

Republic of the Philippines
SANDIGANBAYAN
Quezon City

Second Division

**PEOPLE OF THE
PHILIPPINES,**

CRIM. CASE NO. SB-17-CRM-0017
For: Violation of Sec. 3(e) of RA 3019

CRIM. CASE NO. SB-17-CRM-0018
For : Violation of R.A. 8291

-versus-

CRIM. CASE NO. SB-17-CRM-0019
*For: Violation of R.A. 7875 and its
implementing Rules and Regulations*

CRIM. CASE NO. SB-17-CRM-0020
*For: Violation of R.A. 9679 and its
Implementing Rules and Regulations*

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

**MUKIM O.
ABDULKADIL,**
Accused.

Promulgated:
August 24, 2017
mjg

X-----X

RESOLUTION

PAHIMNA, J.:

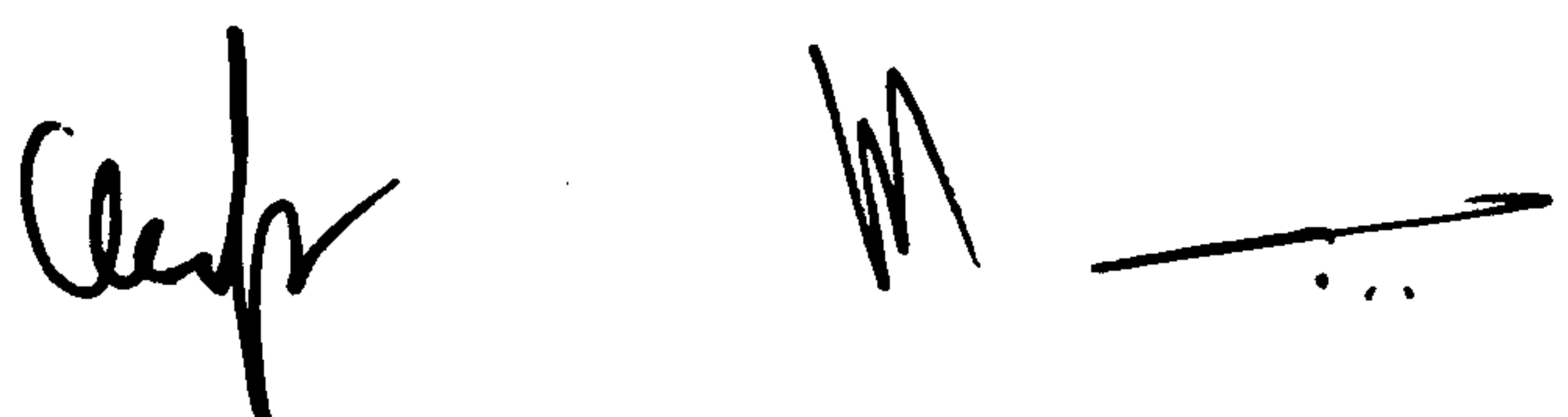
For resolution of this Court is the ***Motion to Dismiss***¹ filed by Accused, through counsel on May 29, 2017.

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

- a. ***Opposition [Re: Motion to Dismiss]***² filed by the Office of the Special Prosecutor-Office of the Ombudsman on June 7, 2017; and

¹ Records, pp. 475-480, Vol. I

² Records, pp. 488 -498, Vol. I



b. Reply (To Prosecution's Opposition dated June 6, 2017)³
filed by Accused on June 20, 2017;

Accused moves to dismiss the above-entitled cases on the sole ground of inordinate delay in the conduct of the preliminary investigation which is tantamount to violation of his constitutional rights to due process and speedy disposition of cases. He alleges that while it is true that the length of preliminary investigation is not a simple mathematical computation, there must be a reasonable justification for the inordinate delay in resolving the cases and citing numerous cases to prove his arguments.

To show the period of such inordinate delay, accused further alleged that:

- a. On September 10, 2007, the Office of the Ombudsman received an anonymous e-mail complaint from "Concerned People of Basilan Province, reporting alleged anomalous transactions of the Province, among others, to wit: (i) non-remittance of the GSIS premiums; and (ii) non-payment of Philhealth Insurance;
- b. Said email Letter-Complaint was docketed as CPL-C-07-01651 and on November 14, 2007, it was endorsed to the Commission on Audit (COA) for audit investigation;
- c. On October 10, 2008, the Special Audit Team of COA, Regional Legal and Adjudication Office, Cluster VI-Local (ARMM), submitted its Consolidated Audit and Investigation Report, which recommended the dismissal of the Complaint for lack of merit in fact and in law;
- d. On April 20, 2010, Marco Anacleto P. Buena of the Complaints Unit of the Office of the Ombudsman-Mindanao filed an Affidavit to initiate the filing of criminal and administrative charges against herein accused, among others;
- e. After the lapse of five years and ten months, the Office of the Ombudsman then issued its Resolution dated December 15, 2015, approved by Ombudsman Conchita Carpio Morales on February 5, 2016;
- f. Notwithstanding the Motion for Reconsideration filed by accused which the Office of the Ombudsman resolved in its Order dated April 18, 2016 and again approved by Ombudsman on June 10, 2016, the preliminary investigation of the cases filed against herein accused took five years and

³ Records, pp. 13-22, vol. II



ten months from the time the Complaint was filed on April 20, 2010 until it was resolved;

By way of **Opposition** thereto, the Prosecution argues that the proceeding in these cases is not attended by vexatious, capricious, and oppressive delay. Mere mathematical computation of time involved is insufficient to determine whether the right to speedy trial has been violated.

