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REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

FOURTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-12-CRM-0081 to 0085

For: (1) Violation of Section 3 (e) of Republic Act (R. A.) No. 3019 or the Anti- Graft and Corrupt Practices Act; (2) Estafa through Falsification Of Public Documents; and (3) Falsification of Public Documents.

-versus-

ANTONIO P. BELICENA, ET AL.,
Accused.

Present:

QUIROZ, J., *Chairperson*
CRUZ, J.
JACINTO, J.

Promulgated on:


July 16, 2018 *unt*

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RESOLUTION

CRUZ, J.

This resolves the (1) Motion to Dismiss dated 16 May 2018 of accused Raul C. De Vera ("De Vera" for brevity) and accused Rosanna P. Diala ("Diala" for brevity); and (2) Prosecution's Comment/Opposition (to the Motion to Dismiss dated May 16, 2018) dated 30 May 2018.

 In their Motion,¹ accused De Vera and Diala (hereinafter collectively referred to as "accused" for brevity) move for the dismissal of the cases filed against them for violation of their right to the speedy disposition of their cases. The accused claim that the alleged crimes happened sometime on 27 April 1998, but the Office

¹ Records, Vol. II, pp. 108-112.

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of the Ombudsman (Ombudsman) only filed the herein cases on 02 March 2012 or fourteen (14) years after. Furthermore, the accused state that the trial of the herein cases only commenced six (6) years after the filing of the Informations in 2012, since their respective arraignment was just set this year. The accused argue, among others, that their right to speedy disposition of cases guaranteed under Section 16 of Article III of the Constitution was violated because without a cause or justifiable motive, a long period of time was allowed to elapse before their cases were tried. Citing jurisprudence, the accused declare that the Bill of Rights takes precedence over the right of the State to prosecute, and when weighed against each other, the scale of justice tilts towards the former. The accused aver that it is incumbent upon the State to prove that the delay was reasonable or that the delay was not attributable to it. Otherwise, the inordinate delay in the resolution of the criminal case warrants the dismissal thereof for being violative of the right of the accused to due process and to the speedy disposition of cases. The accused also underscore that they do not have the duty to bring themselves to trial, rather, it is the duty of the prosecutor to expedite the resolution of the complaint. In conclusion, the accused maintain that the long delay in investigating and in proceeding with the trial of the cases, placed them at a tactical disadvantage since the records, documents and witnesses necessary for their defense are no longer available and accessible to them. Hence, the accused pray for the dismissal of their cases for clear violation of their right to speedy disposition of their cases.

In its Comment/Opposition,² the prosecution denies the violation of the right of the accused to the speedy disposition of their cases, stressing that in determining whether such right was violated the four (4) factors in the "balancing test" must be considered. As the so-called judicial yardstick, the balancing test weighs the conduct of both the prosecution and the defense to see whether the accused has been deprived of the right to speedy disposition of cases. Here, the prosecution observes that the accused only invoked their right to the speedy disposition of their cases after their arraignment had been set, but never while the cases were pending before the Ombudsman. Citing jurisprudence, the prosecution posits that the accused's belated assertion of the said right negated the notion that they were prejudiced by the delay, and that their silence or inaction must be interpreted as a waiver of their right thereto, barring them from claiming the dismissal of their cases. The prosecution also asserts that any perceived delay in the conduct of the preliminary investigation as well as in the subsequent filing of the

² Records, Vol. II, pp. 113-121.

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Informations must be considered reasonable and never inordinate. The prosecution states that the alleged delay of twenty (20) years as computed by the accused was erroneous, explaining that such computation must be reckoned from the time of the commencement of the preliminary investigation on 07 November 2002, and not from the time of the commission of the offense. Moreover, the prosecution insists that the intervening period of six (6) years, from the time of the filing of the Informations in 2012 and the setting of their arraignment in 2018, should not be included in the same computation. The prosecution argues that a mere mathematical reckoning of the time would not suffice because by simply deducting the year 2002 (the year the complaint was filed before the Ombudsman) from 2012 (the year when the Informations were filed in court), would unfairly overlook how the cases progressed during the said period. The prosecution continues to point out the inherent difficulties encountered during the conduct of the preliminary investigation, like the voluminous records involved in the cases, the number of respondents, the tedious and the rigorous review that the cases have to undergo at the different levels in the Office of the Ombudsman, the said office's heavy case load, as well as the changes of leadership in the said office, all contributed to the delay in the proceedings. The prosecution says that the Ombudsman should be presumed to have performed its duty regularly, and that the time consumed in the observance of proper procedures should be considered as reasonable delay. Finally, the prosecution emphasizes that both the State and the accused are entitled to due process. As such, a party's individual rights should not work against and preclude the people's equally important right to public justice.

