Republic of the Philippines
**SANDIGANBAYAN**
Quezon City

***SIXTH DIVISION***

**PEOPLE OF THE PHILIPPINES,**
Plaintiff,

-versus-

**ALBERT AMBAGAN, JR. and ALONA S. BAYOT,**
Accused,

SB-17-CRM-0984 - 1004
For: Violation of Section 3 (e) of Republic Act (R.A.) No. 3019 and Section 52 (g) of Republic Act (R.A.) No. 3019, in relation to Section 6 (b), of R.A. No. 8291

PRESENT:

FERNANDEZ, SJ, *J.*,[1] *Chairperson*
MIRANDA, *J*, &
MUSNGI, *J.*[2]

Promulgated:

NOV 28 2017

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# RESOLUTION

**MIRANDA, *J.*:**

This resolves: 1) The Prosecution's Motion for Reconsideration (On the Resolution dated 04 September 2017) dated September 4, 2017; and 2) The accused Albert Ambagan, Jr. (Ambagan, Jr.) and Alona S. Bayot's (Bayot) Opposition to the Plaintiff's Motion for Reconsideration dated September 20, 2017.

[1] J. Ponferrada, who participated in the assailed Resolution, retired on September 13, 2017. J. Fernandez, SJ will participate in the resolution of the present incident in view of her assumption as Chairperson of the 6th Division on the same date. (As per Administrative Order (A.O.) No. 314-2017 dated September 13, 2017; Revised Internal Rules of the Sandiganbayan, Rule XII, Section 3).
[2] J. Musngi participated in the assailed Resolution (Per Administrative Order No. 124-2017 dated April 4, 2017; Revised Internal Rules of the Sandiganbayan, Rule IX, Sec. 2[a]).

In its motion for reconsideration, the Prosecution, through the Office of the Special Prosecutor (OSP), alleges that: 1) The fact-finding investigation, a separate, distinct, and independent inquiry, is not part of the preliminary investigation; and 2) The failure of the accused to raise the alleged oppressive delay is a waiver of the said right.

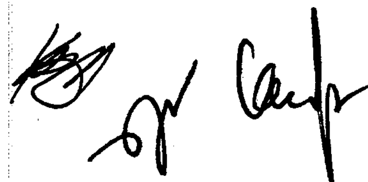
In their opposition, the accused contend that: 1) The motion for reconsideration is barred as it violates their right against double jeopardy; 2) Their rights to due process and speedy disposition of their cases were violated when the Office of the Ombudsman spent eleven (11) years, nine (9) months and seventeen (17) days to finish its fact-finding investigation and preliminary investigation, and to file the informations in Court; 3) The Office of the Ombudsman failed to give any reason for the delay in the filing of these cases; 4) The fact-finding investigation is not a separate, distinct, and independent inquiry from preliminary investigation because these were conducted by the same Office of the Ombudsman; 5) They did not waive their right to the speedy disposition of their cases; and 6) The provision in the Guidelines on the Issuance of Ombudsman Clearance that fact-finding investigation is not a pending case is for the purpose of issuing an Ombudsman clearance only, and an internal rule which cannot prevail over pertinent jurisprudence.

After a restudy of the grounds raised in the motion for reconsideration, the Court finds no valid reason to reconsider its Resolution dated September 4, 2017 dismissing the cases against the accused for violation of their right to speedy disposition of cases. The issues and arguments raised by the Prosecution in its motion for reconsideration are a mere rehash and a repetition of the same issues and arguments raised in its Comment/Opposition (On Omnibus Motion dated May 23, 2017) dated May 31, 2017. These issues and arguments have already been considered and passed upon by the Court in its Resolution dated September 4, 2017. There being no new matters or issues raised to warrant a reversal thereof, the motion for reconsideration must be **denied**.

To reiterate, the speedy disposition of cases covers the period of the preliminary investigation, and all stages to which the accused is subjected to including fact-finding investigations conducted prior to the preliminary investigation proper. This is because the right of an accused to a speedy disposition of his case includes the periods before, during, and after trial.[3]

The fact-finding investigation should not be deemed separate from the preliminary investigation conducted by the Office of the Ombudsman if the

[3] *People v. Torres*, G.R. Nos. 221562-69, October 5, 2016.



aggregate time spent for both constitutes inordinate and oppressive delay in the disposition of any case.[4]

In *Blanco v. Sandiganbayan*,[5] the Supreme Court held that the preliminary investigation started when it was ordered by the Office of the Ombudsman, and not when the latter received the anonymous letter-complaint and the referral of the case to the National Bureau of Investigation (NBI) for fact-finding investigation.

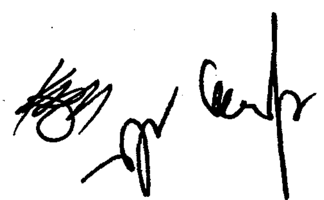
Blanco, however, is not on all fours with the cases before the Court. Here, the fact-finding investigation was conducted by the Office of the Ombudsman, not by the NBI. The Office of the Ombudsman has control over the cases starting from the fact-finding investigation. It is only proper to include the fact-finding investigation conducted by the Office of the Ombudsman in determining inordinate delay. Otherwise, the accused would be at the mercy of the Office of the Ombudsman if the fact-finding investigation is prolonged and excluded in the preliminary investigation.

Similarly, Ombudsman v. Jurado[6] is not applicable. In the said case, the fact-finding investigation was excluded in the preliminary investigation against the respondent therein because he was neither investigated nor charged before the report and recommendation of the Fact-Finding Bureau. Prior to this period, the respondent therein had no case to speak of as he was neither the subject of any complaint nor investigation. Unlike in *Jurado*, the accused in these cases were already the subjects of the fact-finding investigation by the Office of the Ombudsman. The Office of the Ombudsman had control over it. Thus, the fact-finding investigation is included in the determination of inordinate delay.

