REPUBLIC OF THE PHILIPPINES

Sandiganbayan

QUEZON CITY

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff*,	**SB-18-CRM-0447 to 0448**
– versus –	For: Violations of section 3(e) of Rep. Act No. 3019
HUSSIN U. AMIN, NEDRA S. BURAHAN, OSCAR O. PARAWAN, SAMUEL M. SIMBAJON, MA. PERLICE SOCORRO G. JULIAN, and ADBULGAMAR J. INGUI, *Accused.*	
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PEOPLE OF THE PHILIPPINES, *Plaintiff*,	**SB-18-CRM-0449**
– versus –	For: Violation of section 3(e) of Rep. Act No. 3019
HUSSIN U. AMIN, NEDRA S. BURAHAN, OSCAR O. PARAWAN, ABUNDIO E. BERNARDO JR., MA. PERLICE SOCORRO G. JULIAN, and ADBULGAMAR J. INGUI, *Accused.*	Present: LAGOS, *J.*, Chairperson, MENDOZA-ARCEGA, and CORPUS-MAÑALAC, *JJ.* Promulgated: October 25, 2018
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RESOLUTION

LAGOS, *J.*:

This treats of the separate motions for reconsideration of the Court's resolution dated 6 September 2018 of: (i) accused Bernardo,

Julian, Parawan, and Simbajon;[1] and (ii) accused Burahan.[2] The prosecution filed its written opposition to these motions.[3]

Accused Bernardo, Julian, Parawan, and Simbajon argue for the inclusion of the period for fact-finding investigation in determining whether there was inordinate delay in the filing of these cases. The COA report and the Senate Blue Ribbon Committee identified and discussed the liabilities of officials. Accused Parawan in fact was invited to the Senate investigation. This shows he was already subjected to an adversarial proceeding.

For them, the ruling in *Magante v. Sandiganbayan*[4] (*Magante*) should not be applied to a transaction that has been publicly brought to the attention of the Ombudsman. This will allow the Ombudsman to delay the filing of cases and defeat its mandate to promptly act on all complaints.

They argue additionally that, considering the circumstances of the case, the delay in the preliminary investigation was inordinate. The FIO Task Force Abono already stated that it conducted separate investigations into the SARO proponents and it eventually filed related complaints against various officials. From the time it started doing so in 2011, the "Sword of Damocles" has already hanged over herein accused.

Accused Parawan also insists that the prosecution committed forum-shopping since the subject matter of these present cases are the same as in SB-11-CRM-0092.

Accused Burahan states that the circumstances and complexities of these cases should be considered. To require her to present her defenses after the lapse of 12 years violates her right to due process and speedy disposition of her cases.

She argues that the ruling in *Magante* and *Cagang v. Sandiganbayan*[5] (*Cagang*) should be applied prospectively, invoking the principle of *lex prospicit, non respicit*, which mandates a prospective application of laws. She cites articles 4 and 8 of the Civil Code.

She adds that the delay in the preliminary investigation is still unjustified. To her, there was no plausible reason to justify the long

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1 Dated 24 September 2018.
2 Dated 24 September 2018.
3 Dated 10 October 2018
4 G.R. Nos. 230950-51, 23 July 2018.
5 G.R. Nos. 206438, 206458 and 210141-42, 31 July 2018.

delay in terminating the preliminary investigation. She claims that she suffered prejudice as a result of the delay. The prejudice she identifies as applicable to her are the ones found in *Coscolluela v. Sandiganbayan*.[6]

Finally, she laments that the Office of the Ombudsman has not set period for the conduct of its fact-finding investigation and preliminary investigation. These investigations are thus susceptible to abuse and is being used to cause injustice to her.

The prosecution, in its opposition, argues that the issues raised by the accused-movants are reiterations of their denied motions. It also argues that article 4 of the Civil Code refers to only to laws and that article 8's retroactivity does not cover the cases. The *Magante* and *Cagang* cases merely provided different interpretations of the reckoning period regarding speedy disposition of cases.

DISCUSSION and RULING

The motions for reconsideration lack merit.

At the outset, the Court notes that the motions for reconsideration appear to have been filed out of time.[7] Be that as it may, in the interest of justice, the Court shall proceed to entertain the motions and resolve the arguments raised therein.

The Court has already passed upon the arguments raised anew by the accused-movants. They have not raised any new or substantial argument to warrant a reversal of the assailed resolution.

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

7 In the hearing on 14 September 2018 (Records, Vol. 2, p. 44), the accused-movants were given an extended period of ten (10) days from receipt of the assailed resolution, within which to file their motions for reconsideration.

Accused Parawan, Julian, Simbajon and Bernardo, through counsel, were served with a copy of the resolution on 14 September 2018 (see Records, Vol. 2, p. 41 and dorsal side thereof for the return filed by the process server.) Thus, they had until 24 September 2018 to file their motion. But the motion was filed by private courier only on 25 September 2018. It has been settled that when a pleading is filed by private courier, it is the date of receipt by the court that is deemed its filing date and not its deposit to the private courier (see *PNB v. CIR*, G.R. No. 172458, 14 December 2011).

Accused Burahan avers in her motion, which was filed on 26 September 2018, that she did not receive a copy of the resolution. The records show that on 14 September 2018, this Court's process server attempted to serve the same on her counsel through his address on record, but the office was closed and unattended (see Records, Vol. 2, p. 40 and dorsal side thereof for the return filed by the process server). It has been held that counsels have the responsibility to device a system for the receipt of mail intended for them, just as it is the duty of the counsel to inform the court officially of a change in his address; it has likewise been ruled in some cases that the effect of failure to actually serve due to such fault of counsel is to consider the reglementary period as running and not tolled (see *Sps. Aguilar v. Court of Appeals*, G.R. No. 120972, 19 July 1999; *Garrucho v. Court of Appeals*, G.R. No. 143791, 14 January 2005).

