

Republic of the Philippines  
**SANDIGANBAYAN**  
Quezon City

**SPECIAL THIRD DIVISION**

**PEOPLE OF THE  
PHILIPPINES,**

**Plaintiff,**

**- versus -**

**ROEL RAGAY DEGAMO et  
al.,**

**Accused.**

**Criminal Case No. SB-16-  
CRM-0467-0478**

For: Violation of Republic Act No.  
3019, Section 3 (e) and  
Violation of Art. 217, in  
relation to Art. 171 & 48 of  
the Revised Penal Code, as  
amended (Malversation of  
Public Funds)

Present:

**CABOTAJE-TANG, P.J.,**

Chairperson,

**FERNANDEZ, S.J. J.** and

**TRESPESES, J.<sup>1</sup>**

Promulgated:

July 13, 2017

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**R E S O L U T I O N**

**CABOTAJE-TANG, P.J.:**

For resolution are the following motions filed by accused  
Roel R. Degamo, Danilo C. Mendez and Teodorico G. Reyes:

1. *Motion for Reconsideration with Motion to Hold in  
Abeyance Further Proceedings of the Cases* dated February 3,  
2017;<sup>2</sup>
2. *Motion to Dismiss* dated March 21, 2017;<sup>3</sup> and
3. *Manifestation and Motion* dated May 3, 2017.<sup>4</sup>

<sup>1</sup> As per *Administrative Order No. 0227-2016* dated July 26, 2016

<sup>2</sup> p. 45, Vol. II, Record

<sup>3</sup> p. 170, Vol. II, Record

<sup>4</sup> p. 200, *id*

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**I.**

**Accused-movants' Motion for Reconsideration with Motion to Hold in Abeyance Further Proceedings of the Cases dated February 3, 2017**

Accused-movants pray for a reversal of the Court's *Resolution* promulgated on January 24, 2017, which found the existence of probable cause in these cases. Their motion for reconsideration is anchored on the following grounds:

1. The totality of the prosecution's evidence cannot well-engender probable cause against the accused as charged; and
2. The confluence of subsequent events negates the existence of probable cause for indictment against the accused.<sup>5</sup>

On February 17, 2017, the prosecution submitted its *Opposition with Motion Re Accused Degamo, Mendez and Reyes' Motion for Reconsideration with Motion to Hold in Abeyance Further Proceedings of the Cases* dated February 16, 2017.<sup>6</sup> According to the prosecution, the filing of the subject motion violated the three-day notice rule under Section 4, Rule 15 of the Rules of Court. It claims that it received a copy of the said motion in the afternoon of February 7, 2017. The accused-movants, however, requested that their motion be heard on February 9, 2017. "*While the motion should be considered as a mere scrap of paper, considering the violation of afore-said rule, the prosecution, nonetheless, addresses the allegations of the accused and vehemently opposes their motion.*"<sup>7</sup>

The prosecution further asserts that the issues and arguments that the accused "*raised in their motion are evidentiary in nature that are best amplified during the trial.*"<sup>8</sup> "*In relation to the imputation of the insufficiency of the Informations*

<sup>5</sup> p. 1, *Motion for Reconsideration*, *id*

<sup>6</sup> p. 77, *id*

<sup>7</sup> Par. 3, p. 2, *Opposition with Motion*, p. 78, *id*

<sup>8</sup> Par. 5, *id*, *id*

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*for Malversation thru Falsification, the same is improper in a motion for judicial determination of probable cause, more so in a motion for reconsideration as a result of the first motion's denial.*<sup>9</sup> The prosecution further posits that the "Informations passed the completeness and sufficiency tests as they contained the ultimate facts that will allow the accused to prepare for his defense."<sup>10</sup> Anent the invocation again by the accused-movants of the Decision of the Court of Appeals in CA-G.R. SP. No. 146151 (hereinafter, "CA Decision"), the prosecution claims that "this issue has been settled in the Resolution with the supporting jurisprudence."<sup>11</sup>

*"As for the copy of the recommendation for restoration of the SARO and corresponding release of the NCA (Annex 'A' to the motion), the same in effect validated and justified the cases against them..."*<sup>12</sup>

