



REPUBLIC OF THE PHILIPPINES

*Sandiganbayan*

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-18-CRM-0428 and 0429**  
Plaintiff, For: Violation of Sec. 3(e)  
of R.A. No. 3019

*Present*

- versus -

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

**MARCELINO C. LIBANAN,**  
**ET AL.,**

Accused.

*Promulgated:*

**FEB 20 2019**

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## RESOLUTION

**FERNANDEZ, SJ, J.**

This resolves the following:

1. *Accused Libanan's and Agda's Joint Motion for Reconsideration [Re: 26 October 2018 Resolution]<sup>1</sup>* filed by accused Marcelino C. Libanan and Jesus Agda;
2. *Motion for Reconsideration [of the Honorable Court's Resolution Dated October 26, 2018]<sup>2</sup>* filed by accused Vilma B. Bormate;
3. *Motion for Reconsideration<sup>3</sup>* filed by accused Necitas A. Ponferrada;

<sup>1</sup> Dated November 9, 2018; Record, Vol. 4, pp 11-94

<sup>2</sup> Dated November 12, 2018; Record, Vol 4, pp 109-139

<sup>3</sup> Dated November 19, 2018; Record, Vol 4, pp 143-151

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In their *Motion for Reconsideration*, accused Libanan and Agda pray that this Court reconsider its Resolution dated October 26, 2018,<sup>4</sup> quash the Information and dismiss the present case.<sup>5</sup> They argue:

1. The time spent in the fact-finding investigation should have been included in the computation for determining the length of delay, as held in *Torres v. Sandiganbayan*.<sup>6</sup>
  - a. The doctrine laid down in *Torres* still applies, notwithstanding its abandonment thereof in *Cagang v. Sandiganbayan*<sup>7</sup> and *Magante v. Sandiganbayan*.<sup>8</sup> A superseding doctrine against a substantive right of the accused accorded by the prevailing doctrine cannot be given retroactive application.
  - b. *Torres*, wherein there were twelve (12) respondents and a series of transactions, was even more complicated than the present case.
2. The Ombudsman's investigation took around twelve (12) years—from 2006 to June 22, 2018. During said period, they suffered sleepless nights, serious anxieties, impaired freedom of locomotion, became isolated from their friends and relatives, suffered public obloquy and ridicule, were deprived of their right to secure clearances from the Office of the Ombudsman, and suffered financial drain. Their ability to gather evidence and witnesses was also seriously affected.
3. The prosecution failed to justify the delay in the Office of the Ombudsman's investigation. The reasons given by the prosecution had already been rejected by the Supreme Court in cases prior to *Cagang*.
4. Even if the filing of the FIO's Complaint on March 5, 2013 is used as the reckoning point, the period of over four (4) years it took to complete the preliminary investigation is unreasonable.
  - a. The doctrine laid down in *Cagang* may not yet be applied to the present case because *Cagang* has not yet attained finality.
  - b. *Cagang* only excluded the time spent in the fact-finding investigation from the computation for the length of delay.

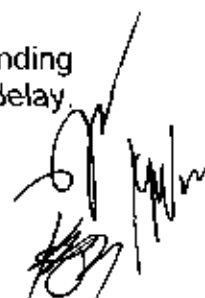
<sup>4</sup> Record, Vol. 3, pp. 470-495

<sup>5</sup> SB-18-CRM-0428 only

<sup>6</sup> G.R. Nos. 221562-69, October 5, 2016

<sup>7</sup> G.R. Nos. 206438, 206458 and 210141-42, July 31, 2018

<sup>8</sup> G.R. Nos. 230950-51, July 23, 2018



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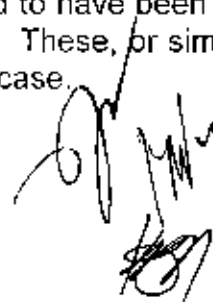
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Delay in the preliminary investigation proper may still result in the dismissal of the case.

5. In *People v. Sandiganbayan (First Division), Jesnar R. Falcon and Peter Paul Jed C. Falcon*,<sup>9</sup> it was held that a period of three (3) years from the filing of the complaint to the determination of probable cause is unreasonable.
6. In *Magante*, the Supreme Court ruled that the prosecution failed to justify the delay of five (5) years and three (3) months in the conduct of the preliminary investigation. It was further held:
  - a. The fact that there were ten (10) respondents, and each of them was afforded the right to be heard, is not a justification for the delay.
  - b. There is no need to prove that the prosecution was politically motivated
  - c. The State, and not the accused, has the obligation to ensure that the case is disposed of within a reasonable period.
  - d. There is no grave prejudice suffered by the State from the delay it caused
7. They filed their respective motions for reconsideration immediately after the issuance of the Ombudsman's Resolution finding probable cause to indict them in court. However, it took the Ombudsman a period of around one (1) year and three (3) months to file the Informations with the Court.
8. The prosecution has not given any compelling reason as to why it took the Office of the Ombudsman around five (5) years and three (3) months to terminate the preliminary investigation.
9. As held in *Coscolluela v. Sandiganbayan*,<sup>10</sup> the Office of the Ombudsman not only has the duty to carefully go through the particulars of the cases, but also to act on them with reasonable promptness.
10. In *Cagang*, over a hundred individuals were investigated, and 40 were eventually found to have been involved in 81 different anomalous transactions. These, or similar circumstances, are absent from the present case.

<sup>9</sup> G.R. Nos. 231469-70, August 2, 2017

<sup>10</sup> G.R. Nos. 191411 and 191871, July 15, 2013



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11. The Office of the Ombudsman's investigation exceeded the period prescribed for completing the preliminary investigation. Thus, the burden of justifying the delay is shifted to the prosecution. The prosecution, however, has not provided any valid justification for the delay.

Accused Reynaldo C. Dorado, and Clotilde J. Salazar, Manuel B. Japzon, Vener T. Dulfo and Samson C. Nervez, in their separate Motions,<sup>11</sup> pray that they be considered to have adopted as their own the *Motion for Reconsideration* of accused Libanan. They further pray that this Court reconsider the assailed Resolution, quash the Informations, and dismiss the present cases.

In her *Motion for Reconsideration*, accused Bormate similarly prays that this Court reverse the Resolution dated October 26, 2018, and dismiss the present cases. She avers:

1. The Court erred in its retroactive application of the Supreme Court's ruling in *Cagang*.
  - a. *Cagang* was promulgated only last July 31, 2018. Said ruling should not have been applied considering that the circumstances subject of her *Omnibus Motion* involved events which occurred more than a decade ago.
  - b. Applying the ruling in *Cagang* to the present cases will effectively deprive her of her constitutionally guaranteed right, which at the time of the subject investigation, was not considered to have been waived.
  - c. In *Carpio Morales v. Court of Appeals*,<sup>12</sup> it was held that new jurisprudential doctrines should only be applied prospectively
2. The Court failed to consider the applicable jurisprudence at the time the accused underwent preliminary investigation.
  - a. From the commencement of the preliminary investigation on March 5, 2013 to its conclusion on November 24, 2017, the prevailing jurisprudence (a) reiterated the State's obligation to promptly resolve cases; (b)

<sup>11</sup> Accused Dorado's *Motion and Manifestation to Adopt "Accused Libanan's Joint Motion for Reconsideration (Re: 26 October 2018 Resolution) as Accused Dorado's Motion for Reconsideration* dated November 19, 2018 (Record, Vol. 4, pp. 140-142); Accused Salazar, Japzon, Dulfo and Nervez' *Motion to Adopt the Motion for Reconsideration (Re 26 October 2018 Resolution)* dated November 19, 2018 (filed by registered mail on November 19, 2018, and received by this Court on November 28, 2018)

<sup>12</sup> G.R. Nos. 217126-27, November 10, 2015

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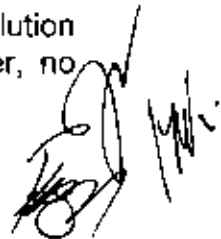
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- reckoned the period of delay from the start of the fact-finding investigation; and (c) emphasized that the defendant has no duty to bring himself or herself to trial, and the prejudice suffered by the accused by reason of the delay in the resolution of the case.
- b. The prevailing jurisprudence at the time of the preliminary investigation removed from the accused the obligation of following up on their case and objecting to the delay in the proceedings.
3. She did not waive her right to speedy disposition of cases, or acquiesce to the inordinate delay in the preliminary investigation.
    - a. She could not have invoked her right to speedy disposition of cases at the time of the conduct of the preliminary investigation because at the time, there was no jurisprudence that imposed upon her the duty to invoke her right to speedy disposition of cases
    - b. There was no reason for her to decry the delay at the time of the filing of her counter-affidavit, considering that at the time, the preliminary investigation had just started.
    - c. The earliest time she could have raised the issue of inordinate delay was after the Informations were filed against her.
  4. The Court erred in finding the prosecution's justification for the delay valid.
    - a. The Court's findings were not supported by the facts provided by the prosecution.
    - b. The justification that the case had to go through different levels of review in the Office of the Ombudsman had already been rejected by the Supreme Court.
    - c. Valid reasons for delay include (1) extraordinary complications such as the degree of difficulty of the questions involved, the number of persons charged and voluminous records and (2) acts attributable to the respondent. None of these circumstances were present.
    - d. Although the present cases relate to the Fertilizer Scam, these cases involve only two straightforward transactions.
    - e. The FIO Complaint and the Ombudsman's Resolution merely echoed the COA Audit Report. Moreover, no



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clarificatory hearing was conducted. There was no reason for the delay in the preliminary investigation.

- f. There were no voluminous records. The relevant documents consist of the five-page COA report containing the COA's findings. The other documents were mere attachments to the COA report.
5. The prejudice she suffered as a result of the delay is not based on mere conjecture
- a. She suffered prejudice by reason of the delay in the preliminary investigation.
  - b. The subject transactions occurred in 2004. The complaint against the accused was filed only in 2012, or around eight years after said transactions. It took another four years before the Informations were filed with the Sandiganbayan.
  - c. The inordinate delay caused serious unrest to her person and to her well-being. She was also deprived of the opportunity to obviate negative public opinion of her reputation.
  - d. She is unable to adequately and competently prepare her defense because she is being burdened to recall and present evidence in connection with events that happened more than a decade ago. Furthermore, documents needed for her defense could no longer be secured.

In her *Motion for Reconsideration*, accused Ponferrada also prays for the reversal of the assailed Resolution and the dismissal of the complaint against her. She avers:

1. The prosecution failed to justify the delay.
  - a. The Supreme Court, in several cases, rejected the justification of the case requiring a thorough review before being approved by the Ombudsman.
  - b. There was no reason for the period of five (5) years it took the Office of the Ombudsman to resolve the case.
    - i. The case involved only two transactions. The COA Report on which the complaint was based, was complete and final.



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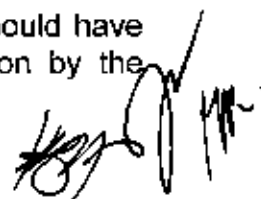
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- ii. The Office of the Ombudsman has not shown any extraordinary complication that would justify the delay.
2. She invoked her right to speedy trial at the earliest opportunity.
  - a. She invoked her right to speedy disposition of cases when she invoked her rights to due process and to be informed of the nature and cause of the accusation against her in her Counter Affidavit dated July 19, 2013.
  - b. The documents attached to the copy of the complaint she received pertained to the transactions of the Regional Office IV of the Department of Agriculture and the 2<sup>nd</sup> District of Oriental Mindoro, and not those of the Province of Eastern Samar.
  - c. The right to due process includes the right to be confronted with the documentary evidence for which an accused is being held criminally liable.
3. The documents she needs for her defense are no longer available. They were destroyed when the province had been ravished by several typhoons. This was even noted in the COA audit report on the "Fertilizer Scam."

In its *Consolidated Comment/Opposition*,<sup>13</sup> the prosecution counters:

1. As the Supreme Court held, neither the Constitution nor Republic Act No. 6770 provided for a specific period within which to determine what can be considered as delay in the disposition of complaints. Thus, judicial interpretation is necessary to determine what is considered "prompt," and what length of time amounts to unreasonable or "inordinate delay."
2. The ruling in *Cagang* merely sets the standard in determining whether there is a violation of the right to speedy disposition of cases. It is not in the nature of a statute such that it cannot be applied retroactively.
3. Judicial interpretation of a statute forms part of the law as of the date it was originally passed. The judicial doctrine does not amount to a passage of a new law, but is merely an interpretation of a pre-existing one.
4. Other than the contention that the *Cagang* ruling should have been prospectively applied, the grounds relied upon by the

<sup>13</sup> Dated November 26, 2018; Record, Vol. 4, pp. 157-164



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accused are a mere reiteration or rehash of those in their previous motions.

5. The right to speedy disposition of cases is deemed violated only when the proceedings are attended by vexatious, capricious and oppressive delays, or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive, a long period of time is allowed to elapse without the party having the case tried. In the assailed Resolution, the Court found that none of the aforementioned circumstances are present.
6. Anxiety typically accompanies a criminal charge. However, for the purpose of determining if there was a violation of the right to speedy disposition of cases, the anxiety must be of such nature and degree that it becomes oppressive, unnecessary and notoriously disproportionate to the nature of the criminal charge.
7. Although an accused has no legal duty to follow up the resolution of the case, the timeliness of the assertion of the right to speedy disposition of cases must still be considered because such right may be waived.

### THE COURT'S RULING

The Court resolves to grant accused Dorado, and Salazar, Japzon, Dulfo and Nervez' respective Motions to adopt as their own the *Motion for Reconsideration* of accused Libanan. Accused Libanan's *Motion for Reconsideration* is considered as the Motion for Reconsideration of said accused.

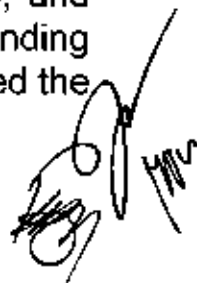
The Court, however, finds no reason that would warrant the reversal of the assailed resolution, and resolves to deny the respective *Motions for Reconsideration* of the accused.

The accused argue that this Court should not have applied the ruling in *Cagang v. Sandiganbayan*<sup>14</sup> because the Decision in said case has not yet been promulgated at the time the Office of the Ombudsman conducted the fact-finding and preliminary investigations.

But even if this Court did not apply the ruling in *Cagang*, and instead, included the period for the conduct of the fact-finding investigation in the computation of the length of delay, and applied the

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<sup>14</sup> *Supra.* Note 7





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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, 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 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

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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.

*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.

Considering the numerous transactions covered and the case load of the Office of the Ombudsman, this Court finds that the time it took the Office of the Ombudsman to conduct the fact-finding investigation is not unreasonable. From the records,<sup>15</sup> it can be seen that the transactions subject of the present cases are only part of those involved in the so-called Fertilizer Scam. Said Fertilizer Scam involved transactions not only of the Province of Eastern Samar, but also those

<sup>15</sup> Record, Vol 1, pp. 18, 65, 95-106

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of other local government units, meaning that there were numerous transactions and persons to be investigated.

Aside from the transactions involved in the Fertilizer Scam, the Office of the Ombudsman had to investigate and resolve other cases. In *Mendoza-Ong v. Sandiganbayan*,<sup>16</sup> the Supreme Court recognized that disposition of cases would take time because of the steady stream of cases reaching the Office of the Ombudsman. viz.:

x x x. Speedy disposition of cases is consistent with reasonable delays. The Court takes judicial notice of the fact that the nature of the Office of the Ombudsman encourages individuals who clamor for efficient government service to lodge freely their complaints against alleged wrongdoing of government personnel. A steady stream of cases reaching the Ombudsman inevitably results. Naturally, disposition of those cases would take some time x x x

There is likewise no merit in the accused' contention that the time spent for the conduct of the fact-finding investigation was unreasonable, considering that the Office of the Ombudsman merely relied on the audit report of the Commission on Audit (COA). In *Cabrera v. Marcelo*,<sup>17</sup> it was held that while the Office of the Ombudsman may rely on COA reports, it has to make an independent determination of the existence of probable cause. Notably, the Supreme Court even stated that the Office of the Ombudsman should refrain from committing undue haste in prosecuting public officials based on COA audit reports. viz.:

Petitioners cannot fault the Ombudsman for relying on the COA *Audit Report*, notwithstanding that it had not yet attained finality. The initial basis for the Ombudsman's investigation was not the COA *Audit Report*, but the complaints filed by Casanova. While the allegations in the complaint happened to be similar with those contained in the COA *Audit Report*, the Ombudsman could very well conduct an independent investigation based on the complaints for the purpose of whether criminal charges should be filed against the petitioners. The Ombudsman is reposed with broad investigatory powers in the pursuit and of its constitutional mandate as protector of the people and investigator of complaints filed against public officials. It is even empowered to request from any government agency such as the COA, the information necessary in the discharge of its responsibilities and to examine, if necessary, pertinent records and documents

<sup>16</sup> G.R. Nos. 146368-69, October 18, 2004

<sup>17</sup> G.R. Nos. 157419-20, December 13, 2004

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It should be borne in mind that the interest of the COA is solely administrative, and that its investigation does not foreclose the Ombudsman's authority to investigate and determine whether there is a crime to be prosecuted for which a public official is answerable. In *Ramos v. Aquino*, the Court ruled that the fact that petitioners accounts and vouchers had passed in audit is not a ground for enjoining the provincial fiscal from conducting the preliminary investigation for the purpose of determining the criminal liability of petitioners for malversation. Clearly then, a finding of probable cause does not derive its veracity from the findings of the COA, but from the independent determination of the Ombudsman.

x x x

At the same time, the Office of the Ombudsman should exercise caution when it utilizes findings of the COA in support of its determination of probable cause as the prelude to the filing of a criminal complaint against a public official. The COA is not the investigatory arm of the Ombudsman; thus, the auditor's preliminary findings of discrepancies do not necessarily equate to a finding of probable cause, which has to be independently established by the Ombudsman. Many conclusions drawn from audit reports hinge on technical matters of appreciation and may be satisfactorily clarified by discussions between the COA and the public officer. The Ombudsman should refrain from committing undue haste in prosecuting public officials based on COA audit reports, and instead make an independent determination of his own on the existence of probable cause that a given public official has committed a penal law violation before proceedings with the institution of the criminal case.

(underscoring supplied)

Next, the accused contend that they should not be deemed to have waived their right to speedy disposition of cases for their failure to timely assert their right thereto. The Court is not persuaded.

To be sure, in *Coscolluela v. Sandiganbayan*,<sup>18</sup> it was held that it was not the respondents' duty to follow up on the prosecution of their case. However, the assertion or failure to assert the right to speedy disposition of cases remains to be one of the factors of the balancing test which has been consistently applied in resolving incidents involving the right to speedy disposition of cases. The Supreme Court never abandoned the doctrine that failure to timely assert the right to speedy disposition of cases is deemed as a waiver of such right, as

<sup>18</sup> *Supra*. Note 10

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shown by the ruling in certain cases,<sup>19</sup> all of which had been promulgated prior to *Cagang*.

The reason as to why the Supreme Court, after applying the balancing test, dismissed, or upheld the dismissal of, some cases, and not others was a result of the differences in the circumstances surrounding the cases, and not by reason of a change in the prevailing doctrine on the assertion or non-assertion of the right to speedy disposition of cases. In *Remulla v. Sandiganbayan*,<sup>20</sup> the Supreme Court, in harmonizing the two sets of cases, explained that there was no conflict between the rulings in the two sets of cases. The difference in the results lie in the High Court's appreciation of the factors of the balancing test, and the circumstances peculiar to each case. *viz.:*

Based on the foregoing, there is no conflict between the first and the second set of cases. In the first set, the Court did not solely rely on the failure of the accused to assert his right; rather, the proper explanation on the delay and the lack of prejudice to the accused were also considered therein. In the same manner, the Court in the second set of cases took into account several factors in sustaining the right of the accused to a speedy disposition of cases, such as the length of delay, the failure of the prosecution to justify the period of delay, and the prejudice caused to the accused. The utter failure of the prosecution to explain the delay of the proceedings outweighed the lack of follow ups from the accused.

Accordingly, both sets of cases only show that "[a] balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy trial cases on an *ad hoc* basis." To reiterate, none of the factors in the balancing test is either a necessary or sufficient condition; they are related and must be considered together with other relevant circumstances. *Corpus v. Sandiganbayan* thoroughly explained how the factors of the balancing test should be weighed, particularly the prejudiced caused by the delay, to wit:

x x x

The rest of the arguments of the accused are a mere reiteration or rehash of those in their previous Motions. These had already been considered and found to be without merit by this Court in the assailed Resolution. Hence, there is no need to discuss these anew.

<sup>19</sup> Please see *Guerrero v. Court of Appeals*, G.R. No. 107211, June 28, 1996; *Perez v. People*, G.R. No. 164763, February 12, 2008, *Rullada v. Sandiganbayan*, G.R. No. 218371, July 20, 2015; *People v. Sandiganbayan*, G.R. Nos. 232197-98, April 16, 2018

<sup>20</sup> G.R. No. 218040, April 17, 2017

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In *Mendoza-Ong v. Sandiganbayan*,<sup>21</sup> the Supreme Court held:

Concerning the first ground abovecited, the Court notes that the motion contains merely a reiteration or rehash of arguments already submitted to the Court and found to be without merit. Petitioner fails to raise any new and substantial arguments, and no cogent reason exists to warrant a reconsideration of the Court's Resolution. It would be a useless ritual for the Court to reiterate itself.

For convenience, the pertinent part<sup>22</sup> of the assailed Resolution addressing the points raised by the accused is hereunder quoted for convenience:

From an examination of the records, the respective motions of the accused, and the prosecution's comment/opposition, it can be gleaned that the present cases arose from the investigation on the so-called Fertilizer Fund Scam conducted by Task Force Abono sometime in 2006. The Field Investigation Office (FIO) of the Office of the Ombudsman filed the Complaint with the Office of the Ombudsman on March 5, 2013. The Resolution finding probable cause to charge the accused with two (2) counts of violation of Sec. 3(e) of R.A. No. 3019 was approved by the Ombudsman on May 15, 2017. After the accused filed their respective motions for reconsideration, the Order denying the same was approved on November 24, 2017. The Information in the present cases were thereafter filed on June 22, 2018.

x x x

Under the *Rules of Procedure of the Office of the Ombudsman*, the preliminary investigation shall be conducted in the manner prescribed in Rule 112, Sec. 3 of the Rules of Court. Sec. 3 of Rule 112, in turn, provides:

x x x

It is apparent that the actual time it took the Office of the Ombudsman to conduct the preliminary investigation is beyond the periods provided in Rule 112, Sec. 3 of the Rules of Court. The burden of proving that the delay was reasonable, and that the accused suffered no prejudice as a result of the delay, now shifts to the prosecution.

According to the prosecution, the delay in the conduct of the preliminary investigation is reasonable because the present cases required a thorough review before being approved by the

<sup>21</sup> *Supra*, Note 16

<sup>22</sup> Resolution dated October 26, 2018, pp. 17-22, Record, Vol. 3, pp. 486-491

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Ombudsman. Furthermore, the prejudice the accused claim to have suffered is based on mere conjecture and not caused by the delay, but rather, incidental to the filing of criminal charges against them. This Court is inclined to agree

This Court notes that although the Informations in the present cases were only for two (2) counts of violation of Sec. 3(e) of R.A. No. 3019, the FIO's Complaint involved fifteen (15) respondents, and criminal charges for Malversation, violation of Sec. 3(e) of R.A. No. 3019, Malversation through Falsification of Public Documents, and administrative charges for Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service. In resolving the Complaint before it, the Office of the Ombudsman had to evaluate the Complaint and the supporting documents. Considering the accused' right to due process, the Office of the Ombudsman had to give them the opportunity to file their respective counter-affidavits, and thereafter, evaluate said counter-affidavits, before resolving the Complaint

This must be considered together with the steady stream of cases reaching the Office of the Ombudsman. In the more recent case of *People v. Sandiganbayan*, the Supreme Court, again, took judicial notice of such fact, and held that the workload of the Office of the Ombudsman should be taken into consideration in determining if the right to speedy disposition of cases was violated. 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 disposition of cases for that matter, is a relative term and must necessarily be a flexible concept.

(underscoring supplied)

Also considering that there is no indication that the cases against the accused were instituted for the purpose of harassing them, or for some other malicious motive, this Court finds that the time it took to conduct the preliminary investigation is not unreasonable.

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Next, the Supreme Court in *Corpuz v. Sandiganbayan*, recognized that delay in the proceedings may cause prejudice not only to the accused, but also to the government, which has the burden of proving its case beyond reasonable doubt. However, prejudice, as contemplated in the right to speedy disposition of cases, must be serious, and beyond that which ensued from ordinary and inevitable delay viz.:

Delay is a two-edge sword. It is the government that bears the burden of proving its case beyond reasonable doubt. The passage of time may make it difficult or impossible for the government to carry its burden. The Constitution and the Rules do not require impossibilities or extraordinary efforts, diligence or exertion from courts or the prosecutor, nor contemplate that such right shall deprive the State of a reasonable Opportunity of fairly prosecuting criminals. As held in *Williams v. United States*, for the government to sustain its right to try the accused despite a delay, it must show two things: (a) that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay, and (b) that there was no more delay than is reasonably attributable to the ordinary processes of justice.

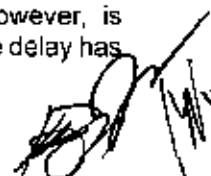
As discussed earlier, the delay in the conduct of the preliminary investigation is not unreasonable, considering the circumstances. Undeniably, the accused suffered some form of prejudice. However, such prejudice does not appear to have been caused by inordinate delay.

According to accused Ponferrada and Bormate, the loss of the pertinent documents was caused by fire that razed the building where the documents were stored, and the typhoons that ravaged the province. Such loss could have happened whether or not there was delay. On the other hand, the accused may suffer anxiety, humiliation, financial strain, and the like by reason of criminal charges against them—with or without inordinate delay. Finally, the impairment of the accused' defense may be caused by inordinate delay. However, the same can also be a result of the mere passage of time, even in the absence of inordinate delay. The prescriptive period of violation of Sec. 3(e) of R.A. No. 3019 is fifteen (15) years. Had the formal complaint been filed near the end of such period, the result would have been the same.

At any rate, the accused appear to have waived their right to speedy disposition of cases by their failure to assert the same at the earliest opportunity.

*Cagang* teaches that the right to speedy disposition of cases must be invoked once the delay has already become prejudicial. The failure to invoke such right constitutes a valid waiver thereof. To wit:

The right to speedy disposition of cases, however, is invoked by a respondent to any type of proceeding once delay has





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already become *prejudicial* to the respondent. The invocation of the constitutional right does not require a threat to the right to liberty. Loss of employment or compensation may already be considered as sufficient to invoke the right. Thus, waiver of the right does not necessarily require that the respondent has already been subjected to the rigors of criminal prosecution. The failure of the respondent to invoke the right even when or she has already suffered or will suffer the consequences of delay constitutes a valid waiver of that right.

(underscoring supplied)

An examination of the accused' respective counter-affidavits would show that they acknowledged that the transactions occurred around ten (10) years ago, and they invoked their right to be informed of the nature and cause of the accusation against them, but there was no assertion of their right to speedy disposition of cases. Considering that the accused decry the protracted fact-finding investigation, claiming that they could no longer accurately recall the events, and that evidence for their defense is no longer available because of the lapse of time from the occurrence of the subject transactions, they should have asserted their right to speedy disposition of cases when they filed their respective counter-affidavits.

After the accused filed their respective counter-affidavits, it does not appear that they asserted their right, and were content to let the case run its course. They were well-aware that there was a case against them, considering that they filed their respective counter-affidavits. They could not have been unaware that the preliminary investigation was still ongoing because they would have received notice of the termination of the preliminary investigation, whatever the result

This Court further notes that after the approval of the Resolution dated March 28, 2017, only accused Libanan asserted his right to speedy disposition of cases, but only in his Supplemental Motion for Reconsideration—after an adverse finding in the Office of the Ombudsman's Resolution, and after he presumably filed his motion for reconsideration of said Resolution. The foregoing leads to the conclusion that the accused acquiesced to the delay.

(citations omitted)

**WHEREFORE**, the Court rules as follows:

1. Accused Bormate's *Manifestation*<sup>23</sup> is hereby NOTED

<sup>23</sup> Dated November 19, 2018; Record, Vol. 4, pp. 106-108



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2. The respective *Motions to Adopt Accused Libanan's Motion for Reconsideration* filed by accused Dorado, and Salazar, Japzon, Dulfo and Nervez, are hereby GRANTED. Accused Libanan's *Motion for Reconsideration* is considered as said accused' *Motions for Reconsideration*.
3. The *Joint Motion for Reconsideration* of accused Libanan and Agda is hereby DENIED for lack of merit.
4. The *Motion for Reconsideration* of accused Bormate is hereby DENIED for lack of merit.
5. The *Motion for Reconsideration* of accused Ponferrada is hereby DENIED for lack of merit.
6. The *Motion for Reconsideration* of accused Dorado is hereby DENIED for lack of merit.
7. The *Motion for Reconsideration* of accused Salazar, Japzon, Dulfo and Nervez is hereby DENIED for lack of merit.

SO ORDERED.

  
SARAH JANE T. FERNANDEZ  
Associate Justice  
Chairperson

**We Concur:**

  
KARL B. MIRANDA  
Associate Justice

  
KEVIN NARCE B. VIVERO  
Associate Justice