REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

SPECIAL SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CRIM. CASES NOS. SB-17-CRM-1593 & 1594** *For: Violation of Section 3(e) of Republic Act No. 3019, as amended*
- versus -	**CRIM. CASES NOS. SB-17-CRM-1595 & 1596** *For: Violation of Article 217 of the Revised Penal Code (Malversation)*
RODOLFO W. ANTONINO, ET AL., *Accused.*	Present: FERNANDEZ, SJ,* J., Chairperson MUSNGI,** J., Associate Justice JACINTO,*** J., Associate Justice QUIROZ,**** J., Associate Justice ECONG,**** J., Associate Justice

MAY 04 2018
Promulgated

RESOLUTION

MUSNGI, J.:

The Court resolves the *Motion for Reconsideration*[1] filed by the plaintiff, through the Office of the Special Prosecutor, on 26 February 2018, to which accused Arthur C. Yap ("**YAP**"), through counsel, filed his *Comment/Opposition (Re: Motion for Reconsideration dated 26 February 2018)*[2] on 07 March 2018.

---

* J. Fernandez assumed her position as Chairperson of the Sixth Division per Administrative Order No. 314-2017, in view of J. Ponferrada's retirement on 13 September 2017. The incident was deemed submitted for resolution after the filing of the prosecution's *Comment/Opposition* on 13 September 2017 (Record, p. 553; Rule XII, Sec.3, *Revised Internal Rules of the Sandiganbayan*)

** Designated as temporary member of the Sixth Division per Administrative Order No. 124-2017 dated 04 April 2017, in view of the vacancy therein.

*** Designated as temporary member per Administrative Order No. 307-A-2017 dated 31 August 2017, in view of the inhibition of J. Miranda.

**** Designated as temporary members per Administrative Order No. 17-C-2017 dated 04 December 2017.

[1] Sandiganbayan Records, Vol. 3, pp. 138-145.

[2] *Ibid.*, pp. 177-189.

In the subject *Resolution*[3] dated 19 February 2018, the Court granted the Urgent Omnibus Motion[4] filed by accused Yap on 25 August 2017 for violation of his constitutional right to speedy disposition of cases. The dispositive portion thereof reads, thus:

> "**WHEREFORE**, in light of the foregoing, the *Urgent Omnibus Motion* filed by accused Arthur Cua Yap on 25 August 2017 is **GRANTED**. Accordingly, CRIMINAL CASES NOS. SB-17-CRM-1593 to 1594 and SB-17-CRM-1595 to 1596 are hereby **DISMISSED** as regards said accused for violation of his constitutional right to speedy disposition of cases.
>
> The hold departure order issued by the Court against the abovenamed accused, if any, is hereby **LIFTED** and **SET ASIDE**, and the cash bond he posted is ordered **RELEASED**, subject to the usual accounting and auditing procedures.
>
> **SO ORDERED.**"

The plaintiff implores the Court to reconsider the dismissal of these cases based on the following grounds:

1. "The accused's right to speedy disposition of cases was not violated; and

2. The fact-finding investigation of the Ombudsman should not be considered in the determination of whether or not there was violation of the right of an accused to speedy disposition of the case."

The plaintiff maintains that there was no inordinate delay attendant in the disposition of these cases and that the Ombudsman was not remiss in its duties to accord the accused his constitutional right to the speedy disposition thereof. It insists that since there was no actual prejudice suffered by accused Yap, the fact-finding investigation should not be included in the mathematical computation of the alleged delay. According to the plaintiff, the fact-finding investigation conducted by the Office of the Ombudsman does not yet involve the adjudication of rights among the parties to the case. In support thereof, the plaintiff cites the Office of the Ombudsman's Memorandum Circular No. 5, Series of 2012 (*Guidelines on the Issuance of Ombudsman Clearance*), thus:

---

[3] *Ibid.*, pp. 92-105.
[4] Sandiganbayan Records, Vol. 1, pp. 288-327.

