REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

Fifth Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

ZENAIDA S. AZCUNA, ET AL.,
Accused.

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

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

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

Promulgated:

August 08, 2017

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RESOLUTION

LAGOS, J.:

For the Court's resolution are (i.) the prosecution's June 6, 2017 *Motion for Reconsideration*[1] (Re: Resolution dated 31 May 2017[2]), (ii.) accused Alberto T. Aquino's *Opposition*[3] thereto dated July 14, 2017, and (iii.) accused Zenaida S. Azcuna's *Compliance with Motion to Dismiss*[4] dated July 12, 2017. By way of comment/opposition to Azcuna's motion, the prosecution

*Designated as Special Member, per Administrative Order No. 025-2017 dated February 1, 2017.
[1] Records, Vol. 2, p. 329.
[2] Id., p. 318.
[3] Id., p. 346.
[4] Id., p. 342.

made a manifestation at the hearing held on July 18, 2017 that it was adopting the comment and opposition it had earlier filed with respect to similar motions filed by other accused.[5]

A. Motion for Reconsideration (Re: Resolution dated May 31, 2017)

The Court finds the prosecution's *Motion for Reconsideration* devoid of merit.

In its *Motion for Reconsideration*, the prosecution maintains that "the Motion to Dismiss on Jurisdictional Ground is not the proper remedy resorted to by the accused-movant. In fact, accused Aquino earlier filed a Motion to Dismiss dated 15 May 2016, citing the same ground i.e. the alleged inordinate delay in the conduct of investigation by the office of the Ombudsman. xxx This Second Motion to Quash should have been treated as another Motion to Quash under Section 1 Rule 117 of the Revised Rules of Criminal Procedure, wherein the same should have been filed before the accused entered their respective plea," invoking *Villaflor vs. Vivar* in that "the failure of the accused to assert any ground for a motion to quash before arraignment, either because he had not filed the motion or had failed to allege the grounds therefor, shall be deemed waiver of such grounds."

That same ground and "waiver argument" had been previously raised by the prosecution in its Motion for Reconsideration[6] of the Court's March 6, 2017 Resolution[7] which granted the other accused, namely Bonalos, Alon, Lamoste, Lariba and Penales's, joint motion to dismiss. Equally relevant and still on point in this instance is the Court's April 10, 2017 Resolution[8] thereon, and hereby reiterates and applies the same here, thus:

RESOLUTION[9]

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> Submitted for the Court's resolution is the prosecution's *Motion for Reconsideration (Re: Resolution dated 06 March 2017)* dated March 20, 2017, and the accused Bonalos, Alon, Lamoste, Lariba and Penales's joint *Comment/Opposition* thereto, dated March 23, 2017.
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> The subject Court's Resolution granted herein accused's Motion to Dismiss dated February 2, 2017. The prosecution refers to the aforesaid motion as the accused's "Second Motion to Dismiss" and, in the present

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[5] See Order dated July 18, 2017; Id., p. 356.
[6] Records, Vol. 2, p. 251.
[7] Id., p. 225.
[8] Id., p. 264.
[9] Id., pp. 264-267. Footnotes omitted; emphases in the original.

Motion for Reconsideration, argues that the same should have been treated as another Motion to Quash under Section 1, Rule 117 of the Revised Rules of Criminal Procedure, "wherein the same should have been filed before the accused enter their respective pleas." Invoking the case of *Villaflor vs. Vivar*, G.R. No. 134744, 16 January 2001, the prosecution maintains that as held in that case "the failure of the accused to assert any ground for a motion to quash before arraignment, either because he had not filed or had failed to allege the grounds therefor, shall be deemed a waiver of such grounds," subject only to the exceptions enumerated in *Cruz, Jr. vs. Court of Appeals*, G.R. No. 83754, February 15, 1991, to wit: "a.) when the information does not charge an offense; b.) when the court lacks jurisdiction over the offense charge[d], c.) when the extinction of the offense or penalty; and d.) when there is double jeopardy." Those exceptions are essentially the same as those enumerated in Section 9 of Rule 117.According to the prosecution, they had already been arraigned and pleaded not guilty, "thus the Second Motion to Dismiss should have been denied."

The Court finds the prosecution's Motion for Reconsideration without merit.

First. The *Villaflor* case only mimics the proscription under Section 9, Rule 117, but the procedural issues in that case were different from those in these cases, viz:

I. Can the court *moto propio* order the dismissal of the two (2) criminal cases for serious injuries and grave threats on the ground that the prosecutor failed to conduct a preliminary investigation?

II. **Should failure of the public prosecutor to conduct a preliminary investigation be considered a ground to quash** the criminal informations for serious physical injuries and grave threats filed against the accused respondent?

III. Should the respondents **entry of plea** in the [grave] threats case and posting of cash bond in the serious physical injuries case be considered a **waiver of his righ**t, if any, **to preliminary investigation**?

The *Villaflor* case was decided by the Supreme Court (*Panganiban, J.*) essentially based on those procedural issues. It did not involve the same issue(s) involved herein, particularly on the issue of inordinate delay and its impact on the herein accused's constitutionally guaranteed right to speedy disposition of cases. The quoted pronouncement in *Cruz, Jr. vs. CA* is a mere reiteration of the exceptions recited in Sec. 9 of Rule 117.

Second. To recall, the 'waiver argument' had been raised by the prosecution in its opposition in the so-called accused's "first" motion to dismiss. With that particular motion, the Court ruled, "But a close look at the instant motion reveals that its basis is actually paragraph (a) of section 3 of Rule 117....Under section 9 of the same rule, arraignment does not constitute a waiver of paragraph (a) as a ground for quashal. Hence, accused-movants' motion to quash, on the ground that the facts charged do not constitute an offense, may be filed even after arraignment." Thus, the said motion was denied by the Court for lack of merit.

In contrast, the prosecution NEVER raised the 'waiver argument' in its *Comment/Opposition* to the accused's so-called "Second" Motion to Dismiss. Intentionally or unintentionally, the prosecution never brought up that issue before the Court in addressing the said motion. The only, if not the ultimate, issue addressed by the prosecution in its *Comment/Opposition* was on the sole issue of "inordinate delay," which it seriously contested. Note that "inordinate delay" is not a ground under Rule 117 for a motion to quash. The prosecution should be deemed barred from raising by way of a motion for reconsideration the issue of the alleged waiver. The waiver, if pertinent at all, was a matter already existing and known to the prosecution when it filed its comment and opposition to the motion. To entertain the same at this juncture is to countenance and give premium to piecemeal arguments by the prosecution.

Third. The herein accused did not merely seek to "quash" the informations in these cases in its "second" motion to dismiss, but sought to have the cases dismissed on a more fundamental ground, to wit:

MOTION TO DISMISS

This motion is anchored on a constitutional ground, which is a violation of the constitutional right of the accused provided in the 1987 Constitution of the Philippines, as follows:

Sec. 16. ALL PERSONS SHALL HAVE THE RIGHT TO A SPEEDY DISPOSITION OF THEIR CASES BEFORE ALL JUDICIAL, QUASI JUDICIAL, OR ADMINISTRATIVE BODIES. (Art. III, 1987 Constitution) (Emphasis in the original.)

Thus, in addition to the prosecution's 'silence' above-mentioned, the Court was also faced with the constitutional import of the accused's "second" motion to dismiss, i.e., the accused's constitutional right to speedy disposition of cases enshrined in the Constitution vis-à-vis the inordinate delay in the investigation and filing of these cases against them. The Court per its Resolution ineluctably upheld the supremacy of the Constitution.

