REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

Fifth Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-18-CRM-0138 and 0139

FOR: Falsification of Public Document under Article 171 par. 4 of the Revised Penal Code

– versus –

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

DAMIAN GAVIOLA MERCADO,
Accused.

Promulgated:
May 21, 2018

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RESOLUTION

LAGOS, J.:

This resolves the following: (1) the *Motion to Quash*[1] filed on April 20, 2018 by accused Damian Mercado of the *Information* filed against him on February 23, 2018 in Criminal Case No. SB-18-CRM-0139; (2) the prosecution's *Comment/Opposition*[2] thereon filed on April 25, 2018; (3) the accused's *Reply*[3] to the Comment /Opposition of the prosecution.

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1 Records, pp. 139-145
2 Id,, pp.146-156
3 Id, pp. 162-165

Earlier, or on April 2, 2018, records show that the prosecution filed its *Compliance/ Manifestation with Motion to Admit Additional Evidence*[4] in Criminal Case No. SB-18-CRM-0138 and the accused filed on April 30, 2018 his *Comment* thereon with *Motion to Admit Additional Evidence and Manifestation*[5] that he is adopting his *Motion to Quash* submitted in Criminal Case No.SB-18-CRM-0139 as well as his *Reply* on the prosecution's *Comment/Opposition* in Criminal Case No.SB-18-CRM-0138.

Accused Mercado prays for the quashal of the *Informations* and the dismissal of the cases against him on two(2) grounds: (1) violation of his constitutional right to speedy disposition of the case filed against him as protected under Section 16, Article III (Bill of Rights) of the 1987 Constitution due to inordinate delay of almost 10 years committed by the Ombudsman in resolving the case, and (2) the facts as alleged in the *Information* do not charge an offense of falsification of public document under par. (4) Article 171 of the Revised Penal Code.

Arguing that his constitutional right under the Bill of Rights to speedy disposition of his cases was violated, accused Mercado asserts that there was clearly an unreasonable and inordinate delay on the part of the Ombudsman in the conduct of the fact-finding investigation, preliminary investigation and resolution of these cases until the filing of the *Informations* on February 23, 2018 which, as the records would undeniably show, took a period of almost 10 years from the time the complaint was filed and received by the Office of the Ombudsman on March 7, 2008.

The cases stemmed from a letter-complaint[6] dated January 22, 2008 filed against the accused Mercado, the Governor of the Province of Southern Leyte at the time material to the acts committed in these cases, and received by the Ombudsman on March 7, 2008 which alleged false entries made in two (2) documents, namely: (i) the Civil Service Commission (CSC) Form 212 or the Personal Data Sheet (PDS); and (ii) the Elective Local Official's Profile Directory (ELOPD) in Data Capture Form. Allegedly, in the CSC Form 212 (PDS), he made it appear in the CSC Form 212 (PDS) that he obtained a degree in BS Civil Engineering from the University of the Visayas, when in truth and in fact, he knew that it was false as he did not enroll at the said university much less obtain said degree therefrom, while in the ELOPD in Data Capture Form he submitted to

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4 Records, pp. 69-78
5 Id, pp.168-180
6 Letter-complaint was filed by Anabeliz Gultiano, Bryan Jay Garces, and Fr. Garnet Quirong.

the DILG, he made it appear that he completed his elementary education in 1971, when in truth and in fact, he knew that it was false as he graduated from Maasin Central School in1968, and that he is a Civil Engineer, knowing fully well that he did not graduate with the degree of Bachelor of Science in Civil Engineer from the University of the Visayas.

Accused Mercado alleges that the timeline of the proceedings before the Ombudsman clearly reveals the inordinate delay considering that a simple case like his case that did not involve voluminous documents and complicated factual and legal issues took the Ombudsman almost 10 years to finish its investigation until the Informations were filed on February 23, 2018. Accused rhetorically asks why it took that long for the Ombudsman to finish its investigation which cannot be considered as speedy disposition of a case as required by the Constitution; it is plain and simple inordinate delay.

