



Republic of the Philippines

Sandiganbayan

Quezon City

SIXTH DIVISION

**PEOPLE OF THE
PHILIPPINES,**

Plaintiff,

SB-18-CRM-0371 - 0378

For: Violation of Section 3 (e) of
Republic Act (R.A.) No. 3019 and
Malversation of Public Funds under
Article 217 of the Revised Penal
Code

-versus-

**MIGUEL DRACULAN
ESCOBAR, SUMAIL KUSAIN
SEKAK, ABDULWAHAB
ADZAL BAYAO, ESTRELLA
CATALAN SABAY,
MUSTAPHA GAPAS
ISMAEL, ARTHUR A.
ALLER, and ROMMEL J.
SARAOSOS,**

Accused,

PRESENT:

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

Promulgated:

FEB 19 2019 *[Signature]*

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RESOLUTION

MIRANDA, J.:

This resolves the: (1) Motion for Reconsideration dated November 22, 2018 filed by accused Abdulwahab Adzal Bayao (Bayao), Mustapha Gapas Ismael (Ismael), and Estrella Catalan Sabay (Sabay) on November 27, 2018; and (2) Comment/Opposition (Re Motion for Reconsideration of Accused Bayao, Ismael, and Sabay) dated December 6, 2018 filed by the Prosecution on December 10, 2018.

In their motion for reconsideration, Bayao, Ismael, and Sabay allege that: 1) even if the period of fact-finding investigation was set aside, the Office of the Ombudsman still delayed the resolution of the case against

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them for 4 years, 4 months and 7 days as there was no reasonable circumstance to justify the said delay; 2) they did not waive their right to a speedy disposition of the case as their motion to quash/dismiss the case was seasonably filed before the Court; 3) they did not also waive their right to a speedy disposition of the case when they failed to invoke it before the Office of the Ombudsman considering that the prosecutor has the duty to speedily resolve the complaint regardless of the lack of objection or acquiescence to the delay; and 4) the ruling in *Cagang v. Sandiganbayan* should be applied prospectively and should not apply to parties who had relied on the old doctrine and acted on the faith thereof.

In its comment/opposition to the motion for reconsideration, the Prosecution, through the Office of the Special Prosecutor (OSP), alleges that: 1) the motion for reconsideration was filed beyond the non-extendible period of 5 days allowed by the Revised Guidelines for Continuous Trial of Criminal Cases; 2) the motion for reconsideration is a mere rehash of the arguments raised by Bayao, Ismael, and Sabay in their Motion to Quash Information/Dismiss the Case dated July 13, 2018; 3) the time it took the Office of the Ombudsman to resolve the complaint was reasonable and was not attended by vexatious, capricious and oppressive delays; 4) Bayao, Ismael, and Sabay waived their right to a speedy disposition of the case when they did not raise it in their motion for reconsideration before the Office of the Ombudsman; 5) the Court clearly explained that fact-finding investigation should not be attributed to the Office of the Ombudsman Luzon; and 6) the motion for reconsideration is a dilatory procedural tactic to delay the proceedings of these cases.

The motion for reconsideration was filed out of time.

The Court will first rule on whether the motion for reconsideration was filed by Bayao, Ismael, and Sabay on time. The Resolution dated November 14, 2018 denying the Motion to Quash Information/Dismiss the Case dated July 13, 2018 of Bayao, Ismael, and Sabay was personally received by them, through counsel, on November 14, 2018. **Bayao, Ismael, and Sabay filed their motion for reconsideration on November 27, 2018, or after 13 days.**

Under Section III(2)(c) of the Revised Guidelines for Continuous Trial of Criminal Cases, which took effect on September 1, 2017, a motion for reconsideration of a meritorious motion shall be filed within a non-extendible period of five (5) calendar days from receipt of the resolution.

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When the motion for reconsideration was filed, the Revised Guidelines for Continuous Trial of Criminal Cases were already in effect. The accused then had 5 days from receipt of the resolution on November 14, 2018, or until November 19, 2018, within which to file a motion for reconsideration. The accused filed their motion for reconsideration 8 days late. Thus, the motion for reconsideration was filed beyond the reglementary period provided under the Revised Guidelines for Continuous Trial of Criminal Cases. On this basis alone, the Court **denies** the motion for reconsideration.

There is no inordinate delay in these cases.

Even after a restudy of the grounds raised in the motion for reconsideration, the Court finds no valid reason to reconsider its Resolution dated November 14, 2018 denying the motion to quash/dismiss of Bayao, Ismael, and Sabay for lack of merit. The issues and arguments raised by them in their motion for reconsideration are a mere rehash and a repetition of the same issues and arguments raised in their Motion to Quash Information/Dismiss the Case dated July 13, 2018. These issues and arguments have already been considered and passed upon by the Court in its Resolution dated November 14, 2018. There being no new matters or issues raised to warrant a reversal thereof, the motion for reconsideration must be **denied**.

