

**SANDIGANBAYAN
QUEZON CITY**

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-17-CRM-2082
For: Violation of Section 3(e),
R.A. No. 3019

- versus -

ANNALIZA P. GONZALES-KWAN,
ET AL.

Accused.

Present:

FERNANDEZ, SJ, J.,
Chairperson
MIRANDA, J.,
FERNANDEZ, B,* J.

Promulgated:

July 6, 2018 *[Signature]*

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RESOLUTION

FERNANDEZ, SJ, J.:

This resolves: i) accused Annaliza Projimo Gonzales-Kwan's *Motion for Reconsideration (of Resolution promulgated on 5 April 2018)*;¹ (ii) accused Arsenio V. Salamida, Esperanza G. Cotin, Ma. Nenita S. Ecleo, Felipe D. Padual and Danilo G. Colandog's *Motion for Reconsideration*;² together with the (iii) *Consolidated Comment/Opposition*³ filed by the prosecution on May 2, 2018.

* Per Administrative Order No. 338-2017 dated October 2, 2017, Special Member in view of the vacancy in the Sixth Division. Justice Bernelito Fernandez participated in the Resolution dated April 5, 2018.

¹ Dated April 11, 2018 and received through registered mail on April 24, 2018.

² Dated April 16, 2018 and received through registered mail on April 24, 2018.

³ *Re: Accused Annaliza Projimo Gonzales-Kwan's Motion for Reconsideration and Accused Arsenio Valdenor Salamida, Esperanza Gormate Cotin, Ma. Nenita Salamida Ecleo, Felipe Darang Padual and Danilo Gagaron Colandog's Motion for Reconsideration (Resolution dated 05 April 2018) dated May 2, 2018*

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Accused Kwan and accused Salamida, et al., similarly ask the Court to: i) reconsider its April 5, 2018 Resolution which denied their separate *Motions to Dismiss*; and, ii) dismiss or quash the present Information.

Accused Kwan contends that the Court gravely erred:

1. In denying her Motion to Dismiss (on the ground of inordinate delay) even when there is a gross violation of her constitutional right to a speedy disposition of her criminal case resulting from the oppressive, capricious, unexplained and unreasonable delay in the aggregate time spent by the Office of the Ombudsman in the Fact-Finding Investigation and the Preliminary Investigation, thereby impairing her ability to adequately prepared for her defense;
2. In ruling that she failed to seasonably invoke her constitutional right to a speedy disposition of her criminal case because she failed to raise the same during the Fact-Finding Investigation, despite the clear pronouncement of the Supreme Court in *Coscolluela vs. Sandiganbayan*⁴ that it is not the duty of the accused to follow up on the prosecution of her case;⁵ and,
3. When it simply disregarded the 7-year period for the conduct of the fact finding investigation. She was severely harassed, threatened, and intimidated by her political opponents at that time who claimed that she has a pending criminal complaint before the Office of the Ombudsman.⁶

On the other hand, accused Salamida, et al., contend:

1. There was unexplained delay attendant in the filing of the complaint and in the resolution thereof, to the prejudice of the rights of all the accused-movants as shown by the following:
 - a) The subject transaction transpired from the months of January to April 2007 and the alleged irregularities in the bidding and award of the contract were already disclosed in the October 19, 2007 letter-complaint of Edgar F. Gica.
 - b) It took the Office of the Ombudsman almost nine (9) years from the institution of the complaint in

⁴ 701 SCRA 188 [2013]

⁵ Motion for Reconsideration dated April 11, 2018, pp. 2-3.

⁶ Motion for Reconsideration dated April 11, 2018, p. 4.

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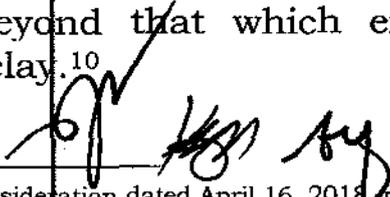
2007 to find probable cause against all the accused-movants.

- 2. There are similarities between the case of **People vs. Ambagan, et al.**, SB-17-CRM-0984 to 1004, November 28, 2017, and the instant case, to *wit*.⁷

	People vs. Ambagan, et al.	People vs. Gonzales-Kwan, et al.
Period of Fact-Finding Investigation	Five (5) years	Six (6) years, five (5) months and six (6) days
Approval and Filing of Information	Four (4) years, four (4) months, seven (7) days	Three (3) years and seven (7) months. Broken down as: Two (2) years, five (5) months and two (2) days for preliminary investigation; One (1) year until approval and filing.
Evidence needed for Resolution	Not voluminous	Respondents and witnesses are readily accessible and available. Documentary evidence are readily accessible and available in one single place; Only eight (8) documentary evidence are relevant in resolving the Complaint.

