



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-17-CRM-1407**

Plaintiff, For: Violation of Section 3(e)
of R.A. No. 3019

SB-17-CRM-1408

For: Falsification of Public Documents

Present

- versus -

FERNANDEZ, SJ, J.,
Chairperson

MIRANDA, J. and

VICENTE S. PARAGAS, ET AL. FERNANDEZ, B,* J.
Accused.

Promulgated:

NOV 20 2017

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves accused Antonio M. Lachienta's *Motion to Dismiss*.¹ In his Motion, he prays for the dismissal of the present cases on the ground of the violation of his right to speedy disposition of cases. He avers:

1. The Department of Environment and Natural Resources issued Regional Special Order No. 2001-332 dated September 11, 2001, creating an investigation team to conduct a fact-finding investigation on the alleged irregularities in the implementation of the Pola Watershed perimeter survey project.
2. The Field Investigation Office (FIO) of the Office of the Ombudsman filed the Complaint dated April 30, 2013.

* Per Administrative Order No. 338-2017 dated October 2, 2017

¹ Dated October 16, 2017 and filed on October 24, 2017; Record, Vol. 2, pp. 151-160

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3. On August 27, 2013, the Office of the Ombudsman directed the respondent to file their respective counter-affidavits.
4. He filed his counter-affidavit on January 8, 2014.
5. The Office of the Ombudsman filed the Information in the present cases on July 14, 2017.
6. In *Angchangco v. Ombudsman*,² *Lopez v. Ombudsman*³ and *Roque v. Ombudsman*,⁴ it was held that a delay of six (6) years in the investigation is inordinate and unreasonable.
7. The FIO started the investigation sometime in 2010, but the Informations were filed only in 2017 – around seven (7) years after the start of the investigation. Such delay in the Ombudsman's investigation is inordinate and oppressive, and has resulted in a clear violation of his constitutional right to speedy disposition of cases.

In his *Supplement to Motion to Dismiss*,⁵ he further avers that the delay in the termination of the preliminary investigation caused anxiety and concerns over his looming arrest once the case is filed with the Sandiganbayan, such that he could not concentrate on his job and participate in public bidding for similar government projects. His defense has also been weakened due to the loss of evidence such as field notes, survey data and monuments made in connection with the mapping of the Pola Watershed area, and the impaired recollection of witnesses.

In its *Comment/Opposition*,⁶ the prosecution counters:

1. In *Gonzales v. Sandiganbayan*,⁷ the Supreme Court held that the right to speedy disposition of cases is violated only when the proceeding is attended by vexatious, capricious and oppressive delays; or when unjustified postponements are asked for and secured, or when without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried. To determine if there is a violation of the right to speedy disposition of cases, the Court should consider the length of delay, the reason for the delay, the defendant's

² G.R. No. 122728, February 13, 1997

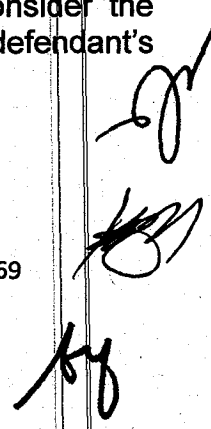
³ G.R. No. 140529, September 6, 2001

⁴ G.R. No. 129978, May 12, 1999

⁵ Dated October 30, 2017 and filed on November 2, 2017; Record, Vol. 2, pp. 166-169

⁶ Dated November 6, 2017 and filed on November 8, 2017; Record, Vol. 2, 289-293

⁷ G.R. No. 94750, July 16, 1991



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assertion or non-assertion of such right, and the prejudice that resulted from the delay.