The Prosecution further averred that the Office of the Ombudsman took more or less six (6) years to terminate its preliminary investigation and claimed that said period is reasonable considering that the Affidavit charged seven (7) respondents including herein accused who filed several responsive pleadings, one after the other, during the course of the investigation.

Moreover, the accused failed to assert his right to speedy resolution of cases during the preliminary investigation, or at the earliest possible opportunity. It was only after he was arraigned and freely participated in the preliminary conference that he moved for the dismissal of these cases on the ground of inordinate delay.

In **Reply** thereto, accused claims that the prosecution admitted that the Office of the Ombudsman took more or less six (6) years to terminate its preliminary investigation. While it is true that there were seven respondents in the Affidavit filed by the Complaints Unit of the Office of the Ombudsman-Mindanao, they were entirely different from the charges against herein accused. Hence, any responsive pleading and evidence adduced by the other respondents were neither related nor in any way connected with the following violations imputed against accused. Based on the records elevated to this Court, only the Affidavit filed by the Complaints Unit of the Office of the Ombudsman-Mindanao and the Counter-Affidavit of herein accused were reviewed and/or evaluated in connection with the instant cases.

Accused maintains that the prosecution failed to adduce any valid, reasonable and justifiable explanation for the delay in the preliminary investigation and resolution of the cases.

RULING

The sole issue to be resolved is whether or not there is inordinate delay that warrants dismissal of the above-entitled cases. After a thorough study, the Court rules to **DENY** the motion.



The Right to a Speedy Disposition of Cases

Article III, Section 16 of the Constitution provides that, *all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.* The constitutional right to a speedy disposition of cases is not limited to the accused in criminal proceedings but extends to all parties in all cases, including civil and administrative cases, and in all proceedings, including judicial and quasi-judicial hearings. Hence, under the Constitution, any party to a case may demand expeditious action from all officials who are tasked with the administration of justice.⁴

In the case of **Corpuz vs. Sandiganbayan**⁵, the Supreme Court discussed the right of the accused to speedy disposition of cases and the correlative obligation of the Court to protect such right as follows:

“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.

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: (1) the length of the delay; (2) the reasons for such delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay. 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

⁴ Lopez, Jr. v. Office of the Ombudsman, G.R. No. 140529, September 6, 2001, 364 SCRA 569, 578

⁵ GR No. 162214, November 11, 2014

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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)

Thus, in determining whether or not the accused has been denied his right to a speedy disposition of a case, the following factors should be taken into consideration: **(1) the length of the delay; (2) the reasons for such delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.**

Gleaned from the foregoing, this Court finds that accused's right to the speedy disposition of cases has not been violated.

As to the Length and Cause of Delay

To this Court, the time that it took the Ombudsman to complete the investigation can hardly be considered an unreasonable and arbitrary delay as to deprive Accused of his constitutional right to the speedy disposition of his cases. Albeit there was delay in the early disposition of the instant cases during the conduct of its preliminary investigation by the Office of the Ombudsman and the latter did not offer any explanation for the cause of such delay other than stating that it exercised extreme care in verifying, evaluating and assessing the charges against all the accused before making a finding of probable cause, there is nothing in the records to show that said period was characterized by delay which was vexatious, capricious or oppressive.

Further, it is noted in *Magsaysay et al. vs. Sandiganbayan et al.*,⁶ that:

The Court is not unmindful of the duty of the Ombudsman under the Constitution and Republic Act No. 6770 to act promptly on Complaints brought before him. But such duty should not be mistaken with a hasty resolution of cases at the expense of thoroughness and correctness. Judicial notice should be taken of the fact that the nature of the Office of the Ombudsman encourages individuals who clamor for efficient government service to freely lodge their Complaints against wrongdoings of government personnel, thus resulting in a steady stream of cases reaching the Office of the Ombudsman.

As stressed upon by the Solicitor General, the Rules of Procedure of the Ombudsman do not specifically prescribe a period within which a criminal complaint may be investigated and decided. But the same Rules adopt the Rules of Court on Preliminary Investigation, as modified by the Rules of Procedure of the Ombudsman. Under the Rules of Court, the Investigating Officer has ten (10) days from submission of the case to come out with the resolution.

But it bears stressing that the period fixed by law is merely "directory", although it cannot be disregarded or ignored completely, with absolute impunity. The records of the case do not show any such complete disregard. In like manner, the circumstances averred in the petition do not suffice to overcome the presumption of

⁶ G.R. No. 128136, October 1, 1999

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regularity in the performance by the Ombudsman of his functions, especially those involving the review of numerous resolutions and recommendations of his investigating officers.