- 3. The elements in the determination of whether the defendant has been denied his right to a speedy disposition of a case, as elucidated in *Coscolluela vs. Sandiganbayan*, are present in this case.⁸

In its *Consolidated Comment/Opposition*,⁹ the prosecution claimed that there was no gross violation of accused' right to speedy disposition of their case. The prosecution stressed that the accused suffered no serious prejudice beyond that which ensued from ordinary and inevitable delay.¹⁰



⁷ Motion for Reconsideration dated April 16, 2018, pp. 3-4.

⁸ Motion for Reconsideration dated April 16, 2018, pp. 5-9.

⁹ Dated May 2, 2018

¹⁰ At p. 3.

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RULING

The *Motions for Reconsideration* separately filed by accused Kwan and by accused Salamida, et al., are denied. The matters raised therein are mere rehash and reiterations of the arguments in the separate *Motions to Dismiss*, and were already passed upon by this Court in its April 5, 2018 *Resolution*.

The Court maintains its conclusion that there was no violation of the accused' right to a speedy disposition of their case since the accused failed to establish that:

1. The delay can be characterized as capricious, vexatious, and oppressive, or that which violates the right to a speedy disposition of cases; and,
2. The accused failed to show that they were unduly prejudiced by the delay in the fact finding investigation and preliminary investigation conducted by the Office of the Ombudsman.

As discussed in this Court's Resolution dated April 5, 2018, the Supreme Court explained that as the balancing test necessarily compels the courts to approach speedy trial and/or speedy disposition cases on an *ad hoc* basis, the conduct of both the prosecution and defendant are 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. The Supreme Court underscored that none of these elements 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.

First, the Court categorically said that it does not agree with the prosecution's sweeping argument that the period for the conduct of the fact finding investigation must be excluded in the determination of the presence of inordinate delay. In reckoning the length of delay from the date of filing of the Complaint by the Field Investigation Office with the

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Office of the Ombudsman, the Court underscored that the accused failed to establish that the pendency, for six (6) years, of the complaint before the Office of the Ombudsman in the Visayas prejudiced them, *viz*:

However, none of the accused here appears to have been notified of the filing of the Complaint nor of the conduct of a fact finding investigation. It appears that the accused first learned of the Complaint against them by Mr. Gino when they were required to file a counter-affidavit by the Office of the Ombudsman, upon the Complaint of GIPO Borden. The accused, thus, failed to establish that the pendency for 6 years of the complaint before the Office of the Ombudsman in the Visayas prejudiced them. Their claim that they were burdened by the restraint on their liberty, financial strain of litigation, and constant anxiety, has no basis.¹¹

Accused Kwan's belated claim that she was prejudiced because of the harassment, threats and intimidation of her political opponents are not supported by proof and was only raised in the present Motion for Reconsideration, hence lacking in credence.

On the other hand, as regards the prejudice caused to the accused resulting from the alleged death of accused Guilberto Naing Labicane and BAC Secretary Erano A. Macapagao, and, the supposed difficulty in securing the documentary evidence, the Court has ruled that:

The accused' uniform claim that the passage of time has led to the loss of their potential witnesses, specifically accused Labicane, or the ability of their witnesses to recall the relevant events; while fortuitous events, *i.e.*, typhoons, caused the loss of documentary evidence, is speculative. Besides, such circumstances and fortuitous events affect the prosecution as much as the defense, in terms of evidence gathering.¹²

Second, as discussed in the April 5, 2018 Resolution, **Coscolluela vs. Sandiganbayan**¹³ and **Torres vs.**

¹¹ Resolution dated April 5, 2018, pp. 8-9, Underscoring supplied.
¹² Resolution dated April 5, 2018, p. 13. Citations omitted.
¹³ *Supra*

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Sandiganbayan,¹⁴ are not on all fours with the present case, viz:

In **Coscolluela**, the Resolution finding probable cause was approved by the Acting Ombudsman six (6) years after the same was submitted for his approval. Here, Ombudsman Carpio-Morales approved the filing of Information against the accused only nine (9) months and thirteen (13) days after the Resolution finding probable cause was submitted for her approval. On the other hand, the accused' *Motion for Reconsideration* was resolved by GIPO Pacquiao three (3) months and 12 days after the same was filed.

Moreover, unlike in **Coscolluela**, accused were duly notified of the preliminary investigation before the Office of the Ombudsman. Indeed, all the accused participated in the proceedings by filing their *Respondents' Counter-Affidavit*, and a *Motion for Reconsideration* of the Ombudsman Resolution finding probable cause to indict them for violation of Section 3(e), R.A. No. 3019.

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In **Torres**, which involved two preliminary investigations, the Supreme Court explained that "both sets of investigations emanated from the same COA Special Audit Report No. 92-128, which was issued as early as June 18, 1993." Thus, the Office of the Ombudsman had more than ample time to review the same from the time the first preliminary investigation was commenced on December 11, 1996, up to the time when Tanodbayan Simeon V. Marcelo recommended a new fact-finding investigation and preliminary investigation on October 11, 2004, and, eventually, when the first set of Information were finally filed before the Sandiganbayan on August 5, 2011.¹⁵

Third, while the Supreme Court, in **Coscolluela**, has ruled that it is not the duty of the respondent or accused to follow up his or her case in a preliminary investigation, the Supreme Court has also ruled that the right to speedy disposition of cases may be considered waived if not promptly invoked.¹⁶ As stated in the April 5, 2018 Resolution, accused

¹⁴ G.R. No. 221562-69, October 5, 2016
¹⁵ Resolution dated April 5, 2018, pp. 15-16. Citations omitted.
¹⁶ Tello vs. People, 588 SCRA 519, 528 [2009]

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failed to promptly raise their right to a speedy disposition of cases. This constitutes a waiver of said right.

Finally, even if the entire period, from the time the letter Complaint was filed until the Information was filed were to be considered, the Court's conclusion would still be the same. There is no violation of the accused' right to the speedy disposition of their case because they failed to establish that they were prejudiced by the delay in the resolution of the case. As this Court noted in the Resolution, jurisprudence dictates that the right is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured; or even without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried.¹⁷

Not every delay in the trial is vexatious, capricious or oppressive. In the legal firmament, the terms have distinct connotations. Vexatious suggests an act which is willful and without reasonable cause, for the purpose of annoying and embarrassing another or one lacking justification and intended to harass. Oppressive connotes an unjust or cruel exercise of power or authority. Capricious action, on the other hand, means willful and unreasoning action.¹⁸

As the Court found, the alleged "restraints on her liberty, financial strain of litigation and constant anxiety,"¹⁹ while the complaint was pending before the Ombudsman, were barren of details to support accused Gonzales-Kwan's claim that the delay prejudiced her. There was likewise no showing that the delay was unjust or cruel, willful and without reasonable cause, for the purpose of annoying and embarrassing herein accused or one lacking justification and intended to harass.

In the absence of clear evidence showing that the alleged delay in the disposition of the case against the accused can be characterized as vexatious, capricious or

¹⁷ Coscolluela vs. Sandiganbayan, *supra* at p. 195.
¹⁸ Lim vs. Court of Appeals, 317 SCRA 521, 526 [1999], quoting with approval the Court of Appeals' decision.
¹⁹ Motion to Dismiss/Quash Information, p. 4; Record, p. 94.

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whimsical, this Court finds accused-movants' claim of violation of their right to the speedy disposition of their case bereft of merit.

In fine, accused failed to convincingly show that a reversal or modification of the questioned resolution is warranted.

WHEREFORE, the Court resolves that, for lack of merit:

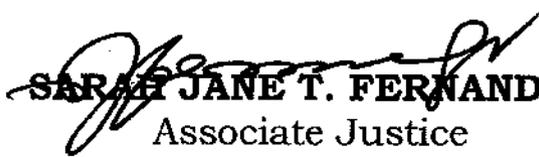
a) The *Motion for Reconsideration (of Resolution Promulgated on 5 April 2018)* filed by accused Annaliza P. Gonzales-Kwan, is **DENIED**; and,

b) The *Motion for Reconsideration* filed by accused Arsenio V. Sallamida, Esperanza G. Cotin, Ma. Nenita S. Ecleo, Felipe D. Padual and Danilo G. Colandog, is **DENIED**.

The arraignment of all the accused set on July 6, 2018 is maintained.

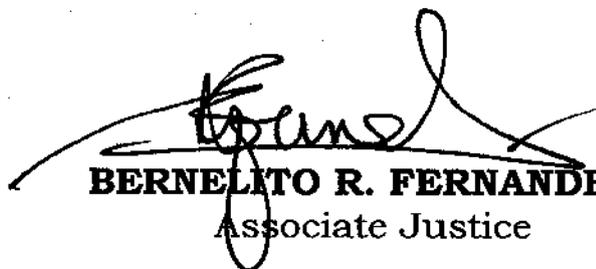
SO ORDERED.

Quezon City, Metro Manila.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

WE CONCUR:


KARL B. MIRANDA
Associate Justice


BERNELITO R. FERNANDEZ
Associate Justice