2. Here, the Complaint was filed on July 24, 2013 and the Office of the Ombudsman approved the Resolution dated August 26, 2016 on October 18, 2016. Thus, the preliminary investigation lasted for only about three (3) years and three (3) months.
3. Considering that there were eleven (11) respondents, the time it took to terminate the preliminary investigation covered the time allotted for the respondents to file their respective counter-affidavits and for the Office of the Ombudsman to properly evaluate the same and determine the existence of probable cause.
4. The time spent in the fact-finding investigation should not be considered in the determination of whether or not there was a violation of the right to speedy disposition of cases. Moreover, the technical nature of the subject project should be considered in the said determination.
5. In *Ombudsman v. Jurado*, it was held that prior to the fact-finding report of the Office of the Ombudsman, therein respondent was never the subject of any complaint or investigation. Similarly, accused Lacanienta could not have been prejudiced by the alleged delay in the conduct of the fact-finding investigation, considering that the subpoenas were issued to the concerned government personnel, not to him.
6. Accused Lacanienta filed his *Counter Affidavit* dated November 25, 2013 on January 8, 2014. He never questioned what he now claims as undue and vexatious delay. If he was indeed prejudiced by such delay, he would have made such argument in his *Counter Affidavit*. Because of his failure to raise the issue of undue delay at the first instance, he is deemed to have waived his right to speedy disposition of cases.
7. The Supreme Court has taken judicial notice of the steady stream of cases reaching the Office of the Ombudsman.

THE COURT'S RULING

The Motion of accused Lacanienta is bereft of merit and should be denied.

From the records, it appears that on September 11, 2001, the DENR formed a fact-finding team to investigate the alleged

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irregularities in the contract involving the Pola Watershed Perimeter Survey Project. Thereafter, the fact-finding team issued its Fact Finding Investigation Report dated March 12, 2002. However, the matter was brought to the Office of the Ombudsman only on December 8, 2010 and January 14, 2011.⁸

The Field Investigation Office (FIO) of the Office of the Ombudsman filed the Complaint dated April 30, 2013 on July 24, 2013.⁹ Some of the respondents filed their respective counter-affidavits from October to December 2013. Accused Lacanienta filed his counter-affidavit on January 8, 2014.¹⁰ Thereafter, the Ombudsman approved on October 18, 2016 the Resolution dated August 26, 2016, finding probable cause to indict the accused for violation of Sec. 3(e) of R.A. No. 3019 and Falsification of Public Documents. After the denial of the respective Motions for Reconsideration of then respondents in the Order dated January 30, 2017,¹¹ the Information in the present cases were filed on July 14, 2017.

From the time the DENR formed the fact-finding team to the filing of the Informations with the Court, a period of around fifteen (15) years and ten (10) months passed. However, from the start of the preliminary investigation to the filing of the Informations, only around three (3) years and eleven (11) months passed. Furthermore, from the start of the preliminary investigation until the approval of the Resolution finding probable cause, only around three (3) years and two (2) months passed.

Indeed, in several cases, the Supreme Court held that a delay of six (6) years is inordinate. In *Tatad v. Sandiganbayan*,¹² the Supreme Court held that a delay of close to three (3) years cannot be deemed reasonable or justifiable. But it must be stressed that in *Tatad*, in concluding that there was a violation of the accused' right to speedy disposition of cases, there were other factors that were taken into consideration. The pertinent portion of that case reads:

x x x. A delay of close to three (3) years can not be deemed reasonable or justifiable in light of the circumstance obtaining in the case at bar. We are not impressed by the attempt of the

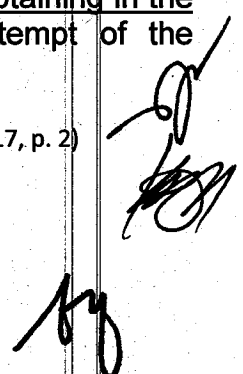
⁸ Record, Vol. 2, p. 167 (*Supplement to Motion to Dismiss* dated October 30, 2017, p. 2)

⁹ Record, Vol. 2, p. 290 (*Comment/Opposition* dated November 6, 2017, p. 2)

¹⁰ Record, Vol. 2, p. 162 (*Motion to Dismiss* of accused Lacanienta, p. 2)

¹¹ Record, Vol. 1, pp. 37-40

¹² G.R. Nos. 72335-39, March 21, 1988



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Sandiganbayan to sanitize the long delay by indulging in the speculative assumption that "the delay may be due to painstaking and grueling scrutiny by the Tanodbayan as to whether the evidence presented during the preliminary investigation merited prosecution of a former high ranking government official." In the first place, such a statement suggests a double standard of treatment, which must be emphatically rejected. Secondly, three out of the five charges against the petitioner were for his alleged failure to file his sworn statement of assets and liabilities required by Republic Act No. 3019, which certainly did not involve complicated legal and factual issues necessitating such "painstaking and grueling scrutiny" as would justify a delay of almost three years in terminating the preliminary investigation. x x x

