



REPUBLIC OF THE PHILIPPINES

**Sandiganbayan**

Quezon City

**Fifth Division**

PEOPLE OF THE PHILIPPINES,  
*Plaintiff,*

*-versus-*

**CRIM. CASE No. SB-24-  
CRM-0007 and 0008**

*For: Violation of Sec. 3(e) of R.A. No.  
3019 (as amended)*

**TEDDY CANLAS TUMANG,  
MARLON L. MANIACUP,  
LUCILA M. AGENTO, JESUS S.  
PUNZALAN, LUZ C. BONDOC,  
ROMEO M. RAZON, WILLIAM B.  
COLIS,**

**Present:**

**Lagos, J., Chairperson,  
Mendoza-Arcega, J.,  
and  
Corpus-Mañalac, J.**

*Accused.*

X ----- X

*Promulgated:*

April 29, 2024  
*[Signature]*

X ----- X

**RESOLUTION**

**MENDOZA-ARCEGA, J.:**

This resolves the following:

- (1) *Motion for Reconsideration*<sup>1</sup> dated 21 March 2024 filed by accused-movants **Teddy C. Tumang, Marlon L. Maniacup,**

<sup>1</sup> Records, pp. 473-480.

*[Handwritten initials]*

**Romeo M. Razon, Lucila M. Agento, Jesus S. Punzalan, Luz C. Bondoc, and William B. Colis, through counsel; and**

(2) *Comment/Opposition to the Motion for Reconsideration*<sup>2</sup> dated 03 April 2024 filed by the Prosecution.

On March 20, 2024, this Court resolved to deny the accused-movant's Motion to Quash and/or Dismiss the Cases.<sup>3</sup> With their present Motion, accused prays that the Court's Resolution dated 20 March 2024 be set aside, and that their Motion to Quash and/or Dismiss the Cases dated 16 February 2024 supplemented with the present Motion for Reconsideration, be granted additionally on the ground of lack of probable cause and violation of the right to speedy disposition of cases.

At the outset, we deem it necessary to point out that the absence of probable cause is not a ground of a motion to quash Information, but it is a ground for the dismissal of the case.<sup>4</sup> Rule 112 of the Rules of Court provides for the prosecution of offenses. A criminal action is instituted upon the filing of a complaint with the prosecutor's office for the purpose of conducting a preliminary investigation, as may be required. Upon the filing of the Information before the trial court, the judge is required to personally evaluate the resolution of the prosecutor and its supporting evidence for purposes of issuance of a warrant of arrest. At that stage, the judge may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. However, the judge cannot reverse the findings of the prosecutor during preliminary investigation and *motu proprio* quash the Information for lack of probable cause. In case of doubt on the existence of probable cause, the judge may simply order the prosecutor to present additional evidence.<sup>5</sup>

Based on the records, this Court found that sufficient grounds exist for the finding of probable cause to issue a Warrant of Arrest against herein accused.<sup>6</sup> Probable cause is defined as the presence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted. Probable cause indicates probability of guilt and

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<sup>2</sup> Records, pp. 411-416.

<sup>3</sup> Records, pp. 461-470.

<sup>4</sup> *People v. Sandiganbayan*, G.R. No. 144159, 29 September 2004.

<sup>5</sup> *Wu v. People*, G.R. Nos. 207220-21, 16 March 2022.

<sup>6</sup> Minutes dated 05 February 2024, Records, p. 259.

requires more than bare suspicion, but less than evidence which would justify a conviction.<sup>7</sup> In the present case, we see no reason to reverse our finding on the existence of probable cause, given that reasonable grounds exist to justify the issuance of a Warrant of Arrest against the accused.

The other grounds contained in paragraphs 5 to 13 of the accused's Motion for Reconsideration<sup>8</sup> are evidentiary in nature and may only be proved in a full-blown trial, hence, they will not be considered in this Resolution.

Moving on, herein accused urges the Court to take a second look and assess whether their right to a speedy disposition of cases was indeed violated or not. After careful review of the records, and due consideration of the circumstances surrounding these cases, the Court deems it necessary to grant the accused-movant's Motion for Reconsideration and order the dismissal of these cases on the ground of inordinate delay and violation of the accused's right to speedy disposition of cases. Accordingly, we set aside our Resolution dated March 20, 2024.

