



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Criminal Case No.:
SB-22-CRM-0051
For: Violation of Sec. 3(e)
R.A. No. 3019 as amended.

- versus -

ROLEN CALIXTO PAULINO, *et al.*,
Accused.

Present:
Lagos, J., Chairperson,
Mendoza –Arcega, and
Corpus-Mañalac, JJ.

Promulgated:

October 24, 2022
Genel E. Ligan

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RESOLUTION

MENDOZA-ARCEGA, J.:

Before this Court, for resolution, are the following:

1. **Motion for Reconsideration** (to Resolution dated 12 July 2022) filed by herein accused, Rolen C. Paulino, Aquilino Y. Cortez, Jr., Elena C. Dabu, Benjamin G. Cajudo II, Noel Y. Atienza, Alreuela M. Bundang-Ortiz, Edna A. Elane, Emerito Linus D. Bacay, Randy C. Sionzon, Eduardo G. Guerrero, Jr., Egmidio M. Gonzales, Jr., Tony Kar Balde III, Cristiflor Buduhan, Anna Marin F. Sison and Joy F. Cahilig (accused Paulino, *et al.*);
2. Separate **Motion for Reconsideration** (to Resolution dated 12 July 2022) filed by accused Aquilino Y. Cortez Jr. (accused Cortez Jr.);
3. The **Omnibus Motion** (1. to transfer the case to the Sandiganbayan (7th) Division or, in the alternative, to quash the Information and to Dismiss the Criminal case, and 2. to suspend the arraignment of the

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- accused pending the resolution of the instant motion and the other incidents*) filed by accused Tony Kar Balde III, Cristiflor Buduhan, Anna Marin F. Sison and Joy Fernandez Cahilig (accused Balde, *et al.*);
4. The **Omnibus Motion** (1. *Motion to Quash Information dated 18 March 2022*; 2. *Motion to Dismiss [on the ground of violation of their right to speedy disposition of cases]*; and 3. *Motion to Defer Arraignment and Pre-Trial*) filed by accused Rolen C. Paulino, Aquilino Y. Cortez Jr., Elena C. Dabu, Benjamin G. Cajudo II, Noel Y. Atienza, Alreuela M. Bundang Ortiz, Edna A. Elane, Emerito Linus D. Bacay, Randy C. Sionzon, Eduardo G. Guerrero Jr., Egmidio M. Gonzales, Jr., Tony Kar Balde III, Cristiflor Buduhan, Anna Marin F. Sison, and Joy F. Cahilig (accused Paulino, *et al.*);
 5. The Prosecution's Consolidated **Comment/Opposition** (1. *to 19 July 2022 Motion for Reconsideration filed by accused Paulino, et al.*; 2. *to 18 August 2022 Motion for Reconsideration filed by accused Cortez Jr.*; 3. *to 22 August Omnibus Motion filed by accused Balde, et al.*; and 4. *to 23 August 2022 Omnibus Motion by accused Paulino, et al.*);
 6. The **Motion to Elevate Records of Preliminary Investigation** filed by accused Tony Kar Balde III, Cristiflor Buduhan, Anna Marin F. Sison, and Joy Fernandez Cahilig (accused Balde, *et al.*);
 7. The Prosecution's **Vehement Opposition** [*to: Motion to Elevate Records of Preliminary Investigation*]; and
 8. The **Supplement to the Omnibus Motion with Manifestation** (*to the Vehement Opposition to the Motion to Elevate Records of Preliminary Investigation*) filed by accused Tony Kar Balde III, Cristiflor Buduhan, Anna Marin F. Sison, and Joy Fernandez Cahilig (accused Balde, *et al.*)

Accused Paulino, et al.'s Motion for Reconsideration

Accused Paulino, *et al.* move for reconsideration of this Court's 12 July 2022 Resolution relying on the following arguments in support of their motion for reconsideration:

- (1) The Hon. Fifth Division does not have jurisdiction to overturn the ruling of the Hon. Seventh Division insofar as the latter court ruled that the Lease Agreement subject of the Information is not covered by the BOT Law;
- (2) The New Information lacks specific factual allegation that the Lease Agreement is covered by the BOT Law. Contrary to the New Information, the facts do not support the allegation that the Lease Agreement, despite purporting to be a simple lease agreement, was covered by the BOT Law;
- (3) Considering the facts attendant to the case, the prosecution should be barred from re-filing an information against the Accused based on the same set of allegations. At the very least, the prosecution must conduct anew a preliminary investigation before it can re-file an information; and

- (4) The re-filing of a new information against the Accused violates their right to speedy disposition of cases and must be dismissed.