To reiterate, inordinate delay in the resolution of and termination of a preliminary investigation will result in the dismissal of the case against the case. Delay, however, is not determined through mere mathematical reckoning but through the examination of the facts and circumstances surrounding each case.¹

After deducting the periods attributable to the accused and those beyond the control of the Office of the Ombudsman, the total period of **4 years, 7 months, and 25 days** spent by the Office of the Ombudsman and the OSP to complete the preliminary investigation and file the informations against Bayao, Ismael, and Sabay can hardly be considered an unreasonable and arbitrary delay as to deprive them of their constitutional right to the speedy disposition of the case.

To recall, the investigating prosecutor had to carefully evaluate the complaint and the supporting documents to determine whether probable cause for violation of Section 3(e) of R.A. No 3019 and Malversation of

¹ *Cagang v. Sandiganbayan*, G.R. No. 206438 and 206458, July 31, 2018.

Public Funds existed against all of the accused. The OSP had to review the case again so that only the case that could stand the rigors of trial would be filed. Also, these cases involve 8 respondents, 2 criminal charges, 2 administrative charges, and voluminous records because it is part of the fertilizer fund scam cases involving several government officials and employees around the country.

Bayao, Ismael, and Sabay were aware that a preliminary investigation was being conducted against them. They were served a copy of the complaint and given the opportunity to file their counter-affidavit. Considering that the Office of the Ombudsman had not released its resolution, Bayao, Ismael, and Sabay knew that the case against them is still pending. They even filed a motion for reconsideration and/or reinvestigation when they finally received the resolution finding probable cause against them.

Under these circumstances, the said period is not capricious, oppressive and vexatious. The time it took the Office of the Ombudsman to investigate the complaint against Bayao, Ismael, and Sabay and to file the necessary informations against them was with valid reasons.

This Court is not unmindful of the duty of the Ombudsman under the Constitution and R.A. No. 6770 to act promptly on complaints brought before it. Such duty, however, should not be mistaken with a hasty resolution of cases at the expense of thoroughness and correctness.² Judicial notice should be taken of the fact that the nature of the Office of the Ombudsman encourages individuals who clamor for efficient government service to freely lodge their complaints against wrongdoings of government personnel. A steady stream of cases reaching the Ombudsman inevitably results. Naturally, disposition of those cases would take some time.³

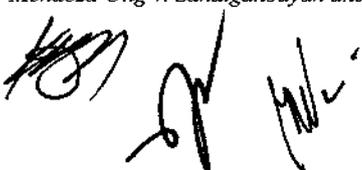
Waiver of the right to a speedy disposition of the case

Bayao, Ismael, and Sabay waived their right to question the alleged violation of their right to a speedy disposition of the case.

The right to speedy disposition of the case must be timely raised. An accused must file the appropriate motion upon the lapse of the statutory period or procedural period established by the Office of the Ombudsman for

² *Cagang v. Sandiganbayan*, G.R. No. 206438 and 206458, July 31, 2018.

³ *Mendoza-Ong v. Sandiganbayan and People*, G.R. Nos. 146368-69, October 23, 2003.



the completion of the preliminary investigation. Otherwise, they are deemed to have waived their right to speedy disposition of the case.⁴

In the cases before the Court, Bayao, Ismael, and Sabay failed to seasonably assert their right to a speedy disposition of the case. They neither raised the issue of inordinate delay before the Office of the Ombudsman nor took any overt acts questioning the alleged inordinate delay during and after the expiration of the period for the termination of the preliminary investigation. Their inaction showed acquiescence and waiver to question any violation of their right to a speedy disposition of the case.

Prospective application of Cagang

The ruling in *Cagang* is applied prospectively consistent with the doctrine of *stare decisis*. The doctrine of *stare decisis* requires courts to follow the rule established in a decision of the Supreme Court. The said decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land.⁵

In *Co v. Court of Appeals and People*,⁶ the Supreme Court ruled that the new doctrine in *Olague v. Military Commission No. 34*⁷ is applied prospectively only to future cases and cases still ongoing or not yet final when the said decision was promulgated. There should be no retroactive nullification of final judgments, whether of conviction or acquittal, rendered by military courts against civilians before the promulgation of the *Olague* decision. Such final sentences should not be disturbed by the State.

