

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. SANDIGANBAYAN (FIRST DIVISION), MANUEL M. LAPID, MA. VICTORIA M. AQUINO-ABUBAKAR, LEOLITA M. AQUINO AND DEXTER ALEXANDER S.D. VAS...

G.R. No. 229656. August 19, 2019

Ponente: REYES, J. JR., J.

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REYES, J. JR., J.:

Claiming that the Sandiganbayan's dismissal of the criminal case filed against respondents on account of violation of the speedy disposition rule was tainted with grave abuse of discretion, petitioner People of the Philippines, represented by the Office of the Ombudsman, through the Office of the Special Prosecutor, interposes the instant certiorari petition.

The Facts

The criminal case filed against respondents relates to the "P728 Million Fertilizer Scam" in the Department of Agriculture (DA).

In 2004, the Department of Budget and Management issued a Special Allotment Release Order for P728,000,000.00 with Notice of Cash Allocation for P291,200,000.00 to the DA for the Farm Input/Implement Fund/Program for the purchase of farm inputs/implements for congressional districts or local government units in line with the Ginintuang Masaganang Ani (GMA) Program of the DA.[1]

On May 24, 2004, and under the GMA Program, the Provincial Government of Pampanga purchased 3,880 bottles of Macro-Micro Foliar Fertilizers from Malayan Pacific Trading Corporation (MPTC).[2]

Allegedly, as early as 2006, the Field Investigation Office-Task Force Abono (FIO) of the Ombudsman investigated the procurement and for this purpose, the FIO issued subpoenas duces tecum to several government offices which were responded to by the latter in June 2006.[3]

On May 2, 2011, the FIO filed before the Ombudsman a complaint[4] against several officials[5] of the Provincial Government of Pampanga including its Governor, respondent Manuel M. Lapid (Lapid), as well as against the officials of MPTC,[6] including its President, respondent Ma. Victoria M. Aquino-Abubakar (Aquino-Abubakar), and incorporator, respondent Leolita M. Aquino (Aquino). Respondent Dexter Alexander S.D. Vasquez (Vasquez), as proprietor of D.A. Vasquez Macro-Micro Fertilizer Resources was also impleaded in the complaint.[7]

On May 20, 2011, the Ombudsman ordered all respondents to file their respective counter affidavits. Lapid sought for additional time within which to file his counter-affidavit which he filed on June 30, 2011.[8] The other respondents also filed separate motions, with the last responsive pleading having been filed by Ronaldo Roxas Dorado, an MPTC incorporator, on February 28, 2012.[9]

On November 5, 2012, Lapid's counsel entered their appearance and moved for the resolution of the complaint. Both were received by the Ombudsman on even date.[10]

The Ombudsman's Special Panel for Fertilizer Fund Scam came up with a Resolution[11] dated September 18, 2013 finding probable cause to indict six,[12] including Lapid, Aquino-Abubakar, Aquino and Vasquez (collectively, Lapid, et al.), out of the 17 respondents[13] for violation of Section 3(e) and (g) of Republic Act (R.A.) No. 3019 for having disregarded the procurement law and its implementing rules in purchasing the fertilizers.

Ombudsman Conchita Carpio Morales approved the panel's Resolution dated September 18, 2013 on June 3, 2014.[14] Lapid and one of therein respondents Benjamin G. Yuzon separately moved for reconsideration which were denied in an Order dated September 12, 2014, approved by Ombudsman Morales on January 30, 2015.

On November 4, 2015, an Information was filed before the Sandiganbayan against the six (6) respondents, including Lapid, et al. The Information's accusatory portion reads:

In May 2004, or thereabout, in the province of Pampanga, and within this Honorable Court's jurisdiction, above-named accused MANUEL MERCADO LAPID, BENJAMIN DE GUZMAN YUZON and VERGEL BALTAZAR YABUT, all public officers, being then the Provincial Governor, Provincial Accountant, and Provincial Treasurer of Pampanga, respectively, while in the performance of their official functions, conspiring with one another and with private individuals MA. VICTORIA M. AQUINO-ABUBAKAR and LEOLITA M. AQUINO, incorporators of Malayan Pacific Trading Corporation (MPTC), and DEXTER ALEXANDER S.D. VASQUEZ, proprietor of D.A. Vasquez Macro-Micro Fertilizer Resources (DAVMMFR), acting with evident bad faith, manifest partiality, or at the very least, gross inexcusable negligence, did then and there, willfully, unlawfully and criminally cause undue injury to the government and give unwarranted benefits, preference and advantage to accused MA. VICTORIA M. AQUINO-ABUBAKAR, LEOLITA M. AQUINO, and DEXTER ALEXANDER S.D. VASQUEZ by entering, in behalf of the Provincial Government of Pampanga, into a transaction manifestly and grossly disadvantageous to the latter involving the purchase by the Provincial Government of Pampanga of 3,880 liters of Macro-Micro Foliar Fertilizer formulated by DAVMMFR and distributed in Pampanga by MPTC with irregularities and instances of fraud attending the transaction, as follows -

1. Purchase of the said fertilizer from MPTC without the benefit of public bidding as required by Republic Act No. 9184 (The Government Procurement Reform Act) and its Implementing Rules and Regulations;
2. Accused Lapid's certification that there are no suitable substitute to Macro-Micro Foliar Fertilizer in order to unlawfully resort to direct purchase despite the availability of a suitable substitute offered at a much lower price in the locality;
3. Indicating in the Purchase Request/Order a brand name of fertilizer (Macro-Micro Foliar Fertilizer) in violation of Republic Act No. 9184 and its implementing Rules and Regulations;
4. The inordinate speed by which the transaction was consummated - from submission of the price quotation by Vasquez's DAVMMFR on May 12, 2004, to the issuance of a Purchase Order by accused Lapid on May 24, 2004 and delivery of the fertilizer on same date, and full payment to MPTC on May 26, 2004 - all for a period of 14 days only;
5. Vasquez applied for Product Registration with the Fertilizer Pesticide Authority (FPA) only on August 15, 2005 after the transaction in May 2004 while MPTC has no Certificate of License to Operate and Product Registration; and
6. Payment to MPTC of a total of P4,761,818.18 (P4,850,000.00 less tax of P88,181.82) for the said fertilizer at P1,250.00/liter which is overpriced by at least P1,100.00/liter, or a total of P4,268,000.00.

thereby causing undue injury to the government in the aforesaid amount of P4,268,000.00.

CONTRARY TO LAW.[15]

On January 8, 2016, and prior to arraignment, Lapid moved to dismiss[16] the criminal case, raising as one of his grounds the alleged inordinate delay of eight years in the fact-finding investigation, preliminary investigation and filing of the case in violation of Lapid's right to due process and to a speedy disposition of his case.[17] The motion to dismiss was adopted by Aquino-Abubakar, Aquino and Vasquez. Aquino-Abubakar and Aquino subsequently filed their supplemental arguments to the motion to dismiss.[18] Pending resolution of his motion to dismiss, Lapid was arraigned on February 18, 2016.[19]

The Ruling of the Sandiganbayan

Finding that Lapid, et al.'s right to a speedy disposition of their cases had been violated, the Sandiganbayan issued its first assailed Resolution[20] dated September 30, 2016 dismissing the criminal case. The Sandiganbayan made the following observations on the conduct of the preliminary investigation proper:

x x x There is no dispute that this was commenced with the filing of the Complaint against accused Lapid, et al. on 02 May 2011. Two (2) years and four (4) months after the filing of the complaint, the Ombudsman found probable cause for the filing of the Information in its Resolution dated 18 September 2013 which was finally approved on 03 June 2014. Sometime in July 2014, accused Lapid and Yuzon filed their respective Motions for Reconsideration. Thereafter, the Information was filed before this Court on 04 November 2015.

From the foregoing timeline, it appears that four (4) years and six (6) months had lapsed from the time of the filing of the Complaint in 2011 until the time the information was filed in 2015. Three (3) years and one (1) month out of this said period was consumed in the Ombudsman's preliminary investigation.

