Republic of the Philippines
SANDIGANBAYAN
Quezon City

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

Crim. Case No. SB-23-CRM-0043
For: violation of Sec. 3 (e) of R. A. No. 3019, as amended

HERBERT CONSTANTINE MACLANG BAUTISTA
and
ALDRIN CHIN CUÑA
Accused.
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Present:

CABOTAJE-TANG, A.M.
P.J./Chairperson
FERNANDEZ, B. R., *J &*
MORENO, R. B., *J.*

Promulgated on:

JUNE 7, 2023

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R E S O L U T I O N

FERNANDEZ, B. R., *J.*

For resolution are Urgent Omnibus Motion [to: (a) quash the Information; and (c) [*sic*] dismiss the case with prejudice] of accused-movant Herbert Constantine M. Bautista dated March 17, 2023 and the Opposition of the prosecution dated April 11, 2023.

In his first prayer of seeking to quash the Information, accused-movant Bautista raised the following grounds citing Section 3 (a), (d) and (h) of Rule 117 of the Rules of Court, namely - - (1) the facts charged therein do not constitute an offense; (2) it contains averments which, if true, would constitute a legal excuse or justification; and, (3) the officer who filed the Information had no authority to do so.

As regards the first ground - *the facts charged therein do not constitute an offense* – accused-movant Bautista alleges that the Information failed to state any factual averments that will constitute manifest partiality, evident bad faith, and gross inexcusable negligence, or even the elements of violation of Section 3 (e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended. He argues that the statements contained in the Information were empty conclusions of law that failed to apprise the accused of ultimate facts constituting the offense charged.

He further avers that the Information is solely anchored on the allegation that he executed all the acts intended for the full payment to Cygnet, despite its failure to apply for and secure a net metering system from the Manila Electric Company (Meralco).

Accused-movant Bautista also argues that the Information is devoid of any averment showing his manifest partiality, evident bad faith, or gross inexcusable negligence and asserts that his signature on the Disbursement Voucher (DV) dated June 27, 2019, without any further allegation that he was animated by malice or fraudulent intent, could not be taken to mean that he acted with manifest partiality, citing a litany of cases, to wit - - People vs. de la Rosa (G.R. No. L-34112, June 25, 1980), Jose M. Roy III vs. The Honorable Ombudsman Conchita Carpio-Morales (G.R. No. 225718, March 4, 2020), Antonio M. Suba vs. Sandiganbayan (G.R. No. 235418, March 3, 2021), Eufrocina N. Macairan vs. People (G.R. No. 215104, March 18, 2021), People vs. Bacaltos (G.R. No. 248701, July 28, 2020), Ysidoro vs. Leonardo-De Castro (G.R. No. 171513, February 6, 2012), People vs. Asuncion (G.R. Nos. 250366 and 250388-98, April 6, 2022), People vs. Banzuela (G.R. No.202060, December 11, 2013), and Sabaldan vs. Office of the Ombudsman (G.R. No. 238014, June 15, 2020).

He maintains that, although he allegedly signed the subject DV and approved the payment of P25,342,359.25 to Cygnet, this does not automatically imply that he already acted with clear, notorious, or plain inclination or predilection to favor Cygnet over other entities.

The absence of manifest partiality is shown by the fact that a bidding was conducted in compliance with Republic Act No. 9184 or the Government Procurement Act and its Implementing Rules and Regulations, the regularity of which has never been disputed, and is therefore deemed admitted by the prosecution.

Even supposing that the bidding and procurement were marred by irregularities, he argues that such irregularities could not be attributed to him as he is not a member of the Bids and Awards Committee (BAC), citing 1.3 or Resolution No. 01-2004 of the Government Procurement Policy Board, issued in relation to R.A. 9184, which provides that the local chief executive shall not be the Chairman or a member of the BAC. Thus, as the former chief executive of Quezon City, he had nothing to do with the procurement and awarding of projects.

On the alleged signing of the subject DV, accused-movant Bautista further alleges that the Information overlooked the fact that the check was released to Cygnet during the administration of Mayor Josefina Belmonte, hence, whatever acts the accused did prior thereto were rendered inconsequential.

Furthermore, even if his act of signing the subject DV facilitated the release of the check, he merely relied on official documents, in accordance with their standard operating procedures, invoking the Arias Doctrine, and that his mere signature on the subject DV could not be taken to mean that he acted with manifest partiality.