> "18. The two sets of investigation were explained in *Memorandum Circular No. 5, Series of 2012 (Guidelines on the issuance of Ombudsman Clearance)* Section 2 provides:
>
> x x x
>
> A case is deemed pending from the time it has been docketed as a criminal, administrative or forfeiture case until a resolution or decision thereof has attained finality in accordance with the rules or, in case of an adverse disposition, the penalty imposed therein has been duly served or fully implemented.
>
> If there appears to be such pending case against the applicant, the Office shall instead issue a Certification that he or she has pending criminal, administrative or forfeiture case/s filed with the Office of the Ombudsman.
>
> **A complaint that is under case build-up or fact-finding investigation, however, shall not be considered a pending case.** (emphasis and underscoring supplied)"

In his *Comment/Opposition*, accused Yap prays for the denial of the instant motion and asserts that:

> "The investigation of the instant criminal cases was attended by vexatious, capricious, and oppressive delay. The prosecution failed to establish any valid reason to justify the protracted investigation. Accordingly, this Honorable Court correctly dismissed the instant criminal cases with respect to Mr. Yap for violation of his constitutional rights to due process of law and speedy disposition of cases."

Accused Yap claims that the four factors to consider in determining whether a defendant or accused has been denied his right to speedy disposition of cases all tilt in his favor. First, he reiterates that a total period of seven (7) years, two (2) months and seven (7) days had lapsed counted from the commencement of the investigation until the *Informations* were filed in Court. Citing the case of *Torres v. Sandiganbayan*,[5] the accused further claims that the Court correctly considered the period of fact-finding investigation in the computation of the period of delay.

Second, the accused maintains that there was no justifiable reason for the delay in the resolution of the Ombudsman's investigation. He explains that a clogged docket or case load is not a justification for failure to timely resolve a case before one's office.

---

[5] G.R. Nos. 221562-69, 05 October 2016.

Third, he likewise maintains that there is no law or rule which requires respondents to constantly follow up their cases with the Office of the Ombudsman, much less file motions for early resolutions of the same. Accused Yap cites the recent case of *Remulla v. Sandiganbayan*,[6] wherein the Supreme Court upheld the doctrine that the respondent has no duty to follow up his case.

Lastly, accused Yap insists that he has already been prejudiced by the inexcusable delay in the resolution of these cases against him. The pendency thereof has subjected him to a life of constant anxiety and public suspicion.

RULING

The Court **denies** the instant motion for lack of merit.

A Motion for Reconsideration should be denied when the same only constitutes a rehash of issues previously put forward.[7] A careful reading of the plaintiff's motion shows that it did not present any new arguments which would warrant a reconsideration of the Court's *Resolution* dated 19 February 2018. Nevertheless, after thoughtful consideration thereof, as well as the records of these cases, the Court still does not find any cogent reason to overturn its earlier pronouncement.

Moreover, it has long been established that the dismissal of a case based on a violation of the accused's right to speedy disposition of cases is immediately final and executory. A reconsideration thereof would constitute a violation of the accused's right against double jeopardy enshrined in Sec. 21, Article III of the 1987 Philippine Constitution, which states in part that, "No person shall be twice put in jeopardy of punishment for the same offense."

Under Sec. 7, Rule 117 of the Revised Rules of Criminal Procedure, double jeopardy attaches:

1. Upon a valid indictment;
2. Before a competent court;
3. After arraignment;
4. When a valid plea has been entered; and

---

[6] G.R. No. 218040, 17 April 2017.
[7] *Komatsu Industries (Phils.), Inc. v. Court of Appeals*, G.R. No. 127682, 24 April 1998.

5. When the accused was convicted or acquitted, or the case was dismissed or otherwise terminated without the express consent of the accused.

All the elements of double jeopardy are present herein.

In the case of *Wilfred N. Chiok vs. People of the Philippines and Rufina Chua*,[8] the Supreme Court explained the "finality-of-acquittal" rule that "in order to give life to the rule on double jeopardy, our rules on criminal proceedings require that a judgment of acquittal, whether ordered by the trial or appellate court, is final, unappealable, and immediately executory upon its promulgation."[9]

Anent the plaintiff's insistence on the exclusion of the fact-finding investigation in the computation of the attendant delay in these cases citing the Office of the Ombudsman's Memorandum Circular No. 5, Series of 2012 (*Guidelines on the Issuance of Ombudsman Clearance*), suffice it to say that the latter is an internal administrative rule used by the Ombudsman only in determining whether there is a pending case against an individual before its office. An administrative rule which defines a pending case before an administrative body cannot supersede the constitutional guarantee of an accused's right to speedy disposition of cases before all judicial, quasi-judicial, or administrative bodies.[10]

WHEREFORE, in light of the foregoing, the *Motion for Reconsideration* filed by the plaintiff on 26 February 2018 is **DENIED** for lack of merit.

