REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

Fifth Division

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**SB-18-CRM-0249 to 0251** For: Article 171 of the Revised Penal Code or Falsification of Public Documents
- versus -	
ESTRELLITO A. POLLOSO, et al., *Accused.*	Present: **LAGOS, J., *Chairperson,* MENDOZA-ARCEGA and CORPUS-MAÑALAC, JJ.** **Promulgated:** November 12, 2018

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RESOLUTION

LAGOS, J.:

For resolution of this Court is the prosecution's Motion for Reconsideration[1] of this Court's August 15, 2018 Resolution[2], accused Esperanza Jimenez's Opposition[3], accused Iris Mendoza, Saloma Cuevas and Ritchelle Holanda-Atara's Comment/Opposition[4], accused Estrellito Polloso's Motion to Admit Attached Comment/Opposition to the Motion for Reconsideration of the Prosecution[5], and accused Amelia Vispo's Opposition/Comment to Motion for Reconsideration[6]. In the assailed resolution, this Court dismissed the charges against the accused on account of violation of their right to speedy disposition of cases.

The prosecution alleges that the Court committed errors in its findings of fact and law in finding for the accused-movants in its application of the

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[1] Records, Vol. II, pp. 476-515.
[2] Records, Vol. II, pp. 461-469.
[3] Records, Vol. II, pp. 516-519.
[4] Records, Vol. II, pp. 539-540.
[5] Records, Vol. II, pp. 545-549.
[6] Records, Vol. II, pp. 583-590.

four factors in determining whether they have been deprived of the right to speedy disposition of cases which should, consequently, warrant the reconsideration of the August 15, 2018 Resolution.

Specifically, the prosecution alleges that January 19, 2011, the date of the issuance of COA Office order No. 2011-036 (JIT), could not validly and correctly be considered as the point of reference in determining the purported delay on the part of the Office of the Ombudsman considering that the COA Report dated September 15, 2011 was only forwarded to and received by the Office of the Ombudsman on January 12, 2012.

Further, the prosecution adds, the issue of whether or not January 19, 2011 should be considered the proper reckoning period has already been mooted with the promulgation of a recent decision of the Supreme Court in the case of ***Cesar Matas Cagang v. Sandiganbayan***[7], where the High Court ruled that the reckoning period for one's constitutional right to a speedy disposition of cases shall begin from the preliminary investigation stage and not earlier or during the fact-finding stage.

The prosecution submits that, in light of ***Cagang***, the remaining pivotal issue is whether the Office of the Ombudsman violated the accused's right to speedy disposition of cases using the preliminary investigation stage as the reckoning period.

The prosecution takes issue with the finding of this Court that the preliminary investigation of four years is in itself unreasonable and that the prosecution has not succeeded in providing a plausible explanation behind the said considerable delay. According to the prosecution, the fact that there are numerous parties involved in these cases and that a couple of the respondents submitted their counter-affidavits at a much later date on April 29, 2016 contributed to the perceived delay. The prosecution contends that the period to be considered in counting the length of time to establish inordinate delay should only be reckoned from the date of the filing of last pleading, which, in this case, was on April 29, 2016, up to the issuance of the Joint Resolution of the Ombudsman, which was on November 23, 2016.

The prosecution submits that the Court erred in not considering the sheer number of respondents in these consolidated cases who filed their respective counter-affidavits on different dates and some even requested extensions of time which were granted. Allegedly, from the filing of the last counter-affidavit, it only took a few months before the Joint Resolution was issued. The prosecution maintains that there is nothing from the records

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[7] G.R. Nos. 206438 and 206458, July 31, 2018.

which would indicate that the Office of the Ombudsman capriciously or arbitrarily delayed the disposition of the complaint filed to the prejudice of the accused in these cases.

As for the reason for the delay, the prosecution alleges that the respondents contributed to the purported delay. According to the prosecution, respondents Cabantug and Sison delayed the investigation by asking for an extension of fifteen days to file their counter-affidavits. Even after the approved Joint Resolution on November 23, 2016, several of the respondents moved for reconsideration thereof yet delaying the conclusion of the preliminary investigation.

The prosecution also cites the involvement of numerous parties. In view of the sheer number of parties involved in these consolidated cases and the relative complexity of the issues and transactions involved, the prosecution submits there is no factual basis to consider that the entire proceedings before the Office of the Ombudsman was attended by capricious, vexatious and oppressive delays.