(underscoring supplied)

Indeed, a delay of three (3) years may be considered unreasonable or unjustifiable, but this would depend on the circumstances obtaining in a particular case. In *Tatad*, it must be noted that aside from the fact that the cases therein did not involve complicated legal and factual issues, the Supreme Court had the impression that "political motivations played a vital role in activating and propelling the prosecutorial process." Accused Lacanienta has not shown that similar circumstances obtain in the present cases.

The Supreme Court, in *Corpuz v. Sandiganbayan*,¹³ explained that the right to speedy disposition of cases is violated only when the proceeding is attended by vexatious, capricious and oppressive delays. Speedy disposition of cases is a flexible concept. In determining if such right was violated, four factors must be considered. *Viz.:*

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.



¹³ G.R. No. 162214, November 11, 2004

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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.

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: (a) length of delay; (b) the reason for the delay; (c) the defendant's assertion of his right; and (d) prejudice to the defendant. x x x

(underscoring supplied)

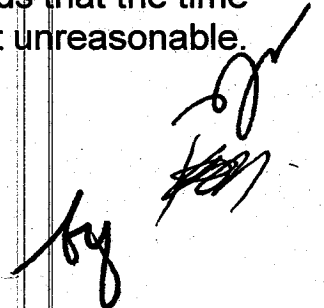
Here, from the filing of the Complaint with the Office of the Ombudsman on July 24, 2013 to the filing of the Informations with the Court on July 14, 2017, a period of around three (3) years and eleven (11) months passed. The length of time, or the delay, however, is only one of the factors that the Court must consider.

Closely related to the length of the delay is the reason or justification of the State for such delay.¹⁴ According to the prosecution, the time it took to complete the preliminary investigation was not unreasonable, considering the number of accused involved, whose right to due process had to be respected.

Indeed, the accused were given the opportunity to be heard. They were given the opportunity to file their respective counter-affidavits, as well as their respective motions for reconsideration of the Ombudsman's Resolution. Considering the number of accused, it necessarily took more time for the Office of the Ombudsman to properly evaluate their respective arguments to arrive at the appropriate conclusion. Also considering the steady stream of cases reaching the Office of the Ombudsman,¹⁵ this Court finds that the time it took to complete the preliminary investigation was not unreasonable.

¹⁴ *Corpuz v. Sandiganbayan*

¹⁵ *Mendoza-Ong v. Sandiganbayan*, 146368-69, October 18, 2004



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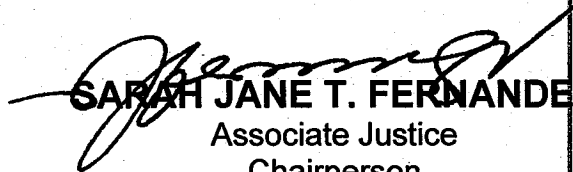
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The prejudice accused Lacanienta claims to have suffered appears to be a result of the mere passage of time, which, by itself, does not necessarily cause the violation of the right to speedy disposition of cases.

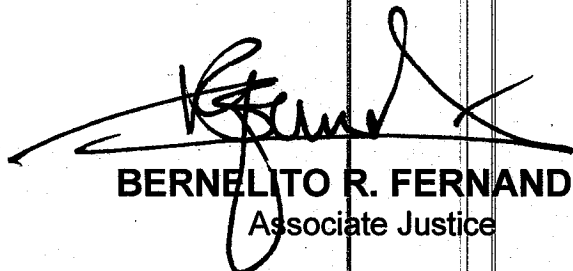
WHEREFORE, the *Motion to Dismiss* of accused Lacanienta, as well as his *Supplement to Motion to Dismiss*, are hereby **DENIED** for lack of merit.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA
Associate Justice


BERNELITO R. FERNANDEZ
Associate Justice