Republic of the Philippines
Sandiganbayan
Quezon City

SPECIAL SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, ***Plaintiff,***	**SB-18-CRM-0288 to 0292** **For: Violation of Section 3(e) of R.A. No. 3019, as amended**
- versus –	*Present* **FERNANDEZ, SJ, J.** *Chairperson* **CORPUS-MAÑALAC,*J.** and **VIVERO, J.**
LUIS RAMON P. LORENZO, JR., ARTHUR C. YAP, and TOMAS A. GUIBANI, ***Accused.***	*Promulgated:* **OCT 23 2018**

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RESOLUTION

VIVERO, J.:

For the Court's consideration is the ***Motion for Reconsideration***[1] filed seasonably[2] by accused Tomas A. Guibani. Said motion assails the Court's Resolution dated August 9, 2018,[3] the *fallo* of which is quoted as follows:

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*Per Administrative Order No. 275-A dated May 9, 2018, Special Member because of the voluntary inhibition of Justice Karl B. Miranda.

[1] Motion for Reconsideration *(Re: Resolution dated 9 August 2018)* dated August 28, 2018, of Tomas A. Guibani, pp. 1 – 8 (Records, Vol. 4, pages 168 – 175).

[2] Tomas Guibani's Motion for Reconsideration was filed "within the non-extendible period of five (5) calendar days from receipt of the such Resolution," conformably with A.M. No. 15-06-10-SC (Resolution) dated April 25, 2017 (Revised Guidelines on the Continuous Trial of Criminal Cases), Part III (c).

[3] Records, Vol. 4, pages 53 – 67.

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

"SO ORDERED." [4]

Accused Guibani ascribes reversible error upon the Court on the ground that:

> **"THIS HONORABLE COURT, WITH DUE RESPECT, ERRED IN FINDING THAT THERE WAS NO INORDINATE DELAY DUE TO THE ABSENCE OF VEXATIOUS, CAPRICIOUS AND OPPRESSIVE DELAYS."** [5]

Guibani steadfastly opposes this Court's Resolution by stressing that:

> "The 'Task Force Abono' started the fact-finding investigation upon its creation in February 2006 but it took 'Task Force Abono' seven years and four months to complete its fact-finding investigation x x x."

As legal anchor, the accused-movant cites the Supreme Court's *dictum* in ***People v. Sandiganbayan (First and Third Division), Hernando B. Perez, et. al.,***[6] **(**hereinafter referred to as ***Perez* case)** the pertinent portion of which reads:

> "The State further argues that the fact-finding investigation should not be considered a part of the preliminary investigation because the former was only preparatory in relation to the latter; and that the period spent in the former should not be factored in the computation of the period devoted to the preliminary investigation.
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> "The argument cannot pass fair scrutiny.
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> "The guarantee of speedy disposition under Section 16 of Article III of the Constitution applies to all cases pending before all judicial, quasi-judicial or administrative bodies. The guarantee would be defeated or rendered inutile if the hair-splitting distinction by the State is accepted. ***Whether or not the fact-finding investigation was separate from the preliminary investigation conducted by the Office of the Ombudsman should not matter***

[4] Records, Vol. 4, page 66.
[5] Supra, Note 1.
[6] G.R. No. 189063, December 11, 2013, 723 Phil. 444, 712 SCRA 359.

> ***for purposes of determining if the respondents' right to the speedy disposition of cases had been violated.***
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> "x x x."[7] (Italics and Emphasis Supplied.)

The prosecution manifested[8] that, in traversing Guibani's motion, it had adopted the *Comment/Opposition (to Accused Arthur C. Yap's Motion for Reconsideration of the Resolution dated August 9, 2018).*[9]

Accused Guibani's motion must fail.

To cling obstinately to the Supreme Court's *dictum* in the ***Perez* case** and seek to apply it to the instant case is a futile pursuit. The *dictum* therein is moribund. Truth to tell, it has been debunked in the fairly recent case of ***Cesar M. Cagang v. Sandiganbayan, Fifth Division, et. al.,***[10] wherein the Supreme Court laid down a perspicuous and definitive guideline, to wit:

> "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. Thus, this Court now holds that **for the purpose of determining whether inordinate delay exists, a case is deemed to have commenced from the filing of the formal complaint and the subsequent conduct of the preliminary investigation. In *People v. Sandiganbayan, Fifth Division*** (sic), **THE RULING THAT FACT-FINDING INVESTIGATIONS ARE INCLUDED IN THE PERIOD FOR DETERMINATION OF INORDINATE DELAY IS ABANDONED."** (Capitalization and Underscoring Supplied.)

