



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-18-CRM-0351 to 0366
For: Violation of Sec. 3(e) of
R.A. 3019, and Malversation
of Public Funds

- versus -

REINERIO B. BELARMINO, et
al.,

Accused.

Present:

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

Promulgated:

OCT 18 2018

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RESOLUTION

VIVERO, J.:

For resolution is accused Lourdes Valdez Gonzales' *Motion for Reconsideration*¹ dated 22 August 2018.

Accused Gonzales prays that this Court uphold her right to speedy disposition of the cases filed against her, grant her Motion for Reconsideration, and cause the dismissal of said cases on the following grounds: (1) inordinate delay; and (2) violation of her right to due process and the speedy disposition of cases.² In support thereof, the accused contends that:

1. The Court could not make the facile conclusion that accused Gonzales and co-accused did not suffer any prejudice from the delay in the preliminary

¹ Motion for Reconsideration dated 22 August 2018, pp. 1-5; Record, Vol. II, pp. 213-217.

² Id. 217.

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investigation of the charges against them and that they have slept on their rights;³

2. The questioned procurement took place in 2004 and, as early as February 2006, the OMB already created its Task Force Abono-Field Investigation Office to investigate the alleged fertilizer fund scam. In addition, in March 2006, the COA already issued its Special Audit Report on the fertilizer fund which basically established the evidence to prosecute Gonzales et al. Thus, it took 14 years from the time the procurement took place for the OMB to file the Informations in court. It also took 12 years for the OMB to file the Informations in court from the time the TFA-FIO was created and the COA issued its Special Audit Report on the fertilizer fund "scam";⁴ and
3. The Honorable Court should revisit and consequently reconsider its adverse disposition of accused Gonzales' Motion to Dismiss. Gonzales has been widowed several years back. Her constant companion now is no longer her departed husband or his ghost, but the worry, anxiety, humiliation and expenses imposed upon her by her indictment in these cases (and dismissal in the accompanying administrative aspect thereof).⁵

In its *Comment/Opposition*⁶ dated 18 September 2018, the prosecution counters that:

1. As to accused Gonzales' motion, a simple perusal of the motion will reveal that the same failed to raise matters substantially plausible or compellingly persuasive to warrant the desired course of action;⁷
2. It will be superfluity for this Honorable Court to re-examine its resolution without accused Gonzales showing any persuasive arguments in support of

³ Id. 213.

⁴ Id. 216.

⁵ Ibid.

⁶ Comment/Opposition dated 18 September 2018, pp. 1-6.

⁷ Id. 1.

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her motion. As the Honorable Court fully explained in its Resolution dated August 17, 2018, mere mathematical computation of the time involved is not the sole consideration whether there was "*inordinate delay*." Rather, the totality of facts and circumstances peculiar to each case must be examined;⁸

3. The cases of *Coscolluella vs Sandiganbayan*⁹, and *Luz Almeda vs OMB (Mindanao)*¹⁰ were superseded by a more recent jurisprudence entitled *People vs Rosalyn G. Gile*¹¹, where the Court held that the delay of seven (7) years in the conduct of the preliminary investigation is not sufficient reason to warrant dismissal of the case due to inordinate delay. There must be proof that the accused during the preliminary investigation were persecuted, oppressed or made to undergo vexatious process during the investigation period and there was timely invocation of the violation of the right to speedy disposition of cases;
4. Contrary to the position of accused Gonzales, the considerable length of time that lapsed from the commission of the crime until the filing of Informations does not necessarily warrant the dismissal of the case on the ground of inordinate delay. In the more recent case of *Magante v. Sandiganbayan*¹², the Supreme Court held that the period utilized for case build-up will not be counted in determining the attendance of inordinate delay;
5. Less than two weeks after the promulgation of the *Magante case*¹³, the Supreme Court *En Banc* in the case of *Cesar M. Cagang vs. Sandiganbayan, et.*

⁸ Id. 2.

⁹ 714 Phil. 64 (2013).

¹⁰ G.R. No. 204267, July 25, 2016.

¹¹ G.R. Nos. 232197-98, April 16, 2018.

¹² G.R. Nos. 230950-51, July 23, 2018.

¹³ Ibid.

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*al.*¹⁴ categorically abandoned the ruling held in *People vs. Sandiganbayan*;¹⁵

6. Clearly in this case, the fact that OMB already created Field Investigation Office- Task Force Abono as early as 2006 to investigate and gather facts in relation to the fertilizer fund scam is of no moment. As held in the *Magante*¹⁶ and *Cagang*¹⁷ cases, the right of accused Gonzales to speedy disposition of cases started only sometime in March 2013 when the Complaint of Associate Graft Investigation Officer II Janice O. Baltazar was docketed as OMB-C-C-13-0082; and
7. Even *assuming arguendo* that there was indeed delay in the preliminary investigation, as held in the *Cagang*¹⁸ case, accused Gonzales was deemed to have waived her right to speedy disposition of cases when she failed to invoke the said right after the lapse of statutory and procedural rights.

THE COURT'S RULING

The Court resolves to deny accused Gonzales' Motion for Reconsideration.

As correctly pointed out by the prosecution, accused Gonzales failed to show any persuasive arguments in support of her motion for the Court to re-examine its Resolution dated 17 August 2018. Indeed, the Court fully explained in the said Resolution that mere mathematical computation of the time involved is not the sole consideration whether or not there was inordinate delay. Rather, the totality of facts and circumstances peculiar to each case must be examined.



¹⁴ G.R. Nos. 206438, 206458 and 210141-42, July 31, 2018.

¹⁵ 723 Phil. 444 (2013).

¹⁶ *Supra*, footnote 12.

¹⁷ *Supra*, footnote 14.

¹⁸ *Supra*, footnote 14.

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In ***Elpidio Tagaan Magante v. Sandiganbayan (Third Division) and People of the Philippines***,¹⁹ the Supreme Court held:

"We must distinguish between fact-finding investigations conducted before and after the filing of a formal complaint. When a formal criminal 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 proprio* 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* 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 said 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 conducted as preludes to the filing of a formal complaint if it finds it proper. This should be distinguished

¹⁹ Supra, footnote 12.

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from the exercise by the Ombudsman of its prosecutor powers which involve determination of probable cause to file information with the court 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.

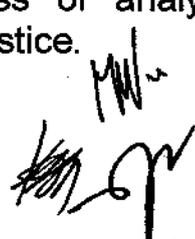
"In sum, the reckoning point when delay starts to run is the date of the filing of a formal complaint by a private complainant or the filing by the Field Investigation Office with the Ombudsman of a formal complaint based on an anonymous complaint or as a result of its *motu proprio* investigations. The period devoted to the fact-finding investigations prior to the date of the 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." (Underscoring and capitalization ours.)

Also, in ***Cesar Matas Cagang v. Sandiganbayan, Fifth Division, Quezon City, et. al.***,²⁰ it was held:

"The period for the determination of whether inordinate delay was committed shall commence from the filing of a formal complaint and the conduct of the preliminary investigation. The periods for the resolution of the preliminary investigation shall be that provided in the Rules of Court, Supreme Court Circulars, and the periods to be established by the Office of the Ombudsman. Failure of the defendant to file the appropriate motion after the lapse of the statutory or procedural periods shall be considered a waiver of his or her right to speedy disposition of cases.

"The ruling in ***People v. Sandiganbayan, Fifth Division***²¹ that fact finding investigations are included in the period for determination of inordinate delay is **ABANDONED.**" (Emphasis and capitalization ours.)

Quite clearly, the delay can hardly be considered as excessive, unwarranted and oppressive. 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, including the thoroughness of analysis must be considered as reasonable processes of justice.



²⁰ Supra, footnote 14.

²¹ 723 Phil. 444 (2013).

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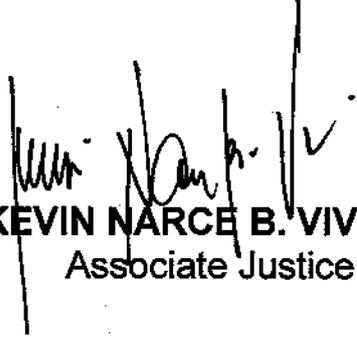
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The rest of accused Gonzales' arguments are a mere reiteration and rehash of those in her *Motion to Dismiss*,²² which have been squarely passed upon by the Court in the *Resolution* sought to be reconsidered.

In sum, the Court finds no basis to reconsider its *Resolution* dated 17 August 2018.

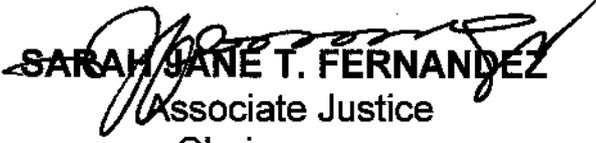
WHEREFORE, the *Motion for Reconsideration* of accused Lourdes Valdez Gonzales is hereby denied for lack of merit.

SO ORDERED.



KEVIN NARCE B. VIVERO
Associate Justice

WE CONCUR:



SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson



KARL B. MIRANDA
Associate Justice

²² Motion to Dismiss dated 9 July 2018, pp. 1-6; Record, Vol. II, pp. 124-129.