



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-18-CRM-0428 and 0429**
Plaintiff, For: Violation of Sec. 3(e)
of R.A. No. 3019

- versus -

MARCELINO C. LIBANAN,
ET AL.,

Accused.

Present

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

Promulgated:

OCT 26 2018 *M*

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves the following:

1. *Motion to Dismiss with Prayer to Defer Arraignment*¹ filed by accused Necitas A. Ponferrada;
2. *Motion to Quash Information and/or Dismiss the Case*² filed by accused Jesus A. Agda;
3. *Omnibus Motion [to Quash the Information/Dismiss the case and Defer the Arraignment of the Accused]*³ filed by accused Vilma B. Bormate;

¹ Dated July 24, 2018; Record, Vol. 2, pp. 181-199

² Dated July 23, 2018; Record, Vol. 2, pp. 202-210

³ Dated August 2, 2018; Record, Vol. 2, pp. 303-529

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4. *Motion to Quash Information and/or Dismiss the Case*⁴ and *Addendum/Supplement [Re: Motion to Quash with Request for a Deferment of the Arraignment]*⁵ filed by accused Marcelino C. Libanan; and
5. *Motion to Dismiss/Quash Informations (With Prayer to Defer Arraignment and Suspend Proceedings)*⁶ filed by accused Reynaldo C. Dorado.

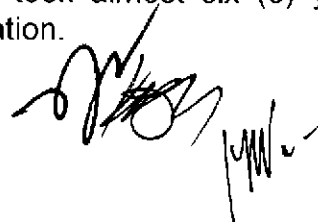
In her *Motion to Dismiss*, accused Ponferrada prays that this Court dismiss the present cases and that the scheduled arraignment be deferred pending the resolution of her Motion. She avers:

1. The following events led to the filing of the Information in the present cases:
 - a. The Office of the Ombudsman formed Task Force Abono in February 2006 to conduct the preliminary investigation on the so-called "Fertilizer Fund" scam.
 - b. On March 29, 2006, the Commission on Audit (COA) issued its Report on the Audit of the ₱728 million GMA Farm Input Fund.
 - c. On October 9, 2012, the Office of the Ombudsman executed a Complaint for Malversation and Violation of Sec. 3(e) of Republic Act No. 3019 (R.A. No. 3019) against the accused and other public officials of the Province of Eastern Samar.
 - d. In the Order dated May 3, 2013, the Office of the Ombudsman directed the respondents to file their respective counter-affidavits and supporting documents.
 - e. In the Resolution dated March 28, 2017, the Office of the Ombudsman found probable cause to charge the accused with two (2) counts of Violation of Sec. 3(e) of R.A. No. 3019.
 - f. The Information in the present cases were filed on June 22, 2018.
2. The Office of the Ombudsman took almost six (6) years to conduct the preliminary investigation.

⁴ Dated August 7, 2018; Record, Vol. 3, pp. 187-A to N

⁵ Dated August 7, 2018; Record, Vol. 3, pp. 215-223

⁶ Dated August 6, 2018; Record, Vol. 3, pp. 204-214



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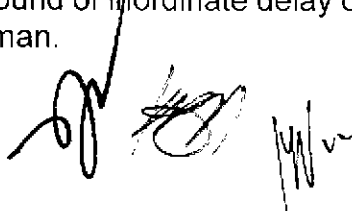
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3. The Rules of Procedure of the Office of the Ombudsman and Rule 112, Sec. 3 of the Rules of Court provide for the periods within which the preliminary investigation should be terminated.
4. The Office of the Ombudsman has not offered any explanation for the delay.
5. The present cases do not involve difficult questions of law. Moreover, the Office of the Ombudsman heavily relied on the COA Audit Report that was in its possession six (6) years prior to the execution of the Complaint.
6. The records would show that she invoked her rights to be informed of the nature and cause of the accusation against her and to due process of law when impertinent documents were attached as annexes to the Complaint. The right to due process includes the right to speedy disposition of cases, and thus, she timely raised the issue of the impropriety of the filing of the Informations.
7. The delay caused prejudice to her.
 - a. She can no longer accurately recall the details of the meetings of the BAC.
 - b. The records are no longer readily available because of several typhoons that ravished the province. The COA Audit Report indicates that no documents were submitted due to the loss of records by reason of fire.
 - c. She is presently unemployed due to the Office of the Ombudsman's suspension order in relation to the administrative aspect of the Complaint. She had to travel around 1,000 kilometers from Eastern Samar to Manila to post bail for her temporary liberty. She has to do the same to attend the proceedings before the Court.
 - d. The ignominy brought about by charges of corruption, the psychological stress of an unfounded suit, and the deprivation of financial means to sustain a litigation by reason of her suspension without pay will lead to the undue deterioration of her health.
8. The Supreme Court, in similar cases, dismissed criminal cases on the ground of inordinate delay on the part of the Office of the Ombudsman.



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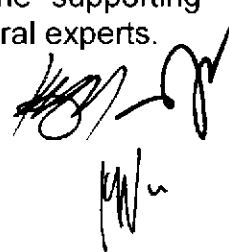
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9. In *Torres v. Sandiganbayan*,⁷ the Supreme Court emphasized that the speedy disposition of cases extends not only to the period during which preliminary investigation was conducted, but to all stages, including the fact-finding investigations conducted prior to the preliminary investigation.
10. This Court is vested with jurisdiction to dismiss the present cases.
11. As a consequence of the inordinate delay in the conduct of the preliminary investigation, the Office of the Ombudsman is deemed ousted of the authority to file the Information in the present cases.
12. The procurement was made in accordance with Republic Act No. 9184 (R.A. No. 9184).
 - a. The procurement subject of the present cases took place on March 1, 2004—barely a year after R.A. No. 9184 took effect. The Manual for Procurement Vol. 2 for goods and services, which contained the procedure for direct contracting, was released only sometime in October 2004.
 - b. At the time of the subject procurement, direct contracting was not proscribed under R.A. No. 9184, provided that it was approved by the procuring entity, and whenever justified by the conditions provided in Sec. 50 of R.A. No. 9184.
 - c. The BAC complied with said conditions.
 - d. The fund allocated by the Department of Budget and Management was intended to benefit the agricultural sector under the *Ginintuang Masaganang Ani* program to implement Republic Act No. 8435 entitled "An Act Prescribing Urgent Related Measures to Modernize the Agriculture and Fisheries Sectors of the Country in Order to Enhance Their Profitability, and Prepare Said Sectors for the Challenges of the Globalization Through an Adequate, Focused and Rational Delivery of Necessary Support Services, Appropriating Funds Therefor and for Other Purposes."⁸
 - e. She was not in a position to assail the supporting documents containing findings of agricultural experts.

⁷ G.R. Nos. 221562-69, October 5, 2016

⁸ Agriculture and Fisheries Modernization Act of 1997

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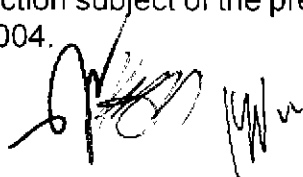
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- f. The function of the BAC was merely recommendatory, subject to the approval or disapproval of the procuring entity.
 - g. As Vice Chairperson of the BAC, she only presided at the BAC meetings in the absence of the BAC Chairperson.
 - h. The BAC resorted to the alternative mode of procurement because NBEM Fertilizer was exclusively sold or distributed by AKAME.
 - i. The documents submitted to the BAC did not appear to have patent defects on the face.
 - j. Her act of signing the pertinent BAC resolutions was done in good faith, in the regular course of the performance of her official functions.
13. The fact that her signature appears on the BAC resolution, by itself, does not prove the existence of conspiracy.
14. There is no probable cause to hold her criminally liable.
- a. Direct contracting is not proscribed by R.A. No. 9184.
 - b. She did not act with manifest partiality, evident bad faith or gross inexcusable negligence because she had no participation in the approval of the disbursement of the subject amount.
 - c. There is no evidence on record that would overturn the presumption of regularity in the performance of her official duty.
15. The constitutional mandate of the Office of the Ombudsman must be coupled with the utmost diligence to spare the elderly and the innocent from the ignominy that attaches to criminal liability.

In his *Motion*, accused Agda also prays that the Information in SB-18-CRM-0428 be quashed and/or the case be dismissed. He avers:

1. His right to speedy disposition of cases was violated because of the inordinate delay in the conduct of the preliminary investigation.
 - a. The transaction subject of the present case took place on April 15, 2004.



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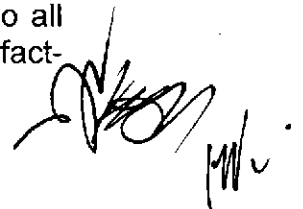
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- b. The COA conducted its investigation in 2009—around ten (10) years ago.
 - c. On March 13, 2013, the field investigation unit of the Office of the Ombudsman filed the Complaint that triggered the preliminary investigation. Said preliminary investigation was terminated only after more than five (5) years.
2. The Supreme Court dismissed a number of cases due to inordinate delay in the proceedings before the Office of the Ombudsman.
 3. The charge against him is a simple case of violation of Sec. 3(e) of R.A. No. 3019, which is the subject of the daily routine of the Office of the Ombudsman.
 4. During the pendency of the proceedings before the Office of the Ombudsman, he suffered anxiety, his memory has been substantially diminished, his freedom of locomotion and right to travel has been restricted, he could not secure clearances from various government agencies, he suffered financial drain, he was subjected to public obloquy and humiliation, his association with his friends and the public was curtailed, and he suffered sleepless nights.
 5. The allegations in the Information does not constitute an offense because it does not allege any specific act to indicate how he, in his capacity as Provincial Agriculturist, conspired with the other accused.

In her *Omnibus Motion*, accused Bormate prays that this Court (1) quash the Information in the present cases on the ground of inordinate delay; (2) dismiss the present cases; and (3) defer and suspend her arraignment pending the resolution of her Motion. She avers:

1. Her right to speedy disposition of cases was violated by the inordinate delay in the proceedings before the Office of the Ombudsman. Hence, the Informations should be quashed, and the cases dismissed.
2. The fact-finding and preliminary investigations took a protracted amount of time.
 - a. The right to speedy disposition of cases covers not only the accused in criminal proceedings, but extends to all parties in all cases. It includes the preliminary and fact-



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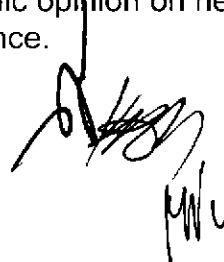
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- finding investigations conducted by the Office of the Ombudsman.
- b. The transaction subject of the present cases occurred in 2004, or more than fourteen (14) years ago.
 - c. The COA issued the relevant Audit Reports in 2006. The Office of the Ombudsman presumably obtained possession of such reports as early as 2006.
 - d. The fact-finding and preliminary investigations, which were based on said COA Audit Reports, took around twelve (12) years to conduct.
 - e. A cursory reading of the Complaint would show that the Office of the Ombudsman merely quoted and adopted the findings in the 2006 COA Report.
 - f. The preliminary investigation, which took around five (5) years to conduct, relied on the facts and evidence adopted by the Complaint, which, in turn, merely parroted the 2006 COA Report.
3. The Office of the Ombudsman failed to justify the delay.
- a. The Office of the Ombudsman has not offered any justification for the delay because there is none.
 - b. The present cases do not involve complicated factual and legal issues, or voluminous records.
 - c. In *Coscolluela v. Sandiganbayan*,⁹ it was held that the Office of the Ombudsman not only had the inherent duty to carefully go through the particulars of a case, but also, to resolve the same within the proper length of time.
 - d. In the same case, it was held that the accused had no duty to take action and inquire upon the status of the case.
4. The inordinate delay in the proceedings before the Office of the Ombudsman caused undue prejudice to her ability to present her evidence and to sustain her defenses.
- a. Not only was she haunted by the possibility of facing criminal charges. She had also been deprived of the opportunity to obviate the negative public opinion on her reputation at the earliest possible instance.