Accused contends that from the time the letter-complaint was received on March 7, 2008 and later referred to Ombudsman-Visayas on March 31, 2008 for case build-up or fact-finding, it took five (5) years, or on April 15, 2013 only, for the Public Assistance and Corruption Prevention Office (PACPO) to come out with its Final Evaluation Report and have it approved by the Deputy Ombudsman of Visayas on October 24, 2013. It was only April 12, 2014, or after almost one (1) year, that a formal *Complaint-Affidavit* was filed by PACPO-Field Investigation Group (FIG). Respondent Mercado, now accused, filed his *Counter-Affidavit* on July 25, 2014 after receiving on July 7, 2014 the Order from the Deputy Ombudsman Visayas to file the same. On March 20, 2017, or after two (2) years and eight (8) months, the Ombudsman issued the Resolution finding the existence of probable cause against Mercado. After denial of his motion for reconsideration on November 29, 2017, the *Informations* were filed on February 23, 2018 against Mercado, the factual details of which are shown below:

March 7, 2008	Letter-complaint, dated January 22, 2008, against Mercado, received by the Office of the Ombudsman, docketed as CPL-C-08-0348
March 31, 2008	Letter-complaint was referred and received by Ombudsman-Visayas for case build-up or fact-finding investigation
April 15,2013	Final Evaluation Report (FER) was issued by the Public Assistance and Corruption Prevention Office (PACPO)-Field Investigation Group (FIG), Ombudsman-Visayas
October 24, 2013	Order was issued by the Office of the Deputy Ombudsman of Visayas approving the FER, docketed as

	OMB-V-C-13-0282
April 12, 2014	Formal Affidavit-Complaint filed by PACPO-FIG, through Associate Graft investigation Officer I Julius N. Oballo, docketed as OMB-V-C-14-0105
May 30, 2014	Order was issued OIC Jane Aguilar of the Evaluation and Investigation Officer (Team B) requiring Mercado to submit Counter-Affidavit
July 7, 2014	Respondent Mercado received the Order dated May 30, 2014 requiring him to file Counter-Affidavit
July 25, 2014	Counter-Affidavit, dated July 16, 2014, was filed by respondent Mercado, now accused.
March 20, 2017	Approval by the Office of the Ombudsman of the Resolution signed by Asst. Ombudsman Edna E. Dino (as reviewing Asst. Ombudsman) finding existence of probable cause against respondent Mercado, now the accused
April 10, 2017	Respondent Mercado filed his Motion for Reconsideration
November 29, 2017	Resolution denying Mercado's Motion for Reconsideration issued by the Office of the Ombudsman
February 23, 2018	Informations for Falsification of Public Documents under par. (4), Article 171 of the Revised Penal Code were filed against Mercado

On his second ground, accused Mercado maintains that there is no probable cause that exists to support the indictment against him in Criminal Case No. SB-18-CRM-0139 because the facts alleged in the *Information* do not charge an offense of falsification of public documents under par. (4) of Article 171of the RPC, alleging that the ELOPD is not a legal requirement mandated by law or any statute for his election into office; that it is a document that was asked of local officials by the DILG for purposes only of profiling and data gathering, hence, it cannot be considered a public document; that it is a private document submitted by an elective official at his option in answer to request "enjoined" by the DILG; that there is no malice that can be ascribed to anything that one puts into it, because it does not go into the qualification of holding public elective office.

In its *Comment/Opposition*, the prosecution explains that the circumstances obtaining in these cases do not find application in the rulings of the Supreme Court that the period spent for the conduct of fact-finding investigation should be included in the computation of whether or not the resolution of the case was attended with delays. *First*, there were steps taken by the Office of the Ombudsman, as can be seen from the timetable presented by the accused, from the time he was subjected to fact-finding investigation up to the conduct of preliminary investigation until the eventual filing of the *Informations* against the accused. *Second*, the accused contributed to the delay

because it took him one (1) year from the time he received the Order on July 7, 2014 to file his *Counter-Affidavit* on July 25, 2015[7] *(sic)*, hence, the delay was not imputable to the Ombudsman. *Third,* there were no vexatious, capricious and oppressive delays because accused was not made to undergo any investigation proceedings prior to the filing of the *Complaint- Affidavit* by the Field Investigation Group (FIG).

Applying the *balancing* test first adopted by the US Supreme Court in *Barker v. Wingo,* the prosecution claims that the accused's right to speedy disposition of his case was not denied because of his failure: (1) to show by clear and convincing evidence that he was prejudiced during the fact-finding phase, such as denial of his salaries and other benefits; (2) to show proof that he was made to endure any vexatious process during the fact-finding phase; and (3) to show in the records of the case that the fact-finding phase was characterized by delay which was vexatious, capricious or oppressive.

The prosecution insists that there are considerations why the fact-finding investigation phase should not be included in reckoning whether or not the right of the accused to speedy disposition of cases have been violated, citing the power to investigate by the Office Ombudsman under Section 2, Rule II of Administrative Order No. 7 (April 10, 1990) which includes the fact-finding inquiry and preliminary investigation proper, and the difference between the two (2) sets of investigation as explained in Memorandum Circular No. 5, series of 2012. The prosecution explains that under said circular, a complaint that is under case build-up or fact-finding investigation shall not be considered a pending case.

