



REPUBLIC OF THE PHILIPPINES  
**SANDIGANBAYAN**  
QUEZON CITY

**SPECIAL THIRD DIVISION**

**PEOPLE OF THE  
PHILIPPINES,**

**Plaintiff,**

**Criminal Case No. SB-16-  
CRM-0270**

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

**- versus -**

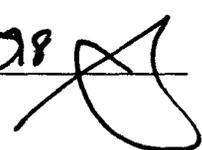
*Present:*

**EMMANUEL CEDRO ANDAYA,  
et al.,**

**Accused.**

**CABOTAJE-TANG, P.J.,**  
Chairperson,  
**FERNANDEZ, B., J. and  
TRESPESES, J.<sup>1</sup>**

*Promulgated:*

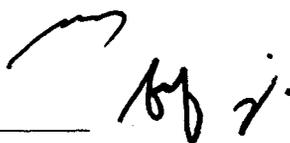
JUNE 18, 2018 

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**RESOLUTION**

**CABOTAJE-TANG, P.J.:**

For resolution is accused Emmanuel C. Andaya, Sylvia C. Banda, Josefina Samson, Bernadette T. Lagumen and Ma. Gracia De Leon Enriquez's "*Motion for Reconsideration*" dated April 10, 2018.<sup>2</sup>



<sup>1</sup> Associate Justice Zaldy V. Trespeses was a signatory to the assailed *Resolution* promulgated on March 12, 2018. Sitting as a special member of the Third Division as per Administrative Order No. 091-2018 dated February 9, 2018.

<sup>2</sup> pp. 146-150, Vol. II, Record

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Accused-movants Andaya, *et al.*, maintain that there was an undue delay of more than five (5) years in the determination of probable cause before the Office of the Ombudsman.<sup>3</sup> They submit that although they filed several *motions for extension* during the preliminary investigation before the Office of the Ombudsman, the case against them was already submitted for resolution as early as September 19, 2012.<sup>4</sup> The accused-movants point out that the handling investigator of the Office of the Ombudsman took more than one (1) year to require them to file their *counter-affidavits* and it took another two (2) years for it to resolve the case against them.<sup>5</sup>

The same accused-movants reiterate that it is not their duty to follow-up on the prosecution of their case but it is incumbent upon the Office of the Ombudsman to resolve the case against them within the period provided for by law. In support of their argument, they invoke the case of ***Coscolluela v. Sandiganbayan***,<sup>6</sup> wherein the Supreme Court held, to wit:

On the other hand, the Office of the Ombudsman failed to present any plausible, special or even novel reason which could justify the four-year delay in terminating its investigation. Its excuse for the delay – the many layers of review that the case had to undergo and the meticulous scrutiny it had to entail – has lost its novelty and is no longer appealing, as was the invocation in the Tatad case. The incident before us does not involve complicated factual and legal issues, specially (sic) in view of the fact that the subject computerization contract had been mutually cancelled by the parties thereto even before the Anti-Graft League filed its complaint.

**Being the respondents in the preliminary investigation proceedings, it was not the petitioners' duty to follow up on the prosecution of**

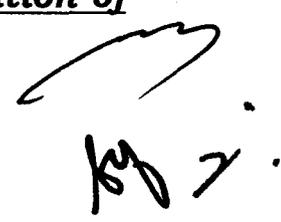
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<sup>3</sup> p. 147, Vol. II, Record

<sup>4</sup> *Id*

<sup>5</sup> *Id*

<sup>6</sup> 701 SCRA 188 (2013)

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**their case.**<sup>7</sup> Conversely, it was the Office of the Ombudsman's responsibility to expedite the same within the bounds of reasonable timeliness in view of its mandate to promptly act on all complaints lodged before it. As pronounced in the case of *Barker v. Wingo*:

**A defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process.**<sup>8</sup>

In its "*Opposition (to Accused Emmanuel C. Andaya, Sylvia C. Banda, Josefina Samson, Bernadette T. Lagumen and Maria Gracia De Leon Enriquez's 'Motion for Reconsideration' dated 10 April 2018)*" dated May 9, 2018, the prosecution submits that the arguments raised by the accused-movants in their present *motion* are mere reiterations and/or rehash of the arguments they raised in their *motion to dismiss*.<sup>9</sup> The prosecution argues that these arguments were already passed upon by the Court in its questioned *Resolution* promulgated on March 12, 2018.<sup>10</sup> Nevertheless, the prosecution maintains that the time spent by the Office of the Ombudsman to resolve the present case is neither vexatious, capricious, oppressive, nor unjustified.<sup>11</sup>