⁹ G.R. Nos. 191411 and 191871, July 15, 2013

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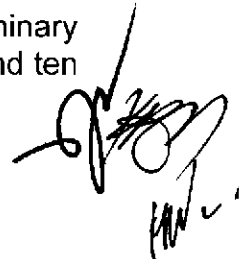
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- b. She no longer has custody or access to the documents needed for her defense because said documents were among those destroyed when the office building of the Department of Agriculture Regional Field Unit No. 8 (DA RFU VIII) was razed by fire on December 20, 2004.
- c. The COA, in the 2006 Audit Report, noted that there were no available documents pertaining to the subject transaction, and made no finding on the illegality, irregularity or impropriety of said transaction.
- d. *The Rules and Regulations Governing the Management of Public Records and Archives Administration* provide for the authorized retention period of one (1) year or five (5) years from contract termination or settlement for Bids and Awards Committee documents.
- e. Since the subject procurement occurred around fourteen (14) years ago, she cannot expect the Provincial Government to maintain custody of the documents needed for her defense.

In his *Motion*, accused Libanan similarly prays for the quashal of the Information in SB-18-CRM-0428 and/or the dismissal of the case. He avers:

1. The complaint was filed on March 5, 2013, around nine (9) years from the time the DBM issued the SARO of ₱728 million on February 3, 2004.
2. He received the order directing him to submit his counter-affidavit only on April 10, 2014, or after more than a year from the filing of the complaint.
3. The Office of the Ombudsman issued its Resolution on March 28, 2017, or four (4) years and twenty-three (23) days from the filing of the complaint on March 5, 2013.
4. He filed his motion for reconsideration of said Resolution within the five (5) day period but the order which denied the accused' motions for reconsideration appears to have been prepared only on October 19, 2017.
5. The Information in SB-18-CRM-0428 was filed with the Court five (5) years, three (3) months and seventeen (17) days from the filing of the FIO's complaint.
6. Combining the time spent for the fact-finding and preliminary investigations, it took the Office of the Ombudsman around ten



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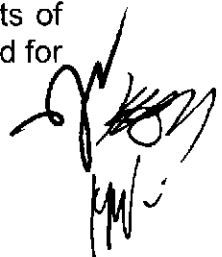
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(10) years to resolve a simple case of violation of Sec. 3(e) of R.A. No. 3019.

7. Over the years, his recollection of the events was affected; witnesses and documentary evidence for his defense are no longer available; he was subjected to public obloquy and humiliation, he was disenchanted from his friends and relatives, and his constituents, his freedom of locomotion was impaired, he could not secure clearances; and he experienced financial drain in securing the services of counsel.
8. The Office of the Ombudsman failed to justify the delay. The usual allegations of having to undergo levels of review, the authentication of documents, and the balance rule, had been rejected by the Supreme Court.
9. In *People v. Sandiganbayan, Jesnar Falcon and Paul Jed Falcon*,¹⁰ the Supreme Court held that a delay of three (3) years in the preliminary investigation is not justified.
10. In *Torres v. Sandiganbayan*, it was held that the fact-finding investigation conducted by administrative bodies such as the COA and the Field Investigation Office (FIO) are included in the computation of delay.
11. The facts charged in the Information do not constitute an offense.
 - a. The Information narrates conclusions of law.
 - b. The Information alleges:
 - i. that 2,164 bags of NBEM-21 was purchased from AKAME for ₱3,246,000.00 without public bidding;
 - ii. that there was a resort to direct contracting without valid justification and without conducting a canvass for a suitable substitute brand;
 - iii. that AKAME was not registered with the Fertilizer and Pesticide Authority (FPA); and
 - iv. that NBEM-21 was not registered with the FPA, all in violation of R.A. 9184.
 - c. No specific act was attributed to him.
 - d. An Information that fails the sufficiency requirements of Rule 110, Sec. 8 of the Rules of Court is null and void for

¹⁰ G.R. Nos. 231469-70, August 2, 2017



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being violative of the accused' right to be informed of the nature and cause of the accusation.

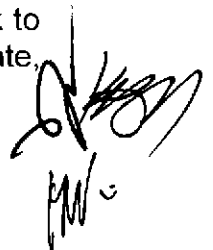
- e. Not even a bill of particulars could remedy the defects in the Informations.

In his *Addendum/Supplement*, accused Libanan reiterates his arguments in his Motion and further argues:

1. In *Torres v. Sandiganbayan*, the Supreme Court held that the period spent in the fact-finding investigation is included in the computation of inordinate delay.
2. Assuming that there is a later ruling that abandons *Torres*, it has no retroactive application. His right to invoke established precedents cannot be disregarded without running afoul of constitutional proscriptions.
3. The prosecution has access to the records, and could determine the exact date the FIO started its fact-finding investigation. Its silence on these matters constitute admission by silence.

In his *Motion*, accused Dorado prays that this Court (1) dismiss the present cases on the ground of violation of his right to speedy disposition of cases; (2) lift and set aside the hold departure order issued against him and release the cash bond he posted; and (3) defer his arraignment pending the resolution of his Motion. He avers:

1. Task Force Abono of the Office of the Ombudsman commenced the fact-finding investigation on the alleged irregularities in the subject transaction as early as 2006.
2. The Complaint was filed after more than six (6) years from the commencement of the fact-finding investigation.
3. The Information in the present cases was filed on June 22, 2018, or five (5) years and eight (8) months from the execution of the Complaint on October 9, 2012.
4. It took the Office of the Ombudsman a total of eleven (11) years and eight (8) months to conclude the preliminary investigation.
5. Under Sec. 3(f) of Rule 112 of the Rules of Court, the investigating officer shall resolve the case within ten (10) days from the conclusion of the investigation.
6. The period of eleven (11) years and eight (8) months it took to complete the preliminary investigation constitutes inordinate.



