



Republic of the Philippines
SANDIGANBAYAN
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,

Plaintiff,

SB-18-CRM-0004

For: Violation of Section 3 (g) of
Republic Act (R.A.) No. 3019

-versus-

**ARTHUR C. YAP, JOHNIFER
G. BATARA, FE D. LAYSA,
WILLIAM G. PADOLINA,
WINSTON C. CORVERA,
GELIA T. CASTILLO, SENEN
C. BACANI, RODOLFO C.
UNDAN, RONILLO A.
BERONIO AND FE N.
LUMAWAG,**

Accused,

PRESENT:

FERNANDEZ, SJ, J.,
Chairperson
MIRANDA, &
VIVERO, JJ.

Promulgated:
FEB 27 2019 *[Signature]*

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RESOLUTION

MIRANDA, J.:

This resolves the: 1) Manifestation and Motion dated January 21, 2019 of Atty. Jeremy Timbancaya Escote (Escote); 2) Motion for Reconsideration dated January 18, 2019 of accused Fe N. Lumawag (Lumawag); and 3) Manifestation dated January 24, 2019 of the Prosecution.

[Signatures]

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In his manifestation and motion, Atty. Escote seeks the admission of the Motion for Reconsideration dated January 21, 2019. He alleges that he received the copy of the Resolution dated December 5, 2018 on January 7, 2019. He was, however, constrained to file the motion for reconsideration on January 21, 2019 only, or fourteen (14) days after receipt of the assailed resolution. He claims that he had to attend to his wife who was confined at the hospital from December 15, 2018 to January 6, 2019 to undergo a medical procedure for PEG on her stomach.

In her motion for reconsideration, accused Lumawag assails the Resolution dated December 5, 2018 denying her Motion to Quash dated March 16, 2018. In particular, she claims that: 1) the Field Investigation Office (FIO) of the Office of the Ombudsman filed the formal complaint only on July 5, 2013 although its certificate of non-forum shopping was signed and sworn to as early as June 5, 2011; 2) said delay of the Office of the Ombudsman to file the complaint and docket the same for preliminary investigation constituted inordinate delay; 3) she has been suffering anxiety, sleepless night, suspicions and hostility from the public, and financial difficulties because of this case; 4) she was cooperative and responsive to the proceedings before the Office of the Ombudsman, and was never remiss of her duty to file all the required pleadings; and 5) the Office of the Ombudsman is mandated to resolve the cases before it with reasonable dispatch and within the period provided by its rules of procedure.

In its Manifestation dated January 24, 2019, the Prosecution, through the Office of the Special Prosecutor (OSP), adopted its arguments and discussion in its Opposition dated January 9, 2019. In the said opposition, the Prosecution sought the denial of the separate motions for reconsideration filed by accused Beronio, Yap, Batara, Laysa, Bacani, and Undan for being a mere rehash of the issues and arguments already raised in their motions to quash and dismiss the informations. The Prosecution claimed that the Court has already resolved the said issues and arguments in its Resolution dated December 5, 2018.

The manifestation and motion of Atty. Escote is **DENIED**.

The motion for reconsideration was filed beyond the reglementary period. The Revised Guidelines for Continuous Trial of Cases strictly provide:

2. Motions

(c) *Meritorious motions.*—

x x x

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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,**¹

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Assuming that the Motion for Reconsideration was filed on time, it is still **DENIED** for lack of merit.

After a restudy, the Court finds nothing new in the arguments raised by accused Lumawag in her motion for reconsideration.

The Supreme Court has consistently emphasized that the constitutional right to a speedy disposition of the case is a relative and flexible concept.² To reiterate, *each case must be decided upon the facts peculiar to it.*³ A mere mathematical reckoning of time involved would not be sufficient.⁴ The conduct and interests of both the Prosecution and the accused are considered and balanced in determining whether the right to the speedy disposition of cases has been violated.⁵

Based on the records, the Office of the Ombudsman took *four (4) years, six (6) months, and eight (8) days* to finish the preliminary investigation of this case reckoned from the filing of the complaint by the FIO on July 5, 2013 to the filing of the information with the Sandiganbayan on January 12, 2018.

The period of fact-finding investigation was excluded in the computation of the period of alleged delay. In the fairly recent case of *Cagang v. Sandiganbayan*,⁶ the Supreme Court held that the fact-finding investigation is not counted in determining whether or not the right of the accused to a speedy disposition of the case was violated. 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 complaint. At this point, the Office of the Ombudsman will not yet determine if there is probable cause to charge the accused. A case is deemed to have commenced only from the filing of the

¹ Emphasis supplied.

² *Dela Pea v. Sandiganbayan*, G.R. No. 144542, June 29, 2001

³ *Benares v. Lim*, G.R. No. 173421, December 14, 2006.

⁴ *Id.*

⁵ *Gonzales v. Sandiganbayan*, G.R. No. 94750, July 16, 1991.

⁶ G.R. Nos. 206438, 206458, 210141-42, July 31, 2018.

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formal complaint and the subsequent conduct of the preliminary investigation.⁷

The total period of *eleven (11) months and nine (9) days* was also excluded from the computation as this period was spent by accused Lumawag and Ronillo A. Beronio in preparing and filing their respective counter-affidavits and motions for reconsideration, and by COA in complying with the subpoena *duces tecum*. Therefore, the total period attributable to the Office of the Ombudsman was only *three (3) years, six (6) months, and twenty-nine (29) days*.

In the Resolution dated December 5, 2018, the Court considered this period reasonable because the investigating prosecutor had to carefully evaluate not only this complaint but also the other two complaints as well as the supporting documents to determine whether probable cause for the offenses charged existed against accused Lumawag and her co-respondents. The Office of the Ombudsman had to consider her right to due process, and the OSP had to review the case again so that only the case that could stand the rigors of trial would be filed. Under these circumstances, the said period is not capricious, oppressive and vexatious.

All other matters raised by accused Lumawag, such as the inexcusable delays by the Office of the Ombudsman in the conduct of the preliminary investigation, her non-waiver of the constitutional right to a speedy disposition of the case, the prejudice she suffered because of the alleged delay, and the application of Supreme Court rulings to this case, were already passed upon and resolved by the Court in the assailed resolution.

Again, each case involving an alleged violation of the right of the accused to a speedy disposition of the case is judged on a case-to-case basis. The Court is required to do more than a computation of the number of years that elapsed in the conduct of the preliminary investigation and filing of the information in court. The inquiry as to whether or not an accused has been denied such right is not susceptible by precise qualification. Particular regard must be had to peculiar circumstances attendant of each case.⁸

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.⁹ There being no new matters or issues raised to warrant a reversal thereof, the Court is not inclined to grant the accused-movant's motion for reconsideration.

⁷ *Id.*

⁸ *Ombudsman v. Jurado*, G.R. No. 154155, August 6, 2008.

⁹ *Supra*, *Benares v. Lim*.

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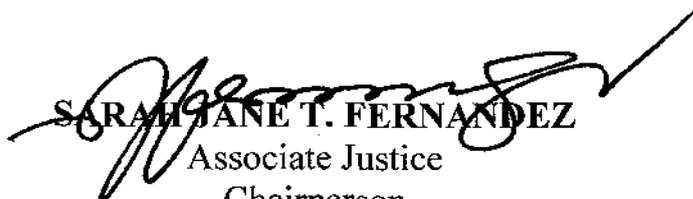
WHEREFORE, the Manifestation and Motion dated January 18, 2019 of Atty. Escote is **DENIED**.

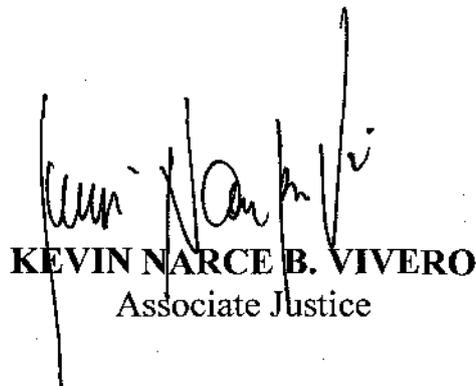
The Motion for Reconsideration dated January 18, 2019 accused Fe N. Lumawag is **DENIED** for lack of merit. The Resolution of the Court promulgated on December 5, 2018 is **AFFIRMED**.

The Manifestation dated January 24, 2019 of the Prosecution is **NOTED**.

SO ORDERED.


KARL B. MIRANDA
Associate Justice


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson


KEVIN NARCE B. VIVERO
Associate Justice

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(Motion for Reconsideration dated January 18, 2019 of accused Lumawag)

SEPARATE CONCURRING OPINION

FERNANDEZ, SJ, J.:

I concur with the finding in the main opinion that there was no violation of accused Lumawag's right to speedy disposition of cases.

As held in *Tumbocon v. Sandiganbayan*,¹ wherein the Supreme Court applied its ruling in *Cagang v. Sandiganbayan*,² the time spent for the fact-finding investigation should be excluded from the computation for determining the length of delay. At any rate, even if *Cagang* was not applied, and the time for the fact-finding investigation is included in the computation of the length of delay, there would nevertheless be no violation of said accused' right to speedy disposition of cases.

Length of delay is but one of the factors that the Court must consider in determining if there was a violation of the right to speedy disposition of cases. The Court must also consider the reason for the delay, the accused' assertion or failure to assert such right, and the prejudice caused by the delay, together with the peculiar circumstances surrounding each case.

As the Supreme Court emphasized in *People v. Sandiganbayan*,³ a mere mathematical computation of the period from the filing of the complaint to the filing of the Information will not suffice. And while the rules provide for periods within which complaints and motions must be acted upon, these periods are not absolute. Jurisprudence continues to adopt the view that speedy disposition is a relative term and must necessarily be a flexible concept. *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

¹ G.R. Nos. 235412-15, November 5, 2018

² G.R. Nos. 206438, 206548 and 210141-42, July 31, 2018

³ G.R. Nos. 232197-98, April 16, 2018



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disposition of cases for that matter, is a relative term and must necessarily be a flexible concept.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson