



REPUBLIC OF THE PHILIPPINES

**Sandiganbayan**

Quezon City

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*Seventh Division*

***MINUTES of the proceedings held on September 17, 2018***

*Present:*

<i>Justice MA. THERESA DOLORES C. GOMEZ-ESTOESTA--</i>	<i>Chairperson</i>
<i>Justice ZALDY V. TRESPESES -----</i>	<i>Member</i>
<i>Justice GEORGINA D. HIDALGO-----</i>	<i>Member</i>

The following resolution was adopted:

***Crim. Case No. SB-18-CRM-0293 – People of the Philippines vs. Apolinario T. Camsol, et al.***

This resolves the following:

1. The defense's "Entry of Appearance with Motions to Defer Arraignment and Pre-Trial and to Dismiss the Above-Entitled Case";<sup>1</sup> and
2. The prosecution's "Comment/Opposition."<sup>2</sup>

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**HIDALGO, J.:**

Before this Court for resolution are:

- (1) "Entry of Appearance with Motions to Defer Arraignment and Pre-Trial and to Dismiss the Above-Entitled Case" dated July 2, 2018; and
- (2) "Comment/Opposition" dated August 7, 2018.

The Ombudsman filed with this Court an Information<sup>3</sup> on April 20, 2018, charging accused former Mayor Apolinario T. Camsol (Camsol), Municipal Treasurer Anecita C. Suyat (Suyat), Municipal Accountant Marcelino P. Endi (Endi), and Municipal Agricultural Officer Asano E. Aban (Aban), all of the Municipality of Buguias, Benguet, for Violation of Section 3(e), Republic Act No. 3019.

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<sup>1</sup> Record, pp. 309-315.

<sup>2</sup> Id. at 347-352.

<sup>3</sup> Id. at 1-3.

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The Information alleged that in 2004, or sometime prior or subsequent thereto, accused Camsol, Suyat, Endi, and Aban, conspiring and confederating with one another, willfully, unlawfully, and criminally gave unwarranted benefit, advantage, and preference to PMB-Agro Goods and Services by awarding it the contract for the purchase of insecticides and fungicides, sans any public bidding and with particular reference to brand names, both in violation of the Government Procurement Reform Act, thereby causing undue injury to the Municipality of Buguias, Benguet in the total amount of One Million Fifty Thousand Pesos (₱1,050,000.00).

A hearing was set on July 31, 2018 supposedly for the arraignment and pre-trial for all the accused. However, the defense filed a Motion to Dismiss dated July 2, 2018 based on inordinate delay<sup>4</sup> and prayed for the deferment of their arraignment and the pre-trial of this case. Despite its objection to such deferment, the prosecution was required to file its comment and/or opposition to the said Motion to Dismiss.

Consequently, this Court, in its July 31, 2018 Order,<sup>5</sup> cancelled and reset the arraignment and pre-trial to September 21, 2018 and deemed the incident submitted for resolution.

In its “Entry of Appearance with Motions to Defer Arraignment and Pre-Trial and to Dismiss the Above-Entitled Case” (Motion to Dismiss), the defense argued that inordinate delay attended the filing and preliminary investigation that led to the filing of the Information herein, in violation of the accused’s right to speedy disposition of cases under Article III, Section 16 of the Constitution. Specifically, the accused averred that from the Commission on Audit’s Notice of Disallowance issued on June 23, 2006, it took more than four (4) years to file the Complaint dated April 18, 2011;<sup>6</sup> and that seven (7) years had elapsed from the time the complaint was lodged for the Ombudsman to file the Information with this Court on April 20, 2018.

In its “Comment/Opposition,” the prosecution countered that the motion to dismiss is anchored only on the length of delay and failed to consider three other factors, namely: the reason for the delay, the defendant’s assertion of his right, and prejudice to the defendant.<sup>7</sup> Thus, it prayed for the denial of the Motion to Dismiss for lack of merit and being pro forma.

We rule in favor of the prosecution.

Article III, Section 16 of the Constitution provides:

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<sup>4</sup> “Entry of Appearance with Motions to Defer Arraignment and Pre-Trial and to Dismiss the Above-Entitled Case” dated July 2, 2018, supra note 1.

<sup>5</sup> Record, p. 341.

<sup>6</sup> Id. at 310-312.

<sup>7</sup> Id. at 349.

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Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

As explicated in *Magante vs. Sandiganbayan*,<sup>8</sup> the guarantee recognizes the truism that justice delayed can mean justice denied.<sup>9</sup> It expanded the speedy trial guarantee afforded to the accused in a criminal proceeding, which was already in place in the 1935 Constitution.<sup>10</sup> Though both concepts are subsumed under the more basic tenet of procedural due process, the right to speedy disposition of cases, to contrast with the right to speedy trial, sweeps more broadly as it is not confined with criminal cases; it extends even to other adversarial proceedings before any judicial, quasi-judicial, and administrative tribunals. The right can, therefore, be invoked not only when a case is submitted for resolution. Rather, it covers the entire period of investigation even before trial. Thus, the right may be invoked as early as the preliminary investigation or inquest.<sup>11</sup>

In the recent case of *Cagang vs. Sandiganbayan*,<sup>12</sup> the Supreme Court has once and for all settled what constitutes inordinate delay as ground for dismissal of a case. As cited in the *Cagang* case, *Martin vs. Ver*<sup>13</sup> introduced in our jurisdiction the “balancing test” from the American case of *Barker vs. Wingo*,<sup>14</sup> which became the basis of a standard test within which to determine the presence of inordinate delay.

The *Barker* balancing test provides for the following factors to be considered in determining the existence of inordinate delay: (1) the length of delay; (2) the reason for the delay; (3) the defendant’s assertion or non-assertion of his or her right to speedy disposition of cases; and (4) the prejudice to the defendant as a result of the delay.<sup>15</sup>

We shall apply the guidelines set forth by the Supreme Court in the *Cagang* case to determine whether there was inordinate delay sufficient to declare the dismissal of this case.

**(1) *The length of delay.*** The Supreme Court held that **inordinate delay commences from the time of the filing of the formal complaint and the subsequent conduct of the preliminary investigation.** It abandoned the ruling in *People vs. Sandiganbayan, Fifth Division*<sup>16</sup> that fact-finding

<sup>8</sup> G.R. Nos. 230950-51, June 23, 2018.

<sup>9</sup> Citing *Caballero vs. Alfonso*, No. L-45647 August 21, 1987.

<sup>10</sup> Article III, Section 1(17) of the 1935 Constitution.

<sup>11</sup> *Cagang vs. Sandiganbayan*, G.R. Nos. 206438 & 206458 and 210141-42, July 31, 2018.

<sup>12</sup> *Id.*

<sup>13</sup> 208 Phil. 658 (1983).

<sup>14</sup> 407 U.S. 514 (1972).

<sup>15</sup> *Cagang* case, supra note 11.

<sup>16</sup> 723 Phil. 444 (2013).

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investigations are included in the period for determination of inordinate delay.<sup>17</sup> The Supreme Court explained:

**When an anonymous complaint is filed or the Office of the Ombudsman conducts a *motu proprio* fact-finding investigation, the proceedings are not yet adversarial.** Even if the accused is invited to attend these investigations, these period cannot be counted since these are merely preparatory to the filing of a formal complaint. At this point, the Office of the Ombudsman will not yet determine if there is probable cause to charge the accused.

This period for case build-up cannot likewise be used by the Office of the Ombudsman as unbridled license to delay proceedings. If its investigation takes too long, it can result in the extinction of criminal liability through the prescription of the offense.

**Considering that fact-finding investigations are not yet adversarial proceedings against the accused, the period of investigation will not be counted in the determination of whether the right to speedy disposition of cases was violated.<sup>18</sup> x x x (emphasis added)**

It is worthy to recall at this juncture that the Motion to Dismiss presented two periods of supposed inordinate delay:

1. Four (4) years and ten (10) months to file the Complaint from the Notice of Disallowance; and
2. Seven (7) years and two (2) days, more or less, to file the Information from the filing of the Complaint.

Applying the doctrine laid down in *Cagang*, a case is deemed to have commenced from the filing of the formal complaint and the subsequent conduct of preliminary investigation. Otherwise stated, the length of the fact-finding investigation and case build-up conducted by the Ombudsman that preceded the filing of the complaint is excluded from the determination of the existence of inordinate delay. The supposed delay of four years and 10 months that it took for the Ombudsman to file a Complaint, from the issuance of the Notice of Disallowance on June 23, 2006 until April 18, 2011, cannot then be considered a violation of the right of the accused to a speedy disposition of

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<sup>17</sup> *Cagang* case, supra note 11.

<sup>18</sup> *Id.*

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cases, for there is no “case” to speak of yet at that time, and the proceeding can in no way be considered as adversarial.

Nevertheless, the Court finds that from the filing of the formal complaint dated April 18, 2011, more than **four (4) years** had elapsed before the issuance of the Resolution of the Ombudsman on November 10, 2015 finding probable cause against the accused, and that, it took almost **three (3) years** for the Ombudsman to file with this Court an Information on April 20, 2018. Thus, a delay of **seven (7) years** can be attributed to the Ombudsman prior to the filing of the Information with the Court.

The mere length of delay, however, is not the sole basis in determining whether there is a violation of the accused’s right to speedy disposition of cases. Let us now then take into consideration the other factors in the balancing test.

(2) *The reason for the delay.* The prosecution justified the delay in this wise:

It must be noted that the instant case is just one of [the] so many investigated nationwide by the Task Force Abono. The so-called *Fertilizer Fund Scam* is not a simple case considering the staggering amount involved (PhP 728 Million!) spread in the entire country to all congressmen, governors and mayors and the controversy elicited public outrage. The number of individuals charged, the agencies and entities involved and the countless/voluminous documents examined and scrutinized is beyond imagination. The Complaint itself charged six (6) crimes – violation of Sections 3 (e) and (g) of Republic Act No. 3019, violation of Section 18, Article VI, Section 31, Article VII, and Section 65, Article XXI of Republic Act No. 9184, and violation of Article 315(1)(b) of the Revised Penal Code plus administrative aspect thereof. Each of these criminal and administrative complaints has different elements to be evaluated in relation to the evidence at hand. Thus, the time spent in resolving the Complaint is reasonable and cannot be considered as capricious and vexatious. And there is no showing that the preliminary investigation was deliberately delayed or politically motivated but the usual process was duly observed.<sup>19</sup>

We rule that that the Ombudsman’s delay in resolving the case is justifiable. Although this case is just one of the many *Fertilizer Fund Scam*

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<sup>19</sup> Record, pp. 349-350.

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cases, the Ombudsman cannot be faulted for the delay since the case is “not run-of-the-mill variety” and is itself complex.<sup>20</sup>

The Supreme Court, in the *Cagang* case, stated that “vexatious, capricious, and oppressive delays,” “unjustified postponements of the trial,” or “when without cause or justifiable motive a long period of time is allowed to elapse without the party having his or her case tried” are instances that may be considered as violations of the right to speedy disposition of cases.<sup>21</sup> The Ombudsman in this case clearly did not commit these fatal lapses. Neither did the accused prove that the Ombudsman committed such infractions. Hence, the prosecution appeared to have regularly followed established procedure in prosecuting the case and justified that delay was incurred because of the complexity of the cases involved and the vast amount of evidence that must be presented.<sup>22</sup>

Institutional delay must also be considered in favor of the prosecution. As the Supreme Court observed:

[Institutional delay is] a reality that the court must address. The prosecution is staffed by overworked and underpaid government lawyers with mounting caseloads.  
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Institutional delay, in the proper context, should not be taken against the State. Most cases handled by the Office of the Ombudsman involve individuals who have resources and who engage private counsel with the means and resources to fully dedicate themselves to their client’s case. More often than not, the accused can only invoke the right to speedy disposition of cases when the Ombudsman has already rendered an unfavorable decision. The prosecution should not be prejudiced by private counsels’ failure to protect the interests of their clients or the accused’s lack of interest in the prosecution of their case.<sup>23</sup>

**(3) *The defendant’s assertion of his or her right to speedy disposition of cases.*** We agree with the prosecution that the accused belatedly raised the issue of inordinate delay before this Court during their supposed arraignment, when they could have properly raised it in the proceedings before the Ombudsman. The failure of the accused to timely invoke the right to speedy disposition of cases may work to their disadvantage, since this could indicate their acquiescence to the delay.<sup>24</sup> The Supreme Court noted:

<sup>20</sup> See *Cagang* case, supra note 11, citing *Binay vs. Sandiganbayan*, 374 Phil. 413, 448 (1999).

<sup>21</sup> *Id.*, citing *Gonzales vs. Sandiganbayan*, 276 Phil. 323, 333-334 (1991).

<sup>22</sup> *Id.*, citing *Ty-Dazo vs. Sandiganbayan*, 424 Phil. 945 (2002).

<sup>23</sup> *Id.*, citation omitted.

<sup>24</sup> *Alvizo vs. Sandiganbayan*, 292-A Phil. 144 (1993).

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[Accused] was definitely not unaware of the projected criminal prosecution posed against him x x x. He appears, however, to have been insensitive to the implications and contingencies thereof 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 his objection hence impliedly with acquiescence.<sup>25</sup>

The Ombudsman revealed that other than filing counter-affidavits, the accused did nothing else to inquire about the delay. Aside from the motion for extension of time to file counter-affidavits, accused in this case did not file or send any letter-queries addressed to the Office of the Ombudsman which conducted the preliminary investigation.<sup>26</sup> Similarly, as cited in the *Cagang* case, the Supreme Court stressed:

[I]t was only x x x after the case was set for arraignment, that petitioners raised the issue of the delay in the conduct of the preliminary investigation. Aside from the motion for extension of time to file counter-affidavits, petitioners in the present case did not file nor send any letter-queries addressed to the Office of the Ombudsman for Mindanao which conducted the preliminary investigation. They slept on their right — a situation amounting to laches. The matter could have taken a different dimension if during all those four years, they showed signs of asserting their right to a speedy disposition of their cases or at least made some overt acts, like filing a motion for early resolution, to show that they were not waiving that right. Their silence may, therefore be interpreted as a waiver of such right. As aptly stated in *Alvizo*, the petitioner therein was insensitive to the implications and contingencies of the projected criminal prosecution posed against him 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 his objection, [and] hence impliedly with his acquiescence.<sup>27</sup>

Despite the pendency of this case since 2011, the accused only invoked their right to speedy disposition of cases after the filing of the Information on April 20, 2018. Admittedly, while there was delay, the accused have not shown that they asserted their rights during the preliminary investigation,

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<sup>25</sup> Id.

<sup>26</sup> Record, p. 350, citing *Dela Peña vs. Sandiganbayan*, 412 Phil. 921 (2001).

<sup>27</sup> *Dela Peña vs. Sandiganbayan*, id.

opting instead to wait until the Information was filed against them with this Court.<sup>28</sup>

(4) *The prejudice to the defendant as a result of the delay.* There is no violation of the accused's right to speedy disposition of cases considering that there is a waiver of the delay in this case. Granting the present Motion to Dismiss will instead prejudice the due process rights of the State. The State should not be prejudiced and deprived of its right to prosecute criminal cases simply because of the ineptitude or nonchalance of the Office of the Ombudsman. *People vs. Leviste*<sup>29</sup> is instructive:

In sum, it must be emphasized that the state, like any other litigant, is entitled to its day in court, and to a reasonable opportunity to present its case. **A hasty dismissal such as the one in question, instead of unclogging dockets, has actually increased the workload of the justice system as a whole and caused uncalled-for delays in the final resolution of this and other cases.** Unwittingly, the precipitate action of the respondent court, instead of easing the burden of the accused, merely prolonged the litigation and ironically enough, unnecessarily delayed the case — in the process, causing the very evil it apparently sought to avoid. Such action does not inspire public confidence in the administration of justice. (emphasis added)

The State is as much entitled to due process as the accused.<sup>30</sup> Withal, the finding of inordinate delay applies in a case-to-case basis. Differently stated, in the application of the doctrine of inordinate delay, particular regard must be taken of the facts and circumstances peculiar to each case. The Supreme Court has consistently held that the concept of speedy disposition is relative or flexible.<sup>31</sup> A mere mathematical reckoning of the time involved is not sufficient to rule that there was inordinate delay.<sup>32</sup>

Verily, where it is clear that the accused have been deprived of due process of law or other constitutionally guaranteed rights, this Court will not hesitate to grant the so-called "radical relief" and to spare the accused from undergoing the rigors and expense of a full-blown trial,<sup>33</sup> but if otherwise, prudence dictates this Court to proceed to trial, as in this case.

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<sup>28</sup> See *Cagang* case, supra note 11.

<sup>29</sup> 325 Phil. 525 (1996).

<sup>30</sup> *Cagang* case, supra note 11.

<sup>31</sup> *Corpuz vs. Sandiganbayan*, 484 Phil. 899 (2004).

<sup>32</sup> *Dela Peña vs. Sandiganbayan*, 412 Phil. 921 (2001).

<sup>33</sup> *Cagang* case, supra note 11, citing *Tatad vs. Sandiganbayan*, 242 Phil. 563, 573 (1988).

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In fine, and taking into consideration the circumstances surrounding this case, we are constrained to rule that inordinate delay is absent here, for the Office of the Ombudsman has successfully overcome the burden of proving that there was no violation of the right to speedy disposition of cases and that the delay is not inordinate and unjustified.<sup>34</sup>

**WHEREFORE**, the Motion to Defer Arraignment and Pre-Trial and to Dismiss the Above-Entitled Case dated July 2, 2018 is **DENIED**.

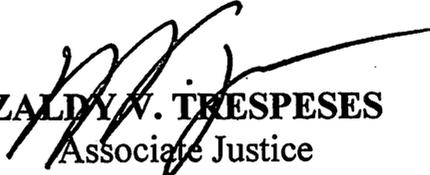
Set the arraignment and pre-trial on September 21, 2018 at 8:30 in the morning as originally scheduled in this Court's July 31, 2018 Order.

**SO ORDERED.**

  
**GEORGINA D. HIDALGO**  
Associate Justice

WE CONCUR:

  
**MA. THERESA DOLORES C. GOMEZ-ESTOESTA**  
Associate Justice  
Chairperson

  
**ZALDY W. TRESPESSES**  
Associate Justice

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<sup>34</sup> See the *Cagang* case, *id.*, where the Supreme Court ruled that courts must first determine which party carries the burden of proof. If the right is invoked within the given time periods contained in current Supreme court resolutions and circulars (*see* Supreme Court Circular No. 38-98, entitled "Implementing the Provisions of Republic Act No. 8493" [1998]; Supreme Court Administrative Order No. 25-2007, entitled "Re: Designation of Courts to Hear, Try, and Decide Cases Involving Killings of Political Activists and Members of the Media" [2007]; and A.M. No. 12-11-2-SC, entitled "Guidelines for Decongesting Holding Jails by Enforcing the Right of the Accused to Bail and to Speedy Trial" [2014]), and the time periods that will be promulgated by the Office of the Ombudsman, the defense has the burden of proving that the right was justifiably invoked. If the delay occurs beyond the given time period and the right is invoked, the prosecution has the burden of justifying the delay. (emphasis added)