As a general rule, an order denying a motion to quash is not appealable as it is merely interlocutory. Likewise, it cannot be the subject of a petition for certiorari. The denial of the motion to quash can still be raised in the appeal of a judgment of conviction. The adequate, plain, and speedy remedy is to proceed to trial and to determine the guilt or innocence of the accused.<sup>9</sup> Nonetheless, Sandiganbayan Resolutions denying a motion to dismiss, being indisputably in the form of interlocutory orders, settle only some incidental, subsidiary, or collateral matter arising in an action and there is something else that still needs to be done by the concerned tribunal in the primary case - the rendition of the final judgment, as opposed to a final judgment, one that finally disposes of a case, leaving nothing more to be done by the Court in respect thereto.<sup>10</sup> Consequently, these interlocutory orders may be subject to modification before final judgment in the main cases. In other words, an interlocutory order is always under the control of the Court and may be modified or rescinded upon sufficient grounds shown at any time before final judgment.<sup>11</sup>

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<sup>7</sup> *Salendab v. Paglas*, G.R. No. 232971 (Notice), 13 December 13, 2023.

<sup>8</sup> *Records*, pp. 474-476.

<sup>9</sup> *Cagang v. Sandiganbayan, Fifth Division*, G.R. Nos. 206438, 206458 & 210141-42, 31 July 2018.

<sup>10</sup> *Cojuangco, Jr. vs. Sandiganbayan and The Presidential Commission on Good Government (PCGG)*, G.R. No. 247982, 28 April 2021.

<sup>11</sup> *Id.*

Herein accused, in their Motion for Reconsideration, once again argues that the interval from the time of the supposed commission of the crime to the time of the filing of Informations before this Court is fourteen (14) years—ten (10) years to build and file the case with the Office of the Ombudsman, and another six (6) years to file the Informations with the Sandiganbayan.<sup>12</sup>

We revisit the guidelines in determining whether the right to speedy trial and/or right to speedy disposition of cases is violated, as laid down in the case of *Cagang v. Sandiganbayan*, to wit:<sup>13</sup>

*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.

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<sup>12</sup> Records, pp. 476-477.

<sup>13</sup> *Cagang v. Sandiganbayan*, Fifth Division, G.R. Nos. 206438, 206458 & 210141-42, 31 July 2018.

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 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. (*Emphasis supplied.*)

As contained in our Resolution dated March 20, 2024, the records show that on February 25, 2013, the Commission on Audit (COA) found irregularities in the purchases and transactions involving the Municipality of Mexico and Buyu Trading. After conducting its investigation, the Field Investigation Office (FIO) of the Ombudsman filed the complaint against respondents Tumang, Maniacup, Agento, Punzalan, Bondoc, Razon, and Colis for violation of Section 3 (e) of R.A. No. 3019 on January 16, 2018. The Resolution of the Ombudsman finding probable cause against the accused was issued on October 20, 2023, and the Informations were filed on January 24, 2024. In other words, the records show that it took the Office of the Ombudsman more than five (5) years and nine (9) months to issue the



Resolution dated 20 October 2023 finding probable cause against the accused.

As held in *Cagang*, a case is deemed initiated upon the filing of a formal complaint prior to the conduct of preliminary investigation. The court re-examined whether the Office of the Ombudsman followed the specified time periods for the conduct of the preliminary investigation, and determined that the Ombudsman failed to do so.

Following the guidelines under *Cagang*, if the delay is beyond the time periods provided in the rules to decide the case, the burden of proof shifts to the State. In the case of *Javier v. Sandiganbayan*,<sup>14</sup> it was held that [t]he Rules of Procedure of the Ombudsman, did not provide for specific time periods to conclude preliminary investigations. Thus, as the Rules of Court finds supplementary application to proceedings in the Ombudsman, the Supreme Court, at the time, ruled that the time periods provided under the Rules of Court would be deemed applicable. Accordingly, Section 3, Rule 112 of the Revised Rules of Criminal Procedure provides that the investigating prosecutor has 10 days “after the investigation x x x [to] determine whether or not there is sufficient ground to hold the respondent for trial.”

It is in the same case where the Supreme Court highlighted the Judiciary’s duty to balance the right of the State to prosecute violations of its laws *vis-à-vis* the rights of citizens to speedy disposition of cases, and thus, citizens ought not to be prejudiced by the Ombudsman’s failure to provide for particular time periods in its own Rules of Procedure.<sup>15</sup>

In the recent case of *Mamba, Jr. v. Sandiganbayan*, the Supreme Court reiterated that the Ombudsman now has clearly specified time periods for conducting not only preliminary investigations, but also fact-finding investigations and administrative adjudications under Administrative Order No. (AO) 1, Series of 2020.<sup>16</sup> For preliminary investigations, AO 1 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)

<sup>14</sup> *Javier v. Sandiganbayan*, G.R. No. 237997, 10 June 2020.

<sup>15</sup> *Id.*

<sup>16</sup> *Mamba, Jr. v. Sandiganbayan*, G.R. Nos. 249343 & 249382 (Notice), 06 July 2022.

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

Applying either the short 10-day period in *Javier*, or the more generous 12 to 24-month periods under AO 1, it is readily apparent that the Ombudsman exceeded the specified time period for preliminary investigations.

As culled from the records of this case, We reproduce the following relevant dates and incidents contained in the Resolution dated March 20, 2024:

DATE	INCIDENT
December 2008	Commission of acts which constitute the violation of Section 3(e) of R.A. No. 3019, as amended, as alleged in the <b>Informations</b>
January 16, 2018	Filing of Complaint
March 14, 2018	Filing of Respondents' Counter-Affidavit
October 20, 2023	Ombudsman's Resolution finding probable cause against the accused
November 28, 2023	Filing of Respondents' Motion for Reconsideration
January 17, 2024	Ombudsman's Order denying the Respondents' Motion for Reconsideration

January 24, 2024	Filing of the <b>Informations</b> before the Sandiganbayan
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The present case, similar to the antecedents in *Mamba, Jr.*, shows that it took the Ombudsman more than **five (5) years and nine (9) months** to issue the Resolution finding probable cause against the accused. Thus, following *Cagang*, the burden of proof actually shifted to the prosecution, who must establish that the delay was reasonable and justified under the circumstances. Once the burden of proof shifts, the prosecution must prove the following: *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.<sup>17</sup>

In these cases, the prosecution failed to establish in their Comment/Oppositions dated 03 April 2024, and 01 March 2024 that they followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case. The records show that the prosecution merely shifted blame to the accused for never having invoked their right to speedy trial while the case was pending resolution of the preliminary investigation.<sup>18</sup> The prosecution relied on bare assertions and failed to provide clear proof of the circumstances causing the delay in the issuance of the Resolution finding probable cause against the accused. From the time that accused had filed their counter-affidavit, there was no longer any participation from them that could have caused the five-year delay in deciding the case before the Ombudsman.

Secondly, the complexity of the cases before this Court was not even discussed by the prosecution.

Thirdly, because of this inordinate delay, the Court agrees with the accused that their possible and relevant defenses are naturally adversely affected. Given that the Informations were filed with the Sandiganbayan more than fifteen (15) years after the occurrence of the subject transactions, it is undeniable that the lapse of time caused prejudice to the causes and defenses of the accused.

The Supreme Court has already discussed the issue of prejudice on the part of the accused caused by inordinate and unexplained delay

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<sup>17</sup> *Id.*

<sup>18</sup> *Records*, p. 423.



in a number of cases. In *Martinez III v. People*, the Supreme Court said:

"The consequences of delay, however, do not only affect the accused. The prosecution of the case will also be made difficult the longer the period of time passes. In *Corpuz v. Sandiganbayan*:

Delay is a two-edge sword. It is the government that bears the burden of proving its case beyond reasonable doubt. The passage of time may make it difficult or impossible for the government to carry its burden. The Constitution and the Rules do not require impossibilities or extraordinary efforts, diligence or exertion from courts or the prosecutor, nor contemplate that such right shall deprive the State of a reasonable opportunity of fairly prosecuting criminals. As held in *Williams v. United States*, for the government to sustain its right to try the accused despite a delay, it must show two things: (a) that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay; and (b) that there was no more delay than is reasonably attributable to the ordinary processes of justice."<sup>19</sup>

*Camsol v. Sandiganbayan*, citing *Martinez*, instructs that to overlook the unusually long delay in the proceedings before the Office of the Ombudsman is akin to the impairment of the accused's right to be given the reasonable opportunity to counteract or refute the additional accusation against them, to wit:

"To just close our eyes to the unusually long delay incurred in this uncomplicated case that the Office of the Ombudsman has not even satisfactorily justified is to sanction the impairment of their valuable right to be given the reasonable opportunity to counteract or to refute the additional accusation against them. All the dire consequences befalling them now constitute the actual prejudice that the mandate for speedy disposition under the Constitution has sought to prevent."<sup>20</sup>

We also revisit our appreciation of the facts of the present cases vis-à-vis the requisite timely assertion of the right as provided in the *Cagang* case. The prosecution argued that the accused failed to timely assert their right and has therefore waived the same because they never inquired or moved for the speedy disposition of their case knowing that their case was pending before the Ombudsman from such time they received the Order to file their counter-affidavits. On the

<sup>19</sup> *Martinez III v. People*, G.R. No. 232574, 1 October 2019.

<sup>20</sup> *Camsol v. Seventh Division of the Sandiganbayan*, G.R. No. 242892, 6 July 2022, citing *Martinez III v. People*, G.R. No. 232574, 1 October 2019.

other hand, records would show that the accused indeed timely filed their pleadings and documents before the Ombudsman and before this Court, and has thus, timely asserted their right to speedy disposition of cases.

To borrow the words of Supreme Court Justice Caguioa in *Javier v. Sandiganbayan*, the accused's inaction "did not amount to acquiescence." While it is true that the records do not reveal that the accused "followed-up" on the resolution of their case before the Ombudsman, the same could not be construed to mean that they acquiesced to the delay of five years.<sup>21</sup>

On this matter, the case of *Coscolluela v. Sandiganbayan* is instructive, to wit:

"Being the respondents in the preliminary investigation proceedings, it was not the petitioners' duty to follow up on the prosecution of their case. Conversely, it was the Office of the Ombudsman's responsibility to expedite the same within the bounds of reasonable timeliness in view of its mandate to promptly act on all complaints lodged before it."<sup>22</sup>

As held in *Javier*, the Ombudsman's own Rules of Procedure provides that motions to dismiss, except on the ground of lack of jurisdiction, are prohibited.<sup>23</sup> Thus, herein accused-movants, like the respondents in *Javier* and *Mamba*, have no legitimate avenues to assert their fundamental right to speedy disposition of cases at the preliminary investigation level. It would be unreasonable to hold against them — and treat it as acquiescence — the fact that they never followed-up or asserted their right in a motion duly filed.

Thus, the Court sees it fit to correct its previous ruling, and hold that the accused-movants indeed timely asserted their rights because they filed their Motion to Quash at the earliest opportunity, i.e., prior to the accused's arraignment. Verily, this shows that accused did not sleep on their rights, and were ready to assert the same under the circumstances. Thus, their actions could not be construed as acquiescence to the delay.<sup>24</sup>

Considering the failure of the prosecution to sufficiently explain the delay of approximately six (6) years in this case, counted from the

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<sup>21</sup> *Javier v. Sandiganbayan*, G.R. No. 237997, 10 June 2020.

<sup>22</sup> *Coscolluela v. Sandiganbayan*, G.R. Nos. 191411 & 191871, 15 July 2013, 714 PHIL 55-69.

<sup>23</sup> *Javier v. Sandiganbayan*, G.R. No. 237997, 10 June 2020.

<sup>24</sup> *Id.*

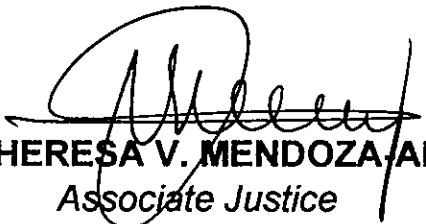
time of the filing of complaint with the Office of the Ombudsman to the filing of the subject *Informations* before the Sandiganbayan, we uphold the right of herein accused to speedy disposition of cases. As such, the criminal cases against them should be dismissed.

**WHEREFORE**, premises considered, this Court resolves to:

- (a) **GRANT** the Motion for Reconsideration filed by accused on March 21, 2024;
- (b) **SET ASIDE** our March 20, 2024 Resolution;
- (c) **DISMISS** Criminal Case Nos. SB-24-CRM-0007 to -0008 as regards accused-movants **TEDDY CANLAS TUMANG, MARLON DE LEON MANIACUP, LUCILA MARIANO AGENTO, JESUS SANCHEZ PUNZALAN, LUZ CANDA BONDOC, ROMEO MANALILI RAZON** and **WILLIAM B. COLIS** for violation of accused's constitutional right to speedy disposition of cases.

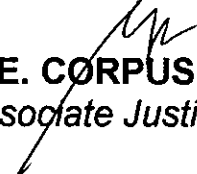
The hold departure orders issued by the Court against the abovenamed accused by reason of these cases are hereby **LIFTED** and **SET ASIDE**, and the bonds they posted are ordered **RELEASED**, subject to the usual accounting and auditing procedures.

**SO ORDERED.**

  
**MARIA THERESA V. MENDOZA-ARCEGA**  
*Associate Justice*

**WE CONCUR:**

  
**RAFAEL R. LAGOS**  
*Chairperson*  
*Associate Justice*

  
**MARYANN E. CORPUS-MAÑALAC**  
*Associate Justice*