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The Court's *ratio decidendi* or pervading rationale in its **May 31 2017** Resolution was anchored on the Supreme Court's recent decision in the *Lamberto Torres vs. Sandiganbayan*[10] case. Yet, the prosecution in its motion for reconsideration adverts to the said case simply in a one-liner that, "The Sandiganbayan added that prejudice to the other accused caused by inordinate delay in these cases 'equally applies to movant (Aquino) in light of the Torres (vs. Sandiganbayan) case.)'" (Underscoring supplied.) The Court's reliance on *Torres* was more substantive than that. The prosecution offered no discussion at all, pro or con, on the Court's invoking *Torres*. As noted by accused Aquino in his *Opposition*, "To be sure, the Subject Motion [for

[10] G.R. No. 221562 to 69, (October 5, 2016).

reconsideration] does not claim that the **Torres** ruling is an incorrect rule or otherwise inapplicable to this case." The part of the resolution that the prosecution quoted is merely the last sentence in a paragraph in the Court's Resolution, and thereby the prosecution totally ignored the Court's ratiocination, to wit:

> 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 the 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.[11]

The prosecution harps on the fact that "[i]n these instant cases, **accused Aquino failed to participate in the preliminary investigation** unlike his co-accused public officials." (Emphasis in the original.) It was precisely for that reason that the *Torres* case became abundantly relevant as to accused Aquino in these cases. Quoting from *Torres*, the Court in its May 31, 2017 Resolution has ruled:

> 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 investigation 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. [12] Upholding the same would allow a scenario where the prosecution deliberately exclude certain individuals from the investigation to file the necessary case at another more convenient time, to the prejudice of the accused. Clearly, respondents' assertion is subject to abuse and cannot be countenanced.
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>> In the present case, petitioner has undoubtedly been prejudiced by virtue of the delay in the resolution of the cases against him. Even

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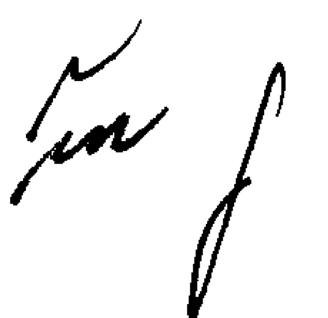
[11] Resolution dated May 31, 2017, Records Vol. 2, p. 318 at 321. Emphasis in the original; underscoring supplied.

[12] Footnote 6 in the Resolution, to wit: 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.



> 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 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 investigation 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.

As also argued by accused Aquino in his *Opposition* to the instant motion for reconsideration, "...the right to speedy disposition of cases that accused Aquino invoked in his Motion to Dismiss is not deemed waived because he has pleaded to the information.... [T]he issue is one of jurisdiction that may be raised at any time before, during or after trial even on appeal, and can not be deemed waived or barred by a plea to the information."

B. Accused Azcuna's Motion to Dismiss

Referring now to accused Zenaida S. Azcuna's *Compliance with Motion to Dismiss*, it will be recalled that the Court in its May 31, 2017 Resolution had decreed that "[b]y 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." Hence, the *Compliance* aspect of the subject pleading. Attached thereto is a medical certificate dated July 5, 2017, signed by Dr. Anlacan, as follows:

> This is to certify that **Mrs. Zenaida S. Azcuna**, a 72 year old widow from Quezon City has been under my neurological care since the year 2008 for the following conditions:
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> Alzheimer disease dementia, severe stage
> Seizure disorder, controlled
> Diabetis mellitus, controlled
> Hypertension, controlled
>
> Today in clinic, she is currently awake, ambulatory, occasionally follows only very simple commands, and able to speak occasional phrases in mixed Filipino, Visayan and Kapampangan language. Although she is amiable and often smiling, her language content is often incoherent and incomprehensible. She has marked comprehension difficulties also, with prominent echolalia (repeating recently heard words) and perseveration

> (repeating previous commands when new commands are instructed). Judgment and other higher level cortical functions can no longer be tested.
>
> She requires assistance in all instrumental and basic activities of daily living including keeping track of medication, orientation and using common household appliances; bathing, dressing, grooming are also assisted. She has marked apathy and occasional episodes of disinhibition due to lack of awareness of her environment and societal norms. She needs 24 hour care and supervision.
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> Since her last assessment in March 2017, she now has marked difficulty taking her medicine as they now need to be ground up/pulverized. She has lost bowel and bladder control and occasionally defecates or urinates on the floor. She has increased sleeping time but manages to eat sufficiently most days of the week. (Underscoring supplied.)

