



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-18-CRM-0337**
Plaintiff, For: Violation of Sec. 3(e)
of R.A. No. 3019

SB-18-CRM-0338 and 0339
For: Malversation (Art. 217 of
the Revised Penal Code)

Present

- versus -

EDGAR G. RAMA, ET AL.

Accused.

FERNANDEZ, SJ, J.,
Chairperson
MIRANDA, J. and
VIVERO, J.

Promulgated:

October 12, 2018 

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RESOLUTION

FERNANDEZ, SJ, J.

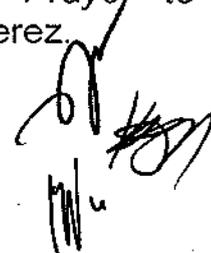
This resolves the following:

1. *Motion for Reconsideration (Re: Resolution dated August 7, 2018)*¹ filed by accused Edgar G. Rama, William G. Surbano, Gorgonia E. Gonzales, Sergio G. Zurita and Nilo B. Gorgonio;
2. *Motion for Reconsideration (Of the Resolution dated August 7, 2018)*² filed by accused Nancy A. Catamco; and
3. *Motion for Reconsideration With Urgent Prayer to Defer Arraignment*³ filed by accused Pompey M. Perez.

¹ Dated August 15, 2018; Record, Vol. 3, pp. 64-67

² Dated September 7, 2018; Record, Vol. 3, pp. 95-173

³ Dated August 16, 2018; Record, Vol. 3, pp. 14-23



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In their *Motion for Reconsideration*, accused Rama, Surbano, Gonzales, Zurita and Gorgonio pray that this Court reconsider its Resolution dated August 7, 2018,⁴ and a new one quashing the three (3) Informations be issued. They aver:

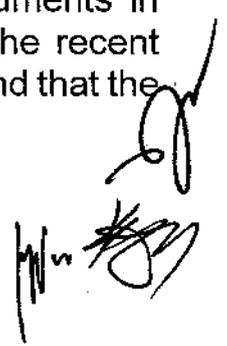
1. Task Force Abono was created sometime in 2006 for the sole purpose of conducting a fact-finding investigation in the so-called "Fertilizer Scam." The prosecution admitted that the Informations in the present cases were based on the complaint filed on June 21, 2013.
2. The prosecution failed to provide an explanation for the following:
 - a. Why the fact-finding investigation took around six (6) years to complete;
 - b. Why the complaint executed on December 27, 2012 was filed only on June 21, 2013;
 - c. Why the Resolution finding probable cause to indict the accused in court was issued only on July 17, 2017, considering that the last counter-affidavit was filed back on May 20, 2015.
3. Inordinate delay should be computed from the time of the fact-finding investigation.
4. The present cases do not involve voluminous records. The number of respondents also does not justify the delay.
5. The prosecution's duty to determine the existence of probable cause in the preliminary investigation should not defeat the accused' right to speedy disposition of cases.
6. The inordinate delay in the conduct of the preliminary investigation caused prejudice to the accused. Some documents involved in the transaction can no longer be found after Poro was hit by typhoon Yolanda.

In their *Supplemental Motion for Reconsideration (Re: Resolution dated August 7, 2018)*,⁵ they reiterate the arguments in their *Motion for Reconsideration*, and further aver that in the recent case of *Magante v. Sandiganbayan*,⁶ the Supreme Court found that the

⁴ Record, Vol. 2, pp. 439-453

⁵ Dated October 1, 2018 and filed on October 4, 2018

⁶ G.R. Nos. 230950-51, July 23, 2018



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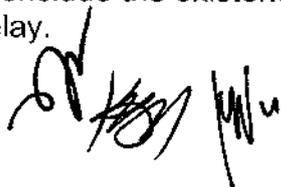
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prosecution failed to justify the delay of around five (5) years and three (3) months in the conduct of the preliminary investigation, and dismissed the case against therein accused on the ground of violation of the right to speedy disposition of cases.

In her *Motion for Reconsideration*, accused Catamco prays that this Court reverse the Resolution dated August 7, 2018 and dismiss the present cases. She avers:

1. There is nothing in the prosecution's *Consolidated Comment/Opposition* dated June 18, 2018 that discusses the proceedings before the Task Force Abono, or even a semblance of an explanation as to why it took more than seven (7) years to conduct the fact-finding investigation.
2. The prosecution failed to provide an explanation for the delay. Surmises, conjectures or speculations cannot take the place of the prosecution's explanation for the delay.
3. The explanation for the delay cannot be inferred under the principle of judicial notice. There is no settled jurisprudence on matters in connection with the Fertilizer Fund Scam.
4. There being no explanation from the prosecution, the delay in the fact-finding investigation is unreasonable.
5. Assuming that the Court may take judicial notice of the proceedings before Task Force Abono, the Court should also take judicial notice of the resolutions of the other Divisions of the Sandiganbayan, dismissing cases in connection with the Fertilizer Fund Scam.
6. Although Task Force Abono's investigation was nationwide in scope, its investigation was based on the Commission on Audit's (COA) investigation. Thus, seven (7) years for conducting the fact-finding investigation is unreasonable.
7. The preliminary investigation took more than five (5) years to conduct. Likewise, the prosecution failed to provide a valid explanation as to why it had to take more than five (5) years to conduct the preliminary investigation after the conduct of the fact-finding investigation for seven (7) years.
8. "The need to meticulously and assiduously review and evaluate the numerous records, and the mathematical computations required to conclude the existence of probable cause" does not justify the delay.



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- a. Preliminary investigation is conducted merely to determine "whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial."
 - b. In *Coscolluela v. Sandiganbayan*,⁷ it was held that the Office of the Ombudsman has the duty not only to carefully go through the particulars of the case but also to resolve the same within the proper length of time.
9. The Court, in the assailed Resolution, failed to consider the seriousness of the prejudice she suffered.
- a. Because she was unaware of the investigations conducted by the COA and Task Force Abono, she was not able to gather the evidence needed for her defense.
 - b. She can no longer locate the manufacturer of Vitacrop liquid fertilizer or any of its officers.
 - c. Such prejudice could have been avoided if there was no inordinate delay in the conduct of the fact-finding and preliminary investigations.

In his *Motion for Reconsideration*, accused Perez similarly prays that the present cases be dismissed. He avers:

1. The State's right to prosecute criminals should not undermine the accused' constitutional right to speedy disposition of cases.
2. A fact-finding investigation was conducted as early as 2006, and the cases do not involve unusually complex factual or legal issues. There was no reason why it had to take more than four (4) years to terminate the preliminary investigation.
3. The State has the burden of proving that the delay was reasonable. An examination of the prosecution's *Consolidated Comment/Opposition (To the Motion to Quash filed by accused Edgar G. Rama and William G. Surbano, and the Motion to Dismiss Cases and/or to Quash Informations filed by accused Nancy A. Catamco)*⁸ would show that it failed to provide a justifiable reason for the delay.
4. There is no way that he can be implicated in the present cases. It was impossible for him to have conspired with the other

⁷ G.R. Nos. 191411 and 191871, July 15, 2013

⁸ Dated June 18, 2018; Record, Vol. 2, pp. 334-343



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accused. He was included in the charge only because he was one of the partners of PERZEBROS company.

5. The Court can dismiss a case on the ground that there is no probable cause for the issuance of a warrant of arrest. The Court should have treated such ground as his motion seeking reconsideration of the resolution finding probable cause for the issuance of a warrant of arrest.

In its *Consolidated Comment/Opposition (To the Motions for Reconsideration of the Resolution dated August 7, 2018)*,⁹ the prosecution counters:

1. Under the *Revised Guidelines on the Continuous Trial of Criminal Cases (Revised Guidelines)*, a motion for reconsideration of a meritorious motion shall be filed within a non-extendible period of five (5) calendar days from receipt of such resolution.
2. In his Motion, accused Perez stated that he received a copy of the assailed Resolution on August 10, 2018. He filed said Motion on August 16, 2018, which is beyond the period allowed by the *Revised Guidelines*.
3. Atty. Richard Bauzon, counsel for accused Rama and Surbano, manifested in open court that he received a copy of the assailed Resolution on August 10, 2018. Said accused' Motion for Reconsideration was filed only on August 16, 2018, which is also beyond the period allowed by the *Revised Guidelines*.
4. The accused also failed to present new grounds that would warrant the reversal of the assailed Resolution. Their arguments are a mere rehash of the arguments in their previous motions.
5. The rulings of the other Divisions of the Sandiganbayan do not apply to the present cases because the factual and legal setting of those cases are different from those in the present cases.

In its *Comment/Opposition (To the Supplemental Motion for Reconsideration)*,¹⁰ the prosecution, in response to accused Rama, Surbano, Gonzales, Zurita and Gorgonio's *Supplemental Motion for Reconsideration*, counters that in *Cagang v. Sandiganbayan*,¹¹ the Supreme Court held that the "determination of the length of delay is

⁹ Dated September 12, 2018 and filed on September 13, 2018

¹⁰ Dated and filed on October 8, 2018

¹¹ G.R. Nos. 206438, 206458 and 210141-42, July 31, 2018

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never mechanical. Courts must consider the entire context of the case, from the amount of evidence to be weighed to the simplicity or complexity of the issues raised.”

THE COURT'S RULING

The Court finds no reason to warrant the reversal of the assailed Resolution, and resolves to deny the respective *Motions for Reconsideration* of the accused.

The accused argue that the prosecution has the burden to justify the delay in the proceedings. However, it failed to provide an explanation as to why it had to take around seven (7) years to conduct the fact-finding investigation and another five (5) years to conduct the preliminary investigation, or total of around twelve (12) year. The present cases do not involve voluminous records or complex factual and legal issues. Furthermore, the Court's findings with regard to the proceedings before Task Force Abono were based on conjecture and speculation, considering that the prosecution made no attempt to explain the delay. There being no explanation for the delay, the same is unreasonable.

These arguments do not persuade.

Contrary to the accused' claim that the prosecution failed to justify the delay, the Court found that the prosecution satisfactorily explained the reason for the delay in the fact-finding and preliminary investigations. According to the prosecution, the Office of the Ombudsman had to meticulously review and evaluate numerous records in connection with the cases. Also considering the steady stream of cases reaching the Office of the Ombudsman, the delay was reasonable.

In *Remulla v. Sandiganbayan*,¹² the Supreme Court held that in determining if there was a violation of the right to speedy disposition of cases, courts must consider the four (4) factors of the balancing test together with other relevant circumstances. Similarly, in *Cagang v. Sandiganbayan*, it was held that courts must consider the entire context of the case in the determination of the length of delay.

¹² G.R. No. 218040, April 17, 2017



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This Court, in the assailed Resolution, held that the time it took to conduct the fact-finding and preliminary investigations is not unreasonable, based on the steady stream of cases reaching the Office of the Ombudsman, and the fact that the fact-finding investigation of Task Force Abono involved several local government units from different regions, as shown by the documents attached to the Office of the Ombudsman's Resolution dated July 17, 2017.¹³

The Court already addressed the accused' arguments of having suffered prejudice as a result of the delay. For convenience, the pertinent portion¹⁴ of the assailed Resolution is hereunder quoted:

In *Corpuz*, the Supreme Court recognized that inordinate delay may cause prejudice to the defendant. But it is not the defendant alone who may suffer prejudice. Delay may also make it harder for the prosecution, which has the burden of proving the guilt of the accused beyond reasonable doubt, to prove its case. Thus, there is a need to balance the prejudice to the defendant against the State's right to prosecute criminals. *Viz.:*

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.

Delay is a two-edge sword. It is the government that bears the burden of proving its case beyond reasonable doubt. The passage of time may make it difficult or impossible for the government to carry its burden. The Constitution and the Rules do not require impossibilities or extraordinary efforts, diligence or exertion from courts or the prosecutor, nor contemplate that such right shall deprive the State of a reasonable opportunity of fairly prosecuting criminals. As held in *Williams v. United States*, for the government to sustain its right to try the accused despite a delay, it must show two things: (a) that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay; and (b) there was no more delay than is reasonably attributable to the ordinary processes of justice.

Here, accused Perez claims that he suffered anxiety during the conduct of the investigation. On the other hand, accused

¹³ Complaint dated December 27, 2012 of Task Force Abono, and Annexes P and Q; Record, Vol. 1, pp. 44-74, 159-170

¹⁴ Resolution dated August 7, 2018, pp. 12-13; Record, Vol. 2, pp. 450-451

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Catamco claims that documents pertaining to the subject transactions can no longer be found, and that she no longer had contact with the manufacturer of the liquid fertilizer in question.

This Court acknowledges that the accused suffered some form of prejudice. However, as discussed earlier, the time it took to conduct the fact-finding and preliminary investigations, while long, is not unreasonable, given the circumstances surrounding the present cases.

Accused Catamco's claim that the prejudice she suffered—*i.e.*, that she was unable to gather the relevant documents because she was unaware of the investigations conducted by the COA and Task Force Abono, and that could no longer locate the manufacturer of the fertilizer—could have been avoided if there was no inordinate delay in the investigations deserves scant consideration. Such prejudice is a result of the passage of time, regardless of the existence of inordinate delay. The complaint against the accused could have been filed at any time within the prescriptive period of the crimes charged. Had the Informations been filed near the end of such prescriptive periods, in the absence of inordinate delay, the result would have been the same.

Finally, accused Perez argues that the Court may dismiss a case on the ground of lack of probable cause for the issuance of a warrant of arrest, and that this Court should have considered such ground in his *Motion to Dismiss* as his motion for reconsideration of this Court's finding of the existence of probable cause for the issuance of a warrant of arrest.

Indeed, the Court may dismiss a case on the ground of lack of probable cause for the issuance of a warrant of arrest.¹⁵ However, this Court had already ruled on the existence of probable cause, and ordered the issuance of a warrant of arrest in the Resolution dated May 7, 2018.¹⁶ In his *Motion to Dismiss*, accused Perez never raised the issue of the Court's finding of the existence of probable cause for the

¹⁵ *Rules of Court. Rule 112, Sec. 5. When warrant of arrest may issue. – (a) By the Regional Trial Court. – Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause.* If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused had already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information. (underscoring supplied)

¹⁶ Record, Vol. 1, p. 365

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issuance of a warrant of arrest, but assailed the Office of the Ombudsman's finding of conspiracy. viz.:

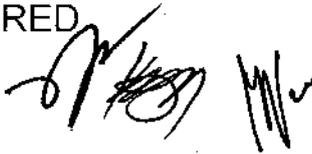
- (b) The Office of the Ombudsman committed grave abuse of discretion in finding Accused Perez to have conspired with the other accused despite the fact that as early as the alleged commission, his marriage to co-accused Nancy Catamco was already undergoing annulment proceedings making it highly improbable if not totally impossible for him to participate in any kind of conspiracy.¹⁷

As this Court held in the assailed Resolution, such matter may be assailed through certiorari proceedings before the Supreme Court. Accused Perez' argument with regard to this Court's finding of probable cause for the issuance of a warrant of arrest, having been raised for the first time in his *Motion for Reconsideration*, appears to be nothing but an afterthought.

WHEREFORE, the Court rules as follows:

1. The *Motion for Reconsideration* and *Supplemental Motion for Reconsideration* of accused Rama, Surbano, Gonzales, Zurita and Gorgonio are hereby DENIED for lack of merit.
2. The *Motion for Reconsideration* of accused Catamco is hereby DENIED for lack of merit.
3. The *Motion for Reconsideration* of accused Perez is hereby DENIED for lack of merit.

SO ORDERED



¹⁷ Accused Perez' *Motion to Dismiss* dated June 13, 2018, p. 16; Record, Vol. 2, p. 281

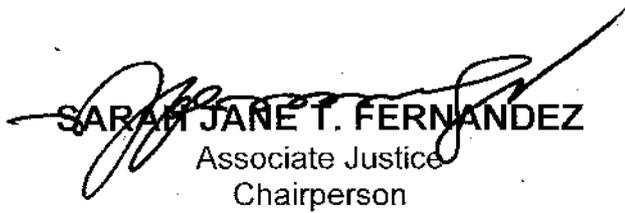
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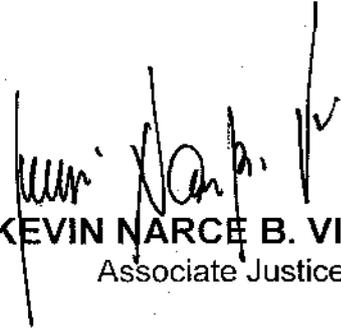
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SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
Associate Justice