



Republic of the Philippines  
Supreme Court  
Manila

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*Wilfredo V. Lapid*  
WILFREDO V. LAPID  
Division Clerk of Court  
Third Division

JUL 19 2019

SUPREME COURT OF THE PHILIPPINES  
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THIRD DIVISION

PEOPLE OF THE PHILIPPINES,  
Petitioner,

G.R. Nos. 233557-67

Present:

PERALTA,\* J.,  
LEONEN,\*\*  
*Acting Chairperson,*  
REYES, A., JR.,  
HERNANDO,\* and  
INTING, JJ.

- versus -

THE HONORABLE  
SANDIGANBAYAN (FIRST  
DIVISION) and CESAR ALSONG  
DIAZ,

Promulgated:

Respondents.

June 19, 2019

*Wilfredo V. Lapid*

X-----X

DECISION

REYES, A., JR., J.:

*The right of an accused to the speedy disposition of cases is a sacrosanct right that must not only be respected by courts and tribunals, but must also be invoked only in clear instances of vexatious, capricious, and oppressive delays. This sacred right is a shield, not a weapon to be used against the State, and should not preclude the rights of public justice.<sup>1</sup>*

This treats of the Petition for *Certiorari*<sup>2</sup> filed by herein petitioner People of the Philippines, seeking to reverse and set aside the Resolutions dated April 18, 2017<sup>3</sup> and July 3, 2017,<sup>4</sup> both issued by the Sandiganbayan,

\* On official business.

\*\* Designated Acting Chairperson per Special Order No. 2675 dated June 17, 2019.

<sup>1</sup> *Olbes v. Hon. Judge Buemio, et al.*, 622 Phil. 357, 366 (2009).

<sup>2</sup> *Rollo*, pp. 6-56.

<sup>3</sup> Penned by Associate Justice Geraldine Faith A. Econg, with Associate Justices Efren N. Dela Cruz and Bernelito R. Fernandez concurring; *id.* at 58-71.

<sup>4</sup> *Id.* at 73-76.

*Reyes*

granting the Motion to Quash and the Supplemental Motion to Quash the Information filed by private respondent Cesar Alsong Diaz (Diaz).

### The Antecedents

On January 18, 2011, State Auditor III and Audit Team Leader Oscar C. Lerio (Lerio) of the Commission on Audit (COA), Municipality of Tagana-an, Surigao del Norte sent a Demand Letter to Diaz requiring him to liquidate and account for his cash advances amounting to ₱5,223,014.00.<sup>5</sup>

In compliance with the said demand, Diaz made a liquidation on January 18, 2011 and April 5, 2011 in the total amount of ₱110,987.00, thereby leaving a balance of ₱5,172,227.24.<sup>6</sup>

Meanwhile, on April 18, 2011 and September 2, 2011, Diaz incurred additional cash advances on the Intelligence Fund in the sum of ₱202,500.00. Again, he failed to liquidate the same amount within the prescribed period, prompting Lerio to send another Demand Letter dated June 9, 2011.<sup>7</sup> Thus, as of March 31, 2012, Diaz's cash advances amounted to ₱5,374,727.24.<sup>8</sup>

On August 6, 2012, Lerio filed an Affidavit before the Office of the Comptroller-Mindanao (OMB-Mindanao), accusing Diaz of violating Article 218 of the Revised Penal Code (RPC) for failing to liquidate his cash advances amounting to ₱5,374,727.24.<sup>9</sup> Attached to Lerio's Affidavit were 76 different documents, checks, receipts and other papers.<sup>10</sup> The case was docketed for preliminary investigation as OMB-M-C-13-0003, entitled *Oscar C. Lerio v. Cesar A. Diaz*.<sup>11</sup>

On January 30, 2013, the OMB-Mindanao released the Order dated January 29, 2013, directing Diaz to submit his counter-affidavit.<sup>12</sup>

On March 5, 2013, Diaz filed a Motion for Extension of Time to Submit Counter-Affidavit requesting for an extension of 10 days.<sup>13</sup>

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<sup>5</sup> Id. at 121.

<sup>6</sup> Id.

<sup>7</sup> Id. at 121-122.

<sup>8</sup> Id. at 122-123.

<sup>9</sup> Id. at 10.

<sup>10</sup> Id. at 10-16.

<sup>11</sup> Id. at 17.

<sup>12</sup> Id.

<sup>13</sup> Id.

On March 19, 2013, the OMB-Mindanao received Diaz's Counter-Affidavit, which included 10 Annexes consisting of Liquidation Reports, among others.<sup>14</sup> In his Counter-Affidavit, Diaz admitted obtaining the cash advances. However, he claimed that he submitted the liquidation reports for eight of his cash advances from the Intelligence Fund, amounting to ₱762,500.00.<sup>15</sup> Diaz further averred that he had liquidated all of his cash advances, but he incurred difficulties retrieving the said records from the Municipal Accountant's Office and the Municipal Treasurer's Office, considering that the records from January 2004 to September 2011 were no longer available in the said offices.<sup>16</sup>

### **Ruling of the Ombudsman**

In a Resolution<sup>17</sup> dated February 7, 2014, the OMB found probable cause to indict Diaz for violation of Article 218 of the RPC. The OMB found that all the elements of Article 218 were present, considering that while Diaz was the Municipal Mayor of Tagana-an, Surigao del Norte, he received the public funds and failed to account for the same within the specified periods required by law.<sup>18</sup>

The dispositive portion of the OMB ruling reads:

WHEREFORE, this Office finds probable cause to indict respondent for thirteen counts of violation of Article 218 of the [RPC]. Let the corresponding Information be filed with the Sandiganbayan.

SO ORDERED.<sup>19</sup>

Diaz filed a Motion for Reconsideration<sup>20</sup> dated November 5, 2014. Thereafter, he filed a Supplemental Motion for Reconsideration<sup>21</sup> dated November 25, 2014.

In an Order<sup>22</sup> dated December 8, 2014, the OMB denied Diaz's Motion for Reconsideration.

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<sup>14</sup> Id. at 17-18.

<sup>15</sup> Id. at 123.

<sup>16</sup> Id. at 124.

<sup>17</sup> Rendered by Graft Investigation and Prosecution Officer I Janice Joanne T. Torres-Arenas; id. at 121-128.

<sup>18</sup> Id. at 124.

<sup>19</sup> Id. at 127.

<sup>20</sup> Id. at 129-137.

<sup>21</sup> Id. at 138-145.

<sup>22</sup> Id. at 146-149.

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Later, on January 30, 2017, Diaz filed a “Motion to Quash the Information and/or Dismiss These Cases on Account of Gross Violation By the Office of the Ombudsman of Accused’[s] Right to Speedy Disposition of His Cases.”<sup>23</sup>

On February 22, 2017, the OMB filed its Comment/Opposition<sup>24</sup> to the Motion to Quash filed by Diaz.

### **Ruling of the Sandiganbayan**

On April 18, 2017, the Sandiganbayan issued the assailed Resolution,<sup>25</sup> granting Diaz’s Motion to Quash. The Sandiganbayan found that there was an inordinate delay in the conduct of the preliminary investigation against Diaz, which lasted for four (4) years, five (5) months, and ten (10) days.<sup>26</sup> The Sandiganbayan observed that there were lulls during the conduct of the preliminary investigation. Specifically, it took the OMB six (6) months and twenty-four (24) days to issue an Order directing Diaz to file his Counter-Affidavit;<sup>27</sup> one (1) year, six (6) months, and twenty-one (21) days (from the filing of Diaz’s Counter Affidavit) to sign and approve the Resolutions recommending the filing of the Information against Diaz;<sup>28</sup> one (1) year and three (3) months to resolve Diaz’s Motion for Reconsideration;<sup>29</sup> and eleven (11) months and eleven (11) days (from the denial of Diaz’s Motion for Reconsideration) to file the Information. The Sandiganbayan found the reasons for the said delays to be unjustified.<sup>30</sup>

Moreover, the Sandiganbayan noted that Diaz asserted his right to the speedy disposition of his case at the earliest opportunity, by filing a Motion to Quash immediately after the Informations were filed against him.<sup>31</sup>

Finally, the Sandiganbayan opined that the prejudice suffered by Diaz is “obvious[,]”<sup>32</sup> as “[t]he cases against Diaz has [sic] been pending for a considerable period.”<sup>33</sup> This prejudice was evident from the fact that Diaz suffered “dire circumstances consisting of difficulties in the preparation of his defense, owing the lapse of memories and probable dissipation of documentary evidence and witnesses.”<sup>34</sup> In addition, Diaz was “unable to secure the necessary clearances from government agencies, and endured

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<sup>23</sup> Id. at 77-96.

<sup>24</sup> Id. at 97-113.

<sup>25</sup> Id. at 58-70.

<sup>26</sup> Id. at 67.

<sup>27</sup> Id.

<sup>28</sup> Id. at 68.

<sup>29</sup> Id.

<sup>30</sup> Id.

<sup>31</sup> Id. at 69.

<sup>32</sup> Id.

<sup>33</sup> Id. at 69-70.

<sup>34</sup> Id. at 70.

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financial drain, restrained freedom of movement, public ridicule, embarrassment, anguish, sleepless nights, restless moments, and isolation from friends and other people.”<sup>35</sup>

The decretal portion of the assailed Sandiganbayan ruling reads:

**WHEREFORE**, in view of the violation of the constitutional right of accused Diaz to the speedy disposition of the cases against him, the instant cases are hereby **DISMISSED**.

The bond which the accused posted in the amount of Sixty-Six Thousand Pesos (Php 66,000.00) in Cash is hereby ordered released, subject to the liability of the bond, if there be any, as well as the usual accounting procedures.

The Hold Departure Order (HDO) dated January 20, 2017 is hereby recalled.

**SO ORDERED.**<sup>36</sup> (Emphases in the original)

Aggrieved, the OMB filed a Motion for Reconsideration, which the Sandiganbayan denied in its Resolution<sup>37</sup> dated July 3, 2017.

Dissatisfied with the ruling, the OMB filed the instant Petition for *Certiorari* under Rule 65 of the Revised Rules of Court.

### Issue

The main issue raised for the Court’s consideration rests on whether or not the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction in granting Diaz’s Motion to Quash.

The People of the Philippines, through the Office of the Special Prosecutor (OSP), decries the dismissal of the criminal cases filed against Diaz. The OSP claims that the Sandiganbayan acted with grave abuse of discretion amounting to lack or excess of jurisdiction when the latter arbitrarily rejected the fact that the period that lapsed in the preliminary investigation was necessitated by the demands of due process and was forced by the surrounding circumstances of the case. According to the OSP, the Sandiganbayan simply ventured into a mere mathematical computation of the period involved, and completely abandoned its task of conducting a balancing test. Instead, the Sandiganbayan arbitrarily set aside the doctrinal rule of considering the four-fold factors that should be assessed in

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<sup>35</sup> Id.

<sup>36</sup> Id.

<sup>37</sup> Id. at 73-76.



determining whether there was in fact a violation of the right to speedy disposition.

Moreover, the OSP avers that Diaz did not assert his right to speedy disposition, and that he failed to show any overt acts proving that he is not abandoning his right to the speedy disposition of his case at any time during the actual preliminary investigation.

The OSP further contends that there was no conclusive factual evidence presented to substantiate Diaz's purported claim of prejudice that he suffered during the alleged delay in the preliminary investigation.

On the other hand, Diaz counters that the period during which the COA conducted its fact-finding investigation should be included in counting the period of the delay.<sup>38</sup> He avers that the delay in resolving the case was in no way justified, which resulted in a violation of his right to the speedy disposition of his case.<sup>39</sup>

### **Ruling of the Court**

#### ***An Acquittal That Is Rendered with Grave Abuse of Discretion Amounting to Lack or Excess of Jurisdiction May Be Questioned Through a Special Civil Action for Certiorari under Rule 65 of the Rules of Court***

It must be noted at the outset that a judgment of acquittal may be assailed by the People in a petition for *certiorari* under Rule 65 of the Rules of Court without placing the accused in double jeopardy. However, in such case, the prosecution is burdened to establish that the court *a quo*, in this case, the Sandiganbayan, acted without jurisdiction or grave abuse of discretion amounting to excess or lack of jurisdiction or a denial of due process.<sup>40</sup> This doctrine was expounded in *People v. Sandiganbayan Fifth Division, et al.*,<sup>41</sup> where the Court, citing the case of *People v. Hon. Asis, et al.*,<sup>42</sup> further explained that:

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<sup>38</sup> Id. at 561.

<sup>39</sup> Id. at 563.

<sup>40</sup> *People v. Sandiganbayan Fifth Division, et al.*, 791 Phil. 37, 51-52 (2016), citing *People v. Judge Laguio, Jr.*, 547 Phil. 296, 311 (2007); *People v. Uy*, 508 Phil. 637, 649 (2005).

<sup>41</sup> 791 Phil. 37 (2016).

<sup>42</sup> 643 Phil. 462 (2010).



A petition for *certiorari* under Rule 65, not appeal, is the remedy to question a verdict of acquittal whether at the trial court or at the appellate level. In our jurisdiction, We adhere to the finality-of-acquittal doctrine, that is, a judgment of acquittal is final and unappealable. The rule, however, is not without exception. In several cases, the Court has entertained petitions for *certiorari* questioning the acquittal of the accused in, or the dismissals of, criminal cases. x x x.<sup>43</sup> (Citations omitted)

Likewise, in *Javier v. Gonzales*,<sup>44</sup> the Court stressed that “[d]ouble jeopardy is not triggered when the order of acquittal is void.”<sup>45</sup> “An acquittal rendered in grave abuse of discretion amounting to lack or excess of jurisdiction does not really ‘acquit’ and therefore does not terminate the case as there can be no double jeopardy based on a void indictment.”<sup>46</sup> Simply stated, a decision rendered with grave abuse of discretion amounts to lack of jurisdiction. In turn, this lack of jurisdiction prevents double jeopardy from attaching.<sup>47</sup>

Applying the foregoing pronouncements to the case at bar, the instant petition for *certiorari* is the correct remedy in seeking to annul the Resolutions of the Sandiganbayan.

With this, the Court shall now proceed to determine whether the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the criminal case filed against Diaz due to the Ombudsman’s violation of his right to the speedy disposition of his case.

### ***The Determination of Delay in the Proceedings Is Not Subject to a Mere Mathematical Reckoning***

No less than the 1987 Constitution guarantees to all persons accused of crimes the right to a speedy disposition of their case. Article III, Section 16 in no uncertain terms mandates that “[a]ll persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.”<sup>48</sup>

The term “speedy disposition” is a relative term and necessarily a flexible concept. Mere mathematical reckoning of the time involved would not suffice, as the realities of everyday life must be regarded in judicial proceedings which, after all, do not exist in a vacuum. As such, any alleged

<sup>43</sup> *People v. Sandiganbayan Fifth Division, et al.*, supra note 40, at 52.

<sup>44</sup> 803 Phil. 631 (2017).

<sup>45</sup> Id. at 647.

<sup>46</sup> Id. at 648, citing *Villareal v. People*, 680 Phil. 527 (2012).

<sup>47</sup> *Javier v. Gonzales*, id.

<sup>48</sup> 1987 CONSTITUTION, Article III, Section 16.

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delay in the disposition of the case should be considered in view of the entirety of the proceedings.<sup>49</sup>

Accordingly, in determining whether the right has been violated, the following factors may be considered and balanced, namely, (i) the length of delay; (ii) the reasons for the delay; (iii) the assertion or failure to assert such right by the accused; and (iv) the prejudice caused by the delay.<sup>50</sup>

Added to this, the Court, in the recent *en banc* case of *Cesar Matas Cagang v. Sandiganbayan, Fifth Division, Quezon City, Office of the Ombudsman, and People of the Philippines*,<sup>51</sup> laid down the following guidelines in determining whether the delay in the disposition of the case constitutes a violation of the accused's right to speedy disposition of cases, to wit:

(i) The right to speedy disposition of cases is different from the right to speedy trial;

(ii) A case shall be deemed initiated upon the filing of a formal complaint prior to the conduct of a preliminary investigation. The doctrine in *People v. Sandiganbayan* which states that the fact-finding investigation should not be deemed separate from the preliminary investigation for the purposes of determining whether there was a violation of the right to speedy disposition of cases, has been abandoned.

**Accordingly, the period taken for fact-finding investigations prior to the filing of the formal complaint shall no longer be included in the determination of whether there has been inordinate delay.**

Likewise, the OMB shall set reasonable periods for preliminary investigation, with due regard to the complexities and nuances of each case. Delays beyond the periods set by the OMB shall be taken against the prosecution;

(iii) Courts must first determine which party carries the burden of proof. If the case was resolved within the time periods contained in the law, Supreme Court resolutions, and circulars, then the burden falls on the defense to prove that the accused's right to speedy disposition was indeed violated. Specifically, the defense must show that the case is motivated by malice, or is politically motivated and attended by utter lack of evidence; and that it did not contribute to the delay.

Otherwise, if the case drags beyond the reasonable periods, and the accused invokes his right to speedy disposition, then the prosecution must justify the delay. **The prosecution must prove that it followed the prescribed procedure in the conduct of preliminary investigation and**

<sup>49</sup> *Sps. Uy v. Judge Adriano*, 536 Phil. 475, 497 (2006).

<sup>50</sup> *Dela Peña v. Sandiganbayan*, 412 Phil. 921, 929 (2001), citing *Alvizo v. Sandiganbayan*, 292-A Phil. 144, 154-155 (1993); *Dansal v. Judge Fernandez, Sr.*, 383 Phil. 897, 907 (2000); *Blanco v. Sandiganbayan*, 399 Phil. 674, 682 (2000).

<sup>51</sup> G.R. Nos. 206438 and 206458- G.R. Nos. 210141-42, July 31, 2018.



**in the prosecution of the case; the issues in the case were complex, and that the volume of evidence made the delay inevitable; and that the accused did not suffer any prejudice as a result of the delay;**

(iv) **“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.”** This rule holds true unless it is shown that the prosecution of the case was solely motivated by malice, or if the accused himself/herself waived his/her right to speedy disposition of cases or the right to speedy trial. 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; and

(v) **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. Failure to do so, constitutes a waiver of such right.<sup>52</sup> (Citation omitted and emphases Ours)

Applying the foregoing tenets to the case at bar, the Court finds that the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction in ordering the quashal of the Information against Diaz based on the purported violation of his right to speedy disposition.

***The Investigation Conducted by the OMB Proceeded at a Continuous and Steady Pace***

Article XI, Section 12<sup>53</sup> of the Constitution and Republic Act No. 6770, Section 13<sup>54</sup> underscore the need for the OMB to act promptly on all the complaints brought before his/her Office.<sup>55</sup> This duty, however, should not be performed at the expense of thoroughness and correctness.<sup>56</sup> It bears stressing that to administer justice with dispatch pertains to an orderly and expeditious process, and not mere speed.<sup>57</sup>

Likewise, “judicial 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

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<sup>52</sup> Id.

<sup>53</sup> Article XI, 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.

<sup>54</sup> 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 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.

<sup>55</sup> *Dansal v. Judge Fernandez, Sr.*, supra note 50, at 908-909.

<sup>56</sup> Id.

<sup>57</sup> *Olbes v. Hon. Judge Buemio, et al.*, supra note 1, 366 (2009).

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wrongdoings of government personnel, thus resulting in a steady stream of cases reaching the Office of the Ombudsman.”<sup>58</sup> Hence, “it cannot be definitely said how long is too long in a system where justice is supposed to be swift, but deliberate. It is consistent with delays and depends upon circumstances. It secures rights to the accused, but it does not preclude the rights of public justice.”<sup>59</sup> For sure, the right to speedy trial cannot be invoked where to sustain the same would result in a clear denial of due process to the prosecution. This right should not operate to deprive the State of its inherent prerogative to prosecute criminal cases.<sup>60</sup>

In the case at bar, the Sandiganbayan concluded that the OMB was guilty of violating the right of Diaz to the speedy disposition of his case, due to the purported delay in its conduct of the preliminary investigation, which lasted for four (4) years, five (5) months, and ten (10) days.<sup>61</sup> Also, the Sandiganbayan held that the OMB took a particularly long time to perform the following acts: (i) six (6) months and twenty-four (24) days before directing Diaz to file his Counter-Affidavit;<sup>62</sup> (ii) one (1) year, six (6) months and twenty-one (21) days before signing and approving the Resolutions recommending the filing of the Information against Diaz;<sup>63</sup> (iii) one (1) year and three (3) months before issuing the Resolution denying Diaz’s Motion for Reconsideration;<sup>64</sup> and (iv) eleven (11) months and eleven (11) days before filing the Information with the Sandiganbayan.<sup>65</sup>

### **The Court disagrees.**

It must be stressed that the determination of the length of delay is never mechanical.<sup>66</sup> Rather, the Court must consider the peculiar facts and circumstances surrounding the case. As the rule now stands, a case should not precipitately be dismissed simply because the case dragged beyond the reasonable periods. The prosecution must be given the chance to prove to the satisfaction of the Court that it followed the prescribed procedure in the prosecution of the case, the issues in the case were complex, the volume of evidence made the delay inevitable, and the accused did not suffer any prejudice as a result of the delay.<sup>67</sup> This, the prosecution sufficiently did.

<sup>58</sup> *Dansal v. Judge Fernandez, Sr.*, supra note 50, at 908-909.

<sup>59</sup> *Olbes v. Hon. Judge Buemio, et al.*, supra note 1.

<sup>60</sup> *Sps. Uy v. Judge Adriano*, supra note 49, at 503.

<sup>61</sup> *Rollo*, p. 67.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 68.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Cesar Matas Cagang v. Sandiganbayan, Fifth Division, Quezon City, Office of the Ombudsman, and People of the Philippines*, supra note 51.

<sup>67</sup> *Id.*

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The records show that the conduct of the preliminary investigation actually proceeded at a continuous and steady pace. Likewise, the OMB sufficiently explained the reasons behind the purported delay in the disposition of the case.

During the alleged lag of six (6) months and twenty-four (24) days from the filing of Lerio's Affidavit to the issuance of the Order directing Diaz to submit his Counter-Affidavit, the OMB's investigating prosecutor had to study the case and evaluate the charges. The OMB noted that Lerio's Affidavit was "undated, unverified, and did not charge any offense against Diaz."<sup>68</sup> Because of this, the investigating prosecutor had to scrutinize the attached 76 documents and make a determination on the proper course of action.<sup>69</sup>

Anent the one (1) year, six (6) months, and twenty-one (21) days of delay in the signing and approval of the Resolutions recommending the filing of the Informations against Diaz, the OMB explained that the said process had to undergo various triers of review within the Office of the OMB. Added to this, the proper dates of the commission of the offense sought to be charged were not readily ascertainable from Lerio's Affidavit or from any of the documents submitted by Diaz. According to the OMB, this was further complicated by the fact that during this time, they were already past the stage of clarificatory questioning.<sup>70</sup>

Likewise, following the filing of Lerio's Affidavit, the following incidents took place, the Deputy OMB-Mindanao submitted his Review Memorandum dated March 31, 2013 to the OMB, recommending the approval of the proposed Draft Resolution of GIPO Arenas and the proposed 13 Informations. The said Review Memorandum, Draft Resolution and the 13 Draft Informations were then endorsed to the OMB Quezon City through a letter dated June 25, 2014. Accordingly, the OMB signed and approved the correct Draft Resolution on October 10, 2014.<sup>71</sup>

It bears emphasis that the Resolution recommending the filing of criminal charges, passed from the hands of GIPO Arenas to the Deputy OMB-Mindanao, down to the OMB-Quezon City, back again to the Deputy OMB-Mindanao, and then to the OMB-Quezon City for finalization. These are the normal processes performed in the Office of the OMB. To the mind of the Court, this justifiably explains the delay of six (6) months and twenty-four (24) days for the issuance of the Order to file Counter-Affidavit, and the one (1) year, six (6) months, and twenty-one (21) days alleged delay from the filing of the Counter-Affidavit to the approval of the resolution of the case.

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<sup>68</sup> *Rollo*, p. 102.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* at 22-23.

<sup>71</sup> *Id.* at 19-20.

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Added to this, voluminous records had to be carefully considered, and there were overlapping cash advances drawn over a period of seven (7) to eight (8) years. These records were scrutinized and analyzed against Diaz's defense that he had liquidated the said accounts.

As to the delays in the resolution of Diaz's Motion for Reconsideration, the following timeline belies the existence of inordinate delay:

On November 5, 2014, the OMB-Mindanao received Diaz's Motion for reconsideration, where he insisted that the cash advances from January 2004 to November 2005 were already liquidated and that the liquidation papers are with the COA. Around 20 days thereafter, Diaz filed a Supplemental Motion for Reconsideration on November 27, 2014. The same Motion was resolved by GIPO Arenas in less than a month, in an Order dated December 8, 2014. Then, following the protocol within the OMB, the said Order was submitted to Deputy OMB-Mindanao, who issued his Review Memorandum a month thereafter, or on January 9, 2015, recommending the approval of the proposed Order dated December 8, 2014 to the OMB.<sup>72</sup>

Consistent with the OMB's internal processes, the said Review Memorandum, along with the Order dated December 8, 2014 and the previously prepared Draft Informations, were transmitted by the OMB-Mindanao to the OMB in Quezon City in a letter dated January 16, 2014 for the latter's perusal and action. During this period, however, the OMB-Quezon City noted several details that necessitated corrections to the Draft Informations. Thus, the OMB-Quezon City caused the amendment of the draft Informations, pertaining to Diaz's cash advances incurred from 2004 to 2006, considering that during the said period, Diaz was the Vice Mayor, and not the Mayor of Tagana-an, Surigao del Norte. As such, the Informations should be filed before the RTC.<sup>73</sup>

Also, the OMB noted errors in the dates of the commission of the offense as written in the Draft Informations. The dates in the Draft Informations reflected the dates of the Disbursement Vouchers. It must be noted that the date of the commission of the offense for violation of Article 218 of the RPC should be that following the two (2)-month period after the due date for the liquidation of the cash advances. Thus, this led to the redrafting of the Informations.<sup>74</sup>

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<sup>72</sup> Id. at 20-21.

<sup>73</sup> Id. at 21-22.

<sup>74</sup> Id. at 22; 25-26.

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Further, the OMB was likewise saddled with the dilemma of adding additional respondents based on Diaz's statements in his Motion for Reconsideration and Supplemental Motion for Reconsideration that he was allegedly allowed to incur subsequent cash advances even if his previous cash advances have not yet been liquidated or properly accounted for.<sup>75</sup>

Based on the foregoing, it becomes all too apparent that the alleged periods of delay considered by the Sandiganbayan were not actually "lulls" or periods of inactivity. Rather, during these periods, the OMB had to meticulously scrutinize the documents, review and study the case, make necessary corrections - all to ensure the proper resolution of the case. For sure, this cannot be characterized as an inordinate delay. At best, this shows that the OMB did not proceed with the case in a haphazard manner, but undertook a thorough scrutiny of the case, to ensure the existence of probable cause against Diaz.

It must be remembered that "courts should appraise a reasonable period 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."<sup>76</sup> Courts are called to consider the entire context of the case, from the amount of evidence to be weighed to the simplicity or complexity of the issues raised. This rule holds true unless it is shown that the prosecution of the case was solely motivated by malice, or if the accused himself/herself waived his/her right to speedy disposition of cases or the right to speedy trial.<sup>77</sup>

Equally important, the purported delay was in no way vexatious, capricious, and/or oppressive. There is no showing that the prosecution was solely motivated by malice in the prosecution of the case. In handling the case, the OMB did not harass Diaz, or treat him in an unfair or oppressive manner. Neither was it shown that the case was politically motivated. In fact, Diaz never adverted to anything of this sort.

***Diaz Failed to Show Any Prejudice  
Suffered from the Alleged Delay in  
the Prosecution of His Case***

In determining whether the right of the accused to a speedy disposition of his/her case was violated, it is likewise essential for the accused to show that he/she suffered prejudice due to the delay. This "prejudice" is assessed in light of the interests of the accused which the speedy disposition right is designed to protect, such as: (i) to prevent

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<sup>75</sup> Id. at 22.

<sup>76</sup> *Cesar Matas Cagang v. Sandiganbayan, Fifth Division, Quezon City, Office of the Ombudsman, and People of the Philippines*, supra note 51.

<sup>77</sup> Id.

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oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired.<sup>78</sup>

To begin with, the first criterion does not apply in the case at bar, as the respondent was never arrested or taken into custody, or otherwise deprived of his liberty in any manner. Thus, the only conceivable harm to Diaz are the anxiety brought by the investigation, and the potential prejudice to his ability to defend his case. Even then, the harm suffered by Diaz occasioned by the filing of the criminal cases against him is too minimal and insubstantial to tip the scales in his favor.

Suffice to say, not every claim of prejudice shall conveniently work in favor of the respondent. First, there must be a conclusive factual basis behind the purported claim of prejudice, as the Court cannot rely on pure speculation or guesswork. The respondent, who asserts to have suffered prejudice, must show actual, specific, and real injury to his rights.<sup>79</sup> Thus, a “mere reference to a general asseveration that their ‘life, liberty and property, not to mention reputation’ have been prejudiced is not enough.”<sup>80</sup>

Diaz’s claims that he “endured financial drain, restrained freedom of movement, public ridicule, embarrassment, anguish, sleepless nights, restless moments, and isolation from friends and other people,”<sup>81</sup> are vague assertions, and typical trepidations and problems attendant to every criminal prosecution. Concededly, anxiety typically accompanies a criminal charge. However, not every claim of anxiety affords the accused a ground to decry a violation of the rights to speedy disposition of cases and to speedy trial.<sup>82</sup> “The anxiety must be of such nature and degree that it becomes oppressive, unnecessary and notoriously disproportionate to the nature of the criminal charge.”<sup>83</sup>

Likewise, the alleged public ridicule, embarrassment, anguish, sleepless nights, restless moments and isolation do not amount to that degree that would justify the nullification of the appropriate and regular steps that must be taken to assure that while the innocent should go unpunished, those guilty must expiate for their offense. They pale in importance to the gravity of the charges and the paramount considerations of seeking justice.<sup>84</sup>

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<sup>78</sup> *The Ombudsman v. Jurado*, 583 Phil. 132, 148-149 (2008).

<sup>79</sup> *Sps. Uy v. Judge Adriano*, supra note 49, at 509.

<sup>80</sup> *Id.* at 489-490.

<sup>81</sup> *Rollo*, p. 70.

<sup>82</sup> Separate Concurring Opinion of Associate Justice Josue N. Bellosillo in *People v. Lacson*, 448 Phil. 317, 421-422 (2003).

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* at 408.

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Furthermore, a claim that the delay has caused an impairment to one's defense must be specific and not merely conjectural. "Vague assertions of faded memory will not suffice. Failure to claim that particular evidence had been lost or had disappeared defeats speedy trial claim."<sup>85</sup>

In the instant case, all that Diaz decried were general claims that he could no longer locate unnamed and unidentified witnesses and that he is having difficulty securing unspecified documents.<sup>86</sup> These shall not serve to deprive the State of its right to prosecute criminal offenses involving millions of pesos from the public coffers.

It must be remembered that in *Alvizo v. Sandiganbayan*,<sup>87</sup> the Court warned against purported claims of prejudice that are simply "conjectural and dubious invocations."<sup>88</sup> The claim of possible loss of evidence, or unavailability of witnesses, although prejudicial to the accused, must still be scrutinized, *viz.*:

We recognize the concern often invoked that undue delay in the disposition of cases may impair the ability of the accused to defend himself, the usual advertence being to the possible loss or unavailability of evidence for the accused. We do not apprehend that such a difficulty would arise here. x x x.

x x x x

Consequently, whatever apprehension petitioner may have over the availability of such documents for his defense is inevitably shared in equal measure by the prosecution for building its case against him. This case, parenthetically, is illustrative of the situation that what is beneficial speed or delay for one side could be harmful speed or delay for the other, and vice-versa. Accordingly, we are not convinced at this juncture that petitioner has been or shall be disadvantaged by the delay complained of or that such delay shall prove oppressive to him. The just albeit belated prosecution of a criminal offense by the State, which was enjoined by this very Court, should not be forestalled either by conjectural supplications of prejudice or by dubious invocations of constitutional rights.<sup>89</sup> (Citations omitted)

The Court is not unmindful of its ruling in *Sandiganbayan Fifth Division, et al.*,<sup>90</sup> *Commo. Torres (Ret.) v. Sandiganbayan, et al.*,<sup>91</sup> and *Inocentes v. People*,<sup>92</sup> where the Court affirmed the Motion to Quash the Information due to the violation of the accused's right to the speedy disposition of his case. In these cases, the argument that the accused was

<sup>85</sup> *Sps. Uy v. Judge Adriano*, supra note 49, at 509.

<sup>86</sup> *Rollo*, p. 567.

<sup>87</sup> 292-A Phil. 144 (1993).

<sup>88</sup> *Id.* at 156.

<sup>89</sup> *Id.*

<sup>90</sup> Supra note 40.

<sup>91</sup> 796 Phil. 856 (2016).

<sup>92</sup> 789 Phil. 318 (2016).

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prejudiced because of the difficulty in securing witnesses and evidence swayed the Court.

However, in *Sandiganbayan, Fifth Division*, the case dragged on for 15 years, in *Torres* for 18 years, and in *Inocentes* for 7 years. Added to this, the Court found in the cited cases that the delays were in fact unreasonable, oppressive, and vexatious, and that the reasons proffered behind the delay were unjustified.

It also bears noting that the records are bereft of any showing that there was a deliberate attempt on the part of the OMB to delay the case in order to gain some tactical advantage over the accused.

### ***The Assertion of the Right to Speedy Trial***

It must be remembered that the invocation of one's right to speedy disposition of cases must be timely raised. The accused must file the appropriate motion upon the lapse of the statutory or procedural periods. Failure to do so constitutes a waiver of such right.<sup>93</sup> Indeed, although the Sandiganbayan noted that Diaz raised this right immediately after the filing of the Information, there was no showing that he attempted to assert his right during the conduct of the preliminary investigation.

Although there may have been delay, Diaz has not shown that he asserted his rights during this period, choosing to wait until the Information was filed against him with the Sandiganbayan. In *Cagang*, this was considered against therein accused, who raised no objection before the OMB, where the inordinate delay was claimed to have occurred.

Indeed, Diaz, as the accused, has no obligation to bring himself to trial. However, his act of waiting for four (4) years while the preliminary investigation took place, passively accepting the delay without any objection, and then suddenly asserting his right to speedy disposition as soon as he received the OMB's adverse ruling, is certainly questionable.

In fine, the Courts are called to balance the duty of the State to effectively prosecute crimes alongside the Constitutional right of the accused to a speedy disposition of his/her case. Lest it be forgotten, "[a]s significant as the right of an accused to a speedy trial is the right of the State to prosecute people who violate its penal laws."<sup>94</sup> This means that the OMB is

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<sup>93</sup> *Cesar Matas Cagang v. Sandiganbayan, Fifth Division, Quezon City, Office of the Ombudsman, and People of the Philippines*, supra note 51.

<sup>94</sup> *Sps. Uy v. Judge Adriano*, supra note 49, at 503, citing *Dansal v. Judge Fernandez, Sr.*, supra note 50, at 902-903.

*Meyer*



saddled with the task of meticulously and diligently assessing each case, while working against time. The OMB should not be faulted if the delay in the proceedings is only attributable to the ordinary processes of justice.<sup>95</sup> This is why it is imperative to do away with a mechanical mathematical reckoning of time, and to delve deeper into the circumstances of each particular case. Otherwise, the precipitate dismissal of a case may enable the accused, who may be guilty, to go scot-free without having been tried, thereby infringing the societal interest in trying people accused of crimes by granting them immunization simply because of a legal blunder.<sup>96</sup>

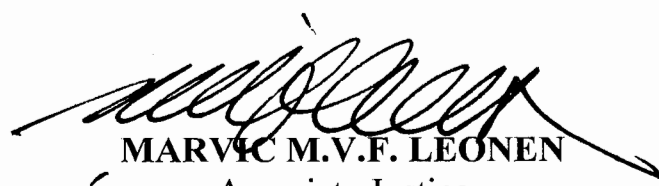
**WHEREFORE**, premises considered, the Petition is **GRANTED**. The Resolutions of the Sandiganbayan dated April 18, 2017, and July 3, 2017, which granted respondent Cesar Alsong Diaz's Motion to Quash are hereby **REVERSED and SET ASIDE**. The Sandiganbayan is forthwith **DIRECTED** to proceed with deliberate dispatch in the disposition of Criminal Case Nos. SB-17-CRM-0038 to 0048.

**SO ORDERED.**

  
**ANDRES B. REYES, JR.**  
Associate Justice

**WE CONCUR:**

(On official business)  
**DIOSDADO M. PERALTA**  
Associate Justice

  
**MARVIC M.V.F. LEONEN**  
Associate Justice  
Acting Chairperson

(On official business)  
**RAMON PAUL L. HERNANDO**  
Associate Justice

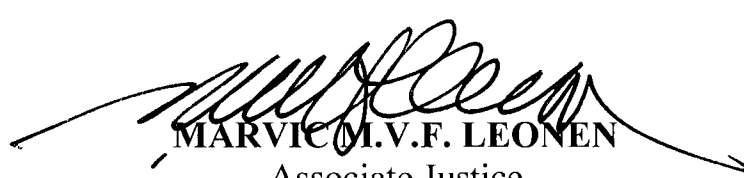
<sup>95</sup> *Roallos v. People*, 723 Phil. 655, 671 (2013).

<sup>96</sup> *Sps. Uy v. Judge Adriano*, supra note 49, at 493, citing *Barker v. Wingo*, 407 US 514, 33 L. Ed. 2d 101, 92 S. Ct. 2182 (1972); see also *Guiani v. Sandiganbayan*, 435 Phil. 467, 480 (2002), and *Sumbang, Jr. v. Gen. Court Martial Pro-Region 6, Iloilo City*, 391 Phil. 929, 934 (2000).

  
**HENRIJEAN PAUL B. INTING**  
 Associate Justice

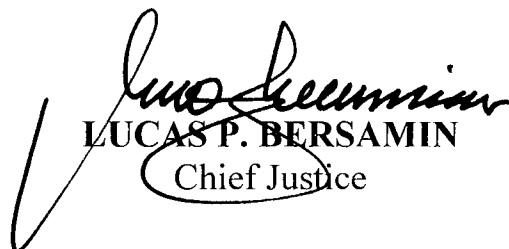
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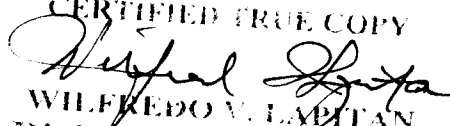
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MARVIC M.V.F. LEONEN**  
 Associate Justice  
 Acting Chairperson, Third Division

**C E R T I F I C A T I O N**

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, 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

CERTIFIED TRUE COPY  
  
**WILFREDO V. LAPIDAN**  
 Division Clerk of Court  
 Third Division

JUL 19 2019