



Republic of the Philippines

SANDIGANBAYAN

Quezon City

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-17-CRM-0118

*For: Malversation of Public Funds
(Article 217, Revised Penal Code)*

-versus-

**GRACE P. DAGADAG and
BERNADETTE A. FERNANDO.**
Accused.

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Present:

CABOTAJE-TANG, P.J.

Chairperson

FERNANDEZ, S.J.* J. and

FERNANDEZ, B. J.

Promulgated:

JUNE 18, 2018

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R E S O L U T I O N

FERNANDEZ, B., J.

This resolves the Omnibus Motion to Quash Information and/or Motion to Dismiss with Motion to Defer Arraignment dated May 12, 2017 by accused Grace P. Dagadag, through counsel.

In her Motion, accused-movant Dagadag principally relied on the following grounds - - (1) The inordinate, oppressive and unreasonable delay of the proceedings constituted violations of the accused (movant) right to due process of law and/or speedy

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disposition of cases; (2) The Information charging the accused (movant) of alleged malversation of public funds is vague that it violates the right of the accused (movant) to due process and right to be informed of the nature and cause of the accusation against her; and, (3) The facts charged in the Information do not constitute the offense of malversation of public funds.

Elaborating, accused-movant Dagadag avers that the investigation of the case took more than thirteen (13) years before the Information was filed before this Court. She narrates that the case stems from a Commission on Audit (COA) Memorandum 2004-014 dated February 20, 2004, prompting the investigation by the Commission on Audit-Cordillera Administrative Region (COA-CAR) of her alleged cash advances for the period October 2001 to 2004. The investigation allegedly revealed that accused-movant had unliquidated cash advances amounting to P5,671,520.87.

From the COA-CAR, the case was then indorsed to the Provincial Prosecution Office-Kalinga (PPO-Kalinga) which issued a Resolution dated December 21, 2010, finding probable cause against the accused-movant for malversation of public funds and a violation of Section 89 in relation to Section 128 of Presidential Decree No. 1445, for granting and availing cash advances without a legally authorized specific purpose and which remain unliquidated. The said Resolution was then forwarded to the Office of the Ombudsman for review.

The Ombudsman, in its Review Resolution dated May 18, 2015, recommended that accused-movant Dagadag and co-accused Bernadette Fernando be charged with malversation with the approved Information attached therewith for filing before this Court. However, the criminal charge for violation of Presidential Decree No. 1445 against the accused-movant was dismissed due to prescription.

Although a Motion for Reconsideration dated July 10, 2015 was subsequently filed by the accused-movant, the same was denied for lack of merit (Order, January 21, 2016).

Eventually, the Office of the Ombudsman filed the appropriate Information on January 30, 2017.

The accused-movant insists that the whole process took a protracted amount of time of thirteen (13) years which already

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constitutes inordinate delay, hence, violating her constitutional right to speedy disposition of cases and/or right to speedy trial enshrined in Section 16, Article III of the Constitution.

She adds that, under existing and similar jurisprudence, the Supreme Court, particularly in *People vs. Sandiganbayan, et al.* (G. R. Nos. 188165 and 189063, December 11, 2013), has ordered the dismissal of cases due to inordinate delay in the conduct of the preliminary investigation.

The accused-movant further reiterates that, in the case at bar, the total delay in the proceedings is nearly thirteen (13) years reckoned from the time that the investigation began in 2004 by the COA-CAR. This delay, she claims, was inordinate and oppressive and already violative of her right to a speedy disposition of cases.

As to the ground that the Information is vague and ambiguous, hence, in violation of her rights to due process and to be informed of the nature and cause of the accusations against her, the accused-movant claims that, in the Amended Information, the prosecution failed to state with particularity the instances of damage and prejudice suffered by the government. This failure violates her right to be informed of the nature of the accusation against her. The damage caused and the instance of misappropriation is material to the defense of the accused-movant in order for her to gather evidence which will prepare her to prove her innocence and/or mitigate her liability, if there be any.

She adds that the recitals in the Amended Information are mere conclusions of law, which fall short of the standard required by the Constitution to appraise the accused-movant of the nature and cause of the accusation against her.

Lastly, the accused-movant alleges that the Amended Information does not constitute an offense of malversation because the prosecution failed to state its essential element - appropriation to his personal gain, or misappropriation of the public funds - citing *Ocampo III vs. People* (G.R. Nos. 156547-51, February 4, 2008).

In its Opposition dated August 2, 2017, the prosecution, alleges that the investigation/post-audit conducted by the COA-CAR do not form part of the preliminary investigation of the



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case. It cites *Aguinaldo vs. Sandiganbayan* (G.R. No. 124471, November 28, 1996) wherein the Supreme Court described the distinct functions of the Commission on Audit and the Office of the Ombudsman.

The prosecution emphasized that the preliminary investigation of the case commenced only on April 22, 2010 when the PPO-Kalinga received the Letter of COA-CAR Regional Director Rosemarie Lacson-Lerio endorsing the case to PPO-Kalinga for preliminary investigation and not in 2004. Thus, it is unfounded if not illogical to impute an assumed inordinate delay of six (6) years prior to the commencement of the preliminary investigation.

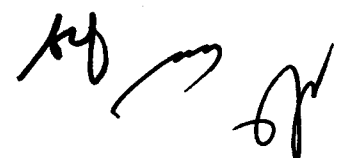
Further, the prosecution asserts that the Office of the Ombudsman has the inherent duty to carefully go through the particulars of the case indorsed to it by the PPO-Kalinga.

According to the prosecution, the case does not involve a measly sum of P5 Million in public funds which was probably malversed, through unliquidated cash advances, and probably committed by not more than two (2) public officials, accused-movant Dagadag being the principal accused. It was not an easy task to ascertain sixty (60) cash advances, among the many cash advances availed of by the accused-movant, as unliquidated, that spanned from year 2001 to 2004 up until the year 2007.

The prosecution also averred that the accused-movant failed to prove and show any actual damage or prejudice that would equate to oppression and injustice caused by any delay. Further, accused-movant Dagadag slept on her right to question the alleged delay at the first instance or at the first reasonable opportunity, hence, such right is deemed waived.

Finally, the prosecution maintains that the Information is sufficient in form and substance, hence, enough to inform accused-movant Dagadag of the nature and cause of the accusation against her. The Supreme Court has consistently decreed that a criminal Information needs only to state the ultimate facts that would establish the commission of the crime. The underlying details thereof are to be proved during trial, and need not be alleged therein.

We find the Omnibus Motion to be meritorious.



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As reference, the Amended Information (Resolution, June 29, 2017) reads - -

That during the period October 2001 to June 2004 or sometime prior or subsequent thereto in the Municipality of Tanudan, Kalinga, Philippines and within the jurisdiction of this Honorable Court; GRACE PUYAO DAGADAG, a high-ranking public officer being then the Municipal Mayor (SG-27), in conspiracy with BERNADETTE ANGGANAY FERNANDO, a Municipal Accountant, both of the Municipality of Tanudan, Kalinga; and in such capacities are accountable officers having custody or control over the funds of the Municipality of Tanudan, for the numerous cash advances which were received by reason of their office and drawn from municipal funds, committing the offense in relation to their official functions, did then and there willfully, unlawfully and feloniously appropriate, take, misappropriate, or convert to their personal use and benefit public funds in the total amount of FIVE MILLION SIX HUNDRED SIXTY-ONE THOUSAND ONE HUNDRED FORTY-EIGHT PESOS and EIGHTY-SEVEN CENTAVOS (Php 5,661,148.87), more or less, by having certified and approved payment such cash advances without legally authorized specific purposes therefor and without accounting for and/or liquidating previous availments; which both accused subsequently failed to account for and liquidate despite demands made by the Commission on Audit - Cordillera Administrative Region, to the damage and prejudice of the government.

CONTRARY TO LAW.

The length of delay in conducting the preliminary investigation by the Office of the Ombudsman in this case shows it committed inordinate delay which is violative of the constitutionally guaranteed right of the accused to due process and to a speedy disposition of the case against her, hence, warrants the dismissal of the criminal case.

Here, the case stemmed from an audit investigation conducted by COA-CAR pursuant to COA Memorandum No. 2004-014 dated February 24, 2004. On April 13, 2010, COA-

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CAR released its Evaluation Report which recommended the filing of 58 counts of violation of P.D. 1445 against the accused and one count of malversation of public funds against accused-movant Dagadag. The case was then forwarded to PPO-Kalinga for preliminary investigation which subsequently issued a Resolution dated December 21, 2010 finding probable cause against accused-movant Dagadag for malversation of public funds and violation of Section 89 in relation to Section 128 of P.D. 1445. Eventually, a Review Resolution by the Office of the Ombudsman dated May 18, 2015, approved by the Ombudsman on June 3, 2015, was issued recommending the filing of criminal charge of malversation against the accused.