The motion is partly meritorious.

It is doctrinal that an accused's right to speedy disposition of cases is a relative or flexible concept.³ As such, a mere mathematical reckoning of the time involved will not suffice but particular regard must be taken of the facts and circumstances peculiar to each case.⁴ In determining whether such right was violated, a "balancing test" is employed, where the conduct of both the prosecution and the accused are weighed *apropos* the following four (4) factors, to wit: (1) the 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.⁵

³ Comm. Lamberto R. Torres (Ret.) vs. Sandiganbayan (1st Division) and People of the Philippines, 805 SCRA 455, (2016), p. 465.

⁴ *Id.*, p. 465.

⁵ Juanito Victor C. Remulla vs. Sandiganbayan (2nd Division) and Erineo S. Maliksi (G. R. No. 218040, April 17, 2017); Comm. Lamberto R. Torres (Ret.) vs. Sandiganbayan (1st Division) and People of the

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Here, it is established in the records that the Special Presidential Task Force filed its Complaint-Affidavit⁶ dated 25 October 2002, before the Office of the Ombudsman on 07 November 2002. Finding probable cause, the Ombudsman issued its Resolution⁷ dated 25 August 2006. Thereafter, the said Resolution was reviewed⁸ and finally approved on 05 March 2012, which led to the filing of the herein Informations⁹ on 04 April 2012. Based on this timeline, it appears that the Ombudsman roughly took nine (9) years and five (5) months to finish its preliminary investigation, reckoned from the time of the filing of the Complaint-Affidavit on 25 October 2002, until the herein Informations were actually filed in court on 04 April 2012. As an excuse for this apparent delay, the prosecution enumerated the alleged difficulties the Ombudsman encountered during the conduct of its preliminary investigation, such as the different reviews that the cases have to undergo, the Ombudsman's heavy workload and the changes in the leadership therein. But, such reasons advanced by the prosecution are not acceptable. In the case of *Rafael L. Coscolluela vs. Sandiganbayan, et al.*,¹⁰ the Supreme Court rejected the similar reasons given to justify the delay in the proceedings and focused on the Ombudsman's constitutional mandate as the protector of the people to act promptly on the case filed before it, to wit:

“xxx To this end, the Court equally denies the SB's ratiocination that the delay in proceedings could be excused by the fact that the case had to undergo careful review and revision through the different levels in the Office of the Ombudsman before it is finally approved, in addition to the steady stream of cases which it had to resolve.

Verily, the Office of the Ombudsman was created under the mantle of the Constitution, mandated to be the "protector of the people" and as such, required to "act promptly on complaints filed in any form or manner against officers and employees of the Government, or of any subdivision, agency or instrumentality thereof, in order to promote efficient service." This great responsibility cannot be simply brushed aside by ineptitude. Precisely, the Office of the Ombudsman has the inherent duty not only to carefully go through the particulars of case but also to resolve the same within the proper length of time. Its dutiful performance should not only be gauged by the quality of the assessment but also by the reasonable promptness of its dispensation. xxx”

Philippines, 805 SCRA 455, (2016), pp. 465-466.

⁶ Records, Vol. I, pp. 70-73.

⁷ Records, Vol. I, pp. 32-69.

⁸ Records, Vol. I, pp. 26-32.

⁹ Records, Vol. I, pp. 1-17

¹⁰ *Rafael L. Coscolluela vs. Sandiganbayan and People of the Philippines*, 701 SCRA 188, (2013), p. 197

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Furthermore, a review of the records would show that the issues involved in the herein cases are not complex, the documents adduced to support the Complaint-Affidavit are not that voluminous, and the respondents subjected to the preliminary investigation are not too many, as to warrant the lapse of more than nine (9) years for the Ombudsman to complete its investigation. It is worth emphasizing that although the Rules of Procedure of the Ombudsman do not specifically prescribe a period within which a criminal complaint may be investigated and decided,¹¹ the same rules have adopted the Rules of Court on Preliminary Investigation, which give the investigating officer only ten (10) days from the submission of the case to come out with a resolution.¹²

Concomitantly, in its attempt to shift the blame to the herein accused, the prosecution claims that the latter should be deemed to have waived their right to the speedy disposition of their cases for failing to raise the same while the cases were still pending before the Ombudsman. This argument fails to persuade. Jurisprudence dictates that 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 the speedy disposition of his case is recognized.¹³ Moreover, it is jurisprudentially settled that a defendant has no duty to bring himself to trial.¹⁴ Such duty falls upon the prosecutors, who need to expedite the prosecution of the case regardless of whether or not the accused objects to the delay. Under the circumstances, the Court is also convinced that the failure of the prosecution to justify the 9-year interval before the case was filed in court far outweighs herein accused's own inaction over the delay.¹⁵

Finally, the damage caused by a prolonged investigation to the defenses of an accused is acknowledged in the case of *Marielen C.*

¹¹ Section 4, Rule II of Administrative Order No 07, states:

"Section 4. Procedure: The preliminary investigation of cases falling under the jurisdiction of the Sandiganbayan and the Regional Trial Court shall be conducted in the manner prescribed in Section 3, Rule 112 of the Rules of Court xxx"

¹² Section 3, Rule 112 of the Rules of Court, provides:

"Section 3. Procedure. – The preliminary investigation shall be conducted in the following manner:

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(f) Within ten (10) days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial. xxx"

¹³ *Juanito Victor C. Remulla vs. Sandiganbayan (2nd Division) and Erineo S. Maliksi* (G. R. No. 218040, April 17, 2017)

¹⁴ *Id.*

¹⁵ *Supra*, footnote 13

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Corpuz and Antonio H. Roman, Sr., vs. Sandiganbayan and People of the Philippines,¹⁶viz.:

“xxx 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 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. xxx”

Hence, considering the length of delay, the absence of acceptable reasons from the prosecution to justify the protracted conduct of its investigation, and the prejudice caused by such delay to accused Diala, the Court finds the period of nine (9) years and five (5) months consumed by the prosecution to investigate and file the herein cases constitutes inordinate delay, which authorizes the dismissal of her cases on the ground of the violation of her right to the speedy disposition thereof.

Nevertheless, the dismissal of her cases does not amount to an automatic release of accused Diala from any civil liability which the State may prove in a subsequent civil proceeding. This remedy is explicit under Section 2, Rule 111 of the Rules of Court, which states that “an acquittal in a criminal case does not bar the private offended party from pursuing a subsequent civil case based on the delict, unless the judgment of acquittal explicitly declares that the act or omission from which the civil liability may arise did not exist.”¹⁷ Here, the present cases are bound to be dismissed even before the Court can make a definite pronouncement as to whether accused Diala indeed committed the offenses from which the civil liability on her part might arise.¹⁸ Absent this pronouncement, the State is not precluded from instituting a subsequent civil case based on the delict if only to recover the amount of public funds attributable to her alleged crimes.¹⁹

¹⁶ 442 SCRA 294, (2004), p. 313

¹⁷ Rafael L. Coscolluela vs. Sandiganbayan and People of the Philippines, 701 SCRA 188, (2013), pp. 202-203

¹⁸ *Id.*, p. 204

¹⁹ *Id.*, p. 204

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Conversely, the same benefit cannot be extended to accused De Vera, who was previously arraigned²⁰ prior to the filing of the present motion. To note, a dismissal based on inordinate delay is premised on the alleged lack of authority of the Ombudsman to file the Information, which is one of the grounds for the filing of a motion to quash.²¹ Thus, in the case of accused De Vera, the motion, although denominated as a "motion to dismiss" is essentially a motion to quash. Under Section 1 Rule 117²² of the Revised Rules on Criminal Procedure, the proper time to file a motion to quash is before the accused enters a plea, which means that the motion should have been filed prior to accused De Vera's arraignment. Corollarily, after he enters his plea, accused De Vera is deemed to have waived²³ all his objections to the validity of the Informations filed, including the lack of authority of the Ombudsman to file the same.