The provision in Memorandum Circular No. 5, Series of 2012, or the Guidelines on the Issuance of Ombudsman Clearance, that a fact-finding investigation is not considered a pending case is not binding on the Court. The memorandum circular pertains only to the issuance of an Ombudsman clearance which is internal in nature and does not affect relevant jurisprudence that fact-finding investigation forms part of the preliminary investigation for purposes of determining violation of the right to speedy disposition of the case.

The Office of the Ombudsman spent a total of *eleven (11) years, nine (9) months and seventeen (17) days* to finish its fact-finding investigation

[4] *People v. Sandiganbayan*, G.R. Nos. 188165 and 189063, December 11, 2013.
[5] G.R. Nos. 136757-58, November 27, 2000.
[6] G.R. Nos. 154155, August 6, 2008.



and preliminary investigation, approve the resolution finding probable cause, and file the information in Court. The significant factors that contributed to the inordinate delay were the fact-finding investigation which lasted more than five (5) years, and the Deputy Ombudsman for Luzon's approval of the resolution finding probable cause which took four (4) years, four (4) months, and seven (7) days. This period was way longer than the preliminary investigation proper conducted by the Graft Investigation and Prosecution Officer which took only one (1) year, three (3) months and eleven (11) days. The Court cannot tolerate this delay considering that these are only simple cases of violation of Section 3(e) of R.A. No. 3019 and failure to remit the social insurance contributions of the municipal employees to the Government Service Insurance System (GSIS). The issues for resolution were not complicated and the documents were not voluminous. In fact, the Resolution dated September 19, 2012 of the Office of the Ombudsman consisted only of ten (10) pages.

It is not the duty of the accused to follow-up the prosecution of their cases. Rather, it is the responsibility of the Office of the Ombudsman to expedite the same within the bounds of reasonable timeliness in view of its mandate to promptly act on all complaints lodged before it. It is not the duty of the accused to bring themselves to trial. The State has that duty as well as the duty of insuring that the trial is consistent with due process.[7]

Moreover, the right to speedy disposition of cases is not merely hinged towards the objective of spurring dispatch in the administration of justice but also to prevent the oppression of the citizen by holding a criminal prosecution suspended over him for an indefinite time. Akin to the right to speedy trial, its salutary objective is to assure that an innocent person may be free from the anxiety and expense of litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose.[8] The right to speedy disposition of the case guaranteed under Section 16, Article III of the Constitution includes the periods before, during and after trial, and affords broader protection than Section 14(2), which guarantees just the right to a speedy trial.[9]

A dismissal on the ground of violation of the right to speedy trial will have the effect of acquittal that would bar further prosecution of the accused for the same offense.[10] A judgment of acquittal is final, unappealable, and immediately executory upon its promulgation and cannot be recalled for

[7] *Coscolluela v. Sandiganbayan*, G.R. Nos. 191411, July 15, 2013.
[8] *Id.*
[9] *Dansal v. Fernandez*, G.R. No. 126814, March 2, 2000.
[10] *Bonsubre, Jr. v. Yerro*, G.R. No. 205952, February 11, 2015.

correction or amendment because of the doctrine that nobody may be put twice in jeopardy of punishment for the same offense. This is known as the "finality of acquittal rule."[11] A judgment of acquittal may be assailed only in a petition for certiorari under Rule 65 of the Rules of Court.[12]

Since a dismissal of a case on the ground of violation of the right to speedy trial results in acquittal that is barred by double jeopardy, it follows that the dismissal of a case based on violation of the right to speedy disposition of the cases should also result in the acquittal of the accused in these cases. Accordingly, the acquittal ends the cases in which the accused is being prosecuted and the same cannot be appealed or reopened because of the doctrine of double jeopardy.

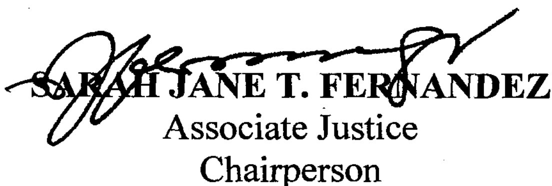
In sum, the right of the accused to the speedy disposition of their cases was violated because of the failure of the Office of the Ombudsman to explain the delay of more than eleven (11) years in terminating the preliminary investigation, and the Deputy Ombudsman for Luzon's approval of the resolution finding probable cause which took four (4) years, four (4) months, and seven (7) days. The filing of the motion for reconsideration is barred by the constitutional proscription on double jeopardy.

**WHEREFORE**, the Prosecution's Motion for Reconsideration dated September 4, 2017 is **DENIED**. The Resolution of the Court promulgated on September 4, 2017 is **AFFIRMED**.

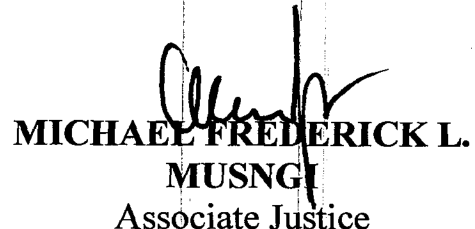
**SO ORDERED.**

**KARL B. MIRANDA**
Associate Justice

WE CONCUR:



**SARAH JANE T. FERNANDEZ**
Associate Justice
Chairperson



**MICHAEL FREDERICK L. MUSNGI**
Associate Justice

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[11] *Chiok v. People*, G.R. No. 176814, December 7, 2015; *People v. Velasco*, G.R. No. 127444, September 13, 2000.
[12] *Villareal v. Aliga*, G.R. Nos. 166995, January 13, 2014.