Finally, the prosecution raises the issue of the propriety of Atty. Richard R. Enojo's appearance as counsel of the accused-movants in these cases. According to the prosecution, Atty. Enojo, as a Provincial Attorney of the Province of Negros Oriental, has the primary duty and loyalty to the said provincial government and not to its provincial governor, who happens to be the accused in these cases. "This certainly raises questions of propriety as well as professional and ethical issues on Atty. Enojo's part that may eventually have repercussions on his occupation and legal profession."<sup>13</sup> The prosecution thus prays that "Atty. Enojo be directed to examine the propriety and legality of his actions in acting as legal counsel of accused Degamo, Mendez and Reyes."<sup>14</sup>

On March 22, 2017, the accused-movants filed its *Reply to Opposition* dated March 17, 2017,<sup>15</sup> where they reiterate that there is no probable cause to charge them in court considering that there is allegedly no evidence presented that Undersecretary Mario Relampagos had authority to order the withdrawal of the subject Special Allotment Release Order (SARO). "In other words, why waste the solemnity of trial or unnecessarily drag the parties through the rigors of trial if the

<sup>9</sup> Par. 7, p. 3 *id*; p. 79, *id*

<sup>10</sup> Par. 7.2, *id*; *id*

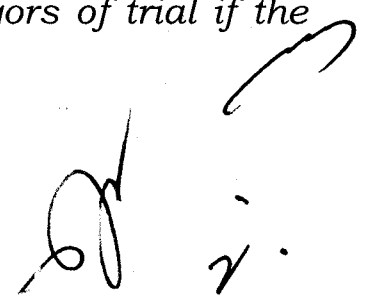
<sup>11</sup> Par. 8, p. 4, *id*; p. 80, *id*

<sup>12</sup> Par. 9, p. 5, *id*; p. 81, *id*

<sup>13</sup> Par. 12, *id*; *id*

<sup>14</sup> p. 6, *id*; p. 82, *id*

<sup>15</sup> p. 139, Vol. II, Record



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*crucial and decisive piece of evidence is not available and will never be available.*<sup>16</sup>

Lastly, the counsel of the accused-movants insists that his appearance as counsel for them is legally permissible.<sup>17</sup>

**II.**

**Accused-movants' Motion to Dismiss dated March 21, 2017**

Relying heavily on **Coscolluela vs. Sandiganbayan**<sup>18</sup> and **Tatad vs. Sandiganbayan**,<sup>19</sup> accused-movants pray for the dismissal of these criminal cases on the ground that the proceedings undertaken by the Office of the Ombudsman during the preliminary investigation stage allegedly violated their constitutional right to a speedy disposition of cases. According to them, *“there is nothing extraordinary in this case that would justify almost three (3) years of preliminary investigation.”*<sup>20</sup>

On April 11, 2017, the prosecution filed its *Opposition Re Accused Degamo, Mendez and Reyes' Motion to Dismiss dated 21 March 2017* dated April 10, 2017.<sup>21</sup> According to the prosecution, the accused-movants contradicted themselves when they counted, and even rounded-off, to three (3) years the completion of the preliminary investigation.<sup>22</sup> To prove their point, the prosecution discussed the factual backdrop of the case from the time of the filing of the complaint against the accused-movants on October 23, 2013 up to the filing of the *Informations* in Court on August 3, 2016.<sup>23</sup> It likewise argues that the facts of these cases are not the same as those in **Tatad** and **Coscolluela**; hence, the accused-movants' reliance thereon is misplaced.

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<sup>16</sup> p. 2, *Reply*, p. 140, *id*

<sup>17</sup> p. 4, *id*; p. 142, *id*

<sup>18</sup> 701 SCRA 188 (2013)

<sup>19</sup> 159 SCRA 70 (1988)

<sup>20</sup> Par. 9, p. 4, *Motion to Dismiss*, p. 173, *id*

<sup>21</sup> p. 184, *id*

<sup>22</sup> Par. 2, *Opposition*, p. 184, *id*

<sup>23</sup> p. 2, *id*; p. 185, *id*

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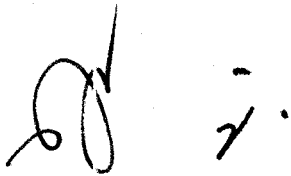
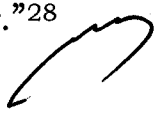
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**III.**