In addition, the Revised Guidelines on Continuous Trial of Criminal Cases mandates that a motion to quash is considered a meritorious motion only if it is based on the following grounds: (1) the facts charged do not constitute an offense; (2) lack of jurisdiction; (3) extinction of liability; or (4) double jeopardy.²⁴ In effect, motions

²⁰ Records, Vol. II, p. 90

²¹ Section 3, Rule 117 of the Revised Rules on Criminal Procedure provides the following grounds for the filing of a motion to quash, to wit:

- (a) That the facts charged do not constitute an offense;
- (b) That the court trying the case has no jurisdiction over the offense charged;
- (c) That the court trying the case has no jurisdiction over the person of the accused;
- (d) That the officer who filed the information had no authority to do so;
- (e) That it does not conform substantially to the prescribed form;
- (f) That more than one offense is charged except when a single punishment for various offenses is prescribe by law;
- (g) That the criminal action or liability has been extinguished;
- (h) That it contains averments which, if true, would constitute a legal excuse or justification; and
- (i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent. *

²² Section 1, Rule 117 of the Revised Rules on Criminal Procedure states:

"Section 1. *Time to move to quash.* – At any time before entering a plea, the accused may move to quash the complaint or information."

²³ Section 9, Rule 117 of the Revised Rules on Criminal Procedure provides:

"The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of Section 3 of this Rules."

²⁴ Revised Guidelines for Continuous Trial of Criminal Cases, (III) Procedure (2)(v), in relation to Section 3, Paragraphs (a), (b), (g), and (i) of Rule 117 of the Revised Rules on Criminal Procedure.

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that do not conform to the above-stated requirements shall be considered unmeritorious and shall be denied outright.²⁵

WHEREFORE, premises considered, the Motion to Dismiss dated 16 May 2018 of accused Raul C. De Vera and accused Rosanna P. Diala is hereby **PARTIALLY GRANTED**.

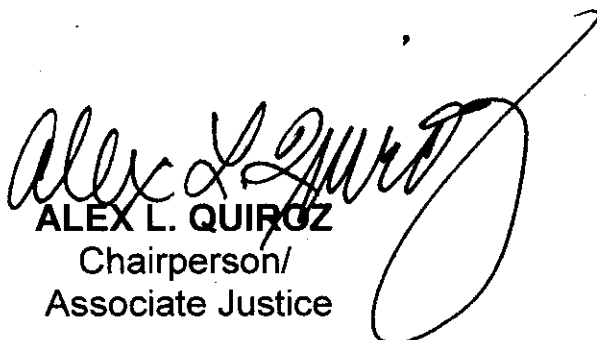
Thus, the cases filed against accused Rosanna P. Diala are **DISMISSED**, for violation of her right to the speedy disposition of her cases, without prejudice to any civil liability that the State may prove in a separate civil action. Moreover, her cash bond²⁶ in the amount of Sixty Two Thousand Pesos (Php62,000.00), under Official Receipt No. 5497209 V, posted on 11 May 2018 is **CANCELLED and RELEASED**. The Hold Departure Order²⁷ issued by this Court against the said accused-movants is also **LIFTED and SET ASIDE**. Let the Commissioner of the Bureau of Immigration be notified accordingly.

On the other hand, with respect to accused Raul C. De Vera, the present Motion to Dismiss is **DENIED** for lack of merit.

SO ORDERED.


REYNALDO P. CRUZ
Associate Justice

We Concur:


ALEX L. QUIROZ
Chairperson/
Associate Justice


BAYANI H. JACINTO
Associate Justice

²⁵ Revised Guidelines for Continuous Trial of Criminal Cases, (III) Procedure (2) (See last paragraph)

²⁶ Records, Vol. II, pp. 100-104

²⁷ Records, Vol. I, p. 698