

Republic of the Philippines  
**SANDIGANBAYAN**  
Quezon City

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Second Division

**PEOPLE OF THE  
PHILIPPINES,**

CRIM. CASE NO. SB-11-CRM-0101

For: Violation of Sec. 3(e) of RA  
3019

-versus-

Present:  
Herrera, Jr., J. *Chairperson*  
Musngi, J. &  
Pahimna, J.

**LEANDRO B. VERCELES,  
JR., ET AL.,**  
Accused.

Promulgated:  
August 2, 2017

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**RESOLUTION**

**PAHIMNA, J.:**

For resolution of the Court is the ***Omnibus Motion to Dismiss the Information (Due to Recent Rulings of the Sandiganbayan)***<sup>1</sup> dated January 30, 2017, and the ***Supplement to the aforesaid Motion*** dated June 20, 2017 both filed by accused Leandro B. Verceles, Jr. (Movant for short), through counsel.

In connection with the aforementioned ***Motion***, the following were also filed:

- a) ***Manifestation***<sup>2</sup> filed by accused Leandro B. Verceles, Jr. on February 6, 2017 through counsel.
- b) ***Manifestation***<sup>3</sup> filed by accused Rodolfo G. Maliñana and Ricardo T. Mendoza, Jr. on February 6, 2017 through counsel.

<sup>1</sup> Record of SB-11-CRM-0101, pp.741-840, Vol. II

<sup>2</sup> Id, pp., 850-852

<sup>3</sup> Id, pp., 853-854



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- c) **Manifestation to Adopt Accused Verceles' Omnibus Motion to Dismiss the Information filed last January 31, 2017 (Due to Recent Rulings of the Sandiganbayan)**<sup>4</sup> filed by accused Ireneo C. del Rosario, Abelardo A. Abundo, Jr., Hilda V. Arcilla, Herbert DLS, Evangelista, Sr. and Julietta M. Tasarra, through counsel on February 6, 2017.
- d) **Comment/Opposition to Accused Verceles' Omnibus Motion to Dismiss Information**<sup>5</sup> filed by the Prosecution through Asst. Special Prosecutors Louella Mae O. Pesquera and Vernard M. Villarin on March 1, 2017.
- e) **Comment/Opposition to Accused Del Rosario, Abundo Jr., Arcilla, Evangelista, Sr., and Tasarra's Manifestation to Adopt Accused Verceles' Omnibus Motion To Dismiss Information**<sup>6</sup> filed by the Prosecution through Asst. Special Prosecutors Louella Mae O. Pesquera and Vernard M. Villarin on March 1, 2017.

In his **Omnibus Motion**, Movant, Leandro B. Verceles, Jr. alleges that the First, Second and Special Divisions of this Court recently resolved issues of probable cause and the impairment of the constitutional right to a speedy disposition of the case on newly discovered argumentations/grounds. Particularly, movant cited the following cases, to wit:

1. People vs. Rexlon T. Gatchalian, et al.<sup>7</sup>
2. People vs. Luis Ramon, Jocelyn aka JocJoc Bolante, et al.,<sup>8</sup>
3. People vs. Manuel Mercado Lapid, et al.<sup>9</sup>

It is on these above-quoted newly discovered argumentations/grounds of the recent rulings of this Court that the aforesaid **Omnibus Motion** is filed.

Pending resolution of the aforesaid **Motion**, movant, through counsel filed on June 20, 2017, a **Supplement to the Omnibus Motion to Dismiss the Information (Due to the Recent Rulings of the Sandiganbayan)** alleging therein additional recent rulings of this Court that may be persuasive in the resolution of the aforesaid **Motions**, citing the following cases, to wit:

<sup>4</sup> Id, pp., 855-857

<sup>5</sup> Id, pp. , 858-865

<sup>6</sup> Id, pp., 866-869

<sup>7</sup> SB-16-CRM-0802, Second Division, December 13, 2016, pp. 776-792

<sup>8</sup> SB-16-CRM-0260, Special Second Division, November 28, 2016, pp. 793-815

<sup>9</sup> SB-15-CRM-0286, First Division, September 30, 2016, pp. 816-840





1. People vs. Edmundo O. Reyes, Jr. et al.<sup>10</sup>
2. People vs. Mary Joyce M. Roquero<sup>11</sup>
3. People vs. Agnes VST Devanadera<sup>12</sup>
4. People vs. Teodoro Delarmente, et al.<sup>13</sup>
5. People vs. Reynaldo O. Parojinog, Sr.<sup>14</sup>

By way of opposition to the aforesaid **Supplement**, plaintiff, through Assistant Special Prosecutors filed on July 7, 2017 its **Additional Comment/Opposition**.

In a nutshell, movant moves for the dismissal of the Information on the following grounds:

1. The lack of probable cause due to lack of complete elements of the crime quoting the aforesaid case of **People vs. Rexlon T. Gatchalian, et al.**, where the Second Division of this Court, on the issue of lack of probable cause, ruled:

*“On the charge of violation of Section 3(j) of R.A. 3019*

*Probable cause for purposes of filing a criminal information is defined as such facts sufficient to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial. Cited in the same case is Sy vs. Secretary of Justice, which cited Villanueva vs. Secretary of Justice, thus:*

*[Probable cause] is such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe or entertain an honest and strong suspicion that a thing is so. The term does not mean ‘actual or positive cause’; nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. Precisely, there is trial for the reception of evidence of the prosecution in support of the charge.”*

<sup>10</sup> SB-17-CRM-0161 to 0163, First Division, April 24, 2017, pp. 911-925

<sup>11</sup> SB-17-CRM-0220 to 0222, First Division, May 08, 2017, pp. 926-933

<sup>12</sup> SB-16-CRM-1227, First Second Division, May 16, 2017, pp. 934-945

<sup>13</sup> SB-17-CRM-0072 to 0073, First Division, June 09, 2017, pp. 946-962

<sup>14</sup> SB-16-CRM-1206, Fifth Division, April 07, 2017, pp. 963-976

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Movant Verceles now argues that the instant case is no different from the **Gatchalian** case, i.e., the elements of Section 3(e) of R.A. 3019 in the instant case are not complete that would establish probable cause. Two elements, namely the 3<sup>rd</sup> and 4<sup>th</sup> elements are lacking. He alleges that the Ombudsman did not satisfactorily lay down the basis for the finding of probable cause. Otherwise, stated, not all elements of Section 3(e) of R.A. 3019 were presented. The fact that the COA/TSO Inspection Report is rendered incompetent, lacking page 4 and being unsigned, would show that there was no other piece of documentary evidence presented by the Ombudsman that would conclude 'undue injury' due to overpricing as charged in the Information.

Neither was there 'unwarranted benefit, advantage, or preference' afforded Greens International Enterprise (GIE) when the alternative mode of direct contracting was used to procure the Macro Micro Liquid fertilizers. Notably, the Ombudsman's Field Investigation Office did not present any evidence in the Complaint that negates the legitimate use by the Accused of the Bidding and Awards Committee (BAC) of Sec. 36 of R.A. 9184 as it was focused only on charging the accused for alleged unauthorized application of direct contracting.

With the absence of the 3<sup>rd</sup> and 4<sup>th</sup> elements and all of its respective modes of Section 3(e) of R.A. 3019, said Section 3(e) could not have been committed.

2. The Office of the Ombudsman has given no plausible explanation to justify inordinate delay; invoking his right to speedy disposition of his case.

To show such delay, a comprehensive timeline of the various incidents that transpired is repleaded:

<b>Incidents</b>	<b>Date</b>
Start of fact-finding by the designation of cases by Ombudsman leading to the preliminary investigation of cases	2004, 2005
Designation of additional fact-finding cases by the Ombudsman	2005
OMB issues subpoena duces tecum to the COA	Not in records
OMB receives reply letter of COA anent subpoena duces tecum	04-April-06
OMB issues subpoena duces tecum to SEC	30-April-2007
OMB receives on May 28, 2007 letter reply of SEC	04-June-2007
Filing of Complaint by FIO dated	15-Sept.-2009

*Handwritten signatures and marks:*  
 [Signature] [Signature] [Signature]



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Sept. 15, 2009 per OMB Order dated 23-Feb-2010	
Total Time for Fact Finding	Four years and nine months
Respondent including Malinana ordered by OMB to file counter-affidavits	23-Feb-2010
Joint counter-affidavit to include Rodolfo Malinana	21-May-2010
Supplement to Joint Counter-Affidavit of other respondent Leandro Vercelles, Jr.	16-February-2011
Additional Supplement to Joint Counter-Affidavit of Vercelles	17-March-2011
OMB Joint Resolution issued recommending indictment of all respondents	18-March-2011
Memorandum filed by Vercelles	15-April-2011
Motion for Reconsideration and Re-Investigation filed by Vercelles	2-May-2011
Supplement to Motion for Re-Investigation filed by Vercelles	6-May-2011
Additional Supplement to Motion for Reconsideration and Re-Investigation filed by Vercelles	9-May-2011
Further Supplement to Motion for Reconsideration and Re-Investigation filed by Vercelles	17-May-2011
OMB Order denying Motion for Reconsideration	21-June-2011
Information filed with the Sandiganbayan	6-June-2011

The prosecution, on the other hand, in its **Comment/Opposition** thereto, contends that all the issues raised by accused Vercelles were already passed upon by this Court and were later affirmed by the Supreme Court.

The prosecution further maintains on the issue of inordinate delay, that the accused has already sought the dismissal of the Information on the foregoing grounds of impairment of their constitutional right to a speedy disposition of the case and the impairment of the statutory right to speedy trial alleging the very same facts, save for the inclusion of the recent rulings of the different divisions of this Court cited by herein Movant. More so, Decisions of other divisions of the Sandiganbayan is not binding with this Court. Otherwise, the prosecution could might as well enumerate all fertilizer cases before this Court and other Divisions of the Sandiganbayan that proceeded to trial.



## RULING

After a careful study, the Court rules to deny the motions.

At the onset, the **Omnibus Motion** is merely dilatory and an attempt to relitigate the issues which were not resolved in his favor.

To reiterate, the Court has already extensively discussed the issue on probable cause in its previous resolutions. A perusal of the records shows that an **Urgent Motion for Judicial Determination of Probable Cause** was filed in July 11, 2011 by herein Movant raising the very same issues as argued above and such issues have already been passed upon by the First Division of this Court, where this case was originally raffled off, in its Resolution dated February 29, 2012, when it stated that:

*“The only question raised by the accused-movants in their motion is the presence of the third and fourth elements of the offense, in that they contend that the evidence submitted by the complainant during the preliminary investigation is not sufficient to establish ‘overpricing’ in light of the standard set in Cauan vs. People and as required under COA Memorandum 07-012, Sections 3.1 and 3.2*

*The Court is not convinced.”*

Unsatisfied, movant Verceles elevated the matter to the Supreme Court by way of Petition for Review on Certiorari but the assailed Resolution was affirmed<sup>15</sup> by the Supreme Court, thus:

*Considering the allegations, issues and arguments adduced in the joint petition for certiorari as well as the comment of the OSP thereon, the Court further resolves to DISMISS the petition for failure to show any grave abuse of discretion in rendering the challenged judgment which on the contrary, appears to be in accord with the facts and applicable laws and jurisprudence.<sup>16</sup>*

In seeking reconsideration of the above-cited ruling, the Supreme Court resolved to deny the said motion with finality as no substantial arguments were raised to warrant its reconsideration.

Anent the second ground, Movant has cited recent rulings of this Court in justifying dismissal of the instant case due to inordinate delay. He argues that the instant case is no different with the cases cited where the Ombudsman took several years for fact-finding and investigation before it filed the necessary Information before this

<sup>15</sup> Verceles Jr. vs. Sandiganbayan, G.R. No. 205155, August 5, 2013.

<sup>16</sup> Records, p. 407





Court and such delay violated his constitutional right to a speedy disposition of his case.

This contention is bereft of merit. The cited cases, as pointed out by the prosecution, are not on all fours with the instant case.

In ***People vs. Edmundo Reyes, Jr. et al.***,<sup>17</sup> the First Division of the Sandiganbayan ruled that the preliminary investigation proper had six years counting from the time the complaint was filed June 27, 2011 up to the filing of the present Information on February 3, 2017.

In ***People vs. Mary Jace Roquero***<sup>18</sup>, the Sandiganbayan First Division ruled that “all in all, the preliminary investigation of these cases rolled for four (4) years and close to four (4) months, counted from the filing of the Complaint on October 24, 2012 to the filing of the three (3) cases before this Court on February 10, 2017.”

In ***People vs. Agnes VST Devanadera***<sup>19</sup>, the First Division stated that “In the present case, it took the Office of the Ombudsman over six (6) years to complete the preliminary investigation, reckoned from the filing of the complaint on October 12, 2010, until the filing of the Information before this Court on November 25, 2016.”

While, in ***People vs. Delarmente***,<sup>20</sup> the First Division of the Sandiganbayan ruled that “it took the Office of the Ombudsman a total of five years to conclude the preliminary investigation stage from the Field Investigation Office (FIO) complaint dated December 19, 2011 to the filing of the Information on January 23, 2017”.