Considering that *Cagang* was promulgated by the Supreme Court on July 31, 2018, the Court has no recourse but to follow the doctrines enunciated in the said case as already discussed. The prospective application of a new doctrine, as in *Cagang*, means that pending cases and future cases should be decided in accordance with the new doctrine. Only final and executory cases decided prior to *Cagang* should be respected and the parties in those cases are allowed to rely on the previous doctrine. Therefore, the claim of Bayao, Ismael, and Sabay that *Cagang* should not apply to them as they had relied on the old doctrine and acted on the faith thereof has no basis.

⁴ *Cagang v. Sandiganbayan*, G.R. No. 206438 and 206458, July 31, 2018.

⁵ *Lazatin v. Desierto*, G.R. No. 147097, June 5, 2009.

⁶ G.R. No. 100776, October 28, 1993.

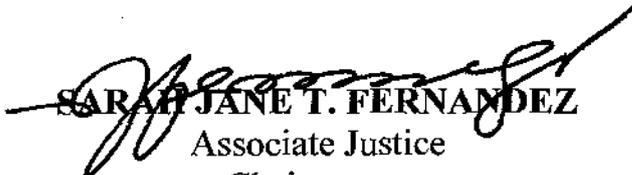
⁷ G.R. No. L-54558 and L-69882, May 22, 1987.

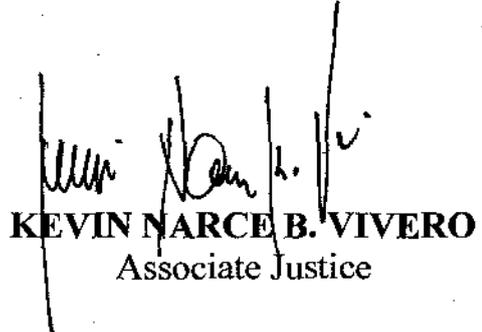
WHEREFORE, the Motion for Reconsideration dated November 22, 2018 of accused Abdulwahab Adzal Bayao, Mustapha Gapas Ismael, and Estrella Catalan Sabay is **DENIED** for having been filed beyond the reglementary period and for lack of merit. The Resolution of the Court promulgated on November 14, 2018 is **AFFIRMED**. The arraignment of and pre-trial for accused Bayao, Ismael, and Sabay shall proceed on March 8, 2019 as scheduled.

SO ORDERED.


KARL B. MIRANDA
Associate Justice

WE CONCUR:


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson


KEVIN NARCE B. VIVERO
Associate Justice

SEPARATE CONCURRING OPINION

FERNANDEZ, SJ, J.:

I concur with the findings in the main opinion. I further submit that as to the applicability of *Cagang* to accused Bayao, Ismael, and Sabay, it is incumbent upon them to show that they relied on the old doctrine in good faith.

In *Carpio-Morales v. Court of Appeals*,¹ wherein the Supreme Court abandoned the condonation doctrine, it was held that a prior doctrine should, as a general rule, be recognized as “good law” prior to its abandonment. The new doctrine should not apply to those who relied on the old doctrine and acted on the faith thereof. *viz.:*

Hence, while the future may ultimately uncover a doctrine’s error, it should be, as a **general rule**, recognized as “good law” prior to its abandonment. Consequently, the people’s reliance thereupon should be respected. The landmark case on this matter is *People v. Jabinal*, wherein it was ruled:

[W]hen a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof.

Inasmuch as accused Bayao, Ismael, and Sabay have not shown that they relied on an old doctrine and acted on the faith thereof, their claim that *Cagang* does not apply to them fails.

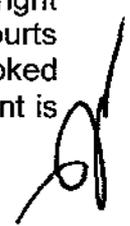
At any rate, whether the Court applies the ruling in *Cagang*, or applies the balancing test, considering its four (4) factors, *i.e.*, (1) length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay; and includes the period for the conduct of the fact-finding investigation in the computation of the length of delay, it would have arrived at the same conclusion.

The discussion on the mode of analysis in *Cagang* reads:

This Court 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 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

¹ G.R. Nos. 217126-27, November 10, 2015



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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 has been inordinate delay.

Third, courts must first determine which party carries the burden of proof. If the right is invoked within the given time 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.

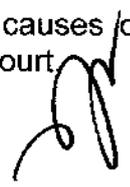
Once the burden of proof shifts to the prosecution, the prosecution must prove *first*, that it followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; *second*, that the complexity of the issues and the volume of evidence made the delay inevitable; 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 the 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 to the delay, the constitutional right can no longer be invoked.

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



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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 elapse of the statutory or procedural periods. Otherwise, they are deemed to have waived their right to speedy disposition of cases.

It can be seen that such mode of analysis incorporates the four (4) factors of the balancing test, as well as the Supreme Court's previous rulings on the effects of malicious prosecution, the waiver of the right to speedy disposition of cases, and prejudice to the accused, among others.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson