



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-18-CRM-0515

For: Violation of Section 3(e)
of Republic Act No. 3019

- versus -

ENRICO R. ECHIVERRI, ET AL.,
Accused.

X-----X

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-18-CRM-0516

For: Falsification of Public Document

- versus -

EDNA V. CENTENO, ET AL.,
Accused.

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

X-----X

Promulgated:

OCT 01 2018

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves the *Urgent Motion to Dismiss*¹ filed by accused Enrico R. Echiverri, Edna V. Centeno and Jesusa C. Garcia.

The accused pray for the dismissal of the Information in the present cases on the ground of violation of their rights to due process and to speedy disposition of cases. They aver:

¹ Dated August 28, 2018; Record, pp. 182-188

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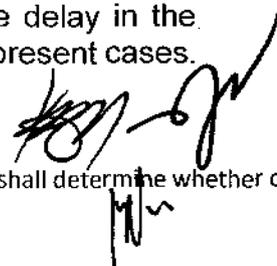
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1. Applying the four-fold test enunciated in *Corpuz v. Sandiganbayan*, it is clear that their right to speedy disposition of cases was violated.
2. It took the Office of the Ombudsman around two (2) years and one (1) month from the filing of the Complaint, to file the Informations with the Court.
 - a. The Complaint subject of the present cases was filed with the Office of the Ombudsman as early as June 9, 2016.
 - b. The Resolution of the Office of the Ombudsman finding probable cause to indict the accused is dated March 23, 2017. It appears that the same was signed on August 25, 2017, and approved by the Ombudsman on February 7, 2018.
 - c. However, the Information in the present cases were filed only on July 20, 2018, or five (5) months from the approval of the Resolution.
 - d. It took the Office of the Ombudsman a total of over two (2) years from the filing of said Complaint to file the Informations.
3. 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.
4. Under Sec. 3(f)² of Rule 112 of the Rules of Court, the investigating officer must determine if there is sufficient ground to hold the respondent for trial within ten (10) days after the investigation.
5. The period of over two (2) years it took to conduct and terminate the preliminary investigation, and to file the Informations, is considerably longer than the prescribed period for resolving a case.
6. In *Tatad v. Sandiganbayan*,³ it was held that a delay of almost three (3) years constitutes a violation of the provisions prescribing the time within which cases must be resolved.
7. There is no acceptable reason for the inordinate delay in the termination of the preliminary investigation in the present cases.

² Sec. 3. (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.

³ G.R. No. 72335-39, March 21, 1988



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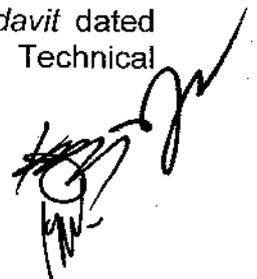
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- a. The present cases are, more or less, the 100th set of cases covering the same set of accused for the same term they held their respective positions of City Mayor, Budget Officer and Accountant.
 - b. The first wave of cases were filed as early as March 2017. Cases of the same nature are still being filed almost every month.
 - c. The Complaints filed against the accused are the same, except for the names of the complainants. There is no reason why it had to take over two (2) years to terminate the preliminary investigation.
 - d. The Office of the Ombudsman's piecemeal filing of Informations is vexatious, capricious and oppressive. It is being done for some reason that only the Office of the Ombudsman knows.
8. They asserted their right to speedy disposition of cases at the earliest opportunity.
 9. Prejudice was caused by the delay.
 - a. They suffered agitation, anxiety, public humiliation as a result of the piecemeal filing of the numerous cases.
 - b. The piecemeal filing of the cases also resulted in different cases based on the same facts and transactions being at different stages of trial, and pending before the different divisions of the Sandiganbayan, thereby preventing, or making consolidation difficult.
 - c. Aside from having to periodically suffer anxiety from having warrants issued against them, they have to post bail in amounts which, if combined, will surely bankrupt them.

In its *Comment/Opposition (Re: Accused Enrico R. Echiverri, Edna V. Centeno, and Jesusa C. Garcia's Urgent Motion to Dismiss)*,⁴ the prosecution counters:

1. There was no violation of the accused' right to speedy disposition of cases.
2. The present cases arose from the *Complaint-Affidavit* dated June 9, 2016 of Virginia I. San Felipe, for Technical

⁴ Dated September 7, 2018 and filed on September 10, 2018



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Malversation under Art. 220 of the Revised Penal Code (RPC), Falsification under Art. 171(4) of the RPC, and Violation of Sec. 3(e) of Republic Act No. 3019 (R.A. No. 3019).

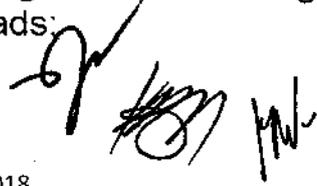
3. The Resolution dated March 23, 2017, finding probable cause to charge the accused in court for Falsification under Art. 171(4) of the RPC and violation of Sec. 3(e) of R.A. No. 3019, was approved by the Ombudsman on October 19, 2017.
4. The preliminary investigation was concluded upon the approval of said Resolution, or around one (1) year and four (4) months from the filing of the *Complaint-Affidavit*.
5. The right to speedy disposition of cases is violated only when the proceedings are attended by vexatious, capricious and oppressive delays; or when unjustified postponements are asked for, and secured, or when without justifiable motive, a long period of time is allowed to elapse without the party having the case tried.
6. In determining if the right to speedy disposition of cases is violated, the Court applies the balancing test, wherein the conduct of both the prosecution and the defendant is weighed. Moreover, particular regard must be taken of the facts and circumstances peculiar to each case.
7. Considering the numerous complaints being filed with the Office of the Ombudsman, the time taken for the conduct and termination of the preliminary investigation is reasonable. The Supreme Court, in *Dansal v. Fernandez*, has already taken judicial notice of the steady stream of cases reaching the Office of the Ombudsman.

The Court did not require the accused to file their *Reply*.⁵ Thus, the same is merely noted.

THE COURT'S RULING

The Court resolves to deny the *Urgent Motion to Dismiss* filed by the accused.

Art. III, Sec. 16 of the Constitution guarantees the right to speedy disposition of cases. The provision reads:



⁵ Dated September 20, 2018 and filed on September 24, 2018

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

The mere fact of delay does not automatically equate to a violation of the right to speedy disposition of cases. Such right is deemed violated only when the proceedings are attended by vexatious, capricious and oppressive delays. In *Corpuz v. Sandiganbayan*,⁶ it was held:

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.

When 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 mere mathematical reckoning of the time involved will not suffice. The Court, in determining if there is a violation of such right, must take into account the peculiar circumstances surrounding each case. Thus, the Supreme Court adopted the balancing test, in which the conduct of both the prosecution and the accused are weighed. In the balancing test, the following factors are considered and balanced: (1) length of delay; (2) reasons for the delay; (3) assertion or failure to assert such right; and (4) prejudice caused by the delay.⁷

⁶ G.R. No. 162214, November 11, 2004

⁷ *Perez v. People*, G.R. No. 164763, February 12, 2008

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In the recent case of *Cagang v. Sandiganbayan*,⁸ the framework for determining whether or not the right to speedy disposition of cases was violated was further refined as follows:

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

Applying *Cagang*, this Court will now determine if the delay in the conduct and termination of the preliminary investigation violated the accused' right to speedy disposition of cases.

As the records bear out, the following events led to the filing of the Information in the present cases:

June 9, 2016	Virginia I. San Felipe filed the <i>Complaint-Affidavit</i> dated June 9, 2016 with the Office of the Ombudsman ⁹
August 9, 2016	The Office of the Ombudsman issued the Order directing the respondents to file their respective counter-affidavits. ¹⁰
August 26, 2016	Accused Echiverri, Centeno and Garcia filed their <i>Consolidated Joint Counter-Affidavit</i> dated August 24, 2016 ¹¹ .

⁸ G.R. Nos. 206438, 206458, and 210141-42, July 29, 2018; decided by the Supreme Court *en banc*

⁹ Record, p. 30

¹⁰ Record, p. 13

¹¹ Record, p. 110

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March 23, 2017	Date of the Resolution finding probable cause to indict the respondents in court. (around 9 months from the filing of the <i>Complaint-Affidavit</i> , and around 6 months from the filing of the accused' <i>Consolidated Joint Counter-Affidavit</i>)
October 19, 2017	The Ombudsman approved the Resolution dated March 23, 2017. ¹² (almost 7 months from the date of the Resolution, and around 1 year and 4 months from the filing of the <i>Complaint-Affidavit</i>)
July 20, 2018	The Informations charging the accused with one (1) count of Violation of Section 3(e) of R.A. No. 3019 (Crim. Case No. SB-18-CRM-0515); and one (1) count of Falsification of Public Document (Crim. Case No. SB-18-CRM-0516) were filed with the Sandiganbayan. (around 9 months from the approval of the Resolution dated March 23, 2017)

The accused argue that their right to speedy disposition of cases was violated because the Information in the present cases were filed only after over two (2) years from the filing of the Complaint. Such period is well beyond the periods prescribed under the Rules of Procedure of the Office of the Ombudsman and Sec. 3 of Rule 112 of the Rules of Court.

Rule II, Sec. 4 of the Rules of Procedure of the Office of the Ombudsman provides:

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

Rule 112, Sec. 3(f) of the Rules of Court, on the other hand, provides:

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

x x x

¹² Record, p. 28

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(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.

Here, the Office of the Ombudsman approved the Resolution dated March 23, 2017 on October 19, 2017, or almost one (1) year and two (2) months from the receipt of the accused' joint counter-affidavit. From the approval of said Resolution, it took the Office of the Ombudsman a period of around nine (9) months to file the Informations with the Sandiganbayan. Everything considered, the Information in the present cases were filed around two (2) years and one (1) month from the filing of Virginia I. San Felipe's *Complaint-Affidavit*.

Clearly, the conduct of the preliminary investigation took longer than the periods prescribed by the Rules of Procedure of the Office of the Ombudsman and the Rules of Court. The prosecution now has the burden of proving that such delay is reasonable, and that no prejudice resulted from the delay.

The prosecution explained that it took the Office of the Ombudsman over two (2) years to conduct the preliminary investigation because it had to act on numerous complaints being filed before it.

The Court finds that the prosecution's explanation justifies the delay.

To be sure, the Office of the Ombudsman has the inherent duty not only to carefully go through the particulars of each case, but also to resolve the same within the proper length of time.¹³ However, this Court must also consider the heavy workload of the Office of the Ombudsman.

In *Mendoza-Ong v. Sandiganbayan*,¹⁴ the Supreme Court recognized that the number of cases reaching the Office of the Ombudsman may adversely affect the rate of the disposition of such cases. To wit:

x x x. "Speedy disposition of cases" is consistent with reasonable delays. The Court takes judicial notice of the fact that the nature of the Office of the Ombudsman encourages individuals

¹³ *Coscolluela v. Sandiganbayan*, G.R. Nos. 191411 and 191871, July 15, 2013

¹⁴ G.R. Nos. 146368-69, October 18, 2004, citing *Dansal v. Fernandez*, G.R. No. 126814, March 2, 2000

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who clamor for efficient government service to lodge freely their complaints against alleged wrongdoing of government personnel. A steady stream of cases reaching the Ombudsman inevitably results. Naturally, disposition of those cases would take some time. x x x

(underscoring supplied)

This was again recognized in *People v. Sandiganbayan*,¹⁵ wherein the Supreme Court held that although the rules prescribe a certain period within which investigating officers must act upon complaints, such rules are not absolute. *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.

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)

Considering the numerous complaints pending before the Office of the Ombudsman—including those involving the transactions entered into by the City Government of Caloocan during accused Echiverri's term as City Mayor, and those not in connection with such transactions—the period of over two (2) years it took the Office of the Ombudsman to file the Informations with the Court cannot be considered unreasonable.

Next, the accused insinuate that the piecemeal filing of the cases against them was deliberately done for some ulterior motive. This Court disagrees.



¹⁵ G.R. Nos. 232197-98, April 16, 2018

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There is nothing, aside from the accused' bare allegation, to show that piecemeal filing of the Informations was done with malice, or that the resultant delay can be characterized as vexatious, capricious, and oppressive, as defined in *Tai Lim v. Court of Appeals*¹⁶ as follows:

As aptly held by the Court of Appeals,

"The right has been defined by our Supreme Court in *Gregorio Kalaw versus Segundo Apostol, et al.*, 62 Phil. 852," as a trial conducted according to law of criminal procedure and the rules and regulations, free from vexatious, capricious and oppressive delays. As the Appellate Court put it in "*Steward versus State*, 13 Arkansas, 720": "what the constitution prohibits is vexatious, capricious and oppressive delays, manufactured by them ministers of justice." Not every delay in the trial is vexatious, capricious or oppressive. In the legal firmament. The terms have distinct connotations. Vexatious suggests an act which is willful and without reasonable cause, for the purpose of annoying and embarrassing another or one lacking justification and intended to harass (page 2548, Third Edition, Webster's International Dictionary). Oppressive connotes an unjust or cruel exercise of power or authority. Capricious action, on the other hand, means willful and unreasoning action..."

(underscoring supplied)

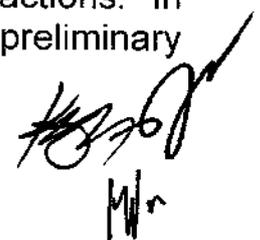
In *Dansal v. Fernandez*,¹⁷ it was held that the Office of the Ombudsman encourages individuals who clamor for efficient government service to freely lodge their Complaints against wrongdoings of government personnel. The number of complaints being filed with the Office of the Ombudsman is beyond its control, but all the same, it has to act on all such complaints.

As the accused admit, the complaints involving the transactions entered into by the City of Caloocan during accused Echiverri's term as Mayor alone are over a hundred in number. Each complaint, filed by a different complainant, on a different date, is treated as a separate case, and necessitates a separate investigation. It follows that the Informations pertaining to a particular case will be filed separately from those pertaining to other cases.

The resolution of the cases related to the transactions of the City of Caloocan alone will take some time, considering the number of transactions involved. In addition to these cases, the Office of the Ombudsman also handles cases not related to such transactions. In fine, the Court finds that the time it took to terminate the preliminary

¹⁶ G.R. No. 131483, October 26, 1999

¹⁷ G.R. No. 126814, March 2, 2000

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investigations, as well as the piecemeal filing of Informations, are not unreasonable.

This Court likewise finds that the accused did not suffer prejudice as a result of the delay.

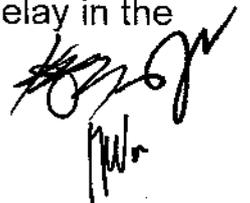
Prejudice, as contemplated in the right to speedy disposition of cases, was defined and explained in *Corpuz v. Sandiganbayan*¹⁸ as follows:

x x x. Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association curtailed, and he is subjected to public obloquy.

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

This Court is not unmindful of the fact that the accused may have suffered some form of prejudice. However, it does not appear that such prejudice is that which is contemplated in the right to speedy disposition of cases, *i.e.*, serious prejudice caused by inordinate delay. The agitation, anxiety, public humiliation and financial strain the accused claim to have suffered appears to be a result of the filing of numerous cases against them, rather than caused by the delay in the

¹⁸ *Supra*. Note 6



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conduct and termination of the preliminary investigation. The Court notes that the accused, in their *Urgent Motion*, even specifically stated that the prejudice was caused by the piecemeal filing of cases against them.

Considering the foregoing, the Court finds that there was no violation of the accused' right to speedy disposition of cases. At any rate, they are deemed to have waived such right. In *Cagang*,¹⁹ it was held that the failure to timely assert the right to speedy disposition of cases is deemed a waiver of such right. viz.:

Fifth, the right to speedy disposition of cases or the right to speedy trial must be timely raised. The respondent or the accused must file the appropriate motion upon the lapse of the statutory or procedural periods. Otherwise, they are deemed to have waived their right to speedy disposition of cases.

The accused claim that there was undue delay in the conduct of the preliminary investigation because the period within which it was conducted was considerably longer than the period prescribed under the applicable Rules. However, it does not appear that herein accused asserted their right to speedy disposition of cases in the proceedings before the Office of the Ombudsman.

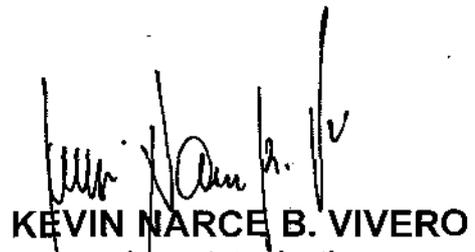
WHEREFORE, accused Echiverri, Centeno and Garcia's *Urgent Motion to Dismiss* is hereby DENIED for lack of merit, and their *Reply* is NOTED.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

WE CONCUR:


KARL B. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
Associate Justice

¹⁹ *Supra*. Note 8