Although the accused-movant filed a Motion for Reconsideration dated July 10, 2015, the same was denied through an Order dated January 21, 2016 and approved by the Ombudsman on February 4, 2016.

The Information was subsequently filed with the Sandiganbayan on January 23, 2017.

In *Perez vs. People, et al.* (G. R. No. 164763, February 12, 2008), our Supreme Court cited the United States Supreme Court case of *Barker vs. Wingo* [407 US 514, 33 L. Ed. 2d 101, 92 S. Ct. 2182 (1972)], and adopted the balancing test as a middle ground in which "the conduct of both the prosecution and defendant are weighed". This concept was explained as - -

A balancing test necessarily compels courts to approach speedy trial cases on an *ad hoc* basis.

We can do little more than identify some of the factors which courts should assess in determining whether a particular defendant has been deprived of his right. **Though some might express them in different ways, we identify four such factors: Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant.**

The length of the delay is to some extent a triggering mechanism. Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance. **Nevertheless, because of the imprecision of the right to speedy trial, the length**

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of delay that will provoke such an inquiry is necessarily dependent upon the peculiar circumstances of the case. To take but one example, the delay that can be tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy charge.

Closely related to length of delay is the reason the government assigns to justify the delay. Here, too, different weights should be assigned to different reasons. A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay. **We have already discussed the third factor, the defendant's responsibility to assert his right.** Whether and how a defendant asserts his right is closely related to the other factors we have mentioned. **The strength of his efforts will be affected by the length of the delay, to some extent by the reason for the delay, and most particularly by the personal prejudice, which is not always readily identifiable, that he experiences.** The more serious the deprivation, the more likely a defendant is to complain. The defendant's assertion of his speedy trial right, then, is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right. **We emphasize that failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial.**

A fourth factor is prejudice to the defendant. Prejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. This Court has identified three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused;



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and (iii) to limit the possibility that the defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. If witnesses die or disappear during a delay, the prejudice is obvious. There is also prejudice if defense witnesses are unable to recall accurately events of the distant past. Loss of memory, however, is not always reflected in the record because what has been forgotten can rarely be shown. (Emphasis supplied)

Applying the balancing test, granting that the audit investigation would not be included in counting the interval in conducting the preliminary investigation, the factual circumstances of the present case shows the Office of the Ombudsman conducted the preliminary investigation/review of the Resolution by the PPO-Kalinga, recommending the filing of charges against the accused, with undue delay, which spanned a period of four (4) years and four (4) months, and another eleven (11) months before the Information was eventually filed before this Court. Thus, the delay incurred in the proceedings lasted for a total of five (5) years and three (3) months.

The prosecution asserts that it carefully reviewed the particulars of the case indorsed to it by the Provincial Prosecutor of Kalinga and investigated and evaluated this case along with other transactions involving irregularities which are committed by public officials in the country, hence, making its disposition difficult.

We are not persuaded.

This Court finds that the prosecution failed to justify the delay of five (5) years in the resolution of the case and filing of the case against the accused-movant. The delay of more than four (4) years to review the finding of probable cause by the Provincial Prosecutor of Kalinga is unreasonable considering that the case does not involve complex issues. Circumstances have shown that the Office of the Provincial Prosecutor managed to find probable cause against the accused-movant within seven (7) months while the Office of the Ombudsman took four (4) years to issue similar findings or concurred thereto, when there was no account that it had verified



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documents, data or statistics with other government agencies nor conducted further probe on the case.

Further, the documents and/or evidence including the evaluation report of the COA-CAR were already available for scrutiny. Not to mention that the accused in the present case are not numerous.

Moreover, the Order dated January 21, 2016 denying the Motion for Reconsideration on the Review Resolution of the Ombudsman was already approved by the Ombudsman as early as February 4, 2016, but the Information was filed before this Court only on January 23, 2017 or an interval of eleven (11) months. The failure of the prosecution to explain why it took them almost a year to file the Information could only be surmised as capricious and oppressive.

Relative to the argument that the accused-movant did not assert her right to a speedy disposition of the case, the Supreme Court in *Remulla vs. Sandiganbayan, et al.* (G. R. No. 218040, April 17, 2017), reiterated the ruling laid down in the *Coscolluela* case (G. R. No. 191411, July 15, 2013) that the accused has no duty to follow up on the prosecution of their case because it was the Ombudsman's responsibility to expedite the proceedings within the bounds of reasonable timeliness in view of its mandate to promptly act on all complaints lodged before it. The Court held - -

Remulla argues that the assertion or non-assertion of the right to a speedy disposition of cases determines whether the court must dismiss the case for inordinate delay or continue the proceedings. Such argument, however, fails to persuade. It must be emphasized that the balancing test is a relative and flexible concept. The factors therein must be weighed according to the different facts and circumstances of each case. The courts are given wide judicial discretion in analyzing the context of the case, bearing in mind the prejudice caused by the delay both to the accused and the State.

In addition, 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

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otherwise would promote judicial legislation where the Court would provide a compulsory requisite not specified by the constitutional provision. It simply cannot be done, thus, the *ad hoc* characteristic of the balancing test must be upheld.

Likewise, contrary to the argument of the OSP, the U. S. case of *Barker v. Wingo*, from which the balancing test originated, recognizes that a respondent in a criminal case has no compulsory obligation to follow up on his case. It was held therein that "[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.

Finally, Remulla argues that the doctrine in *Coscolluela* - that the accused has no duty to follow up on the prosecution of their case - only applies to cases where the accused is unaware of the preliminary investigation. A review of related and subsequent cases, however, validates the said doctrine that it is applicable even if the accused was fully informed and had participated in the investigation. In *Cervantes*, the petitioner filed his affidavit before the Tanodbayan to answer the allegations against him. In *People*, the respondents therein were able to file their counter-affidavit with the Ombudsman. In *Inocentes*, the petitioner filed a motion for reconsideration before the Ombudsman. In all these cases, the accused were completely informed of the preliminary investigation against them and they were able to participate in the proceedings before the delays were incurred. In spite of this, the Court applied the doctrine in *Coscolluela* because it was the Ombudsman's responsibility to expedite the proceedings within the bounds of reasonable timeliness in view of its mandate to promptly act on all complaints lodged before it.

Finally, such inordinate delay by the Office of the Ombudsman in conducting the preliminary investigation obviously prejudiced accused-movant Dagadag as she was placed in a tactical disadvantage and possibly weakened her defense since the alleged violations were done more than ten (10) years now. Furthermore, the anxiety and oppression



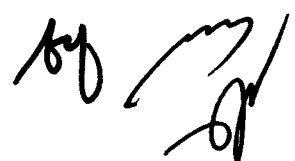
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caused to the accused-movant due to prolonged investigation. The Supreme Court in the case of *Coscolluela vs. Sandiganbayan, et al.* (G.R. No. 191411, July 15, 2013) recognized the prejudice caused to the accused by the lengthy delay in the proceedings against them, to wit - -

Lest it be misunderstood, the right to speedy disposition of cases is not merely hinged towards the objective of spurring dispatch in the administration of justice but also to prevent the oppression of the citizen by holding a criminal prosecution suspended over him for an indefinite time. Akin to the right to speedy trial, its "salutary objective" is to assure that an innocent person may be free from the anxiety and expense of litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose. This looming unrest as well as the tactical disadvantages carried by the passage of time should be weighed against the State and in favor of the individual. In the context of the right to a speedy trial, the Court in *Corpuz v. Sandiganbayan* (Corpuz) illuminated:

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.

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 will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to 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 disadvantaged by restraints on his liberty and



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by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.

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. x x x (citations omitted).

Hence, the Court is constrained to rule on dismissing the present case for violation of the accused-movant's



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constitutionally guaranteed right to speedy disposition of the case against her.


With the foregoing findings, further discussions on the other grounds raised by accused-movant Dagadag would only be a surplusage.

WHEREFORE, premises considered, the Omnibus Motion to Quash Information and/or Motion to Dismiss with Motion to Defer Arraignment dated May 12, 2017 of accused-movant Grace P. Dagadag is **GRANTED** for being meritorious.


Consequently, the Amended Information in Criminal Case No. SB-17-CRM-0118 is hereby **DISMISSED**, as prayed for.

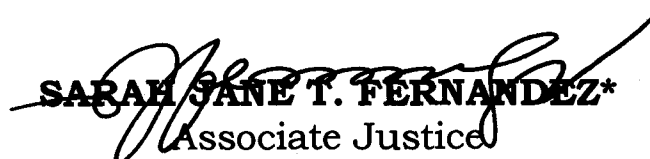
The Hold Departure Orders issued by this Court against accused-movant Dagadag and co-accused Bernadette A. Fernando are hereby **RECALLED** and **SET ASIDE**. Their respective bonds posted for their provisional liberty are ordered **RELEASED** subject to the usual accounting rules and regulations.

SO ORDERED.


BERNELITO R. FERNANDEZ
Associate Justice

We concur:


AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson


SARAH JANE T. FERNANDEZ*
Associate Justice