**Accused-movants' Manifestation and Motion dated May 3, 2017**

In his manifestation and motion, the counsel for the accused-movants, Atty. Enojo, prays that he be allowed to continue to appear as counsel for all the accused. According to Atty. Enojo, he can appear as counsel for all the accused-movants because "he is the incumbent OIC-Provincial Legal Office (sic) and herein accused are charged in their official capacities as governor, provincial accountant and provincial treasurer, respectively."<sup>24</sup> "Precisely, this Honorable Sandiganbayan took cognizance of the instant cases as all the accused stand charged in their official capacities as public employees. The fund in issue was disbursed by herein accused in their official capacities as mentioned above. Any suit against the accused arising from or in connection with their official function deserve the assistance of the province's legal officer – the undersigned."<sup>25</sup>

The prosecution filed its *Opposition Re Atty. Richard R. Enojo's Manifestation and Motion* dated June 7, 2017,<sup>26</sup> praying that the subject motion to allow Atty. Enojo to appear as counsel for the accused-movants be denied. According to the prosecution, the appearance of Atty. Enojo in these criminal cases is not among the duties of a legal officer of a province under Section 481, paragraph (b) of Republic Act (R.A.) No. 7160, otherwise known as the "Local Government Code of the Philippines"; hence, his appearance as counsel for the accused in these cases is illegal.<sup>27</sup> It further argues that based on the aforesaid provision of the Local Government Code, it is not among Atty. Enojo's duty as legal officer of the Province of Negros Oriental to "represent any public official of the Province xxx charged with criminal cases, even if the same was committed in relation to the public official's position and functions."<sup>28</sup>



<sup>24</sup> Par. 2, p. 1, *Manifestation and Motion*, p. 200, *id*

<sup>25</sup> p. 2, *id*, p. 201, *id*

<sup>26</sup> p. 222, Vol. II, Record

<sup>27</sup> pp. 1-2, *Opposition*, pp. 222-223, *id*

<sup>28</sup> Par. 3, p. 2, *id*, p. 223, *id*

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**THE RULING OF THE COURT**

After an assiduous consideration of the arguments raised by the accused-movants in their subject motions and the opposition thereto of the prosecution, the Court **DENIES** the same for reasons hereinafter discussed.

***I. The delay which attended the preliminary investigation of these cases is not vexatious, capricious and oppressive; hence, there is no violation of the accused-movants' right to speedy trial or disposition of their cases.***

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The accused-movants pray for the dismissal of these criminal cases based on speedy trial grounds purportedly because *"almost 3 years have passed since the filing of the complaint up to the filing of the Information. Based on the record of this case, the inescapable conclusion is that the Office of the Ombudsman took its own sweet time to terminate the preliminary investigation and lodge the Information in court, unmindful of the fact that in the interim, accused had to endure the agony of an uncertain future, akin to having the proverbial sword of Damocles hanging over their heads."*<sup>29</sup>

The Court disagrees with the accused-movants' claim that their right to speedy disposition has been violated in the proceedings below.

Indeed, a person's right to the speedy disposition of his case is guaranteed under Section 16, Article III of the 1987 Constitution:

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

<sup>29</sup> Par. 9, p. 3, *Motion to Dismiss*, p. 172, Vol. II, Record

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However, the Supreme Court has consistently declared that the right to speedy trial and speedy disposition of a case is violated only when the proceeding is attended by vexatious, capricious and oppressive delays. To ascertain whether these conditions obtain in a given case, the High Court prescribes the following factors to be considered, namely: (1) length of delay; (2) the reason for the delay; (3) the defendant's assertion of his right; and (4) prejudice to the defendant.<sup>30</sup> Thus:

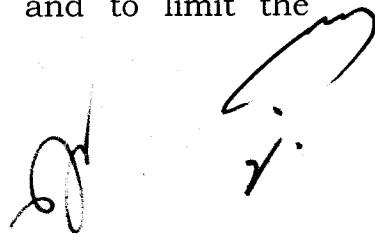
The right of the accused to a speedy trial and to a speedy disposition of the case against him was designed to prevent the oppression of the citizen by holding criminal prosecution suspended over him for an indefinite time, and to prevent delays in the administration of justice by mandating the courts to proceed with reasonable dispatch in the trial of criminal cases. **Such right to a speedy trial and a speedy disposition of a case is violated only when the proceeding is attended by vexatious, capricious and oppressive delays. The inquiry as to whether or not an accused has been denied such right is not susceptible by precise qualification. The concept of a speedy disposition is a relative term and must necessarily be a flexible concept.**

