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Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,

Petitioner,

- versus -

HONORABLE SANDIGANBAYAN (FIRST DIVISION), JULIUS CAESAR FALAR HERRERA, CESAR TOMAS MOZO LOPEZ, AMALIA REYES TIROL, ESTER CORAZON JAMISOLA GALBREATH, ALFONSO RAFOLS DAMALERIO II, MA. FE CAMACHO-LEJOS, JOSIL ESTUR TRABAJO,\* ASTER APALISOK\*\*-PIOLLO, BRIGIDO ZAPANTA IMBOY, and JANE CENSORIA DEL ROSARIO CAJES-YAP,

Respondents.

G.R. No. 240776

Present:

PERLAS-BERNABE, J.,  
Chairperson,  
REYES, A., JR.,  
HERNANDO,\*\*  
INTING, and  
ZALAMEDA,\*\*\*\* JJ.

Promulgated:

20 NOV 2019

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DECISION

PERLAS-BERNABE, J.:

\* "Trabaho" in some parts of the rollo.

\*\* "Aplisok" in some parts of the rollo.

\*\*\* On leave.

\*\*\*\* Designated Additional Member per Special Order No. 2727 dated October 25, 2019.

Assailed in this petition for *certiorari*<sup>1</sup> are the Resolutions dated March 16, 2018,<sup>2</sup> April 17, 2018,<sup>3</sup> and June 4, 2018<sup>4</sup> of the Sandiganbayan (SB) in Crim. Case No. SB-17-CRM-2200 which dismissed the criminal case against respondents Julius Caesar Falar Herrera (Herrera), Cesar Tomas Mozo Lopez (Lopez), Amalia Reyes Tirol (Tirol), Ester Corazon Jamisola Galbreath (Galbreath), Alfonso Rafols Damalerio II (Damalerio II), Ma. Fe Camacho-Lejos (Camacho-Lejos), Josil Estur Trabajo (Trabajo), Aster Apalisok-Piollo (Apalisok-Piollo), Brigido Zapanta Imboy (Imboy), and Jane Censoria Del Rosario Cajés-Yap (Cajés-Yap; collectively, respondents) for violation of their right to speedy disposition of cases.

### The Facts

The instant case stemmed from a complaint<sup>5</sup> filed on November 6, 2014 by the Field Investigation Office (FIO) of the Office of the Ombudsman (OMB) for violation of Section 3 (e) and (g)<sup>6</sup> of Republic Act No. (RA) 3019,<sup>7</sup> as well as for Gross Neglect of Duty, Inefficiency, and Incompetence in the Performance of Official Duty and Conduct Prejudicial to the Best Interest of the Service, under Section 46, Rule 10 of the Revised Rules on Administrative Cases in the Civil Service, against twenty-five (25) public officials of the Province of Bohol,<sup>8</sup> including herein respondents.<sup>9</sup> The complaint was filed in connection with the alleged irregularities in the procurement of one-unit hydraulic excavator with breaker in 2006 and various heavy equipment in 2009, in which the opening and negotiation fees of the Letter of Credit (LC) for the said procurement in the amount of ₱274,024.32 were charged to the Land Bank Account of the Province of Bohol pursuant to Sangguniang Panlalawigan Resolution No. 2009-226. The complaint alleged that the payment of such fees is prohibited under Section

<sup>1</sup> *Rollo*, pp. 9-51.

<sup>2</sup> *Id.* at 60-70. Penned by Associate Justice Efren N. De La Cruz with Associate Justices Geraldine Faith A. Econg and Edgardo M. Caldoná, concurring.

<sup>3</sup> *Id.* at 72-81.

<sup>4</sup> *Id.* at 83-86.

<sup>5</sup> Dated October 14, 2014. However only two (2) pages are attached to the *rollo* (see *id.* at 113-114).

<sup>6</sup> Section 3. *Corrupt practices of public officers.* — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

x x x x

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

x x x x

<sup>7</sup> Entitled "ANTI-GRAFT AND CORRUPT PRACTICES ACT," approved on August 17, 1960.

<sup>8</sup> See *rollo*, pp. 14-15.

<sup>9</sup> Respondents were charged in the following capacities: Herrera as Vice-Governor; and Lopez, Amalia Reyes Tirol, Ester Corazon Jamisola Galbreath, Alfonso Rafols Damalerio II, Ma. Fe Camacho-Lejos, Josil Estur Trabajo, Aster Apalisok-Piollo, Brigido Zapanta Imboy, and Jane Censoria Del Rosario Cajés-Yap as Sangguniang Panlalawigan Members. See *id.* at 14.

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42.5<sup>10</sup> of the Implementing Rules and Regulations-Part A of RA 9184<sup>11</sup> and Memorandum Order No. 213, Series of 2006<sup>12</sup> issued by the Office of the President.<sup>13</sup>

On December 11, 2014, the OMB issued an Order<sup>14</sup> directing respondents *a quo* to submit their counter-affidavits. Complying thereto, they filed their respective counter-affidavits on February 16, 18, and 20, 2015.<sup>15</sup>

In a Resolution<sup>16</sup> approved on December 6, 2016, the OMB found probable cause to indict respondents for violation of Section 3 (e) of RA 3019, but dismissed the complaint as against the other public officials.<sup>17</sup> Aggrieved, respondents separately moved for reconsideration, but was denied in an Order<sup>18</sup> dated March 7, 2017.<sup>19</sup> Accordingly, the OMB filed the Information<sup>20</sup> against respondents before the SB on December 1, 2017 docketed as Crim. Case No. SB-17-CRM-2200.

Thereafter, the criminal case was set for arraignment and pre-trial on January 26, 2018.<sup>21</sup> However, Cajes-Yap moved for postponement of the pre-trial on the ground that she just filed a Motion to Dismiss/Quash Information<sup>22</sup> on January 26, 2018 for violation of her right to speedy disposition of cases and speedy trial. She pointed out in her motion to dismiss that the investigation took more or less six (6) years before the OMB issued the resolution on the complaint on December 6, 2016 and filed the Information on December 1, 2017.<sup>23</sup>

Meanwhile, on January 31, 2018, Tirol, Galbreath, Imboy, Camacho-Lejos, and Apalisok-Piollo also filed a Motion to Dismiss<sup>24</sup> essentially

<sup>10</sup> Section 42. Contract Implementation and Termination

x x x x

42.5. Procuring entities may issue a letter of credit in favor of a local or foreign suppliers; Provided, that, no payment on the letter of credit shall be made until delivery and acceptance of the goods as certified to by the procuring entity in accordance with the delivery schedule provided for in the contract; Provided further, that, the cost for the opening of letter of credit shall be for the account of the local or foreign supplier and to be so stated in the bidding documents.

<sup>11</sup> Entitled "AN ACT PROVIDING FOR THE MODERNIZATION, STANDARDIZATION AND REGULATION OF THE PROCUREMENT ACTIVITIES OF THE GOVERNMENT AND FOR OTHER PURPOSES," approved on January 10, 2003.

<sup>12</sup> Entitled "APPROVING AMENDMENTS TO SECTIONS 42.5, 54.2 (B) (D), AND 61.1 OF THE IMPLEMENTING RULES AND REGULATIONS PART A (IRR-A) OF REPUBLIC ACT NO. 9184" (May 8, 2006).

<sup>13</sup> See *rollo*, pp. 14-15.

<sup>14</sup> Only page 4 is attached to the *rollo* (see *id.* at 115). See also *id.* at 15.

<sup>15</sup> See *id.* at 15-16 and 35-36.

<sup>16</sup> Dated November 24, 2015. Only page 25 is attached to the *rollo* (see *id.* at 116).

<sup>17</sup> See *id.* at 16-17.

<sup>18</sup> Not attached to the *rollo*.

<sup>19</sup> See *rollo*, p. 17.

<sup>20</sup> Not attached to the *rollo*, but see *id.* at 17.

<sup>21</sup> See *id.* at 18.

<sup>22</sup> Dated January 24, 2018. *Id.* at 87-101.

<sup>23</sup> See *id.* at 93.

<sup>24</sup> Dated January 29, 2018. *Id.* at 102-112.

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echoing Cajes-Yap's argument as regards the inordinate delay in the investigation and filing of the Information. They added that the fact-finding investigation should not be deemed separate from the preliminary investigation.<sup>25</sup>

Responding to the two (2) motions to dismiss, the prosecution argued in its Consolidated Comment/Opposition,<sup>26</sup> dated February 5, 2018, that only three (3) years and twenty-five (25) days had elapsed from the filing of the complaint for preliminary investigation on November 6, 2014 up to the filing of the Information on December 1, 2017. Hence, there was no oppressive delay. If there was any, it claimed that the delay is reasonable as the case involves twenty-five (25) respondents *a quo*, and the evaluation and study of the entire case records will take some time to complete.<sup>27</sup>

Subsequently, Lopez and Damalerio II,<sup>28</sup> later joined by Trabajo,<sup>29</sup> as well as Herrera,<sup>30</sup> filed their respective motions to dismiss. Together, they echoed the discussions in the earlier-filed Motions to Dismiss, adding that the OMB's inordinate delay in the filing of the Information against them deprived the SB of its jurisdiction to take cognizance of the same.<sup>31</sup> For its part, the OMB adopted its February 5, 2018 comment/opposition in response to these motions.<sup>32</sup>

### The SB Ruling

In a Resolution<sup>33</sup> dated March 16, 2018, the SB found the motions filed by Cajes-Yap, *et al.* partly meritorious, finding that the OMB indeed committed inordinate delay in the conduct of the preliminary investigation. Particularly, it pointed out that, contrary to the prosecution's claim, records show that the fact-finding investigation began in 2012 and thus, it took the OMB almost six (6) years to complete the fact-finding and preliminary investigation before it filed the Information on December 1, 2017.<sup>34</sup> Moreover, it noted that the prosecution did not provide any plausible

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<sup>25</sup> See *id.* at 104-106.

<sup>26</sup> *Id.* at 117-126.

<sup>27</sup> See *id.* at 121-124.

<sup>28</sup> See Lopez and Damalerio's Motion to Dismiss dated February 19, 2018; *id.* at 127-143.

<sup>29</sup> *Id.* at 18.

<sup>30</sup> See Herrera's Motion to Dismiss dated February 22, 2018; *id.* at 147-151.

<sup>31</sup> See *id.* at 130-142 and 148-150.

<sup>32</sup> See *id.* at 19.

<sup>33</sup> *Id.* at 224-234.

<sup>34</sup> *Id.* at 66. The Sandiganbayan listed the following documents which it used as basis to conclude that the investigation began earlier than 2014 as claimed by the OMB: (1) Letter dated March 16, 2012 from the Philippine National Bank, which the Ombudsman received on April 12, 2012, in response to the latter's request for certified true copies of (a) the LC involving the purchase of the Volvo Hydraulic Excavator and (b) a Certification under oath stating whether or not the amount of ₱9,723,998.15 was debited from the account of the provincial government of Bohol for the opening of the LC; and (2) Letter, dated May 9, 2012, of the CMI, which the Ombudsman received on May 15, 2012, in response to the subpoena issued by the Ombudsman General Investigation Bureau, with enclosed photocopies of documents in relation to the procurement of the excavator, *i.e.*, bidding documents, invoices, purchase requests, notice of award, among others.

explanation for the delay. Thus, it dismissed the case as against them for violation of their constitutional right to a speedy disposition of their case.<sup>35</sup>

Subsequently, in a Resolution<sup>36</sup> dated April 17, 2018, the SB granted the motions filed by Lopez and Damalerio II, as adopted by Trabajo and Herrera, and accordingly, dismissed the case as against them on the same grounds.<sup>37</sup>

In view of the foregoing, the OMB filed separate motions for reconsideration which were, however, denied by the SB in a Resolution<sup>38</sup> dated June 4, 2018, holding that the right to speedy disposition of cases covers not only the period within which the preliminary investigation was conducted, but also all stages to which the accused was subjected, even including the fact-finding investigations conducted prior to the preliminary investigation proper.<sup>39</sup>

Hence, the present petition.

### **The Issue Before the Court**

The essential issue for the Court's resolution is whether or not the SB committed grave abuse of discretion in quashing the Information, and accordingly, dismissing the case against respondents on the ground of inordinate delay.

### **The Court's Ruling**

The petition is meritorious.

There is grave abuse of discretion when: (1) an act is done contrary to the Constitution, law, or jurisprudence; or (2) it is executed whimsically, capriciously, or arbitrarily out of malice, ill-will, or personal bias.<sup>40</sup> As will be shown below, the SB was guilty of grave abuse of discretion when it dismissed the criminal cases against respondents on the ground of inordinate delay.

Section 16, Article III of the Constitution guarantees every person's right to speedy disposition of his cases before all judicial, quasi-judicial, or

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<sup>35</sup> See *id.* at 228-234.

<sup>36</sup> *Id.* at 236-245.

<sup>37</sup> *Id.* at 244.

<sup>38</sup> *Id.* at 247-250.

<sup>39</sup> *Id.* at 249.

<sup>40</sup> See *Information Technology Foundation of the Philippines v. Commission on Elections*, 464 Phil. 173, 190 (2004); citations omitted.

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administrative bodies. This constitutional right is not limited to the accused in criminal proceedings but extends to all parties in all cases, be it civil or administrative in nature, as well as in all proceedings, either judicial or quasi-judicial.<sup>41</sup> In this regard, Section 12,<sup>42</sup> Article XI of the Constitution and Section 13<sup>43</sup> of RA 6770<sup>44</sup> specifically commands the OMB and his or her deputies to act promptly on all complaints brought before his/her Office.

To be sure, neither the Constitution nor RA 6770 provides for a specific period within which to measure promptness, and corollary thereto, determine whether the right to speedy disposition of cases is violated. The administration of justice, however, does not deal primarily with speed, and delay, when reasonable under the circumstances, does not by itself violate said right.<sup>45</sup>

Accordingly, it has been held that a mere mathematical reckoning of the time involved is not sufficient to rule that there was inordinate delay as it requires a consideration of a number of factors, including a consideration of the conduct of both the prosecution and the defendant.<sup>46</sup> **These factors include: the length of delay, the reason for delay, the defendant's assertion or non-assertion of his or her right, and the prejudice to the defendant as a result of the delay.**<sup>47</sup>

In the fairly recent case of *Cagang v. Sandiganbayan (Cagang)*,<sup>48</sup> the Court clarified that the period taken for fact-finding investigations prior to the filing of the formal complaint shall not be included in the determination of whether there has been inordinate delay considering that fact-finding investigations are not yet adversarial proceedings against the accused. Thus, it is settled that **a case is deemed initiated upon the filing of a formal complaint prior to the conduct of a preliminary investigation, to wit:**

<sup>41</sup> See *Revuelta v. People*, G.R. No. 237039, June 10, 2019, citing *Inocentes v. People*, 789 Phil. 318, 333-334 (2016).

<sup>42</sup> 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. (Emphasis supplied)

<sup>43</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. (Emphasis supplied)

<sup>44</sup> Entitled "AN ACT PROVIDING FOR THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN, AND FOR OTHER PURPOSES," approved on November 17, 1989.

<sup>45</sup> See *The Ombudsman v. Jurado*, 583 Phil. 132, 145 (2008), where the Court held: "Just like the constitutional guarantee of 'speedy trial,' 'speedy disposition of cases' is a flexible concept. It is consistent with delays and depends upon the circumstances."

<sup>46</sup> See *Cagang v. Sandiganbayan*, G.R. Nos. 206438, 206458, and 210141-42, July 31, 2018.

<sup>47</sup> See *Revuelta v. People*, supra note 41; *Cagang v. Sandiganbayan*, supra note 46, citing *Barker v. Wingo*, 407 U.S. 514 (1972) in *Martin v. Ver*, 208 Phil. 658, 664 (1983); *Magante v. Sandiganbayan*, G.R. Nos. 230950-51, July 23, 2018; and *The Ombudsman v. Jurado*, supra note 45, at 145, citing *Dela Peña v. Sandiganbayan*, 412 Phil. 921, 929 (2001).

<sup>48</sup> Supra note 46.

**When an anonymous complaint is filed or the Office of the Ombudsman conducts a *motu proprio* fact-finding investigation, the proceedings are not yet adversarial. Even if the accused is invited to attend these investigations, this period cannot be counted since these are merely preparatory to the filing of a formal complaint. At this point, the Office of the Ombudsman will not yet determine if there is probable cause to charge the accused.**

This period for case build-up cannot likewise be used by the Office of the Ombudsman as unbridled license to delay proceedings. If its investigation takes too long, it can result in the extinction of criminal liability through the prescription of the offense.

**Considering that fact-finding investigations are not yet adversarial proceedings against the accused, the period of investigation will not be counted in the determination of whether the right to speedy disposition of cases was violated.** Thus, this Court now holds that for the purpose of determining whether inordinate delay exists, a case is deemed to have commenced from the filing of the formal complaint and the subsequent conduct of the preliminary investigation. In *People v. Sandiganbayan, Fifth Division* [723 Phil. 444 (2013)], the ruling that fact-finding investigations are included in the period for determination of inordinate delay is abandoned.<sup>49</sup> (Emphases supplied)

Applying the foregoing, the Court finds that respondents' right to the speedy disposition of cases has not been violated.

Preliminarily, it is undisputed that the complaint against respondents was filed with the OMB on November 6, 2014 and it was only thereafter that they were required to respond to the charges and participate in the investigation. Prior thereto, respondents were not subjected to any adversarial proceeding even when the fact-finding investigation began as early as 2012. As records disclose, the period prior to the filing of the complaint entailed only the determination of facts and the personalities involved, including the gathering of evidence, but without involving any of the respondents in said investigation proceedings. Thus, consistent with *Cagang*, the reckoning point in this case when delay started to run was on November 6, 2014, when the case was **deemed initiated upon the filing of a formal complaint prior to the conduct of a preliminary investigation.**

Proceeding from said reckoning point, the Court finds no inordinate delay in the conduct and termination of the preliminary investigation by the OMB. Records show that upon the filing of the complaint by the FIO on **November 6, 2014**, the OMB immediately directed the twenty-five (25) respondents *a quo* to file their respective counter-affidavits. Said respondents *a quo*, however, complied with the Order only on February 16, 18, and 20, 2015. Thereafter, the OMB issued the probable cause Resolution from which respondents subsequently sought reconsideration. The OMB, however, denied said motions in the Order dated March 7, 2017 and on

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<sup>49</sup> Id.

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**December 1, 2017**, it filed the Information. Thus, only a period of three (3) years and twenty-five (25) days has elapsed from the filing of the complaint up to the filing of the Information before the SB. During this period, the OMB had to investigate and provide all twenty-five (25) respondents *a quo* with sufficient opportunity to study the evidence against them and respond to the charges. It also had to review numerous records and documents relative to the charges involving several purchase transactions of heavy equipment in two (2) separate years, *i.e.*, 2006 and 2009, and arrive at the probable cause resolution. All the while, the preliminary investigation of the criminal case ran parallel to the adjudication of the counterpart administrative case. Given these circumstances, the Court is hard-pressed to consider the period as vexatious, capricious, or oppressive to respondents to warrant the dismissal of the case on the ground of inordinate delay.

Moreover, it is significant to note that respondents have not asserted their right to speedy disposition of cases during said period. Indeed, records show that respondents were fully aware of the conduct of the preliminary investigation through the filing of their counter-affidavits, as well as their subsequent motions for reconsideration from the OMB's probable cause Resolution. Despite the pendency of the case before the OMB since 2014, however, respondents only invoked said right after the Information was already filed with the SB on December 1, 2017. As the Court held in *Cagang*, the right to speedy disposition of cases, same as the right to speedy trial, must be timely raised through an appropriate motion, failing in which, he or she is deemed to have acquiesced to the delay and thus, has waived these rights,<sup>50</sup> as in this case.

All told, there was no inordinate delay committed by the OMB that transgressed respondents' right to a speedy disposition of their case. Accordingly, the Court finds that the SB gravely abused its discretion in granting respondents' motion to dismiss/quash the Information and in dismissing the case against them.

**WHEREFORE**, the petition for *certiorari* is **GRANTED**. The Resolutions dated March 16, 2018, April 17, 2018, and June 4, 2018 of the Sandiganbayan (SB) in Crim. Case No. SB-17-CRM-2200 are hereby **ANNULLED** and **SET ASIDE** for having been issued with grave abuse of discretion. Accordingly, Crim. Case No. SB-17-CRM-2200 is **REMANDED** to the SB which is hereby **DIRECTED** to resolve the same with due and deliberate dispatch.

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<sup>50</sup> See *People v. Sandiganbayan*, G.R. Nos. 233557-67, June 19, 2019; *Doroteo v. Sandiganbayan*, G.R. Nos. 232765-67, January 16, 2019; and *Magante v. Sandiganbayan*, supra note 47, citing *Dela Peña v. Sandiganbayan*, supra note 47, at 932.



**SO ORDERED.**

*M.P. Bernabe*  
**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice

**WE CONCUR:**

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

On leave  
**RAMON PAUL L. HERNANDO**  
Associate Justice

*Inting*  
**HENRI JEAN PAUL B. INTING**  
Associate Justice

*Zalameda*  
**RODIL V. ZALAMEDA**  
Associate Justice

**ATTESTATION**

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.

*M.P. Bernabe*  
**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice  
Chairperson, Second Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division 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.

*Diosdado M. Peralta*  
**DIOSDADO M. PERALTA**  
Chief Justice