The ruling in ***Cagang*** came on the heels of the High Tribunal's pronouncement in ***Magante v. Sandiganbayan (Third Division) and People***.[11] Salient excerpts from the *ponencia* of Justice Presbitero J. Velasco, Jr. are quoted below, *viz:*

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[7] 723 Phil. 444, 493; 712 SCRA 359, 415.
[8] Manifestation dated August 29, 2018, of the Office of the Special Prosecutor, pp. 1 – 3 (Records, Vol. 4, pp. 187 - 189).
[9] Records, Vol. 4, pp. 159 – 162.
[10] G.R. Nos. 206438, 206458 & 210141-42, July 31, 2018.
[11] G.R. Nos. 230950-51, July 23, 2018.

"We must distinguish between fact-finding investigations conducted before and after the filing of a formal complaint. When a formal complaint had been initiated by a private complainant, the burden is upon such complainant to substantiate his allegations by appending all the necessary evidence for establishing probable cause. The fact-finding investigation conducted by the Ombudsman after the complaint is filed should then necessarily be included in computing the aggregate period of the preliminary investigation.

"On the other hand, **IF THE FACT-FINDING INVESTIGATION PRECEDES THE FILING OF A COMPLAINT AS IN INCIDENTS INVESTIGATED *MOTU PROPIO* BY THE OMBUDSMAN, SUCH INVESTIGATION SHOULD BE EXCLUDED FROM THE COMPUTATION. THE PERIOD UTILIZED FOR CASE BUILD-UP WILL NOT BE COUNTED IN DETERMINING THE ATTENDANCE OF INORDINATE DELAY.**

"**IT IS ONLY WHEN A FORMAL VERIFIED COMPLAINT HAD BEEN FILED WOULD THE OBLIGATION ON THE PART OF THE OMBUDSMAN TO RESOLVE THE SAME PROMPTLY ARISE.** Prior to the filing of a complaint, the party involved is not yet subjected to any adverse proceeding and cannot yet invoke the right to the speedy disposition of a case, which is correlative to an actual proceeding. In this light, the doctrine in *People v. Sandiganbayan*[12] should be revisited.

"With respect to investigations relating to anonymous complaints or *motu proprio* investigations by the Ombudsman, the date when the Ombudsman receives the anonymous complaint or when it started its *motu proprio* investigations and the periods of time devoted to such investigations cannot be considered in determining the period of delay. **FOR THE RESPONDENTS, THE CASE BUILD-UP PHASE OF AN ANONYMOUS COMPLAINT OR A *MOTU PROPRIO* INVESTIGATION IS NOT YET EXPOSED TO AN ADVERSARIAL PROCEEDING.** The Ombudsman should of course be aware that a long delay may result in the extinction of criminal liability by reason of the prescription of the offense.

"Even if the person accused of the offense subject of said anonymous complaint or *motu proprio* investigations by the Ombudsman is asked to attend invitations by the Ombudsman for the fact-finding investigations, this directive cannot be considered in determining inordinate delay. These conferences or meetings with the persons subject of the anonymous complaints or *motu proprio* investigations are simply preludes to the filing of a formal complaint if it finds it proper. This should be distinguished from the exercise by the Ombudsman of its prosecutor powers which involve determination of probable cause to file information with the court

[12]G.R. No. 188165, December 11, 2013.

resulting from official preliminary investigation. Thus, **THE PERIOD SPENT FOR FACT-FINDING INVESTIGATIONS OF THE OMBUDSMAN PRIOR TO THE FILING OF THE FORMAL COMPLAINT BY THE FIELD INVESTIGATION OFFICE OF THE OMBUDSMAN IS IRRELEVANT IN DETERMINING INORDINATE DELAY.**

"In sum, **THE RECKONING POINT WHEN DELAY STARTS TO RUN IS THE DATE OF** the filing of the formal complaint by a private complainant or **THE FILING BY THE FIELD INVESTIGATION OFFICE WITH THE OMBUDSMAN OF A FORMAL COMPLAINT** based on an anonymous complaint or **AS A RESULT OF ITS *MOTU PROPRIO* INVESTIGATIONS.** The period devoted to the fact-finding investigations prior to the date of filing of the formal complaint with the Ombudsman shall not be considered in determining inordinate delay. After the filing of the formal complaint, the time devoted to fact-finding investigations shall always be factored in."[13]

"x x x [T]he period spent for fact-finding investigations of the Ombudsman prior to the filing of the formal complaint by the Field Investigation Office of the Ombudsman is irrelevant in determining inordinate delay.'

"x x x." [14] (Capitalization Ours.)

More.

The Supreme Court's pronouncements in ***Tatad v. Sandiganbayan***[15] and ***Angchangco, Jr. v. Ombudsman***[16] cannot buttress Guibani's position.[17] The peculiar facts and circumstances in these cases are not on all fours with the factual milieu in the instant case.

On this score, the resolution of the High Tribunal in ***Varela vs. Sandiganbayan, Fifth Division***[18] is apropos. Pertinent excerpts therefrom are quoted below: *viz:*

". . . [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***[19] case) delaying tactics

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[13] *Magante v. Sandiganbayan (Third Division) and People,* G.R. Nos. 230950-51, July 23, 2018.
[14] *Supra.* Note 20.
[15] G.R. No. L-72335-39, March 21, 1998, 159 SCRA 70.
[16] G.R. No. 122728, February 13, 1997, 268 SCRA 301.
[17] Supra. Note 1.
[18] G.R. No. 203564, December 3, 2014.
[19] Supra. Note 15.

> employed by the prosecutors; or that the accused has remained under cloud as the petitioner in the ***Anchangco***[20] 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***[21] 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***[22] 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."** [23] (Emphasis and Underscoring Supplied.)

Absent any allegation and proof that accused Guibani was persecuted, oppressed or made to undergo any vexatious process, as in the ***Tatad*** **case** and ***Angchangco*** case, during the investigative phase prior to the filing of the informations, reliance thereon is misplaced.

Further, accused Guibani contends that:

> "The conduct of the preliminary investigation proper by the Office of the Ombudsman was delayed for **four years and 3 months** since the criminal complaint was prepared on **July 23, 2013** but the same was filed by the Field Investigation Office (FIO) of the Office of the Ombudsman only on **November 11, 2013** while the information against the accused Guibani was filed in this Honorable Court only on **April 20, 2018;** The total delay of filing the information in this Honorable Court for at least **12 years** is obviously vexatious, capricious, and oppressive."[24]

Guibani's obtrusion does not persuade.

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.***[25] 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

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[20] Supra. Note 16.

[21] *Duterte v. Sandiganbayan,* G.R. No. 130191, April 27, 1998, 289 SCRA 721.

[22] *Cervantes v. Sandiganbayan,* G.R. No. 108595, May 18, 1999, 307 SCRA 149.

[23] Supra. Note 18.

[24] Motion for Reconsideration dated August 28, 2018, of T. A. Guibani, p. 6 of 8 (Records, Vol. 4, p. 173).

[25] G.R. No. 126814, March 2, 2000, 327 SCRA 145, 153.

correctness."[26] 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.[27] Rather, the totality of the facts and circumstances peculiar to each case must be examined.[28] Hence, the constitutional guarantee of speedy disposition of cases is a relative or flexible concept.[29] Multipronged factors which must be considered include: (1) the length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.[30] 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.[31]

Accused Guibani failed to identify a concrete prejudice that they may have suffered as a logical, inevitable and necessary consequence of the allegedly snail-paced investigation. Suffice it to say, however, that the delay was attributable to the complexity of the issues, the volume of evidence and the conduct of the parties' lawyers.

Further, accused Guibani failed to timely invoke his right to speedy disposition of the case. As aptly stated in the ***Alvizo v. Sandiganbayan,***[32] he was insensitive to the implications and

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[26] *Ibid.*.

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

[28] *Binay v. Sandiganbayan,* G.R. Nos. 120681 – 83, October 1, 1999. 316 SCRA 65.

[29] *Torres v. 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.

[30] *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. v. Judge Gil P. Fernandez, Sr. and Montera,* G.R. No. 126814 , March 2, 2000.

[31] *Padua v. Ericta,* 161 SCRA 458.

[32] G.R. No. 101689, March 17, 1993; 454 Phil. 34; 220 SCRA 55.

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.

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.[33] Contemporaneous jurisprudence undergirds this. In ***People v. 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 loath to veer away from this ruling. ***Judicia posteriora sunt in lege fortiora.*** (The later decisions are the stronger in law.)

A final note. Transcendental significance should be ascribed to the ***raison d'tre*** of the Office of the Ombudsman. In ***Francisco Guerrero vs. Court of Appeals, et al.,***[34] 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 tranquilitate et concordia quam debita legume administratio.*** (Nothing more preserves in tranquility and

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

[34] G.R. No. 107211, June 28, 1996, 257 SCRA 703, 716.

concord those subjected to the government than a due administration of the laws.)

WHEREFORE, premises considered, the Court ***DENIES*** the ***Motion for Reconsideration*** of accused Tomas A. Guibani for sheer lack of merit.

SO ORDERED.

KEVIN NARCE B. VIVERO
Associate Justice

WE CONCUR:

SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

MARYANN CORPUS-MAÑALAC
Associate Justice