Republic of the Philippines
Supreme Court
Manila

**SECOND DIVISION**

**VICENTE J. CAMPA, JR. AND PERFECTO M. PASCUA,**

*Petitioners,*

-versus-

**HON. EUGENE C. PARAS, PRESIDING JUDGE, RTC, BR. 58, MAKATI CITY AND PEOPLE OF THE PHILIPPINES,**

*Respondents.*

**G.R. No. 250504**

Members:

**PERLAS-BERNABE, J.,** *Chairperson,*
**LAZARO-JAVIER,**
**LOPEZ, M.,**
**ROSARIO, and**
**LOPEZ, J.,*** ***JJ.***

Promulgated:

JUL 12 2021

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# DECISION

**LAZARO-JAVIER, *J.*:**

## The Case

This petition for *certiorari*[1] under Rule 65 seeks to reverse the following dispositions of the Regional Trial Court (RTC) - Branch 58, Makati City in ***People v. Emerito P. Manalo, et al.,***[2] ***People v. Vicente J. Campa, Jr. et al.,***[3] and ***People v. Perfecto M. Pascua, et al.:***[4]

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* Designated as additional member per S.O. No. 2822 dated April 7, 2021.
[1] *Rollo*, pp. 3-35.
[2] Criminal Case Nos. 19-00774, 19-00775, 19-00778, 19-00780, 19-00781, 19-00782, 19-00784, 19-00787, 19-00789, 19-00796, 19-00797, 19-00798, 19-00799, 19-00801, 19-00803, 19-00804, 19-00806, 19-00807, and 19-00810.
[3] Criminal Case Nos. 19-00773, 19-00777, 19-00783, 19-00786, 19-00793, 19-00801, 19-00802, 19-00805, 19-00807, 19-00808, and 19-00809;
[4] Criminal Case Nos. 19-00790, 19-00794, and 19-00808.

1. **Order**[5] dated August 13, 2019, denying Vicente J. Campa, Jr.'s (Vicente) motion to dismiss[6] as well as Perfecto M. Pascua's (Pascua) manifestation with motion to adopt[7] his motion for reconsideration before the Department of Justice (DOJ) against its finding of probable cause;

2. **Order**[8] dated October 1, 2019, denying petitioners' motion for reconsideration and setting their arraignment;

3. **Order**[9] dated October 7, 2019, reiterating the Order dated October 1, 2019 and resetting petitioners' arraignment.

## Antecedents

On September 12, 2007, the Bangko Sentral ng Pilipinas (BSP) filed a complaint before the DOJ against the officers of BankWise, Inc., including petitioners and five (5) others,[10] for violation of Monetary Board Resolution No. 1460[11] in relation to Section 3, Republic Act No. (RA) 7653.[12] In the complaint, the BSP charged petitioners, et al. with issuing unfunded manager's checks and failing to present documents to support the bank's disbursements in acquiring assets.[13] After due proceedings, the case was deemed submitted for resolution on August 29, 2008.[14]

More than ten (10) years thereafter, under Resolution[15] dated February 8, 2019, the DOJ found probable cause to hold petitioners liable for the offense charged. Accordingly, it filed before the RTC, Makati City eleven (11) Informations against Campa and five (5) against Pascua for violation of Monetary Board Resolution No. 1460 in relation to Section 3, RA 7653. These cases were raffled to RTC-Branch 58, Makati City, presided by Hon. Eugene C. Paras.[16]

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[5] *Rollo*, pp. 35-37.
[6] *Id.* at 70-78.
[7] *Id.* at 79-80.
[8] *Id.* at 38-39.
[9] *Id.* at 40-41.
[10] Namely Lazaro LL. Madara, Javier A. Quintos, Emerito P. Manalo, Roberto A. Buhain, and Leonides Val P. Ortega.
[11] Directing the bank to: 1) immediately stop issuing unfunded manager's checks; 2) strictly comply with the provisions Section 102 of R.A. No. 7653 with regard to overdraft balances in its demand deposit account with BSP and 3) present pertinent documents on disbursements on third party assets for transfer under the name of BankWise totaling more than P163 Million, a substantial portion of which were lodged under the miscellaneous assets account; *rollo*, p. 45.
[12] THE NEW CENTRAL BANK ACT.
SEC. 3. Responsibility and Primary Objective. The Bangko Sentral shall provide policy directions in the areas of money, banking, and credit. It shall have supervision over the operations of banks and exercise such regulatory powers as provided in this Act and other pertinent laws over the operations of finance companies and non-bank financial institutions performing quasi-banking functions, hereafter referred to as quasibanks, and institutions performing similar functions.
The primary objective of the Bangko Sentral is to maintain price stability conducive to a balanced and sustainable growth of the economy. It shall also promote and maintain monetary stability and the convertibility of the peso.
[13] *Rollo*, p. 7.
[14] *Id.*
[15] *Id.* at 42-69.
[16] *Id.* at 7.