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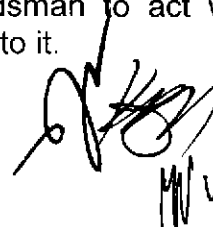
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vexatious, capricious and oppressive delays which violated his right to speedy disposition of cases.

7. Even if the six (6)-year period for the fact-finding investigation is not counted, the preliminary investigation, which took five (5) years and eight (8) months, is still inordinate, oppressive and unreasonable.
8. There is no valid justification for the delay.
 - a. The present cases for two (2) counts of violation of Sec. 3(e) of R.A. No. 3019 involve two (2) transactions which occurred in April 2004 in connection with the procurement of 4,328 bags of NBEM-21 from Akame Marketing International.
 - b. The present cases do not involve complex issues or voluminous records.
 - c. There is no reason why it had to take an inordinate amount of time just to verify the signatures of the accused on the various documents involved.
 - d. Considering the lengthy fact-finding investigation, there is nothing that would warrant the delay in the preliminary investigation of the Complaint.
9. He is deemed to have timely asserted his right to speedy disposition of cases when he filed his instant *Motion to Dismiss/Quash Information*. Said Motion may be filed at any time before arraignment.
10. In *Coscolluela v. Sandiganbayan*, the Supreme Court held that the respondents in a preliminary investigation are not required to follow-up on the prosecution of their cases.
11. The delay in the present cases caused psychological, physical and financial prejudice.
 - a. He suffered anxiety, hostility, additional expenses and restrictions on his person and well-being.
 - b. His defense has been impaired because he can no longer retrieve records or call upon witnesses. Furthermore, possible witnesses may no longer be able to accurately recall the events of the past.
12. It is the duty of the Office of the Ombudsman to act with reasonable dispatch on the cases entrusted to it.



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In their *Manifestation to Adopt the Motion to Quash Information and/or Dismiss the Case Filed by Accused Marcelino Chicano Libanan*,¹¹ accused Clotilde J. Salazar, Manuel B. Japzon, Vener T. Dulfo and Samson C. Nervez adopted accused Libanan's *Motion to Quash Information and/or Dismiss the Case*. They further argue:

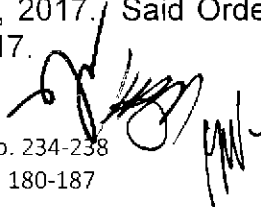
1. Assuming that the reckoning point in determining whether there was inordinate delay is from the filing of the Complaint dated October 9, 2012, the fact that the preliminary investigation took more than five (5) years to complete constitutes violation of their rights to due process and to speedy disposition of cases.
2. The records would bear out that they were always prompt in filing their pleadings.
3. They are not unaware of the workload of the Office of the Ombudsman. However, they are also aware 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.
4. As a result of the charges, they were, and are, being subjected to public ridicule.
5. The Office of the Ombudsman's violation of their right to speedy disposition of cases is akin to grave abuse of discretion amounting to lack or excess of jurisdiction.

In its *Consolidated Comment/Opposition*¹² (to the respective motions of accused Agda and Ponferrada), the prosecution counters:

1. There was no violation of accused Agda and Ponferrada's right to speedy disposition of cases.
 - a. As opposed to said accused' claim that it took the Office of the Ombudsman more than five (5) years from the filing of the complaint to complete the preliminary investigation, it actually took only four (4) years, two (2) months and ten (10) days.
 - b. After the approval of the Resolution dated March 28, 2017, the accused filed their respective motions for reconsideration, and the same were denied in the Order dated October 19, 2017. Said Order was approved on November 24, 2017.

¹¹ Dated August 13, 2018; Record, Vol. 3, pp. 234-238

¹² Dated August 3, 2018; Record, Vol. 3, pp. 180-187



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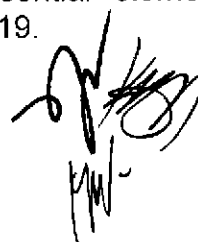
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- c. The present cases arose from the ₱728 million Fertilizer Fund anomaly which resulted in the filing of numerous cases, each case requiring a careful scrutiny of the records before being approved by the Ombudsman.
 - d. Said accused failed to show that they suffered prejudice tantamount to a deprivation of the right to speedy disposition of cases.
 - e. In *Spouses Uy v. Adriano*,¹³ it was held that the claim of prejudice must have some conclusive factual basis, and not based on mere conjecture.
 - f. Anxiety typically accompanies a criminal charge. To constitute prejudice in the context of the right to speedy disposition of cases, such anxiety must be of such nature and degree that it becomes oppressive, unnecessary and notoriously disproportionate to the nature of the criminal charge.
 - g. Said accused' claim of the impairment of their defense is based on mere conjecture.
 - h. Accused Agda and Ponferrada failed to show that the filing of the complaint and the Informations were for the purpose of harassing them.
 - i. The protection under the right to speedy disposition of cases should not operate as to deprive the State of its inherent prerogative to prosecute criminal cases, provided that such prosecution is not barred by the statute of limitations.
 - j. The present cases were filed within the prescriptive period as provided in R.A. No. 3019, as amended.
2. The Informations are sufficient in form and substance.
- a. The test in determining the adequacy of the averments in an Information is whether the facts alleged, if hypothetically admitted, would establish the essential elements of the crime. Matters extrinsic or evidence *aliunde* should not be considered.
 - b. The allegations in both Informations, if hypothetically admitted, would establish the essential elements of violation of Sec. 3(e) of R.A. No. 3019.

¹³ G.R. No. 159098, October 27, 2006



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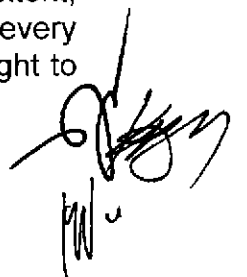
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- c. Accused Ponferrada's other arguments are matters of defense, which should be presented and heard during trial.

In its *Consolidated Comment/Opposition*¹⁴ (to the respective motions of accused Libanan, Bormate and Dorado), the prosecution counters:

1. The period devoted for fact-finding investigation should not be included in the determination of inordinate delay. The period that should be considered starts from the filing of the formal complaint until the filing of the Information with the court.
 - a. The fact-finding investigation may be characterized as an inquisitorial process. The persons subject of the inquiry are not informed of the possible charges against them because such investigation is confidential and non-adversarial in nature.
 - b. The preliminary investigation begins upon the filing of formal charges. It is at this stage where particular respondents are identified.
2. In determining if there was a violation of the right to speedy disposition of cases, the Court must consider the four (4) factors in the balancing test, namely (a) length of delay; (b) reason for the delay; (c) the defendant's assertion of the right; and (d) prejudice to the defendant.
3. The present cases arose from the ₱728 million Fertilizer Fund anomaly which resulted in the filing of numerous cases, each case requiring a careful scrutiny of the records before being approved by the Ombudsman.
4. Considering the complexity of the entire process and the volume of documents involved, the delay cannot be characterized as vexatious, capricious and oppressive.
5. The protection under the right to speedy disposition of cases should not operate as to deprive the State of its inherent prerogative to prosecute criminal cases, provided that such prosecution is not barred by the statute of limitations.
6. An accused in a criminal case tends to suffer, to a certain extent, stress, anxiety and some injury to the reputation. Not every claim of anxiety will be tantamount to a violation of the right to

¹⁴ Dated August 16, 2018; Record, Vol. 3, pp. 273-280



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speedy disposition of cases. The anxiety must be of such nature and degree that it becomes oppressive, unnecessary and notoriously disproportionate to the nature of the criminal charge.

7. It was not shown that the accused were significantly deprived of their liberty, or that their ability to defend themselves has been impaired.
8. The accused' claim that their defense has been impaired is based on mere conjecture.
9. Informations are sufficient in form and substance.
 - a. The test in determining the adequacy of the averments in an Information is whether the facts alleged, if hypothetically admitted, would establish the essential elements of the crime. Matters extrinsic or evidence *aliunde* should not be considered.
 - b. The allegations in both Informations, if hypothetically admitted, would establish the essential elements of violation of Sec. 3(e) of R.A. No. 3019.

THE COURT'S RULING

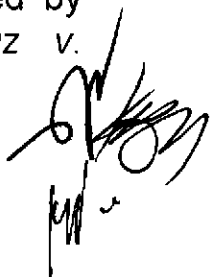
The Court resolves to deny the respective motions of the accused.

A. Right to speedy disposition of cases

The right to speedy disposition of cases is enshrined in Art. III, Sec. 16 of the Constitution, which reads:

Sec. 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

It bears stressing that the right to speedy disposition of cases is not violated by the mere fact that there was delay in the proceedings. Such right is violated only when the proceedings are attended by vexatious, capricious and oppressive delays. In *Corpuz v.*



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Sandiganbayan,¹⁵ the Supreme Court discussed the purpose of such right as follows:

The right of the accused to a speedy trial and to a speedy disposition of the case against him was designed to prevent the oppression of the citizen by holding criminal prosecution suspended over him for an indefinite time, and to prevent delays in the administration of justice by mandating the courts to proceed with reasonable dispatch in the trial of criminal cases. Such right to a speedy trial and a speedy disposition of a case is violated only when the proceeding is attended by vexatious, capricious and oppressive delays. The inquiry as to whether or not an accused has been denied such right is not susceptible by precise qualification. The concept of a speedy disposition is a relative term and must necessarily be a flexible concept.

While justice is administered with dispatch, the essential ingredient is orderly, expeditious and not mere speed. It cannot be definitely said how long is too long in a system where justice is supposed to be swift, but deliberate. It is consistent with delays and depends upon circumstances. It secures rights to the accused, but it does not preclude the rights of public justice. Also, it must be borne in mind that the rights given to the accused by the Constitution and the Rules of Court are shields, not weapons; hence, courts are to give meaning to that intent.

Because speedy disposition is a flexible concept, the determination of whether delays are inordinate cannot be based on a mere mathematical reckoning of time. Hence, the Supreme Court adopted the balancing test, which weighs the conduct of both the prosecution and the defendant, in determining if there is a violation of the right to speedy disposition of cases. The balancing test considers the length of delay, the reasons for such delay, the assertion or failure to assert the right by the accused, the prejudice caused by the delay, as well as other relevant facts and circumstances peculiar to each case.¹⁶

In the recent case of *Cagang v. Sandiganbayan*,¹⁷ the Supreme Court further refined the framework for determining whether the delay is inordinate as thus:

To summarize, inordinate delay in the resolution and termination of preliminary investigation violates the accused's right

¹⁵ G.R. No. 162214, November 11, 2004

¹⁶ Please see *Perez v. People*, G.R. No. 164763, February 12, 2008

¹⁷ Decided by the Supreme Court *en banc*; G.R. Nos. 206438, 206458, and 210141-42, July 31, 2018

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to due process and the speedy disposition of cases, and may result in the dismissal of the case against the accused. The burden of proving delay depends on whether delay is alleged within the periods provided by law or procedural rules. If the delay is alleged to have occurred during the given periods, the burden is on the respondent or the accused to prove that the delay was inordinate. If the delay is alleged to have occurred beyond the given periods, the burden shifts to the prosecution to prove that the delay was reasonable under the circumstances and that no prejudice was suffered by the accused as a result of the delay.