The prosecution reiterates that the numerous pleadings between the parties; the care exercised by the investigating officer in verifying, evaluating and assessing the charges against the respondents; and, the fact that the case had to undergo a hierarchy of review before it was finally approved by the Ombudsman should all be taken into consideration in the determination of the existence of inordinate delay.<sup>12</sup>

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<sup>7</sup> Emphasis supplied by the accused-movants

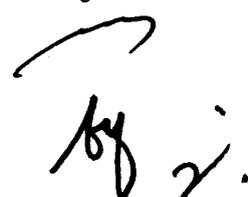
<sup>8</sup> Emphasis supplied by the accused-movants

<sup>9</sup> p. 154, Vol. II, Record

<sup>10</sup> *Id*

<sup>11</sup> *Id*

<sup>12</sup> p. 155, *Id*



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Moreover, the prosecution points to the fact that it is only now, when the present case is already set for the initial presentation of the prosecution's evidence, that the accused-movants are asserting their right to speedy disposition of cases.<sup>13</sup> Relying on the case of ***Dela Peña v. Sandiganbayan***,<sup>14</sup> the prosecution argues that the accused-movants' inaction and/or silence amounts to their implied acquiescence to the time poured into the resolution of their case before the Office of the Ombudsman.<sup>15</sup>

Lastly, the prosecution claims that the accused-movants were never prejudiced by the alleged delay in this case.<sup>16</sup> It asserts that the accused-movants remain to be presumed innocent and the prosecution is still duty-bound to build a case against them and to prove their guilt beyond reasonable doubt despite the passage of time.<sup>17</sup>

### **THE RULING OF THE COURT**

The Court finds the subject *motion* bereft of merit.

As aptly pointed out by the prosecution, the assertion of the accused-movants that it took the Office of the Ombudsman five (5) years to terminate the preliminary investigation of this case merely reiterates their argument in their *Motion to Dismiss* dated January 17, 2018.<sup>18</sup> This argument was squarely passed upon by the Court in its assailed *Resolution* promulgated on March 12, 2018, *viz:*

To begin with, it is settled that although the Constitution guarantees the right to speedy disposition

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<sup>13</sup> p. 155, Vol. II, Record

<sup>14</sup> 360 SCRA 478 (2001)

<sup>15</sup> pp. 155-156, *Id*

<sup>16</sup> p. 156, *Id*

<sup>17</sup> p. 156, *Id*

<sup>18</sup> pp. 35-60, *Id*

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of cases, such speedy disposition is a flexible concept.<sup>19</sup> To properly define that concept, the facts and circumstances surrounding each case must be evaluated and taken into account.<sup>20</sup> In other words, jurisprudence instructs that courts are compelled to approach such cases on an *ad hoc* basis and weigh the conducts of both the prosecution and the accused *vis-à-vis* the [1] length of delay; [2] reason for the delay; [3] accused's assertion or non-assertion of his/her right to speedy trial; and, [4] prejudice caused to the defendant resulting from the delay.<sup>21</sup>

Thus, the cases invoked by the accused-movant to support his claim of inordinate delay cannot be blindly applied to the present case without a close scrutiny of the attendant facts and circumstances surrounding the preliminary investigation in the present case. To be sure, a mere mathematical reckoning of the time involved is not sufficient to hold the existence of inordinate delay.<sup>22</sup>

The records of this case show the following factual antecedents surrounding the preliminary investigation conducted by the Office of the Ombudsman, thus:

1. On **April 26, 2011**, private complainant Guillermo L. Sylanteng, Jr., filed his *Complaint-Affidavit* dated April 25, 2011, with the Office of the Ombudsman;<sup>23</sup>
2. On **May 15, 2012**, a directive was issued to Graft Investigation and Prosecution Officer Alan L. Molina to conduct a preliminary investigation and administrative adjudication in the present case; thereafter, orders were given to the respondents to file their respective *counter-affidavits*;<sup>24</sup>

<sup>19</sup> *Ombudsman v. Jurado*, 561 SCRA 135 (2008)

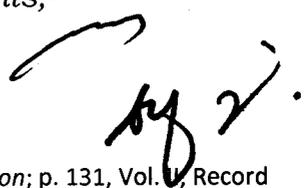
<sup>20</sup> *Remulla v. Sandiganbayan*, G.R. No. 218040, April 17, 2017

<sup>21</sup> *Id*

<sup>22</sup> *Dela Peña v. Sandiganbayan*, 360 SCRA 478 (2001); p. 7, *Resolution*; p. 131, Vol. V, Record