The prosecution cites *Blanco vs. Sandiganbayan*[8] and *Ombudsman vs. Jurado*[9] as judicial precedents recognizing the conduct of several parallel fact-finding investigations by different agencies which were excluded in reckoning whether or not the right of the accused to speedy disposition of cases have been violated.

On the second ground of accused's motion to quash in Criminal Case No. SB-18-CRM-0139, the prosecution argues that all the elements of the crime of falsification of public document par. (4), Article 171 of the RPC are attendant. Contrary to what the accused

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7 Both the accused and the prosecution erroneously stated in their respective pleadings that the Counter-Affidavit was filed on July 25, 2015 which apparently was taken from page 5 of the Resolution of the Ombudsman dated March 20, 2017 (see Records, p.9). A careful examination of the records show that the Counter-Affidavit was signed and sworn under oath on July 16, 2014 and was filed on July 25, 2014 (see Records, p.28), and not July 25, 2015.

8 G.R. Nos. 136757-58, November 27, 2000

9 G.R. 154155, August 6, 2008, 561 SCRA 135, 147, August 6, 2008

seemed to suggest, the Elective Local Official's Profile Directory (ELOPD) is not a private document but a public document as defined under Section 19 (c), Rule 132 of the Rules of Court (*public records, kept in the Philippines, of private documents required by law to be entered therein).* The prosecution insists that it is required to be submitted to the DILG as provided under DILG Memorandum Circular No. 2007-59.

DISCUSSION AND RULING

The first issue raised in the *Motion to Quash* is whether or not the delay incurred by the Ombudsman in resolving the letter-complaint against accused Mercado and the subsequent filing of the *Informations* constitute inordinate delay which violates his right to speedy disposition of cases under Section 16, Article III of the 1987 Constitution.

The answer is in the affirmative.

The task of the Ombudsman is simply to verify if indeed accused intentionally falsified his PDS and ELOPD by declaring that he was a Civil Engineer. The issue was overly simple enough that a *prima facie* determination should not have taken ten (10) long years to resolve.

While it is true that a mere mathematical reckoning of the time is not sufficient to determine a violation of the right to speedy disposition of the case but the totality of the facts of the case as held in the case of *Martin vs. Ver*[10], where the conduct of both the prosecution and defendant are weighed on the bases of the four-fold factors, namely: (1) length of the delay; (2) reason for the delay; (3) defendant's non-assertion of his right; and (4) prejudice to defendant resulting from the delay. In other words, the other circumstances of the case may be looked into because, as held in the case of *De la Peña vs. Sandiganbayan,*[11] reiterated in *Coscolluela vs. Sandiganbayan,*[12] the constitutional guarantee to a speedy disposition of cases is "a relative or flexible concept" and "depends upon the circumstances peculiar to each case."

The four-fold factors cited in *Martin vs. Ver*, supra, was further explained in *Remulla vs. Sandiganbayan*[13] that a "balancing test of applying societal interests and the rights of the accused necessarily

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10 G.R. L-62810, July 25, 1983, 208 Phil. 658 (1983), citing Barker vs. Wingo, 407 US 514, 92 SCt 2182(1982).
11 G.R. No. 144542, June 29, 2001
12 G.R. No. 191411, July 15, 2013, 701 SCRA 188, July 15,2013
13 G.R. No. 218040, April 17, 2017

compels the court to approach speedy trial cases on an *ad hoc* basis." The case of *Corpuz vs. Sandiganbayan*[14] is instructive on how the balancing test should be weighed particularly the prejudice caused by the delay, thus:

> "x x x Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense would be impaired. Of these, the most serious is the last, because of the inability of the defendant to adequately prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantage by restraints on his liberty and by living under the cloud of anxiety, suspicion and often, hostility. His financial resources maybe drained, his association is curtailed and is subjected to public obloquy."

Given the attendant circumstances in the instant case, as shown by the timeline outlined by the accused, it took 10 long years for the Office of the Ombudsman from the time the letter-complaint was received on March 7, 2008 to investigate and resolve the complaint until the *Informations* were eventually filed on February 23, 2018. Within that 10-year period, it took the Office of the Ombudsman six (6) years from the time the letter-complaint was referred to OMB-Visayas for fact-finding investigation on March 31, 2008 to file a formal *Complaint-Affidavit* on April 12, 2014 by the PACPO-FIG.

