



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

Criminal Case No.:
SB-18-CRM-0279 to 0282
For: Violation of Sec. 3(e)
R.A. No. 3019 as amended.

ROQUE R. ABLAN, JR., et al.,
Accused.

X-----X

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

Criminal Case No.:
SB-18-CRM-0283 to 0286
For: Malversation of
Public Funds.

REINERIO B. BELARMINO, JR., et al.,
Accused.

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

Promulgated:
January 21, 2019 led

X-----X

RESOLUTION

MENDOZA-ARCEGA, J.:

For resolution is the *Motion to Quash*, dated July 26, 2018, filed by accused Francisco Cabuloy Casil. Herein accused pleads for the dismissal of the case against him on the ground of inordinate delay.

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In his motion, he argues that the preliminary investigation was only terminated at the time the Informations were filed before this Court, or almost five (5) years from the filing of the complaint on 2013.

The prosecution adopted its *Comment/Opposition*¹ dated July 11, 2018 it previously filed to counter the motion to quash filed by accused Lourdes Gonzales. In the said Comment, the prosecution asserted that the right of the accused to speedy disposition of cases was not denied nor violated based on the fact that: the accused failed to show by clear and convincing evidence that she was prejudiced before she allegedly filed her counter-affidavit, such as denial of her salaries and other benefits; the accused failed to show proof that she was made to endure any vexatious process during the fact-finding phase until she filed her counter-affidavit; and there is nothing in the records to show that the fact-finding phase was characterized by delay which was vexatious, capricious, or oppressive (sic).

This Court resolves to grant the present motion. In its Resolution dated August 22, 2018, it granted the Motion to Quash filed by accused Gonzales dismissing the case against her. We held therein that the delay of almost five (5) years in the conduct of preliminary investigation by the Office of the Ombudsman is unjustified and therefore in violation of the accused's right to speedy disposition of cases. The basis for dismissal was explained in this light:

*“Enshrined under Article III, Section 13 of the Constitution is the guarantee for all persons to have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies. However, it must be underscored that such right is a relative and flexible concept.”*²

A line of jurisprudence has adopted the “balancing test” to approach the cases on an ad hoc basis and the conduct of both parties are weighed according to the four-fold factors: thus: (1) length of delay; (2) reason for the delay; (3) defendant's assertion or non-assertion of his right; and (4) prejudice to defendant resulting from the delay. None of these elements, however is either a necessary or sufficient condition, they are related and must be considered together with other relevant

¹ Comment/Opposition (Re: Motion to Dismiss on Grounds of Inordinate Delay dated July 9, 2018), dated July 11, 2018; Record, Volume 1, pages 525-521.

² Ombudsman vs. Jurado, G.R. No. 154155, August 6, 2008; Torres vs. Sandiganbayan, G.R. No. 221562-68, October 5, 2016 citing Braza vs. Sandiganbayan, G.R. No. 195032, February 20, 2013.

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circumstances.³ Guided by these factors, We are led to the following conclusions:

Length of Delay

Accused Gonzales insists that from the filing of the complaint by the Field Investigation Office of the Office of the Ombudsman until the time the Information was filed to this Court, the total period spent until the time the preliminary investigation was terminated was five (5) years and five (5) months. Based on the timeline presented, the said period is reckoned from the filing of the complaint on 12 November 2012 until 13 April 2018, when the Information was filed. This fact remains uncontroverted by the prosecution and at the same time the records of this case supports the same outline of events.

Upon filing of the complaint, accused-movant was able to file her Counter-Affidavit on 12 July 2013. Almost three (3) years thereafter, the Resolution finding probable cause against accused movants was issued. The said resolution was approved by Ombudsman Carpio-Morales on 17 July 2017, which led to the filing of the Information to this Court only on 13 April 2018. In sum, the stretch of the investigation and resolution of the case in the Office of the Ombudsman total to five (5) years and five (5) months which has been consistently found by this Court to be inordinate.

Reason for delay

We cannot set aside the fact that the period for determination of probable cause as well as the conduct of preliminary investigation may be affected by factors such as the number of witnesses of each case, the complexity of the issues involved, the annexes submitted by the parties which the investigating officer must assess, in addition to several motions the parties may file. In a preliminary investigation, respondents are given the opportunity to respond to the complaint and submit controverting evidence, which would necessarily take time and could prolong the investigation. The resolution of this criminal investigation while pending in the Office of the Ombudsman

³ Remulla vs. Sandiganbayan, G.R. 218040, 17 April 2017; People vs. Sandiganbayan, G.R. No. 199151-56, July 25, 2016; Dela Peña vs. Sandiganbayan, G.R. No. 144542, June 29, 2001; Alvizo vs. Sandiganbayan, G.R. No. 101689, March 17, 1993.

required the time, not just for the Ombudsman to investigate and resolve the case, but also to give the respondents the opportunity to submit their respective counter-affidavits and pleadings.

Nevertheless, the period of more than five (5) years for the resolution of this case is clearly unjustifiable. It is apparent that these consolidated cases are comprised only of three transactions, involving three sets of procurement documents. Upon review, this case cannot be considered as voluminous to require the length of more than five (5) years of investigation. Generally, the inquiry revolved around the irregularities of the subject procurements. It would appear that the Resolution was grounded on the findings made by the Commission on Audit, specifically, the amount for the overpriced liquid fertilizers as shown in the COA canvass; the fact that the beneficiaries for the transactions were not identified at the outset and there was no list of recipients provided for verification.

It can be pointed out that it took the accused-movant seven (7) months to file her Counter-affidavit, however such fact is incomparable to the delay attributed to the Ombudsman.

Accused's assertion of the delay

The accused through counsel manifested before this Court that accused Gonzales is not ready for arraignment as she would be filing her Motion to Dismiss on the ground of inordinate delay. By this, she insists that she has timely asserted her right to speedy disposition of cases, having raised the same at the earliest opportunity.

The case of Remulla⁴ discussed the pertinent cases to determine the violation of the right to speedy disposition of cases. The findings of the said case confirms that in the interplay of the elements to be considered, the utter failure of the prosecution to explain the delay outweighed the lack of follow ups from the accused. In such event, We cannot give great weight to accused-movant's lack of objection over the delay during the preliminary investigation because the prosecution, as in Remulla, utterly failed to defend the Ombudsman's inaction. Also, there is no constitutional or legal provision which directs the accused to

⁴ Supra note 12.

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follow up his case before his right to its speedy disposition can be recognized. This principle has been upheld in the long-standing case of Baker vs. Wingo⁵, which states that the defendant has no duty to bring himself to trial. In this light, we give favor to the accused-movant's claim.

Prejudice to the accused

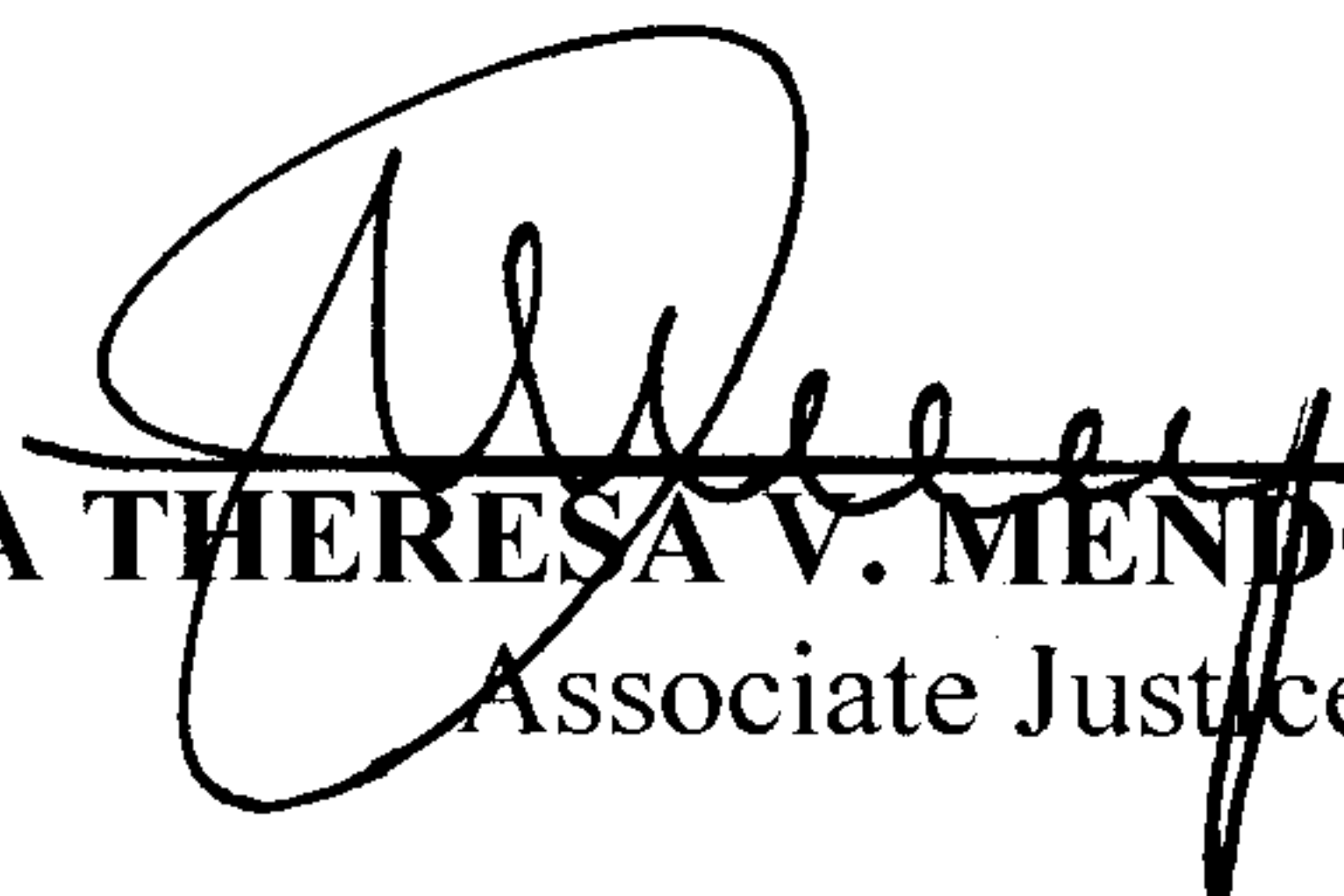
In considering the prejudice caused to the accused-movant, the case of Remulla is also persuasive. In the said case, as in the present circumstances, the protracted period of uncertainty over their criminal case caused them prejudice, living under a cloud of anxiety, suspicion and even, hostility.

Upon perusal of the circumstances of this case together with the consideration of the four elements of the right to speedy disposition of cases, We conclude that the Constitutional right of the accused-movant has been violated and, therefore, the charges against her must be dismissed."

With the foregoing, this Court must consider herein accused as similarly situated as that of accused Gonzales, whose case was previously dismissed on the same ground that is raised in this motion. In the same manner that the prosecution adopted the same arguments in their earlier Comment/Opposition which failed to justify the delay. Thus, this Court sees no compelling reason to deviate from its previous Resolution.

WHEREFORE, premises considered, the ***Motion to Quash on Grounds of Inordinate Delay*** dated by accused Francisco Cabuloy Casil is hereby **GRANTED**. The charges against him in SB-18-CRM-0279 to 0286 are **DISMISSED** for violation of his right to speedy disposition of cases.

SO ORDERED.


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

⁵ 407 U.S. 514.

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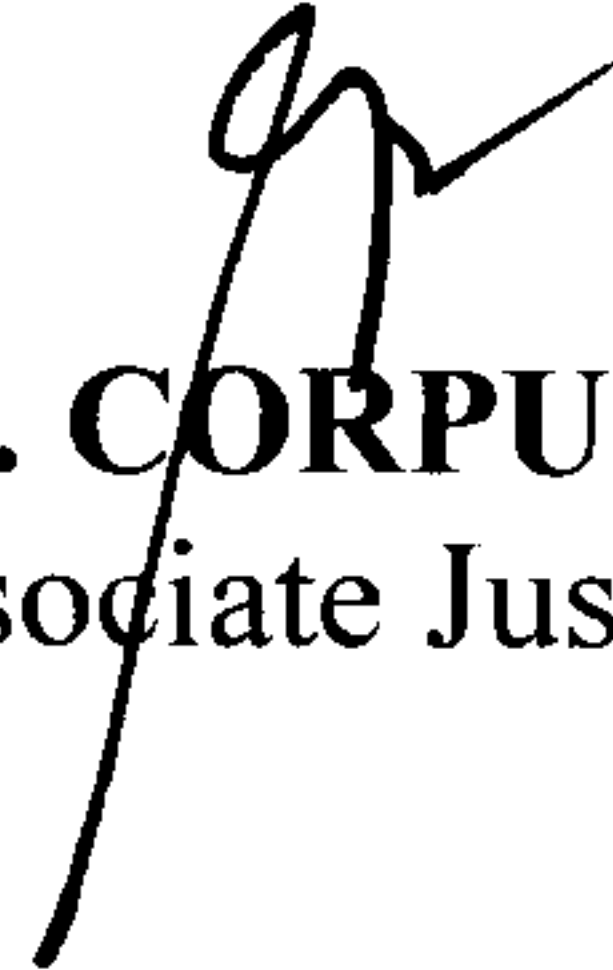
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WE CONCUR:


RAFAEL R. LAGOS
Chairperson
Associate Justice


MARYANN E. CORPUS-MAÑALAC
Associate Justice