



Republic of the Philippines
Sandiganbayan
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-17-CRM-0351 to 0366

For: Violation of Section 3(e) of R.A. No. 3019,
and Malversation of Public Funds

- versus -

Present

FERNANDEZ, SJ, J.,

Chairperson

MIRANDA, J. and

VIVERO, J.

REINERIO B. BELARMINO, JR.,
FRANCISCO C. CASIL, LOURDES
V. GONZALES, AVELINA O. SORIANO,
MARIBEL B. CABRADILLA, and
JONATHAN C. BUGAOAN,¹

Accused.

Promulgated:

AUG 16 2018 

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RESOLUTION

VIVERO, J.:

For the Court's consideration are the ***Motion to Dismiss (On Grounds of Inordinate Delay)***² filed by accused Lourdes V. Gonzales and the ***Motion to Quash Information***³ lodged by accused Francisco C. Casil. Both motions are grounded on the alleged violation of the right to speedy disposition of the case.⁴

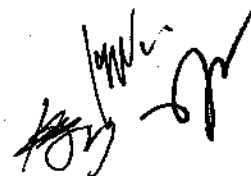
Accused Gonzales alleged that inordinate delay during the preliminary investigation phase was tantamount to a violation of the accused's right to due process and her right to speedy disposition of the case. To be sure, five (5) years and five (5) months lapsed from

¹ During the scheduled arraignment and pre-trial on July 13, 2018, the Court was informed that accused Bugaoan died on June 28, 2018.

² Motion to Dismiss dated July 9, 2018, pp. 1 – 6 (*Records, Vol. 2, pages 124-129*).

³ Motion to Quash Information dated July 13, 2018, pp. 1 – 8 (*Records, Vol. 2, pages 146-153*).

⁴ ARTICLE III, Section 16, 1987 Constitution.



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filing of the complaint on December 5, 2012 by the Task Force Abono - Field Investigation Office⁵ (TFA-FIO) up to the filing of the informations at this Court on May 4, 2018. Likewise, accused Casil was up in arms while stressing that *"there is no justification on the part of the Office of the Ombudsman to explain the delay in resolving the complaint and filing the informations before the Sandiganbayan."*⁶

In its *Consolidated Comment/ Opposition*,⁷ the prosecution counters that *"it only took the Office of the Ombudsman 2 years & 3 months, excluding the time interval where the delay was caused by the respondent and/or accused-movants themselves, to terminate the preliminary investigation in these cases."*⁸ The chronology of events, as culled from the records,⁹ leading to the preferment of charges against the accused are as follows:

DATE	SIGNIFICANT EVENT
December 5, 2012	A complaint was signed by Associate Graft Investigation Officer III (AGIO III) Janice O. Baltazar
March 20, 2013	The aforesaid complaint was docketed as OMB-C-C-13-0082
April 11, 2013	Director Agbada issued an order directing the accused to file their respective counter-affidavits within ten (10) days from receipt of said Order
May 17, 2013	The Office of the Ombudsman received a Motion for Extension of Time to File Counter-Affidavit dated May 10, 2013, from accused-movants, among others
June 10, 2013	The Office of the Ombudsman received the Entry of Appearance and Motion for Extension of Time to File Counter-Affidavit dated June 10, 2013, of accused Gonzales
July 1, 2013	The Office of the Ombudsman received the Motion for Last Extension of Time dated July 1,

⁵ This was created by the Office of the Ombudsman to look into the procurement and use of the fertilizer fund in line with the Farm Input and Farm Implement Program of the Department of Agriculture for the Fourth District of Pangasinan.

⁶ Motion to Quash Information dated June 13, 2018, page 5 (*Records, Vol. 2, page 150.*)

⁷ Dated July 27, 2018 (*Records, Vol. 2, pages 154 – 163.*)

⁸ *Ibid.* (*Records, Vol. 2, page 157.*)

⁹ Consolidated Comment/ Opposition dated July 27, 2018, pages 2 – 4.

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	2013, from accused Gonzales
July 15, 2013	Accused Gonzales and her co-accused filed their Joint Counter-Affidavit dated July 12, 2013
July 17, 2013	Accused Casil filed his Counter-Affidavit dated July 16, 2013
February 5, 2016	Graft Investigation and Prosecution Officer II (GIPO II) Karla Maria F. Barrios drafted a Resolution, and she submitted this for approval of her superiors and the Ombudsman
April 11, 2016	The Ombudsman approved the Resolution submitted by GIPO II Barrios
May 20, 2016	Accused Gonzales moved for reconsideration of the Resolution of the Office of the Ombudsman
June 2, 2016	Accused Casil filed his motion for reconsideration of the Resolution of the Office of the Ombudsman
July 19, 2016	Accused Casil filed his Consolidated Supplemental Motion for Reconsideration dated July 14, 2016
August 4, 2016	GIPO II Barrios drafted an Order denying the Motion of Reconsideration filed by accused-movants
October 6, 2016	The Ombudsman approved the above-mentioned draft Order
May 4, 2018	The Office of the Ombudsman filed sixteen (16) informations for violation of Section 3(e) of Republic Act No. 3019 and malversation against the accused

Prescinding from the foregoing, the prosecution's retort to the truculent stance of the accused-movants is anchored on the following, to wit:

"7. The preliminary investigation against the accused-movants started only on April 2013, when Director Adoracion A. Agbada (Director Agbada) of EIO-B, Office of the Ombudsman issued an Order for the accused-movants, among others, to file their respective counter-affidavits in the preliminary investigation case docketed as OMB-C-C-13-0082 for violation of Section 3(e) & 3(g) of R.A. 3019 and Malversation (Art. 217, RPC).

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"x x x

"10. It took only two (2) years, more or less, before the Honorable Ombudsman was able to issue the resolution indicting the accused-movants of (sic) violation of Section 3(e) of RA 3019 and Malversation of Public Funds. x x x

"11. Further, it only took three (3) months from receipt of the Supplemental Motion for Reconsideration filed by accused-movant Casil for the Office of the Ombudsman to resolve the several motion[s] for reconsideration filed by accused and/or respondents in the said preliminary investigation.

"12. The period from the last order until the issuance of the resolution is completely justifiable considering [that] the resolution will still have to undergo various level[s] of review and the same is still subject for approval of the Honorable Ombudsman.

"x x x

"14. The Honorable Court should take judicial notice that the jurisdiction of the Ombudsman is nationwide. The Honorable Ombudsman would understandably be deluged with various proposed Resolutions, Orders and action documents coming from the area and sectoral offices, involving old and new cases, requiring review and approval, not to mention other administrative matters and functions to attend to.

"x x x

"17. Indeed, cases lodged with the Office of the Ombudsman could not just be acted upon precipitately as to cause injustice either to the accused or respondents or the State. x x x." ¹⁰

THE COURT'S RULING

The Court resolves to deny the motions of accused-movants Gonzales and Casil.

The expostulation of both accused-movants centers on the allegedly inordinate delay in the termination of the preliminary

¹⁰ Consolidated Comment/ Opposition dated July 27, 2018, of the Office of the Special Prosecutor (OSP), pp. 2 - 5 (*Records, Vol. 2, pages 155 - 158.*)

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investigation which, if it passes fair scrutiny, runs afoul with their right to speedy disposition of the cases.

The right to "a speedy disposition of cases" is enshrined in the 1987 Constitution. Section 16, Article III of the Constitution provides: "All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial or administrative bodies." Violation of this right, however, arises only when the proceedings are attended by vexatious, capricious, and oppressive delays,¹¹ which are absent in this case. Only when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive a long period of time is allowed to lapse without the accused having his case tried would such right be rendered nugatory.¹²

The guiding principle in determining whether or not accused's right to speedy disposition of his case was infringed was laid down in ***Dansal vs. Fernandez, Sr.***¹³ wherein the Supreme Court enunciated that the Ombudsman's duty "should not be mistaken with a hasty resolution of cases at the expense of thoroughness and correctness."¹⁴ Notably, the period during which the records of this case were examined and reviewed for case build-up, the time poured into the research of pertinent laws and jurisprudence, the thoroughness of analysis add up to the ostensibly grinding pace.

Mere mathematical computation of the time involved is not the sole consideration.¹⁵ Rather, the totality of the facts and circumstances peculiar to each case must be examined.¹⁶ Hence, the constitutional guarantee of speedy disposition of cases is a relative or flexible concept.¹⁷ Multipronged factors which must be considered include: (1) the length of delay; (2) the reasons for the

¹¹ *People vs. Sandiganbayan, Fourth Division*, G.R. No. 232197-98, April 16, 2018; *The Ombudsman vs. Jurado*, G.R. No. 154155, August 6, 2008; 561 SCRA 135; *Mendoza-Ong vs. Sandiganbayan*, G.R. Nos. 146368-69, October 18, 2004, 440 SCRA 423.

¹² *Corpuz vs. Sandiganbayan*, G.R. No. 162214, November 11, 2004, 442 SCRA 294.

¹³ G.R. No. 126814, March 2, 2000, 327 SCRA 145, 153.

¹⁴ *Ibid.*

¹⁵ *Gaas vs. Mitmug*, G.R. No. 165776, April 30, 2008; *Guiani vs. Sandiganbayan*, G.R. Nos. 146897-917, August 6, 2002; *De la Peña vs. Sandiganbayan*, G.R. No. 144542, June 29, 2001; *Cadalin vs. POEA Administrator*, G.R. No. 104776 & 104911 - 14, December 5, 1994; *Alvizo vs. Sandiganbayan*, G.R. No. 101689, March 17, 1993, 220 SCRA 55; *Gonzales vs. Sandiganbayan*, G.R. No. 94750, July 16, 1991.

¹⁶ *Binay vs. Sandiganbayan*, G.R. Nos. 120681 - 83, October 1, 1999. 316 SCRA 65.

¹⁷ *Torres vs. Sandiganbayan*, G.R. Nos. 221562 - 69, October 5, 2016; Joaquin Bernas, THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES, VOL. I, First Edition, p. 421.

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delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.¹⁸ The desideratum of a speedy disposition of cases should not, if at all possible, result in the precipitate loss of a party's right to present evidence and either in a plaintiffs being non-suited or the defendant's being pronounced liable under an *ex parte* judgment.¹⁹

In the instant case, the investigatory process was set in motion on April 11, 2013, and the last counter-affidavit was filed on July 17, 2013. The Graft Investigation Officer came up with a resolution two and a half (2 ½) years thereafter. The resolution passed through the hierarchy of review and was finally approved by Ombudsman Conchita Carpio-Morales on October 6, 2016. On May 4, 2018, sixteen (16) informations against accused-movants and four (4) others were filed before this Court.

Accused Gonzales contends that if in *Tatad vs. Sandiganbayan*²⁰ and in *Duterte vs. Sandiganbayan*,²¹ the Supreme Court held that “[a] delay of close to three (3) years cannot be deemed as reasonable or justifiable,” a fortiori, a delay of over five (5) years, as in the instant case, is undoubtedly inordinate.

The Court is not swayed.

Verily, the phrase that follows the quoted, albeit abridged, dictum is: “***in the light of the circumstances obtaining in the case at bar.***” To be sure, the Supreme Court did not rule that a delay of “close to three (3) years” *per se* can never be deemed reasonable or justifiable. It need not be gainsaid that sheer length of delay is but one of the factors to consider. On this score, the resolution of the High Tribunal in *Varela vs. Sandiganbayan, Fifth Division*²² is apropos. Pertinent excerpts therefrom are quoted below: viz:

¹⁸ *De la Peña v. Sandiganbayan*, G.R. No. 145851, November 22, 2001, 412 Phil. 921, 929, citing *Cojuangco, Jr. v. Sandiganbayan*, 360 Phil. 559, 587 (1998); *Blanco v. Sandiganbayan*, 399 Phil. 674, 682 (2000); Joaquin Bernas, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY, 1996, p. 489, citing *Barker vs. Wingo*, 407 US 524. *Dansal, et. al. vs. Judge Gil P. Fernandez, Sr. and Montero*, G.R. No. 126814, March 2, 2000.

¹⁹ *Padua vs. Erieta*, 161 SCRA 458.

²⁰ G.R. No. 72335-39, March 21, 1988, 159 SCRA 70.

²¹ G.R. No. 130191, April 27, 1998, 289 SCRA 721.

²² G.R. No. 203564, December 3, 2014.

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“ . . . [T]he accused failed to present evidence to prove that the delay was due to an intentional, capricious, whimsical, or probable politically-motivated (as present in the *Tatad*²³ case) delaying tactics employed by the prosecutors; or that the accused has remained under cloud as the petitioner in the *Anchangco*²⁴ case; or that accused could not have urged the speedy resolution of the case against him considering that he was completely unaware that the investigation against him was still ongoing, as what happened in the *Duterte*²⁵ case; or that the initiatory pleading was filed six (6) years thereafter from the time the sworn complaint was filed, as present in the *Cervantes*²⁶ case. x x x [T]he delays in the instant case were caused by the prosecution’s regular exercise of its investigatory power and accused’s exhaustion of available remedies. For this reason, the instant Motion to Quash necessarily fails.”²⁷ (Emphasis and Underscoring Supplied.)

Accused Casil unabashedly likened this case to the *Hernani Perez case*,²⁸ wherein the Supreme Court held that the five (5) years and five (5) months spent by the Office of the Ombudsman for its fact-finding investigation and preliminary investigation constituted inordinate delay.²⁹

The Court remains unconvinced.

Indeed, the cases invoked by accused-movants cannot be blindly applied to the present case because of variance in factual milieus. Instead, as stressed in *Torres vs. Sandiganbayan*,³⁰ particular regard must be taken of the peculiar facts and circumstances. Corollarily, *Remulla vs. Sandiganbayan*³¹ underscored that “[a] *balancing test* of applying societal interests and the rights of the accused necessarily compels the court to approach speed trial cases on an *ad hoc* basis.”³²

²³ *Tatad vs. Sandiganbayan*, G.R. No. 72335 – 39, March 12, 1988, 159 SCRA 70.

²⁴ *Anchangco, Jr. vs. Ombudsman*, G.R. No. 122728, February 13, 1997, 268 SCRA 301.

²⁵ *Duterte vs. Sandiganbayan*, G.R. No. 130191, April 27, 1998, 289 SCRA 721.

²⁶ *Cervantes vs. Sandiganbayan*, G.R. No. 108595, May 18, 1999, 307 SCRA 149.

²⁷ SEE note 22.

²⁸ *People versus Sandiganbayan, First and Third Division, Hernando Benito Perez, et. al.*, G.R. No. 188665/ G.R. No. 189063, December 11, 2013.

²⁹ Motion to Quash Information dated July 13, 2018, page 5.

³⁰ G.R. Nos. 221562 – 69, October 5, 2016.

³¹ G.R. No. 218040, April 17, 2017.

³² SEE also *Magsaysay vs. Sandiganbayan*, G.R. No. 128136, October 1, 1999.

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In ***Corpuz vs. Sandiganbayan***,³³ the Supreme Court explained how the “***balancing test***” is applied, 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 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.”³⁴

Accused-movants failed to identify a concrete prejudice that they may have suffered as a logical, inevitable and necessary consequence of the allegedly snail-paced investigation. Conjectural suppositions of “looming unrest as well as the tactical disadvantages carried by the passage of time”³⁵ and “hardships”³⁶ deserve scant consideration.

Notably, it was only on July 13, 2018, after this case was set for arraignment, that accused-movants raised the issue of delay in the conduct of the investigation. No letter-queries to the Deputy Ombudsman for Luzon were filed in that regard. For failing to seasonably invoke their right and making a demand therefor thru some overt act, like filing a motion for early resolution, they were deemed to have waived it. They slept on their right – a situation amounting to laches.³⁷ As aptly stated in the ***Alvizo case***,³⁸ they were insensitive to the implications and contingencies of the projected criminal prosecution posed against them by not taking any step whatsoever to accelerate the disposition of the matter, which inaction conduces to the perception that the supervening delay seems to have been without their objection, hence impliedly with their acquiescence.

³³ G.R. No. 162214, November 11, 2004.

³⁴ 484 Phil. 899, 917 [2004]; 442 SCRA 294.

³⁵ Motion to Quash Information dated July 13, 2016, of F. C. Casil, page 6 of 8, citing *Coscolluella vs. Sandiganbayan*, G.R. No. 191411, July 15, 2013.

³⁶ Motion to Dismiss dated July 9, 2018, of L. V. Gonzales, page 3 of 6.

³⁷ *Republic v. Desierto*, G.R. No. 131966, August 16, 2004.

³⁸ *Alvizo vs. Sandiganbayan*, G.R. No. 101689, March 17, 1993; 454 Phil. 34; 220 SCRA 55.

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Well-settled is the rule that a mere mathematical reckoning of time involved would not be sufficient to warrant the Court's *imprimatur* to the radical relief prayed for by accused-movants.³⁹ Contemporaneous jurisprudence undergirds this. In *People vs. Sandiganbayan (Fourth Division), Alejandro E. Gamos and Rosalyn G. Gile*, G.R. Nos. 232197 – 98, April 16, 2018, the Supreme Court held that although “7 years had passed since the filing of the first Complaint in 2008 until the filing of the information before it,” this, without more, did not constitute inordinate delay. Considering that the alleged delay herein is less than seven (7) years, this Court is not inclined to veer away from this ruling. ***Judicia posteriora sunt in lege fortiora.*** (The later decisions are the stronger in law.)

Above all things, transcendental significance should be ascribed to the *raison d'être* of the Office of the Ombudsman. In *Francisco Guerrero vs. Court of Appeals, et al.*,⁴⁰ the Supreme Court declared:

“While this Court recognizes the right to speedy disposition quite distinctly from the right to a speedy trial, and although this Court has always zealously espoused protection from oppressive and vexatious delays not attributable to the party involved, at the same time, we hold that a party's individual rights should not work against and preclude the people's equally important right to public justice.
x x x.”

Parenthetically, the protection under the right to a speedy disposition of cases should not operate as to deprive the government of its inherent prerogative in prosecuting criminal cases or generally in seeing to it that all who approach the bar of justice be afforded a fair opportunity to present their side. ***Nihil infra regnum subditos magis conservat in tranquillitate et concordia quam debita legume administratio.*** (Nothing more preserves in tranquility and concord those subjected to the government than a due administration of the laws.)

A final note. In *Dansal vs. Fernandez, Sr.*,⁴¹ the Supreme Court acknowledged the vital role of the Office of the Ombudsman as

³⁹ *Mendoza-Ong vs. Sandiganbayan*, G.R. Nos. 146368-69, October 18, 2004, 440 SCRA 423, 425-426; *Gaas and Gomera vs. Mitmug*, G.R. No. 165776, April 30, 2008, 553 SCRA 335.

⁴⁰ G.R. No. 107211, June 28, 1996, 257 SCRA 703, 716.

⁴¹ G.R. No. 126814, March 2, 2000, 383 Phil. 897, 327 SCRA 145.

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the institutional vanguard against corruption and bureaucracy. Salient portions from said case are quoted below, viz:

"The Court is not unmindful of the duty of the Ombudsman under the Constitution and Republic Act No. 6770 to act promptly on Complaints brought before her. But such duty should not be mistaken with a hasty resolution of cases at the expense of thoroughness and correctness. Judicial notice should be taken of the fact that the nature of the Office of the Ombudsman encourages individuals who clamor for efficient government service to freely lodge their complaints against wrongdoings of government personnel, thus resulting in a steady stream of cases reaching the Office of the Ombudsman."

WHEREFORE, premises considered, the motions of the accused are hereby **DENIED** for lack of merit.

The arraignment of all the accused set on August 17, 2018⁴² is maintained.

SO ORDERED.



KEVIN NARCE B. VIVERO
Associate Justice

WE CONCUR:



SARAH JANE T. FERNANDEZ
Chairperson
Associate Justice



KARL B. MIRANDA
Associate Justice

⁴² Order dated July 13, 2018, page 1 of 2 (*Records, Vol. 2, page 143*).