



Republic of the Philippines
Sandiganbayan
Quezon City

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-18-CRM-0369

**For: Violation of Section 3(e)
R.A. No. 3019 (The Anti-Graft
and Corrupt Practices Act)**

- versus -

LEONARD MARTIN SR. *et al.*,
Accused.

Present:

**Lagos, L, Chairperson,
Mendoza - Arcega and
Corpus - Mañalac, JL**

Promulgated:

July 26, 2018 lel

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RESOLUTION

CORPUS - MAÑALAC, J.:

Before the Court are the following incidents, *viz:*

1. *Motion to Quash Information* filed on June 28, 2018 by **Leonard Martin Sr., Maritoni Eustaquio, Gilvern D. Manzano, and Reynante Pastor;**¹
2. *Motion to Quash Information* filed on June 28, 2018 by **Elmer A. Baquiran and Elpidio Colobong, Jr.;**² and
3. *Consolidated Comment and/or Opposition* filed by the prosecution on July 4, 2018;

The Antecedents

The Information in this case alleges a violation of Republic Act No. 3019, Section 3(e) by accused Leonard Martin, Sr. (*Municipal Mayor*), Maritoni Eustaquio (*Municipal Treasurer*), Gilverio D. Manzano (*Officer-in-Charge, Municipal Accountant's Office*), Reynante Pastor (*Municipal Supply Officer*), all of Aglipay, Quirino, as well as Elpidio Colobong, Jr. and Elmer A.

¹ Record, p. 380

² Record, p. 390

Baquiran, both private persons representing *Agri-Component Corporation or AGRICOMP*, arising from the alleged irregular purchase of the following equipment by the Municipality of Aglipay, Province of Quirino from AGRICOMP, viz:

1. One (1) unit of Kubota Tractor 4WD Model 90000DT with Serial No. 59402 for Php2,090,000.00;
2. One (1) unit of AGRICOMP Harrow Model 10x10 frame, imported 4x4 square tube gang frame channel bar shuffling 1/3 diameter disc (imported) 24 inches diameter, heavy duty section and complete with accessories for Php180,000.00;
3. Two (2) units of dumping trailer double tire 8.25x20 brand new accessories with tail light and hand break for Php220,000.00 each or for Php440,000.00;
4. A Multi Crop Thresher with 12.5 HP diesel engine for Php121,000.00;
5. One (1) set of maintenance tools for Php59,000.00

Allegedly, the purchase was without compliance with the mandatory public bidding required under Republic Act No. 9184, as amended, and its implementing rules and regulations, and without conducting the necessary steps for the conduct of direct contracting, as provided by the Manual of Procedures for the Procurement of Goods and Services, facilitating or causing the payment of the contract despite the alleged attendant irregularities in the procurement process, thus, causing undue injury to the Municipality of Aglipay, Qurino in the total amount of **Php2,794,000.00**.

On May 21, 2018, this Court issued a Hold Departure Order against herein accused. Accordingly, accused Martin, Jr.,³ Eustaquio,⁴ Manzano,⁵ Pastor⁶ and Baquiran⁷ posted their respective cash bail bonds on May 31, 2018 for their provisional liberty. Accused Colobong, Jr.,⁸ on the other hand, posted his bail bond on June 11, 2018.

The Arraignment and Pre-trial Conference were scheduled on July 6, 2018 but was reset to August 3, 2018 in view of the filing of the instant motions to quash, which are now for this Court's resolution.

The Motions

Both motions, though separately filed, similarly pray for the quashal of the *Information* filed against the herein accused on the ground of inordinate delay, invoking the accused's constitutional right to due process of law and speedy disposition of cases. In support of such claim, the accused cite the

³ Record, pp. 295-300

⁴ Record, pp. 301-306

⁵ Record, pp. 3017-312

⁶ Record, pp. 313-318

⁷ Record, pp. 325-330

⁸ Record, pp. 347-351

cases of *Torres vs. Sandiganbayan*,⁹ *Dela Peña vs. Sandiganbayan*,¹⁰ *People vs. Hon. Sandiganbayan*,¹¹ *Tatad vs. Sandiganbayan*,¹² *Angchangco vs. Ombudsman*,¹³ *Roque vs. Ombudsman*,¹⁴ *Cervantes vs. Sandiganbayan*,¹⁵ *Corpuz vs. Sandiganbayan*¹⁶ and *Coscolluela vs. Sandiganbayan*.¹⁷

They argue that the Office of the Ombudsman incurred delay in the disposition of the case against them and in filing the *Information* before this Court, which is inordinate, chronologically laying down the timeline of the facts leading to the filing of the instant case in Court. They reckon the period of investigation from the fact-finding inquiry conducted by the Ombudsman thru the *Task Force Abono*, which it created for the purpose of investigation of the reported Fertilizer Fund Scam sometime in 2006. Allegedly, the said Task Force issued a subpoena dated September 20, 2006 to OIC-State Auditor III Virgilio S. Allas to produce documents relative to the Fertilizer Fund, and it took around **four (4) years and eight (8) months** for the Task Force to terminate its fact-finding proceeding and file a formal complaint for preliminary investigation on June 15, 2011. Another **five (5) years and five (5) months** was spent before the *Special Panel for Fertilizer Fund Scam* was able to resolve the same through its Resolution dated November 11, 2016 finding probable cause against the herein accused for violation of RA No. 3019, Section 3[e]. Whereas, the Ombudsman used up an extra period of **one (1) year and six (6) months** to file the *Information* before this Court on May 4, 2018. In all, herein accused compute an aggregate time of **eleven (11) years and seven (7) months** of investigation by the Ombudsman before this case eventually reached this Court.

All accused insist that there is no sufficient and cogent reason for the delay in investigation, considering that the issue involved is simple and that specialized bodies (*Task Force Abono* and *Special Panel for Fertilizer Fund Scam*) were created to probe on the subject. That in fact, the outcome of preliminary investigation did not vary much from the findings of the fact-finding inquiry. Such delay in the investigation of the case caused undue prejudice to the accused who stood to have a “Damocles sword” over their heads during the protracted period of investigation in violation of their right to a speedy disposition of the case against them.

Accused Martin, Sr., Eustaquio, Manzano and Pastor particularly characterized the prejudice caused to them by the delay, alleging that “*the*

⁹ G.R. No. 221562-69, October 5, 2016

¹⁰ G.R. No. 144542, June 29, 2001

¹¹ G.R. No. 188165, December 11, 2013

¹² G.R. No. 72335-39, March 21, 1988

¹³ G.R. No. 122728, February 13, 1997

¹⁴ G.R. No. 129978, May 12, 1999

¹⁵ G.R. No. 108595, May 18, 1999

¹⁶ G.R. No. 162214, November 11, 2004

¹⁷ G.R. No. 191411, July 15, 2013

psychological, social, financial and emotional torment is too much too bear.” For accused Baquiran, allegedly he was impleaded merely for being the Chair of AGRICOMP and signatory to some documents on the purchase of the subject equipment by the Municipality of Aglipay, while accused Colobong, Jr., a former employee of the said corporation, merely supervised the actual delivery of the machineries. Baquiran is no longer the Chair but a mere investor of AGRICOMP, while Colobong, Jr. is no longer connected with AGRICOMP. The lapse of time allegedly makes it difficult for all accused to recall and retrieve important documents relating to the instant purchases due to sheer volume of the day to day transactions of their respective offices. The delay in the disposition of this case is said to be vexatious, capricious and oppressive.

***The Prosecution’s Consolidated Comment
and/or Opposition***

The Prosecution strongly opposes the motions, countering that “mere mathematical reckoning of the time involved is not sufficient to invoke inordinate delay.” Citing *Dela Peña vs. Sandiganbayan*,¹⁸ it argues that while a considerable lapse of time was incurred, it was not inordinate, vexatious, oppressive and capricious to warrant a violation of the accused’s constitutional right to due process and speedy disposition of cases. It begs this Court to consider the facts and circumstances peculiar to this case *viz-a-viz* the balancing test framework laid down in *Guiani vs. Sandiganbayan*,¹⁹ to wit: (1) the length of delay; (2) the reasons of the delay; (3) the assertion or failure to assert by the accused; and (4) the prejudice caused by the delay.

As to the **length of delay**, the prosecution advances that the reckoning point to establish the length of delay is the preliminary investigation and not the fact-finding. Thus, it should be calculated from June 15, 2011 when the complaint was filed for preliminary investigation, and not in 2006 when the fact-finding inquiry commenced, such that the delay is not **eleven (11) years and seven (7) months** as the accused claim, but only **six (6) years and eleven (11) months**. The prosecution cites the case of *Ombudsman vs. Jurado*,²⁰ where the Supreme Court ruled that the deleterious effect of delay should not be reckoned from the conduct of fact-finding inquiry.

As to the **reason for the delay**, the prosecution avers that the reason for delay is justified. This case involving the Fertilizer Fund is something new because it presented “*novel modus operandi*” of irregularity, being unique and well thought of, consisting of complex web of transactions in the disbursement and utilization of the Department of Agriculture’s Php728 Million Farm Input and Farm Implement Program. At that time, the

¹⁸ G.R. No. 144542, June 29, 2001

¹⁹ G.R. Nos. 146897-917, August 6, 2002

²⁰ G.R. No. 154155, August 6, 2008

Ombudsman investigators admittedly were struggling to understand the scheme that even required the creation of a special investigation panel known as the *Task Force Abono* to conduct the fact-finding investigation and the *Special Panel for Fertilizer Scam* to handle the preliminary investigation. Intensive investigation nationwide was allegedly needed since it involved not only the local government unit of Aglipay, Qurino, but also high-ranking officials at the national level.

As to the **failure of the accused to assert their right to speedy disposition of the case**, the prosecution argues that the circumstances in *Angchangco vs. Ombudsman*²¹ cited by the accused do not apply to the instant case considering that in *Angchangco*, the petitioner was vigilant in asserting his rights, whereas the accused herein neglected to assert their right to speedy disposition of the cases at the earliest possible opportunity. That comparing with the circumstances in *Coscolluela vs. Sandiganbayan*²² where the case against the petitioner was dismissed for unreasonably terminating the preliminary investigation eight (8) years after the filing of the complaint, the Ombudsman in the instant case had only six (6) years and eleven (11) months to terminate the preliminary investigation.

Finally, as to the **prejudice caused by the delay**, the prosecution cites the case of *Spouses Uy vs. Adriano*²³ where it was declared that the claim of prejudice must have a conclusive factual basis, which is nil in the instant case.

The Court's Ruling

While it has to be noted that a violation of the right to speedy disposition of cases is not among the grounds for quashal of the *Information* enumerated literally under Section 3, Rule 117 of the Rules of Court, jurisprudence enunciates that a violation of Constitutional rights is a jurisdictional concern, when as ruled in *People vs. Bocar*,²⁴ “the cardinal precept is that where there is a violation of basic Constitutional rights, courts are ousted of their jurisdiction.” This right is enshrined in Article III, Section 16 of the Constitution, which declares that “all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial or administrative bodies.” When a violation of the right to speedy disposition is involved, it is not simply the *Information* which is being assailed but the entire proceedings. Thus, the Supreme Court in *Tatad vs. Sandiganbayan*,²⁵ recognized that the principal relief of the accused invoking a violation of the right to speedy disposition of cases is the dismissal of the pending case. It was emphasized in *People vs. Dulinayan*,²⁶ that the Constitutional guarantee

²¹ G.R. No. 122728, February 13, 1997

²² G.R. No. 191411, July 15, 2013

²³ GR No. 159098, October 27, 2006

²⁴ *People vs. Bocar* G.R. No. L-27935, 138 SCRA 116, August 16, 1985

²⁵ *Tatad vs. Sandiganabayan*, GR No. 72335-30, March 2, 1988

²⁶ G.R. No. 199151-56, July 25, 2016 citing *Capt. Roquero v. The Chancellor of UP-Manila, et al.*

against unreasonable delay in the disposition of cases was intended to stem the tide of disenchantment among the people in the administration of justice by our judicial and quasi-judicial tribunals.

Pounding on the accused's basic right to speedy disposition of their case, thus, the instant motions may appropriately be tackled on jurisdictional ground.

Going over the discourse on inordinate delay, the Court relays the principle that it is not the sheer length of time that elapsed that is solely to be considered in determining a violation of right to speedy case disposition but the totality of the facts of the case. In determining if delay is inordinate, other circumstances may be looked into as such as the length of delay, the reasons for the delay, the assertion or failure to assert such right and the prejudice caused by the delay.²⁷ This doctrine was laid down in *Torres vs. Sandiganbayan*,²⁸ citing the cases of *Braza vs. The Hon. Sandiganbayan* and *Dela Pena vs. Sandiganbayan*, where consistently it was declared that the Constitutional guarantee to a speedy disposition of cases is "a relative or flexible concept" and "depends upon the circumstances peculiar to each case." This was followed by the pronouncement in the case of *Remulla vs. Sandiganbayan*,²⁹ holding that the "[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."

Approaching in this light the issue of unwarranted delay in the disposition of the case herein, the Court finds for the accused.

On its face, the time alone spent for preliminary investigation - from the time the *Special Panel for Fertilizer Scam* issued its Order on January 4, 2012 for the accused to file their Counter-Affidavits until it came up with its Resolution finding probable cause on November 11, 2016, or a period of **five (5) years and five (5) months**, appears unreasonable. This is more so considering that another period of **one (1) year and six (6) months** elapsed before the *Information* was eventually filed in Court on May 4, 2018. Antecedently, in aggravation of the delay in investigation of a crime purportedly committed in 2004, it took around **four (4) years and eight (8) months** for the Ombudsman to complete its fact-finding investigation which started in 2006 with the creation of *Task Force Abono* that issued a subpoena dated September 20, 2006 to State Auditor Virgilio Allas to produce documents relative to the Fertilizer Scam. An aggregate time of **eleven (11) years and seven (7) months** of investigation by the Ombudsman, both fact-finding and preliminary, is simply undue. While it is doctrinal that "a simple mathematical computation of time is not enough," in this particular case, the total number of years consumed before the Ombudsman was able to come up

²⁷ Dela Pena vs. Sandiganbayan, GR No. 144542, June 29, 2001

²⁸ G.R. No. 221562-69, October 5, 2016

²⁹ G.R. No. 218040, April 17, 2017

with a case in Court against the accused, by itself, is "inordinate," which simply means that it is beyond rational limits.

The prosecution contends that in computing the delay, the period of the fact-finding should be excluded, citing the case of *People vs. Jurado*.³⁰ However, noting the more recent case of *Torres vs. Sandiganbayan*,³¹ a similar issue of whether or not the fact-finding investigation should be considered in determining if the accused's right to speedy disposition of his case had been violated was adversely ruled upon in favor of the accused, which held, viz:

We find it necessary to emphasize that the speedy disposition of cases covers not only the period within which the preliminary investigation was conducted, but also all stages to which the accused is subjected, even including the fact-finding investigations conducted prior to the preliminary investigation proper. X x x"

Indeed, the Supreme Court in the earlier case of *Dansal vs. Fernandez, Sr.*,³² cited in the *Torres* case declared:

Initially embodied in Section 16, Article IV of the 1973 Constitution, the aforesaid constitutional provision is one of three provisions mandating speedier dispensation of justice. **It guarantees the right of all persons to "a speedy disposition of their case"; includes within its contemplation the periods before, during and after trial,** and affords broader protection than Section 14(2), which guarantees just the right to a speedy trial. It is more embracing than the protection under Article VII, Section 15, which covers only the period after the submission of the case. The present constitutional provision applies to civil, criminal and administrative cases. (citations omitted; *Emphasis supplied*)

It comes to fore the need to examine the reason put up by the prosecution in incurring more than eleven (11) years delay in investigation. Regrettably, the alleged peculiarity of the Fertilizer Fund Scam, and the fact that the panel of investigators were not lawyers who merely worked under the supervision of a director/lawyer, do not pass the test of reasonableness in justifying the delay. A more serious explanation than this is exacted from the prosecution to merit an alleviation of the deleterious effect of its delay. In *Coscolluela vs. Sandiganbayan*,³³ it was held:

X x x the Office of the Ombudsman failed to present any plausible, special or even novel reason which

³⁰ Supra, Note 20

³¹ GR No. 221562-69 October 5, 2016

³² G.R. No. 126814, March 2, 2000.

³³ G.R. No. 191411, July 15, 2013

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.

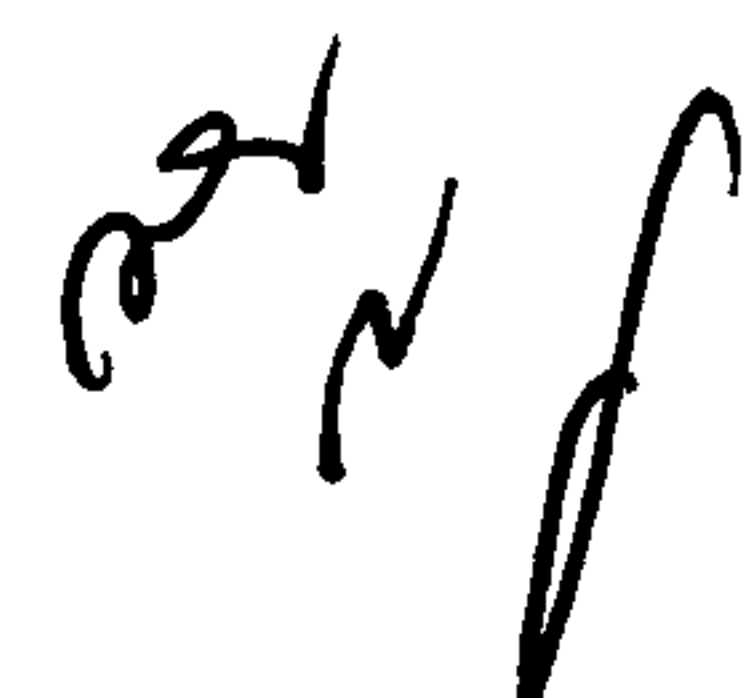
While the prosecution invokes the alleged complexities of the Fertilizer Scam for a reason, a cursory perusal of the *Information* shows that the alleged irregularity merely pertains to the failure of the local government of Aglipay, Quirino to conduct bidding or comply with the requirements of direct contracting in the procurement of the subject equipment. Said issue does not call for the expending of a preliminary investigation period of more than five (5) years to resolve. As aptly argued by the accused, the results of the preliminary investigation are essentially based on the data gathered during the fact-finding inquiry, which additionally took up a period of more than four (4) years. Adjunct to the doctrine that the Ombudsman is 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," the Supreme Court, in the same case of *Coscuella*, ruled:

Thus, in view of the unjustified length of time miring the Office of the Ombudsman's resolution of the case as well as the concomitant prejudice that the delay in this case has caused, it is undeniable that petitioners' constitutional right to due process and speedy disposition of cases had been violated. As the institutional vanguard against corruption and bureaucracy, the Office of the Ombudsman should create a system of accountability in order to ensure that cases before it are resolved with reasonable dispatch and to equally expose those who are responsible for its delays, as it ought to determine in this case. [emphasis supplied]

Anent the factor of prejudice caused to the accused, the case of *Corpuz vs. Sandiganbayan*³⁴ sheds light in explaining how the balancing test should be weighed particularly on account of the prejudice caused by the delay, to wit:

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

³⁴ 484 Phil 899, 917 (2004) cited in *Coscolluela vs. Sandiganbayan*, G.R. No. 191411, July 15, 2013



oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense would be impaired. Of these, the most serious is the last, because of the inability of the defendant to adequately 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 the cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed and is subjected to public obloquy.

Here, the lapse of more than eleven (11) years creates undue prejudice to the right of the accused to properly present their defense. The lapse could mean losing track of the documents needed in their defense, or inability of the defense witnesses to recall accurately the events. More importantly, the disadvantage to the accused by the unreasonable lapse of time before the case reaches the Court is heightened if their intended witnesses can no longer be located, as they have either resigned or have long died.

Neither would the alleged failure of the accused to assert their right to speedy disposition of the case at the earliest possible time defeat their claim for its dismissal. The Supreme Court had emphasized in the *Coscolluela* case,³⁵ that “being the respondents in the preliminary investigation proceedings, it was not the petitioners’ duty to follow up on the prosecution of their case. X x x x 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.” Here, there is no showing that the accused contributed to the delay in the disposition of their case. Corollary thereto, the Supreme Court in *People vs. Sandiganbayan and Acot et al*,³⁶ ruled:

It is the prosecution’s duty to expedite the prosecution of the case regardless of whether the petitioner did not object to the delay or that the delay was with his acquiescence provided it was not due to causes attributable to it.

This is not to demean the State’s right to prosecute, which only requires that said right be exercised with due regard to the Constitutional rights of the persons under investigation. In this case, such right was not taken away from the State which had its opportunity to investigate and prosecute the accused, except that its delay in doing so trampled upon the latter’s right to speedy

³⁵ *Coscolluela vs. Sandiganbayan*, Supra, Note 32

³⁶ GR No. 199151, July 25, 2016

case disposition. In *Allado vs. Diokno*,³⁷ the Supreme Court pronounced that “in the hierarchy of rights, the Bill of Rights takes precedence over the right of the State to prosecute, and when weighed against each other, the scales of justice tilt towards the former.”

Clearly borne from the records, the more than eleven (11) years period consumed in the investigation and resolution of the case to the filing of the *Information* in Court was vexatious. There is no reason to justify the delay, which warrants the dismissal of this case.


WHEREFORE, the *Motions to Quash Information* filed by accused Martin, Sr., Eustaquio, Manzano, Pastor, Colobong, Jr. and Baquiran are **GRANTED**. The case against them is hereby **DISMISSED**.

So Ordered.



MARYANN E. CORPUS – MAÑALAC
Associate Justice

WE CONCUR:



RAFAEL R. LAGOS
Associate Justice
Chairperson



MARIA THERESA V. MENDOZA – ARCEGA
Associate Justice

³⁷ G.R. No. 113630, May 5, 1994