



Republic of the Philippines
SANDIGANBAYAN
Quezon City

SIXTH DIVISION

**PEOPLE OF THE
PHILIPPINES,**

Plaintiff,

-versus-

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

**MIGUEL DRACULAN
ESCOBAR, SUMAIL KUSAIN
SEKAK, ABDULWAHAB ¹
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:

AUG 13 2019

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RESOLUTION

MIRANDA, J.:

This resolves the: (1) Motion for Reconsideration dated March 18, 2019 filed by accused Miguel D. Escobar (Escobar) on March 20, 2019 assailing the Court's Resolution dated January 16, 2019 which denied his Motion to Quash dated October 16, 2018; (2) Comment/Opposition (To Accused Miguel D. Escobar's Motion for Reconsideration) dated March 22, 2019 filed by the Prosecution on March 25, 2019; and (3) Manifestation dated March 27, 2019 filed by accused Escobar on March 27, 2019.

In his motion for reconsideration, accused Escobar alleges that: 1) he did not waive his right to question the alleged violation of his right to a speedy disposition of the cases because it is not his duty to follow-up the cases for early resolution, and it is the duty of the prosecutor to speedily

¹ Spelled as "Abdulwahab" in the title of the informations, but spelled as "Abdulwazab" in the accusatory portions of the informations.

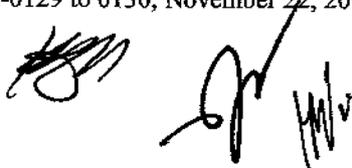
resolve the complaint; 2) in the recent case of Escobar v. People² where accused Escobar himself was the petitioner, the Supreme Court ruled that the delay in the said case is a disregard of the Ombudsman's constitutional mandate to be the protector of the people and as such, is required to act promptly on complaints filed in any form or manner against officers and employees of the government; 3) the Prosecution failed to justify the delay of 4 years, 7 months and 25 days considering that the Prosecution is powerful and overwhelming in resources at its disposal; 4) in the dissenting opinion of Justice (now Ombudsman) Samuel R. Martires and Justice Michael Frederick L. Musngi in People v. Miguel D. Escobar promulgated by the Special Third Division on November 22, 2016,³ they said that accused Escobar and another co-accused in the said case invoked their right to speedy disposition of the case after the informations were filed before the Court which is the earliest opportunity for them to have raised such right. Their non-filing of a motion to resolve or similar pleading before the Ombudsman cannot be construed as hibernating on their right; and 5) he was charged with offenses allegedly committed on July 2004, August 2004 and September 2004 when he was no longer the Governor of the Province of Sarangani.

In its comment/opposition, 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 pursuant to the Revised Guidelines for Continuous Trial of Criminal Cases considering that counsel for accused Escobar was furnished with a copy of the Resolution dated January 16, 2018 denying his motion to quash during the February 8, 2019 hearing; 2) the motion for reconsideration is a mere rehash of the arguments raised by accused Escobar in his Motion to Quash dated October 16, 2018; 3) the Office of the Ombudsman made sure that due process was observed when it afforded accused Escobar time to file his counter-affidavit despite 2 extensions of time to file the same; and 4) 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.

In his manifestation, accused Escobar stated that he received the resolution denying his motion to quash at 3:15 o'clock in the afternoon of March 18, 2019. He was not furnished a copy of the resolution during the February 8, 2019 hearing because of the on-going hearing and the court staff-in-charge could not simply leave the courtroom, and that counsel for accused Escobar was scheduled for medical treatment at 4:00 o'clock in the afternoon of the same day.

² G.R. No. 228349 and 228353, September 19, 2018.

³ SB-12-CRM-0129 to 0130, November 22, 2016



THE COURT'S RULING

The motion for reconsideration was filed within the reglementary period.

The Court will first rule on whether or not the motion for reconsideration was filed by accused Escobar on time. The records do not show that Atty. Maria Nympha Mandagan, counsel for accused Escobar, was furnished a copy of the Resolution dated January 16, 2019 during the February 8, 2019 hearing. On the contrary, the records show that the Resolution dated January 16, 2019 denying the Motion to Quash dated October 16, 2018 of accused Escobar was personally served by the Court's process server to his counsel, Atty. Maria Nympha Mandagan, on March 18, 2019.⁴ Under the circumstances, the Court will consider the receipt of the resolution by accused Escobar's counsel on March 18, 2019 for purposes of determining the reglementary period.

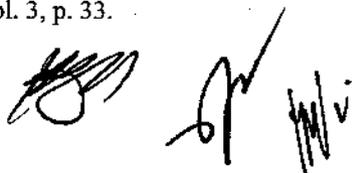
Under Section III(2)(c) of the Revised Guidelines for Continuous Trial of Criminal Cases, which took effect on September 1, 2017, a motion for reconsideration of a meritorious motion shall be filed within a non-extendible period of 5 calendar days from receipt of the resolution.

When the motion for reconsideration was filed on March 20, 2019, the Revised Guidelines for Continuous Trial of Criminal Cases were already in effect. Accused Escobar had 5 days from receipt of the resolution on March 18, 2019, or until March 23, 2019, within which to file a motion for reconsideration. Accused Escobar filed his motion for reconsideration 3 days before the due date. Thus, the motion for reconsideration was filed within the reglementary period provided under the Revised Guidelines for Continuous Trial of Criminal Cases.

There is no inordinate delay in these cases.

However, even after a restudy of the grounds raised in the motion for reconsideration, the Court finds no valid reason to reconsider its Resolution dated January 16, 2019 denying the motion to quash of accused Escobar for lack of merit. The issues and arguments raised by him in his motion for reconsideration are a mere rehash and a repetition of the same issues and arguments raised in his Motion to Quash dated October 16, 2018. These issues and arguments have already been considered and passed upon by the Court in its Resolution dated January 16, 2019. There being no new matters

⁴ Records, vol. 3, p. 33.



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 accused. Delay, however, is not determined through mere mathematical reckoning but through the examination of the facts and circumstances surrounding each case.⁵

After deducting the periods attributable to accused Escobar, his co-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 accused Escobar can hardly be considered an unreasonable and arbitrary delay as to deprive him of his constitutional right to the speedy disposition of the cases.

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 Public Funds existed against all 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. It will be noted that these cases involve 8 respondents, 2 criminal charges, 2 administrative charges and voluminous records being part of the fertilizer fund scam cases involving several government officials and employees around the country.

Accused Escobar was also served a copy of the complaint and given the opportunity to file his counter-affidavit, which he filed after seeking 2 extensions of time.

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 accused Escobar and to file the necessary informations against him was with valid reasons.

Accused Escobar waived his right to a speedy disposition of the cases.

Accused Escobar waived his right to question the alleged violation of his right to a speedy disposition of the cases.

⁵ *Cagang v. Sandiganbayan*, G.R. No. 206438 and 206458, July 31, 2018.



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The right to a 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 the completion of the preliminary investigation. Otherwise, the accused is deemed to have waived his right to speedy disposition of the case.⁶

In the cases before the Court, accused Escobar failed to seasonably assert his right to a speedy disposition of the cases. He 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. His inaction illustrates acquiescence and waiver to question any violation of his right to a speedy disposition of the cases.

The case of Escobar v. People cited by accused Escobar in his motion for reconsideration is a different case and involves a distinct set of facts and circumstances. The said case pertains to an alleged falsification of a disbursement voucher to make it appear that the amount of Two Hundred Fifty Thousand Pesos (Php250,000.00) was requested by Bamboo Craftsman to the damage and prejudice of the Government. The Office of the Ombudsman resolved probable cause in the said case against accused Escobar in less than 2 years but the informations were filed only after more than 7 years.

The cases at bar pertain to the selection and accreditation of the Workers Cooperatives of the Philippines (WCP) to implement the fertilizer project of the Province of Saranggani despite the lack of qualifications of WCP and the purchase of several gallons of overpriced fertilizers from Reynato C. Sarmiento Trading without public bidding. The Office of the Ombudsman resolved probable cause in these cases in 4 years and 5 months and filed the informations after 9 months.

Each case must be decided upon the **facts peculiar** to it.⁷ Considering that the above case cited by accused Escobar involves a different set of facts and took a longer period to resolve probable cause and file the information, the ruling of the Honorable Supreme Court in the said case cannot be applied in these cases.

⁶ *Cagang v. Sandiganbayan*, G.R. No. 206438 and 206458, July 31, 2018.

⁷ *Benares v. Lim*, G.R. No. 173421, December 14, 2006.



Decisions of a division of the Sandiganbayan is not binding on the other divisions.

Decisions of higher courts bind the lower courts while courts of coordinate authority do not bind each other. A ruling of a particular division of the Court of Appeals, while may be taken cognizance of in some cases, cannot bind or prejudice a ruling of another division thereof for being coordinate authorities.⁸ It must also be stressed that only the decisions of the Supreme Court form part of our legal system.⁹

By analogy, the Court is not bound by the decision, ruling or opinion of another division of the Court for being coordinate authorities.

The Sandiganbayan functions in divisions of 3 Justices each and each division functions independently of the other.¹⁰

Matters extrinsic of the information are not considered in a motion to quash information.

The allegation of accused Escobar that he should not have been charged because he was no longer the Governor of Saranggani Province at the time of the alleged commission of the offenses is a matter of evidence which is best threshed out in a full-blown trial. Considering that the informations sufficiently stated the relevant averments and essential elements of the offense, the Court sees no reason to quash the said informations.

The Court may not consider a situation contrary to that set forth in the information. Facts which constitute the defense of accused Escobar must be proved during the trial. Such facts or circumstances do not constitute prior grounds for a motion to quash the information.¹¹

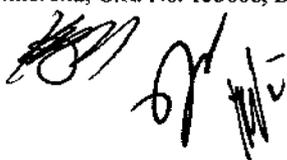
To recall, in its Comment/Opposition (To Accused Miguel D. Escobar's Motion to Quash) dated October 26, 2018, the Prosecution claimed that accused Escobar was charged because he was the proponent of the Five Million Pesos (PhP5,000,000.00) fertilizer fund. On May 6, 2004, accused Escobar entered into a tripartite Memorandum of Agreement

⁸ *Francisco v. Rojas*, G.R. No. 167120, April 23, 2014.

⁹ *Quasha Ancheta Peña & Nolasco Law Office v. Court of Appeals*, G.R. No. 182013, December 4, 2009.

¹⁰ *Preagido v. Sandiganbayan*, G.R. No. 52341-46, November 25, 2005, citing *De Guzman v. People*, G.R. No. L-52488, December 15, 1982.

¹¹ *Torres v. Garchitorena*, G.R. No. 153666, December 27, 2002.



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(MOA) with the Department of Agriculture-Regional Field Unit XII (DA-RFU XII) and WCP. The selection of WCP as the conduit-implementor of the fertilizer project was allegedly attended by irregularities.

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.¹² 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.¹³

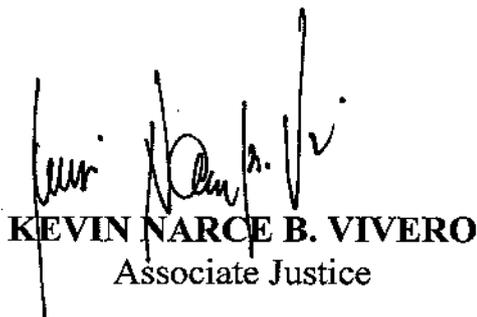
WHEREFORE, the Motion for Reconsideration dated March 18, 2019 of accused Miguel D. Escobar is **DENIED** for lack of merit. The Resolution of the Court promulgated on January 16, 2019 is **AFFIRMED**. The arraignment of and pre-trial for accused Escobar shall proceed on August 27, 2019 as scheduled.

SO ORDERED.


KARL B. MIRANDA
Associate Justice

WE CONCUR:


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson


KEVIN NARCE B. VIVERO
Associate Justice

¹² *Cagang v. Sandiganbayan*, G.R. No. 206438 and 206458, July 31, 2018.

¹³ *Mendoza-Ong v. Sandiganbayan and People*, G.R. Nos. 146368-69, October 23, 2003.