



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PETE GERALD L. JAVIER and
DANILO B. TUMAMAO,
Petitioners,

G.R. No. 237997

Present:

- versus -

PERALTA, C.J., Chairperson,
CAGUIOA,
J. REYES, JR.,
LAZARO-JAVIER, and
LOPEZ, JJ.

SANDIGANBAYAN and
PEOPLE OF THE
PHILIPPINES,
Respondents.

Promulgated:

JUN 10 2020 *mtw*

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DECISION

CAGUIOA, J.:

Before the Court is a Petition for *Certiorari*¹ (Petition) filed by petitioners Pete Gerald L. Javier (Javier) and Danilo B. Tumamao (Tumamao) assailing the Resolution² dated January 25, 2018 and Resolution³ dated March 1, 2018 of the Sandiganbayan Sixth Division in Crim. Case No. SB-17-CRM-1781, both of which denied their Motion to Quash on Grounds of Inordinate Delay (Motion to Quash) for lack of merit.

The Facts

In 2004, the Province of Isabela procured, by direct contracting, 15,333 bottles of liquid organic fertilizer.⁴ The Commission on Audit (COA), in its Audit Observation Memorandum No. 2004-14 dated October 12, 2004, found

¹ *Rollo*, pp. 3-16.

² *Id.* at 20-27. Penned by Sandiganbayan Associate Justice Sarah Jane T. Fernandez, with Associate Justices Kari B. Miranda and Bernelito R. Fernandez concurring.

³ *Id.* at 28-32.

⁴ *Id.* at 20.

that the procurement was done without open competitive bidding, and that the procured items were overpriced.⁵

On July 4, 2011, the Task Force Abono of the Office of the Ombudsman (Ombudsman) filed a complaint against the public officers involved in the subject transaction,⁶ including Javier and Tumamao, who were the Provincial Accountant and Provincial Agriculturist of Isabela, respectively.

On August 5, 2011, the Ombudsman directed the public officers to file their respective counter affidavits. Javier filed his counter affidavit on November 14, 2011, while Tumamao filed his on November 23, 2011.⁷

After almost five years, or on September 19, 2016, the Special Panel on Fertilizer Fund Scam of the Ombudsman issued its Resolution finding probable cause to indict Javier and Tumamao, along with Provincial Vice-Governor Santiago P. Respicio (Respicio), for violation of Section 3(e), of Republic Act No. 3019 (R.A. No. 3019).⁸ The Ombudsman approved the Resolution on November 22, 2016.⁹

Thereafter, on October 3, 2017, an Information dated June 14, 2017 was filed against Javier and Tumamao for violation of Section 3(e) of R.A. No. 3019, the accusatory portion of which reads:

That on 26 March 2004, or sometime prior or subsequent thereto, in the Province of Isabela, Philippines and within the jurisdiction of this Honorable Court, accused Provincial Accountant **PETE GERALD L. JAVIER** a high-ranking public officer being then a provincial department head, and Provincial Agriculturist **DANILO B. TUMAMAQ**, together with the late Provincial Vice-Governor Santiago P. Respicio, while in the performance of their administrative and/or official functions and committing the crime in relation to office, taking advantage of their official position, acting with evident bad faith, manifest partiality and/or gross inexcusable negligence, conspiring and confederating with one another, did then and there willfully, unlawfully, and/or criminally cause undue injury to the government for in the amount of as (*sic*) Nine Million Four Hundred Seventy Five Thousand Seven Hundred Ninety Four Pesos (₱9,475,794.00), more or less, representing the overpriced amount in the purchase of 15,333 bottles of Bio Nature Liquid Fertilizer at ₱750.00 per bottle or a total payment of Eleven million four hundred ninety-nine thousand and seven hundred fifty pesos (₱11,499,750.00), despite the absence of a public bidding in the procurement process and failure of the supplier, Feshan Philippines (Feshan), to meet the mandated requirements specified in Section 8(a) of Presidential Decree No. 1144 which prohibits the sale and distribution of fertilizers and pesticide without securing from the Fertilizer and Pesticide Authority the necessary license, which defects accused knew fully well, were in violation of Republic Act No. 9184 (The Government Procurement Reform Act) and other pertinent existing rules and regulations,

⁵ Id. at 20-21.

⁶ Id. at 21.

⁷ Id.

⁸ Id.

⁹ Id.

thereby giving unwarranted benefits, advantage or preference to Feshan, to the damage and prejudice of the government.

CONTRARY TO LAW.¹⁰

The Sandiganbayan set the date of the supposed arraignment. Javier and Tumamao, however, manifested that they were not ready for arraignment as they intended to file a motion to quash on the ground of inordinate delay.¹¹ They then filed the Motion to Quash¹² on November 24, 2017, arguing that the period constituting five years and four months from the filing of the complaint to the approval of the resolution finding probable cause constituted delay which violated their right to speedy disposition of cases. Javier and Tumamao cited the following jurisprudence wherein the cases were dismissed on the ground of inordinate delay: (a) *Tatad v. Sandiganbayan*,¹³ where the delay was close to three years; (b) *Duterte v. Sandiganbayan*,¹⁴ where the delay was more than four years; and (c) *People v. Sandiganbayan, First Division, et al.* and *People v. Sandiganbayan, Second Division, et al.*¹⁵ (*People v. Sandiganbayan*), where the delay was around five years and five months.

The Sandiganbayan ordered the Ombudsman to file a Comment on the Motion to Quash. The Ombudsman filed its Comment¹⁶ on November 29, 2017, wherein it prayed for the dismissal of the motion, arguing that the case had voluminous records, and that there were an endless number of cases being filed in their office.

RULING OF THE SANDIGANBAYAN

In its Resolution¹⁷ dated January 25, 2018, the Sandiganbayan denied the Motion to Quash. While the Sandiganbayan conceded the amount of time which constituted the delay, it simply held that the Ombudsman had valid justifications for such delay. The Sandiganbayan adopted the Ombudsman's justifications, despite the latter's failure to substantiate its claims.

Javier and Tumamao sought reconsideration of the Sandiganbayan's Resolution. The Sandiganbayan, however, denied the motion for reconsideration in a Resolution¹⁸ dated March 1, 2018.

Hence, the instant Petition.

¹⁰ Id. at 40-41.

¹¹ Id. at 7.

¹² Id. at 42-48.

¹³ 242 Phil. 563 (1988).

¹⁴ 352 Phil. 557 (1998).

¹⁵ 723 Phil. 444 (2013).

¹⁶ *Rollo*, pp. 66-69.

¹⁷ *Supra* note 2.

¹⁸ *Supra* note 3.



Issue

For resolution of the Court is the issue of whether the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying the Motion to Quash filed by Javier and Tumamao.

The Court's Ruling

The petition is granted. The Court rules that the Sandiganbayan gravely abused its discretion in denying the Motion to Quash.

In resolving questions involving the right to speedy disposition of cases, the Court is guided by its ruling in *Cagang v. Sandiganbayan, Fifth Division*¹⁹ (*Cagang*), wherein the following guidelines were laid down:

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.

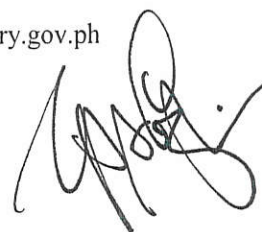
Second, a case is deemed initiated upon the filing of a formal complaint prior to a conduct of a preliminary investigation. This Court acknowledges, however, that the Ombudsman should set reasonable periods for preliminary investigation, with due regard to the complexities and nuances of each case. Delays 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

¹⁹ G.R. Nos. 206438, 206458 & 210141-42, July 31, 2018, accessed at < <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64581>>.



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.²⁰


From the foregoing guidelines, the Court concludes that, as will be explained below, the right to speedy disposition of cases of both Javier and Tumamao were violated by the Ombudsman's delay in concluding the preliminary investigation.

There was inordinate delay in the preliminary investigation

Despite the *ponente*'s reservations as regards the conclusion reached in *Cagang* "that for the purpose of determining whether inordinate delay exists, a case is deemed to have commenced from the filing of the formal complaint and the subsequent conduct of the preliminary investigation,"²¹ the *ponente* respects that *Cagang* is the standing doctrine. Thus, for purposes of computing the length of delay in the present case, the *Cagang* guidelines will be followed, and the case against Javier and Tumamao would be deemed initiated only upon the filing of the complaint, or on April 27, 2011. Javier and Tumamao were given the opportunity to be heard, and were therefore able to file their counter-affidavits on November 15, 2011 and November 22, 2011, respectively. After these dates, it appears from the record that the case had

²⁰ Id.

²¹ See Dissenting Opinion of Justice Caguioa in *Cagang v. Sandiganbayan, Fifth Division*, *supra* note 19.



become dormant until December 5, 2016 when the Ombudsman approved the resolution finding probable cause against Javier and Tumamao.²²

There is thus an unexplained delay of five years from the time the counter-affidavits were filed to the termination of the preliminary investigation through the approval of the Ombudsman's resolution finding probable cause.

The prosecution had the burden to explain the delay in the preliminary investigation

According to *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.²³ The Rules of Procedure of the Ombudsman,²⁴ however, do not provide for specific time periods to conclude preliminary investigations. Thus, as the Rules of Court finds suppletory application to proceedings in the Ombudsman,²⁵ the time periods provided therein 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."²⁶

This 10-day period may seem short or unreasonable from an administrative standpoint. However, given the Court'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, the Court rules that citizens ought not to be prejudiced by the Ombudsman's failure to provide for particular time periods in its own Rules of Procedure.

Thus, as the preliminary investigation was terminated beyond the 10-day period provided in the Revised Rules of Criminal Procedure, the burden of proof thus shifted towards the prosecution to prove that the delay was not unreasonable. In any event, the period of delay in this case — five years — was extraordinarily long that there could conceivably be no procedural rule that would justify said delay. Undoubtedly, therefore, the burden was on the prosecution to provide justifications for the delay.

The Sandiganbayan gravely abused its discretion in giving

²² *Rollo*, p. 24.

²³ "If it has been alleged that there was delay beyond the given time periods, the burden of proof *shifts*." (*Cagang v. Sandiganbayan, Fifth Division*, supra note 19)

²⁴ Ombudsman Administrative Order No. 07, April 10, 1990.

²⁵ RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN, Rule V, Sec. 3 provides:

Sec. 3. *Rules of Court, application.* — In all matters not provided in these rules, the Rules of Court shall apply in a suppletory character, or by analogy whenever practicable and convenient.

²⁶ REVISED RULES OF CRIMINAL PROCEDURE, Rule 112, Section 3(f).

credence to the prosecution's bare assertions

In *Cagang*, the Court held that in cases where the burden of proof has shifted to the prosecution, the prosecution must be able to 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.²⁷

In stark contrast, however, the prosecution, in its *Comment/Opposition*²⁸ to the Motion to Quash, justified the delay of five years by merely claiming that the case had voluminous records, without offering any proof as to the said assertion or at least specifying how voluminous such records were. The prosecution basically relied on such unsubstantiated claim, and rested on the Court's recognition in a previous case that there is a steady stream of cases that reaches their office. The Ombudsman simply argued:

x x x Accused-movants' assertion that the issues relating to the instant case are not complicated as would justify more than 5 years of preliminary investigation deserves scant consideration. It must be noted that the case at hand has voluminous records, thus each document demands careful scrutiny to ensure that justice is fairly served.

x x x Let it also be emphasized that the complaints lodged before the Office of the Ombudsman are endless. **Thus, the Supreme Court has already taken judicial notice of the steady stream of cases reaching the Office of the Ombudsman.** As held in *Dansal v. Judge Fernandez, Sr.*, the Supreme Court held that: "(j)udicial notice should be taken of the fact that the nature of the Office of the Ombudsman encourages individuals who clamor for efficient government service to freely lodge their Complaints against wrongdoings of government personnel, thus resulting in steady stream of cases reaching the Office of the Ombudsman."²⁹ (Emphasis in the original)

Despite the Ombudsman's bare assertions above, the Sandiganbayan still denied Javier and Tumamao's Motion to Quash, reasoning as follows:

According to the prosecution, it took a long time to terminate the preliminary investigation because the Office of the Ombudsman had to go through voluminous records in properly evaluating and resolving the Complaint filed before it. Aside from the present case, the Office of the Ombudsman also handled other cases. Inevitably, the termination of the preliminary investigation took some time.

²⁷ *Cagang v. Sandiganbayan, Fifth Division*, supra note 19.

²⁸ *Rollo*, pp. 66-70.

²⁹ *Id.* at 68-69.



The Court finds that the prosecution provided a valid justification for the delay.

The Court notes that the Information filed is only for violation of Sec. 3(e) of R.A. No. 3019. However, a reading of the Complaint filed by Task Force Abono would show that the same was for the following offenses:

1. Violation of Sec. 3(e) of R.A. No. 3019;
2. Violation of Sec. 3(g) of R.A. No. 3019;
3. Malversation through Falsification under Art. 217 in relation to Article 171 of the Revised Penal Code; and
4. Violation of Section 65.2(4) of the Implementing Rules and Regulations of R.A. No. 9184.

Furthermore, although only accused Javier and Tumamao ended up being charged in Court for violation of Sec. 3(e) of R.A. No. 3019, it must be noted that there were ten (10) respondents involved.

Because of the number of charges against the respondents, the Office of the Ombudsman had to evaluate more documents. Some documents relevant to one or some of the charges may not be relevant to the others. On the other hand, all ten (10) respondents had to be given an opportunity to explain their side, in view of their right to due process. This means that the Office of the Ombudsman had to evaluate their respective counter-affidavits, as well as their respective countervailing evidence.

The preliminary investigation in the present case necessarily took more time to conduct than in a simpler case involving fewer respondents and fewer charges. Be it noted that aside from the present case, the Office of the Ombudsman also handled other cases.³⁰

Notably, the Sandiganbayan provided its own justification for the delay, *i.e.*, the number of respondents and the number of charges against them, even if the Ombudsman itself did not claim that these factors caused the delay.

It bears reiterating that, following *Cagang*, the prosecution has the burden of proof in this case to prove that Javier and Tumamao's right to speedy disposition of cases was not violated. The duty was therefore on the prosecution, not the Sandiganbayan — whose mandate was to act as an impartial court — to offer the necessary proof and discharge the said burden. **To the mind of the Court, the Sandiganbayan committed grave abuse of discretion not only when it gave credence to the Ombudsman's unsubstantiated claims, but more so when it offered its own justifications for the delay.**

³⁰ Id. at 24-25.



At this juncture, it is well to point out that the Ombudsman cannot repeatedly hide behind the “steady stream of cases that reach their office” despite the Court’s recognition of such reality. The Court understands the reality of clogged dockets — from which it suffers as well — and recognizes the current inevitability of institutional delays. However, “steady stream of cases” and “clogged dockets” are not talismanic phrases that may be invoked at whim to magically justify each and every case of long delays in the disposition of cases. Like all other facts that courts take into consideration in each case, the “steady stream of cases” should still be subject to proof as to its effects on a particular case, bearing in mind the importance of the right to speedy disposition of cases as a fundamental right.

The petitioners timely asserted their right to speedy disposition of cases

Another requisite provided for in *Cagang* is the timely assertion of the right. Once again, despite the *ponente*’s reservation regarding the said requirement,³¹ the same would nevertheless be applied in this case.

The reason why the Court requires the accused to assert his right in a timely manner is to prevent construing the accused’s acts, or to be more apt, his inaction, as acquiescence to the delay. As the Court stated in *Cagang*:

The defense must also prove that it exerted meaningful efforts to protect accused’s constitutional rights. In *Alvizo v. Sandiganbayan*, the failure of the accused to timely invoke the right to speedy disposition of cases may work to his or her disadvantage, since this could indicate his or her acquiescence to the delay[.]

Here, the Court holds that Javier and Tumamao’s acts, or their inaction, did not amount to acquiescence. While it is true that the records are bereft of any indication that Javier and/or Tumamao “followed-up” on the resolution of their case, the same could not be construed to mean that they acquiesced to the delay of five years.

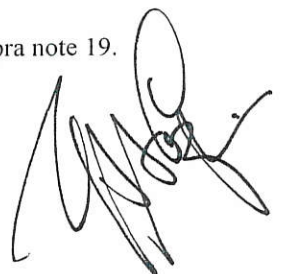
For one, the case of *Coscolluela v. Sandiganbayan*³² (*Coscolluela*) provides that respondents in preliminary investigation proceedings do not have any duty to follow up on the prosecution of their case. The Court categorically stated:

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.³³

³¹ See Dissenting Opinion of Justice Caguioa in *Cagang v. Sandiganbayan*, *Fifth Division*, supra note 19.

³² 714 Phil. 55 (2013).

³³ Id. at 64.



The Court in *Cagang* did not explicitly abandon *Coscolluela* — considering that it explicitly abandoned *People v. Sandiganbayan* in the said case — and even cited it in one of its discussions. Thus, the pronouncements in *Coscolluela* remain good law, and may still be considered in determining whether the right to speedy disposition of cases was properly invoked.


Moreover, the Court is not unreasonable in its requirements. The Ombudsman's own Rules of Procedure provides that motions to dismiss, except on the ground of lack of jurisdiction, are prohibited.³⁴ Thus, respondents like Javier and Tumamao 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.

Lastly, the Court holds that Javier and Tumamao timely asserted their rights because they filed the Motion to Quash at the earliest opportunity. Before they were even arraigned, they already sought permission from the Sandiganbayan to file the Motion to Quash to finally be able to assert their right to speedy disposition of cases.³⁵ To the mind of the Court, this shows that Javier and Tumamao did not sleep on their rights, and were ready to assert the same given the opportunity. Certainly, this could not be construed as acquiescence to the delay.

Considering the prosecution's failure to discharge its burden of proof, along with Javier and Tumamao's timely assertion of their rights, the Sandiganbayan thus committed grave abuse of discretion in denying the Motion to Quash.

WHEREFORE, the petition is hereby **GRANTED**. The assailed Resolutions dated January 25, 2018 and March 1, 2018 of Sandiganbayan Sixth Division are **ANNULLED** and **SET ASIDE**. The Sandiganbayan is likewise ordered to **DISMISS** Crim. Case No. SB-17-CRM-1781 for violation of the Constitutional right to speedy disposition of cases of petitioners Pete Gerald L. Javier and Danilo B. Tumamao.

SO ORDERED.


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

³⁴ RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN, Rule II, Sec. 4(d).

³⁵ *Rollo*, p. 7.

WE CONCUR:



DIOSDADO M. PERALTA
Chief Justice
Chairperson



JOSE C. REYES, JR.
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice



MARIO V. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Chief Justice