SO ORDERED.

Quezon City, Philippines.

MICHAEL FREDERICK L. MUSNGI
Associate Justice

[8] G.R. No. 179814, 07 December 2017.
[9] Wilfred N. Chiok vs. People of the Philippines and Rufina Chua, G.R. No. 179814, 07 December 2017.
[10] Section 16, Article III of the 1987 Philippine Constitution.

x----------x

We concur:

ALEX L. QUIROZ
Associate Justice

GERALDINE FAITH A. ECONG
Associate Justice

We dissent:

Pls. see separate concurring and dissenting opinion.

SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

Pls. see separate dissenting opinion

BAYANI H. JACINTO
Associate Justice

People v. Rodolfo W. Antonino, et al. (SB-17-CRM-1593 to 1596)
(Prosecution's *Motion for Reconsideration* dated February 26, 2018)

CONCURRING AND DISSENTING OPINION

FERNANDEZ, SJ, J.:

I maintain my position that there was no inordinate delay in the conduct of the preliminary investigation by the Office of the Ombudsman. However, I concur with the result reached by the majority.

The dismissal of a case on the ground of violation of the accused' right to speedy disposition of cases results in the acquittal of the accused.[1] A judgment of acquittal is final, unappealable, and immediately executory upon its promulgation,[2] and as a rule, cannot be reconsidered because it places the accused under double jeopardy.[3]

SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

---

[1] Please see *Coscolluela v. Sandiganbayan*, G.R. Nos. 191411 and 191871, July 15, 2013
[2] *Villareal v. Aliga*, G.R. No. 166995, January 13, 2014
[3] *Lejano v. People*, G.R. Nos. 176389 and 176864, January 18, 2011

PEOPLE v. RODOLFO W. ANTONINO ET AL.
SB-17-CRM-1593 to 1596

DISSENTING OPINION

JACINTO, *J.*:

Including the time spent by the Commission on Audit (COA) in its Special Audit of the Priority Development Assistance Fund (PDAF) in determining that there was inordinate delay in the conduct of the OMB's preliminary investigation has implications that are not warranted beyond the facts of this case.

The COA-Special Audits Office's (SAO) Report No. 2012-03 was a government-wide performance audit of the allocation and utilization of the PDAF, and its objective was to determine, among others, the propriety of the PDAF releases and the efficient use of said fund. It was not a result of an investigation conducted to determine administrative or criminal liability against the accused in these cases, or any particular individual.

Government-wide audits (GWA) consist of the simultaneous examination of current management functions of government agencies with the purpose of recommending improvements in operations, formulation of audit criteria that are supported by best practices, provision benchmarks for performance, and determination of incorrect acts, if any.[1] In this regard, the nature of COA-SAO's functions is separable from the investigative and quasi-adjudicative departments within the COA that are bound by timeframes,[2] and the exercise of its power is not merely for checks and audits, but also essentially policy-making in nature.

A plain reading of COA-SAO Report No. 2012-03 itself yields to the conclusion that the purpose is essentially exploratory and recommendatory. In fact, as regards legal action against any person who may be found accountable, the 462-page document merely contains a succinct blanket recommendation to the concerned implementing agencies to "[t]ake appropriate actions against officials responsible for transactions considered questionable and/or releasing financial assistance for purposes no longer covered by the program." No specific persons or projects were necessarily identified for prosecution, nor were there any specific crimes recommended to be charged. Instead, it contained recommended guidelines for better auditing, disbursement, and management practices.

---

[1] See Special Audit Reports, Commission on Audit, <https://www.coa.gov.ph/index.php/reports/special-audit-reports> (visited last 18 April 2018).

[2] REVISED RULES OF PROCEDURE OF THE COMMISSION ON AUDIT (2009), Rules IV to VIII, X, XIII, and XIV.