He also points out that the Information did not state that, at the time he signed the subject DV, he knew that the contractor Cygnet was unable to secure a net metering system from Meralco and was, thus, not entitled to payment. Without such prior knowledge, it is highly improbable for accused-movant Bautista to have acted with evident bad faith when he signed the subject DV.

Neither, accused-movant Bautista claims, did the Information reveal any instance or circumstance to support any attribution of gross inexcusable negligence to him.

Accused-movant Bautista insists that there was an efficiency and prompt implementation of the subject Project being the result of a strict adherence to the regular procurement procedure. Thus, he claims to have exercised due care.

In asserting the regularity in the proceedings, accused-movant Bautista also alleges that there were no adverse findings by the Commission on Audit (COA) in both its 2019 and 2020 annual audit. Neither was there any notice of disallowance issued.

On the element of undue injury to the government, accused-movant Bautista contends that when he signed the subject DV and approved the payment to Cygnet, the funds had not yet been released to the latter. Hence, at that point, the government had not yet suffered or sustained any undue injury and damage and prejudice.

He reiterates that the subject Project was continued by Mayor Belmonte as she released the check to Cygnet under Resolution No. SP 8280, series of 2020, for the purpose of entering into a net metering agreement with Meralco for renewable energy system of the Quezon City government.

Accused-movant Bautista also claims that the Information failed to sufficiently state the ultimate and specific acts that would establish conspiracy. It did not even cite the individual acts of the accused that purportedly illustrate the existence of conspiracy, principally relying in the cases of Arroyo vs. Sandiganbayan (G.R. No.220598, April 18, 2017); Magsuci vs. Sandiganbayan (G.R. No. L-101545, January 3, 1995); and, Sabiniano vs. Court of Appeals (G.R. No. 76490, October 6, 1995).

On his second ground - *the subject Information contains averments which, if true, would constitute a legal excuse or justification* – accused-movant Bautista posits that having acted as the city mayor, he was obligated to implement the subject Project pursuant to Ordinance No. 2827. Thus, he argues that he acted in the lawful exercise of his functions as a mayor which will serve as a legal excuse or justification that

prevents criminal liability to arise, a justifying circumstance of fulfillment of a duty under paragraph 5 of Article 11 of the Revised Penal Code, as amended.

Relative to the third ground - *the officer who filed the Information had no authority to do so* - accused-movant Bautista contends that it was filed and signed by Assistant Special Prosecutor III Lyn G. Dimayuga without the necessary written authority or approval of the Ombudsman.

Citing Section 3 (d) of Rule 117 of the Rules of Court and Section 4 (g) of Administrative Order No. 70, otherwise known as the Rules of Procedure of the Office of the Ombudsman, he rationalizes that, being a jurisdictional defect, the lack of authority of the filing officer is a non-waivable ground even if not raised in a motion to quash and thus could be raised even after a plea.

Accused-movant Bautista also prayed that the case against him be dismissed for the blatant violation of his constitutional right to a speedy disposition of his case.

He maintains that, after the complaint against the accused was filed with the Ombudsman on March 3, 2020, it took more than three (3) years to complete and resolve the preliminary investigation of the charge, particularly after receiving, on March 13, 2023, the Order dated December 27, 2022 denying his Motion for Reconsideration dated March 12, 2022.

In support of this contention, accused-movant Bautista cites People vs. Sandiganbayan (G. R. Nos. 188165 and 189063, December 11, 2013), People vs. Lapid, *et al.* (SB-CRM-0286, September 30, 2016), Alfredo R. Enriquez, *et al.* vs. Office of the Ombudsman (545 SCRA 618, 630, 633, February 15, 2008), Coscolluela vs. Sandiganbayan (G. R. No. 191411, July 15, 2013), and Inocentes vs. People (G. R. No. 205963-64, July 7, 2016).

When given time (Minutes, March 20, 2023), the prosecution filed its Opposition dated April 11, 2023.

The prosecution specifically responded in the following manner, namely - - (1) The information sufficiently alleges the essential elements of violation of Section 3 (e) of R.A. No. 3019; (2) The matters raised by accused-movant Bautista are evidentiary in nature and are matters of defense best passed

upon after a full-blown trial on the merits; (3) The conspiracy indictment need not aver all the components of conspiracy or allege all the details thereof; (4) The information does not contain averments which, if true, would constitute a legal excuse or justification; (5) The information was filed with the approval the Ombudsman; and, (6) The preliminary investigation was not attended by vexatious, capricious, and oppressive delays.

On the first ground - *the Information sufficiently alleges the essential elements of violation of Section 3 (e) of R.A. No. 3019* – the prosecution invokes the ruling in Mark E. Jalandoni, *et al.* vs. The Office of the Ombudsman, *et al.* (G.R. No. 211751, May 10, 2021), that, in order to test the viability of a motion to quash on the ground that the facts charged do not constitute an offense, it must be settled whether the facts alleged, if hypothetically admitted, would establish the essential elements of the offense charged as defined by law. Matters *aliunde* or those beyond what is alleged in the information are not considered.

Reference is further made by the prosecution on the case of People vs. Sandiganbayan (G.R. No. 160619, September 9, 2015), which instructs that, in determining whether the allegations in the information are sufficient, three matters must be considered- - (1) what must be alleged in a valid information; (2) what the elements of the crime charged are; and, (3) whether these elements are sufficiently stated in the information. Only the ultimate facts constituting the offense need to be stated in the information and not the finer details of why and how the crime was committed.

The prosecution also cites Section 6, Rule 110 of the Revised Rules of Criminal Procedure. It provides that a complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and, the place where the offense was committed. When an offense is committed by more than one person, all of them shall be included in the complaint or information.

It goes further by noting Section 9 of the same Rule. Here, it states that the acts or omissions complained of as constituting the offense must be stated in ordinary and

concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged and for the court to pronounce judgment.

As to what facts and circumstances should be included in the information, the prosecution alludes to Lazarte, Jr. vs. Sandiganbayan (G.R. No. 180122, March 13, 2009), where the Supreme Court pronounced that reference should be made to the definition and elements of the offense charged and that the use of derivatives or synonyms or allegations of basic facts constituting the same is sufficient.

Furthermore, the prosecution submits that the allegations in the subject Information, if hypothetically admitted, are undoubtedly sufficient to establish the offense charged, *viz* - - (1) accused Bautista, then Mayor of Quezon City, was a public officer discharging administrative and /or official functions at the time material to this case; (2) while in the performance of their official functions, accused Bautista, in conspiracy with his co-accused, acted with evident bad faith, manifest partiality, or gross inexcusable negligence in facilitating and approving the release of public funds in the amount of P25,342,359.25 to Cygnet, as full payment for the implementation of the Project No. 1905-55463 (Supply and Installation of Solar Power System and Waterproofing Works for Civic Center Building F), specifically, accused Cuña issued an undated Certificate of Acceptance; and accused Bautista signed Box C of Disbursement Voucher dated June 17, 2019, approving the payment of P25,342,359.25 to Cygnet, notwithstanding the fact that Cygnet was not entitled to said amount because it failed to apply for and secure a Net Metering System from Meralco, as required under the Terms of Reference and the Supply and Delivery Agreement for the Project No. 1905-55463; and, (3) thereby conferring unwarranted benefits and advantage on Cygnet and causing undue injury to the government in the amount of P25,342,359.25, more or less.

It also argues that the reliance made by accused-movant Bautista on the cases of People vs. de la Rosa (G.R. No. L-34112, June 25, 1980), Jose M. Roy III vs. The Honorable Ombudsman Conchita Carpio-Morales (G.R. No. 225718, March 4, 2020), Antonio M. Suba vs. Sandiganbayan (G.R. No. 235418, March 3, 2021), Eufrocina N. Macairan vs. People (G.R. No. 215104, March 18, 2021), People vs. Bacaltos (G.R. No. 248701, July 28, 2020),

Ysidoro vs. Leonardo-De Castro (G.R. No. 171513, February 6, 2012), People vs. Asuncion (G.R. Nos. 250366 and 250388-98, April 6, 2022), People vs. Banzuela (G.R. No.202060, December 11, 2013), and Sabaldan vs. Office of the Ombudsman (G.R. No. 238014, June 15, 2020), is misplaced.

In the cases of Roy III (*supra.*) and Sabaldan (*supra.*), these pertain to findings of probable cause by the Office of the Ombudsman while the cases of Suba (*supra.*), Macairan (*supra.*), Bacaltos (*supra.*), Ysidoro (*supra.*), Asuncion (*supra.*) and Banzuela (*supra.*) involve cases which had already undergone the rigors of trial.

Herein, the prosecution has yet to present its evidence and the question before this Court is simply whether the subject Information is sufficient to warrant a trial for the accused. As settled jurisprudence dictates, in resolving a motion to quash an information on the ground that the facts alleged therein do not constitute an offense, the courts may not go beyond the four corners of the information and inquire into the merits of the case.

Moreover, unlike in the case of de la Rosa where the prosecution admitted certain facts and participated in hearings on the motion to quash where both parties presented documentary and testimonial evidence, the parties herein have not presented any evidence nor made admissions "which destroy the *prima facie* truth accorded to the allegations of the information."

Relative to the second ground - *the matters raised by accused Bautista are evidentiary in nature and are matters of defense best passed upon after a full-blown trial on the merits* - the prosecution submits that, as settled jurisprudence dictates, facts which constitute the defense of the accused do not constitute proper grounds for a motion to quash the information on the ground that the material averments do not constitute the offense.

On the ground that – a *conspiracy indictment need not aver all the components of conspiracy or allege all the details thereof* - the prosecution alleges that it is enough to allege conspiracy as a mode in the commission of the offense by use of the word conspire or its derivatives or synonyms or by allegation of basic facts constituting the conspiracy.

Citing the case of Lazarte, Jr. *(supra.)*, conspiracy, under Philippine law, should be understood on two levels. It can be a mode of committing a crime or it may be constitutive of the crime itself.

Herein, conspiracy is simply alleged as a mode of committing the offense charged. Thus, the Information need not state the specific or individual acts of the accused constituting the conspiracy.

It also cited the case of Estrada vs. Sandiganbayan (G.R. No. 148965, February 26, 2022), ruling that it is enough to allege conspiracy as a mode in the commission of an offense in either of the following manner-- (1) by the use of the word conspire, or its derivatives or synonyms, such as confederate, connive, collude, etc.; or, (2) by an allegation of basic facts constituting the conspiracy in a manner that a person of common understanding would know what is intended, and with such precision as would enable the accused to competently enter a plea to a subsequent indictment based on the same facts.

As the case of Estrada *(ibid.)* instructs, the allegation of conspiracy in the information must not be confused with the adequacy of evidence that may be required to prove it. A conspiracy is proved by evidence of actual cooperation; of acts indicative of an agreement, a common purpose or design, a concerted action or concurrence of sentiments to commit the felony and pursue it. A statement of this evidence is not necessary in the information.

The reliance of accused-movant Bautista on the cases of Arroyo vs. Sandiganbayan (G.R. No.220598, April 18, 2017); Magsuci vs. Sandiganbayan (G.R. No. L-101545, January 3, 1995); and, Sabiniano vs. Court of Appeals (G.R. No. 76490, October 6, 1995), is likewise misplaced.

The Arroyo (*supra.*) case concerns the denial of the demurrer to the evidence of the petitioner while the Magsuci (*supra.*) and Sabiniano (*supra.*) cases involve cases that have already undergone the rigors of trial. In the instant case, the prosecution has yet to present evidence proving the alleged conspiracy between the two accused.

On the ground that the information does not contain averments which, if true, would constitute a legal excuse or justification, the prosecution contends that, assuming for the

sake of argument that his act of signing the subject Disbursement Voucher caused damage or prejudice to the government, or that the same was done without proper authorization due to minor technicalities, it cannot be denied that he acted in his official capacity as city mayor and pursuant to Ordinance No. 2827, series of 2019, as emphasized in the Information itself, which alleges that the accused committed the offense charged "while in the performance of their official functions."

Relatedly, in Lacson vs. The Executive Secretary, *et al.* (G.R. No. 128096, January 20, 1999), the allegation "while in the performance of their official functions" is jurisdictional in the sense that the offense charged falls under the exclusive original jurisdiction of the Sandiganbayan having been committed by public officials in relation to their office. At best, this is a matter of defense which must be proved during the trial on the merits of this case.

On the issue that the Information was filed without the approval the Ombudsman, the prosecution stresses that apart from Section 4 (g) of Administrative Order No. 07, s. 1990, the assailed Information fully complied with the mandate of Rule 112, Section 4, paragraph 3 of the Revised Rules on Criminal Procedure which states that - - *no complaint or information may be filed or dismissed by the investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy.*

Contrary to contention of accused-movant Bautista, the approval of the Ombudsman is contained in the Information itself as shown by his signature below the typewritten word "APPROVED" on the bottom portion of the second page thereof.

Finally, in response to the position of accused-movant Bautista that the preliminary investigation was attended by vexatious, capricious, and oppressive delays, the prosecution, citing Revuelta vs. People *(G. R. No. 237039, June 10, 2019)*, denies the same and stresses that a mere mathematical reckoning of the time involved is not sufficient.

The prosecution adds, still citing the Revuelta case, that a balancing test must be used to determine whether a defendant has been denied his right to a speedy disposition

of a case, in which the conduct of both the prosecution and the defendant are weighed, and such factors as length of delay, reason for the delay, the defendant's assertion or non-assertion of his right, and prejudice to the defendant resulting from the delay, are considered.

After outlining the timeline involved, guided by the records of this case, and applying the balancing test, the prosecution submits that the preliminary investigation was not attended by vexatious, capricious, and oppressive delays.

The prosecution further argues that accused-movant Bautista failed to invoke his right to speedy disposition of his case during the preliminary investigation. As enunciated in Magante vs. Sandiganbayan (G.R. No. 230950-51, July 23, 2018), it was his duty to bring to the attention of the investigating officer the perceived inordinate delay, otherwise his failure to do so amounts to a waiver of his right to speedy disposition of the case. It may likewise be presumed that he allowed the delay only to later claim it as a ruse for dismissal.

Our ruling

The assailed Information charges accused-movant Herbert Constantine M. Bautista and accused Aldrin C. Cuña for violation of Section 3 (e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended, the accusatory portion of the Information against them reads, as follows - -

> That on June 27, 2019, or sometime prior or subsequent to this date, in Quezon City, and within the jurisdiction of this Honorable Court, accused **HERBERT CONSTANTINE MACLANG BAUTISTA**, City Mayor, and **ALDRIN CHIN CUÑA**, City Administrator, both of Quezon City, while in the performance of their official functions, acting with evident bad faith, manifest partiality or gross inexcusable negligence and in conspiracy with one another, did then and there willfully, unlawfully and criminally cause undue injury to the government in the amount of P25,342,359.25, more or less, and confer unwarranted benefits and advantage on Cygnet Energy and Power Asia, Inc. (Cygnet) by facilitating and approving the release of public funds in the amount of P25,342,359.25 to Cygnet, as full payment for the implementation of Project No. 1905-55463 (Supply and Installation of Solar Power System and Waterproofing Works for Civic Center Building F), specifically 1) accused Cuña issued an undated Certificate of Acceptance; and 2) accused Bautista signed Box C of

> Disbursement Voucher dated June 27, 2019, approving the payment of P25,342,359.25 to Cygnet, notwithstanding the fact that Cygnet was not entitled to said amount because it failed to apply for and secure a Net Metering System from Meralco, as required under the Terms of Reference and the Supply and Delivery Agreement for Project No. 1905-55463, thereby causing damage and prejudice to the government in the said amount of P25,342,359.25, more or less.
>
> CONTRARY TO LAW.

An information only needs to state the ultimate facts constituting the offense, not the finer details of why and how the illegal acts alleged amounted to undue injury or damage - matters that are appropriate for trial (People vs. Solar y Dumbrique, G.R. No. 225595, August 6, 2019).

The test is whether the crime is sufficiently described in intelligible terms with such particularity as to apprise the accused, with reasonable certainty, of the offense charged. The *raison d'etre* of the rule is to enable the accused to suitably prepare his defense (People vs. Solar, *ibid.*).

On a motion to quash, the case of People vs. Sandiganbayan (G.R. No. 160619, September 9, 2015), comes to mind - -

> A motion to quash an Information on the ground that the facts charged do not constitute an offense should be resolved on the basis of the allegations in the Information whose truth and veracity are hypothetically admitted. The question that must be answered is whether such allegations are sufficient to establish the elements of the crime charged without considering matters *aliunde*. In proceeding to resolve this issue, courts must look into three matters: (1) what must be alleged in a valid Information; (2) what the elements of the crime charged are; and (3) whether these elements are sufficiently stated in the Information.

Additionally, the relevant provisions in resolving this motion are Sections 6 and 9 of Rule 110 of the Rules of Court, which provides - -

> Sec. 6. Sufficiency of complaint or information. — A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

> When an offense is committed by more than one person, all of them shall be included in the complaint or information.
>
> x x x
>
> Sec. 9. Cause of the accusation. — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

On the crime charged, the essential elements of a violation of Section 3 (e) of R. A. No. 3019, as amended, laid down in Tio vs. People (G.R. No. 230132, January 19, 2021), are -- (1) that the accused is a public officer discharging administrative, judicial, or official functions, or a private individual acting in conspiracy with such public officer; (2) that he acted with (a) manifest partiality, (b) evident bad faith, or (c) gross inexcusable negligence; and, (3) that his action caused (a) any undue injury to any party, including the government, or (b) gave any private party unwarranted benefits, advantage, or preference in the discharge of his functions.

Here, We find that the subject Information to be sufficient.

As correctly enumerated by the prosecution in its Opposition dated April 11, 2023, the allegations in the subject Information, if theoretically admitted, are adequate to establish a violation of Section 3 (e) of R. A. No. 3019, as amended.

Furthermore, the issues raised by accused-movant Bautista cannot be considered in weighing the sufficiency of the subject Information as these mostly refer to matters extrinsic or evidence *aliunde*. These focused on factual allegations that would require the presentation of evidence best fitted for a full-blown trial.

Likewise, his invocation of the applicability of the justifying circumstance of fulfillment of a duty as a public officer is also a matter of defense which will require either the

presentation of documentary or testimonial evidence also in a trial on the merits.

With respect to the argument of accused-movant Bautista that the subject Information was filed and signed by Assistant Special Prosecutor III Lyn G. Dimayuga without the necessary written authority of or approval from the Ombudsman, as required under Section 4 (g) of Administrative Order No. 07, s. 1990, We note that the approval of Ombudsman Samuel Martires is contained in the subject Information itself, as shown by his signature below the typewritten word "APPROVED" on the bottom portion of the second page thereof with stamp mark dated February 3, 2023. This alone sufficiently complies with this requirement.

Anent the position of accused-movant Bautista that his right to a speedy disposition of cases was violated, We find that a period of three (3) years was a reasonable time to afford the investigating prosecutor the opportunity to carefully evaluate the complaint and its supporting documents. This could be seen from the records of this case as correctly outlined by the prosecution in its Opposition dated April 11, 2023. Moreso, accused-movant Bautista failed to adequately demonstrate how the purported delay caused him prejudice as he solely focused on the length of time taken by the preliminary investigation.

We remember the case of Reyes vs. Director or Whoever is In-Charge of Camp Bagong Diwa, Taguig, Metro Manila (G. R. No. 254838, January 17, 2023) citing Hong vs. Aragon (G. R. No. 209797, September 08, 2020), where the Supreme Court discussed and applied the Barker Balancing Test in evaluating whether there is a violation of the right to speedy disposition of cases, in this wise - -

> In determining whether a person is denied of his [or her] right to speedy trial or right to speedy disposition of a case, the Barker Balancing Test and the judicial pronouncements in *Cagang* find application.
>
> Under the Barker Balancing Test, the following factors must be considered in determining the existence of inordinate delay: (1) the 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.

In *Cagang*, the Court warned that the determination of inordinate delay is not by mathematical computation, as several factors contribute in resolving a case, to wit - -

> What may constitute a reasonable time to resolve a proceeding is not determined by "mere mathematical reckoning." It requires consideration of a number of factors, including the time required to investigate the complaint, to file the information, to conduct an arraignment, the application for bail, pre-trial, trial proper, and the submission of the case for decision. Unforeseen circumstances, such as unavoidable postponements or *force majeure*, must also be taken into account.
>
> The complexity of the issues presented in a case must also be considered in determining whether the period necessary for its resolution is reasonable. In Mendoza-Ong vs. Sandiganbayan, this Court found that "the long delay in resolving the preliminary investigation could not be justified on the basis of the records." Further, in Binay vs. Sandiganbayan, this Court considered "the complexity of the cases (not run-of-the-mill variety) and the conduct of the parties' lawyers' to determine whether the delay is justifiable. When the case is simple and the evidence is straightforward, it is possible that delay may occur even within the given periods. Defense, however, still has the burden to prove that the case could have been resolved even before the lapse of the period before the delay could be considered inordinate."

Notably, these factors would find significance if the fact of delay was already established. This may be proved by reference to laws which provide for the time periods in the disposition of cases. Only when delay is ascertained would the prosecution be charged with the burden of proving that there was no violation of the right to speedy trial or the right to speedy disposition of cases. Otherwise, the burden of proof lies with the defense.

Significantly, in assessing whether there is a violation of the right to speedy trial, the guidelines laid down in Cagang vs. Sandiganbayan (G. R. No. 206438 and 206458, July 31, 2018) are instructive - -

> *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 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 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.

The reliance of accused-movant Bautista in the cases of Coscolluela vs. Sandiganbayan (G. R. No. 191411, July 15, 2013), and Inocentes vs. People (G. R. No. 205963-64, July 7, 2016), is misplaced.

In the Coscolluela (*supra.*) case, it was held that petitioners cannot be faulted for their alleged failure to assert their right to speedy disposition of cases. They could not have urged the speedy resolution of their case because they were unaware that the investigation against them was still on-going. They were only informed of the result of the preliminary investigation and the Information against them only after the lapse of six (6) long years, or when they received a copy of the latter after its filing with the Sandiganbayan on June 19, 2009. In this regard, they could have reasonably assumed that the proceedings against them have already been terminated. This serves as a plausible reason as to why petitioners never followed-up on the case altogether.

On the other hand, in the case of Inocentes (*supra.*), the complaint was filed sometime in 2004. After the preliminary investigation or on September 15, 2005, the Office of the Ombudsman issued a resolution finding probable cause to charge Inocentes. Following the denial of his motion for reconsideration on November 14, 2005, the prosecution filed the Informations before the Regional Trial Court (RTC) of Tarlac City. However, on March 14, 2006, the Office of the Ombudsman ordered the withdrawal of the Informations filed before the RTC. From this point, it took almost six (6) years (or only on May 2, 2012) before the Informations were filed before the Sandiganbayan. The court finds that the period of six (6) years is too long solely for the transfer of records from the RTC in Tarlac City to the Sandiganbayan. This is already an inordinate delay in resolving a criminal complaint that the constitutionally guaranteed right of the accused to due process and to the speedy disposition of cases.

Herein, the circumstances do not evince vexatious, capricious and oppressive delay in the conduct of preliminary investigation. Accordingly, We find no compelling reason to accord the same relief of dismissal granted by the Supreme Court in those cases cited by accused-movant Bautista.

This Court also recognized the Covid-19 pandemic that gripped the world and made a significant impact on the timeline of the events in this case, particularly when several quarantines and lockdowns were imposed on March 12, 2020 upon an executive declaration of a public health emergency. Judicial notice can likewise be given to this event of global proportions. Despite these challenges, however, the Office of the Ombudsman was able to resolve the case within a reasonable time.

It should be remembered that judicial notice is the cognizance of certain facts that judges may properly take and act on without proof because these facts are already known to them; it is the duty of the court to assume something as matters of fact without need of further evidentiary support (Almonte vs. People, G. R. No. 252117, July 28, 2020).

Given the foregoing, and consistent with the guidelines detailed in the case of Cagang vs. Sandiganbayan (supra.), this Court finds that there was no inordinate delay in the conduct of preliminary investigation against accused-movant Bautista. Consequently, the case against him should not be dismissed upon a finding that there was no violation of his right to speedy disposition of cases.

WHEREFORE, in view of the foregoing, the Urgent Omnibus Motion [To: (A) Quash the Information; and (C) [sic] Dismiss the Case with Prejudice] dated March 17, 2023 of accused-movant Herbert Constantine Maclang Bautista is hereby **DENIED** for lack of merit.

SO ORDERED.

BERNELITO R. FERNANDEZ
Associate Justice

We concur:

AMPARO M. CABOTAJE-TANG
Presiding Justice/Chairperson

RONALD B. MORENO
Associate Justice