



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

First Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CASE NO. **SB-17-CRM-0292**
For: Violation of Sec. 3(g), RA 3019

- versus -

NINIA P. LUMAUAN, ET AL.,
Accused.

Present:

DE LA CRUZ, J., *Chairperson*
ECONG, J. &
FERNANDEZ*, JJ.

Promulgated on:

JUN 21 2017

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RESOLUTION

DE LA CRUZ, J.

This resolves accused Fausta L. Tanguilan's *Motion To Quash/Dismiss Information*, dated April 10, 2017, and the prosecution's *Comment/Opposition*, dated April 25, 2017, thereto.


Accused Tanguilan moves for the quashal/dismissal of the instant Information on two (2) grounds:

1. That the facts charged in the Information do not constitute an offense; and

2. The inordinate delay on the part of the Ombudsman in the conduct of the preliminary investigation in this case violated her constitutional right to speedy disposition of her case.

This case traces its roots from a Joint Affidavit-Complaint, dated March 4, 2011, filed by Alexander Mangupag, Roman S. Domingo, Vimar G. Auayang, Carlos C. de Ramos and Francisco F. Cabrera on March 8, 2011 before the Office of the Ombudsman

*Sitting as Special Member of the First Division as per Administrative Order No. 009-2017, dated January 11, 2017.

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(OMB) against respondents therein Joseph L. Rios, Romeo Corral, Faustina Tanguilan, Macaria Duldulao and Ninia P. Lumauan. Except for respondent Rios, who passed away during the preliminary investigation, the OMB found probable cause to indict accused Tanguilan, Duldulao and Lumauan for violation of Section 3(g) of RA 3019, and accused Corral for violation of Section 3(i) of the same Act.

In a Resolution promulgated on May 8, 2017, this Court, upon motion of Corral, dismissed his case (Criminal Case No. SB-17 CRM-0291) for violation of his right to speedy disposition of his case. In that Resolution, the Court found the antecedent facts as follows:

In 1985, the MTWD acquired a parcel of land located in Barangay Buntun, Tuguegarao City, Cagayan where the water pumping station (Pumping Station No. 2) was constructed. The construction was completed in 1987. Distribution pipes and power transmissions were then installed in neighboring properties in order to connect Pumping Station No. 2 to its main lines. One of the lands affected in the construction of the distribution pipes and power transmission lines is the land owned by accused and his spouse, Lorita Corral.

In December 2007, or ten (10) years after the construction of the pumping station, Lorita Corral demanded that the distribution pipes and transmission lines traversing her property be relocated. When it was learned during the meetings of the Board of MTWD with Acting General Manager Lumauan that the purchase of Corral's affected property is not an option, the possibility of lease was discussed. The Board then directed the Bids and Awards Committee (BAC) of MTWD to assist in the determination of the amount of the rent of Corral's affected property. The BAC then asked its Technical Working Group (TWG) to conduct a study for the purpose of recommending the amount of the lease/rent. The TWG submitted its recommendation to the BAC who in turn likewise submitted its recommendation to the Board. Thus, Board Resolution No. 2009-0114 dated September 2, 2009 was passed by the Board of Directors of MTWD, the pertinent portion of which states:

"NOW THEREFORE, for and in consideration of the foregoing premises, upon motion by Director L. Rios and fully seconded by Director Macaria M. Duldulao, BE IT RESOLVED AS IT IS HEREBY RESOLVED, to approve the payment of monthly rental in the amount of Thirteen Thousand Nine Hundred Eight Pesos for the property of Director and Ms. Corral at Buntun, Tuguegarao

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City, that was traversed by MTWD pipes and high voltage wire to commence on December 2007.”

