

for Atty. *M. Fabian*
Atty. CEZEL C. DE LEON
 Executive Clerk of Court III
 5th Division, Sandiganbayan



Republic of the Philippines
Sandiganbayan
 Quezon City

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff,

- versus -

SB-18-CRM-0369
For: Violation of Section 3(e),
Republic Act No. 3019
(The Anti-Graft and Corrupt
Practices Act)

LEONARD B. MARTIN, SR., et al.,
 Accused.

Present:
Lagos, J., Chairperson,
Mendoza-Arcega and
Corpus-Mañalac, JJ.

Promulgated:
October 15, 2018 *Jal*

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RESOLUTION

CORPUS - MAÑALAC, J.:

For resolution is prosecution's **Motion for Reconsideration** filed on August 7, 2018 assailing the July 26, 2018 Resolution which granted the Motions to Quash Information of accused Leonard Martin, Sr., Maritoni Estaquio, Gilvern D. Manzano, Reynante Pastor, Elmer A. Baquiran and Elpidio Colobong, Jr. consequently dismissing this case against them on account of inordinate delay in investigation.

In its motion, the prosecution pleads to reconsider and specifically asks the Court to: (i) exclude the fact-finding investigation in determining the length of delay and consider the perceived delay as justified; (ii) consider the time spent during preliminary investigation as reasonable; (iii) reconsider that the accused failed to assert their rights. Allegedly, there is already a finding of probable cause against the accused and that the prosecution should not be deprived of its right to indict.

It argues that excluding the fact-finding investigation, the length of delay is only about five (5) years and five (5) months of preliminary investigation which is justified because the investigation entailed "*meticulous documentations and verifications*" and the "*nature of the transactions cuts across various government agencies*" involving the transfer, disbursement, utilization and liquidation of funds from the Department of Budget and Management (DBM) down to the alleged beneficiaries. Likewise, it holds that

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the accused failed to assert their right to speedy disposition of the case at the most opportune time so that the same should be considered a waiver of such right consistent with the pronouncement of the Supreme Court *En Banc* in the cases of *Guiani v. Sandiganbayan*¹ and *Gaas v. Mitmug*.² The said cases ruled that the accused who failed to raise the issue of speedy case disposition and instead filed their counter-affidavits are deemed to have waived their right thereto. That these cases of *Guiani* and *Gaas* should be controlling since the case of *Coscolluela v. Sandiganbayan*³ relied upon by the Court was decided only by the Second Division.

It further alleges that “probable cause” exists against all the accused, thus, the State may not be deprived outright of the opportunity to fairly indict criminals.

Two (2) separate **Comments** were filed by [1] accused Baquiran and Colobong, Jr.⁴ and [2] accused Martin, Sr., Eustaquio, Manzano and Pastor.⁵

Accused **Baquiran and Colobong, Jr.** counter that the fact-finding investigation exposed them to legal proceeding as they were required to produce documents, and interviews were conducted that created a bad impression on them in the business community. The “lackadaisical conduct of the fact-finding investigation” resulted to uncertainty that was unfair to the accused who were waiting for the results thereof. That even excluding the fact-finding investigation in computing the time of delay, the period of preliminary investigation was inordinate, especially so that specialized bodies [“Task Force Abono” and the “Special Panel for Fertilizer Fund Scam”] were created by the Ombudsman specifically for this case. That there was no acceptable reason for the total period of eleven (11) years and seven (7) months fact-finding and preliminary investigation.

They contend that the Ombudsman office “fell short” of its Constitutional mandate “to act promptly on complaints filed before them,” thus, violating their right to speedy case disposition.

Along the same line of reasoning, accused **Martin, Sr., Eustaquio, Manzano and Pastor** likewise argue against the allegations of the prosecution. The alleged delay of five (5) years and five (5) months corresponding to preliminary investigation is inconsistent with the prosecution’s earlier submission in its Consolidated Comment and/or Opposition dated July 4, 2018 that the delay was six (6) years and eleven (11) months. In whichever way to reckon the period of delay, the total investigation period of eleven (11) years and seven (7) months [fact-finding and preliminary investigation] with no

¹ GR No. 146897-917, August 6, 2002

² GR No. 165776, April 30, 2008

³ GR No. 191411, July 15, 2013

⁴ Filed on August 29, 2018

⁵ Filed on August 31, 2018

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acceptable justification is said to be vexatious. Additionally, they claim that following the prosecution's logic that the right is waived if not raised prior to the filing of counter-affidavits, they could not be expected to raise the right to speedy case disposition at the stage when preliminary investigation was still at the commencement stage. To them, the most opportune time to invoke the right is before the accused enters his or her plea. Anent the finding of probable cause, they argue that an accused's right to speedy case disposition takes precedence over the State's right to prosecute invoking the case of *Allado v. Diokno*.⁶

Ruling

As to the alleged exclusion of the fact-finding inquiry in computing the period of delay, the recent pronouncement of the Supreme Court in the case of *Magante v. Sandiganbayan*⁷ elucidates that:

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. [Emphasis supplied.]

However, while excluding the period of fact-finding inquiry, the prosecution remains to fail in providing a satisfactory explanation for the protracted period of preliminary investigation. The record⁸ shows the Field Investigation Office (FIO) Task Force Abono filed its complaint against the accused on November 28, 2011 which came up with a Resolution approved on November 29, 2016, or about five (5) years thereafter, whereas the Information was filed in Court on May 4, 2018, or after another period of about one (1) year and five (5) months.

Reiterating, this Court had squarely addressed this issue in the assailed Resolution, stating that:

On its face, the time alone spent for preliminary investigation from the time the *Special Panel for Fertilizer Scam* issued its Order on January 4, 2012 for the accused to file their Counter-Affidavits until it came up with its Resolution finding probable cause on November 11, 2016, or a period of **five (5) years and five (5) months, appears unreasonable**. This is more so considering that another period of **one (1) year and six (6) months** elapsed before the

⁶ GR No. 113630, May 5, 1994

⁷ GR No. 230950-51, July 23, 2018

⁸ Ombudsman Resolution in OMB-C-C-11-0802-L, Records, pp. 6-21

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Information was eventually filed in Court on May 4, 2018. Xxx While it is doctrinal that “a simple mathematical computation of time is not enough,” in this particular case, the total number of years consumed before the Ombudsman was able to come up with a case in Court against the accused, by itself, is “inordinate”, which simply means that it is beyond rational limits. Xxx [Emphasis supplied.]

While the prosecution invokes the alleged complexities of the Fertilizer Scam for a reason, a cursory perusal of the *Information* shows that the alleged irregularity merely pertains to the failure of the local government of Aglipay, Quirino to conduct bidding or comply with the requirements of direct contracting in the procurement of the subject equipment. Said issue does not call for the expending of a preliminary investigation period of more than five (5) years to resolve.

In its motion, the prosecution again insists that the delay is justified because of the “*meticulous documentations and verifications*” of the transactions involving the transfer, disbursement, utilization and liquidation of funds from the DBM to the alleged beneficiaries. However, it would appear from the record that the documents considered during the preliminary investigation were the same documents gathered and verified by the FIO in the course of its duty as the fact-finding arm of the Office of the Ombudsman, supplied and made available to the panel during the preliminary investigation. Hence, the alleged “meticulous documentations and verifications” does not genuinely serve to justify the delay of more than five (5) years preliminary investigation.

That the accused failed to assert their right to speedy disposition of the case at the most opportune time was already considered in the assailed Resolution, viz:

Xxxx it was the Office of the Ombudsman’s responsibility to expedite the same within the bounds of reasonable timeliness in view of its mandate to promptly act on all complaints lodged before it.”
Xxxx. Corollary thereto, the Supreme Court in *People vs. Sandiganbayan and Acot et al*, ruled:

It is the prosecution’s duty to expedite the prosecution of the case regardless of whether the petitioner did not object to the delay or that the delay was with his acquiescence provided it was not due to causes attributable to it.

The doctrine laid down in the Guiani and Gaas cases does not work fairly for the prosecution. The circumstances of those cases are distinct from this case. At any rate, as to when the right to speedy case disposition may be invoked, the case of *Magante v. Sandiganbayan*⁹ is instructive, where the Supreme Court declared:

⁹ *Magante v. Sandiganbayan*, GR No. 230950-51, July 23, 2018

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Likewise, 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 or 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 in *Angchangco*, did not file any motion before the Ombudsman to expedite the proceeding. **It is sufficient that he raised the constitutional infraction prior to his arraignment before the Sandiganbayan.** [emphasis supplied]

Finally, relative to the existence of probable cause that should not be disregarded, the same was tersely discussed in the assailed said Resolution, the pertinent portion of which is quoted as follows:

This is not to demean the State's right to prosecute, which only requires that said right be exercised with due regard to the Constitutional rights of the persons under investigation. In this case, such right was not taken away from the State which had its opportunity to investigate and prosecute the accused, except that its delay in doing so trampled upon the latter's right to speedy case disposition. In *Allado vs. Diokno*, the Supreme Court pronounced that "in the hierarchy of rights, the Bill of Rights takes precedence over the right of the State to prosecute, and when weighed against each other, the scales of justice tilt towards the former."


Nothing of substance was raised by the prosecution in the instant Motion for Reconsideration which merits a modification or change in the Resolution of July 6, 2018, hence the Court is not persuaded to reconsider.

WHEREFORE, the instant motion is DENIED.

SO ORDERED.


MARYANN E. CORPUS-MANALAC
Associate Justice

WE CONCUR:


RAFAEL R. LAGOS
Associate Justice
Chairperson


MARIA THERESA V. MENDOZA - ARCEGA
Associate Justice