



**REPUBLIC OF THE PHILIPPINES  
SANDIGANBAYAN  
QUEZON CITY**

**SPECIAL THIRD DIVISION**

**PEOPLE  
OF THE  
PHILIPPINES,**

**Plaintiff,**

**-versus -**

**TOMASA LUGA GUARDO, et  
al,**

**Accused.**

**Criminal Case No. SB-17-  
CRM-2081**

For: Violation of Section 3(e) of  
Republic Act (R. A.) No. 3019,  
as amended

*Present:*

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

*Promulgated*

JUNE 6, 2018

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**RESOLUTION**

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

For resolution is accused Joseph C. Sy's *Motion for Reconsideration Ad Cautela (Re: Resolution dated 22 February 2018)* dated March 5, 2018.<sup>2</sup>

<sup>1</sup> J. Zaldy V. Trespeses is a signatory to the assailed Resolution.

<sup>2</sup> pp. 402-417, Record, Vol. 11

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Accused Sy prays for a reconsideration of the Court's Resolution promulgated on February 22, 2018 which denied his motion to dismiss and defer arraignment without prejudice to his motion to recuse. Accused Sy argues that the Court deprived him of his right under Section 2, Article III of the Constitution<sup>3</sup> when it declared that in moving for the dismissal of the case on the ground of lack of probable cause, he is effectively asking the Court to judicially re-determine the existence of probable cause. He also argues that the delay in the termination of the preliminary investigation in this case was inordinate and violative of his right to speedy disposition of his case.<sup>4</sup>

The prosecution opposes the subject motion. It argues that the same motion merely reiterates accused Sy's arguments raised in his motion to dismiss and purely a dilatory tactic to delay the proceedings in this case. At any rate, the prosecution insists that accused Sy is effectively moving for a judicial determination of probable cause, which is a prohibited motion, under the guise of a motion to quash a warrant of arrest. It adds that the motion for the Court to determine probable cause for the purpose of the issuance of a warrant of arrest had become moot because accused Sy had already posted bond for his provisional liberty. The prosecution also argues that the period of time in which the fact-finding investigation was conducted should not be taken into consideration in determining whether the accused's right to a speedy disposition of cases was violated because the fact-finding investigation is distinct from the preliminary investigation. It further argues that the claim of prejudice due to the delay should be counter-balanced with the right of the State to seek redress.<sup>5</sup>

The Court finds the motion devoid of merit.

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<sup>3</sup> SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

<sup>4</sup> pp. 403-416, Vol. II, Record

<sup>5</sup> pp. 186-194, Vol. II, Record

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An examination of the subject motion for reconsideration shows that accused Sy has not raised any cogent reason that would warrant a reversal of this Court’s Resolution promulgated on February 22, 2018. To be sure, accused Sy merely raises the same arguments he invoked in his motion to dismiss and defer arraignment which the Court had squarely passed upon.

As ruled by the Court in its assailed Resolution, it already found the existence of probable cause in this case for the issuance of a warrant of arrest against Sy and that there was no violation of accused Sy’s right to speedy disposition of cases, to wit:<sup>6</sup>

***I. The Court had already found the existence of probable cause in this case.***

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To be sure, the Court already found that probable cause exists in this case in its Resolution dated December 6, 2017; hence, it ordered the issuance of warrants of arrest against the accused.

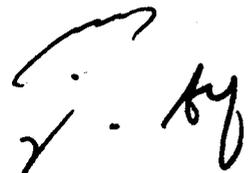
In invoking lack of probable cause as a ground for the dismissal of this case, accused Sy is effectively asking the Court to judicially re-determine the existence of probable cause. This simply cannot be done. A motion for judicial determination of probable cause is now a prohibited motion under the Revised Guidelines for Continuous Trial of Criminal Cases:

III. Procedure

... ..

2. Motions

... ..