The prosecution describes this lapse of time as reasonable delay, bearing in mind the voluminous records, the number of participants involved in the case, and the time needed to evaluate the evidence submitted by each party. The reason proffered by the prosecution is unacceptable as recent jurisprudence has called attention to the constitutional mandate of the Ombudsman as the "protector of the people," such that it is expected to act promptly on all complaints lodged before it. The Supreme Court had occasion to emphasize this in the case of [Rafael L. Coscolluela vs. Sandiganbayan] and [People of the Philippines,] to wit:

x x x x

This doctrine is further strengthened by the dictates of procedural due process which entails substantial adherence to the requirement of the law governing the conduct of preliminary investigation, and this necessarily includes the prosecutor's substantial compliance with the limitation prescribed by law for the resolution of the case. The ruling in [Alfredo R. Enriquez, et al. vs. Office of the Ombudsman] is instructive:

x x x x

It bears stressing that in case of delay, the duty is upon the State to prove that the delay was reasonable, or that the delay was not attributable to it. But, the prosecution clearly failed to hurdle this burden since no plausible explanation was given to justify the delay in the Ombudsman's preliminary investigation.

x x x x

This Court further notes, as adverted to previously, that it took the Ombudsman the better part of nine (9) months merely to approve the 18 September 2013 Resolution finding probable cause against Lapid, [et al.] And, again, no satisfactory explanation has been furnished the Court. All in all, the unjustified delay during the Ombudsman's preliminary investigation qualifies as vexatious, capricious, and oppressive. Without a reasonable explanation, the delay in the latter's proceedings is unwarranted considering the adverse effects

and/or prejudice that such long delay may cause upon the defense of the accused. x x x[21] (Citations omitted)

Thus, the Sandiganbayan disposed as follows:

WHEREFORE, premises considered, the Urgent Motion dated 08 January 2016, filed by accused Manuel M. Lapid, and adopted by accused Ma. Victoria M. Aquino-Abubakar, Leolita M. Aquino, and Dexter Alexander S.D. Vasquez, is GRANTED. Accordingly, the case against them is hereby ordered DISMISSED, for violation of their rights to the speedy disposition of their cases, without prejudice to any civil liability which the Province of Pampanga may file against them.

On the other hand, accused Benjamin G. Yuzon's Motion to Quash Information dated 10 February 2016, is hereby DENIED for lack of merit.

SO ORDERED.[22]

Petitioner's motion for reconsideration[23] was denied by the Sandiganbayan in its second assailed Resolution[24] dated December 13, 2016.

The Issue

Petitioner, thus, resorted to the present certiorari petition alleging grave abuse of discretion on the part of the Sandiganbayan when it dismissed the criminal case without applying the balancing test to gauge inordinate delay and instead resorted to a mere mathematical computation of the period of delay. Petitioner likewise assails the Sandiganbayan's finding that the delay was oppressive and prejudicial to Lapid, et al. According to petitioner, the dismissal of the criminal case unduly deprived the State of its right to prosecute.[25]

By way of comment,[26] Lapid emphasized that petitioner did not prove that the delay in the conduct of the preliminary investigation was reasonable or justified in that it failed to demonstrate the supposed complexity of the case; the records are not voluminous as it consist of single-page documents for a total of 70 annexes; and that the respondents raised substantially similar defenses and issues.[27]

Lapid further argues that the lapse of a long period of time without having his case tried, without cause or justifiable motive, is deemed as vexatious, capricious and oppressive delay which violates a party's right to a speedy disposition of his case and to due process.[28] He also claims to have been prejudiced by the delay in the disposition of his case given that one of his primary witnesses, i.e., Provincial Administrator Atty. Benalfre Jabar Galang,[29] died even before he could perform any act in Lapid's defense.[30] Contrary to petitioner's claim, Lapid contends that the Sandiganbayan in fact applied the balancing test in determining whether Lapid has been denied his right to a speedy disposition of his case.[31] Finally, Lapid urges the Court to dismiss the instant petition for violation of the rule on double jeopardy.[32]

For their part, Aquino-Abubakar, Aquino and Vasquez commented[33] that the Ombudsman caused the delay of more than nine years in the fact-finding investigation and the preliminary investigation in violation of their right to a speedy disposition of their case.

Thus, the core issue to be resolved is whether or not the Sandiganbayan gravely abused its discretion when it dismissed the criminal case against Lapid, et al., for violation of the latter's right to a speedy disposition of their case. Determinative of this issue is whether or not the Ombudsman committed inordinate delay in the resolution and termination of the preliminary investigation.

The Ruling of the Court

We grant the Petition. In the absence of vexatious, capricious and oppressive delays in the conduct of the preliminary investigation, there can be no denial of the right to a speedy disposition of cases.

The speedy disposition of cases before all judicial, quasi-judicial, or administrative bodies is a right Constitutionally-guaranteed to all persons.[34] Juxtaposed with the right to speedy trial, the right to a speedy disposition of cases is a right commonly invoked in fact-finding investigations and preliminary investigations conducted by the Ombudsman because while these proceedings do not form part of the criminal prosecution proper[35] the respondent may already be prejudiced by such proceedings,[36] and equally because the Ombudsman itself is Constitutionally committed to act promptly on complaints filed before it.[37]

As tritely held in *Tatad v. Sandiganbayan*,[38] an "undue delay in the conduct of a preliminary investigation cannot be corrected, for until now, man has not yet invented a device for setting back time." Invariably, the underlying principle of the right to speedy disposition of cases remains to be the prevention not only of delay in the administration of justice[39] but also of oppression of the citizen by indefinitely suspending criminal prosecution.[40] A violation of this right results to the grant of the "radical relief"[41] of immediate dismissal of the case.

To determine whether a respondent's right to a speedy disposition of cases, the 1983 case of *Martin v. Ver*[42] adopted the balancing test laid down in the U.S. case of *Barker v. Wingo*. [43] The balancing test compels the courts to approach cases on an ad hoc basis, with the conduct of both the prosecution and defendant weighed using the four-fold factors: (1) the length of the delay; (2) reason for the delay; (3) defendant's assertion or non-assertion of his right; and (4) prejudice to defendant resulting from the delay. These factors are to be considered together.[44]

Due to the fact that neither the Constitution nor the Ombudsman Act of 1989,[45] provide for a specific period within which the Ombudsman is mandated to conduct its fact-finding investigations or to act on complaints, other than "promptly," what was considered "prompt" or "inordinate delay" was instead given judicial interpretation, the leading case being *Tatad*. [46] *Tatad* held that: the finding of inordinate delay applies in a case-to-case basis; political motivation is one of the circumstances to consider in determining inordinate delay; and that because of the attendant political color, the delay of three years in the termination of the preliminary investigation was inordinate.[47] Thus, to determine whether or not there was inordinate delay, cases were consistently approached by the Court on an ad hoc basis using the combination of *Tatad* and the *Barker* four-fold test.[48]

As to when a case is deemed to have been commenced for purposes of determining inordinate delay, *Dansal v. Fernandez*[49] instructs that the right to a speedy disposition of cases is available as early as the preliminary investigation or inquest. *People v. Sandiganbayan*[50] even went further in time as to include the conduct of fact-finding investigation prior to the filing of a formal complaint.

On July 31, 2018, a definitive ruling on the concept of inordinate delay was laid down by the Court en banc in *Cagang v. Sandiganbayan*[51] as follows:

(1) The right to speedy disposition of cases is different from the right to speedy trial.

The former may only be invoked in criminal prosecutions against courts of law while the latter may be invoked before any tribunal as long as the respondent may already be prejudiced by the proceeding.

(2) For purposes of determining inordinate delay, a case is deemed to have commenced from the filing of the formal complaint and the subsequent conduct of the preliminary investigation.

Cagang, thus, abandoned *People v. Sandiganbayan*. The Ombudsman should set reasonable periods for preliminary investigation and delays beyond this period will be taken against the prosecution.

(3) Courts must determine which party carries the burden of proof.

If it has been alleged that there was delay within the time periods (i.e., according to the time periods that will be issued by the Ombudsman), the burden is on the defense to show that there has been violation of their rights to speedy disposition of case or to speedy trial. The defense must prove: (a) that the case took much longer than was reasonably necessary to resolve and (b) that efforts were exerted to protect their constitutional rights.

If the delay occurs beyond the given time period and the right is invoked, the prosecution has the burden of justifying the delay. The prosecution must prove: (a) that it followed the prescribed procedure in the conduct of preliminary investigation and case prosecution; (b) the delay was inevitable due to the complexity of the issues and volume of evidence; and (c) accused was not prejudiced by the delay.

(4) Determination of the length of delay is never mechanical.

Courts must consider the entire context of the case, the amount of evidence and the complexity of issues involved. An examination of the delay is no longer necessary to justify the dismissal of the case if the prosecution of the case was solely motivated by malice.

(5) 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.

Applying the Cagang Guidelines

In line with the foregoing disquisitions, the Court finds that the Sandiganbayan gravely abused its discretion when it dismissed the criminal case against Lapid, et al., supposedly due to inordinate delay.

There was no allegation or proof that the complaint was intended for malicious prosecution or that it was politically-motivated. Immediate dismissal of the criminal case on this point is, thus, unwarranted. Consequently, the Court must "analyze the existence and the cause of the delay." [52]

The case against Lapid, et al., was commenced on May 2, 2011, upon the filing by the FIO of the complaint. The fact-finding investigation, having preceded the filing of the formal complaint is excluded in determining the extent of the delay. [53] At any rate, the Sandiganbayan, in its Resolution dated September 30, 2016, observed that there was no evidence to show that the Ombudsman indeed commenced and conducted a fact-finding investigation as early as 2006. On the contrary, the subpoenas which the Ombudsman issued in connection with its fact-finding investigation, which Lapid, et al., [54] themselves submitted in evidence, were addressed to various government offices but not to them. Thus, the fact-finding investigation could not have been vexatious, capricious, and oppressive as to them.

The panel found probable cause to indict Lapid, et al., for violation of Section 3(e), in relation to Section 3(g) of R.A. 3019, on September 18, 2013, or two years and four months from the filing of the complaint. The panel's recommendation was approved by the Ombudsman on June 3, 2014. Thus, from the filing of the formal complaint until the Ombudsman's approval of the Resolution finding probable cause against Lapid, et al., the length of time consumed for the preliminary investigation was three years and one month.

Some of the respondents, including Lapid, moved for reconsideration in July 2014, which the panel recommended to deny on September 12, 2014. The panel's recommendation was to be approved by the Ombudsman only on January 30, 2015, or four months after. Finally, the Information was filed on November 4, 2015, or ten months after the Ombudsman's approval of the denial of the motion for reconsideration.

In the absence of a fixed or stated period for the conduct and termination of the preliminary investigation in the Office of the Ombudsman, we currently determine whether such length of time was reasonable under the

circumstances.

"Reasonable time" to resolve a proceeding is not determined by mere mathematical computation, but must be "appraised from the point of view of how much time a competent and independent public officer would need in relation to the complexity of a given case." [55] A number of factors must also be taken into account, such as: (1) the time required to investigate the complaint and to file the information; (2) the happening of unforeseen circumstances, such as unavoidable postponements or force majeure; (3) the complexity of the issues involved; and (4) the conduct of the lawyers. [56]

From the timeline [57] presented by the petitioner, it appears that while Lapid filed his counter-affidavit on June 8, 2011, Aquino-Abubakar and Aquino filed their counter-affidavit only on February 24, 2012, after twice seeking for an extension of time to do so. [58] Thus, it was only on March 28, 2012, that the complaint and the counter-affidavits were submitted to the panel for resolution. [59] Eight months after, or on November 5, 2012, the panel had already submitted its recommendation. [60] The Ombudsman, thus, took proper action in the ordinary course of things and pursuant to its mandate. [61]

It is also well to recall that the complaint involved 17 accused-respondents relating to a scam in the disbursement of government funds under the GMA Program involving several congressional districts or local government units nationwide. In *Salcedo v. Sandiganbayan*, [62] the Court held that a preliminary investigation that took four years, two months and 20 days to complete was not unreasonable given that the graft investigating officer had to thoroughly investigate the complex cases involving the alleged disbursement of government funds. In this case, the lapse of four years and six months, reckoned from the filing of the complaint, was justified due to the complexity of the issue involved requiring a thorough study of the case to determine with probability who should be indicted.

It is also undisputed that while Lapid filed a motion to resolve on November 5, 2012, invoking therein his right to a speedy disposition of his case, he moved for the dismissal of the case only on January 8, 2016, or when he was about to be arraigned. This motion was merely adopted by Aquino-Abubakar, Aquino and Vasquez through a manifestation dated March 9, 2016, and a supplemental motion to dismiss dated April 27, 2016. [63] Respondents, thus, allowed a considerable time to lapse before they invoked their right to a speedy disposition of their case. [64]

In sum, delay becomes inordinate only in the presence of arbitrary, vexatious and oppressive actions or inactions that are discernible from the proceedings. No such delay attended the Ombudsman's proceedings that would warrant the dismissal of the criminal case against herein respondents.

WHEREFORE, the instant Petition is GRANTED. The Resolutions dated September 30, 2016, and December 13, 2016, insofar as it dismissed the criminal case docketed as SB-15-CRM-0286 against respondents Manuel M. Lapid, Ma. Victoria M. Aquino-Abubakar, Leolita M. Aquino and Dexter Alexander S.D. Vasquez are REVERSED and SET ASIDE. The Sandiganbayan is DIRECTED to resolve the criminal case with reasonable dispatch.

SO ORDERED.

Carpio (Chairperson), Lazaro-Javier, and Zalameda, JJ., concur.
Caguioa, J., see dissent.

[1] Rollo, p. 96.

[2] Id. at 97.

[3] Id. at 147.

[4] For violation of Section 3(e) and (g) of Republic Act No. 3019 and Section 65.2 of the Implementing Rules and Regulations, in relation to Section 10 and 18 of Republic Act No. 9184 and for Article 217 in relation to Article 171 of the Revised Penal Code.

[5] In addition to respondent Governor Manuel M. Lapid, the complaint impleaded Benjamin G. Yuzon (Accountant), Vergel B. Yabut (Treasurer), Benalfre J. Galang (Administrator), Lulu S. Alingcastre (General Services Officer), Leonardo M. Mendoza (Technical Assistant, Tourism Infrastructure & Enterprise Zone Authority) and Ramir G. Flores (Administrative Officer I-Casual).

[6] These included MPTC's incorporators, Ismael B. Abubakar, Jr., Alberto T. Aquino, Arthur M. Aquino, Paul Albert M. Aquino, Marites Sto. Domingo, Rolando E. Dorado and Abe Nasuiton.

[7] Rollo, p. 9.

[8] Id. at 148.

[9] Id. at 9.

[10] Id.

[11] Id. at 94-113.

[12] In addition to respondents Lapid, Aquino-Abubakar, Aquino and Vasquez, probable cause was found against Benjamin G. Yuzon and Vergel B. Yabut.

[13] The charges against Lulu S. Alingcastre, Leonardo M. Mendoza, Ramir Flores, Ismael B. Abubakar, Jr., Alberto T. Aquino, Arthur M. Aquino, Paul Albert M. Aquino, Marites Sto. Domingo, Rolando R. Dorado, Ade Nasuiton and Benalfre J. Galang were dismissed.

[14] Rollo, p. 113.

[15] Id. at 10-11.

[16] Id. at 176-200.

[17] Id. at 177.

[18] Id. at 13.

[19] Id. at 149.

[20] Penned by Associate Justice Reynaldo P. Cruz, with Associate Justices Efren N. Dela Cruz and Michael Frederick L. Musngi; id. at 218-231.

[21] Id. at 223-226.

[22] Id. at 230.

[23] Id. at 232-242.

[24] Id. at 272-275.

[25] Id. at 17-18.

[26] Id. at 146-175.

[27] Id. at 155-156.

[28] Id. at 160.

[29] As corrected in Lapid's Manifestation dated June 27, 2017, rollo, p. 308.

[30] Id. at 162.

[31] Id. at 164-165.

[32] Id. at 168.

[33] Id. at 284-306 and 327-336.

[34] Article III, Section 16 of the Constitution provides:

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

[35] *Cagang v. Sandiganbayan*, G.R. Nos. 206438, 206458, & 210141-42, July 31, 2018.

[36] Id.

[37] Article XI, Section 12 of the Constitution provides:

The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against 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.

[38] 242 Phil. 563, 576 (1988).

[39] See *Corpuz v. Sandiganbayan*, 484 Phil. 899, 917 (2004).

[40] *Coscolluela v. Sandiganbayan*, 714 Phil. 55, 65 (2013).

[41] See *Tatad v. Sandiganbayan*, *supra* note 37.

[42] 208 Phil. 658, 664 (1983).

[43] 407 U.S. 514.

[44] *Spouses Uy v. Adriano*, 536 Phil. 475, 498 (2006).

[45] Republic Act No. 6770.

[46] *Cagang v. Sandiganbayan*, *supra* note 35.

[47] Id.

[48] Id. *Cagang* cites the cases of *Gonzales v. Sandiganbayan*, 276 Phil. 323 (1991) and *Alvizo v. Sandiganbayan*, 292-A Phil. 144 (1993).

[49] 383 Phil. 897 (2000). *Dansal* was also cited in *Cagang v. Sandiganbayan*.

[50] 723 Phil. 444, 493 (2013).

[51] G.R. Nos. 206438, 206458, & 210141-42, *supra* note 35.

[52] Cagang v. Sandiganbayan, supra note 35.

[53] See also Magante v. Sandiganbayan and People of the Philippines, G.R. Nos. 230950-51, July 23, 2018.

[54] Rollo, p. 147. See also the Comment of Aquino-Abubakar, Aquino and Vasquez, rollo, p. 286.

[55] Cagang v. Sandiganbayan, supra note 35.

[56] Id.

[57] Rollo, pp. 11-13.

[58] Id. at 11-12.

[59] Id.

[60] Id.

[61] See Salcedo v. Sandiganbayan, G.R. Nos. 223869-960, February 13, 2019.

[62] Id.

[63] Rollo, p. 42.

[64] In Magante v. Sandiganbayan, supra note 52, the Court held that it is sufficient that the constitutional infraction is raised prior to the accused's arraignment before the Sandiganbayan.

DISSENTING OPINION

CAGUIOA, J.:

I dissent. Again, I submit this Dissenting Opinion to register anew my views on the urgent and imperative need to revisit and correct prevailing jurisprudence in assessing inordinate delay.

The ponencia finds that the Sandiganbayan[1] gravely abused its discretion in dismissing the criminal case filed against respondents Manuel M. Lapid, Ma. Victoria M. Aquino-Abubakar, Leolita M. Aquino and Dexter Alexander S.D. Vasquez (private respondents) for violation of right to speedy disposition of their case on the basis of the Court's Decision in Cagang v. Sandiganbayan[2] (Cagang). In determining whether there was inordinate delay in the proceedings before the Office of the Ombudsman (Ombudsman), the ponencia focused on the timeline provided by the prosecution from the filing of the Complaint by the Field Investigation Office — Task Force Abono (FIO-Task Force Abono) on May 2, 2011 to the filing of the Information before the Sandiganbayan on November 4, 2015. The ponencia holds that the lapse of four (4) years and six (6) months, reckoned from the filing of the complaint, was justified due to the complexity of the issue and the number of respondents which required a thorough study of the case to determine with probability who should be indicted.

As stated at the outset, I dissent. While the period of time spent in the Ombudsman's preliminary investigation may have been justified, there was clearly inordinate delay that prejudiced the private respondents herein as the period spent in the fact-finding phase was completely unjustified. Indeed, this case demonstrates the significance of the last element in the four-fold test, and why the Court should revisit, re-examine and reconfigure its understanding of prejudice and the reckoning of the periods to determine inordinate delay.

In Cagang, the Court, citing Corpuz v. Sandiganbayan,[3] emphasized that prejudice to the accused is defined 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. (Emphasis, underscoring and italics supplied).

However, even as Cagang correctly mentions the impairment of a defendant to mount a defense as that which needs most protection, it nevertheless limits the coverage of the right to speedy disposition to the preliminary investigation stage. In doing so, Cagang and all the other cases relying upon it, overlooks that prejudice, as defined above, attaches from the moment the fact finding investigation commences because any unreasonable delay incurred results in the impairment of one's defense.

This case perfectly illustrates the real prejudice caused to the private respondents, or any other accused finding himself in a similar situation, by the unexplained delay in the Ombudsman's fact-finding investigation.

To recall, this case stemmed from the transaction between the Province of Pampanga and Malayan Pacific Trading Corporation (MPTC), on May 24, 2004, for the purchase of 3,880 bottles of fertilizers, under the Ginintuang Masaganag Ani (GMA) Program of the Department of Agriculture (DA). And as early as 2006, the FIO - Task Force Abono of the Ombudsman investigated the said procurement and issued subpoenas duces tecum to several government offices which were responded to by the latter in June 2006. The FIO - Task Force Abono, however, only filed its complaint before the Ombudsman almost five (5) years after or on May 2, 2011. The Ombudsman, in turn, finished its preliminary investigation only on September 18, 2013 and the corresponding Information was filed two (2) years after or only on November 4, 2015. Thus, counting from the time the fact-finding investigation commenced in June 2006, the Ombudsman took nine (9) years and five (5) months to file a case against private respondents. Of this period, the ponencia, following Cagang, simply focused on the justifications proffered by the prosecution on the four (4) years and six (6) months devoted to the preliminary investigation. It failed to consider that the unexplained delay that occurred prior to the conduct of the preliminary investigation - which spanned five (5) years, may have led to the loss of material documents or any other evidence that they could have used to put up an effective defense.

Thus, I reiterate the point I raised in Cagang that the right to speedy disposition of cases should cover not only the preliminary investigation, but extends further, to cover the fact-finding process.[4] Moreover, I stress anew that:

x x x [I]n *Torres v. Sandiganbayan* (Torres) the Court categorically stated that the speedy disposition of cases covers "not only the period within which the preliminary investigation was conducted, but also all stages to which the accused is subjected, even including fact-finding investigations conducted prior to the preliminary investigation proper."

Unreasonable delay incurred during fact-finding and preliminary investigation, like that incurred during the course of trial, is equally prejudicial to the respondent, as it results in the impairment of the very same interests which the right to speedy trial protects — against oppressive pre-trial incarceration, unnecessary anxiety and concern, and the impairment of one's defense. To hold that such right attaches only upon the launch of a formal preliminary investigation would be to sanction the impairment of such interests at the first instance, and render respondent's right to speedy disposition and trial nugatory. Further to this, it is oppressive to require that for purposes of determining inordinate delay, the period is counted only from the filing of a formal complaint or when the person being investigated is required to comment (in instances of fact-finding investigations).

Prejudice is not limited to when the person being investigated is notified of the proceedings against him.

Prejudice is more real in the form of denial of access to documents or witnesses that have been buried or forgotten by time, and in one's failure to recall the events due to the inordinately long period that had elapsed since the acts that give rise to the criminal prosecution. Inordinate delay is clearly prejudicial when it impairs one's ability to mount a complete and effective defense. Hence, contrary to the majority, I maintain that *People v. Sandiganbayan* and *Torres* remain good law in this jurisdiction. The scope of right to speedy disposition corresponds not to any specific phase in the criminal process, but rather, attaches the very moment the respondent (or accused) is exposed to prejudice, which, in turn, may occur as early as the fact-finding stage.[5] (Emphasis in the original; underscoring and italics supplied)

Cagang further ruled that delay is a two-edged sword, which also causes prejudice to the government. I submit, however, that the gravity of the prejudice suffered by the accused due to the unreasonable delay in the fact-finding investigation is incomparable to whatever disadvantage the same may have caused the government. It must be stressed that the State has immense resources at its disposal that it can wield and utilize against the individual citizen at any time. This is one of the reasons why the State is constitutionally mandated to dispose of all judicial, quasi-judicial, or administrative proceedings with utmost dispatch. The number of the combined permanent personnel in the investigative arms of the government alone shows how vast and incredible the power the State has over the individual citizen, or the seventeen (17) respondents in this case, who are "but a speck of particle or molecule vis-à-vis the vast and overwhelming powers of government. [Their] only guarantee against oppression and tyranny are [their] fundamental liberties under the Bill of Rights which shield [them] in times of need." [6]

Thus, the Court cannot simply brush aside the prejudice caused by the delays in the investigation, more so, in the fact-finding investigation. The delays in this stage cause real and serious prejudice to the accused because facts on which his innocence is hinged would be more difficult, if not impossible, to prove. Verily, had the Court, in Cagang, taken into consideration the period prior to the preliminary investigation in determining inordinate delay and prejudice caused thereby, the constitutional guarantee of speedy disposition of cases would not have been defeated or rendered inutile.[7]

[1] First Division.

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

[3] 484 Phil. 899, 918 (2004).

[4] See Dissenting Opinion of Justice Caguioa in Cagang, p. 6.

[5] Id. at 7.

[6] *Secretary of Justice v. Hon. Lantion*, 379 Phil. 165, 185 (2000).

[7] See *People v. Sandiganbayan*, 723 Phil. 444, 493 (2013).

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