The study made by the SAO cannot be said to be an essential and substantive part of the OMB's preliminary investigation simply because it was eventually the basis of a "PDAF complaint." To do so is a dangerous undertaking. It relegates any form of governmental action as an adjunct to preliminary investigation. It leads to the scenario wherein, regardless of the actual time spent on preliminary investigation, if a precursory governmental investigation, study, or action was undertaken, and which took some time to conclude, such would automatically merit dismissal of the formal complaint. **Delay is then counted against the OMB even before a case reaches it.**

In this instance, it would appear that the conclusion that there was inordinate delay in the preliminary investigation of the OMB was based mainly on a mathematical reckoning of periods, without the differentiation between, and examination of the nature of, the time spent by the COA to conduct its GWA, and the actual time spent by the OMB in conducting its preliminary investigation. The *Resolution* also renders nugatory both the Constitutional bodies' functions and powers, and can serve as a precursor for the non-prosecution of accountable government officials should they successfully evade scrutiny for several years.

Period Involved:

In these cases, the period should be computed, as pointed out by accused himself, from the filing of the Complaint-Affidavit on 18 June 2014 up to the filing of the Informations with this Court on 22 August 2017: a total of three (3) years and two (2) months.

Notwithstanding the timid *Comment/Opposition* filed by the Office of the Special Prosecutor or the fact that, as pointed out by the Court in its earlier *Resolution*, only three (3) respondents filed their counter-affidavits, the period it took the OMB to conclude its preliminary investigation could not be characterized as vexatious, capricious, and oppressive.

These cases are not the usual cases filed before the OMB. *Enrile v. People*[3] recognized that PDAF cases involve a "complex scheme basically involving projects supposed to have been funded by said PDAF which turned out to be inexistent or 'ghost projects.'" The 46-page 03 June 2016 OMB Resolution itself detailed and considered the transactions across government agencies; SAO Report No. 2012-03; and, the field validations of alleged beneficiaries of Congressman Antonino's PDAF from seven (7) municipalities of the 4th District of Nueva Ecija. Simply stated, these cases

[3] G.R. No. 213455, 11 August 2015.

are complex, involving several offices, transactions, and people – such as the numerous alleged beneficiaries whose affidavits had to be considered. Thus, the period it took the OMB investigator to resolve these cases and for the OMB officials to review the investigator's findings are valid factors to be considered.

It is true that in *Coscolluela v. Sandiganbayan*[4] the Supreme Court called upon the OMB to act on its cases with reasonable dispatch. Said pronouncement notwithstanding, the Court must also take into account the prevailing realities of the OMB's caseload. This has long been recognized by the Supreme Court. And, *Coscolluela*, being a decision of a division, could not be considered to have abandoned or overturned decisions of the Supreme Court *En Banc* or even earlier decisions by other divisions of the High Court.

Thus, in *Raro v. Sandiganbayan*,[5] the Supreme Court *En Banc* recognized that the OMB's adherence to its rules of procedure may cause delay in its proceedings, thus –

> The length of time it took before the conclusion of the preliminary investigation may only be attributed to the adherence of the Ombudsman and the NBI to the rules of procedure and the rudiments of fair play. xxx Recently, the Court held that while the Rules of Court provides a ten-day period from submission of the case within which an investigating officer must come out with a resolution, that period of time is merely directory. Thus:
>
> > 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.

Similarly, in *Gonzales III v. Office of the President*,[6] a relatively recent case, the Supreme Court *En Banc* recognized the OMB's significant caseload as it held as follows:

---

[4] G.R. No. 191411, 15 July 2013.
[5] G.R. No. 108431, 14 July 2000.
[6] G.R. Nos. 196231 & 196232, 28 January 2014, citations omitted.

> The Office of the Ombudsman is not a corner office in our bureaucracy. It handles numerous cases that involve the potential loss of employment of *many other* public employees. We cannot conclusively state, as the OP appears to suggest, that Mendoza's case should have been prioritized over other similar cases. The Court has already taken judicial notice of the steady stream of cases reaching the Office of the Ombudsman. This consideration certainly militates against the OSG's observation that there was "a grossly inordinate and inexcusable delay" on the part of Gonzales.
>
> Equally important, the constitutional guarantee of "speedy disposition of cases" before, among others, quasi-judicial bodies, like the Office of the Ombudsman, is itself a *relative* concept. Thus, the delay, if any, must be measured in this objective constitutional sense. Unfortunately, because of the very statutory grounds relied upon by the OP in dismissing Gonzales, the political and, perhaps, "practical" considerations got the better of what is legal and constitutional.
>
> The facts do not show that Gonzales' subordinates had in any way been grossly negligent in their work. While GIPO Garcia reviewed the case and drafted the order for more than three months, it is noteworthy that he had not drafted the initial decision and, therefore, had to review the case for the first time. Even the Ombudsman herself could not be faulted for acting on a case within four months, given the amount of cases that her office handles.
>
> The point is that these are not inordinately long periods for the work involved: examination of the records, research on the pertinent laws and jurisprudence, and exercise of legal judgment and discretion. If this Court rules that these periods *per se* constitute gross neglect of duty, the Ombudsman's constitutional mandate to prosecute all the erring officials of this country would be subjected to an unreasonable and overwhelming constraint. Similarly, if the Court rules that these periods *per se* constitute gross neglect of duty, then we must be prepared to reconcile this with the established concept of the right of speedy disposition of cases — something the Court may be hard put to justify.

Otherwise stated, the nature of the case against the accused, the internal review processes of the OMB, and its caseload are sufficient explanations as to why it took some time before the accused's indictment was filed with the Court.

The timeline of events as outlined in the *Resolution* clearly shows that there was no unnecessary delay in resolving these cases at the preliminary investigation stage. Similarly, the accused failed to prove that there was such delay. The mere fact that the preliminary investigation took three (3) years and two (2) months to conclude does not mean there was inordinate delay. In

Ombudsman v. Jurado,[7] the Supreme Court did not find the six (6) years it took the OMB to complete its investigation to be unreasonable, thus –

> To our mind, the time it took the Ombudsman to complete the investigation can hardly be considered an unreasonable and arbitrary delay as to deprive respondent of his constitutional right to the speedy disposition of his case. Further, there is nothing in the records to show that said period was characterized by delay which was vexatious, capricious or oppressive. There was no inordinate delay amounting to a violation of respondents constitutional rights. The assertion of respondent that there was a violation of his right to the speedy disposition of cases against him must necessarily fail.

The following pronouncement in *Licaros v. Sandiganbayan*[8] is *apropos*:

> It has been held that a breach of the right of the accused to the speedy disposition of a case may have consequential effects, but it is not enough that there be some procrastination in the proceedings. In order to justify the dismissal of a criminal case, it must be established that the proceedings have unquestionably been marred by vexatious, capricious and oppressive delays.

Thus, in the absence of clear and convincing showing that the period it took the OMB to conclude its preliminary investigation was vexatious, capricious, and oppressive, accused Yap is not entitled to the "radical relief" he prayed for.

The right to speedy disposition must be asserted:

The pronouncement in *Coscolluela* that it is not accused's duty to urge the OMB to resolve these cases could not have possibly overturned the following pronouncements made by the High Court *En Banc* in *Guiani et al. v. Sandiganbayan*:[9]

> The records of this case show that petitioners raised their objections to the perceived delay in the resolution of the complaints against them only on September 27, 1999, when they filed their Omnibus Motion with the Sandiganbayan. It would appear, therefore, that petitioners impliedly acquiesced in the delay in the proceedings.

[7] G.R. No. 154155, 6 August 2007.
[8] G.R. No. 145851, 22 November 2001.
[9] G.R. Nos. 146897-917, 6 August 2002.

> **The right to a speedy trial as well as other rights conferred by the Constitution or statute, except when otherwise expressly so provided by law, may be waived. It must therefore be asserted. Thus, if there was a delay in the trial of the case, petitioners are not entirely without blame.** (emphasis added)

The same pronouncement was made by the Supreme Court *En Banc* in *Barcelona v. Lim.*[10]

Recently, in *Remulla v. Sandiganbayan,*[11] the Supreme Court harmonized its pronouncement in *Coscolluela* with other decisions where it held that the accused waived their right to the speedy disposition of their cases by their failure to invoke such right at the earliest opportunity. Thus -

> xxxx there is no conflict between the first and the second set of cases. In the first set, the Court did not solely rely on the failure of the accused to assert his right; rather, the proper explanation on the delay and the lack of prejudice to the accused were also considered therein. In the same manner, the Court in the second set of cases took into account several factors in sustaining the right of the accused to a speedy disposition of cases, such as the length of delay, the failure of the prosecution to justify the period of delay, and the prejudice caused to the accused. The utter failure of the prosecution to explain the delay of the proceedings outweighed the lack of follow ups from the accused.
>
> Accordingly, both sets of cases only show that "[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." To reiterate, none of the factors in the balancing test is either a necessary or sufficient condition; they are related and must be considered together with other relevant circumstances. xxxx.

In other words, the doctrine established in *Guiani* and *Barcelona, Tilendo v. Ombudsman,*[12] *Dimayacyac v. Court of Appeals,*[13] *Bernat v. Sandiganbayan,*[14] *Tello v. People,*[15] and *Dela Peña v. Sandiganbayan (En Banc),*[16] that an accused who fails to assert his right to the speedy disposition of his case is deemed to have waived such right and therefore is not entitled to the radical relief granted by the Court in the cases of *Tatad* and *Angchangco* still holds true. However, as held in *Coscolluela* and clarified in *Remulla,* despite the failure of an accused to invoke such right,

[10] G.R. No. 189171, 3 June 2014.
[11] G.R. No. 218040, 17 April 2017.
[12] G.R. No. 165975, 13 September 2007.
[13] G.R. No. 136264, 28 May 2004.
[14] G.R. No. 158018, 20 May 2004.
[15] G.R. No. 165781, 5 June 2009.
[16] G.R. No. 144542, 29 June 2001.

if, taking into consideration all the circumstances of a particular case, there has been an inordinate delay in the disposition thereof and the prosecution has failed to advance any justification for such delay, then such case may still be dismissed for violation of said right.

The latter situation, however, does not obtain in these cases. Thus, accused Yap's failure to invoke such right at the earliest opportunity is a factor to be taken against him. In this connection, it is significant to note that in *Gaas v. Mitmug,*[17] the accused's failure to invoke his right to speedy disposition of his case was taken against him despite the unnecessary delay in the preliminary investigation, thus –

> In this case, although it is true that the Complaint was filed on November 18, 1991 and petitioners received an Order directing them to submit their counter-affidavits only three years after or on June 16, 1995, they failed to raise the issue of speedy disposition of the case at that time. Instead, they submitted their counter-affidavits. It was only in this petition that they first raised the issue. Neither have they moved for a speedy resolution of the case. It was only when they lost and pursued their appeal that they first raised the issue. It cannot therefore be said that the proceedings are attended by vexatious, capricious and oppressive delays. Petitioners cannot now seek the protection of the law to benefit from the adverse effects of their failure to raise the issue at the first instance. In effect, they are deemed to have waived their rights when they filed their counter-affidavits after they received the Order dated June 16, 1995 without immediately questioning the alleged violations of their rights to a speedy trial and to a speedy disposition of the case.

Prejudice caused by the delay:

Litigation is never an easy matter for any party. It causes significant emotional, mental, and financial strain to all litigants. This unavoidable effect, however, cannot be the sole basis for discontinuing or preventing the trial of a case.

In *Jacob v. Sandiganbayan,*[18] the Supreme Court recognizes that delay casts a negative effect on both the State and the accused, thus the former must show that the latter suffered no serious prejudice beyond that which ensued from ordinary and inevitable delay, and that there was no more delay than is reasonably attributable to the ordinary processes of justice:

---

[17] G.R. No. 165776, 30 April 2008.
[18] G.R. No. 162206, 17 November 2010, citing Corpuz v. Sandiganbayan, G.R. No. 162214, 11 November 2004.

> 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 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 xxx

In these cases, the delay attributable to the indictment of accused Yap cannot be said to be intentional, extraordinary, or that which was purposefully calculated to prejudice him. While it is true that in the course of time some evidence may no longer be produced by both parties, it cannot be said at this juncture that accused has completely lost the ability to produce evidence in his behalf. On this score, it may be noted that the prejudice claimed by accused is merely speculative.

Finally, it is also important to add that in cases involving "inordinate delay" the Supreme Court has also considered society's fundamental interest in the prosecution of cases against errant public officers. *Corpuz v. Sandiganbayan*:[19]

> The Court is wont to stress that the State, through the Sandiganbayan and the Ombudsman/Special Prosecutor, has the duty of insuring that the criminal justice system is consistent with due process and the constitutional rights of the accused. Society has a particular interest in bringing swift prosecutions and society's representatives are the ones who should protect that interest. It has been held that the right to a prompt inquiry into criminal charges is fundamental and the duty of the charging authority is to provide a prompt disposition of the case.

[19] See note 18.

Prescinding from the foregoing, we agree with the Sandiganbayan that the dismissal of the cases was precipitate and unwarranted. 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.