While justice is administered with dispatch, the essential ingredient is orderly, expeditious and not mere speed. **It cannot be definitely said how long is too long in a system where justice is supposed to be swift, but deliberate. It is consistent with delays and depends upon circumstances. It secures rights to the accused, but it does not preclude the rights of public justice. Also, it must be borne in mind that the rights given to the accused by the Constitution and the Rules of Court are shields, not weapons; hence, courts are to give meaning to that intent.**

**A balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy trial cases on an *ad hoc* basis.**

In determining whether the accused has been deprived of his right to a speedy disposition of the case and to a speedy trial, **four factors must be considered: (a) length of delay; (b) the reason for the delay; (c) the defendant's assertion of his right; and (d) prejudice to the defendant.** 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

<sup>30</sup> *Corpuz vs. Sandiganbayan*, 442 SCRA 294 (2004)



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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.

Delay is a two-edge sword. It is the government that bears the burden of proving its case beyond reasonable doubt. The passage of time may make it difficult or impossible for the government to carry its burden. The Constitution and the Rules do not require impossibilities or extraordinary efforts, diligence or exertion from courts or the prosecutor, nor contemplate that such right shall deprive the State of a reasonable opportunity of fairly prosecuting criminals. As held in *Williams v. United States*, for the government to sustain its right to try the accused despite a delay, it must show two things: (a) that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay; and (b) that there was no more delay than is reasonably attributable to the ordinary processes of justice.<sup>31</sup>

Here, a review of the records of these cases reveal the following antecedent facts:

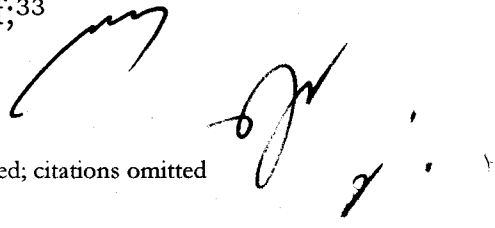
1. **October 29, 2013** - June Vincent Manuel S. Gaudan filed a *Complaint-Affidavit* of even date against the herein accused-movants before the Office of the Ombudsman-Visayas ("OMB-Visayas"). Complainant alleged that the accused-movants committed the crimes of malversation and violations of Section 3 (e) of R.A. No. 3019 by "*causing undue injury to the government in the amount of P143.775 million and giving unwarranted benefits to several private contractors, through evident bad faith and manifest partiality;*"<sup>32</sup>

2. **February 21, 2014** - Accused-movants received a copy of the *Order* dated January 7, 2014, issued by the OMB-Visayas, directing them to file their counter-affidavits within ten (10) days from receipt thereof;<sup>33</sup>

<sup>31</sup> *Corpuz vs. Sandiganbayan, id*; emphasis supplied; citations omitted

<sup>32</sup> p. 29, Vol. I, Record

<sup>33</sup> p. 1, *Motion to Dismiss*; p. 170, Vol. II, Record





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3. **March 10, 2014** – Accused Degamo filed his *Counter-Affidavit* dated February 27, 2014,<sup>34</sup> before the OMB-Visayas. On the same day, accused Mendez and Reyes filed their *Joint Counter-Affidavit (With Motion to Defer Proceedings on the Ground of the Existence of a Prejudicial Question)* dated February 26, 2014;

4. **March 19, 2014** – The parties were directed by the OMB-Visayas to file their respective position papers. Private complainant filed his position paper on April, 29, 2015, while the accused-movants filed theirs on May 5, 2014. On May 24, 2014, accused Reyes and Mendez filed their supplemental position paper;<sup>35</sup>

5. **March 24, 2014** – Private complainant filed his *Motion for Extension of Time to Reply, and Comment to the Respondent's Motion to Defer Proceedings on the Ground of the Existence of a Prejudicial Question* before the OMB-Visayas;<sup>36</sup>

6. **April 7, 2014** – Private complainant filed his *Consolidated Reply to Counter-Affidavits and Opposition to Respondents' Motion to Defer Proceedings on the Ground of the Existence of a Prejudicial Question*;<sup>37</sup>

7. **March 16, 2016** – Ombudsman Conchita Carpio Morales approved the *Joint Resolution* dated January 12, 2016, which found probable cause to indict the herein accused-movants in these criminal cases;<sup>38</sup>

8. **April 14, 2016** – The OMB received a copy of accused Reyes and Mendez's motion for reconsideration of the said joint resolution;<sup>39</sup>

9. **April 20, 2016** – The OMB received a copy of accused Degamo's motion for reconsideration;<sup>40</sup>

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<sup>34</sup> p. 81, *id*

<sup>35</sup> p. 2, *Motion to Dismiss*, p. 171, Vol. II, Record

<sup>36</sup> p. 2, *Opposition*, p. 185, *id*

<sup>37</sup> *id*, *id*

<sup>38</sup> p. 9, *Joint Resolution*, p. 14, Vol. I, Record

<sup>39</sup> p. 2, *Opposition*, p. 185, Vol. II, Record

<sup>40</sup> *id*, *id*

10. **May 25, 2016** – Ombudsman Carpio Morales approved the *Joint Order* dated May 16, 2017, which denied the accused-movants' motions for reconsideration;<sup>41</sup> and

11. **August 3, 2016** – The *Informations* charging the herein accused of the crimes of violation of Section 3 (e) of R.A. No. 3019 and malversation of public funds through falsification of public documents were filed with the Court.<sup>42</sup>

As can be readily gleaned from the above narration, the preliminary investigation of these cases lasted from **October 29, 2013**, the time of the filing of the complaint, up to **August 3, 2016**, when the *Informations* were filed with the Court, or a period of **two (2) years, nine (9) months and five (5) days**. The Court does not find such period of delay as vexatious, capricious and/or oppressive.

The Court took particular note of the nature of the complaint filed against the herein accused-movants. To recapitulate, the accused-movants were charged in relation to the calamity fund that was released to the Province of Negros Oriental under *Special Allotment Release Order (SARO) No. RO-VII-12-0009202* dated June 5, 2012, in the amount of P961,550,000.00. It appears that after PhP480,775,000.00 out of the aforesaid amount was released and deposited to the account of the Province of Negros Oriental, Department of Budget and Management (DBM) Undersecretary Mario L. Relampagos wrote accused Degamo that the subject SARO would be withdrawn allegedly because the Province of Negros Oriental did not comply with existing guidelines relative to the release of funds for infrastructure projects amounting to PhP10 Million and higher. After the subject SARO was withdrawn, it appears that the accused-movants still utilized the amount they received from the said SARO by awarding several infrastructure projects to different contractors through negotiated procurement in emergency cases.

With the above factual milieu, it cannot be denied that the Office of the Ombudsman needed time to thoroughly review and evaluate the bases of the complaint against the herein accused-movants considering that it involves a SARO which was initially issued and received by a local government unit but was

<sup>41</sup> p. 9, *Joint Order*, p. 25, Vol. I, Record

<sup>42</sup> p. 1, Vol. I, Record

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subsequently withdrawn by the DBM. To be sure, the issuance, and later, the withdrawal, of a SARO by the DBM is not a common occurrence; hence, the need for the Office of the Ombudsman to thoroughly evaluate whether there is indeed probable cause to indict the herein accused-movants for the crimes subject of these cases.

It is likewise worthy to note that the Office of the Ombudsman needed to time to evaluate whether there is a need to suspend the preliminary investigation because accused-movants Mendez and Reyes filed a motion to defer the proceedings on the ground that there allegedly exists a prejudicial question. It appears from the submission of the said accused that they filed an appeal before the Commission on Audit (COA) relative to the notices of disallowance that they received in connection with the transactions they entered into under the subject SARO.

To the mind of the Court, the amount of time that was expended by the Office of the Ombudsman in resolving the complaint against the accused-movants, *i.e.*, **two (2) years, nine (9) months and five (5) days**, could be reasonably attributed to the ordinary processes of justice<sup>43</sup> and was necessitated by the exigency of the actions taken on the case.<sup>44</sup> It cannot be considered violative of the constitutional right to a speedy disposition of cases of the accused-movants.

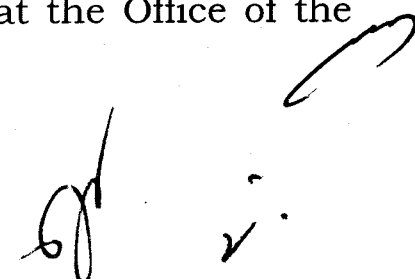
It has been held that speedy disposition of cases is consistent with reasonable delays. The Supreme Court has taken judicial notice of the fact that the nature of the Office of the Ombudsman encourages individuals who clamor for efficient government service to lodge freely their complaints against alleged wrongdoing of government personnel. A steady stream of cases reaching the Ombudsman inevitably results. Naturally, disposition of those cases would take some time.<sup>45</sup>

More importantly, there is nothing in the record that will suggest, even faintly, that the Office of the Ombudsman deliberately "delayed" the termination of the preliminary investigation in order to hamper or prejudice the defense of the herein accused-movants or to gain some tactical advantage over them. On the contrary, the Court finds that the Office of the

<sup>43</sup> *Corpuz vs. Sandiganbayan, supra*

<sup>44</sup> *Ong vs. Sandiganbayan*, 440 SCRA 423 (2004)

<sup>45</sup> *id*

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Ombudsman conducted a genuinely thorough preliminary investigation consistent with the real purpose thereof – to determine whether probable cause exists to warrant the indictment of the accused-movants for the crimes charged. Thus, the delay should be weighed *less heavily* against the State conformably with the teachings of the Supreme Court in **Corpuz vs. Sandiganbayan**.<sup>46</sup>

Closely related to the length of delay is the reason or justification of the State for such delay. Different weights should be assigned to different reasons or justifications invoked by the State. **For instance, a deliberate attempt to delay the trial in order to hamper or prejudice the defense should be weighted heavily against the State. Also, it is improper for the prosecutor to intentionally delay to gain some tactical advantage over the defendant or to harass or prejudice him. On the other hand, the heavy case load of the prosecution or a missing witness should be weighted less heavily against the State.** Corollarily, Section 4, Rule 119 of the Revised Rules of Criminal Procedure enumerates the factors for granting a continuance.<sup>47</sup>

Notably, it is only now after the Court had found the existence of probable cause against the accused-movants that they claim a violation of their right to speedy disposition of cases. To be sure, they raised nary a whimper before the Office of the Ombudsman regarding this alleged violation. Under the obtaining facts, the accused-movants should be deemed to have waived their right to speedy disposition of cases.

It must be stressed that the said right to a speedy disposition of cases is personal; hence, it may be considered waived if not seasonably invoked. Thus:

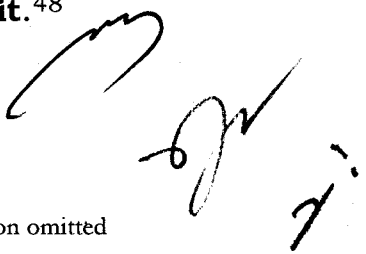
The right to a speedy trial, as well as other rights conferred by the Constitution or statute, may be waived except when otherwise expressly provided by law. **One's right to the speedy disposition of his case must therefore be asserted. Due to the failure of petitioner to assert this right, he is considered to have waived it.**<sup>48</sup>

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<sup>46</sup> *Supra*

<sup>47</sup> Emphasis supplied

<sup>48</sup> *Barcelona vs. Tan*, 724 SCRA 133 (2014); citation omitted



Accused-movants invoke **Coscolluela**<sup>49</sup> in asserting that their right to speedy trial was violated by the Office of the Ombudsman.

The Court finds the accused-movants' reliance on **Coscolluela** misplaced.

**Corpuz vs. Sandiganbayan**<sup>50</sup> teaches that courts should approach speedy trial cases on an *ad hoc* basis. Pursuant to the aforesaid teaching, accused-movants cannot tenably rely on the teachings of **Coscolluela** since the factual backdrop of the said case is so far removed from the facts of these cases.

**Coscolluela** involved the alleged anomalous purchase of medical and agricultural equipment for the Province of Negros Occidental in the amount of P20,000,000.00 which allegedly happened around a month before Coscolluela stepped down from office. On March 27, 2003, the assigned Graft Investigation Officer prepared a resolution finding probable cause against Coscolluela, together with three (3) other individuals, for violation of Section 3 (e) of R.A. No. 3019 and recommended the filing of the corresponding Information against them. However, the final approval of Acting Ombudsman Casimiro came only on May 21, 2009, and on June 19, 2009, the *Information* was filed before the *Sandiganbayan*. Coscolluela filed a Motion to Quash, arguing, among others, that his constitutional right to speedy disposition of cases was violated as the criminal charges against him were resolved only after almost eight (8) years since the complaint was instituted. The *Sandiganbayan* denied the said motion to quash ruling, among other reasons, that the resolution of the graft investigation officer had to undergo careful review and revision through the various levels of the Office of the Ombudsman; hence, the period of delay cannot be deemed as inordinate and as such, petitioners' constitutional right to speedy disposition of cases was not violated.

It is from this factual milieu that the Supreme Court overturned the said resolution of the *Sandiganbayan* in **Coscolluela**. It held that the delay in the Ombudsman's resolution of the case was unjustified. The High Court equally rejected the *Sandiganbayan's* ratiocination that the delay in proceedings could be excused by the fact that the case had to undergo careful review and revision through the different levels

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<sup>49</sup> *supra*

<sup>50</sup> *supra*



in the Office of the Ombudsman before it is finally approved, in addition to the steady stream of cases which it had to resolve.

To be sure, the factual backdrop of **Coscolluela** is not the same or similar to these criminal cases; hence, their plea for the dismissal of these cases based thereon must be denied.

Further, accused-movants' invocation of **Tatad** to support their claim that their right to a speedy disposition of their case was violated by the Office of the Ombudsman is improper.

In **Tatad**, there was a delay of almost three (3) years in the conduct of the preliminary investigation by the then **Tanodbayan**. In ruling that such delay constituted a violation of the constitutional rights of the accused to due process and to a speedy disposition of cases, the Supreme Court took into account the following circumstances: (1) the complaint was resurrected only after Tatad had a falling out with the former President Marcos, and, hence, political motivations played a vital role in activating and propelling the prosecutorial process; (2) the Tanodbayan blatantly departed from the established procedure prescribed by law for the conduct of preliminary investigation; and (3) the simple factual and legal issues involved did not justify the delay.<sup>51</sup>

The aforesaid factual milieu attendant in **Tatad** is definitely not present in these cases; hence, the ruling therein cannot be properly applied here. Indeed, the protection under the right to a speedy disposition of cases should not operate as to deprive the government of its inherent prerogative in prosecuting criminal cases or generally seeing to it that all who approach the bar of justice be afforded a fair opportunity to present their side.<sup>52</sup>

**II. Accused-movants' motion for reconsideration failed to comply with the three-day notice rule under Section 4, Rule 15 of the Rules of Court.**

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<sup>51</sup> Please refer to *Dela Peña vs. Sandiganbayan*, 360 SCRA 478 (2001)

<sup>52</sup> *Dansal vs. Fernandez, Sr.*, 327 SCRA 145 (2000)

**RESOLUTION**

Criminal Cases No. SB-16-CRM-0467-0478  
People vs. Degamo, *et al.*

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Section 4, Rule 15 of the Rules of Court reads:

Section 4. Hearing of motion. Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

**Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing**, unless the court for good cause sets the hearing on shorter notice.<sup>53</sup>

It is an elementary rule that every motion must contain the mandatory requirements of notice and hearing and that there must be proof of service thereof. The Supreme Court has consistently held that a motion that fails to comply with the above requirements is considered a worthless piece of paper which should not be acted upon. The rule, however, is not absolute. There are motions that can be acted upon by the court *ex parte* if these would not cause prejudice to the other party. They are not strictly covered by the rigid requirement of the rules on notice and hearing of motions.<sup>54</sup>

Here, the accused-movants' *Motion for Reconsideration with Motion to Hold in Abeyance Further Proceedings of the Cases* dated February 3, 2017, was set for hearing by the counsel for accused-movants on **February 9, 2017**. It appears from the receipt of LBC Express Inc. attached thereto that the subject motion was sent by private courier to the Office of the Ombudsman (OMB) on February 6, 2017, and will be delivered to the said office the following day, **February 7, 2017**.<sup>55</sup> According to the prosecution, they received a copy of the said motion on **February 7, 2017** at 4:00 o'clock in the afternoon.<sup>56</sup>

Plainly, the filing of the subject motion failed to comply with the mandatory *three-day notice rule* under the second paragraph of Section 4, Rule 15 of the Rules of Court. On this ground alone, the Court could already deny the subject motion because it is a mere scrap of paper. Considering, however, that the prosecution was able to properly respond to the arguments

<sup>53</sup> Emphasis supplied

<sup>54</sup> *Anama vs. Court of Appeals*, 664 SCRA 293 (2012)

<sup>55</sup> p. 56, Vol. II, Record

<sup>56</sup> Par. 1, p. 1, *id.*; p. 77, *id.*