REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

Fifth Division

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**SB-18-CRM-0370**
– versus –	**For: Violation of section 3(e) of Rep. Act No. 3019**
TOMAS RICARDO TANJUATCO, et al., *Accused.*	**Present:**
	LAGOS, *J.*, Chairperson, MENDOZA-ARCEGA, and CORPUS-MAÑALAC, *JJ.*
	Promulgated: January 15, 2019

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RESOLUTION

LAGOS, *J.*:

For the Court's consideration is a *Motion for Reconsideration (On the Resolution dated 13, July 2018)*[1] filed by the prosecution on August 1, 2018 and accused Yolanda R. Reyes's *Comment/Opposition*[2] thereto, filed on August 7, 2018. In the subject Resolution,[3] the Court granted accused Reyes's *Omnibus Motion to Dismiss the Present Case for Violation of Accused's Right to Right to Speedy Disposition of the Same Case*, together with all the other accused herein, namely Tomas Ricardo A. Tanjuatco, Adorable A. Sunga, Godofredo Mariano, and Nenita Vines's *Motion to Quash*, and this case ordered dismissed as against all of the above- mentioned accused.[4]

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[1] Records, pp. 346-354.
[2] *Id.*, 358-362.
[3] *Id.*, 310-328.
[4] The dispositive portion of the Resolution's reads, "**WHEREFORE**, the motions are hereby **GRANTED**. Accordingly, this case **DISMISSED** as against Tomas Ricardo A. Tanjuatco, Adorable A. Sunga, Godofredo I.

In its *Motion for Reconsideration*, "[t]he prosecution implores the indulgence of the Honorable Court to reconsider its *Resolution* and to take a second look in light of the following circumstances: 1) that the perceive[d] delay at the preliminary investigation is justified and reasonable; 2) that the accused failed to assert their rights when they submitted their counter-affidavits; 3) that the controlling principle is the one laid down by the Supreme Court sitting *en banc*; and 4) that there was already a finding of probable cause against the accused."[5] It "begs that the Honorable Court considers (sic) the recent pronouncement of the Supreme Court in *People v. Sandiganbayan (Fourth Division)*."[6] A paragraph from the said decision, as quoted by the prosecution, will be further discussed below.

Accused Yolanda R. Reyes in her point-by-point *Comment/Opposition,* hereby briefly quoted, maintains that:

> First point: The subject plaintiff's motion for reconsideration was filed out of time and therefore it can, and must be, denied outright.
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> Second point: Accused was already acquitted in the instant cases (sic) and to reopen it or hold further proceedings will violate his (her) constitutional right against double jeopardy.
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> Third point: There is no categorical and specific or substantiated claim in plaintiff's Motion for Reconsideration that there was violation of its (plaintiff's) right to due process or that grave abuse of discretion amounting to lack or excess of jurisdiction was committed by this Honorable Court in order to justify the reconsideration or reversal of the subject resolution.
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> Fourth point: The pronouncement of the Supreme Court in People vs. Sandignbayan (Fourth Division), Alejandro Gamos, et al., G.R. No. 232197-98, April 16, 2018 cited by the plaintiff in its motion for reconsideration does not squarely apply to the instant
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> case given the clear differences beween the factual backdrops of he Gamos case and the present case.
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> Fifth point: Granting for the sake of argument but without conceding that the period of fact-finding investigation is excluded from the totality of about twelve (12) years that the instant case was pending at the Office of the Ombudsman so that the appreciable gap or length of delay is six years and four months spent during the preliminary investigation, still the latter period of (6 years and 4 months) is unjustified if the period of five (5) years (2006 to 2011)

Mariano, Nenita M. Vines, and Yolanda Reyes. The Hold Departure Orders issued against them are **CANCELLED.**" xxx (Emphasis in the original.)

[5] *Supra*, Note 1, par. 3, p. 347.

[6] People v. Sandiganbayan: (Fourth Division), Alejandro Gamos, et al., G.R. No. 232197-98, April 16, 2018.