Under Section 9, Rule 119 of the Revised Rules of Criminal Procedure, the trial court may dismiss a criminal case on a motion *nolle prosequi* if the accused is not brought to trial within the prescribed time and is deprived of his right to a speedy trial or disposition of the case on account of unreasonable or capricious delay caused by the prosecution. *En contrario*, the accused is not entitled to a dismissal where such delay was caused by proceedings or motions instituted by him. **But it must be understood that an overzealous or precipitate dismissal of a case may enable the defendant, who may be guilty, to go free without having been tried, thereby infringing the societal interest in trying people accused of crimes rather than granting them immunization because of legal error.** Not too long ago, we emphasized that:

> **[T]he State, like any other litigant, is entitled to its day in court, and to a reasonable opportunity to present its case. A hasty dismissal such as the one in question, instead of unclogging dockets, has actually increased the workload of the justice system as a whole and caused uncalled-for delays in the final resolution of this and other cases. Unwittingly, the precipitate action of the respondent court, instead of easing the burden of the accused, merely prolonged the litigation and ironically enough, unnecessarily delayed the case in the process, causing the very evil it apparently sought to avoid. Such action does not inspire public confidence in the administration of justice.**

There can be no denying the fact that the petitioners, as well as the other accused, was prejudiced by the delay in the reinvestigation of the cases and the submission by the Ombudsman/Special Prosecutor of his report thereon. So was the State. **We have balanced the societal interest involved in the cases and the need to give substance to the petitioners constitutional rights and their quest for justice, and we are convinced that the dismissal of the cases is too drastic a remedy to be accorded to the petitioners. The cloud of suspicion may still linger over the heads of the petitioners by the**

> **precipitate dismissal of the cases.** We repeat -- the cases involve the so-called tax credit certificates scam and hundreds of millions of pesos allegedly perpetrated by government officials in connivance with private individuals. The People has yet to prove the guilt of the petitioners of the crimes charged beyond reasonable doubt. We agree with the ruling of the Sandiganbayan that before resorting to the extreme sanction of depriving the petitioner a chance to prove its case by dismissing the cases, the Ombudsman/Special Prosecutor should be ordered by the Sandiganbayan under pain of contempt, to explain the delay in the submission of his report on his reinvestigation. (Emphasis added; citations omitted)

The same sentiment was echoed in in *Valencia v. Sandiganbayan*:[20]

> As significant as the right of an accused to a speedy trial is the right of the State to prosecute people who violate its penal laws. The right to a speedy trial is deemed violated only when the proceeding is attended by vexatious, capricious and oppressive delays. ... There is no difference between an order outrightly dismissing the case and an order allowing the eventual dismissal thereof. Both would set a dangerous precedent which enables the accused, who may be guilty, to go free without having been validly tried, thereby infringing the interest of the society.

In sum, after applying the balancing test, it appears that the time it took the OMB to conclude its investigation could not be characterized as vexatious, capricious, and oppressive especially considering that accused Yap failed to invoke his right to the speedy disposition of the cases before the OMB.

Finally, the *Resolution* dismissing the cases against accused Yap for violation of his right to the speedy trial/disposition of his cases does not bar the prosecution from seeking a review thereof in view of the Court's failure to faithfully apply the balancing test. As held in *Yuchengco v. Court of Appeals*,[21] such judgment or order may be assailed in a petition for *certiorari* under Rule 65 of the Rules of Court upon showing that the trial court, in the dismissing the case, committed grave abuse of discretion amounting to lack or excess of jurisdiction. Thus:

> By way of exception, a judgment of acquittal in a criminal case may be assailed in a petition for *certiorari* under Rule 65 of the Rules of

[20] G.R. No. 165996, 17 October 2005 (citations omitted).
[21] G.R. No. 139768, 07 February 2002; See also *Mupas v. People*, G.R. No. 189365, 12 October 2011.

Court but only upon a clear showing by the petitioner that the lower court, in acquitting the accused, committed not merely reversible errors of judgment but also grave abuse of discretion amounting to lack or excess of jurisdiction or a denial of due process, **thus rendering the assailed judgment void**. In which event, the accused cannot be considered at risk of double jeopardy which has the following essential elements: 1) the accused is charged under a complaint or an information sufficient in form and substance to sustain a conviction; 2) the court has jurisdiction; 3) the accused has been arraigned and he has pleaded; and 4) he is convicted or acquitted, or the case is dismissed without his express consent. (emphasis and underscoring supplied).

BAYANI H. JACINTO
Associate Justice