled that, “Most appropriate in this instance is the pronouncement of the Supreme Court in the *Dela Pena* case, cited by the prosecution, due to the peculiar situation of movant in that ‘[a] mere mathematical reckoning of the time involved’ at the preliminary investigation is not sufficient,’ Movant was not privy to the ‘time involved’ at the preliminary investigation and, thus, not competent to assail the same. He cannot vicariously tack in his favor such alleged delay strictly by reckoning the mere lapse of time involved.” (Records, Vol. 1. p. 374.) xxx “Although the notice to the movant during preliminary investigation failed to reach him, that alone should not stifle the entire preliminary investigation conducted by the Ombudsman.” (*Id.*, p. 375.)

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had been rendered that also justify the dismissal of these cases as to the herein accused, namely:

First. On October 5, 2016, the Supreme Court rendered its ruling in **Lamberto Torres vs. Sandiganbayan** (hereinafter **Torres**)<sup>5</sup> that an accused (like herein accused) who was unable to participate in the preliminary investigation is not unaffected by the oppressive and vexatious delays in the preliminary investigation and is entitled to appropriate relief by way of dismissal of the case against him for violation of this right to speedy disposition of the case and to due process. (Underscoring supplied.)

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Second. On March 6, 2017, the Honorable Court, on motion of the other accused Bonales [sic] et al. issued a Resolution holding that there was inordinate delay in the preliminary investigation of these cases in violation of the latter's constitutional rights to speedy disposition of their cases and to due process and such violation rendered the office of the Ombudsman (OMB) without further authority to try the accused. xxx

In its *Comment/Opposition*, the prosecution acknowledged forthrightly, that "[t]his second Motion to Dismiss was brought about because of this Court's Resolution dated 06 March 2017 finding inordinate delay in the preliminary investigation against the other accused Bonales [sic], et al."; that "[a]ccused Aquino now, in essence, claims that what is good for his co-accused Bonales [sic], et al. is also good for him and must be equally applied or similarly extended to him." Nevertheless, the prosecution insists that "accused Aquino failed to participate in the preliminary investigation. Thus, there was no right violated on his part."

The Court finds accused's motion to dismiss impressed with merit.

In the *Lamberto Torres vs. Sandiganbayan* case, as against therein respondents' claim that "no prejudice was caused to petitioner from the delay in the second set of investigations because he never participated therein and was actually never even informed of the proceedings anyway" (underscoring supplied), the Supreme Court held, that:

Adopting respondents' position would defeat the very purpose of the right against speedy disposition of cases.<sup>6</sup> Upholding the same would allow

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<sup>5</sup> G.R. Nos. 221562-69.

<sup>6</sup> Underscoring supplied. To give legal cogency and proper context to the phrase "right against speedy disposition of cases", it is believed to mean simply the "right to speedy disposition of cases," as commonly understood, not against it.



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a scenario where the prosecution may deliberately exclude certain individuals from the investigation only to file the necessary cases at another, more convenient time, to the prejudice of the accused. Clearly, respondents' assertion is subject to abuse and cannot be countenanced.

In the present case, petitioner has undoubtedly been prejudiced by virtue of the delay in the resolution of the cases filed against him. Even though he was **not initially included as a respondent** in the investigation conducted from 1996 to 2006 pertaining to the "overpricing of medicines" procured through emergency purchase, he has already been deprived of the ability to adequately prepare his case considering that he may no longer have any access to records or contact with any witness in support of his defense. This is even aggravated by the fact that petitioner has been retired for fifteen (15) years. Even if he was never imprisoned and subjected to trial, it cannot be denied that he has lived under a cloud of anxiety by virtue of the delay in the resolution of his case. (Underscoring supplied.)

The therein respondents' arguments that "the affidavit complaint filed on February 22, 2006, which resulted in the filing of the August 5, 2011 Informations, was based on a new investigation" and that "the preliminary investigations conducted against petitioner in the different periods (from 1996 to 1999 and from 2006 to 2011) involved different transactions pursuant to the various findings embodied in the COA Special Audit Report of 1993," did not sway or persuade the Supreme Court to rule otherwise.

The *Torres* case sheds a new light of deliverance on movant's personal crusade to free himself from the travail and tribulation resulting from these cases. Likewise, the *Torres* case brings new guidance for the Court, particularly with respect to its ramifications on the broader issues concerning inordinate delay and the speedy disposition of cases, as are involved in these cases. It is a new 'case law' on the subject favorable to the accused, hence, movant may validly invoke the same for his benefit. In its *Comment/Opposition*, the prosecution did not address, one way or another, the doctrinal import and impact of the *Torres* case and particularly its applicability, one way or another, with respect to the peculiar situation of the movant, accused Aquino. Instead, it anchored its arguments mainly on whether there was inordinate delay or not in these cases, citing various cases dealing on the issue. The issue of inordinate delay is already a foregone conclusion based on this Court's ruling on the *Bonalos, et al.*'s motion to dismiss, which movant has aptly referred to. It is 'water over the dam.' This Court's pronouncement regarding prejudice to the other accused caused by inordinate delay in these cases equally applies to movant in light of the *Torres* case.

It is a fact that these cases have been ordered dismissed by this Court as to the rest of the other accused (except as to the accused Zenaida Suing Azcuna, who has been found suffering from a severe stage "Alzheimer disease dementia" and for which reason the proceedings herein remain indefinitely suspended as to her), due to inordinate delay in the preliminary investigation and filing of these cases and, thus, held to be in violation of the accused's

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constitutional right to speedy disposition of cases and to due process. Such was the ruling of the Court in its **March 6, 2017** resolution earlier referred to by movant.