There is no basis in the claim that the Office of the Ombudsman should have resolved the complaint sooner since the COA report and the Senate committee looked into the fertilizer fund. The records show that the subject fertilizer fund consisted of a complicated web of transactions involving numerous officials in different government agencies. It would be unreasonable to expect the Office of the Ombudsman to immediately accept the findings of other agencies. It is constitutionally mandated to investigate independently.[8] Thus, in the assailed resolution, We said:

> "It should be remembered, however, that the Office of the Ombudsman has wide investigatory powers and it may properly consider the reports or documents from other government agencies. Even if it were true that the FIO complaint relied on the COA report, it does not devalue the complaint or make the investigatory period oppressive. As explained by the prosecution, the report covers a wide range of transactions and had to be distilled to ascertain the individual participation of the accused."[9]

It is also absurd to suggest that the accused were already subjected to adversarial proceedings when the Office of the Ombudsman started filing complaints in 2011 against some officers connected to the fertilizer fund scam. Those cases are distinct from these cases involving the accused-movants. If anything, this only suggests that the accused-movants already expected that they will be charged for their participation even if no formal complaint was filed against them. If the accused-movants harbored any fear or labored under a threat of prosecution as far back as 2011, such was borne out of their own appreciation of their respective participation in the disbursement of the fund. At that point, the Office of the Ombudsman was still carrying out its function with respect to the investigation of the fund scam and naming the ones responsible therefor.

The Office of the Ombudsman's knowledge of the fund scam, if such were publicly brought to its attention, does not determine whether or not there was inordinate delay. A formal or adversarial proceeding against the accused had not yet been lodged. In determining whether there was inordinate delay, what matters is when the formal complaint against the accused-movants was filed. There is no basis to extend the coverage of the relevant period to when the investigating office or agency became aware of the issue.

In this regard, We stress again that the Office of the Ombudsman's conduct of fact-finding investigation and preliminary investigation was conducted well within the prescriptive period for the

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8 See. CONST., art. XI, sections 12 and 13.
9 Resolution dated 6 September 2018, p. 12.

prosecution of the offenses charged herein. None of the accused-movants have addressed this issue.

Even assuming *arguendo* that the *Magante* and *Cagang* rulings are to be applied prospectively, the accused-movants' plea for dismissal should still be denied.

In *People v. Sandiganbayan*,[10] the fact-finding investigation that was included was initiated by the Ombudsman when he requested another government agency to submit documents it possessed with regard to a specific person on a specific exposé. This, in turn, led to the filing of a complaint-affidavit by the aggrieved party. It was not reckoned from the time the exposé was made publicly in a speech in Congress by one of its members. The fact-finding investigation there concerned a specific person in a particularized case. The eventual accused had already been exposed to adversarial proceedings in the fact-finding investigation stage.

In contrast, the fact-finding investigation of these cases was done to identify the irregular transactions and the persons responsible. The investigation was not directed at any one transaction or any specific persons. No complaint was also formally filed. Thus, the herein accused were not exposed to adversarial proceedings during the fact-finding investigation of these cases.

Moreover, the *Magante* and *Cagang* cases primarily cover the length of the delay. The accused-movants still failed to substantiate the other factors of the balancing test. They still failed to show that they were subjected to an unjustified proceeding which actually prejudiced them.

In the assailed resolution, We found that the reasons for the delay sufficient, in view of the circumstances then obtaining:

> "We find the reasons cited by the prosecution to be sufficient under the facts of these cases.
>
> A perusal of the records would show the complexity of these cases. First, the FIO complaint raised a number of factual allegations and attached numerous documents. It would certainly take time to go through these and resolve them. Second, the complexity is compounded by the fact that there are a number of public-officer respondents, each of whom presented their defenses as well. Their side, of course, must be considered as well. Third, the Office of the Ombudsman's resolution finding probable cause shows that it evaluated the allegations and supporting evidence to determine the individual participation of the accused and their alleged scheme or

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10 G.R. Nos. 188165 and 189063, 11 December 2013.

> conspiratorial actions. Thus, the time requirement to comb through all the allegations and documents is not unjustified. Fourth, the records show that the alleged criminal acts and or transactions subject of these cases are related to a larger case investigation into the so-called 'fertilizer fund scam.'"[11]

Further, on the issue of prejudice caused by the delay, the accused-movants still have not substantiated any such prejudice suffered by them. Accused Burahan's reference to prejudice found in other cases is not enough to establish that she, in fact, suffered such prejudice and that these were caused by the delay.

With respect to accused Parawan, his claim that there was forum shopping has no merit. In the assailed resolution, We have extensively discussed that while these cases may share some factual element with SB-11-CRM-0092, as they involve and share the same subject SARO, the alleged criminal acts are different. Thus, the prosecution did not commit forum shopping in filing these cases.

All told, there is no cogent reason for Us to reverse our denial of the accused-movants' prayer for the dismissal of these cases.

WHEREFORE, the motions for reconsideration are **DENIED**. The arraignment of the accused, except accused Amin, shall proceed on 14 November 2018 at 1:30 in the afternoon, as previously scheduled.

SO ORDERED.

RAFAEL R. LAGOS
Associate Justice
Chairperson

WE CONCUR:

MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

MARYANN E. CORPUS-MAÑALAC
Associate Justice

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11 Resolution dated 6 September 2018, p. 12.