As to the assertion or failure to assert such right by the accused and the prejudice caused by the delay.

It is noteworthy that the accused raised the issue of delay only for the first time in the subject **Motion**. As aptly argued by the Prosecution, accused failed to assert his right to speedy resolution of cases during the preliminary investigation or at the earliest possible opportunity as it was only recently, when he had already been arraigned and had already freely participated in the preliminary conference that he moved for the dismissal of these cases on the ground of inordinate delay and it further argues that accused's silence during such period amounts to a waiver of such right.

In **Bernat vs. Sandiganbayan**⁷ the Supreme Court stated:

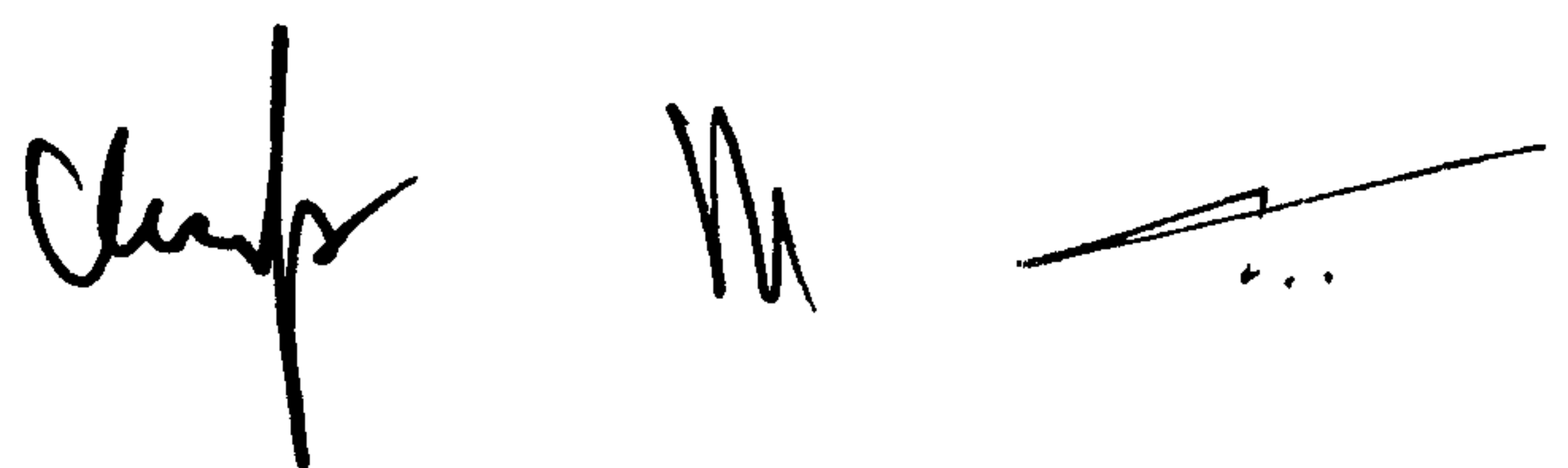
"While this Court recognizes the right to speedy disposition quite distinctly from the right to a speedy trial, and although this Court has always zealously espoused protection from oppressive and vexatious delays not attributable to the party involved, at the same time, we hold that a party's individual rights should not work against and preclude the people's equally important right to public justice."

On the issue on prejudice, accused averred that Governor Jhun Akbar, the other respondent in the *Affidavit* who can shed light on the allegations of the prosecution is already dead and accused himself is already a senior citizen and have spent his last years defending himself against a complaint. He stressed that it is imaginable how much prejudice this has caused him.

However, a perusal of the **Motion to Dismiss** filed by the Accused reveals no concrete allegation that such inordinate delay in the disposition of his case has prejudiced him at all. Other than stating that accused is already a senior citizen spending his last years defending against a complaint, there is no substantial argument that was made, clearly defining how such alleged delay have particularly prejudiced him. In the absence thereof, his contentions of prejudice are considered merely speculative and cannot be given much weight. Further, the death of his co-respondent who could allegedly shed light to the allegations of the prosecution could not be considered prejudicial as it is the prosecution who has the burden to prove his guilt and in failing to do so, accused may be acquitted. To reiterate, the claim of impairment of defense due to delay must be definite and not by mere speculation.

Thus, the contention that there was a violation of his right to the speedy disposition of cases against him must necessarily fail.

⁷ G.R. No. 158018, May 20, 2004



As emphasized by the Supreme Court:

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 of the accused, but it does not preclude the right 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.⁸

Finally, the State should not be prejudiced and deprived of its right to prosecute the cases simply because of the ineptitude or nonchalance of the Ombudsman/Special Prosecutor.⁹

WHEREFORE, the *Motion to Dismiss* filed by the accused is hereby **DENIED** for want of merit.

SO ORDERED.


LORIFEL L. PAHIMNA
Associate Justice

We concur:


OSCAR C. HERRERA, JR.
Chairperson
Associate Justice


MICHAEL FREDERICK L. MUSNGI
Associate Justice

⁸ Ibid.

⁹ Corpuz vs. Sandiganbayan