



Republic of the Philippines  
*Sandiganbayan*  
Quezon City  
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SEVENTH DIVISION

*MINUTES of the proceedings held on April 17, 2018.*

*Present:*

*MA. THERESA DOLORES C. GOMEZ-ESTOESTA ----- Chairperson*  
*ZALDY V. TRESPESES ----- Associate Justice*  
*BERNELITO R. FERNANDEZ\* ----- Associate Justice*

The following resolution was adopted:

***SB-18-CRM-0013 – People v. Augusto L. Syjuco, et al.***

Before this Court are:

1. Accused Buen S. Mondejar's "MOTION TO QUASH the Information against Buen Samarista Mondejar" dated February 13, 2018; and
2. The Prosecution's "OPPOSITION [TO MOTION TO QUASH DATED 13 FEBRUARY 2018]" dated April 2, 2018.

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For resolution is accused Buen Mondejar's *Motion to Quash* anchored on the alleged inordinate delay in the conduct of the preliminary investigation, including the fact-finding investigation of the Office of the Ombudsman.

In his *Motion*, accused Mondejar presented a timeline of proceedings from the Ombudsman's fact-finding investigation to the filing of the *Information*, as follows:

- |                          |   |
|--------------------------|---|
| <i>July 29, 2009</i>     | - COA disallowed the payment for the subject project of TESDA   |
| <i>February 13, 2013</i> | - Office of the Ombudsman issued a <i>subpoena duces tecum</i> to the BPLO of Quezon City as part of its fact-finding investigation |
| <i>December 2, 2014</i>  | - Office of the Ombudsman initiated a complaint against the accused   |

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\* Per A.O. No. 066-2018 dated January 30, 2018

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- February 2, 2015* - Complaint was filed
- September 13, 2016* - Resolution of the Ombudsman
- February 24, 2017* - Denial of accused's MR
- May 24, 2017* - Date of Information
- January 23, 2018* - Filing of Information

Accused Mondejar summarized that up to the filing of the *Information*, it took ten (10) years from the alleged commission of the offense; or **five (5) years from the conduct of fact finding investigation**; or three (3) years from the institution of the Complaint. According to him, this constituted inordinate delay, violating his right to the speedy disposition of the case, and meriting the quashal of the *Information* against him.

Citing a few cases,<sup>1</sup> including *People v. Sandiganbayan*,<sup>2</sup> which accused Mondejar claimed was squarely applicable to him, he averred that there was inordinate delay when fact-finding investigation and preliminary investigation lasted for five years. The delay was for no justifiable cause, as all that the Prosecution needed for the indictment was already available in the AOM and the COA Report, and the Ombudsman had access to its material witness even before the initiation of the complaint.

Accused Mondejar asserted that he could not be faulted for not having urged the speedy disposition of his case before the Ombudsman, which was itself responsible for the delay. Further, it was not his duty to follow up on the case; instead, it was the duty of the Ombudsman to act promptly on it. The filing of this case caused him anxiety and stress, and tarnished his good name, which he has preserved for three decades. Time has eroded certain defenses, which were no longer available to him, and his memory of the details has dimmed.

In its *Opposition*, the Prosecution countered that there was no inordinate delay in the proceedings before the Ombudsman. The cases cited by accused Mondejar were not applicable herein. The subpoena adverted to have commenced the fact-finding investigation did not indicate that it was for the investigation of accused Mondejar, or in connection with this case. The delay was justified as the subject disbursement amounted to ₱30 Million Pesos. The documents were voluminous – the Complaint-Affidavit had 156 annexes, and the pleadings during preliminary investigation comprised of 1,565 pages. The TESDA and the other offices were reluctant to participate in the investigation, and in fact, the accused themselves contributed to the delay, having filed numerous motions for extension, some even asking for 40 days. Oppressive delay could not mean delay resulting from the significant contribution of the accused in stalling the proceedings.

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<sup>1</sup> *Tatad v. Sandiganbayan*, G.R. Nos. 72335-39, March 21, 1988; *Cervantes v. Sandiganbayan*, G.R. No. 108595, May 18, 1999; *Roque v. Ombudsman*, G.R. No. 129978, May 12, 1999; *Angchangco v. Ombudsman*, G.R. No. 122728, February 13, 1997; and *Coscolluela v. Sandiganbayan*, G.R. No. 191411, July 15, 2013

<sup>2</sup> G.R. Nos. 188165 & 189063, December 11, 2013

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The *Motion* is bereft of merit.

Duration-wise, this case may be similar to *People v. Sandiganbayan*, as accused Mondejar submits, but the similarity ends there.

It has been held that in determining inordinate delay, a mere mathematical reckoning of the time involved would not be sufficient. In the application of the constitutional guarantee of the right to speedy disposition of cases, particular regard must also be taken of the facts and circumstances peculiar to each case.<sup>3</sup>

In *Corpuz v. Sandiganbayan*<sup>4</sup>, the Supreme Court explained the right to speedy disposition of cases thus:

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.**

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**. (emphases supplied)

In his *Motion*, accused Mondejar enumerated the four factors to be considered in determining whether an accused has been deprived of his right to a speedy disposition of the case, as follows: (1) the length of delay; (2) the reasons for the delay; (3) assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.<sup>5</sup> None of these factors is either a necessary or sufficient condition; they are related and must be considered together with other relevant circumstances.<sup>6</sup>

While this Court finds that accused Mondejar timely asserted his right to the speedy disposition of this case by filing the instant *Motion*, the same

<sup>3</sup> *Ty-Dazo, et al. v. Sandiganbayan*, G.R. No. 143885-86, January 21, 2002

<sup>4</sup> G.R. No. 162214, November 11, 2004

<sup>5</sup> *Coscolluela v. Sandiganbayan*, G.R. No. 191411, July 15, 2013

<sup>6</sup> *Remulla v. Sandiganbayan*, G.R. No. 218040, April 17, 2017

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does not sufficiently support the existence of the other factors necessary to convince this Court that there has indeed been a violation of said right.

### *Length of Delay*

While the fact-finding and preliminary investigations in this case lasted as long as that in *People v. Sandiganbayan*, i.e., five years in all, this alone does not conclusively indicate inordinate delay since, as discussed above, inordinate delay is determined on an *ad hoc basis*.

### *Reason for the delay*

Accused Mondejar submits that all that was necessary to find probable cause against him was already in the COA Report, whose author was already accessible to the Ombudsman even before the Complaint was filed.

The Prosecution, on the other hand, alludes to the voluminous documents which the Office of the Ombudsman took time to study. Moreover, the accused themselves contributed to the delay by filing motions for extension to file their respective Counter-Affidavits.

The Records would disclose that the FIO filed a complaint against thirty-three (33) respondents, and to support such complaint, had to compile and study around 156 documents during its fact-finding investigation. In arguing how expeditiously the Ombudsman could have resolved his criminal liability, accused Mondejar loses sight of the fact that he was only one of 33 respondents whose respective criminal liabilities the Ombudsman had to determine.

The Certification from the BPLO attached to the *Motion* is Annex "EEEEEE" of the Complaint; hence, contrary to the Prosecution's submission, it is indeed related to this case, showing that fact-finding investigation has taken place as of February 28, 2013. Upon filing of the complaint with the Office of the Ombudsman, the investigating prosecutor had to study the Complaint, together with its annexes, as well as the defenses advanced by each of the respondents, in order to arrive at its Resolution.

Given the volume of documents to gather and study and the number of respondents impleaded, this Court finds that the Office of the Ombudsman took a reasonable time to conduct its fact-finding investigation (2 years) and preliminary investigation (2 years), which was hardly vexations, capricious, or oppressive against the accused. This case is not analogous to *People v. Sandiganbayan*, which involved a simple charge for robbery, wherein the Ombudsman found that intimidation and asportation had been completed at the time of transfer of funds to the accused, and it was improper for the Ombudsman not to act upon it right then, and instead await the ratification of a treaty by the Senate, which was calculated to be used by the Prosecution to its advantage against the accused during preliminary investigation.

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That the Office of the Ombudsman's findings after preliminary investigation ended up matching the COA's findings in its Report did not render unnecessary the time utilized by the Ombudsman to conduct preliminary investigation. As explained in *Cabrera v. Marcelo*:<sup>7</sup>

**It should be borne in mind that the interest of the COA is solely administrative, and that its investigation does not foreclose the Ombudsmans authority to investigate and determine whether there is a crime to be prosecuted for which a public official is answerable. In *Ramos v. Aquino*, the Court ruled that the fact that petitioners accounts and vouchers had passed in audit is not a ground for enjoining the provincial fiscal from conducting a preliminary investigation for the purpose of determining the criminal liability of petitioners for malversation. Clearly then, a finding of probable cause does not derive its veracity from the findings of the COA, but from the independent determination of the Ombudsman. (emphases supplied)**

*Prejudice caused by the delay*

Finally, in all criminal indictments, the accused stands to suffer, to a certain extent, anxiety, stress, and some injury to the reputation. Certain things may happen while cases are pending, but these are not necessarily attributable to the pendency of these cases. Accused Mondejar's prospective witnesses could have unfortunately passed away, and his memory may not be as clear, but the passage of time is not always the same as its misuse, in this case, by the Ombudsman. The passage of time alone, without a significant deprivation of liberty or impairment of the ability to properly defend oneself, is not absolute evidence of prejudice. The right to a speedy trial is not primarily intended to prevent prejudice to the defense caused by the passage of time; that interest is protected primarily by the due process clause and the statutes of limitations.<sup>8</sup> As member of the BAC, whose actions were presumably based on documents and themselves documented, accused Mondejar's defense is not substantially weakened by the lack of witnesses or his waning memory.

WHEREFORE, in view of the foregoing, accused Mondejar's *Motion to Quash* is **DENIED** for lack of merit.

Let the arraignment of the accused on May 21, 2018 at 8:30 a.m. proceed, as scheduled.

**Pre-Trial** shall immediately proceed. The parties are directed to furnish the Court, at least five (5) days before the scheduled arraignment, with the soft (in Microsoft Word Format)<sup>9</sup> and hard copies of their respective pre-trial brief and/or a list of their documentary exhibits, witnesses, issues, proposals for stipulation and/or admitted facts, without prejudice to resorting to modes of discovery procedure, if necessitated.

SO ORDERED.

<sup>7</sup> G.R. Nos. 157419-20, December 13, 2004

<sup>8</sup> *Sps. Uy v. Judge Adriano, et al.*, G.R. No. 159098, October 27, 2006

<sup>9</sup> To be emailed to sb7thdivocc@gmail.com

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**GOMEZ-ESTOESTA, J., Chairperson**



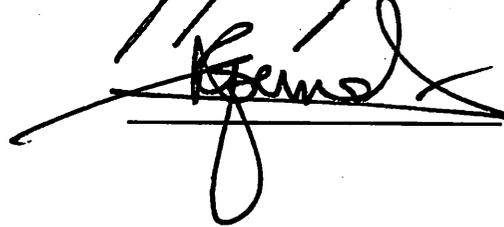
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**TRESPESES, J.**



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**FERNANDEZ, J.**



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