<sup>23</sup> pp. 27-53, Vol. I, Record

<sup>24</sup> p. 89, Vol. II, Record



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3. On **May 24, 2012**, then respondents Andaya, Banda, Samson, Sillona, Lagumen and Enriquez filed a "*Motion for Additional Time to File Counter-Affidavits and other Supporting Documents*;"<sup>25</sup>
4. On **June 14, 2012**, private respondent Haw filed his *counter-affidavit*;<sup>26</sup>
5. On **June 15, 2012**, respondents Andaya, Banda, Samson, Sillona, Lagumen and Enriquez filed their "*Joint Counter-Affidavit*" dated June 14, 2012;<sup>27</sup>
6. On **July 2, 2012**, respondent Dancel filed his *counter-affidavit*;<sup>28</sup>
7. On **July 11, 2012**, the private complainant prayed for an additional time to file his *reply-affidavit*;<sup>29</sup>
8. On **July 25, 2012**, private complainant Sylianteng filed his "*Consolidated Reply Affidavit*" dated July 22, 2012;<sup>30</sup> the private complainant requested and was given an extension of time to file his *reply* until July 26, 2012;<sup>31</sup>
9. On **August 9, 2012**, the above-mentioned respondents also prayed for an additional time to file their *rejoinder*;<sup>32</sup>
10. On **August 29, 2012**, respondents Andaya, Banda, Samson, Sillona, Lagumen and Enriquez filed their "*Consolidated Rejoinder Affidavit*" of even date;<sup>33</sup>
11. On **September 10, 2012**, the private complainant likewise requested for an extension of time to file his *sur-rejoinder*;<sup>34</sup>

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<sup>25</sup> p. 89, Vol. II, Record

<sup>26</sup> p. 89, Vol. II, Record

<sup>27</sup> pp. 54- 130, Vol. I, Record

<sup>28</sup> p. 89, Vol. II, Record

<sup>29</sup> p. 89, Vol. II, Record

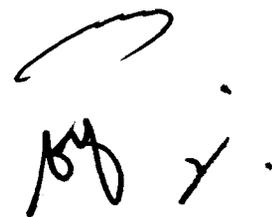
<sup>30</sup> pp. 169-183, Vol. I, Record

<sup>31</sup> p. 169, Vol. I, Record

<sup>32</sup> p. 89, Vol. II, Record

<sup>33</sup> pp. 184-249, Vol. I, Record

<sup>34</sup> p. 89, Vol. II, Record

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12. On **September 19, 2012**, private complainant Sylianteng filed his "*Sur-Rejoinder*" of even date;<sup>35</sup>
13. On **July 24, 2015**, the Office of the Ombudsman issued a *Resolution* finding probable cause to indict then respondents Andaya, Banda, Samson, Sillona, Lagumen and Enriquez for violation of Section 3 (e) of Republic Act (R.A.) No. 3019; the said *resolution* was approved by Ombudsman Conchita Carpio-Morales on **July 27, 2015**;<sup>36</sup>
14. On **November 6, 2015**, the Office of the Ombudsman issued an *Order* which denied the *motions for reconsideration* filed by the above-mentioned respondents; the said *Order* was approved by Ombudsman Morales on **January 20, 2016**;<sup>37</sup>
15. The present *Information* was drafted by Generoso Severo H. Plazo, Assitant Special Prosecutor II, on **April 1, 2016**. The same *Information* was approved by Ombudsman Morales on **April 15, 2016**;<sup>38</sup> and,
16. On **May 4, 2016**, the *Information* in this case was filed.<sup>39</sup>

Plainly, the Office of the Ombudsman took continued actions to resolve the preliminary investigation in the present case. Also, the *motion for reconsideration* filed by the respondents was immediately resolved. Undeniably, the numerous pleadings filed by the parties and the *motions for extension of time* filed by them contributed to the delay in this case. While there was a delay in the disposition of the case before the Office of the Ombudsman, the

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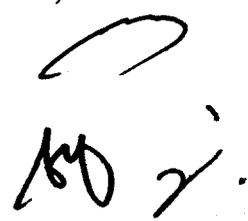
<sup>35</sup> pp. 131-168, Vol. I, Record

<sup>36</sup> pp. 7-21, Vol. I, Record

<sup>37</sup> pp. 22-26, Vol. I, Record

<sup>38</sup> pp. 1-4, Vol. I, Record

<sup>39</sup> pp. 5-6, Vol. I, Record



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Court does not find such delay as vexatious, arbitrary, capricious or oppressive warranting the dismissal of the present case.

To repeat, the constitutional guarantee of speedy trial is a relative and flexible concept. It is consistent with reasonable delays and depends upon the circumstances.<sup>40</sup> What is proscribed is unreasonable, arbitrary and oppressive delay which render rights nugatory.<sup>41</sup>

Indeed, the period during which the pleadings (together with its annexes) were examined and reviewed, the *motions for extension of time* filed by the parties, the time poured into the research of pertinent laws and applicable jurisprudence, the levels of review that the case had to go through and the exercise of legal judgment and discretion must also be taken into consideration in determining the existence of inordinate delay.<sup>42</sup>

As above shown, the Court applied settled jurisprudence as well as the *four-fold test* and gave particular regard to the facts and circumstances surrounding the preliminary investigation of this case as well as the reason for the delay given by the prosecution. After an assessment thereof, the Court did not find the existence of inordinate delay in the preliminary investigation of this case because only when the proceedings are attended by vexatious, capricious and oppressive delays, or when without cause or justifiable motive, a long period of time is allowed to elapse, would there be a violation of the right to speedy disposition of cases.<sup>43</sup>

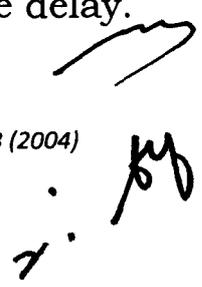
To stress, a mere mathematical reckoning of the time involved is not enough to hold the existence of inordinate delay.

<sup>40</sup> *Braza v. Sandiganbayan*, 691 SCRA 471 (2013)

<sup>41</sup> *Ombudsman v. Jurado*, 561 SCRA 135 (2008), *Mendoza-Ong v. Sandiganbayan*, 440 SCRA 423 (2004)

<sup>42</sup> pp. 7-10, *Resolution*; pp. 131-134, Vol. II, Record

<sup>43</sup> *Ombudsman v. Jurado*, 561 SCRA 135 (2008)

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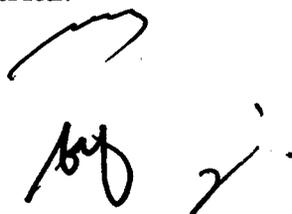
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Jurisprudence teaches that the *four-fold* factors must be considered and related together with other relevant circumstances and courts must still engage in a difficult and sensitive balancing process in the determination on whether or not the accused's right to speedy disposition of cases had been violated.<sup>44</sup>

Also, the averment of accused-movants Andaya, *et al.*, that pursuant to the ruling of the Supreme Court in the case of ***Coscolluela v. Sandiganbayan***,<sup>45</sup> they are not required nor do they have the duty to follow up on the prosecution of the case against them was also squarely passed upon by the Court in its challenged *resolution*, thus:

It is noteworthy that the accused-movant and his co-accused never raised the issue of inordinate delay, or at least took any step in order to accelerate the proceedings in the preliminary investigation of their case. It is only now, or when the case is already set for the initial presentation of the prosecution's evidence, that the accused-movant is minded to assert his right to speedy trial.

While it is true that a respondent in criminal case has no obligation to follow-up on his case, it is likewise jurisprudentially settled that the accused's assertion of his/her right to speedy disposition of cases is entitled to strong evidentiary weight in determining whether or not he/she is being deprived thereof; hence, failure to claim such right at the earliest opportunity will make it difficult to prove that there was denial of the respondent's right to speedy trial.<sup>46</sup>

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<sup>44</sup> See *Remulla v. Sandiganbayan*, G.R. No. 218040, April 17, 2017

<sup>45</sup> 191411

<sup>46</sup> See *Perez v. People*, 544 SCRA 532 (2008) citing *Barker v. Wingo*, 407 US 514 (1972); p. 10-11, *Resolution*; pp. 134-135, Vol. II, Record

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In sum, the accused-movants failed to raise any new or substantial matters that would warrant a reconsideration of the Court's *Resolution* promulgated on March 12, 2018.

**WHEREFORE**, accused Emmanuel C. Andaya, Sylvia C. Banda, Josefina Samson, Bernadette T. Lagumen and Ma. Gracia De Leon Enriquez's "*Motion for Reconsideration*" dated April 10, 2018, is **DENIED** for being *pro forma* and/or lack of merit.

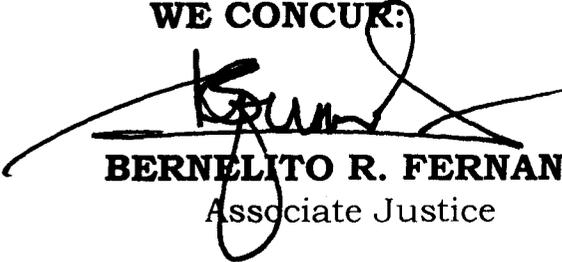
**SO ORDERED.**

Quezon City, Metro Manila

  
**AMPARO M. CABOTAJE-TANG**

Presiding Justice  
Chairperson

**WE CONCUR:**

  
**BERNELITO R. FERNANDEZ**

Associate Justice

  
**ZALDY V. TRESPESES**

Associate Justice