The March 6, 2017 Resolution of the Court provides, in part: “As alleged in the information, the offenses or transactions involved in these cases occurred in year 2005. Thus, it has been 12 years since, more or less. It can, therefore, with plausible validity put to question the ability of the remaining accused to adequately prepare their defense and recall, either to affirm, confirm or deny accurately, those events which transpired that long time ago. Neither can they hope for help in recalling, if not reliving, the past from the principal accused, Zenaida Azcuna, under whose leadership as then mayor of the Municipality of Lopez Jaena, Misamis Occidental, they served, and for which reason have been implicated in these cases. The delay We have reckoned in these cases cannot be considered as ‘ordinary and inevitable.’ Rather, it was in its totality unjustified and unfathomable. It is gross and inordinate from what is ‘reasonably attributable to the ordinary process of justice.’ xxxTo describe it, it is vexatious, capricious, and oppressive, to say the least, in light of the inordinate delay in the investigation, the fate that has befallen the principal accused, and the bleak uncertainties now faced by the remaining accused due to passage of time.”

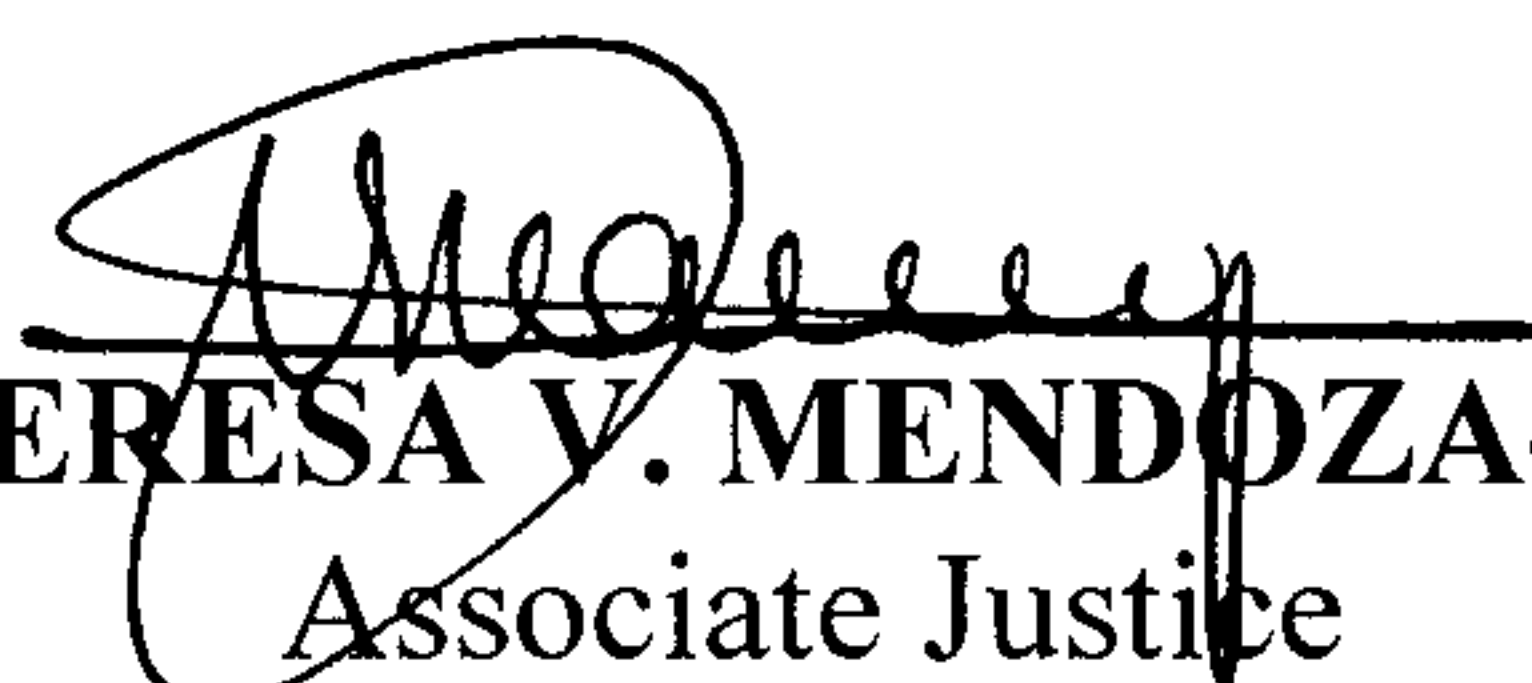
**WHEREFORE**, the accused’s *Motion to Dismiss* is **GRANTED** and the instant cases are **DISMISSED** as to accused-movant Alberto T. Aquino. The Hold Departure Order issued against him, in connection with these cases, are hereby ordered **CANCELLED**. By copy of this resolution, neurologist Dr. Michelle M. Anlacan is ordered to immediately submit to the Court her follow-up report regarding the monitoring of the cognitive functions of accused Zenaida Suing Azcuna.

**SO ORDERED.**

  
**RAFAEL R. LAGOS**  
Associate Justice  
Chairperson

**WE CONCUR:**

  
**REYNALDO P. CRUZ**  
Associate Justice

  
**MARIA THERESA V. MENDOZA-ARCEGA**  
Associate Justice