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SUPREME COURT OF THE PHILIPPINES  
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Republic of the Philippines  
**Supreme Court**  
Manila

**FIRST DIVISION**

**CELESTINO A. MARTINEZ III,**  
**and RHETT E. MINGUEZ,**  
Petitioners,

**G.R. No. 232574**

Present:

BERSAMIN, *Chief Justice*,  
PERLAS-BERNABE,  
GISMUNDO,  
CARANDANG, and  
ZALAMEDA, *JJ.*

- versus -

**PEOPLE OF THE PHILIPPINES,**  
**and HON. SIXTH DIVISION OF**  
**THE SANDIGANBAYAN,**  
Respondents.

Promulgated:

**OCT 01 2019**

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**DECISION**

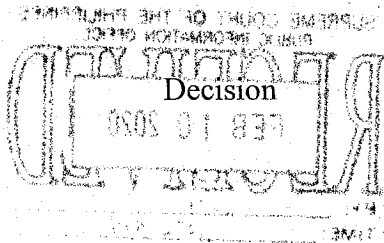
**BERSAMIN, C.J.:**

Although delay is not to be determined solely from the length of time taken for the conduct of the preliminary investigation, a long delay is inordinate unless the Office of the Ombudsman suitably justifies it.

**The Case**

The petitioners hereby assail on *certiorari* the resolution issued by the Sandiganbayan on March 1, 2017 denying their *Motion to Quash Information And/Or To Dismiss* alleging inordinate delay in the disposition of the case charging them with a violation of Section 3(e) of Republic Act No. 3019 (*Anti-Graft and Corrupt Practices Act*);<sup>1</sup> and the resolution issued on May 18, 2017 denying their motion for reconsideration,<sup>2</sup> on the ground that the Sandiganbayan thereby committed grave abuse of discretion amounting to lack or excess of jurisdiction.

<sup>1</sup> *Rollo*, pp. 27-34; penned by Associate Justice Oscar C. Herrera, Jr., and concurred in by Associate Justice Rodolfo A. Ponferrada and Associate Justice Karl B. Miranda.  
<sup>2</sup> *Id.* at 35-39.



### Antecedents

In 2004, petitioner Celestino A. Martinez III, then the Mayor of the Municipality of Bogo in the Province of Cebu, entered into a Memorandum of Agreement (MOA) with Sikap Yaman Foundation, Inc. (Sikap Yaman), a non-stock, non-profit non-governmental organization (NGO) created for the specific purpose of implementing the projects of the Department of Agriculture (DA) through its Regional Field Office VII. By virtue of the MOA, the Municipality of Bogo, through its treasurer, co-petitioner Rhett E. Minguez, released the amount of ₱6,000,000.00 in favor of Sikap Yaman.<sup>3</sup>

On May 11, 2011, the Field Investigation Office–Task Force Abono (FIO-Task Force Abono) of the Office of the Ombudsman<sup>4</sup> filed criminal and administrative complaints charging the petitioners with having caused the execution of the MOA with Sikap Yaman despite the absence of a resolution from the Sangguniang Bayan authorizing petitioner Martinez III as Municipal Mayor to enter into the MOA. The complaints alleged that Sikap Yaman had not been an accredited NGO.<sup>5</sup>

After being directed on July 20, 2011 to submit their counter-affidavits, the petitioners complied on September 19, 2011, and attached to their counter-affidavits the resolution of the Sangguniang Bayan accrediting Sikap Yaman, and another resolution authorizing petitioner Martinez III to enter into the MOA with Sikap Yaman.

On October 30, 2014, the Special Panel formed to investigate the Task Force Abono Cases issued a resolution finding probable cause against the petitioners for a violation of Section 3(e) of R.A. No. 3019 in relation to the release of funds in favor of Sikap Yaman.<sup>6</sup>

The Ombudsman approved the resolution on February 2, 2015.

Following the denial of the petitioners' motion for reconsideration of the resolution of February 2, 2015, the Office of the Ombudsman filed in the Sandiganbayan an information on June 28, 2016 formally charging the petitioners with the violation of Section 3(e) of R.A. No. 3019, the accusatory portion of which reads thusly:

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<sup>3</sup> Id. at 5.

<sup>4</sup> Id. at 101.

<sup>5</sup> Id. at 6.

<sup>6</sup> Id. at 127-139.

That in the year 2004 or sometime prior or subsequent thereto, in the Municipality of Bogo, Cebu, and within the jurisdiction of this Honorable Court, accused CELESTINO MARTINEZ III, a high-ranking public officer, being then the Mayor of the Municipality of Bogo, Cebu, and Municipal Treasurer RHETT E. MINGUEZ, while in the performance of their official functions and committing the offenses in relation to office, taking advantage of their official positions, acting with manifest partiality, evident bad faith, or gross inexcusable negligence, in conspiracy with each other, did then and there willfully, unlawfully, and criminally, give Sikap Yaman Foundation (Sikap Yaman), a non-stock and non-profit association, unwarranted benefits, privilege and advantage, by causing and/or approving the implementation of the Department of Agriculture's Farm Inputs and Farm Implements program (FIFIP), identifying Sikap Yaman as the project implementer despite its lack of qualifications under Commission on Audit Circular No. 96-003, and causing the release of fund in the total amount of ₱6,000,000.00 to said association, and by failing to monitor and ascertain the status of the project, the proper utilization of the fund, and the receipt of the fertilizers by the farmer beneficiaries, resulting and causing undue injury to the Municipality of Bogo, Cebu, in the total amount of ₱6,000,000.00.

**CONTRARY TO LAW.<sup>7</sup>**

On July 29, 2016, the petitioners filed a *Motion to Remand Case For Reinvestigation* but the Sandiganbayan denied the motion on November 28, 2016.<sup>8</sup>

On January 6, 2017, the petitioners presented their *Motion To Quash Information And/Or To Dismiss* asserting that there had been inordinate delay in the disposition of the complaints lodged against them.

In due course, the Office of the Special Prosecutor (OSP) filed an opposition to the motion.<sup>9</sup>

On March 1, 2017, the Sandiganbayan issued the first assailed resolution denying the *Motion To Quash Information And/Or To Dismiss* for lack of merit,<sup>10</sup> holding that the peculiar circumstances of the case had justified the length of time spent in the conduct of the preliminary investigation; that the petitioners did not also allege that the perceived delay had been vexatious, or capricious, or oppressive, and had caused prejudice; and that the filing of their *Motion To Remand Case For Reinvestigation* contradicted their claim of inordinate delay in the conduct of the preliminary investigation.

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<sup>7</sup> Id. at 40-41.

<sup>8</sup> Id. at 50-51.

<sup>9</sup> Id. at 27.

<sup>10</sup> Supra note 1.

The petitioners moved to reconsider the resolution, but the Sandiganbayan denied the motion through the second assailed resolution dated May 18, 2017.<sup>11</sup>

### Issues

In this recourse, the petitioners submit the following issues, to wit:

#### I

WHETHER THE SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO ABSENCE OR LACK OF JURISDICTION WHEN IT RULED THAT THE PERIOD OF FOUR (4) YEARS AND NINE (9) MONTHS FOR THE OFFICE OF THE OMBUDSMAN TO FINISH THE PRELIMINARY INVESTIGATION OF THIS CASE DID NOT CONSTITUTE INORDINATE DELAY;

#### II

BY WAY OF A QUESTION OF LAW, WHETHER THE ULTIMATE DETERMINATION OF WHAT CONSTITUTES "CAUSING UNDUE INJURY" "GIVING UNWARRANTED BENEFITS AND ADVANTAGE" SHOULD BE LEFT TO THE INTERPRETATION AND OPINION OF THE INVESTIGATING PROSECUTOR OR THERE MUST BE SOME BASIS OF LAW OR SPECIFIC PROVISIONS OF LAW BEFORE THE CRIME OF VIOLATION OF SEC. 3(e) OF RA 3019 IS FILED IN COURT.<sup>12</sup>

The petitioners submit that although the delay in the issuance of the resolutions was largely unjustified, the Office of the Ombudsman did not present any plausible, special or even novel reason to justify the delay beyond stating that the delay emanated from the regular exercise of its prerogative in prosecuting criminal cases; that the lengthy, vexatious, capricious and oppressive delay in the proceedings prejudiced them especially after they had meanwhile been led to believe that they had already sufficiently answered the charges against them, and particularly because they had been unfairly made to answer to a new accusation through the allegation that they had not conducted monitoring activities of the project, without prior notice in violation of due process; that initially they had been accused only of entering into the MOA with Sikap Yaman without the proper accreditation from the Sangguniang Bayan of the Municipality of Bogu; and that after the Sangguniang Bayan had issued the accreditation as an NGO in favor of Sikap Yaman, the Office of the Ombudsman then unjustly came out with the new allegation in the information without prior notice to them, thereby leaving them with no opportunity to intelligently refute the new allegation.<sup>13</sup>

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<sup>11</sup> Supra note 2.

<sup>12</sup> Rollo, p. 7.

<sup>13</sup> Id. at 8-16.

The OSP counters that the petition for *certiorari* was filed out of time; that the petitioners did not attach thereto a sworn certification of non-forum shopping; that the mere mathematical reckoning of the time involved in the conduct of the preliminary investigation would not be sufficient in determining undue delay; that they did not also show that the proceedings before the Office of the Ombudsman had been attended with vexatious, capricious and oppressive delays; that the long period had been necessary to afford all parties the full opportunity to be heard and to present their respective sides; that Criminal Case No. SB-16-CRM-0413 had been only one of the numerous cases that had resulted from the conduct of several nationwide investigations into the "728 Million Pesos Fertilizer Fund Scam"; that they did not assert their right to speedy disposition at the earliest opportune time; and that the filing of their motion to remand the case clearly indicated their acquiescence to the period spent by the Office of the Ombudsman in the disposition of their case; and that the petitioners did not show that they had been prejudiced by the delay.<sup>14</sup>

### **Ruling of the Court**

The petition for *certiorari* is impressed with merit.

The Constitution guarantees under Section 16, Article III the right to the speedy disposition of cases, providing therein as follows:

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

To accord with such right, Section 12, Article XI of the Constitution mandates the Office of the Ombudsman to act promptly on complaints filed before it in any form or manner, *viz.*:

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

The mandate is reiterated in Section 13 of R.A. No. 6670 (*The Ombudsman Act of 1989*), which provides:

Section 13. Mandate. – The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the government, or of any

<sup>14</sup> Id. at 151-164.

subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people.

In this connection, the Court does not set a threshold period in determining undue or inordinate delay. Indeed, a mere mathematical reckoning of the time involved is not sufficient in determining whether or not there was inordinate delay on the part of the investigating officer; particular regard must be taken of the facts and circumstances peculiar to each case.<sup>15</sup> Instead, the Court has adopted the “balancing test” based on the landmark ruling of the United States Supreme Court in *Barker v. Wingo*<sup>16</sup> to the effect that in determining the existence of inordinate delay the courts should consider the presence of the following factors, namely; (1) the length of delay; (2) the reason for delay; (3) the defendant’s assertion or non-assertion of his or her right; and (4) the prejudice to the defendant as a result of the delay.<sup>17</sup>

The FIO-Task Force Abono filed the complaint against the petitioners on May 11, 2011. On July 20, 2011, the Office of the Ombudsman issued an order for the petitioners to file their counter-affidavits. The petitioners complied and filed their counter-affidavits on September 19, 2011. On February 2, 2015, the Office of the Ombudsman approved the joint resolution dated October 30, 2014 finding probable cause to charge the petitioners. The latter then timely filed their motion for reconsideration on March 23, 2015, but the Office of the Ombudsman denied the motion on January 12, 2016. The Office of the Ombudsman filed the informations against the petitioners on June 28, 2016.<sup>18</sup>

The OSP posits that the Office of the Ombudsman promptly and expeditiously acted on the petitioners’ case considering that the case had been but a part of the so-called “Fertilizer Fund Scam” that involved several Congressmen, Governors, Mayors, high officials in the Department of Agriculture, local government units, non-governmental organizations and private entities and suppliers. The OSP opines that given the number of the personalities and high offices involved, the Office of the Ombudsman did not cause inordinate delay in the disposition of the case of the petitioners.<sup>19</sup>

The Court disagrees with the position of the OSP.

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<sup>15</sup> *Magante v. Sandiganbayan (Third Division)*, G.R. Nos. 230950-51, July 23, 2018.

<sup>16</sup> 407 U.S. 514 (1972).

<sup>17</sup> *Cagang v. Sandiganbayan, Fifth Division*, G.R. Nos. 206438, 206458 & 210141-42, July 31, 2018.

<sup>18</sup> *Rollo*, pp. 29-31.

<sup>19</sup> *Id.* at 157-158.

It is quite notable that from the time the petitioners were ordered to submit their counter-affidavit on July 20, 2011, it took the Office of the Ombudsman until June 28, 2016, or *almost five years* from the time they were required to submit their counter-affidavits, to file the corresponding informations. Given the unusual length of such interval, the Prosecution bears the burden to justify the prolonged conduct of the preliminary investigation,<sup>20</sup> but it did not offer any suitable explanation.

The representation by the OSG that the Office of the Ombudsman had investigated the present case in conjunction with the other Fertilizer Fund scam cases did not sufficiently justify the close to five years spent in conducting the preliminary investigation. There was no allegation, to start with, that the petitioners had conspired with those involved in the other so-called Fertilizer Fund scam cases,<sup>21</sup> which might have explained the long period necessary for the preliminary examination. The delay was really inordinate and oppressive considering that the informations ultimately filed against the petitioners did not appear to have resulted from a complex preliminary investigation that involved the review of voluminous documentary and other evidence. Moreover, the petitioners were only initially charged for their non-compliance with COA Circular No. 96-003<sup>22</sup> that concerned accounting and auditing guidelines on the release of fund assistance to NGOs and people's organizations. Under the circumstances, the protracted preliminary investigation by the Office of the Ombudsman evidently ran counter to the aforecited express constitutional mandate to promptly act on complaints filed with it.

On the other hand, the petitioners refuted the allegations contained in the criminal complaint lodged against them. The complaint only alleged against the petitioners the absence of the MOA and Sangguniang Bayan resolution, and that Sikap Yaman had not been a qualified NGO for not being accredited by the Sangguniang Bayan. In their refutation through their counter-affidavits, however, the petitioners duly submitted within the reglementary period allowed by the rules the MOA, the Sangguniang Bayan resolution authorizing them to enter into the MOA, and another Sangguniang Bayan resolution accrediting Sikap Yaman. As such, they did not cause or contribute to the delay in the conduct of the preliminary investigation. It also appears that they timely asserted their right to a speedy disposition of their case after the Office of the Ombudsman had filed the informations against them; hence, they could not be said to have slept on their rights as far as insisting on the prompt disposition of their case was concerned.

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<sup>20</sup> See *Magante v. Sandiganbayan (Third Division)*, supra, note 15; *Cagang v. Sandiganbayan, Fifth Division*, supra note 17.

<sup>21</sup> *Rollo*, pp. 133-138.

<sup>22</sup> Restatement with amendments of COA Circular No. 95-003 dated February 15, 1995 Prescribing Accounting and Auditing Guidelines on the release of Funds Assistance to Non-Governmental Organizations/People's Organizations (NGOs/POs), February 27, 1996.

We reject the State's contention that the petitioners did not suffer any prejudice as a result of the delay in the conclusion of the preliminary investigation against them.

In *Cagang v. Sandiganbayan*,<sup>23</sup> the Court has delved on the nature and extent of prejudice in the context of the right to speedy disposition of cases in this manner:

The prosecution must likewise prove that no prejudice was suffered by the accused as a result of the delay. *Corpuz v. Sandiganbayan* defined prejudice to the accused as:

Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired. **Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.**

In *Coscolluela v. Sandiganbayan*:

Lest it be misunderstood, the right to speedy disposition of cases is not merely hinged towards the objective of spurring dispatch in the administration of justice but also to prevent the oppression of the citizen by holding a criminal prosecution suspended over him for an indefinite time. Akin to the right to speedy trial, its "salutary objective" is to assure that an innocent person may be free from the anxiety and expense of litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose. **This looming unrest as well as the tactical disadvantages carried by the passage of time should be weighed against the State and in favor of the individual.**

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

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<sup>23</sup> Supra note 17.



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.** (Emphasis supplied)

Under the foregoing pronouncement, the delay incurred in conducting the preliminary investigation surely prejudiced the petitioners. After submitting their counter-affidavits with the documents proving that Sikap Yaman had been a qualified NGO and showing the express authority of petitioner Martinez III to enter into the MOA, they had reasonable basis to become comfortable and to honestly believe themselves cleared of the accusation. They had no inkling whatsoever that the Office of the Ombudsman was in the meanwhile adding their supposed failure to monitor the use of the funds by Sikap Yaman as the recipient NGO in support of the accusation. The addition was without prior notice to them. Worse, the failure to monitor the use of the funds by Sikap Yaman had not been supposedly required of them. At least, they were not aware of the requirement, if true. With the lapse of nearly five years from the submission of their counter-affidavits, they were thus no longer in the position to adequately prepare themselves for their defense should further proceedings and trial be held, including the gathering of evidence upon the new allegation that had meanwhile contributed another ground for their indictment for the violation of Section 3(e) of R.A. No. 3019. 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.

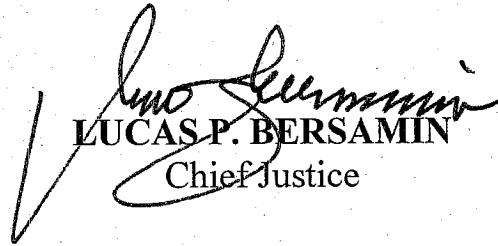
Given the unjustified passage of a long time in the conduct of the preliminary investigation and in view of the ensuing prejudice that such delay caused to the petitioners, their right to the speedy disposition of their case was violated. Consequently, the complaint filed against them should be abated and dismissed.

**WHEREFORE**, the Court **GRANTS** the petition for review on *certiorari*; **NULLIFIES** and **SETS ASIDE** the resolutions promulgated by the Sandiganbayan on March 1, 2017 and May 18, 2017 in SB-16-CRM-0413; and **DISMISSES** Criminal Case No. SB-16-CRM-0413 on the ground


that its filing violated the right of the petitioners to the speedy disposition of their cases.

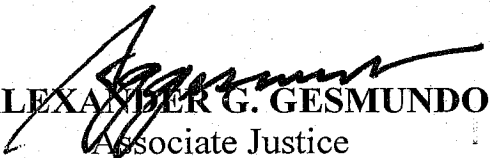
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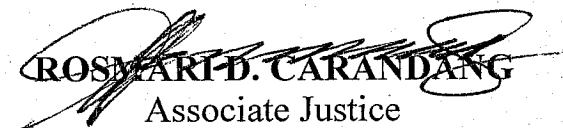
**SO ORDERED.**

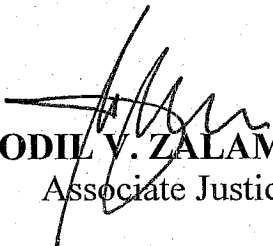
  
**LUCAS P. BERSAMIN**  
Chief Justice

**WE CONCUR:**

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

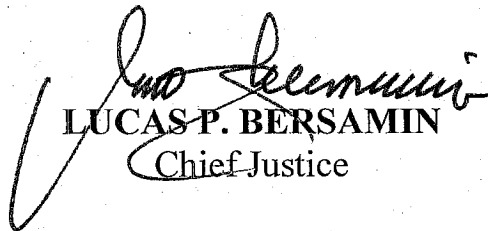
  
**ALEXANDER G. GESMUNDO**  
Associate Justice

  
**ROSMARID D. CARANDANG**  
Associate Justice

  
**RODIL V. ZALAMEDA**  
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.

  
**LUCAS P. BERSAMIN**  
Chief Justice