By *Manifestation with Motion to Adopt* dated May 28, 2019[17] and *Entry of Appearance with Motion to Dismiss* dated June 18, 2019,[18] petitioners sought the dismissal of the cases before the trial court on ground of inordinate delay. According to them, the unreasonable length of the investigation before the DOJ violated their right to a speedy disposition of their cases as enshrined under Section 16, Article III of the 1987 Constitution.

**The Ruling of the Regional Trial Court**

By Order[19] dated August 13, 2019, the trial court denied the motions, *viz.*:

> WHEREFORE, premises considered, the Court DENIES accused Emerito P. Manalo's Motion to Quash/Motion to Dismiss, accused Perfecto M. Pascua's Manifestation With Motion To Adopt, and accused Vicente M. (sic) and accused Vicente J. Campa, Jr.'s Motion To Dismiss for lack of merit.
>
> SO ORDERED.

It held that the delay of ten (10) years and five (5) months was neither vexatious, capricious, nor oppressive. It may be attributed to the complexity of the case which involved voluminous documents. Too, the appointment of nine (9) Secretaries of Justice from the filing of BSP's complaint on September 3, 2007 affected the conduct of the investigation.[20]

The trial court denied reconsideration and scheduled petitioners' arraignment through Orders[21] dated October 1 and October 7, 2019.

**The Present Petition**

On *certiorari* before this Court, petitioners essentially argue that the trial court acted in grave abuse of discretion amounting to lack or excess of jurisdiction when it ruled that there was no inordinate delay in the conduct of the DOJ investigation.[22] Applying the balancing test as refined in the Court's ruling in ***Cagang v. Sandiganbayan***,[23] the criminal charges against them should have been dismissed.[24] Meantime, petitioners seek injunctive relief to enjoin further proceedings.

In their *Comment*[25] dated March 22, 2021, respondents, through the Office of the Solicitor General (OSG) riposte:

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[17] *Id.* at 79-80.
[18] *Id.* at 70-78.
[19] Penned by Hon. Eugene C. Paras.
[20] *Rollo*, p. 11.
[21] *Id.* at 9.
[22] *Id.* at 10-27.
[23] G.R. No. 206438, 206458 & 210141-42, July 31, 2018.
[24] *Rollo*, p. 11.
[25] *Id.* at 195-231.

**For one.** The petition should be dismissed outright as petitioners availed of the wrong remedy and violated the doctrine of hierarchy of courts. The proper recourse from the denial of a motion to quash is to proceed to trial.[26] But even assuming that *certiorari* is available, it should have been filed with the Court of Appeals, not here.[27]

**For another.** The trial court did not act with grave abuse of discretion in issuing the assailed Orders. For although it took the DOJ more than ten (10) years to resolve the preliminary investigation, it was not guilty of inordinate delay.

"Speedy disposition" is relative and there is no hard-and-fast mathematical rule in appreciating a timeframe; cases must be resolved based on their attendant facts and circumstances. Here, (1) the time spent by the DOJ to resolve the investigation was reasonable and justified considering the nature of the violation, the sheer number of transactions involved, the degree of difficulty of the issues, and the voluminous pleadings and documents on record;[28] (2) petitioners waived their right to a speedy disposition of their cases and are deemed to have accepted the delay since they never filed any pleading before the DOJ invoking such right;[29] (3) there was no evidence to show that petitioners were prejudiced by the delay;[30] and (4) the right of the State to prosecute must prevail over petitioners' right to a speedy disposition of their cases; as the banking business is imbued with public interest, the State has the paramount duty to guarantee that the financial interests of those dealing with banking institutions are duly protected.[31]

## Threshold Issues

Did the delay in the preliminary investigation before the DOJ violate petitioners' constitutional right to a speedy disposition of their cases?

Did the trial court act in grave abuse of discretion when it denied petitioners' motion to dismiss and/or quash?

## Ruling

We grant the petition.

### *Petition for certiorari is the proper remedy; the case falls within the exceptions to the rule on hierarchy of courts*

At the outset, the OSG seeks the outright dismissal of the petition based

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[26] *Id.* at 207-208.
[27] *Id.* at 208-209.
[28] *Id.* at 212-218.
[29] *Id.* at. 218-221.
[30] *Id.* at 221-222.
[31] *Id.* at 222-227.

on purported procedural infirmities. It asserts that a petition for *certiorari* is not the proper mode of assailing interlocutory orders of the trial court and that petitioners' direct resort to the Court violated the rule on hierarchy of courts

We disagree.