The determination of whether the delay was inordinate is not through mere mathematical reckoning but through the examination of the facts and circumstances surrounding the case. Courts should appraise a reasonable period from the point of view of how much time a competent and independent public officer would need in relation to the complexity of a given case. If there has been delay, the prosecution must be able to satisfactorily explain the reasons for such delay and that no prejudice was suffered by the accused as a result. The timely invocation of the accused's constitutional rights must also be examined on a case-to case basis.

Using such framework, this Court will now determine whether the delay in the proceedings before the Office of the Ombudsman is inordinate.

From an examination of the records, the respective motions of the accused, and the prosecution's comment/opposition, it can be gleaned that the present cases arose from the investigation on the so-called Fertilizer Fund Scam conducted by Task Force Abono sometime in 2006. The Field Investigation Office (FIO) of the Office of the Ombudsman filed the Complaint¹⁸ with the Office of the Ombudsman on March 5, 2013.¹⁹ The Resolution²⁰ finding probable cause to charge the accused with two (2) counts of violation of Sec. 3(e) of R.A. No. 3019 was approved by the Ombudsman on May 15, 2017. After the accused filed their respective motions for reconsideration, the Order²¹ denying the same was approved on November 24, 2017. The Information in the present cases were thereafter filed on June 22, 2018.

The point of reckoning for cases which resulted from *motu proprio* investigations conducted by the Office of the Ombudsman is the filing of a formal complaint by the Field Investigation Office of the Office of

¹⁸ Dated October 9, 2012; Record, Vol. 1, pp. 39-56

¹⁹ Consolidated Comment/Opposition dated August 16, 2018, p. 3; Record, Vol. 3, p. 275

²⁰ Dated March 28, 2017; Record, Vol. 1, pp. 16-29

²¹ Dated October 19, 2017; Record, Vol. 1, pp. 31-37

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the Ombudsman.²² In the present cases, the point of reckoning from which the delay will be counted is March 5, 2013. The Resolution finding probable cause to indict the accused in court was approved on May 15, 2017, or around four (4) years and two (2) months from the filing of the FIO's Complaint.

Under the *Rules of Procedure of the Office of the Ombudsman*, the preliminary investigation shall be conducted in the manner prescribed in Rule 112, Sec. 3 of the Rules of Court.²³ Sec. 3 of Rule 112, in turn, provides:

Sec. 3. Procedure. – The preliminary investigation shall be conducted in the following manner:

(a) x x x

(b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he finds no ground to continue with the investigation, or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents.

x x x

(c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. x x x

(d) If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the ten (10) day period, the investigating officer shall resolve the complaint based on the evidence presented by the complainant.

x x x

(f) Within ten (10) days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial.

It is apparent that the actual time it took the Office of the Ombudsman to conduct the preliminary investigation is beyond the

²² *Magante v. Sandiganbayan*, G.R. Nos. 230950-51, July 23, 2018; *Cagang v. Sandiganbayan*, G.R. Nos. 206438, 206458, and 210141-42, July 31, 2018

²³ **Rule II, Sec. 4. Procedure.** – The preliminary investigation of cases falling under the jurisdiction of the Sandiganbayan and Regional Trial Courts shall be conducted in the manner prescribed in Section 3, Rule 112 of the Rules of Court, subject to the following provisions: x x x

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periods provided in Rule 112, Sec. 3 of the Rules of Court. The burden of proving that the delay was reasonable, and that the accused suffered no prejudice as a result of the delay, now shifts to the prosecution.

According to the prosecution, the delay in the conduct of the preliminary investigation is reasonable because the present cases required a thorough review before being approved by the Ombudsman. Furthermore, the prejudice the accused claim to have suffered is based on mere conjecture and not caused by the delay, but rather, incidental to the filing of criminal charges against them. This Court is inclined to agree.

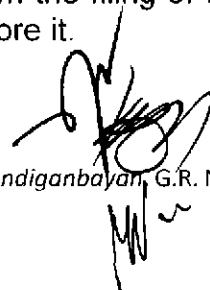
This Court notes that although the Informations in the present cases were only for two (2) counts of violation of Sec. 3(e) of R.A. No. 3019, the FIO's Complaint involved fifteen (15) respondents, and criminal charges for Malversation, violation of Sec. 3(e) of R.A. No. 3019, Malversation through Falsification of Public Documents, and administrative charges for Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service. In resolving the Complaint before it, the Office of the Ombudsman had to evaluate the Complaint and the supporting documents. Considering the accused' right to due process, the Office of the Ombudsman had to give them the opportunity to file their respective counter-affidavits, and thereafter, evaluate said counter-affidavits, before resolving the Complaint.

This must be considered together with the steady stream of cases reaching the Office of the Ombudsman.²⁴ In the more recent case of *People v. Sandiganbayan*,²⁵ the Supreme Court, again, took judicial notice of such fact, and held that the workload of the Office of the Ombudsman should be taken into consideration in determining if the right to speedy disposition of cases was violated. *viz.:*

At this juncture, this Court takes judicial notice of the fact that these cases are not the only ones pending before the OMB. As can be gleaned from the assailed resolutions, these circumstances were not considered by the court *a quo* as it, evidently, merely ventured into a mathematical computation of the period from the filing of the First Complaint to the filing of the Informations before it.

²⁴ *Dansal v. Fernandez*, G.R. No. 126814, March 2, 2000; *Mendoza-Ong v. Sandiganbayan*, G.R. Nos. 146368-69, October 18, 2004

²⁵ G.R. Nos. 232197-98, April 16, 2018



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It is relevant to note that while procedural periods to act upon complaints and motions are set by the rules, these may not be absolute. The law and jurisprudence allow certain exceptions thereto as this Court and the law recognizes the fact that judicial, as well as investigatory, proceedings do not exist in a vacuum and must contend with the realities of everyday life. It bears stressing that in spite of the prescribed periods, jurisprudence continues to adopt the view that the fundamentally recognized principle is that the concept of speedy trial, or speedy disposition of cases for that matter, is a relative term and must necessarily be a flexible concept.

(underscoring supplied)

Also considering that there is no indication that the cases against the accused were instituted for the purpose of harassing them, or for some other malicious motive, this Court finds that the time it took to conduct the preliminary investigation is not unreasonable.

Next, the Supreme Court, in *Corpuz v. Sandiganbayan*,²⁶ recognized that delay in the proceedings may cause prejudice not only to the accused, but also to the government, which has the burden of proving its case beyond reasonable doubt. However, prejudice, as contemplated in the right to speedy disposition of cases, must be serious, and beyond that which ensued from ordinary and inevitable delay. *viz.:*

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) that there was no more delay than is reasonably attributable to the ordinary processes of justice.

As discussed earlier, the delay in the conduct of the preliminary investigation is not unreasonable, considering the circumstances. Undeniably, the accused suffered some form of prejudice. However, such prejudice does not appear to have been caused by inordinate delay.

²⁶ *Supra*. Note 15

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According to accused Ponferrada and Bormate, the loss of the pertinent documents was caused by fire that razed the building where the documents were stored, and the typhoons that ravaged the province. Such loss could have happened whether or not there was delay. On the other hand, the accused may suffer anxiety, humiliation, financial strain, and the like by reason of criminal charges against them—with or without inordinate delay. Finally, the impairment of the accused' defense may be caused by inordinate delay. However, the same can also be a result of the mere passage of time, even in the absence of inordinate delay. The prescriptive period of violation of Sec. 3(e) of R.A. No. 3019 is fifteen (15) years.²⁷ Had the formal complaint been filed near the end of such period, the result would have been the same.

At any rate, the accused appear to have waived their right to speedy disposition of cases by their failure to assert the same at the earliest opportunity.

*Cagang*²⁸ teaches that the right to speedy disposition of cases must be invoked once the delay has already become prejudicial. The failure to invoke such right constitutes a valid waiver thereof. To wit:

The right to speedy disposition of cases, however, is invoked by a respondent to any type of proceeding once delay has already become *prejudicial* to the respondent. The invocation of the constitutional right does not require a threat to the right to liberty. Loss of employment or compensation may already be considered as sufficient to invoke the right. Thus, waiver of the right does not necessarily require that the respondent has already been subjected to the rigors of criminal prosecution. The failure of the respondent to invoke the right even when or she has already suffered or will suffer the consequences of delay constitutes a valid waiver of that right.

(underscoring supplied)

An examination of the accused' respective counter-affidavits²⁹ would show that they acknowledged that the transactions occurred around ten (10) years ago, and they invoked their right to be informed of the nature and cause of the accusation against them, but there was no assertion of their right to speedy disposition of cases. Considering

²⁷ Prior to the effectivity of Republic Act No. 10910 (2016), which increased the period to twenty (20) years.

²⁸ *Supra*. Note 17

²⁹ Record, Vol. 2, pp. 53-59 (accused Dulfo); pp. 60-66 (accused Japzon); pp. 67-73 (accused Bormate); pp. 74-84 (accused Ponferrada); pp. 85-91 (accused Salazar); pp. 92-96 (accused Libanan); pp. 97-104 (accused Agda); pp. 105-113 (accused Nervez); and pp. 114-121 (accused Dorado)

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that the accused decry the protracted fact-finding investigation, claiming that they could no longer accurately recall the events, and that evidence for their defense is no longer available because of the lapse of time from the occurrence of the subject transactions, they should have asserted their right to speedy disposition of cases when they filed their respective counter-affidavits.

After the accused filed their respective counter-affidavits, it does not appear that they asserted their right, and were content to let the case run its course. They were well-aware that there was a case against them, considering that they filed their respective counter-affidavits. They could not have been unaware that the preliminary investigation was still ongoing because they would have received notice of the termination of the preliminary investigation, whatever the result.³⁰

This Court further notes that after the approval of the Resolution dated March 28, 2017, only accused Libanan asserted his right to speedy disposition of cases, but only in his Supplemental Motion for Reconsideration—³¹ after an adverse finding in the Office of the Ombudsman's Resolution, and after he presumably filed his motion for reconsideration of said Resolution. The foregoing leads to the conclusion that the accused acquiesced to the delay.

In fine, the Court finds that there was no violation of the accused' right to speedy disposition of cases.

B. Sufficiency of the Information

Accused Agda and Libanan argue that the facts charged in the Information do not constitute an offense because no specific acts are attributed to them. This Court is not persuaded.

In resolving a motion to quash on the ground that the facts charged do not constitute an offense,³² the Court need not go beyond the four corners of the Information. In *People v. Sandiganbayan*,³³ the

³⁰ *Rules of Procedure of the Office of the Ombudsman. Rule II, Sec. 6. Notice to parties.* – The parties shall be served with a copy of the resolution as finally approved by the Ombudsman or by the proper Deputy Ombudsman.

³¹ Record, p. 33

³² *Rules of Court. Rule 117, Sec. 3(a)*

³³ G.R. No. 160619, September 9, 2015

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Supreme Court stated the three (3) matters that the Court must look into in resolving a motion to quash on such ground. To wit:

A motion to quash an Information on the ground that the facts charged do not constitute an offense should be resolved on the basis of the allegations in the Information whose truth and veracity are hypothetically admitted. The question that must be answered is whether such allegations are sufficient to establish the element of the crime charged without considering matters *aliunde*. In proceeding to resolve this issue, courts must look into three matters: (1) what must be alleged in a valid Information; (2) what the elements of the crime charged are; and (3) whether these elements are sufficiently stated in the Information.

(underscoring supplied)

Rule 110, Sec. 6 of the Rules of Court provides for the contents of a sufficient Information. *viz.*:

Sec. 6. Sufficiency of complaint or information. – A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

When an offense is committed by more than one person, all of them shall be included in the complaint or information.

Furthermore, an Information need only allege the ultimate facts constituting the offense charged and not the finer details of why and how the crime was committed.³⁴

The elements of violation of Sec. 3(e) of R.A. No. 3019 are as follows:

1. That the accused must be a public officer discharging administrative, judicial, or official functions (or a private individual acting in conspiracy with such public officers);
2. That he [or she] acted with manifest partiality, evident bad faith, or inexcusable negligence; and
3. That his [or her] action caused any undue injury to any party, including the government, or giving any private party

³⁴ *People v. Sandiganbayan*, G.R. No. 160619, September 9, 2015

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unwarranted benefits, advantage, or preference in the discharge of his [or her] functions.³⁵

The Information in SB-18-CRM-0428 alleges:

1. x x x, accused MARCELINO CHICANO LIBANAN and CLOTILDE JAPZON SALAZAR, both high ranking public officers, being then the Congressman for the Lone District of Eastern Samar and Governor of the Province of Eastern Samar, respectively, JESUS A. AGDA, VENER TABUENA DULFO, VILMA BANZON BORMATE, NECISTAS AÑOSA PONFERRADA, SAMSON CHUA NERVEZ, REYNALDO C. DORADO, and MANUEL BANTAY JAPZON, being the Provincial Agriculturist, Provincial Accountant, Provincial General Services Officer and Chairman, Bids and Awards Committee (BAC) Officer-In-Charge Provincial Administrator and BAC Vice Chairman, Project Development Officer IV and BAC member, Executive Assistant II and BAC member, and BAC member, respectively, all of the Provincial Government of Eastern Samar, committing the offense in relation to their office and taking advantage of their respective official positions, x x x, conspiring and confederating with one another and with accused EDILBERTO L. APOSTOL, CECILIA APOSTOL and MARY JANE FABIAN, General Manager/ Owner and representatives, respectively of AKAME Marketing International, x x x
2. x x x, acting with manifest partiality, evident bad faith or gross inexcusable negligence, x x x, by purchasing 2,164 bags of NBEM-21 Microbial Inoculant and Soil Activator (NBEM 21) from AKAME in the amount of Three Million Two Hundred and Forty Six Thousand Pesos (PhP3,246,000.00) without the benefit of public bidding and with the following attendant irregularities: (a) by resorting to direct contracting without valid justification and without conducting any canvass for a suitable substitute of NBEM 21; (b) AKAME Marketing International is not registered with the Fertilizer and Pesticide Authority (FPA); and (c) NBEM 21 is not registered with the FPA, all in violation of R.A. No. 9184 (The Government Procurement Reform Act) and existing rules and regulations, and by causing and/or facilitating of the payment in favor of AKAME despite the said irregularities, x x x
3. did then and there willfully, unlawfully, and criminally, give unwarranted benefits, advantage and preference to AKAME Marketing International, and/or accused EDILBERTO L.

³⁵ *Fuentes v. People*, G.R. No. 186421, April 17, 2017

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APOSTOL, CECILIA APOSTOL and MARY JANE FABIAN, x x
x, to the damage and prejudice of the government.

The Information in SB-18-CRM-0429 is similarly worded, except for (1) the date of the alleged commission of the offense; (2) accused Libanan and Agda are not included; and (3) instead of accused Cecilia Apostol, accused Kevin Ed O. Apostol is included in the charge.

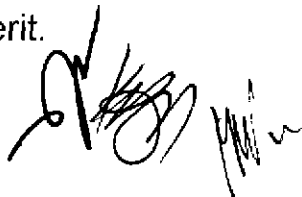
This Court finds that the Information in the present cases sufficiently allege the facts constituting the elements of violation of Sec. 3(e) of R.A. No. 3019. In a nutshell, the Informations allege that the accused public officers, committing the offense in relation to their office and taking advantage of their respective official positions, conspiring with one another, and with accused private individuals, acted with manifest partiality, evident bad faith or gross inexcusable negligence by purchasing NBEM-21 from AKAME without public bidding and with the attendant irregularities, and caused the giving of unwarranted benefits, advantage and preference to AKAME Marketing International and/or accused private individuals, and damage and prejudice to the government.

The specific acts performed by each of the accused are evidentiary, or constitute the finer details of why and how the accused allegedly committed two (2) counts of violation of Sec. 3(e) of R.A. No. 3019.

The rest of the accused' arguments are matters of evidence which are better threshed out in a full-blown trial.

WHEREFORE, the Court rules as follows:

1. Accused Ponferrada's *Motion to Dismiss* is hereby DENIED for lack of merit.
2. Accused Agda's *Motion to Quash Information and/or Dismiss the Case* is hereby DENIED for lack of merit.
3. Accused Bormate's *Omnibus Motion* is hereby DENIED for lack of merit.



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4. Accused Libanan's *Motion to Quash Information and/or Dismiss the Case and Addendum/Supplement* are hereby DENIED for lack of merit.

5. Accused Dorado's *Motion to Dismiss/Quash Informations* is hereby DENIED for lack of merit.

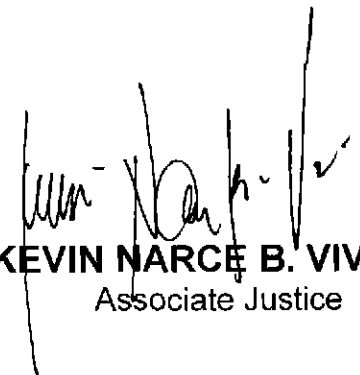
6. Accused Salazar, Japzon, Dulfo and Nervez's *Motion to Quash Information and/or Dismiss the Case* is hereby DENIED for lack of merit.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
Associate Justice