<sup>6</sup> at pp. 4-14, Resolution promulgated on February 22, 2018; pp. 249-259, Vol. II, Record; citations omitted

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(b) Prohibited Motions. - Prohibited motions shall be denied outright before the scheduled arraignment without need of comment and/ or opposition.

The following motions are prohibited:

- i. Motion for judicial determination of probable cause.

... ..

Thus, accused Sy's motion for the dismissal of the case based on lack of probable cause is necessarily prohibited.

Assuming that the subject motion is a motion to quash warrant of arrest, the issue raised is nonetheless the same, *i.e.*, lack of probable cause. Effectively, accused Sy seeks a judicial re-determination of probable cause for the purpose of the issuance of a warrant of arrest which, as above stated, cannot be done.

The determination of probable cause for the purpose of an arrest warrant is judicial, performed by the judge to ascertain whether the accused should be placed under the court's custody. However, to move the court to conduct a judicial determination (or re-determination as in this case) of probable cause is a mere superfluity. For with or without such motion, the judge is duty-bound to personally evaluate the resolution of the public prosecutor and the supporting evidence. In fact, the task of the presiding judge when the Information is filed with the court is first and foremost to determine the existence or non-existence of probable cause for the arrest of the accused.

This is what the Court precisely did in this case. Upon the filing of the case with it, the Court determined the existence of probable cause. After it made a positive determination thereof, it issued warrants of arrest. Thus, it is superfluous for accused Sy to seek the judicial re-determination of probable cause on the pretext that the Court should still act and proceed independently of the executive determination of probable cause to charge the proper offense.

**Aguinaldo and Verzosa cases** do not support accused Sy's contention.



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In **Aguinaldo**, the Supreme Court denied therein petitioners' petition for review on the ground that public respondent did not commit grave abuse of discretion when he denied therein petitioner's motion to quash warrant of arrest, and setting their arraignment, despite the pendency of their petition for review with the DOJ. Thus, the High Court reminded judges that the pendency of a motion for reconsideration, motion for reinvestigation, or petition for review is not a cause for the quashal of a warrant of arrest previously issued because the quashal of a warrant of arrest may only take place upon the finding that no probable cause exists.

The **Verzosa case** involved an administrative case against a judge for grave abuse of authority, grave misconduct and violation of the Code of Judicial Conduct in connection with a criminal case. Among the issues raised therein was the respondent judge's issuance of a warrant of arrest against the complainant. According to the Supreme Court, "if ever complainant perceived that irregularities attended the issuance of warrant of arrest against him, he has all available judicial remedies, such as filing a motion to quash warrant of arrest, habeas corpus proceedings, or certiorari, but none was availed of by complainant."

**II. *There was no inordinate delay in the termination of the preliminary investigation in this case; hence, there is no violation of accused Sy's right to speedy disposition of his case.***

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The concept of speedy disposition is relative or flexible. A mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case. For this reason, 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. The conduct of both the prosecution and defendant are



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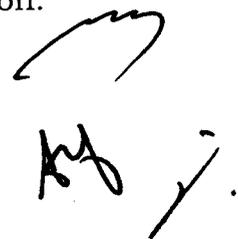
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weighed *apropos* the four-fold factors, to wit: (1) length of the delay; (2) reason for the delay; (3) defendant's assertion or non-assertion of his right; and (4) prejudice to defendant resulting from the delay. None of these elements, however, is either a 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.

Applying the balancing test, the Court finds that accused Sy's right to a speedy disposition of his case was not violated.

In its opposition, the prosecution enumerates the chronology of events from the time of the filing of the complaint on March 5, 2013 until the filing of the Information on October 13, 2017, to wit:

- March 5, 2013 - The Field Investigation Office (FIO) filed a complaint with the Office of the Deputy Ombudsman for Luzon.
- April 17, 2013 - The OMB-Luzon issued an Order to all accused to file their respective counter-affidavits.
- May to July 2013 - Except for accused Sy, who failed to receive the aforesaid Order, all the accused filed their respective counter-affidavits.
- March 2015 - Except for accused Sy, the accused filed their respective position papers.
- May 27, 2016 - This case, then docketed as OMB-C-C-13-0059, was assigned to GIPO Joyrich Golangco.
- August 31, 2016 - GIPO Golangco prepared the OMB Resolution.

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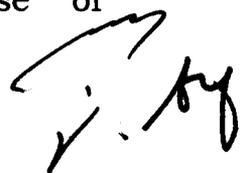
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- January 26, 2017 - The Ombudsman approved OMB Resolution dated August 31, 2016.
- April 5, 2017 - Accused Ronaldo Gruyal filed a motion for reconsideration of the aforesaid OMB Resolution.
- July 5, 2017 - GIPO Golangco prepared the Order denying accused Gruyal's motion for reconsideration.
- August 1, 2017 - The Ombudsman approved the Order dated July 5, 2017 denying accused Gruyal's motion for reconsideration.
- October 13, 2017 - The Information was filed with the Sandiganbayan.

The above chronology of events shows that the preliminary investigation in this case was terminated after four (4) years, reckoned from the time the complaint was filed by the Field Investigation Office (FIO) on March 5, 2013, until the Information was filed with the Court on October 13, 2017.

It also appears from the documents attached to the Resolution dated August 31, 2016, issued by the Office of the Ombudsman, that the fact-finding investigation started on March 24, 2011, the date when the Field Investigation Office issued a *subpoena duces tecum* against the Regional Director of the Commission on Audit (COA). The *subpoena* was in connection with the P5 million fund allocation for the 1<sup>st</sup> District of Surigao del Sur, particularly in the Municipality of Cantillan, which was derived from the P728 Million fertilizer fund of the *Ginintuang Masaganang Ani* (GMA) program of the Department of Agriculture for the purchase of farm inputs and implements.

Accused Sy correctly points out that the fact-finding investigation should not be deemed separate from the preliminary investigation conducted by the Office of the Ombudsman. However, for the purpose of



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determining whether a person's right to a speedy disposition of cases had been violated, the aggregate time spent for the said investigation must constitute inordinate and oppressive delay in the disposition of any case.

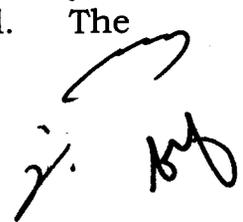
In this case, the mere fact that it took the Office of the Ombudsman more than six (6) years to conclude the preliminary investigation including the fact-finding investigation, does not automatically amount to a violation of accused Sy's right to a speedy disposition of his case. To repeat, the concept of speedy disposition is relative or flexible. A mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case.

Also, the concept of speedy disposition is consistent with delays and depends upon the circumstances. What the Constitution prohibits are unreasonable, arbitrary and oppressive delays which render rights nugatory.

Here, the preliminary investigation involved fifteen (15) respondents. There were five (5) separate counter-affidavits filed by the respondents from May 2013 to June 2013. The respondents were also allowed to file their respective position papers. Necessarily, these counter-affidavits, together with the complaint and several documents attached thereto, had to be examined and studied by the Graft Investigator.

After the investigation, the Office of the Ombudsman issued a Resolution dated August 31, 2016, finding probable cause to indict thirteen (13) accused for violation of Section 3(e) of R. A. No. 3019, and dismissed the case against Rodriguez for lack of merit, and against Miranda by reason of death. On April 5, 2017, accused Ronaldo Gruyal filed a motion for reconsideration of the said resolution. The same was denied by the Office of the Ombudsman in its Order dated July 5, 2017.

Notably, the Resolution and the Order issued by the Office of the Ombudsman went through different levels of review. The Graft Investigator submitted the resolution and/or order to the team leader for review, then to the Deputy Ombudsman for recommendation, and, finally to the Ombudsman for approval or disapproval. The

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number of the accused involved, the documents to be examined and the different levels of review that the case underwent certainly contributed to the "delay" in terminating the preliminary investigation.

Under the obtaining facts, the Court finds that the delay in the termination of the preliminary investigation was not unreasonable or oppressive. The chronology of events shows that the accused were merely given ample opportunity to ventilate their defenses in the interest of justice. There is no showing that the prosecution deliberately delayed the proceedings to gain an advantage or for other impermissible reasons. The delay was reasonable being part of the ordinary processes of justice as the prosecution correctly points out:

First, the delay, if there was any, was necessary to afford the accused in this case the full opportunity to clearly and exhaustively ventilate their defenses in observance of the due process clause. In fact, they were still afforded the opportunity to submit their respective position papers to which they did so sometime in March 2015. They were also given the chance to file motion for reconsideration to which accused Ronaldo Gruyal has filed one on April 5, 2017. And to be fair, the Office of the Ombudsman also waited for reasonable time for complainant FIO to respond to the said motion for reconsideration of accused Gruyal before the same motion was submitted for resolution.

While it may be true that accused Sy could not have asserted his right to a speedy disposition of cases because he was not notified of the conduct of the preliminary investigation, it bears stress that the same is not the only factor to be considered in determining whether there is a violation of the right to a speedy disposition of cases.

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.



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Accused Sy further claims that he will be prejudiced by the alleged delay in terminating the preliminary investigation because of the “herculean task of salvaging documents and witnesses who have personal knowledge about the transaction involved.” He alleges that Golden Harvest is no longer operational and that he has no access with the people who used to work for Golden Harvest.

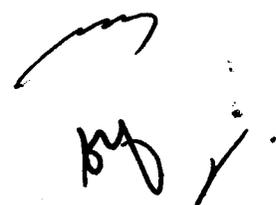
The claim has no merit.

The concept of “prejudice” as one of the factors to be considered and balanced in determining whether there is a violation of the right to speedy disposition of cases was explained in **Perez vs. People**, as follows:

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; 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.

In this case, it cannot be said that accused Sy was unduly prejudiced by the “delay” given the fact that he immediately posted bail upon the filing of the case. Moreover, except for his general allegation, accused Sy has not identified who his potential witnesses would be and could no longer testify. He also failed to particularize the documents which are material to his defense and are now beyond recovery due to the passage of time.

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Finally, an examination of the cases invoked by accused Sy in support of his claimed violation of his right to speedy disposition of cases are inapplicable here because of their substantially differing circumstances. To repeat, in determining whether there is a violation of the right to a speedy disposition of cases, particular regard must be taken of the facts and circumstances peculiar to each case. For this reason, 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.

**WHEREFORE**, the Court **DENIES** accused Joseph C. Sy's *Motion For Reconsideration Ad Cautela (Re: Resolution dated 22 February 2018)* dated March 5, 2018, for being *pro forma* and for lack of merit.

**SO ORDERED.**

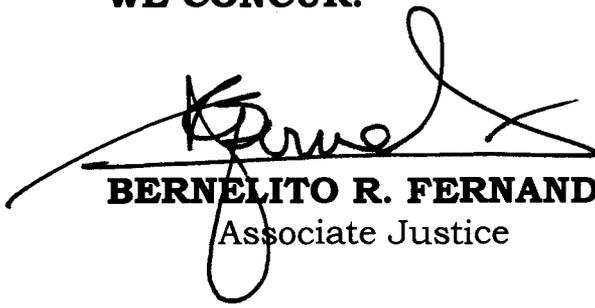
Quezon City, Metro Manila.



**AMPARO M. GABOTAJE-TANG**

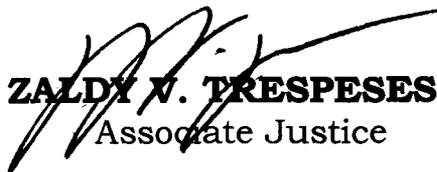
Presiding Justice  
Chairperson

**WE CONCUR:**



**BERNELITO R. FERNANDEZ**

Associate Justice



**ZALDY V. TRESPESES**

Associate Justice