Considering the undue prejudice to the accused by such delay within the contemplation of *Corpuz vs. Sandiganbayan,* the prosecution miserably failed to adduce valid reasons for the delay and convince the Court why the instant case should not be dismissed given the 10-year period of delay.

The prosecution's argument that there are considerations why the fact-finding investigation phase should not be included in reckoning whether or not the right of the accused to speedy disposition of cases have been violated has been rejected by the Supreme Court ruling in the 2016 case of *Torres vs.*

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14 G.R. No. 162214, November 11, 2004

Sandiganbayan,[15] that the speedy disposition of cases covers the period of conducting the preliminary investigation, and all stages to which the accused is subjected to including fact-finding investigations conducted prior to the preliminary investigation proper. As explained by the Supreme Court in the 2013 case of *People vs. Sandiganbayan,*[16] thus:

> "The guarantee of speedy disposition under Section 16 of Article III of the Constitution applies to *all* cases pending before *all* judicial, quasi-judicial or administrative bodies. The guarantee would be defeated or rendered inutile if the hair-splitting distinction by the State is accepted. Whether or not the fact-finding investigation was separate from the preliminary investigation conducted by the Office of the Ombudsman should not matter for purposes of determining if the respondents' right to the speedy disposition of their cases had been violated."

Even the cases of *Blanco vs. Sandiganbayan* and *Ombudsman vs. Jurado* cited by the prosecution in its *Comment/Opposition* militate against its theory that fact-finding investigation should not be summed-up with preliminary investigation in reckoning whether or not the right of the accused to speedy disposition of cases have been violated.

The case of *Blanco* has a totally different factual milieu from the instant cases. In *Blanco,* the Supreme Court ruled that the preliminary investigation actually started on March 20, 1995 when it was ordered by the Office of the Ombudsman, and not on September 13,1988 when the Office of the Ombudsman received the anonymous letter-complaint and the referral of the case to the National Bureau of Investigation (NBI). In the case of herein accused Mercado, the fact-finding investigation was conducted by the Office of the Ombudsman, not by the NBI. Clearly, the Ombudsman has control over the cases starting from the fact-finding investigation, thus, it is only proper to include the fact-finding investigation conducted by the Ombudsman; otherwise, the accused would be at the mercy of the Ombudsman if the fact-finding investigation is prolonged and excluded in the preliminary investigation.

Neither the case of *Ombudsman vs. Jurado*[17] cited by the prosecution is applicable in support of prosecution's theory. In the case of *Jurado* which was decided by the Supreme Court in 2008, the

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15 G.R. No. 221562-69, October 5, 2016
16 G.R. No. 188165 and 189063, December 11, 2013.
17 G.R.No. 1154155, August 6, 2008.

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fact-finding investigation was excluded in the preliminary investigation against the respondent therein because Jurado was neither investigated nor charged before the report and recommendation of the Ombudsman Fact-Finding Bureau (FFB). Before the FFB report and recommendation, Jurado had no case to speak of as he was neither the subject of any complaint nor investigation. In the original complaint filed by the Bureau of Customs, Jurado was not included as one of the parties charged with violation of the Tariff and Customs Code. Here, in the case of accused Mercado, he was already the subject of the fact-finding investigation by the Ombudsman since March 31, 2008. The Ombudsman had control over it, thus, the fact-finding investigation is included in the determination of inordinate delay.

Anent the second ground of the *Motion to Quash* relative only to SB-18-CRM-0139 that the facts alleged in the Information do not charge an offense of falsification of public documents under par. (4) of Article 171of the RPC, the Court need not dwell anymore on the issue considering that even assuming *arguendo* that all elements of the offense charged are present in the *Information* which, as a matter of course, the State has the right to prosecute, in the hierarchy of rights, the Bill of Rights takes precedence over the right of the State to prosecute and when weighed against each other, the scales of justice tilts towards the former.

Where, as in the instant case, there is an inordinate delay of 10 years in the investigation of the complaint from March 31, 2008 by the Office of the Ombudsman until the *Informations* were eventually filed in this Court on February 23, 2018, the right of accused Mercado to speedy disposition of the case takes precedence over the right of the State to prosecute. Considering the above disquisition, the Court need no longer act on the prosecution's *Motion to Admit Additional Evidence.*

WHEREFORE, in light of the foregoing, the *Motions to Quash* are **GRANTED** and, accordingly, these criminal cases against accused Damian Gaviola Mercado are hereby DISMISSED. The hold departure orders issued against him are lifted and set aside.

SO ORDERED.

RAFAEL R. LAGOS
Chairperson
Associate Justice

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WE CONCUR:

MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

MARYANN E. CORPUS- MAÑALAC
Associate Justice