



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

Criminal Case No.:
SB-17-CRM-0482
For: Violation of Sec. 3(e)
R.A. 3019 as amended

AVELINO J. GUNGOB, SR., *ET AL.*,
Accused.

Present:
Lagos, J., Chairperson,
Cruz*, and
Mendoza –Arcega, JJ.

Promulgated:

September 05, 2017 *fel*

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RESOLUTION

MENDOZA-ARCEGA, J.:

For resolution is the *Motion to Dismiss*¹ filed by accused Carlito H. Maglasang, Rosalina S. Maglasang, Marilou H. Herrera, Evangeline M. Pua, and Florisa F. Bagasbas (hereinafter called **movants**) on 5 June 2017 and the prosecution's *Comment/Opposition to the Motion to Dismiss*² filed on 13 June 2017.

* Sitting as Special Member pursuant to Administrative Order No. 025-2017, dated February 1, 2017.

¹ Records, Vol. II, p. 5-167.

² Ibid, p. 174-179.

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The case stemmed from the alleged “anomaly in the purchase of 166 bottles of liquid organic fertilizer which has been overpriced by 733%.” This is otherwise known as the “Fertilizer Scam.”

The core of the movants’ Motion to Dismiss rests on the ground that the total of ten (10) years spent for the fact-finding investigation and the preliminary investigation conducted by the Office of the Ombudsman constitutes a gross violation of the movants’ constitutional rights to due process and speedy disposition of cases.

In essence, the movants argue that on 21 June 2006 the original complaints³ were filed against then Mayor of Consolacion, Cebu, Avelino J. Gungob, Sr., Municipal Accountant Siegfred G. Cataluña, and Municipal Treasurer Rosalina S. Maglasang, for Malversation and Violation of Section 3(e) and/or (g) of Republic Act No. 3019⁴. However, as per Consolidated Evaluation Report⁵ issued on 11 August 2006, these cases were referred to the Public Assistance and Corruption Prevention Office (PACPO) of the Deputy Ombudsman for the Visayas for further fact-finding inquiry to gather more evidence on the matter.

As claimed by the movants, the fact-finding investigation commenced again on 17 August 2011 after a letter by the Deputy Ombudsman for the Visayas dated 1 August 2011 was filed requiring the Commission on Audit – Region VII to submit the audit report, sworn affidavit and other supporting documents, involving the alleged anomalous purchase. Thereafter, the fact-finding went on until the case was instituted anew on 8 May 2014 when Graft Investigation Office II Alejandro P. Borden filed an Affidavit-Complaint against herein movants. Thus, from the institution of the original complaint in 21 June 2006 up to the issuance of the Resolution finding probable cause for Violation of Section 3(e) of R.A. No. 3019, the time spent for the investigation of this case is a staggering period of ten (10) years.

The prosecution denies the movants’ claim in its Comment/Opposition stating that the preliminary investigation of this case only started from the time the Affidavit-Complaint was filed by the Graft Investigation Officer on 8 May 2014. The Office of the Ombudsman was able to conduct the preliminary investigation for this case within a period of two (2) years and five (5) months, therefore there is no inordinate delay in the manner of the investigation.

The issue before Us is whether or not the Office of the Ombudsman committed inordinate delay in the conduct of the investigation, which constitutes a violation of the accused right to speedy disposition of cases.

³ Records, Vol. II, pages 30-81; OMB-V-C-06-0323-F and OMB-V-A-06-0352-F.

⁴ Otherwise known as the Anti-Graft and Corrupt and Practices Act.

⁵ Records, Vol. II, pages 82-90.

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Hence it is noteworthy for this Court to present a timeline of events as alleged by the parties in their respective pleadings:

***Timeline as alleged
by the Movants⁶***

On **21 June 2006**, the complaint for Malversation and for Violation of Section 3(e) and/or (g) of R.A. No. 3019 against then Mayor of Consolacion, Cebu Avelino J. Gungob, Sr., Municipal Accountant Siegfred G. Cataluña, and Municipal Treasurer Rosalina S. Maglasang was filed.

On **11 August 2006**, a Consolidated Evaluation Report was issued referring the case for further fact-finding investigation to gather more evidence necessary to warrant further formal proceedings against the said respondents.

On **17 August 2011** or six (6) years from the issuance of the Consolidated Evaluation Report, a Letter by the Deputy Ombudsman for the Visayas was filed requiring the Commission on Audit (COA) - Region VII to submit the final audit report, sworn affidavit and other supporting documents, involving the alleged anomalous purchase of the 166 bottles of liquid organic fertilizer.

On **25 May 2013**, as per its Letter dated 21 March 2013, the Deputy Ombudsman for the Visayas informed the COA that it needs the audit report with disallowance and the affidavit of the auditor covering the alleged anomalous purchase.

On **1 August 2013**, the Regional Director of COA informed the Deputy Ombudsman for the Visayas that COA – Region VII had issued a Memorandum directing the Audit Team Leader 12 – Municipality of Consolacion to coordinate with the previous Audit Team Leader necessary in the evaluation of the circumstance of the case and in the preparation of the report.

On **20 September 2013**, the COA – Region VII indorsed to the Deputy Ombudsman for the Visayas the report of the Audit Team Leader of the Municipality of Consolacion, Cebu.

On **8 May 2014**, Graft Investigation Officer II Alejandro P. Borden executed an Affidavit-Complaint against the movants together with the former Mayor of Consolacion, Cebu Avelino Gungob, Sr. and MM Castillo General Merchandise.

⁶ Records, Vol. II, pages 7-9.

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On **13 November 2014**, the Office of the Ombudsman issued an Order finding enough basis to proceed with the preliminary investigation of the criminal cases and directed the accused to file their Counter-Affidavit/s and other controverting evidence.

On **29 December 2014**, herein movants filed their Counter-Affidavit, explaining that they did not use their positions as municipal officials to procure some benefit to themselves. Accordingly, on the same date, Avelino Gungob, Sr., filed his Counter-Affidavit in support of his defense.

On **3 October 2016**, the Office of the Ombudsman issued a Resolution dismissing the criminal complaint for malversation, but finding probable cause to charge the movants together with Avelino Gungob, Sr., Siegfred Cataluña, and Marilyn Castillo for Violation of Section 3(e) of R.A. No. 3019.

On **14 November 2016**, the movants seasonably filed a Motion for Partial Reconsideration of the said Resolution.

On **13 January 2017**, the Office of the Ombudsman denied the Motion for Partial Reconsideration for lack of merit.

On **13 March 2017**, the Office of the Ombudsman filed before this Court the instant Information against herein movants dated 13 January 2017.

On **17 April 2017**, herein movants were arraigned and pleaded not guilty.

***Timeline as alleged
by the Prosecution⁷***

On **8 May 2014**, Graft Investigation Officer II Alejandro P. Borden executed an Affidavit-Complaint.

On **4 December 2014**, an Order was issued requiring the respondents to submit their Counter-Affidavits.

On **29 December 2014**, respondents Carlito Maglasang, Rosalina Maglasang, Florisa Bagasbas, Marilou Herrera, and Evangeline Puao filed their Counter-Affidavit.

On **28 January 2015**, the said respondents executed a Respondents Position Paper.

⁷ Records, Vol. II, page 175-176.

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On **3 October 2016**, the Office of the Ombudsman issued a Resolution finding probable cause to charge Respondents for Violation of Section 3 (e) of R.A. No. 3019.

On **14 November 2016**, respondents executed a Motion for Partial Reconsideration of the 3 October 2016 Resolution.

On **13 January 2017**, the Office of the Ombudsman issued an Order denying the Motion for Partial Reconsideration of the respondents.

On **13 March 2017**, the Information was filed with the Sandiganbayan.

With the foregoing, We put into consideration the movants' argument together with prosecution's comment/opposition.

THE COURT'S RULING

The Court resolves to deny the Motion to Dismiss.

The guarantee of the speedy disposition of cases under Section 16 of Article III of the Constitution applies to all cases pending before all judicial, quasi-judicial or administrative bodies. Relying on the case of *People vs. Sandiganbayan*⁸, the movants pointed out that the fact-finding investigation is but part and parcel of a preliminary investigation, especially if viewed in the light of accused's right to speedy disposition of cases. Thus, the movants argued that while it only took two (2) years and five (5) months to finish the preliminary investigation proper resulting in the finding of probable cause against the accused, this period must also include the fact-finding inquiry.

We find that accused Rosalina S. Maglasang, one of the respondents in the original complaints, may claim that the investigation started from the fact-finding inquiry which must be reckoned from 17 August 2011 when the Deputy Ombudsman for the Visayas required the Commission on Audit (COA) - Region VII to submit a final audit report. A careful scrutiny of the records showed that the investigation of the original complaints was closed and terminated upon the issuance of the Consolidation Evaluation Report. However, this Court is not convinced that the time spent for the conduct of the investigation violated the rights of accused Rosalina S. Maglasang.

Alternatively, the preliminary investigation on the part of accused Carlito H. Maglasang, Marilou H. Herrera, Evangeline M. Pua, and Florisa F. Bagasbas started from the time they were informed of the institution of the criminal action when an Affidavit-Complaint against them was filed on 8 May

⁸ G.R. No. 188165, December 11, 2013.

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2014; in which case, the investigation of their case was completed within a period of two (2) years and five (5) months.

The right to speedy disposition of cases is a relative and flexible concept such that mere mathematical reckoning of the time involved would not be sufficient. Delay as contemplated in the right to a speedy disposition of cases assumes various forms and numerous implications.⁹

The Supreme Court in a number of decisions has held that the right is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured; or even without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried.¹⁰ Here, the prosecution pointed out that the instant case is one of the cases in the celebrated controversy known as the "Fertilizer Scam", which involved high ranking officials of the Department of Agriculture, legislators, government officials, and various non-government organizations. Therefore, investigating cases of this nature requires diligence and thoroughness, and that it would take a considerable time before the investigating officer would finally resolve the matter.¹¹ The Court should not only consider the length of delay but the justification for such delay. Thus, in *Corpus vs. Sandiganbayan*¹², the Court held:

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.

Moreover, the Supreme Court recognized in *Mendoza-Ong vs. Sandiganbayan*¹³ that due to the number of cases filed in the Office of the Ombudsman, delay inevitably exists, to wit:

The Court takes judicial notice of the fact that the nature of the Office of the Ombudsman encourages individuals who clamour 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.

⁹ *Coscolluela v. Sandiganbayan*, G.R. No. 191411, July 15, 2013, as reiterated in *Enriquez v. Office of the Ombudsman*, G.R. Nos. 174902-06, February 15, 2008.

¹⁰ *Roquero vs. Chancellor of UP-Manila*, G.R. No. 181851, March 9, 2010.

¹¹ *Records*, Volume II, page 117.

¹² G.R. No. 162214, November 11, 2004.

¹³ G.R. Nos. 146368-69, October 18, 2004.

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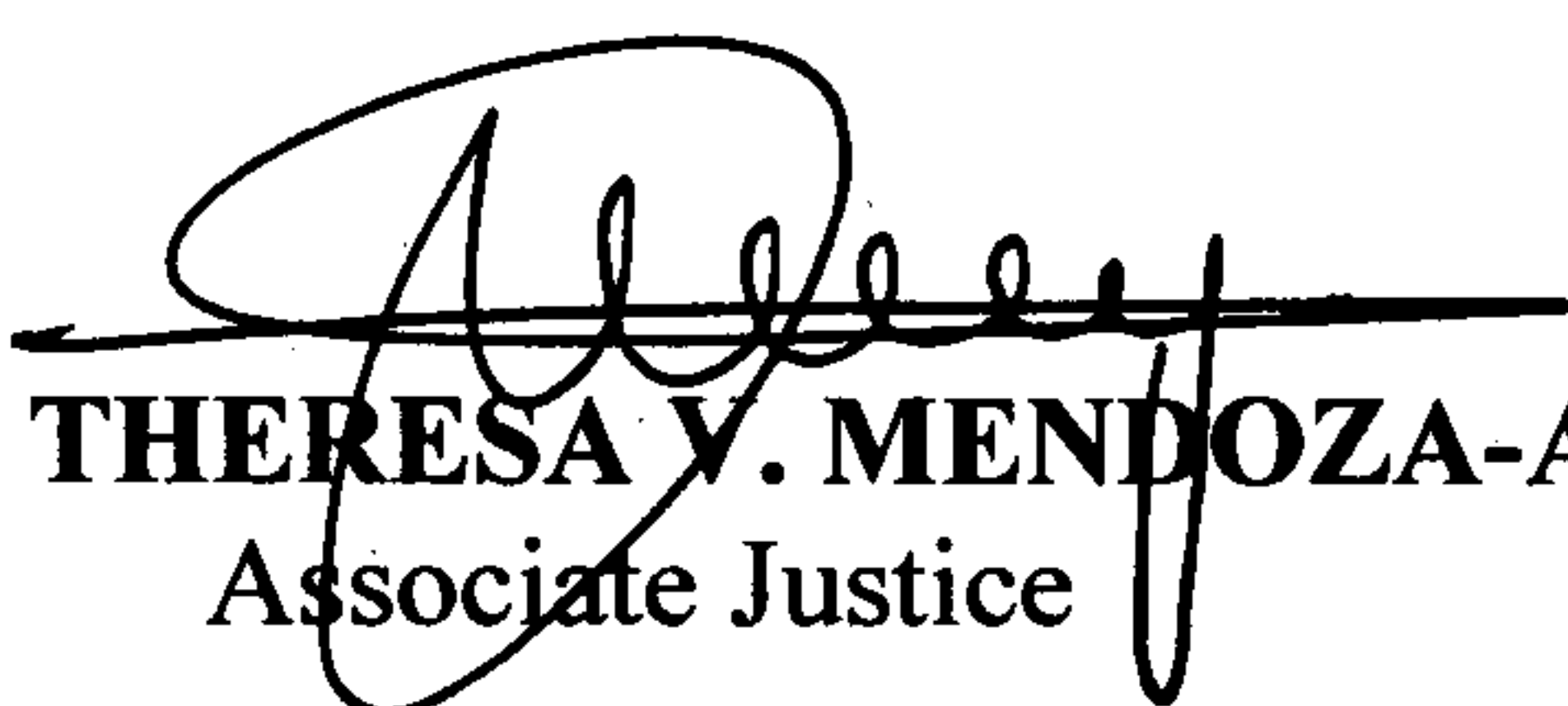
With a lot of factors to consider in the determination of whether there has been a violation of the right to speedy disposition of cases, a balancing test has been adopted which takes into consideration: (1) the length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.¹⁴ Prejudice should be assessed in the light of the interest of 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.¹⁵ In the instant case, the movants were unable to discuss the presence of any of the said factors. There can be no violation of the movants' right to speedy disposition of cases since they failed to assert such right and failed to show the prejudice caused by the delay.

As a final note, there has been an opposing force between the accused's right to a speedy disposition of cases and the right of the State and the People to prosecute crimes. The clash of these rights led the Courts to adopt the four-factor test and accordingly, give equal importance to the right of the State to indict criminals, along with the privilege accorded to the accused. It secures rights to the accused, but it does not preclude the rights of public justice.

After considering the facts and circumstances of the present case, We find that there is no violation of the movants' right to speedy disposition of cases to warrant the dismissal of this case.

WHEREFORE, premises considered, the *Motion to Dismiss* filed by accused Carlito H. Maglasang, Rosalina S. Maglasang, Marilou H. Herrera, Evangeline M. Puaos, and Florisa F. Bagasbas filed on 5 June 2017 is hereby **DENIED** for lack of merit.

SO ORDERED.


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

WE CONCUR:


RAFAEL R. LAGOS
Chairperson


REYNALDO P. CRUZ
Associate Justice

¹⁴ Supra note 10.

¹⁵ Supra note 12.