A Contract of Lease was then executed between MTWD and Ms. Corral for a period of five years. On December 22, 2010, a check in the amount of Five Hundred Fourteen Thousand, Five Hundred Ninety-Six Pesos (Php514,596.00) was issued in favor of Lorita Corral. On August 31, 2011, a Notice of Disallowance was issued by COA and demanded that Ms. Corral return the amount paid to her. The amount of the rent was returned on September 17, 2011, and the contract was then rescinded on October 5, 2011.

The complaint-affidavit dated March 4, 2011 was filed on March 8, 2011 against the members of the Board of MTWD and its Acting General Manager. The Office of the Ombudsman issued a resolution finding probable cause against all the respondents on March 23, 2016, for violation of Sec. 3(i), R.A. No. 3019 against accused Corral, and for violation of Sec. 3(g), R.A. No. 3019 against the rest of the respondents. The Ombudsman approved the findings of the investigating prosecutor on April 5, 2016. xxx.

Prior to the March 23, 2016 Resolution, the Deputy Ombudsman for Luzon approved the resolution of the investigating prosecutor on finding probable cause against accused on October 20, 2014. The motion for reconsideration filed by accused was also denied by the said Deputy Ombudsman in 2015. Because the accused involved in the preliminary investigation are high ranking officials and the case is cognizable by the Sandiganbayan, the Office of the Ombudsman issued the March 23, 2016 Resolution to replace the earlier (2014) Resolution approved by the Deputy Ombudsman for Luzon.

Accused Tanguilan asserts that her right to speedy disposition of her case has been violated as it took the OMB a protracted period six (6) years to conduct the preliminary investigation as shown by the following timeline:

March 8, 2011 – The Joint Complaint Affidavit, dated March 4, 2011 was filed against accused Tanguilan and others before the OMB.

September 12, 2011 – Accused Tanguilan and her co-respondents therein filed their counter-affidavits.

April 20, 2012 – Date of Resolution finding probable cause against accused Tanguilan, etc.

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November 14, 2014 – Accused Tanguilan filed a motion for reconsideration to the April 20, 2012 Resolution.

January 20, 2015 – The OMB resolved the motion for reconsideration filed by accused Tanguilan and her co-accused.

April 10, 2015 – The OMB issued an Order *motu proprio* recalling its April 20, 2012 and January 20, 2015 Resolutions.

May 3, 2016 – The OMB issued Resolution, dated March 23, 2016 finding probable cause against the accused.

February 24, 2017 – The Information, dated July 14, 2016 was filed before the Sandiganbayan.

The prosecution counters that this case was not attended with vexatious, capricious and oppressive delay. It explains that it took Deputy Ombudsman (DO) for Luzon Gerard A. Mosquera two (2) years to approve on October 20, 2014 the Resolution, dated April 20, 2012, because he assumed office in 2012 after the Resolution was already drafted. Upon his assumption, he was confronted with numerous orders, decisions, resolutions, etc. for his review and approval. He could not be expected to perfunctorily affix his signatures on these documents if only to expedite their release. This was in addition to his administrative concerns being the head of the OMB for the whole of Luzon.

The prosecution further reasons that the Order dated April 10, 2015 was issued to recall Resolution, dated April 20, 2012, and Joint Order, dated January 20, 2015, because the respondents were misclassified as low-ranking officers when in fact, pursuant to Item 1(g), Section 4(A) of PD No. 1606, as amended by RA Nos. 7975 and 8249, presidents, directors or trustees or managers of government-owned or controlled corporations are classified as high-ranking officials over whom the Sandiganbayan has jurisdiction. This being the case, it is the Ombudsman who should approve the Information as provided in Section 5, Rule II of Administrative Order No. 07. This Order was approved by DO Mosquera on September 1, 2015.

Finally, the prosecution maintains that the accused in all her pleadings neither raised the issue on speedy disposition of her case

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nor moved for its early resolution. On this point, the prosecution posits that the pronouncement in *Coscolluela v. Sandiganbayan*,¹ issued by the Second Division of the Supreme Court stating that it was not the duty of the petitioners to follow up on the prosecution of their case could not have overturned the principle laid down by the Supreme Court *en banc* that the right to speedy disposition of a case must be seasonably asserted.² Article VIII, Section 4(3) of the Constitution provides in part that “no doctrine or principle of law laid down by the Court in a decision rendered *en banc* or in division may be modified or reversed except by the Court sitting *en banc*.”

The Court finds for accused Tanguilan.

The instant case developed from the same transaction and became the subject of a similar preliminary investigation as the case of *People v. Romeo D. Corral*,³ which upon motion of the accused, the Court dismissed on the ground of violation of his right to speedy disposition of his case. In fact, the arguments contained in the prosecution’s comment/opposition to the present motion to quash/dismiss are simply a reiteration or rehash of its *Comment and/or Opposition*, dated March 24, 2017, to accused Corral’s *Motion to Quash Information and/or Dismiss the Case*, dated March 13, 2017. The Court sees no cogent reason why the holding in *Corral* shall not be made to apply in this case. Thus, the Court reiterates:

It is settled that the preliminary investigation of this case conducted by the Office of the Ombudsman was a few days short of six years. The purpose of preliminary investigation is to secure the innocent against hasty, malicious and oppressive prosecution, and to protect him from an open and public accusation of crime, from the trouble, expense and anxiety of a public trial, and also to protect the state from useless and expensive trials.⁴

It is incumbent upon this Court to determine whether or not the almost six years of preliminary investigation constitutes inordinate delay.

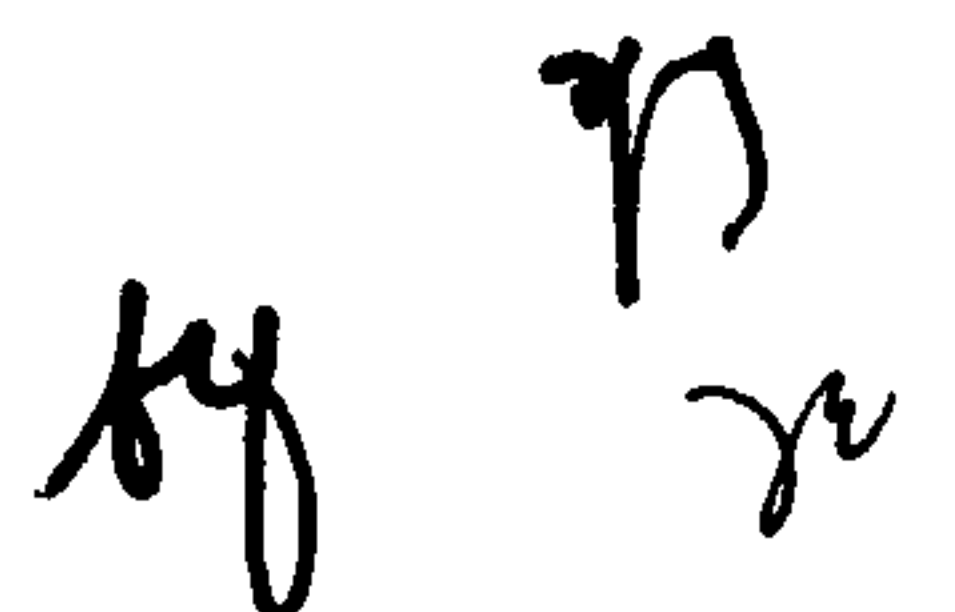
This Court answers in the affirmative.

¹ 701 SCRA 188

² *Alvizo v. Sandiganbayan* 220 SCRA 55; *Dela Peña v. Sandiganabayan*, 360SCRA 478; *Guiani v. Sandiganabayan*, 386 SCRA 436; *Gaas v. Mitmug*, 553 SCRA 335

³ *Supra*

⁴ *Hashim v. Boncan*, 71 Phil. 216, January 13, 1941



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In *People v. Sandiganbayan* (Fifth Division) ⁵, the Supreme Court laid down the factors to be considered in the determination of whether there is inordinate delay. It said:

The concept of speedy disposition is relative or flexible. A mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case. Hence, the doctrinal rule is that in the determination of whether that right has been violated, the factors that may be considered and balanced are as follows: (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.

The concept of inordinate delay is not just a determination of the length of time for the Office of the Ombudsman to complete the preliminary investigation. In other words, a mere delay in the conclusion of the preliminary investigation within a given period is not enough to constitute delay. For a court to consider the delay as inordinate, the said delay must be for a considerable length of time and without any justifiable reason. It is also material for accused to invoke his right to the speedy disposition of cases against him and that he must show that he was prejudiced by the prosecution's delay.

We now proceed to apply the test in this case to determine if there was inordinate delay before the Office of the Ombudsman, as alleged by the accused.

Length of Delay. From the table presented below, it is clear that it took almost 6 years for the Office of the Ombudsman to complete the preliminary investigation.

Date	Case Event/Incident/Action of the Office of the Ombudsman	Time Lapsed
March 8, 2011	Filing of Complaint against members of the Tuguegarao Water District Board and Acting General Manager	
July 7, 2011	Order directing Respondents to file their respective counter-affidavits	3 months and 29 days
September 12,	Counter-affidavits	

⁵ G.R. Nos. 199151-56, July 25, 2016

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2011	were received (after respondents sought extension of time to file the same)	
November 17, 2011	Motion to Admit Supplemental Counter-affidavit filed	
December 1, 2011	Reply affidavit filed by Complainants was received by OMB	
April 20, 2012	Resolution finding probable cause was prepared	4 months and 20 days (from the time issues were joined)
October 20, 2014	Deputy Ombudsman for Luzon approved the April 20, 2011 Resolution	2 years and 6 months (from April 20, 2012)
January 20, 2015	Joint Order denying the Motions for Reconsideration filed by respondents	3 months (from approval of Resolution finding probable cause)
February 11, 2015	Deputy Ombudsman for Luzon approved the Joint Order	22 days (to approve the Joint Order submitted)
April 10, 2015	Order recalling the Resolution finding probable cause and the Joint Order	
September 1, 2015	Order approving the recall of the above described Resolution and Joint Order	
March 23, 2016	Resolution in lieu of the Resolution dated April 20, 2012 was issued	
April 5, 2016	Approval by the Ombudsman of the March 23, 2016 Resolution	
June 30, 2016 (June 21, 2016 for accused	Order denying the Motion for Reconsideration	

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Tanguilan)		
July 5, 2016 (July 1, 2016 for accused Tanguilan)	Approval of the Order denying the Motion for Reconsideration	1 year 4 months and 24 days (20 days for accused Tanguilan) from (DO's approval of the Joint Order)
	Filing of the Information before the Sandiganbayan	




Therefore, based on the presentation of the prosecution of the timeline of this case, it is obvious that the final approval of the resolution finding probable cause took the longest, as it took the approving officer 2.5 years to affix his signature and approve the already completed resolution.

The second longest period where the Office of the Ombudsman spent its time with is when it had to make anew its finding of probable cause. It took the said office 1 year and 4 months to have the Ombudsman approve a Resolution finding probable cause.

From these 2 case events alone, it took the Office of the Ombudsman a total of 3 years and 10 months, or almost 4 years to complete. Certainly, this is within the concept of delay that is frowned upon by law.

Reason for delay. The prosecution reasons that the first "choke point" or stall in the case processing at the Office of the DO-Luzon was because when the investigating prosecutor submitted the resolution for approval, the DO-Luzon, who was just newly appointed, was "confronted with numerous orders, decisions, resolutions, etc. for his review and approval" in addition to the "administrative concerns that he had to attend to."

The appointment of a new DO-Luzon could not be considered as justification for the delay. Perhaps, a new head of office could be given a few months to settle down and that would be understandable. But to solely attribute the delay of two and a half (2 and 1/2) years because the DO is just newly appointed would be absurd, considering that a Deputy Ombudsman has a fixed term of seven (7) years. Following the argument of the prosecution, it

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would mean that whoever is appointed needs around one-third (1/3) of his entire term to adjust to his office.

The second major stall is because the records of this case had to be forwarded to the Office of the Ombudsman after the DO-Luzon recalled his approval of the resolution finding probable cause because he (DO-Luzon) had no authority to approve such resolution since the respondents were considered high ranking officials and therefore, the authority to make such approval rests with the Ombudsman and not with the DO-Luzon. It is really ironic that the case was pending for 2 and ½ years for the DO-Luzon to approve and for the same DO-Luzon to withdraw his approval because he had no authority to make such approval in the first place.

Such lapses are understandable especially if the sheer volume of the cases that flood the Office of the Ombudsman is taken into consideration. This is in addition to the highly centralized procedure in the office where the Deputy Ombudsman is tasked to review, sign, and approve or recommend approval of administrative and criminal cases as well as administratively oversee the entire office operation.

But the Office of the Ombudsman was created to ensure that all public officials will be held accountable for their actions. Because of its purpose, the office is inherently powerful. The only weapon a respondent government official has against this powerful office is his or her right to invoke his constitutional rights including the right to the speedy disposition of cases against him. Thus, once a complaint is lodged with the Office of the Ombudsman, the clock ticks and the said Office is burdened to dispose of the case with dispatch.

Assertion of such right by the accused. Accused could not be considered to have waived their right to speedy disposition of their case. As a matter of fact, he made this assertion at first opportunity to do so---i.e., he filed the motion to quash/dismiss on the ground of inordinate delay immediately after the Information against them were filed.

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Accused Tanguilan said in her motion that she was unduly prejudiced by the unjustified delay, without stating some specifics. This notwithstanding, *Coscolluela* has instructed that prejudice should be considered in light of the interest of the accused that the speedy trial was designed to protect. Thus:

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Being the respondents in the preliminary investigation proceedings, 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. As pronounced in the case of *Barker v. Wingo*:⁶

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.⁷

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...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 obliquy.⁸

In the more recent case of *Almeda v. Office of the Ombudsman (Mindanao)*,⁹ the Supreme Court again emphasized that:

"It is the duty of the prosecutor to speedily resolve the complaint, as mandated by the Constitution, regardless of whether the (respondent) did not object to the delay or that the delay was with his acquiescence provided that it was not due to causes directly attributable to him." Failure or inaction may not have been deliberately intended, yet unjustified delay nonetheless causes just as much vexation and oppression. Indeed, delay prejudices the accused or respondent — and the State just the same.



Considering the Court's finding that accused Tanguilan's right to speedy disposition of her case was violated because the preliminary investigation took a protracted period to complete, it is

⁶ 407 U.S. 514 (1972)

⁷ *Coscolluela v. Sandiganbayan*, supra, p. 199

⁸ *Id.*, p. 200

⁹ G.R. No. 204267. July 25, 2016

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no longer necessary to address the issue on the insufficiency of the Information.

WHEREFORE, in light of all the foregoing, the instant case is hereby ordered **DISMISSED** for violation of the right of accused Fausta L. Tanguilan to a speedy disposition of her case.

Considering that this dismissal is tantamount to an acquittal, the hold departure order issued against accused Tanguilan by reason of this case is hereby **LIFTED**, and the bond she posted is ordered **RELEASED**, subject to the usual accounting and auditing procedures.

SO ORDERED.


EFREN N. DE LA CRUZ
Chairperson/Associate Justice

WE CONCUR:


GERALDINE FAITH A. ECONG
Associate Justice


BERNELITO R. FERNANDEZ
Associate Justice