



REPUBLIC OF THE PHILIPPINES  
SANDIGANBAYAN  
Quezon City

Fifth Division

PEOPLE OF THE PHILIPPINES,  
*Plaintiff,*

SB-17-CRM-2411 to 2413

- versus -

For: Section 3 (e) of Republic Act No.  
3019

RENERIO B. BELARMINO, JR.  
ET AL.,

Present:  
LAGOS, J., *Chairperson*, MENDOZA-  
ARCEGA and CORPUS-MAÑALAC, JJ.

*Accused.*

Promulgated:

May 21, 2018 *led*

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RESOLUTION

**LAGOS, J.:**

For resolution of this Court is accused Francisco Casil's Motion to Quash Information<sup>1</sup>, accused Lourdes Gonzales and Jonathan Bugaoan's Motion to Quash<sup>2</sup>, accused Cristina Pangilinan's Motion to Quash Information<sup>3</sup>, and the prosecution's Consolidated Comment-Opposition<sup>4</sup>.

Accused Casil, Gonzales, Bugaoan and Pangilinan all allege in their motions that their right to speedy disposition was violated by the Office of the Ombudsman.

Accused Casil asserts that all the elements of the violation of the right to speedy disposition of cases are present. First, according to accused Casil, by mere mathematical computation, there is a considerable length of delay in resolving the complaint before the Office of the Ombudsman. He claims that the preliminary investigation proceedings against the accused-movants

<sup>1</sup> Records, Vol. II, pp. 11-18.

<sup>2</sup> Records, Vol. II, pp. 19-24.

<sup>3</sup> Records, Vol. II, pp. 31-37.

<sup>4</sup> Records, Vol. II, pp. 58-72.

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was terminated only at the time the Informations were filed before the Sandiganbayan, or five years from the filing of the complaint on December 2012. Second, allegedly, there is no justification on the part of the Office of the Ombudsman to explain the delay in resolving the complaint and filing the Informations before the Sandiganbayan. Third, he, the accused-movant, had asserted his right to speedy disposition of cases. Fourth and last, there is prejudice caused on the part of the accused-movants due to the delay.

Accused Gonzales and Bugaoan invoke inordinate delay and submit that they are entitled to the dismissal of the cases against them. According to the accused-movants, it took more than three years and four months for the resolution finding probable cause to be approved by Ombudsman Carpio Morales. It also took three years and ten months from the time the complaint was filed for the OMB to wind up its preliminary investigation through the approval on October 16, 2016 by the Ombudsman of the order denying the motions for reconsideration of Gonzales, Bugaoan and other respondents. And, finally, from the filing of the complaint on December 5, 2012, it took almost five years for the Informations against the accused to be filed with this Court.

Accused-movants add that jurisprudence is consistent that the dismissal of a case on grounds of inordinate delay or violation of the right to the speedy disposition of cases would "depend on the circumstances". A "balancing test" of the right of the State to prosecute and the accused's right to the speedy disposition of his case is called for, as there is "no single decisive factor" for determining if said right has been violated. However, if the delay is repugnant to the Constitution in the sense that it has rendered rights nugatory (*Caballero v. Alfonso, Jr.*, 153 SCRA 163 [1987]) prejudiced the accused (*Gonzales v. Sandiganbayan*, 199 SCRA 298, 307 [1991]), the rights of the accused to the speedy disposition of his case must be upheld and the case against him dismissed.

Moreover, as per the accused-movants, in the determination of whether the accused has been denied his right to a speedy disposition of a case, the following may be considered and balanced; (1) 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. However, according to the movants, none of these elements is either necessary or sufficient condition; they are related and must be considered together with other relevant circumstances. These factors have no talismanic qualities as courts must still engage in a difficult and sensitive balancing process (*Remulla v. Sandiganbayan* [G.R. No. 218040, April 17, 2017]).

