

REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

FOURTH DIVISION

Minutes of the proceedings held on September 28, 2018.

Present:

Hon. ALEX L. QUIROZ	Associate Justice
Hon. REYNALDO P. CRUZ	Associate Justice
Hon. BAYANI H. JACINTO	Associate Justice

The following resolution was adopted:

SB-18-CRM-0294 – PEOPLE OF THE PHILIPPINES, Plaintiff, v. FAUSTINO SANCHEZ DY, JR., DANILO B. TUMAMAO, PETE GERALD LAPUEBLA JAVIER, WILLIAM DADEZ NICOLAS, SR., ET.AL., Accused.

Before the Court are the **Omnibus Motions (1) To Defer the Arraignment of the Accused; and (2) To Order the Ombudsman to Rule on the Accused's Motion for Reconsideration** dated 21 June 2018, filed by accused Pete Gerald L. Javier, William D. Nicolas, Sr., Alfredo B. Mendoza and Danilo B. Tumamao on 25 June 2018;¹ **Omnibus Motion to Quash/Dismiss and to Suspend Arraignment** dated 2 July 2018 filed by accused Don Antonio Marie V. Abogado;² **Motion to Quash** dated 2 July 2018 filed by accused Medardo B. Aggari,³ and **Motion to Dismiss** dated 9 July 2018 filed by accused Faustino Sanchez Dy, Jr.⁴

Accused Javier, Nicolas, Sr., Mendoza and Tumamao⁵ withdrew their Omnibus Motions later on and, in lieu thereof, filed a Motion to Quash, through their **Motion to Withdraw Motions with Motion to Quash** dated 9 July 2018. The accused also filed a **Supplement to the Motion to Quash** dated 24 July 2018.⁶ These motions are herewith included for the Court's resolution.

Briefly, an overview on the Motions filed.

Accused Javier, Nicolas, Sr., Mendoza, and Tumamao initially filed their *Omnibus Motion* dated 21 June 2018, arguing in essence, that they still had a pending motion for reconsideration before the Office of the Ombudsman.⁷ The accused, however, subsequently filed a *Motion to Withdraw Omnibus Motions with Motion to Quash*,⁸ praying that their earlier motion be withdrawn and that the case

¹ Records, Vol. II, pp. 5-8.

² *Id.*, pp. 57-62.

³ *Id.*, pp. 63-69.

⁴ *Id.*, pp. 78-99.

⁵ *Id.*, pp. 123-132.

⁶ *Id.*, pp. 173-183.

⁷ The prosecution filed its *Comment/Opposition* thereto on 28 June 2018, *id.*, pp. 11-16, while the accused filed a *Reply* on 6 July 2018, pp. 74-77.

⁸ *See* Note 6.

against them be dismissed instead, on account of the inordinate delay in the proceedings before the Office of the Ombudsman.

In view thereof, the *Omnibus Motion* dated 21 June 2018, filed by accused Javier, Nicolas, Sr., Mendoza and Tumamao is deemed withdrawn and their *Motion to Quash* is admitted.

Accused Abogado similarly prays for the dismissal of the case, citing lack of probable cause as basis for his *Omnibus Motion to Quash/Dismiss and to Suspend Arraignment* dated 2 July 2018. He points out that his indictment based on the allegation of conspiracy holds no water for he has neither knowledge of nor participation in the GMA project.

For his part, **accused Aggari** avers that his indictment was based only on the Certification stating that a public bidding was conducted on 18 March 2004 for the transaction subject of this case, when no such bidding actually took place. Contrary to this allegation, however, Aggari points out that he did not sign said Certification and argues that, proceeding therefrom, there is no cause of action, much less evidence, against him.

Common to all these Motions, however, is the prayer for the dismissal of the case against all the accused due to inordinate delay in the proceedings before the Office of the Ombudsman. It is in this light that this particular issue takes precedence in the discussion of the matters brought before the Court.

Motions to Quash/Dismiss Due to Inordinate Delay

All the accused argue that it took the OMB about 14 years – counted from March 2004, the date the transaction subject of this case took place up to the filing of the present Information on 20 April 2018 – to conclude its fact-finding and preliminary investigations, thereby violating their right to the speedy disposition of their case. The following timeline is culled from their motions:

2004	Procurement subject of the case took place; Commencement of the fact-finding investigation as shown by the docket numbers indicated in the subpoenas dated 23 November 2006 and 5 January 2007
6 October 2006 13 December 2006 18 January 2007 23 January 2007	COA submitted documents subject of OMB subpoena
8 February 2013	Date of filing of Complaint for preliminary investigation [8 years since start of fact-finding investigation].
25 March 2013	Order to file Counter-Affidavit
7 July 2017	OMB Resolution issued by handling

	investigator
22 August 2017	Date of approval by the Ombudsman of said Resolution
20 April 2018	Information was filed with the Court

The accused claim that the protracted proceedings before the Office of the Ombudsman violated their right to the speedy disposition of their case. Citing *Coscolluela v. Sandiganbayan*⁹ and *People v. Sandiganbayan*,¹⁰ they point out that the fact-finding investigation should not be deemed separate from the preliminary investigation.

They further claim that the 14-year delay is not justified since the case involves “*the relatively simple issue of whether or not public bidding was conducted.*” Lastly, the accused allege that the delay greatly prejudiced them, as “*pieces of evidence and witnesses are harder to procure given the passage of time,*” and has placed them under a cloud of uncertainty and unrest, thus unduly inflicting emotional, psychological and financial burden upon them.

The prosecution filed separate comments/oppositions to the motions filed by accused¹¹ and presented its own timeline of the proceedings before the Office of the Ombudsman.

The prosecution argues that “delay” is to be determined by applying the “balancing test,” taking into account the following factors: (1) length of delay; (2) reason for the delay; (3) assertion or non-assertion of the right; and (4) prejudice resulting from the delay. It asserts that the delay in this case should be computed from the filing of the complaint for preliminary investigation, excluding therefrom, the period of fact-finding investigation.

It submits that taking into consideration the facts of the case, the documents involved, the caseload of the Office of the Ombudsman and its internal processes, the preliminary investigation was concluded within a reasonable time.

Finally, the prosecution also points out that the accused failed to assert their right at the earliest opportunity and that they failed to show any actual damage or prejudice suffered.

DISCUSSION

Length of Delay

In view of the recent rulings of the Supreme Court in *Cagang v. Sandiganbayan*¹² and *Magante v. Sandiganbayan*,¹³ the delay should be computed from the filing of the complaint for preliminary investigation only and excluding

⁹ G.R. No. 191111, 5 July 2013

¹⁰ G.R. No. 188165 and 189063, 11 December 2013.

¹¹ *Comment/Opposition* dated 10 July 2018 to accused Abogado’s motion, Records, Vol. II, pp. 136-144; *Comment/Opposition* dated 9 July 2018 to accused Agarrin’s motion, pp. 145-150; *Comment/Opposition* dated 16 July 2018 to accused Javier et al.’s motion, pp. 158-163; *Comment/Opposition* dated 16 July 2018 to accused Dy’s motion, pp. 151-157.

¹² G.R. Nos. 206138 and 206158 and G.R. Nos. 210141-42, 31 July 2018

¹³ G.R. No. 230950-51, 23 July 2018.

therefrom the period of fact-finding investigation which appears to have been initiated by the Office of the Ombudsman *motu proprio*.

The prosecution's own timeline shows that the preliminary investigation commenced on 8 February 2013, upon the filing of the FIO complaint and was concluded on 20 April 2018 upon the filing of the Information with the Court. In all, it took a period of five (5) years and two (2) months for the OMB to conclude its preliminary investigation.

However, the Court notes that four (4) years and 10 days of this total period of delay was due to a lull in the proceedings. As indicated in the prosecution's timeline, the last counter-affidavit of the accused was filed on 27 June 2013. Yet, the Resolution was only issued by the Office of the Ombudsman investigator on 7 July 2017 – or four (4) years and 10 days later. In other words, the case slept or remained unacted upon during this period.

Reason for the Delay

The prosecution justifies the delay by pointing to the Office of the Ombudsman's thorough investigation and review of the documents submitted by all the parties, the number of respondents involved, the steady stream of cases filed with the Office of the Ombudsman and the layers of review within the Office of the Ombudsman.

As noted earlier, however, the delay was largely with the issuance of the Office of the Ombudsman investigator of the Resolution. This cannot be justified by the "steady stream of cases" filed with the Office of the Ombudsman and the "layers of review" within the Office of the Ombudsman. For one, no delay can be attributed to the review processes in this case as shown by the prosecution's timeline. Second, the prosecution failed to show the number of cases actually being handled by the investigating prosecutor so as to be affected by the "steady stream of cases" being filed with the Office of the Ombudsman.

Moreover, the Court agrees with the accused that the issue involved in this case does not justify the period it took the Office of the Ombudsman to conclude its preliminary investigation. The case involves a single transaction and a determination of whether such transaction – purchase of farm tractors and trailing harrows – was supported by the required documentation and underwent public bidding.

Assertion/Non assertion of the Right

Cagang instructs that, "the accused must invoke his or her constitutional rights in a timely manner. The failure to do so could be considered by the Courts as a waiver of right." Accused in this case, failed to invoke their right before the OMB and only did so before their arraignment.

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Prejudice resulting from the delay

The prosecution correctly points out that the accused's claims of prejudice are speculative and are not supported by concrete evidence. Nonetheless, delay generally affects both parties – the prosecution and the accused. Hence, the court will consider the delay herein to have prejudiced all the parties.

RULING

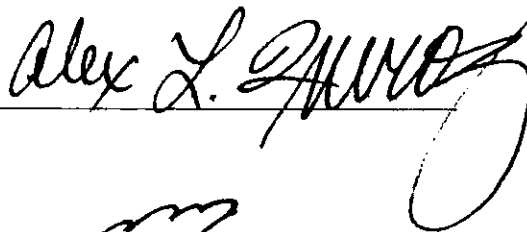
Applying now the balancing test of the four factors discussed above to the particular circumstances of the present case, the Court finds the motions filed by the accused to be meritorious. This is notwithstanding accused's failure to invoke their right before the OMB, since the Court finds the delay of 5 years and 2 months to be inordinate and unjustified, and which factors are to be given more weight. As held in *Magante*:

xxx petitioner's alleged failure to assert his right is not a veritable ground for the denial of the motion in the absence of any motion, pleading, or act on his part that contributed to the delay. It is not for him to ensure that the wheels of justice continue to turn. Rather, it is for the State to guarantee that the case is disposed within a reasonable period. Thus, it is of no moment that petitioner herein, unlike *Anchangco*, did not file any motion before the Ombudsman to expedite the proceedings. It is sufficient that he raised the constitutional infraction prior to his arraignment before the Sandiganbayan.

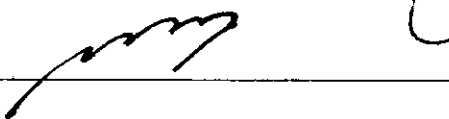
In other words, the length of delay and the failure of the prosecution to justify the period of delay outweigh the lack of follow-ups from the accused.

WHEREFORE, premises considered, the respective motions to quash/dismiss filed by accused Pete Gerald Lapuebla Javier, William Dadez Nicolas, Sr., Alfredo B. Mendoza and Danilo B. Tumamao; Don Antonio Marie Ventura Abogado; Medardo B. Aggari, and Faustino Sanchez Dy, Jr., are hereby **GRANTED** and the case against the accused is hereby **DISMISSED**. The Hold Departure Order issued against them is ordered **LIFTED** and **SET ASIDE** and their bail bonds are ordered **RELEASED**, subject to the usual auditing and accounting procedures.

QUIROZ, J., *Chairperson*



CRUZ, J.



JACINTO, J.