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To note, the Court in its May 31, 2017 Resolution has declared, "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 proceeding 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 constitutional right to speedy disposition of cases and to due process."[13] The prejudice to Azcuna is more pronounced as compared to her co-accused because she started suffering from the said disease in 2008. Undoubtedly, she can no longer prepare for her defense because of her inability to recall events.

It would be futile to go back and discuss further the previous comments and opposition which the prosecution has conveniently proffered to "adopt" vis-à-vis the present motion to dismiss of accused Azcuna, considering that those matters had been sufficiently addressed to by the Court. "Inordinate delay" is utterly the pivotal and central issue in these cases, much less than the state of health of accused Azcuna. Her state of health was earlier relevant mainly for the purpose of suspending the proceedings as to her in these cases. But on the issue of inordinate delay, the 'die is cast'. It is equally fitting that the Court adopt the same ruling in its March 6, 2017 Resolution which granted accused *Bonalos, et al.* and Aquino's respective *Motions to Dismiss* on the ground of inordinate delay. The relief being sought by accused Azcuna fits squarely within the confines of the March 6, 2017 Resolution, which had been essentially reiterated in the Court's April 10, and May 21, 2017, Resolutions, to wit:

> In *Corpuz vs. Sandiganbayan*, the Supreme Court citing *Williams v. United States* (250 F. 2nd. 19 (1957) held that "for the government to sustain

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[13] Records, Vol.7 p. 321-322.

> 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 ordinary and inevitable delay; and (b) that there was no more delay than is reasonably attributable to the ordinary process of justice." [G.R. No. 162214, November 11, 2004, 442 SCRA 294, 314] 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 they 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." It betrays the mandate that "The Ombudsman and his Deputies, as protector of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the government or of any subdivision, agency or instrumentality thereof xxx." The amount of delay herein is beyond doubt antithetical to the mandated promptitude. To 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.[14]

The prosecution finally argues that "[t]he government coffers lost Php1,000,000.00 because of this and the right of the State to pursue such criminal acts should be balanced with the right of the accused to speedy trial." The prosecution refers to the amount involved in the alleged anomalies in these cases. But as contended by the accused in his *Opposition*, "If anybody is to blame for losing the right to prosecute the offenders, the prosecution may very well not blame not the defendant but themselves. For is it not a fact that the prosecution was party to the case of **Tatad** as early as 1987, followed by **Anchangco, Duterte, Roque, Cervantes, Coscolluela** and **Perez**, and therefore knew very well that inordinate delay in the preliminary investigation proceeding would lead invariably to the dismissal of the criminal action. Strictly, 'speedy trial' was not the issue in these cases. Although it could be arguably related to each other, 'speedy trial' would involve different sets of rules and jurisprudence, as against the issue of speedy disposition of cases involved here.

WHEREFORE, the prosecution's *Motion for Reconsideration* of the Court's May 31 2017 Resolution is **DENIED** for lack of merit. Accused Azcuna's motion to dismiss is **GRANTED** and the instant cases are **DISMISSED** as to her. The **Hold Departure Order** issued against her in connection with these cases are hereby ordered **CANCELLED.** Her bail bond

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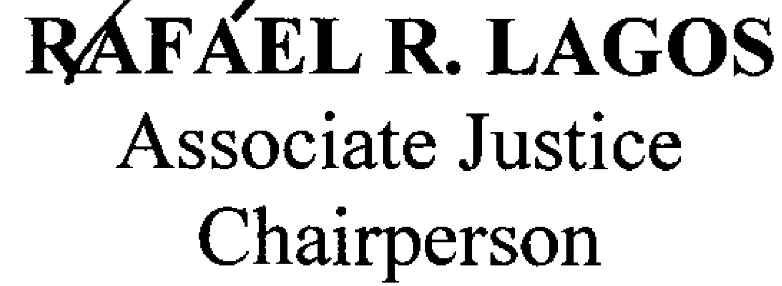
[14] Records, Vol. 2, pp. 231-232; underscoring supplied.

is ordered **RELEASED**, upon finality of this resolution, subject to usual accounting and auditing procedures.

SO ORDERED.



RAFAEL R. LAGOS
Associate Justice
Chairperson

WE CONCUR:

REYNALDO P. CRUZ
Associate Justice

MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice