



REPUBLIC OF THE PHILIPPINES

**Sandiganbayan**

Quezon City

**FIFTH DIVISION**

**PEOPLE OF THE PHILIPPINES, SB-18-CRM-0396**

*Plaintiff,*

– versus –

For: Violation of sec. 3(e) of  
Rep. Act No. 3019

**DATU UMBRA BAYAM  
DILANGALEN, AL HADJ,  
RAHIMA A. ALI, and KABIBA A.  
MAEL,**

*Accused.*

Present:

LAGOS, J., Chairperson,  
CORPUS-MAÑALAC, and  
JACINTO\*, JJ.

Promulgated:

September 24, 2018 *lag*

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### RESOLUTION

**LAGOS, J.:**

This resolves the following: (1) Accused Ali and Mael's *I. Motion to Nullify the Information II. Motion to Dismiss the Case for Lack of Jurisdiction*;<sup>1</sup> and (2) accused Dilangalen's *Manifestation to Adopt Motion to Quash Information and to Dismiss with Arguments and Motion to Withdraw Motion for Leave to Travel Abroad*.<sup>2</sup> The prosecution filed its *Consolidated Comment/Opposition*.<sup>3</sup>

Accused Ali and Mael argue that the Information in this case should be nullified and quashed due to the inordinate delay in the resolution of the preliminary investigation of this case, which violated their right to due process of law and speedy disposition of their case.

\* Sitting as Special Member, per Administrative Order No. 424-2018 dated 22 August 2018.

<sup>1</sup> Dated 20 August 2018. Records, pp. 146-149.

<sup>2</sup> Dated 29 August 2018. Records, pp. 170-177. His motion for leave to travel abroad was withdrawn, per Order of 3 September 2018.

<sup>3</sup> Dated 6 September 2018. Records, pp. 181-185.

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They continue that with the nullity of the Information, this Court cannot acquire jurisdiction over the case. Thus, pursuant to Rule 117, sec 3(b) of the Rules on Criminal Procedure, the case should be dismissed for lack of jurisdiction.

Their claim of inordinate delay is based on their following timeline:

Date	Event
10 January 2013	Private complainant Mohidin S. Lauban filed his complaint against the accused, among others
19 October 2016	The FIU executed a complaint-affidavit
21 October 2016	The FIU complaint is filed with the Office of the Deputy Ombudsman For Mindanao
14 November 2017	GIPO Llanto-Presbitero signed the resolution of the case
20 November 2017	The resolution was reviewed and recommended for approval by Deputy Ombudsman Elman
20 December 2017	The Ombudsman approved the resolution

They claim a total delay period of five (5) years and 11 months, counted from 10 January 2013 up to 12 November 2018.

They contend that there is no plausible explanation for the delay as the issues and facts of the case are not so complicated. They also add that there was no adverse act which can be attributed to them for such delay.

Accused Dilangalen adopts the motion of his co-accused. He relies on essentially the same timeline presented by accused Ali and Mael.

He views the FIU complaint as a more polished reiteration of the complaint by Lauban, and it was unreasonable for the FIU to have taken three (3) years to file its complaint. The period is unusually long since the factual and legal issues are simple. He argues that the Office of the Ombudsman failed to follow the procedure for a preliminary investigation, which is the one prescribed in Rule 112 of the Rules of Court.

*Ng*

He also notes that he raised the issue of delay in his counter-affidavit.

He opines that his case is similar to *Tatad v. Sandiganbayan*<sup>4</sup> because a supposedly dormant complaint was revived after certain political events took place.

The prosecution opposes the motions of the accused. They start by correcting the timeline of the accused. Even if the fact-finding investigation is counted, the period should be from the filing of the Lauban complaint on 10 January 2013 to the filing of the Informations with this Court on 28 May 2018, or a period of five (5) years and four (4) months.

They point out that, out of this period, only the period for the preliminary investigation proper is relevant. This took only one (1) year and seven (7) months. They insist on excluding the period for fact-finding investigation. They cite as basis the Supreme Court decision as regards the petition of one Cesar Cagang, which was announced by the Supreme Court spokesperson. They then present their own timeline:

Date	Event
21 October 2016	The FIU complaint is filed with the Office of the Deputy Ombudsman For Mindanao
6 January 2017	The case was assigned to a Graft Investigation and Prosecution Officer (GIPO)
9 January 2017	Release of joint order for accused to file their counter-affidavits
25 January 2017	Receipt of counter-affidavit of Mary Jane Bayam
10 February 2017	Receipt of counter-affidavit of Dilangalen, et al.
3 April 2017 to 29 June 2017	Submission of draft resolutions to the bureau director handling the case
14 November 2017	Release of final resolution
20 December 2017	The Ombudsman approved the resolution
28 May 2018	The Information is filed and raffled

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<sup>4</sup> G.R. Nos. 72335-39, 21 March 1988.

They contend that there is no inordinate delay in the preliminary investigation as the period in between actions are reasonable. The case was under continuous investigation to verify all aspects of the case.

Anent the claim of this being similar to the *Tatad* case, they claim that this is better addressed in the trial of this case. There are no circumstances clearly analogous to the *Tatad* case.

### DISCUSSION and RULING

The motions are not meritorious.

The claim that this Court does not have jurisdiction over the case stems from the accused-movants' view that their right to speedy disposition of cases has been violated. Their thrust for dismissal of this cases is grounded mainly on their claim that their right to speedy disposition of their cases was violated.

We clarify that the jurisdiction of courts over a criminal case is determined by the allegations in the Information<sup>5</sup> and by looking at the law in force at the time the action is instituted.<sup>6</sup> When there is a violation of the right to a speedy disposition of cases, the dismissal of the filed criminal cases is an effect of such violation.<sup>7</sup> Besides the claim of inordinate delay, which will be discussed hereunder, the motions do not actually argue that this Court is devoid of jurisdiction under the law or that the Information is defective. Thus, there is no basis to quash the Information under section 3(b) of Rule 117.

In determining whether an accused's right to speedy disposition of his case was violated, a balancing test is used. This test looks at four factors, which have to be considered altogether, to properly assess the issue of violation of the accused's right to speedy disposition of cases.<sup>8</sup> The right is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays.<sup>9</sup> The four factors considered are: (i) the length of the delay; (ii) the reasons for the delay; (iii) the assertion or non-assertion of the right; and (iv) prejudice caused by the delay.<sup>10</sup>

We find that the accused have failed to substantiate their claim of inordinate delay.

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<sup>5</sup> Foz v. People, G.R. No. 167764, 9 October 2009.

<sup>6</sup> Figueroa v. People, G.R. No. 147406, 14 July 2008.

<sup>7</sup> Tatad v. Sandiganbayan, supra.

<sup>8</sup> Remulla v. Sandiganbayan, G.R. No. 218040, 17 April 2017.

<sup>9</sup> Coscolluela v. Sandiganbayan, G.R. Nos. 191411 & 191871, 15 July 2013.

<sup>10</sup> Id.

A reading of their motions would show that they relied heavily on a mathematical computation of the delay. Such approach is not sanctioned by the governing balancing test. The balancing test specifically looks at other matters so that the circumstances of each case may be examined and weighed. In fact, the Supreme Court has on several occasions explicitly ruled that a mere mathematical reckoning does not suffice.<sup>11</sup>

The accused simply argued that the delay was not justified because the case was not complex. There is no discussion of the facts of the case to support this conclusion. This is an oversimplification that fails to appreciate the nature of fact-finding investigations and preliminary investigations.

A fact-finding investigation enables the Office of the Ombudsman to conduct its investigation in the manner it may deem best. Just because there are delays in terminating or completing such investigation does not render the entire investigation defective. The accused, and even this Court, cannot dictate how the Office of the Ombudsman carries out its investigatory activities.

Anent the conduct of the preliminary investigation proper, We note that the internal rules of the Office of the Ombudsman do not specify rigid time periods. They, however, reference the procedure in the Rules of Court. But it should be remembered that the time periods prescribed in the Rules of Court are only directory.<sup>12</sup> In the end, the reasonableness of the time incurred by the Office of the Ombudsman in conducting and terminating the preliminary investigation must take into account the circumstances of each case.

The accused cannot expect that this Court will simply accept their proposition that this case is not complex. A cursory review of the records would even dispel their claim. The complaint-affidavit filed by Lauban contained numerous factual allegations. It is logical to expect the Office of the Ombudsman to ascertain the veracity of these allegations. And such action would necessarily entail some time. The Lauban complaint also impleaded multiple respondents, and an investigation into the participation of each would also complicate the assessment of the complaint. The case also involves a number of documents which have to be examined and related to the allegations in the complaint.

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<sup>11</sup> Ombudsman v. Jurado, G.R. No. 154155, 6 August 2008; Remulla v. Sandiganbayan, supra; Coscolluela v. Sandiganbyan, supra.

<sup>12</sup> Dansal v. Fernandez, G.R. No. 126814, 2 March 2000.

Even if the FIU complaint contains allegations which were first made in the Lauban, it does not make the fact-finding investigation oppressive. One cannot expect that the Office of the Ombudsman would simply adopt the allegations of complainants without verifying such allegations.

It does not appear that the Office of the Ombudsman conducted their fact-finding investigation in a manner contrary to laws and established rules. It should also be noted that at this stage, the accused were not yet exposed to adversarial proceedings.

In the conduct of the preliminary investigation proper, it also does not appear that the Office of the Ombudsman unnecessarily dragged on the proceedings. At this stage, the FIU complaint is subjected to a preliminary investigation for the determination of existence of probable cause. This is resolved in conjunction with the defenses raised by the accused in their counter-affidavits. The case cannot also be considered as simple. It appears that in this case, there were: numerous allegations, multiple respondents are impleaded, a number of evidence are involved, and there is a relative complexity of facts and issues. Thus, the time incurred for the resolution of the complaint, together with the accused's counter-affidavits as then respondents, are not unreasonable under the circumstances.

The accused were exposed to adversarial proceedings only when they were apprised via the order requiring them to file their counter-affidavits. And the period incurred for the preliminary investigation proper is not unjustifiably long. The case was ripe for resolution only upon receipt by the Office of the Ombudsman of the counter-affidavits of the respondents on 10 February 2017. And it took only a little over ten (10) months to finally resolve the case. The preliminary investigation proper was initiated by the FIU complaint filed on 21 October 2016 and it was finally terminated by the filing of the Information on 28 May 2018. Thus the conduct of the preliminary investigation proper consisted only a period of about one (1) year and seven (7) months. We find this period to be reasonable under the circumstances of this case.

All of the accused also failed to even identify how they were prejudiced by the delay. In the balancing test, what is examined is the prejudice that resulted from the delay. The accused's failure to identify and substantiate any suffered prejudice is fatal to their claim of violation of their right. For if the accused were not prejudiced, then it cannot be reasonably said that the delay was vexatious, capricious, and oppressive. We cannot simply note the existence of such prejudice, especially when such cannot be discerned from the records.

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It should be stressed that the right to speedy disposition of cases is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays. Without any showing that the delay was vexatious, capricious, and oppressive, We cannot simply declare the entire period of fact-finding investigation and preliminary investigation as violative of the accused's rights.

Finally, We are not persuaded by accused Dilangalen that his case is similar to that in *Tatad*. The political situation appreciated in *Tatad* does not obtain here. His claim that the case was revived owing to certain political events is speculative and is not supported by any evidence or record.

In assessing claims of violation of the right to speedy disposition of cases, the State's equally valued right to prosecute crimes is necessarily involved. It would be unfair to the People, as plaintiff, if the accused's claim were believed despite their failure to substantiate such claim.

**WHEREFORE**, the accused's motions to dismiss and motions to quash are **DENIED** for lack of merit. Let the preliminary conference proceed on 9 October 2018 at 1:30 in the afternoon, as previously scheduled.

**SO ORDERED.**

  
**RAFAEL R. LAGOS**  
Chairperson  
Associate Justice

**WE CONCUR:**

  
**MARYANN E.  
CORPUS-MAÑALAC**  
Associate Justice

  
**BAYANI H. JACINTO**  
Associate Justice