Accused Esperanza Jimenez alleges that all the arguments of the prosecution do not apply to her since she never received a subpoena and was never allowed to undergo preliminary investigation. This is a fact that the prosecution, allegedly, has not disputed and has therefore deemed to have admitted. Accused Jimenez claims, unlike the other accused who at least were lucky enough to have been given an opportunity to file a Counter-Affidavit, she only found out about the charge when the warrant was already issued against her. As far as accused Jimenez is concerned, therefore, this is, allegedly, beyond mere delay, her rights to due process and prescription have both been violated. Hence, according to her, it was only proper for the Court to dismiss the case as against her.

Accused Iris Mendoza, Saloma Cuevas and Ritchelle Holanda-Atara allege that the issues raised by the prosecution have already been considered, passed upon and sufficiently discussed by the Court in its resolution. Furthermore, the accused allege that their dismissal has the effect of acquittal that would bar further prosecution for the same offense.

Accused Estrellito Polloso submits that the issues presented in the motion for reconsideration of the prosecution have already been passed upon and ruled in the Resolution of the Court dismissing these cases citing this Court's finding that the four-year delay in the preliminary investigation stage itself is unreasonable.

Accused Polloso also alleges that the prosecution's contention that he failed to file motions for early resolution or motion to dismiss with the Ombudsman during the preliminary investigation is immaterial in view of the pronouncement of the Supreme Court in ***Coscolluela v. Sandiganbayan***[8].

Similar to his co-accused, accused Polloso also alleges that his acquittal can no longer be the subject of a motion for reconsideration as it will violate his right against double jeopardy.

Accused Amelia Vispo alleges that the case of ***Cagang*** and the instant cases involved different situations and circumstances. According to accused Vispo, while hundreds of accused were involved in Cagang, the case at bar involves less respondents. Further, allegedly, with respect to Vispo and her co-accused, the preliminary investigation lasted four years. The complaint was filed with the Office of the Ombudsman in 2014 and the Informations were filed with the Court only on April 6, 2018, after the issuance of Resolutions in 2017. Also, despite the formal filing of the Complaint in 2014, the Office of the Ombudsman already had in its possession the results of the fact-finding investigation because it was part of the joint team that conducted the same together with the Commission on Audit.

Accused Vispo alleges that whatever opportunity she may have had to gather documentary evidence and secure witnesses may have already been compromised due to the delay. She is also, allegedly, worried that this incident may affect her status or reputation abroad which could jeopardize her present job.

Citing the four factors to consider in determining inordinate delay, accused Vispo alleges:

(1) Even excluding the joint fact-finding investigation by COA and the Office of the Ombudsman from 2010 to 2014, the Complaints with respect to accused Vispo were formally filed with the Office of the Ombudsman in 2014 (after the Office of the Ombudsman, together with COA, jointly conducted a fact-finding investigation for 4 years) and it took the Office of the Ombudsman four years to file Informations involving accused Vispo with the Sandiganbayan on April 6, 2018.
(2) It is, therefore, apparent that the Office of the Ombudsman brought about the delay which, from the records of the case, is clearly unreasonable and arbitrary, all evidence necessary for the finding or not of probable cause being already available at the conclusion of the

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[8] G.R. No. 191411, July 15, 2013.

fact-finding investigation sometime in 2014 and which were known to the prosecution upon the filing of the complaints. Records will also show that the other accused timely filed their counter-affidavits in 2014, the same year the complaints were filed.

(3) On the other hand, accused Vispo cannot be said to have given any reason for the delay in view of the fact that she resigned from MWSS sometime in 2007 and has been out of the country since then, hence, never participated in the proceedings. Furthermore, accused Vispo did not receive any process or order nor a copy of the Joint Resolution of the Office of the Ombudsman, her address being indicated in the Official Mailing List of the Office of the Ombudsman as "MWSS, Katipunan Ave., Balara, Quezon City".

(4) Accused Vispo was unaware that the case proceeded in her absence, in which case, she could have asserted her right against the delay. Sometime in May 2018, upon learning of the issuance of the warrant of arrest against her, accused Vispo immediately sought the assistance of counsel who secured a copy of the records of the case and caused the preparation and filing of the instant Omnibus Motion.

