



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY

THIRD DIVISION

**PEOPLE OF THE
PHILIPPINES,**

Plaintiff,

**Criminal Case No. SB-23-
CRM-0035**

For: *Violation of Section 3 (h) of
Republic Act No. 3019 (Anti-
Graft and Corrupt Practices
Act), as amended*


- versus -

Present:

**JED PATRICK ESCALANTE
MABILOG and PLARIDEL
CORDERO NAVA II,**

Accused.

CABOTAJE-TANG, P.J.,
Chairperson,
FERNANDEZ, B.R., J. and
MORENO, R.B., J.
Promulgated:


JUNE 23, 2023 


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RESOLUTION

CABOTAJE-TANG, P.J.:

This pertains to the *Motion to Quash/Dismiss* dated March 30, 2023,¹ filed by accused Plaridel Cordero Nava II, and the prosecution's *Opposition to the Motion to Quash/Dismiss* filed by Accused Plaridel C. Nava II dated May 19, 2023.²


¹ pp. 133-138, Record

² pp. 187-191, Record


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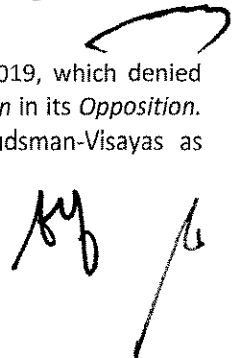
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In his Motion, accused Nava II prays for the dismissal of the case against him due to the alleged violation of his constitutional right to a speedy disposition of his case. He points out that the criminal complaint against him was filed by his co-accused Jed Patrick E. Mabilog before the Office of the Ombudsman Visayas ("**Ombudsman-Visayas**") on **September 16, 2015**, and was resolved by the Ombudsman-Visayas, through its *Consolidated Resolution* dated **March 28, 2017**. Accused Nava II avers that he filed a *Motion for Reconsideration* of the *Consolidated Resolution* on **October 9, 2017**. However, the Ombudsman-Visayas only resolved the same on **June 28, 2019**, through a *Consolidated Order*. Worse, the *Information* charging him with the present offense was only filed by the Ombudsman on **March 2, 2023**, or approximately **eight (8) years** after the initial complaint was filed against him. Against this factual backdrop, accused Nava II contends that he suffered continuing mental anguish and was prejudiced after having considerably waited for the outcome of the criminal case against him *ad infinitum*.

In its *Opposition* dated May 19, 2023, the prosecution admits that there was a delay of **one (1) year and eight (8) months** in the resolution of the *Motion for Reconsideration* filed by accused Nava II before the Ombudsman-Visayas. It likewise admits that there was a further delay of **three (3) years and nine (9) months** from the approval of the *Consolidated Order*³ denying accused Nava's reconsideration and the filing of the *Information* on March 2, 2023. However, the prosecution asserts that there was no violation of the accused's constitutional right to speedy disposition of cases since the delays were justified.

First, it reasons out that the approval of the *Consolidated Order* involved layers of review that are indispensable requisites to the proper and judicious

³ The prosecution mistakenly referred to the *Consolidated Order* dated June 28, 2019, which denied accused Nava II's *Motion for Reconsideration*, as *Consolidated Resolution* or *Resolution* in its *Opposition*. For clarity, the Court shall refer to the June 28, 2019 issuance of the Ombudsman-Visayas as *Consolidated Order* based on the records submitted to the Court

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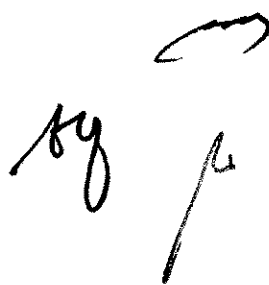
prosecution of the case. Second, it cites the onset of the COVID-19 pandemic, particularly the emergence of the Delta and Omicron variants, as well as the distance between the offices of the Ombudsman Proper and Ombudsman Visayas as factors which contributed to the delay in the transmission of the records and process of approval of the *Consolidated Order*. The prosecution asks the Court to take judicial notice of the fact that during the pandemic, postal and courier services took longer than usual. It likewise cites the strict sanitation protocol of the Office of the Ombudsman in handling mail matters. Lastly, the prosecution points out that the *Consolidated Resolution* was signed near the end of the term of former Ombudsman Conchita Carpio Morales. When accused Nava II's *Motion for Reconsideration* of the resolution was received by the Ombudsman, Ombudsman Samuel R. Martires was already appointed. Given the transition in leadership, the prosecution asserts that Ombudsman Martires could not be faulted for not rushing the signing of the *Consolidated Order* which denied the motion for reconsideration, as well as the *Information*, since he effectively was studying and reviewing the case for the first time.

The prosecution adds that while accused Nava II claims to have suffered continuing mental anguish that resulted in his prejudice, he did not state any concrete and substantiated prejudice that he suffered as a result of the delay. Nor does the record support his claim that he suffered the kind of prejudice that falls within the proscription of *Republic v. Sandiganbayan*.⁴ Given these, the prosecution prays that the motion be denied for lack of merit.

THE RULING OF THE COURT

The Court finds the subject motion unmeritorious.

⁴ G.R. No. 231144, February 19, 2020

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The right to speedy disposition of cases is constitutionally guaranteed. Under Article III, Section 16 of the Constitution:

SECTION 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

Jurisprudence has consistently held that the right to speedy disposition of cases is 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 unjustifiable motive, a long period of time is allowed to elapse without the party having his case tried.”⁵

Since the concept of a speedy disposition is a relative term and by necessity, a flexible concept, the inquiry as to whether or not an accused has been denied such right is **not susceptible by precise qualification**.⁶ Similarly, delay is **not determined through mere mathematical reckoning** but through the examination of the facts and circumstances surrounding each case.⁷

To determine if the right to speedy disposition of cases was violated, the Supreme Court laid down the following guidelines in ***Cagang v. Sandiganbayan***,⁸ in this wise:

This Court now clarifies the mode of analysis in situations where the right to speedy disposition of cases or the right to speedy trial is invoked.

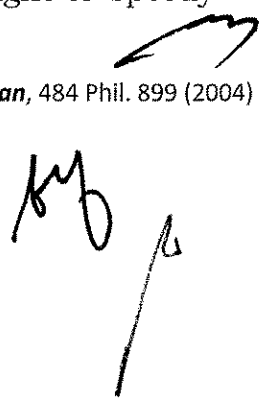
First, the right to speedy disposition of cases is different from the right to speedy trial. While the rationale for both rights is the same, the right to speedy

⁵ *Ty-Dazo v. Sandiganbayan*, 424 Phil. 945 (2002); *Corpuz v. Sandiganbayan*, 484 Phil. 899 (2004)
Emphasis supplied

⁶ *Id*

⁷ *Cagang v. Sandiganbayan*, 875 SCRA 374 (2018); Emphasis supplied

⁸ *Id*

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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 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.

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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.

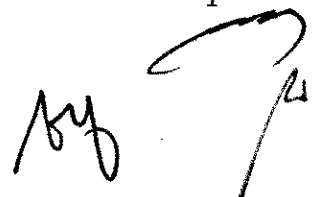
An exception to this rule is if there is an allegation that the prosecution of the case was solely motivated by malice, such as when the case is politically motivated or when there is continued prosecution despite utter lack of evidence. Malicious intent may be gauged from the behavior of the prosecution 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.

In determining the time periods to be followed by the Ombudsman in the conduct of preliminary investigation, the Court turns to the rules promulgated by the Office of the Ombudsman whereby reasonable periods are set for the conduct of preliminary investigations. *Administrative Order No. 1, series of 2020* (“**A.O. No. 1**”) prescribes the periods in the conduct of investigations by the Office of the Ombudsman. Section 8 of A.O. No. 1 provides that, subject to several considerations and unless otherwise provided for in a separate issuance, the period for completion of a preliminary investigation shall not exceed twelve (12) months for simple

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cases or twenty-four (24) months for complex cases.

However, the preliminary investigation subject of the case at bar was long terminated prior to the effectivity of A.O. No. 1; hence, the Court turns to Sec. 4, Rule II of the *Rules of Procedure of the Office of the Ombudsman*⁹ which provides that the preliminary investigation of cases falling under the jurisdiction of the Sandiganbayan shall be conducted in the manner prescribed in Sec. 3, Rule 112 of the Rules of Court, subject to the provisions in Sec. 4, Rule II of said *Rules of Procedure of the Office of the Ombudsman*. Sec. 3, Rule 112 of the Rules of Court provides:

Section 3. Procedure. — The preliminary investigation shall be conducted in the following manner:

- (a) The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish probable cause. They shall be in such number of copies as there are respondents, plus two (2) copies for the official file. The affidavits shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath, or, in their absence or unavailability, before a notary public, each of who must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.
- (b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he finds no ground to continue with the investigation or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents.

The respondent shall have the right to examine the evidence submitted by the complainant which he may not have been furnished and to copy them at his expense. If the evidence is voluminous, the complainant may be required to specify those which he intends to

⁹ Administrative Order No. 07

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present against the respondent, and these shall be made available for examination or copying by the respondent at his expense.

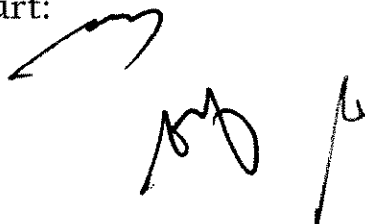
Objects as evidence need not be furnished a party but shall be made available for examination, copying, or photographing at the expense of the requesting party.

- (c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of this section, with copies thereof furnished by him to the complainant. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit.
- (d) If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the ten (10) day period, the investigating officer shall resolve the complaint based on the evidence presented by the complainant.
- (e) The investigating officer may set a hearing if there are facts and issues to be clarified from a party or a witness. The parties can be present at the hearing but without the right to examine or cross-examine. They may, however, submit to the investigating officer questions which may be asked to the party or witness concerned.

The hearing shall be held within ten (10) days from submission of the counter-affidavits and other documents or from the expiration of the period for their submission. It shall be terminated within five (5) days.

- (f) Within ten (10) days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial.

The table below outlines the significant timeline of events from the stage of preliminary investigation until the filing of the charges against the accused-movant before the Court:

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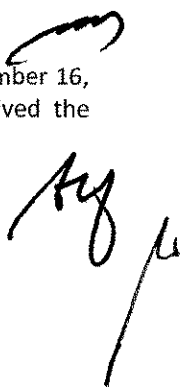
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Timeline	
Date	Incidence
September 11, ¹⁰ 2015	Filing of counter-charge or criminal complaint by accused Mabilog against accused-movant Nava II.
November 26, 2015	Accused-movant Nava II filed his counter-affidavit.
March 28, 2017	The Office of the Ombudsman issued the <i>Consolidated Resolution</i> against accused Mabilog and Nava II.
October 3, and 9, 2017	Accused Mabilog and Nava II filed their respective <i>Motions for Reconsideration</i> .
July 26, 2018	Ombudsman Conchita Carpio Morales retired.
August 6, 2018	Ombudsman Samuel R. Martires took his oath of office.
June 28, 2019	The Office of the Ombudsman issued the <i>Consolidated Order</i> denying accused Mabilog's and Nava II's motions for reconsideration.
March 2, 2023	The Office of the Ombudsman filed the present <i>Information</i> before the Court.

Based on the above recorded facts, it is clear that the Ombudsman's *Consolidated Resolution* and its *Consolidated Order* were approved beyond the periods provided under the Rules of Court. However, as early as ***Dansal v. Fernandez***,¹¹ the Supreme Court has already taken judicial notice of the steady stream of cases reaching the Office of the Ombudsman, and held that although under the Rules of Court, the Investigating Office must issue a resolution within ten (10) days from the submission of the case, the period fixed

¹⁰ Accused Nava II alleged that the counter-charge or complaint against him was filed on September 16, 2015. The *Consolidated Resolution* of the Ombudsman-Visayas, however, state that it received the counter-charge or complaint of accused Mabilog against accused Nava II on September 11, 2015.

¹¹ 383 Phil. 897 (2000)



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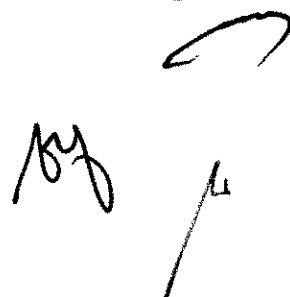
by law is merely “directory,” although it cannot be disregarded or ignored completely with absolute impunity. Further, in ***Salcedo v. The Honorable Third Division of the Sandiganbayan***,¹² the Supreme Court explained that it has never set a threshold period for terminating the preliminary investigation proceedings before the Office of the Ombudsman premised on the fact that the constitutionally guaranteed right to speedy disposition of cases is a relative or flexible concept, to wit:

The Court has never set a threshold period for terminating the preliminary investigation proceedings before the Office of the Ombudsman premised on the fact that the constitutionally guaranteed right to speedy disposition of cases is a relative or flexible concept. **It is consistent with delays and depends upon the circumstances of a particular case, and thus, it cannot be quantified into specified number of days or months.** It is quite difficult to ascertain with definiteness and precision when said right have been denied. The Court cannot exactly say how long is too long in a system where justice is supposed to be swift but thorough and correctly considered. **Due to the imprecision of this right, the length of delay that will provoke an inquiry is necessarily dependent upon the peculiar circumstances of each case.**

Given the aforesaid pronouncements, the Court must determine whether inordinate delay exists based on the entire context of the case and not merely based on the length of time involved. Moreover, since the delay occurred beyond the given time period, per *Cagang*, the prosecution has the burden of justifying the delay.

In this case, the Court notes that there were indeed delays in the conduct of the preliminary investigation against accused Nava II. However, there is no showing that the delays were motivated by malice or were brought about to merely harass the accused herein. There is likewise no showing that

¹² 893 SCRA 25 (2019)

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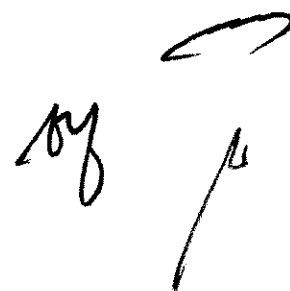
the Ombudsman did not follow the prescribed procedure in the conduct of the preliminary investigation. While the Court notes the accused-movant's contention that the case is simple and not complex, and the amount of evidence is not voluminous, the Court likewise considers the prosecution's assertion as to the layers of review needed before the *Consolidated Resolution* and *Consolidated Order* may be approved as well as the distance between the offices of the Ombudsman-Visayas and the Ombudsman-Proper. Considering further that the Office of the Ombudsman handles other cases, as well as the change in leadership during the review of the *Consolidated Order*, the Court deems the period lapsed as not unreasonable.

As for the delay of **three (3) years and nine (9) months** from the approval of the *Consolidated Order* dated June 28, 2019, and the filing of the present *Information* on March 2, 2023, the Court takes judicial notice of the considerable impact that the onset of the COVID-19 pandemic had worldwide. To recall, the President declared a State of Public Health Emergency throughout the Philippines due to COVID-19 on March 8, 2020.¹³ Thereafter, Metro Manila and other parts of the Philippines were put under a series of community quarantines and alert levels because of the COVID-19 pandemic. These resulted in **work suspensions and closures of courts**, among others, which clearly disrupted and prolonged the timeline of the events in the case at bar.

Considering the entirety of the events surrounding the preliminary investigation conducted by the Ombudsman, the Court finds that the filing of the *Information* with this Court on March 2, 2023 is not unreasonable.

Moreover, the Court agrees with the claim of the prosecution that there is no proof that the accused-movant was prejudiced by the delay in the proceedings before the Office of the Ombudsman. Bare and unsubstantiated

¹³ Proclamation No. 922, dated March 8, 2020



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allegations do not constitute substantial evidence and have no probative value.

In fine, the Court finds that although there was delay in the preliminary investigation before the Office of the Ombudsman, such delay was not vexatious, capricious, and oppressive. Therefore, there was no violation of the accused-movant's right to speedy disposition of cases.

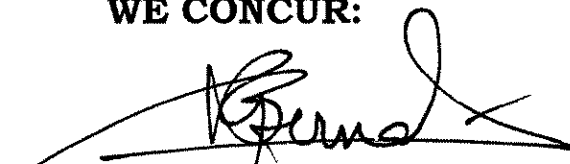
WHEREFORE, accused-movant Plaridel Cordero Nava II's *Motion to Quash/Dismiss* dated March 30, 2023, is **DENIED** for lack of merit.


SO ORDERED.

Quezon City, Metro Manila


AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson

WE CONCUR:


BERNELITO R. FERNANDEZ
Associate Justice


RONALD B. MORENO
Associate Justice