Accused Cortez Jr.'s Motion for Reconsideration

In his separate motion, accused Cortez, Jr. reiterated his arguments in his previous motion for reconsideration. In particular, accused Cortez alleges that the Court merely relied on the sufficiency of the indictment based on the additions of phrases in the present Information as supplied by the prosecution. Accused reiterates that since the 7th Division already found that the evidence on record fails to establish probable cause against all the accused, then the maxim *nullum crimen nulla poena sine lege* applies.

Accused Balde, et al.'s Omnibus Motion

In this Motion accused Balde, *et al.* seek (1) to transfer the case to the 7th Division or, in the alternative, to quash the present Information and to dismiss the criminal case; and (2) to suspend the arraignment of the accused pending the resolution of the instant motion and the other incidents.

Accused Balde, *et al.* support their claim to transfer the case to the 7th Division by alleging that the present case still involves the same facts and issues that have already been resolved with finality by said division. They reiterate in this motion that the 7th Division's Resolution has been final and executory for the Ombudsman's failure to file a timely appeal. They claim that the dismissal of the information disposes of the previous criminal case, terminates the proceedings, and leaves the court with nothing further to do with respect to the case. For accused Balde, *et al.* the proper remedy for the prosecution was to file an appeal to the Supreme Court (SC) and assuming that the SC overturns the 7th Division's findings of fact and law, then that is the only time that the Ombudsman conduct a new preliminary investigation and consequently, filing of a new information.

In the alternative, it is prayed that the Information be quashed and the case be dismissed since the present Information still fails to allege facts that will constitute an offense. Accused Balde, *et al.* hinge their arguments on the fact that (1) the 7th Division had ruled with finality that the lease agreement does not fall under any of the contractual arrangements under the BOT Law; (2) the BOT Law is not exclusive to all transactions between the government and private sector – the choice lies with the implementing agency; (3) the accused cannot be found guilty of violation of Republic Act No. 3019 because they did not deliberately violate the BOT Law; and (4) the accused acted in good faith in the performance of their official duties and for the benefit of the City of Olongapo and her constituents.

Furthermore, accused Balde, *et al.* seek that the case be dismissed since it violates the accused's right to speedy disposition of cases. For the accused, there was inordinate delay as shown in the following incidents:

- (1) It took more than two years to resolve the preliminary investigation, from the filing of the affidavit-complaint on November 26, 2015 until the issuance of the Ombudsman's Resolution on February 6, 2018 finding probable cause to charge the accused. About two years and six months from the denial of its motions for reconsideration, the Ombudsman filed the present information based on the same affidavit-complaint.
- (2) It is alleged that the delay is politically motivated with malice and is attended by utter lack of evidence. This claim is supported by the fact that the Ombudsman filed the first Information raffled before the 7th Division on March 8, 2019 or two months prior to the May 9, 2019 local elections. The said Information was amended and subsequently quashed by the 7th Division. Then, the Ombudsman re-filed a new Information on March 18, 2022 or barely two months prior to the May 9, 2022 national and local elections.
- (3) The accused further claim that they timely raised their right to speedy disposition of cases.
- (4) Lastly, they claim that all of the accused suffered from financial strains and losses. They also suffered emotional distress and anxiety. In fact, accused Malabute died prior to the institution of the present Information but was still included as an accused even after his death. They all suffered physical, emotional and financial damage caused by repeated filing of the case and their reputation and career in politics and public service have been damaged beyond repair because of the persecution that they have to endure for more than six years.

Finally, accused Balde, *et al.* reiterated in this Motion that the Court has no authority to overturn the decision of the 7th Division for it is a co-equal court. For the accused, what this Court should have done was take judicial notice of the prior proceedings, specifically, the resolution by the 7th Division.

Accused Paulino, *et al.*'s Omnibus Motion

Accused Paulino, *et al.*, hereby pray for the following: (1) to quash the present Information; (2) to dismiss the case on the ground of violation of their right to speedy disposition of cases; and (3) to defer arraignment and pre-trial.

The claim to quash the information is grounded on the fact that the 5th Division does not have jurisdiction to overturn the ruling of the 7th Division insofar as the latter court ruled that the Lease Agreement subject of the

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Information is not covered by the BOT Law. The quashal is also based on the fact that the instant case must be dismissed for being violative of the principle of justice, fairness, and reason as it is equivalent to *res judicata*. Finally, accused Paulino, *et al.* seek to quash the information since it lacks specific factual allegation that the Lease Agreement is covered by the BOT Law. Consequently, the facts do not support the allegation that the Lease Agreement, despite purporting to be a simple lease agreement, was covered by the BOT Law.

Accused Paulino, *et al.* further assert that their Constitutionally guaranteed right to speedy disposition of cases has been violated. For the accused, there is significant length of delay based on the following facts:

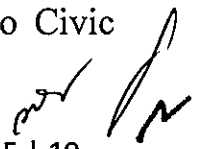
- (1) The complaint was filed on November 26, 2015 and the case was only resolved by the Ombudsman on February 6, 2018. The case was then filed before the Sandiganbayan on March 8, 2019 and it was dismissed on July 26, 2019. The Motion for Reconsideration filed by the prosecution was subsequently denied on September 27, 2010. Thus, it has been three (3) years and two (2) months since the prosecution originally filed the Original Information on March 8, 2019 until the Ombudsman promulgated its Resolution.
- (2) Then, it took the prosecution another two (2) years and six (6) months, reckoning from the quashal of the Information before the 7th division, before the present Information is filed before the 5th Division.
- (3) Lastly, the present Information seems to have been made on January 30, 2020, certified as of February 2020, and approved as of May 2021. Hence, it is clearly violative of the accused's right to speedy disposition of cases for the prosecution to wait for almost a year from the time the present Information was completed until it has been filed.

It is claimed that the accused asserted their right to speedy disposition of cases at the first instance in their comment to prosecution's motion for reconsideration of the 5th Division's April 1, 2022 Resolution. Likewise, the accused asserted their right in their Motion for Reconsideration dated July 19, 2022.

Lastly, accused Paulino, *et al.* maintain that they were prejudiced by the delay. They asseverated that due to the inordinate delay, it has become harder or even impossible for the accused to obtain testimonies from key witnesses who would have been available were it not for the delay.

Consolidated Comment/Opposition of the Prosecution

The prosecution in its Comment/Opposition argues that the crux of the matter in this case is whether there is probable cause to issue warrant of arrest against herein accused for entering into a contract with SM Prime Holdings Incorporated (SMPHI), for the lease and development of Olongapo Civic Center Complex.



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For the prosecution, the filing of the present Information takes cue from the 7th Division's Resolution dated September 27, 2019, for the non-compliance of the previous Information with Republic Act No. 6957, as amended by Republic Act No. 7718 and its Implementing Rules and Regulations. The prosecution then conscientiously cured the defect by categorically alleging in the present Information that the Lease Agreement was governed by the aforementioned laws. Furthermore, it was also alleged in the present Information that: *"and where the structures actually erected, built, assembled and constructed by SMPHI are those structures which are covered by, and fall under BOT Law, thereby giving unwarranted benefit, advantage or preference to SM Prime Holdings Incorporated (SMPHI), to the damage and prejudice of the Government"*. For the prosecution, what was wanting in the previous Information has been sufficiently filled-up and appropriately alleged in the present Information.

To address the point that the Sandiganbayan 5th Division has no jurisdiction over the present case, the prosecution contends that when the case was raffled to the 5th Division, it obtained jurisdiction over it. With this, the duty and function of the court is to make a determination whether there is probable cause to issue warrant against the accused.

The prosecution further submits that the constitutionally enshrined right of the accused to speedy disposition of cases was not violated. It is pointed out that the period between March 8, 2019, when the case was filed before the Court and September 27, 2019, when the Motion for Reconsideration filed by the prosecution was denied by the 7th Division, is not a factor in determining whether there was delay on the prosecution of the case. It is submitted that any delay in the said intervening period should not be ascribed to the prosecution since it pertains to the period when the Court had control over the proceedings.

Accordingly, the accused's right to speedy disposition of cases was not violated for it was the accused who failed to invoke such right. The prosecution contends that the accused did not timely invoke their right when the case was undergoing preliminary investigation with the Office of the Ombudsman. Further, the accused were never prejudiced nor injured by reason of the proceedings pertaining to this case. In fact, the accused failed to specify the manner how and why the perceived violation of the right to speedy disposition of cases caused them injury or prejudice. Finally, for the prosecution, if there was delay on its part, the same was not vexatious, oppressive and capricious. It is submitted that the time spent for re-evaluation and review of the numerous documents and pleadings, the complexity of the issues at hand, as well as the level of review undertaken before the case reaches the Office of the Ombudsman for approval. In addition to the foregoing, the overriding consideration which caused the delay in prosecution is the Covid19 pandemic.

In its Comment/Opposition to the Omnibus Motion filed by accused Balde, *et al.*, it is raised that said accused made an unsubstantiated charge that the Ombudsman falsely certified that it conducted a preliminary investigation prior to the filing of the present Information, and that in truth, the Ombudsman did not conduct a new preliminary investigation prior to the filing of the present Information. In opposition, the prosecution alleged that it prepares New Information upon perusal, examination and consideration of the Affidavits, Counter-Affidavits and other supporting documents constituting as evidence. Thus, the Ombudsman filed the present information only after finding that the crime charged has been committed and that the accused are probably guilty thereof.

**Accused Balde, et al.'s Motion to Elevate Records
of Preliminary Investigation and the
Supplement to the Omnibus Motion**

In this Motion, accused Balde, *et al.* reiterate that the Ombudsman may only re-prosecute all of herein accused and file the present Information only after the Ombudsman has adduced additional evidence conducted in a new preliminary investigation. They further claim that they are only aware of the preliminary investigation conducted by the Ombudsman in Criminal Case No. OMB-L-C-16-0093 after the filing of the Affidavit-Complaint by Rodalyn G. Hanif on November 26, 2015. Consequently, they are not aware of any preliminary investigation conducted *after* the dismissal of Criminal Case No. SB-19-CRM-0027 on July 26, 2019. With this, and in accordance with the provisions of the Rules of Court, they now seek that the Ombudsman be ordered to elevate before this Court the records of the purported preliminary investigation that was supposedly conducted as certified by the prosecution.

In the supplemental motion, accused Balde, *et al.* argue that the prosecution finally conceded that no new preliminary investigation was conducted prior to the filing of the present Information. The accused has repeatedly claimed that the prosecution cannot amend an information without factual basis and evidence adduced in a preliminary investigation.

**Prosecution's Vehement Opposition
[to Motion to Elevate Records of Preliminary Investigation]**

Accused Balde, *et al.* insist in their previous motions that another preliminary investigation should have been conducted before the present Information can be filed. For the prosecution, there is no law or rule which requires the Office of the Ombudsman to conduct another preliminary investigation before it re-files a criminal Information based on the same complaint. In fact, an OMB-L-C-16-0093, which originated from the affidavit-complaint dated November 12, 2015, underwent a full preliminary investigation, culminating in the issuance of the Ombudsman's Resolution



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dated February 6, 2018, which was affirmed through a Joint Order, recommending the filing of a criminal Complaint against the accused in this case. Admittedly, Criminal Case No. SB-19-CRM-0027 was dismissed, however, such dismissal did not prompt the re-filing of a subsequent or different Complaint, covering other or different offenses, to require the conduct anew of a subsequent preliminary investigation.

The prosecution reiterates that the accused did not enter their plea before the case¹ was dismissed, hence, double jeopardy has not yet attached. The dismissal of the case, having been made without any of the accused therein entering their pleas, was without prejudice to re-filing, as double jeopardy has not yet attached.

The Court's Ruling

Upon examination of the foregoing incidents, particularly the respective allegation of the accused in their Motions and the comment or opposition of the prosecution, this Court now recapitulates the issues into the following points:

- (1) The present Information should be quashed since the same alleges facts that do not constitute an offense;
- (2) This Court does not have jurisdiction to overturn the ruling of the 7th Division; and
- (3) The re-filing of the present Information violated the accused's right to speedy disposition of cases and therefore, the case must be dismissed.

The first issue has been categorically ruled by this Court in its July 12, 2022 Resolution, delving into the matter will call for a re-examination of the same allegations and facts of the case. The assertion that the present Information alleges facts which do not constitute an offense, is a mere rehash of the allegations of the accused in their previous Comment/Opposition (dated June 1, 2022). To reiterate Our ruling in the July 12, 2022 Resolution states:

“Well-settled is the rule that a defect pertaining to the failure of an information to charge facts constituting an offense may be cured by amendment, thus the Courts are mandated not to automatically quash the Information, but rather the prosecution should be given the opportunity to correct the defect by way of amendment. This will allow the Courts to proceed without undue delay. Therefore, unnecessary appeals based on technical grounds are avoided.² Despite the fact that the Seventh Division's Resolution did not order such amendment, the Rules still allows the re-filing of another information for as long as the crime has not prescribed, thus the present

¹ SB-19-CRM-0027

² People vs. Sandiganbayan, G.R. No. 160619, September 9, 2015, 770 SCRA 162 cited in Lazaro v. People, G.R. No. 230018, June 2021.

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Information filed in accordance with procedural rules. The same is provided under Section 6, Rule 117:

Sec. 6. Order sustaining the motion to quash not a bar to another prosecution; exception. – An order sustaining the motion to quash is not a bar to another prosecution for the same offense unless the motion was based on the grounds specified in Section 3(g) and (i) of this Rule.

This Court is convinced that the present Information is also sufficient to indict herein accused for violation of Section 3(e) under Republic Act 3019, as amended. It must be emphasized that Section 2 of Republic Act 7718 defined Private sector infrastructure or development projects, which included “*infrastructure and development projects as may be authorized by the appropriate agency pursuant to this Act*”. Section 2 of RA 7718, reads:

“Sec. 2 [a] **Private sector infrastructure or development projects.** – The general description of infrastructure or development projects normally financed and operated by the public sector but which will now be wholly or partly implemented by the private sector, including but not limited to, power plants, highways, ports, airports, canals, dams, hydropower projects, water supply, irrigation, telecommunications, railroads, and railways, transport systems, land reclamation projects, industrial estates or townships, housing, government buildings, tourism projects, markets, slaughterhouses, warehouses, solid wastes management, information technology networks and database infrastructure, education and health facilities, sewerage, drainage, dredging, **and other infrastructure and development projects as may be authorized by the appropriate agency pursuant to this Act.** Such projects shall be undertaken through contractual arrangements as defined hereunder and such other variations as may be approved by the President of the Philippines.”

The Seventh Division’s Resolution dated September 27, 2019 may have denied the prosecution’s motions solely based on the wrong remedy it sought from the very beginning, it however ruled that:

“Haplessly, the strain this gets in the interpretation of the law could have been obviated **had the Amended Information alleged, at the first instance, that the Lease Agreement was covered by the BOT Law.** Such was the dearth at the instance, which cannot be overlooked. For it is only from an allegation that the Lease Agreement was covered by the BOT Law could the adjoining allegation, “non-compliance with RA 6957, as amended by RA 7718 and IRR” could fully translate into a criminal charge.”

Consequently, the additional allegation in the present information, “... *where by its terms and conditions the said agreement is governed, covered by, and is under Republic Act No. 6957,*

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otherwise known as “An Act Authorizing the Financing, Construction, Operation, and Maintenance of Infrastructure Projects by the Private Sector, and for other Purposes” as amended by Republic Act No. 7718 and its Implementing Rules and Regulations (IRR) [BOT Law] albeit disguised as an ordinary lease agreement, to evade compliance with and in fact executed without complying with the requisites and provisions prescribed by the (sic) this Law (BOT Law)” was sufficient to constitute an offense.”

As to the claim that this Court lacks jurisdiction to overturn the ruling of the 7th Division, We are not persuaded. For the Court, the present Information has sufficiently alleged the facts necessary to constitute an offense. To elaborate on this point again will lead to a recapitulation of the issues settled in our previous Resolution.

However, admittedly, this Court failed to discuss in the July 12, 2022 Resolution, the issue on whether the re-filing of the present Information would violate the accused’s right to speedy disposition of cases. On this point, We find merit in the accused’s assertion.

The guaranteed right to speedy disposition of cases is enshrined in Section 16, Article III of the 1987 Constitution which provides that “*All person shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.*” Accordingly, the Ombudsman is directed to promptly act on all complaints filed before it as instituted under Section 12, Article XI of the 1987 Constitution, to wit:

Section 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall in appropriate cases, notify the complaints of the action taken and the results thereof.

In addition to the foregoing Constitutional mandate the same is replicated in Section 13 of the Ombudsman Act of 1989³ which provides:

Section 13. Mandate. — The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants

³ Republic Act No. 6770

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in order to promote efficient service by the Government to the people.

Following the ruling of the Supreme Court in *Cagang vs. Sandiganbayan, Fifth Division*⁴(Cagang), the succeeding guidelines must be utilized as a mode of analysis in situations involving right to speedy disposition of cases:

“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

⁴ G.R. No. 206438 and 206458. (July 31, 2018)

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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 the 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 lapse of the statutory or procedural periods. Otherwise, they are deemed to have waived their right to speedy disposition of cases.”⁵

Following the *Cagang* guidelines, it is appropriate to examine whether there is inordinate delay by reckoning the length of delay from the time the formal complaint was filed before the Ombudsman up to the completion of the preliminary investigation resulting in the filing of the Information. However, despite the mandate provided under the Constitution and RA 6770, there is no specified time frame for the Ombudsman to “promptly” act on such complaints. Current jurisprudence does not also provide for the specific periods to conclude the preliminary investigation. However, the Ombudsman released an Administrative Order⁶ which specifies the periods for conducting not only preliminary investigations, but also fact-finding investigations and

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

⁶ AO No. 1, Series of 2020.

administrative adjudications. Section 8 of said Administrative Order specifically provides:

Section 8. *Period for the conduct of Preliminary Investigation.* – Unless otherwise provided for in a separate issuance, such as an Office Order creating a special panel of investigators/prosecutors and prescribing the period for completion of the preliminary investigation, the proceedings therein shall not exceed twelve (12) months for simple cases or twenty-four months (24) for complex cases, subject to the following considerations:

- (a) The complexity of the case shall be determined on the basis of factors such as, but not limited to, the number of respondents, the number of offenses charged, the volume of documents, the geographical coverage, and the amount of public funds involved.
- (b) Any delay incurred in the proceedings, whenever attributable to the respondent, shall suspend the running of the period for purposes of completing the preliminary investigation.
- (c) The period herein prescribed may be extended by written authority of the Ombudsman, or the Overall Deputy Ombudsman/Special Prosecutor/Deputy Ombudsman concerned for justifiable reasons, which extension shall not exceed one (1) year.

A careful examination of the timeline of this case will determine whether the period prescribed for the completion of the preliminary investigation has been complied. The following dates are significant:

Date of Filing/Issuance	Incidents
26 November 2015	Hanif filed an Affidavit-Complaint against herein accused before the Ombudsman.
06 February 2018	After conducting preliminary investigation on the said Affidavit-Complaint, the Ombudsman issued a Resolution finding probable cause to charge all the accused for violation of RA 3019.
08 March 2019	The Ombudsman filed the Original Information before the Sandiganbayan.
26 July 2019	The Sandiganbayan 7 th Division quashed the Amended Information against the accused.

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27 September 2019	The Sandiganbayan 7 th Division denied the Motions for Reconsideration on the quashal of the Amended Information
18 March 2022	From the denial of the prior Motions for Reconsideration, the Ombudsman filed the present Information based on the original Affidavit-Complaint and now raffled to the Sandiganbayan 5 th Division
01 April 2022	The 5 th Division dismissed the present Information relying on the 7 th Division's Resolution.
12 July 2022	The 5 th Division granted the Ombudsman's Motion for Reconsideration and reversed the dismissal of the present Information.

Significantly, it took the Ombudsman approximately more than two (2) years to resolve the preliminary investigation. It is also appropriate to look into the length of delay incurred in the re-filing of the present Information reckoned from the time the Motions for Reconsideration was denied by the 7th Division, which was about two (2) years and six (6) months from such denial. This Court believes that the delay incurred in the re-filing of the present Information is unjustifiable, considering the fact that the Ombudsman did not need to conduct a new preliminary investigation. Applying Section 8 of Administrative Order No. 1 Series of 2020, in the present case it would appear that it took the Ombudsman **more than four (4) years** to file the present Information before this Court.

Since the delay went beyond the 12 months and 24 months provided for in the cited Administrative Order, and the accused timely asserted its right to speedy disposition of cases, then the burden of proof in justifying the delay is shifted to the prosecution.

Guided by the case of *Cagang*, once the burden of proof shifts to the prosecution, it 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.

The prosecution's assertion that the delay was due to the re-evaluation and review of numerous documents and pleadings, the complexity of the issues at hand, as well as the level of review undertaken before the case reaches the Office of the Ombudsman for approval cannot justify the delay, especially the length of time incurred in the re-filing of the present Information. At the very least, the most part of the delay may be attributed to

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the Covid-19 pandemic because its effects were self-evident in the lockdowns and physical closures of offices. However, the said circumstance is not one of those enumerated as a consideration to justify extensions, under Administrative Order 1 series of 2020, issued by no less than the Office of the Ombudsman. Nonetheless, while the effects of the pandemic were self-evident, a period of more than two (2) years just to refile the present Information appears unjustifiable, more so that the prosecution failed to allege how such refiling had been specifically impacted by the effects of the pandemic given that the Ombudsman approved the new information as early as May 28, 2021.

The following material dates of the refiled Information were taken into consideration by this Court:

- (1) Information is dated January 30, 2020;
- (2) The Certification and Jurat of the Information are dated February 2020;
- (3) Ombudsman's approval of the Information was on May 28, 2021; and
- (4) The Information was only filed on March 18, 2022.

Furthermore, the prosecution asserted that the accused were not prejudiced nor injured by reason of the proceedings. This Court is not persuaded. The overwhelming claim of the accused that they incurred emotional distress and anxiety are sufficient to show that they were prejudiced by the length of delay. To underscore that prejudice was suffered by the accused, the following are some of the assertions in their Omnibus Motion dated August 18, 2022:

55.1 Accused Noel Yabut Atienza was diagnosed with chronic renal failure which necessitated him [to undergo] hemodialysis three (3) times a week. Further, the criminal proceedings caused additional financial drain and hardships due to his loss of salary as city councilor.

55.2 Accused Randy dela Cruz Sionzon, aside from the financial distress (brought upon his family, his children were being bullied in school due to the baseless charge filed against him. His children, one of whom was already in college, would go home in tears due to the bullying she experienced in school. The emotional impact and anxiety he and his children suffered has drastically affected him.

5.3 Accused Atty. Anna Marin F. Sison was the City Legal Officer prior to her rejoining the judiciary department as a Clerk of Court V of the Office of the Clerk of Court of Sta. Cruz, Laguna. She has prided herself with acting with discretion and within the confines of her legal training and education. She has likewise reviewed all the actions of the City Government making sure they are acting within the bounds of the law. The criminal

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proceedings caused her great emotional and financial distress as she knows that this case was unfounded. This case may have caused a negative effect on her aspirations to becoming a member of the judiciary. Yet, she still believes the Honorable Court will see thru this meritless case.

55.4 Accused Mamerto Baustista Malabute, prior to the criminal proceedings, had contributed to the success of Olongapo City as its City Administrator. However, when the criminal case was initiated, his health began to deteriorate. He could not work well like he used to. His morale, self-confidence and zealously in working continued to decline. The stress and worry had a drastic effect on his capacity to work and triggered his health conditions. He died on or about 17 February 2022 without having seen his good name cleared and was still unfortunately included in the 2nd Amended Information filed by the Ombudsman even after his death.

55.5 Accused Tony Kar M. Balde III's suffered a negative mark on his career, his family and finances due to the pendency of the criminal proceedings. The said proceedings drastically affected his life and his family because the controversy hounded even his daughter studying in University of Sto. Tomas, Manila. His GSIS consolidated loan incurred penalties that required it to be restructured. Thus, his previous payments of around PESOS: NINETY THOUSAND (PHP 90,000.00) more or less, was considered as allocated only to the penalties. It brought emotional stress and financial problems to his whole family. He had sleepless nights thinking about this case and it affected him emotionally, mentally and physically.

55.6 Accused Atty. Alreuela M. Bundang-Ortiz's inclusion in the criminal proceedings came as a great shock to her and to the rest of the officials of Olongapo City as she, being a lawyer, saw to it that existing laws were followed in whatever actions were taken in the City Council. The criminal proceedings had a tremendous impact in her career as a practicing lawyer and somehow tarnished her reputation as a practitioner and a public servant. This was due to the fact that she painstakingly made sure that laws were followed in the City Council's approval and endorsement of its Bids and Awards Committee. Her ultimate dream to become a member of the judiciary has been put on hold, yet, despite this set back, she still believes in the justice system and that the Honorable Court can see the merit in their position.

55.7 Accused Eduardo G. Guerrero has always been in public service, starting as a resident doctor since 1977 until he became a City Councilor. His inclusion in the criminal proceedings has a cascading effect on his career, As a retired government doctor, the avenue of his assistance to others suddenly closed as he can no longer look out for others in the way that he used to. It had a great effect on his family's finance as well as his reputation as i[t] left him without any direction since he has always been a public servant.

55.8 Accused Joy Fernandez Cahilig served with the local government of Olongapo City since 1988 as a Fiscal Clerk until she reached

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her present position as a City Budget Officer. Being a single parent, she went thru a tough time when she was included in the criminal proceedings. The instant case impelled her to acquire huge liabilities for her son and her nephew, whom she was supporting in education. It affected her emotional and mental health because she was tortured as to how to provide for her son and nephew while thinking how she will be able to clear her name.

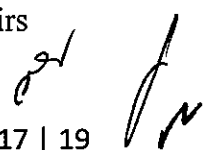
55.9 **Accused Edna A. Elane** served for three (3) consecutive terms. Her dedication to public service was the impetus for her re-election. When she was included in the criminal proceedings, her emotional state and confidence was greatly affected and she endured sleepless nights. This case affected her and her family emotionally and financially due to her family's health concerns and daily expenses. Yet, she believes the Honorable Court will see the merit in their position.

55.10 **Accused Atty. Cristiflor D. Buduhan** is a certified public accountant and a lawyer. She had a reputation for hard work and being a professional. She did not want to tarnish her name in her two professions with any act of malfeasance or misfeasance. When she was charged with the criminal case, she was five (5) months pregnant and considered high risk. Her other son saw her name, as one of those charged for graft and corruption, and it felt as if a dagger was stabbed thru her heart. It caused her emotional as well as financial distress due to its effect on her family and their disposition. She felt that her reputation which she has assiduously tried to protect was tarnished. Yet, she still believes that justice will be served.

55.11 **Accused Benjamin Gregorio Cajudo II** came from a family devoted to public service as his mother also served in public service, first as City Councilor, then as Vice-Mayor until becoming Acting Mayor of Olongapo City. He continued this legacy of service by initiating reforms and activities that benefitted the general public for Olongapo City. The criminal proceedings caused him financial difficulties as he was the only breadwinner of the family. It caused emotional distress as he knew it was a political harassment and persecution filed by political opponents. The protracted case has caused his family to undergo reputational and financial distress. Yet, all throughout, he believes that the Honorable Court will find merit in their position.

55.12 **Accused Emerito Linus Bacay** is a three-term councilor of Olongapo City. He handled Committees on Traffic Management; Sports Development and Disaster and Public Safety. Prior to that he was the Barangay Councilor for three consecutive terms, thus showing that his zeal for public service is in his blood. The instant case affected his family as he knows that this case is unfounded and is a case of politically motivated harassment and persecution. He hopes to see a silver lining at the end in order to clear his name.

55.13 **Accused Egmidio Manzano Gonzales, Jr.** is the mandatory representative of the indigenous peoples to the Olongapo City Council. He has served in this capacity since 2014. Prior to that, he was the Tribal affairs

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assistant since year 2000. He has continuously worked for the betterment of the indigenous people of Olongapo City and related areas. This case has affected his family as his reputation as a representative of the Indigenous People has been affected. He did not understand why this happened as he believes that no law was violated.

55.14 **Accused Elena C. Dabu** was a three-term City Councilor of Olongapo City where she handled committees on Woman and Children's Welfare and Social Welfare and Development, House Rules and Ethics, Finance and Appropriation and Ways and Means, Market and Livelihood and Cooperation. The criminal proceedings caused her to lose her employment with the local government unit as it coincided with the expiration of her term and tarnished her reputation within the community. This caused grave financial and emotional concern for her due to the fact that it entailed the emotional strain as her reputation as a public servant was affected. She believes that justice will be served and this unmeritorious case will finally be dismissed permanently.

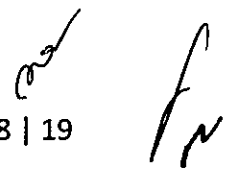
55.15 Finally, **Accused Rolen Calixto Paulino** has been a three-term City Mayor of Olongapo City. Prior to that, he held the position of Vice Mayor for four (4) terms (not successively). Likewise, he served in the City Council. His dedication to public service is unwavering. When he was included in the criminal proceedings, he felt devastated not for himself but for the people who rely and depend on him, including his staff who assist him 100% of the time. At the same time, his reputation was tainted due to unfounded accusations clearly propounded by his political opponents. He continues to the mission of giving assistance to those who seek his help because he believes that it is his calling and vocation, which is to be of service to the people. He, like the rest of the Accused, believe that this unfounded and meritless complaint will finally be dismissed by the Honorable Court."⁷ (emphasis supplied)

Clearly, the Ombudsman's claim that the accused were not prejudiced by the length of delay brought about by the criminal proceedings fails to convince this Court given these assertion of facts by the accused.

Finally, we find that the accused had timely raised their right when they asserted their Comment/Opposition to the prosecution's Motion for Reconsideration in the April 1, 2022 Resolution issued by this Court. Their right was repeatedly asserted in their respective Motions for Reconsideration and Omnibus Motions. Contrary to the prosecution's claim that they did not invoke their right while the case was undergoing preliminary investigation with the Office of the Ombudsman, the Supreme Court has settled the rule that it was sufficient for the accused to timely assert their right at the earliest possible opportunity, even after preliminary investigation.⁸ Certainly, the

⁷ Omnibus Motion filed by accused Balde, *et al.* dated August 18, 2022. Records, pages 409-413.

⁸ Alarilla vs. Sandiganbayan (Fourth Division), G.R. No. 236177-210, February 3, 2021.



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length of delay of more than four (4) years in completing the present Information and the failure of the prosecution to present justifiable reasons of such delay, this Court rules that all of herein accused's right to speedy disposition of cases had been violated. Thus, the present case should be dismissed.


Consequently, there is no more reason to discuss and rule on the pending motions to elevate the records of Preliminary Investigation and the opposition to this Court.

WHEREFORE, premises^{jel} considered, **Criminal Case No. SB-22-CRM-0051** against Rolan Calixto Paulino, Aquilino Yorac Cortez Jr., Elena Calma Dabu, Benjamin Gregorio Cajudo II, Eduardo Guerrero Guerrero, Noel Yabut Atienza, Alrueula Mauro Bundang-Ortiz, Edna Alviz Elane, Emerito Linus Dolantre Bacay, Randy Dela Cruz Sionzon, Egmidio Manzano Gonzales, Jr. Tony Kar Balde III, Cristiflor Buduhan, Anna Marin Florentino Sison, Mamerto B. Malabute, and Joy Fernandez Cahilig is hereby **DISMISSED** for violation of the accused's constitutional right to speedy disposition of cases. Accused Balde, et al.'s pending motion to elevate the records of preliminary investigation and the prosecution's vehement opposition thereto is rendered **MOOT AND ACADEMIC**.

SO ORDERED.


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

WE CONCUR:


RAFAEL R. LAGOS
Chairperson
Associate Justice


MARYANN E. CORPUS-MAÑALAC
Associate Justice