In their case, accused-movants claim that it took more than three years and four months for the OMB to conduct its preliminary investigation of the complaint against them and produce a resolution finding probable cause approved by the Ombudsman. The complaint was filed on December 5, 2012 by the Field Investigation Office II (FIO) of the OMB itself, but it took until April 11, 2016 for Ombudsman Carpio Morales to approve the resolution finding probable cause against said respondents for malversation and violation of Section 3 (e) of Republic Act No. 3019. It took longer, three years and ten months for the order denying the motions for reconsideration of Gonzales and Bugaoan et al. to be approved by the Ombudsman.

Accused-movants cite *Duterte v. Sandiganbayan* (G.R. No. 130191, April 27, 1998) and claim that their case is akin to that of the petitioner in said case. They claim that the complaint against them 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.

Accused Pangilinan asserts that a careful re-examination of the incidents of the present case would clearly reveal that accused-movants' right to a speedy disposition of their case had been violated. First, by mere mathematical computation, there is a considerable length of delay of five years in resolving the complaint before the Office of the Ombudsman. Second, there is no justification on the part of the Office of the Ombudsman to explain the delay in resolving the complaint and filing the Informations before the Sandiganbayan. Third, the accused-movant, by filing the instant motion, had asserted his right to speedy disposition. Fourth, there is prejudice on the part of the accused-movants caused by the delay.

The prosecution, in its Consolidated Comment-Opposition, counters that the four factors laid down in the case of *Dela Pena, et al. v. Sandiganbayan* (G.R. No. 144542, June 29, 2011), as consistently adopted in a long line of cases, must be considered. As such, according to the prosecution, a mere mathematical computation of the time involved is insufficient to determine whether the right to speedy trial has been violated and that several factors, including the assertion of such right, must be weighed and balanced.

The timeline of this case, as per the prosecution, is as follows:

On March 20, 2013, the FIO complaint dated November 9, 2012 was filed.

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On April 20, 2013, the Ombudsman ordered the respondents to file their counter-affidavits.

On May 17 and 23, 2013, the Ombudsman received the Motion for Extension of Time to file counter-affidavit filed by Belarmino, Casil, Bugaoan, Pangilinan, among others, all praying for an extension of sixty days within which to file their counter-affidavit.

On June 10, 2013, the Ombudsman again received a Motion for Extension to filed counter-affidavit for Gonzales, Bugaoan, and Pangilinan, among other, praying for an extension of another ten days within which to file their counter-affidavit.

On July 6, 2013, the Ombudsman received the Joint Counter-Affidavit of Gonzales, Bugaoan and Pangilinan, among others.

On July 12, 2013, the Ombudsman received the counter-affidavit of Belarmino.

On July 17, 2013, the Ombudsman received the counter-affidavit of Casil.

On June 13, 2016, the Ombudsman issued the resolution finding probable cause against the accused.

September 12-26, 2016, the recommendation of the finding of probable cause was reviewed and approved by the Director of Preliminary Investigation and Adjudication Bureau (PIAB) D and Team Leader, Team B-fertilizer Scam Special Panel and eventually by the Deputy Ombudsman for Luzon.

July 23, 2017, the resolution finding probable cause was approved by Ombudsman Carpio Morales.

December 11, 2017, the subject Informations were filed with this Court.

According to the prosecution, contrary to the timeline presented by the accused-movants, the Office of the Ombudsman took only three years and six months to resolve the preliminary investigation from the time the FIO complaint was received on March 20, 2013 until its approval by the Deputy Ombudsman for Luzon on September 26, 2016. Thereafter, it took only ten months for the Ombudsman to approve the said resolution.

The prosecution points out that the accused-movants prayed for a total of seventy-day extension to file their respective counter-affidavits.

The prosecution posits that, while the resolution of the complaint was protracted, the same cannot be considered capricious or vexatious, neither intended to oppress nor unduly burden the accused-movants. Allegedly, records are bereft of any indication that accused-movants were unreasonably prejudiced during the time the preliminary investigation was pending. The prosecution concludes that considering the restrictive dimension of the right to speedy disposition of cases, that is, it is lost unless seasonably invoked and a clear showing of prejudice caused to the accused by reason of such delay, the instant case cannot be readily dismissed based merely on the ground and the cases cited by accused-movants.

### DISCUSSION AND RULING

The Supreme Court in the case of *Coscolluela v. Sandiganbayan*<sup>5</sup> and the more recent case of *Commo. Lamberto Torres v. Sandiganbayan*<sup>6</sup> has reiterated that, in determining whether an accused has been deprived of the right to speedy disposition of cases, four factors must be considered: (a) length of delay; (b) reason of the delay; (c) the defendant's assertion of his right; and, lastly, (d) prejudice of the defendant.

However, in the even more recent case of *Remulla v. Sandiganbayan*<sup>7</sup>, the High Court emphasized that none of these elements is either a necessary or sufficient condition. The aforesaid four elements are related and must be considered together with other relevant circumstances. The right to a speedy disposition of cases is a relative concept. Each invocation of the right to speedy disposition must be approached by the courts on an *ad hoc* basis where the conduct of both the prosecution and defendant are weighed *apropos* the four-fold factors.

Given the pronouncement of the Supreme Court in *Remulla*, this Court must collectively consider all four elements of the right to speedy disposition as well as other relevant peculiar circumstances present in this case, should there be any, to resolve the subject motions.

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<sup>5</sup> G.R. No. 191411, July 15, 2013.

<sup>6</sup> G.R. Nos. 221562-69, October 5, 2016.

<sup>7</sup> G.R. No. 218040, April 17, 2017.

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### **Length of Delay**

Contrary to the accused-movants' assertions, the records show that the complaint dated November 9, 2012 that precipitated the preliminary investigation was filed by the FIO with the Office of the Ombudsman (OMB) on March 20, 2013. A month after, on April 20, 2013, the OMB ordered the respondents to file their counter-affidavits.

As per the uncontroverted allegation of the prosecution, the respondents, herein accused-movants included, asked for extensions to file their counter-affidavits.

On July 6 and 17, 2013, the OMB received the counter-affidavits of accused-movants.

Three years thereafter, the investigating officer issued a resolution regarding the complaint against the accused-movants. According to the prosecution, this resolution was then reviewed by the Deputy Ombudsman for Luzon from September 12 to 26, 2016.

On July 23, 2017, almost a whole year after the review by the Deputy Ombudsman for Luzon, Ombudsman Morales approved the resolution. More than four months after, on December 11, 2017, the subject Informations were filed.

From the filing of the complaint by the FIO with the OMB to the filing of the Informations by the OMB with this Court, it took the OMB more than four years to resolve the case against the accused-movants and file these in court.

### **Reason for the Delay**

The prosecution attempts to justify the prolonged period of resolution by asserting that time was required to conduct a thorough review of the investigating officer's recommendation. The prosecution also points out that the respondents had an extension of seventy days total to file their counter-affidavits.

Upon perusal of the records, however, the period of more than four years expended for the resolution of this case is unjustifiable.

First, these consolidated cases are comprised only of three transactions, involving only three sets of procurement documents. Thus, the records cannot be called voluminous by any stretch of the imagination.

Second, these cases are, in the OMB's own words, primarily founded on the "material inconsistencies in the details appearing in the supporting

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documents”<sup>8</sup>. An example of such a material inconsistency, as cited in the resolution, was the Purchase Order to Central Luzon Farmers Agro Center which was issued prior to the letter of award and approval of the Bids and Awards Committee resolution recommending the procurement of fertilizers from the same. Such material inconsistencies are evident and should not take four years to find.