Further, in ***People vs. Reynaldo O. Pajarinog***<sup>21</sup> the Fifth Division of the Sandiganbayan declared that it took the preliminary investigation a total of almost two years from the Complaint filed by the Field Investigation Unit (FIU) on December 8, 2014 to the filing of the Information on November 23, 2016.

Whereas in the instant case, the Complaint-Affidavit dated September 15, 2009 of the Field Investigation Office was filed on January 26, 2010. Thus, the Office of the Ombudsman took a total of almost one year and ten months to conclude the preliminary investigation and amusingly, during the interim, movant has filed series of motions within a span of six months or from June 16, 2011 when it filed *Supplement to Joint Counter-Affidavit of other respondent* and a month later, he again filed an *Additional Supplement to Joint Counter-Affidavit*. When a Joint Resolution was

<sup>17</sup> SB-17-CRM-0161 to 0163, First Division, April 24, 2017, pp. 911-925

<sup>18</sup> SB-17-CRM-0220 to 0222, First Division, May 8, 2017, pp. 926-933

<sup>19</sup> SB-16-CRM-1227 First Division, May 16, 2017, pp. 934-945

<sup>20</sup> SB-17-CRM-0072, First Division, June 09, 2017, pp. 946-962

<sup>21</sup> SB-16-CRM-1206, Fifth Division, April 07 2017, pp. 963-976





issued indicting all respondents, including herein movant, he then filed *Motion for Reconsideration and Reinvestigation* and while the same was still pending, he again filed a *Supplement to Motion for Reconsideration and Reinvestigation*, then days later, he filed another *Additional Supplement to Motion for Reconsideration and Reinvestigation* and finally adding *Further Supplement to the Motion for Reconsideration and Reinvestigation* on May 2011 which were all denied by the Office of the Ombudsman. The said office should not therefore be faulted as the cause of the delay which is prejudicial to the right of herein movant when he himself should be blamed for the cause of the same.

In the case of **Jacob v. Sandiganbayan**<sup>22</sup>, the Supreme Court ruled that:

*We further emphasized in Uy that speedy trial is a relative term and necessarily a flexible concept. In determining whether the right of the accused to a speedy trial was violated, the delay should be considered, in view of the entirety of the proceedings. Indeed, mere mathematical reckoning of the time involved would not suffice as the realities of everyday life must be regarded in judicial proceedings which, after all, do not exist in a vacuum.*

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*We expounded more extensively in Corpuz on the right of the accused to a speedy trial and disposition of the case against him, thus:*

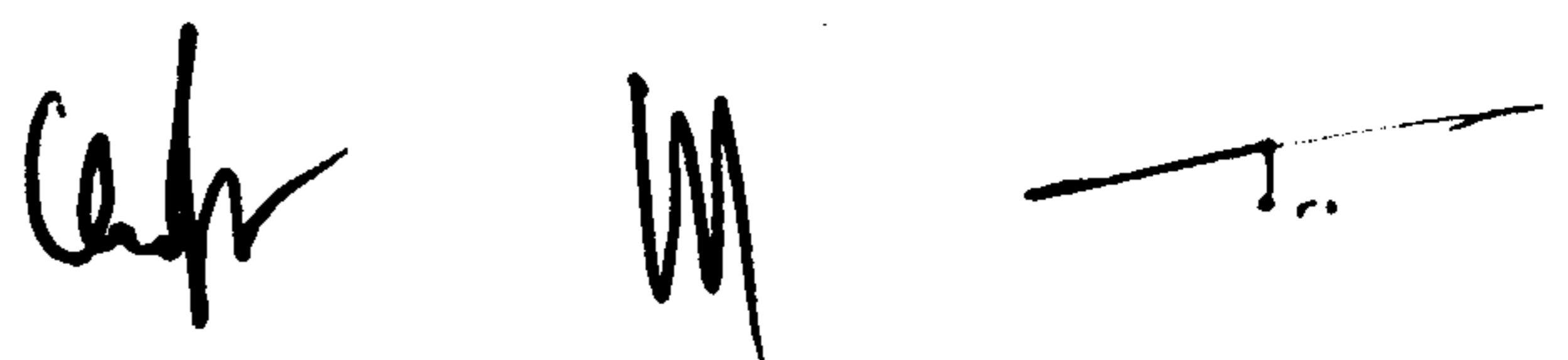
*The right of the accused to a speedy trial and to a speedy disposition of the case against him was designed to prevent the oppression of the citizen by holding criminal prosecution suspended over him for an indefinite time, and to prevent delays in the administration of justice by mandating the courts 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. (citations omitted)*

*We went on to lay down in Corpuz the test for determining whether an accused was indeed deprived of his right to a speedy trial and disposition of the case against him:*

*In determining whether the accused has been deprived of his right to a speedy disposition of the case and to a speedy trial, four*

<sup>22</sup> GR No. 162206, November 17, 2010





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 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.

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. (citations omitted)

Gleaned from the records, accused Rodolfo G. Maliñana filed a **Motion to Dismiss the Information with Leave of Court**<sup>23</sup> on May 20, 2014, which was adopted by herein movant, this time on the ground of impairment of the accused's constitutional right to a speedy trial pursuant to RA 8493, otherwise known as the Speedy Trial Act of 1998. But then again, the said motion was denied by this Court in its **Resolution**<sup>24</sup> finding no violation of the Speedy Trial Act reasoning that the applicability of the Hernando Perez ruling is misplaced. It further ruled that:

*"The concept of speedy disposition of cases remains to be a relative and flexible concept that must be decided upon the peculiar circumstances of every case. In **Perez**, the charge involved is simply crime of robbery. This case, on the other hand, involves the alleged misuse of fertilizer fund, necessarily involving numerous individuals*

<sup>23</sup> Records, p. 46

<sup>24</sup> Records, p. 528





and requiring an examination and study of copious amount of documents and evidence. Even with these complexities, this Court fails to see any instance by which the Ombudsman could be adjudged to have dawdled in carrying out its investigation.<sup>25</sup>

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This court does not likewise find any violation of the Speedy Trial Act. Delay arising from the change of venue or transfer of court is one of the excludable delays recognized under the Speedy Trial Act. The time it took the Sandiganbayan First Division to resolve the various motions filed by the accused was adequately explained by the justifiable postponements and delay warranted, which were all warranted by the situation.

In sum, this Court sees no inordinate delay in the conduct of investigation that violated the constitutional right of the accused to the speedy disposition of cases.<sup>26</sup>

On November 21, 2016, the Supreme Court affirmed the assailed **Resolutions**<sup>27</sup> which states in part:

*“Considering the allegations, issues and arguments adduced in the joint petition for certiorari with prayer for issuance of a temporary restraining Order assailing the Resolutions dated 27 February 2015 and 21 July 2016 of the Sandiganbayan, Special Second Division, Quezon City in Crim. Case No. SB-11-CRM-0101, the Court resolves to DISMISS the petition for failure to sufficiently show that the questioned resolutions are tainted with grave abuse of discretion.”<sup>28</sup>*

Without being too repetitive, the above allegations of movant in his **Omnibus Motion and Supplement to the Omnibus Motion** were mere rehash of the previous allegations in his **Urgent Motion for Judicial Determination of Probable Cause** filed on July 11, 2011 and the **Motion to Dismiss the Information with Leave of Court** filed by Accused Maliñana on May 20, 2014 which he adopted, and both issues have already been thoroughly passed upon by the Court in its previous resolutions. Consequently, these **motions** are considerably dilatory.

As previously ruled, the delay being imputed by herein movant is not inordinate so as to warrant dismissal of the instant case as the circumstances attending the same cannot be said as capricious, vexatious or oppressive.

Interestingly, from the time the Complaint for preliminary investigation up to the time the Information before this Court was filed in 2011, movant has actively participated in the proceedings of this case considering the numerous and voluminous pleadings he has filed for the dismissal of the Information. As a matter of fact, movant

<sup>25</sup> Records, p. 535

<sup>26</sup> Records, p. 536

<sup>27</sup> Records, pp. 528-537 and pp.697-702

<sup>28</sup> Verceles, Jr. vs. Sandiganbayan [2<sup>nd</sup> Division], G.R. No. 227149, November 21, 2016



has not yet been arraigned up to the present due to the motions filed and resolved by the Court. Thus, he cannot argue that he would not be able to adequately prepare for his defense in the instant case due to the long years that transpired in the proceedings.

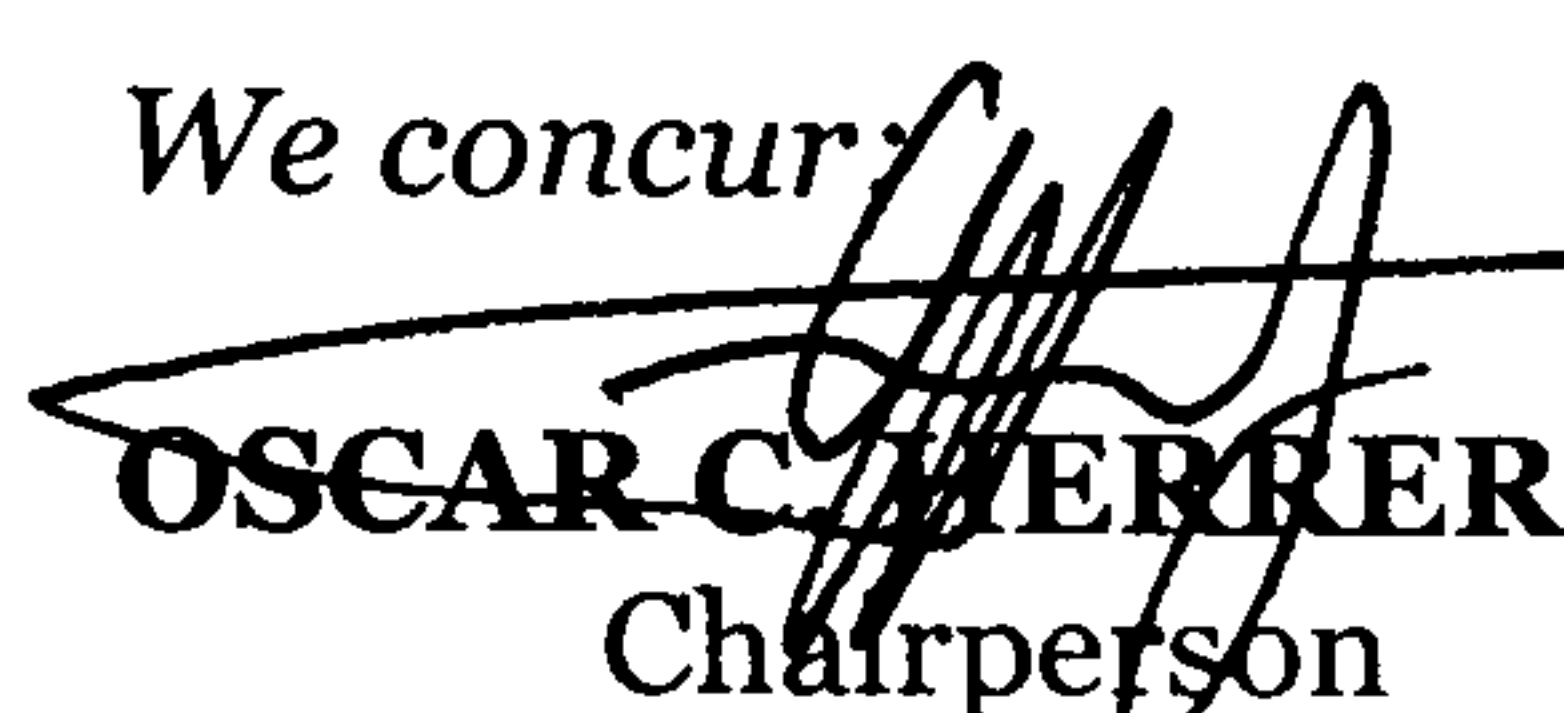
In sum, while the accused is guaranteed with the right to speedy disposition of cases, it is likewise important to keep in mind that the State, like any other litigant, has the right to have his day in court to prove and present its case. This ruling was further enunciated in **Jacob v. Sandiganbayan**, when the Supreme Court stated:

*“While the right of the accused to a speedy trial and disposition is important, the right of the State to pursue criminal cases and in the process, restore people’s confidence in the administration of justice is of paramount importance.”*

**WHEREFORE**, the **Omnibus Motion to Dismiss the Information (Due to Recent Rulings of the Sandiganbayan)** filed on January 31, 2017, by accused Leandro Verceles, Jr. through counsel, is hereby **DENIED**.

**SO ORDERED.**

  
**LORIFEL L. PAHIMNA**  
Associate Justice

*We concur:*  
  
**OSCAR C. FERRERA, JR.**  
Chairperson  
Associate Justice

  
**MICHAEL FREDERICK L. MUSNGI**  
Associate Justice