RULING

In the recent case of ***Cesar Matas Cagang v. Sandiganbayan, Fifth Division, Quezon City; Office of the Ombudsman; and People of the Philippines***[9], the Supreme Court set the latest definitive guidelines in the determination of the violation of the right to speedy disposition of cases. In an *En Banc* decision penned by Hon. Marvic M.V.F. Leonen, the High Court made the following pronouncement:

> People v. Sandiganbayan, Fifth Division must be re-examined.
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> When an anonymous complaint is filed or the Office of the Ombudsman conducts a *motu proprio* fact-finding investigation, the proceedings are not yet adversarial. Even if the accused is invited to attend these investigations, this period cannot be counted since these are merely preparatory to the filing of a formal complaint. At this point the Ombudsman will not yet determine if there is probable cause to charge the accused.
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> ...
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> Considering that fact-finding investigations are not yet adversarial against the accused, the period of investigation will not be counted in the determination of whether the right to speedy disposition of cases was violated. Thus, this Court now holds that for the purpose of determining whether inordinate delay exists, a case is deemed to have commenced from the filing of the formal complaint and the subsequent conduct of the

[9] G.R. Nos. 206438 and 206458, July 31, 2018.

preliminary investigation. In People v. Sandiganbayan, Fifth Division, the ruling that fact-finding investigation are included in the period for determination of inordinate delay is abandoned.

...

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 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.

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This Court now clarifies the mode of analysis in situations where the right to speedy disposition of cases or the right to speedy trial is invoked.

First, the right to speedy disposition of cases is different from the right to speedy trial. While the rationale for both rights is the same, the right to speedy trial may be only be invoked in criminal prosecutions against courts of law. The right to speedy disposition of cases, however, may be invoked before any tribunal, whether judicial or quasi-judicial. What is important is that the accused may already be prejudiced by the proceeding for the right to speedy disposition of cases to be invoked.

Second, a case is deemed initiated upon the filing of a formal complaint prior to a conduct of a preliminary investigation. This Court acknowledges, however, that the Ombudsman should set reasonable periods for preliminary investigation, with due regard to the complexities and nuances of each case. Delays beyond this period will be taken against the prosecution. The period taken for fact-finding investigations prior to the filing of the formal complaint shall not be included in the determination of whether there was been inordinate delay.

Third, courts must determine which party carries the burden of proof. If the right is invoked within the given periods contained in current Supreme Court resolutions and circulars, and the time periods that will be

promulgated by the Office of the Ombudsman, the defense has the burden of proving that the right was justifiably invoked. If the delay occurs beyond the given time period and the right is invoked, the prosecution has the burden of justifying the delay.

If the defense has the burden of proof, it must prove first, whether the case is motivated by malice or clearly only politically motivated and is attended by utter lack of evidence, and second, that the defense did not contribute to the delay.

Once the burden of proof shifts to the prosecution, the prosecution must prove first, that it followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; second, that the complexity of the issues and the volume of evidence made the delay inevitable; and third, that no prejudice was suffered by the accused as a result of the delay.

Fourth, determination of the length of delay is never mechanical. Courts must consider the entire context of the case, from the amount of evidence to be weighed to the simplicity or complexity of the issues raised.

An exception to this rule is if there is an allegation that the prosecution of the case was solely motivated by malice, such as when the case is politically motivated or when there is continued prosecution despite utter lack of evidence. Malicious intent may be gauged from the behavior of the prosecution throughout the proceedings. If malicious prosecution is properly alleged and substantially proven, the case would automatically be dismissed without need of further analysis of the delay.

Another exception would be waiver of the accused to the right to speedy disposition of cases or the right to speedy trial. If it can be proven that the accused acquiesced o the delay, the constitutional right can no longer be invoked.

In all cases of dismissals due to inordinate delay, the causes of the delays must be properly laid out and discussed by the relevant court.

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.

Length of Delay

In Our earlier resolution dismissing the cases against the accused-movants, We held that, following the pronouncement of the Supreme Court in the case of ***Commodore Lamberto Torres v. Sandiganbayan***[10], the Office

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[10] G.R.Nos. 221562-69, October 5, 2016.

of the Ombudsman's (OMB) investigation into the transactions involved in these cases dated as far back as January 19, 2011 when the Commission on Audit (COA) and the OMB formed a Special Audit Team for the purpose of conducting a joint audit of the Metropolitan Waterworks and Sewerage System (MWSS) and a formal fact-finding audit investigation commenced.

If the abovequoted pronouncement of the Supreme Court in ***Cagang*** that, for the purpose of determining whether inordinate delay exists, a case is only deemed to have commenced from the filing of the formal complaint and the subsequent conduct of the preliminary investigation, were to be applied to this case, the whole fact-finding stage would be discarded. Only the period of preliminary investigation shall be factored in the computation of the length of delay, which in this case is from the filing by the Ombudsman Field Investigation Office (FIO) of the complaint on March 21, 2014 to the filing of the Informations with the Court on April 6, 2018.

However, when a doctrine of the Supreme Court is overruled and a different view is adopted, the new doctrine should be applied prospectively and should not apply to parties who have relied on the old doctrine and acted on the faith thereof.[11] Given that, in these consolidated cases, the accused already filed their motions relying on the rulings of the Supreme Court in the cases of ***Torres*** and ***People v. Sandiganbayan***[12] and the same had already been submitted prior to the case of ***Cagang***, this Court cannot apply new doctrines of ***Cagang*** which overturned the previous doctrines. Therefore, this Court's previous ruling factoring in the fact-finding stage in determining the period of delay must stand.

Besides, We previously held that even if the period of delay started only from the filing of the complaint by the FIO on March 21, 2014 up to the filing of the cases with the Court on April 6, 2018, it would be easily recognizable that, since the right to speedy disposition of cases does not only include the period from which a case is submitted for resolution, rather, it covers the entire period of investigation before trial[13], more than four years was spent on the preliminary investigation alone. Considering the circumstances of this case, We found that more than four years by itself is unreasonable. We find no reason to deviate from this earlier ruling.

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[11] Spouses Gauvain v. Court of Appeals (G.R. No. 97998, January 27, 1992).
[12] 723 Phil. 444 (2013).
[13] Cagang, *supra*.

Reason for the Delay

The prosecution contends that the numerous parties, specifically fifteen respondents in OMB-C-C-0285, twenty-eight respondents in C-C-14-0138 and twenty-six respondents in C-C-14-0139, involved in the preliminary investigation of these cases justify the length of time it took to resolve it. We disagree. While We may agree that a total of sixty-six respondents may complicate matters as to require a longer period of resolution than usual, four years to do so is unjustifiably long.

The prosecution also contends that the respondents contributed to the delay by filing motions for extension with two respondents filing their counter-affidavits as late as 2016 and motions for reconsiderations. However, even factoring in the extensions of time given to the respondents, accused herein, these extensions are insufficient to justify the delay in these cases. Neither can the belated submission of counter-affidavits from two respondents serve to justify the delay in these cases as the Ombudsman has full control of progress of the entire proceedings before it. The Ombudsman is not at the mercy of the respondents before it. It is equipped with powers and processes to expedite the cases before it.

Timely Invocation of the Right

As regards the matter of timely invocation of the right to speedy disposition, ***Cagang*** has the following to say:

> The defense must also prove that it exerted meaningful efforts to protect accused's constitutional rights. In ***Alvizo v. Sandiganbayan***, the failure of the accused to timely invoke the right to speedy disposition of cases may work to his or her disadvantage, since this could indicate his or her acquiescence to the delay:
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> > Petitioner was definitely not unaware of the projected criminal prosecution against him by the indication of this Court as a complementary sanction in its resolution of his administrative case. He appears, however, to have been insensitive to the implications and contingencies thereof by not taking any step whatsoever to accelerate the disposition of the matter, which inaction conduces to the perception that the supervening delay seems to have been without his objection hence impliedly with his acquiescence.
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> In Dela Pena v. Sandiganbayan, this Court equated his acquiescence as one that could amount to laches, which results in the waiver of their rights:
> ...

This concept of acquiescence, however, is premised on the presumption that the accused was fully aware that the preliminary investigation has not yet been terminated despite a considerable length of time. Thus, in Duterte v. Sandiganbayan, this Court stated that Alvizo would not apply if the accused were unaware that the investigation was still ongoing:

> Petitioners in this case, however, could not have urged the speedy resolution of their case because they were completely unaware that the investigation against them was still on-going. Peculiar to this case, we reiterate, is the fact that petitioners were merely asked to comment, and not file counter-affidavits which is the proper procedure to follow in a preliminary investigation. After giving their explanation and after four long years of being in the dark, petitioners, naturally, had reason to assume that the charges against them had already been dismissed.

Similarly, in Coscolluela v. Sandiganbayan:

> Records show that they would not have urged the speedy resolution of their case because they were unaware that the investigation against them was still on-going. They were only informed of the March 27, 2003 Resolution and Information against them only after the lapse of six (6) long years, or when they received a copy of the latter after its filing with the SB on June 19, 2009. In this regard, they could have reasonably assumed that the proceedings against them have already been terminated. This serves as a plausible reason as to why petitioners never followed-up on the case altogether ...
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> ...

Two of the accused-movants allege unawareness of the proceedings against them before the OMB, accused Jimenez and Vispo. Both claim that they did not receive any processes, orders or notices from the OMB. Ignorant that a case proceeded in their absence, they allegedly had no opportunity to assert their right against the delay. Both accused have consistently asserted that they were entirely unaware of the existence and progress of the investigation against them before the OMB and only came to know of the same after the filing of the subject Informations in these cases and the issuance of warrants of arrests against them.

Upon checking the records of the case, there was indeed no mention in the September 6, 2016 OMB Joint Resolution of counter-affidavits from Jimenez and Vispo, nor in the March 24, 2017 resolution denying respondents' motions for reconsideration. The prosecution, likewise, did not deny in its Consolidated Comment and/or Opposition or its Motion for Reconsideration accused Jimenez or Vispo's allegations of lack of notice except to say that, as regards Vispo's claim, the same is evidentiary in nature

and should be taken up during trial. As to these two accused, therefore, there could not have been a waiver of their right to speedy disposition of cases.

As for the other accused, Mendoza, Cuevas, Atara and Polloso, if the Court follows the Supreme Court's pronouncement in ***Cagang***, the accused would be adjudged to have waived their right to speedy disposition of cases due to their failure to allege and prove the timely invocation of their right before the OMB. However, since their motions were filed prior to the ***Cagang*** ruling, these must necessarily be viewed in light of the older doctrine espoused in the case of ***Rafael L. Coscolluela v. Sandiganbayan***[14] where the Supreme Court stated that it was not the duty of the accused to follow up on the prosecution of their case. Instead, it was the Office of the Ombudsman's responsibility to expedite the same within the bounds of reasonable timelines in view of its mandate to act promptly on all complaints lodged before it.

Prejudice to the Accused

As the Supreme Court held in ***Coscolluela*** and as even reiterated in ***Cagang***, the right to speedy disposition of cases is not merely hinged towards the objective of spurring dispatch in the administration of justice but also to prevent the oppression of the citizen by holding a criminal prosecution suspended over him for an indefinite time. Akin to the right to speedy trial, its "salutary objective" is to assure that an innocent person may be free from the anxiety and expense of litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose. This looming unrest as well as the tactical disadvantages carried by the passage of time should be weighed against the state and in favor of the individual.

Finally, the motion for reconsideration of the prosecution is likewise barred by the rule on double jeopardy. A dismissal grounded on the denial of the right of the accused to speedy disposition results in acquittal.[15]

The 1987 Constitution provides, in Section 21, Article III, that:

> **Section 21. No person shall be twice put in jeopardy of punishment for the same offense. x x x**

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[14] G.R. No. 191411, July 15, 2013.
[15] Coscolluela, *supra*.

In accordance with the abovesaid constitutional provision, as a rule, a judgment of acquittal cannot be reconsidered because it places the accused twice in jeopardy for an offense which he has already been absolved. In criminal cases, the full power of the State is ranged against the accused. If there is no limit to attempts to prosecute the accused for the same offense after he has been acquitted, the infinite power and capacity of the State for a sustained and repeated litigation would eventually overwhelm the accused in terms of resources, stamina, and the will to fight.[16] That said, a motion for reconsideration after an acquittal is possible only on exceptional and narrow grounds as in cases when the court gravely abused its discretion, resulting in loss of jurisdiction, or when a mistrial has occurred. In any of such cases, the State may assail the decision by special civil action of *certiorari* under Rule 65.[17]

In the case at bar, the prosecution did not invoke either exception nor is this Court the venue for the same. That remedy lies with the Supreme Court. Thus, for this and the reasons discussed above, the Court must deny the prosecution's motion.

WHEREFORE, premises considered, the prosecution's Motion for Reconsideration is hereby DENIED for lack of merit.

SO ORDERED.

RAFAEL R. LAGOS
Chairperson
Associate Justice

WE CONCUR:

MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

MARYANN E. CORPUS-MAÑALAC
Associate Justice

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[16] Antonio Lejano v. People of the Philippines (G.R. No. 176389, January 18, 2011).
[17] Lejano, *supra*.