Third, apart from the said “material inconsistencies”, the OMB grounded its findings on the “canvass of foliar liquid fertilizers conducted by the COA”<sup>9</sup>, citing the Report on the audit of the 728 Million GMA Farm Input Fund, which was available as early as March 29, 2006. It would appear then that the OMB relied heavily on the factual findings of the COA in said 2006 Report. With the bulk of the legwork done as regards its factual findings, the, as the prosecution itself said, “protracted”<sup>10</sup> resolution of the complaint, the discussion of the substantive issues of which barely consisting of two pages, becomes unreasonable.

While the prosecution may be quick to point out that respondents, accused-movants in this case, had a seventy-day extension to file their counter-affidavits, that extension pales in comparison to the delay attributable to the OMB.

### **The Defendant’s Assertion of His Right**

In the case of *Remulla*, the Supreme Court painstakingly examined the long line of cases pertinent to the subject of the right to speedy disposition of cases. In discussing the interplay of the elements involved in the invocation of the said Constitutional right, the High Court concluded that the utter failure of the prosecution to explain the delay of the proceedings outweighed the lack of follow ups from the accused. The same is true in this case. While there may not have been follow-ups from the accused, in light of the circumstances of this case, this Court cannot give great weight to accused-movants’ lack of objection over the delay during the preliminary investigation because the prosecution, as in *Remulla*, utterly failed to defend the OMB’s inaction.

Moreover, as the High Court elucidated in *Remulla*, there is no constitutional or legal provision which states that it is mandatory for the accused to follow up his case before his right to its speedy disposition can be recognized. To rule otherwise would promote judicial legislation where the Court would provide a compulsory requisite not specified by the

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<sup>8</sup> See Page 12 of Resolution in OMB-C-C-13-0083 (Records, Vol. I, p. 18).

<sup>9</sup> See Page 12 of Resolution in OMB-C-C-13-0083 (Records, Vol. I, p. 18).

<sup>10</sup> See Page 9 of the prosecution’s Consolidated Comment-Opposition (Records, Vol. II, p. 66).

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constitutional provision. Add to this the oft-cited doctrine in the case of *Barker v. Wingo*<sup>11</sup>, which states that the defendant has no duty to bring himself to trial, this Court must find in the accused-movants' favor.


### Prejudice to the Defendant

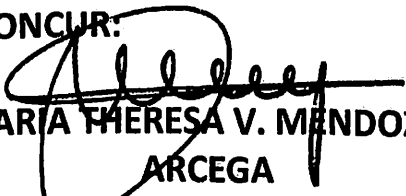
Lastly, this Court must consider the prejudice that the accused-movants have suffered due to the prolonged delay of the OMB's investigation. As in *Remulla*, certainly, this protracted period of uncertainty over their criminal case caused them prejudice, living under a cloud of anxiety, suspicion and even, hostility.

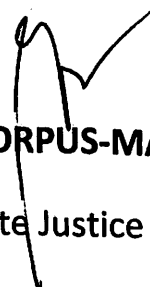
All in all, upon deliberation of the four elements of the right to speedy disposition of cases, this Court is constrained to find that circumstances of this case lead to the conclusion that the said Constitutional right of the accused-movants had been violated and, therefore, they are entitled to the dismissal of the present charges filed against them.

**WHEREFORE**, premises considered, accused Francisco Casil's Motion to Quash Information, accused Lourdes Gonzales and Jonathan Bugaoan's Motion to Quash, and accused Cristina Pangilinan's Motion to Quash Information are hereby GRANTED. The charges against them in SB-17-CRM-2411 to 2413 are DISMISSED for violation of their right to speedy disposition of cases. The hold-departure orders issued against them are ordered recalled and set aside.

**SO ORDERED.**

  
**RAFAEL R. LAGOS**  
Chairperson  
Associate Justice

WE CONCUR:  
  
**MARIA THERESA V. MENDOZA-ARCEGA**  
Associate Justice

  
**MARYANN E. CORPUS-MAÑALAC**  
Associate Justice

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<sup>11</sup> 407 U.S. 514.