> spent in the preliminary investigation in the case of Torres vs. Sandiganbayan, et al. (G.R. No. 221562-69, October 5, 2016) will be used as a gauge of inordinate delay as a ground to dismiss the instant case for violation of the constitutional right to speedy disposition of case.
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> Eight point: The assertion of the right to speedy disposition of the instant case against her was made by Accused Reyes when she filed her Motion for Reconsideration on June 5, 2017 at the Office of the Ombudsman during the preliminary investigation of the instant case.
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> Ninth point: The supposed existence of probable cause against the accused is of no moment at this point of time since the plaintiff/Office of the Ombudsman had clearly and already violated the constitutional right of the Accused to speedy disposition of the case.[7]

Accused Tanjuatco, Sunga, Mariano, and Vines did not file any comment or opposition despite the period given by the Court to the accused. The other remaining accused, Ruben Pendre, remains at-large.

DISCUSSION AND RULING

Without need to belabor each and every point invoked by the accused Reyes in her *Comment/*Opposition, the Court finds the same to be well-taken.

First off, movant admits that "[o]n **20 July 2018**, the Prosecution received a copy of this Honorable Court's *Resolution* promulgated on July 13, 2018 granting the <u>*Motion to Dismiss*</u> filed by Tomas Ricardo A. Tanjuatco, Adorable A. Sunga, Godofredo I. Mariano, Nenita M. Vines and Yolanda Reyes.xxx"[8] To note, there is no other Resolution promulgated in this case on July 13, 2018, other than the one dealing with herein accused Reyes's *Omnibus Motion to Dismiss* and the other accused's *Motion to Quash* as previously mentioned. Thus, it means that the "motion to dismiss" adverted by the prosecution in its motion could only pertain, in generic terms, to the said two separate motions of the herein accused. As duly invoked by accused Reyes in her *Comment/Opposition*, the prosecution consequently had only until **July 25, 2018** within which to file its motion for reconsideration on the subject *Resolution*, in accordance with Part III., No. 2 (c), par. 4 of the *Revised Guidelines for*

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[7] *Supra*, Note 2, pp. 358-361; emphasis omitted.
[8] *Supra*, Note 1, p. 346; emphasis in the original; underscoring supplied.

Continuous Trial of Criminal Cases [A.M. No. 15-06-10-SC], which took effect on September 1, 2017 and reads, as follows: " **The motion for reconsideration of the resolution of a meritorious motion shall be filed within a non-extendible period of five (5) calendar days from receipt of such resolution....**" As scrutinized by accused Reyes, and revealed by the records of this case, "...as borne by the received marking on the first page of the copy of the said plaintiff's motion, the same motion was filed only last **August 1, 2018**, or on the twelfth (12th) day already after the resolution was received by the prosecution last July 201 (sic), 2018 [July 20, 2018]. In other words, the said plaintiff's motion was **filed seven (7) days late**. Accordingly, the plaintiff's motion for reconsideration must, and can already, be denied outright for lack of merit for being a mere scrap of paper."[9]

The alleged "perceived" delay posited by the prosecution, being "justified and reasonable" is 'water under bridge,' same having been matter-of-factly debunked by the Court in the subject Resolution, to wit:

> From the foregoing, the Court computes the total length of delay at about eleven (11) years and five (5) months.
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> **The prosecution considers the delay in this case to be reasonable**. Its main consideration for this is that the fertilizer fund scam was a complicated case which needed a thorough handling and review
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> It offers as reason additionally the following: staff movement in the Office of the Ombudsman; some of its investigators are not lawyers thus the need to review their findings; constitution of a special task force to handle the case.
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> These reasons are not persuasive.
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> While the Court acknowledges that the fertilizer fund scam may be a complicated case, such complication does not justify the length of delay in this case. The magnitude or scope of the investigation does not justify the length of time it took to resolve the case.
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> That this is not an ordinary case was appreciated early on by the Office of the Ombudsman when it constituted a special task force to conduct fact-finding investigation. This was manifested

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[9] *Supra*, Note 2, par. 3, p. 358; emphasis in the original.

again when a special panel was constituted to resolve the complaints filed by the task force.

Raising the fact of specialized groups to resolve the case is a double-edged sword, which in this case operates to the disadvantage of the prosecution. The creation of such special groups should result into reasonable speedier resolution of cases. This is not the case with the Task Force Abono and the special panel for fertilizer fund cases.

The Task Force Abono took five (5) years and three (3) months to draft its complaint. It took another period of over five (5) months to file such complaint for the conduct of a preliminary investigation proper.

Pointing to voluminous documents does not justify the period of over five (5) years and nine (9) months to conduct and terminate a fact finding investigation. That the personnel who conducted the investigation were not lawyers is also beside the point.

It should be stressed that this is a specialized task force within a specialized government office. It has not shown that it encountered extraordinary difficulty in retrieving documents or finding out the scheme in which the scam was carried out. If there were any such difficulty, the office should have addressed it while its personnel were encountering such difficulty to ease the burden.

In the preliminary investigation proper, the situation did not improve. After the filing of the counter-affidavits, the resolution of the complaint took nearly five (5) years. The resolution finding probable cause was dated 2 December 2016. It took about four and a half (4 ½) months to review and finalize the same as of 24 April 2017.

This is not justified delay....

It does not help the prosecution's case that the documents reviewed and the arguments presented for the eventual indictment of the herein accused were readily available in the complaint filed by the FIO. The time period it took the panel to sift through the complaint and the counter-affidavits and prepare the resolution was clearly **not reasonable**.

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And when the Ombudsman finally approved the order denying the motions for reconsideration, the Office of Ombudsman still took another period of about five and a half (5 ½) months just to file the corresponding information with this Court.[10]

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[10] *Supra*, Note 3, pp. 321-322; citations omitted; underscoring in the original; bold type supplied.

The prosecution maintains with respect to the present case, that "the controlling principle is the one laid down by the Supreme Court sitting *en banc*,"[11] citing *People v. Sandiganbayan (Fourth Division), Alejandro Gamos, et al.*, G.R. No. 232197-98, April 16, 2018, and quotes:

> 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 that (sic) concept of speedy trial and speedy disposition of cases for that matter, is a relative term and must necessarily be flexible concept.[12]

To be sure, there are no such "procedural periods" or "prescribed periods" involved in this case, thus, the Court's independent and judicious determination of "inordinate delay" in this case must prevail. And jurisprudence-wise, that is precisely the reason why there are the *Coscolluela v. Sandiganbayan*,[13] *People v. Sandiganbayan and Acot*,[14] *Almeda v. Office of the Ombudsman*,[15] and *Remulla v. Sandiganbayan* rulings,[16] among others, which this Court, directly or indirectly, had to recognize, adopt, or follow. Otherwise, of what worth would all the other "non-*en banc*" decisions of the Supreme Court be, if everything else is sweepingly considered trumped by the *en banc*? As summed up by the Court in the subject Resolution, "Guided by settled jurisprudence and establishe principles, the Court assessed the facts of this case vis-à-vis the four factors of the balancing test. An analysis of each factor and correlation of all such factors show that there was vexatious, capricious, and oppressive delay. The Court concludes that the accused-movant's right to speedy disposition of their cases has been violated, which violation warrants the dismissal of this criminal case against them."[17] And, as duly asserted by accused Reyes in here *Comment/Opposition*, "By virtue of aforesaid [Court's] Resolution, Accused was already acquitted in the instant cases (sic) and to reopen it or hold further proceedings will already violate his (sic) constitutional right against **double jeopardy**."[18]

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[11] *Supra*, Note 1, par 3, p. 347.
[12] *Id.*, par. 4, p. 347; underscoring supplied.
[13] G.R. No. 191411 & 191871, July 15, 2013
[14] G.R. No. 199151-56, July 25, 2016
[15] G.R No. 204267, July 25, 2016
[16] G.R. No. 218040, March 14, 2000
[17] Resolution, Note 3, p. 327.
[18] Comment/Opposition, Note 2, par. 5, p. 359; bold print supplied.

Accused Reyes in her *Comment/Opposition* also asserts that "[t]he pronouncement of the Supreme Court in People vs. Sandiganbayan (Fourth Division), Gamos, et al...does not squarely apply to her instant case given the clear differences between the factual backdrops of the Gamos case and the present case...."[19]

Without need to dwell on the details involved in *People v. Sandiganbayan (Fourth Division)*, the prosecution quotes the following paragraph from the said decision which is self-explanatory:

> Another essential matter disregarded by the court *a quo* is the fact that there is nothing on record that would show that respondents asserted this right to speedy disposition during the OMB [Office of the Ombudsman] proceedings when they alleged that the delay occurred. In fact, it took respondents one year and eight months after the Informations were filed before the court *a quo* on March 30, 2015 before they finally asserted such right in their Motion to Dismiss filed on November 22, 2016. (Underscoring supplied.)

Here, the records show that respondents asserted the same constitutional right during the preliminary investigation hereof, except that the prosecution would qualify it in the following sense, that "the accused failed to assert their rights when they submitted their counter-affidavits"[20] The prosecution insists that "[f]or accused Reyes, the issue was raised for the first time when she filed a *Motion for Reconsideration* to the *Resolution* of the Ombudsman finding probable cause for violation of Sec. 3 (e) of RA 3019 on 05 June 2017. As to the other accused, it was only raised after the *Information* was filed against them on 4 May 2018, by way of *Motion to Dismiss* and/or *Motion to Quash Information*."[21] Suffice it to state that, as noted by the Court in the subject Resolution, "In this case, the issue of inordinate delay was raised by some respondents in the preliminary investigation, albeit none of the present accused. The issue, however, was not addressed in the resolution finding probable cause. Its importance, although not raised by the herein accused, is that the Office of the Ombudsman had been apprised of the possible existence of the inordinate delay."[22]

The prosecution's claim that since "there was already a finding of probable cause against the accused," meaning the Court's Resolution ought to be reconsidered on account thereof, has no leg to stand. The probable cause harped on by the prosecution pertains

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[19] *Supra*, par. 7, p. 360.
[20] *Supra*, Note 1, p. 347, par. 3, item 2; underscoring supplied.
[21] *Id.*, p. 348; italics in the original.
[22] *Supra*, Note 3, p. 324; underscoring supplied.

to the issuance of arrest warrant in this case, sanctioned under Sec. 6, Rule 112 of the Rules of Court, to wit:

> SEC. 6. When warrant of arrest may issue. – (a) By the Regional Trial Court. – Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may
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> immediately dismiss the case if the evidence on record clearly fails to establish probable cause. **If he finds probable cause, he shall issue a warrant of arrest**, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint of information was filed pursuant to section 7 of this Rule. In case of doubt of the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information.

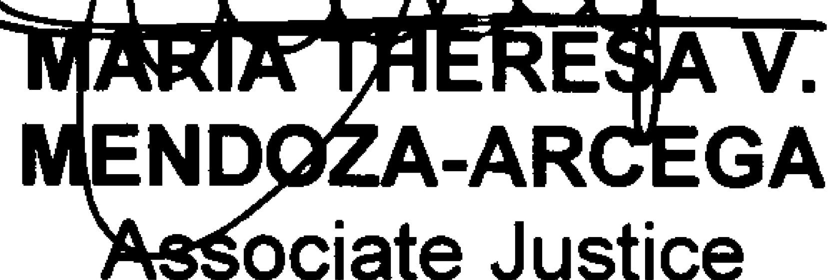
The probable cause earlier found by the Court was strictly for the purpose of issuing an arrest warrant. The Court is not precluded, much less estopped, through the rudimentary finding of probable cause, from considering the issue of "inordinate delay" subsequently raised by the accused, which impacted on their right to speedy disposition of cases guaranteed under the Constitution. Neither were the accused barred from raising the same issue of inordinate delay that they suffered during the preliminary investigation of this case, and seek redress, if not vindication, therefrom.

WHEREFORE, in view of the foregoing, the prosecution's *Motion for Reconsideration* is **DENIED**.

SO ORDERED.

RAFAEL R. LAGOS
Chairperson
Associate Justice

WE CONCUR:



MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

MARYANN E. CORPUS-MAÑALAC
Associate Justice