**First.** Contrary to the OSG's assertion, the proper mode of challenging an interlocutory order, such as a denial of a motion to quash, is, indeed, through a petition for *certiorari* under Rule 65 of the Rules of Civil Procedure. ***Cruz y Digma v. People***[32] instructs:

> The rulings of the trial court... **are interlocutory in nature and may not be the subject of a separate appeal or review on *certiorari***, but may be assigned as errors and reviewed in the appeal properly taken from the decision rendered by the trial court on the merits of the case. When the court has jurisdiction over the case and person of the accused, any error in the application of the law and the appreciation of evidence committed by a court after it has acquired jurisdiction over a case, may be corrected only by appeal.
>
> x x x x
>
> **Admittedly, the general rule that the extraordinary writ of *certiorari* is not available to challenge interlocutory orders of the trial court may be subject to exceptions. When the assailed interlocutory orders are patently erroneous or issued with grave abuse of discretion, the remedy of *certiorari* lies.** (Emphases and underscoring supplied; citations omitted)

Verily, *certiorari* is available against an interlocutory order where it is shown that the same is patently erroneous or was issued in grave abuse of discretion.[33] As will be discussed below, the Court finds that the present case fits into these exceptions and that *certiorari* under Rule 65 is the proper remedy.

**Another.** The doctrine of hierarchy of courts is not absolute. ***Gios-Samar v. DOTC***[34] elucidates:

> x x x As a matter of policy[,] **such a direct recourse to this Court should not be allowed.** The Supreme Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition. It cannot and should not be burdened with the task of dealing with causes in the first instance. Its original jurisdiction to issue the so-called extraordinary writs should be exercised only where absolutely necessary or where serious and important reasons exist therefor[.] x x x **Where the issuance of an extraordinary writ is also within the competence of the Court of Appeals or a Regional Trial Court, it is in either of these courts that the specific action for the**

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[32] 363 Phil. 156, 160-161 (1999).
[33] *Tadeo v. People*, 360 Phil. 914, 919 (1998); *Choa v. Choa*, 441 Phil. 175, 182-183 (2002).
[34] G.R. No. 217158, March 12, 2019.

**writ's procurement must be presented. This is and should continue to be the policy in this regard, a policy that courts and lawyers must strictly observe.**

x x x x

**Exceptions to the doctrine of hierarchy of courts**

Aside from the special civil actions over which it has original Jurisdiction, **the Court, through the years, has allowed litigants to seek direct relief from it upon allegation of "serious and important reasons."** The Diocese of Bacolod v. Commission on Elections (Diocese) summarized these circumstances in this wise:

1. when there are genuine issues of constitutionality that must be addressed at the most immediate time;

2. when the issues involved are of transcendental importance;

3. cases of first impression;

4. the constitutional issues raised are better decided by the Court;

5. **exigency in certain situations**;

6. the filed petition reviews the act of a constitutional organ;

7. **when petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression; [and]**

8. the petition includes questions that are "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy.

Here, petitioners' direct recourse to the Court falls within exceptions 5 and 7, thus: the exigency of the resolution of their cases is the very issue they have brought to fore in the present petition; and they had no other plain, speedy, and adequate remedy in the ordinary course of law as the only alternative to filing the petition was to proceed to trial and prolong further the disposition of their cases. Indeed, it would be counterproductive, nay, illogical for petitioners to go through a full-blown trial and wait for an adverse ruling before they may be allowed to assert their right to speedy disposition of their cases.

***There was inordinate delay in the conduct of the preliminary investigation***

Foremost, Article III, Section 16 of the 1987 Constitution guarantees the right to speedy disposition of cases, *viz.*:

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

The right to speedy disposition of cases may be invoked against all judicial, quasi-judicial or administrative bodies, in civil, criminal, or administrative cases before them; inordinate delay in the resolution of cases warrant their dismissal. Delay is determined through the examination of the facts and circumstances surrounding each case, not through mere mathematical reckoning.[35] To be sure, 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.[36]

To aid the courts in determining whether there is ***inordinate delay***, our jurisdiction has adopted the **Balancing Test** first introduced in ***Barker v. Wingo***.[37] The Balancing Test involves the assessment of four (4) criteria: ***first***, the length of delay; ***second***, the reason for delay; ***third***, the defendant's assertion or non-assertion of his or her right; and ***fourth***, the prejudice to the defendant as a result of the delay. But in the more recent case of ***Cagang v. Sandiganbayan***,[38] the Court refined the guidelines insofar as preliminary investigations are concerned, thus:

> This Court now clarifies the mode of analysis in situations where the right to speedy disposition of cases or the right to speedy trial is invoked.
>
> *First*, the right to speedy disposition of cases is different from the right to speedy trial. While the rationale for both rights is the same, the right to speedy trial may only be invoked in criminal prosecutions against courts of law. The right to speedy disposition of cases, however, may be invoked before any tribunal, whether judicial or quasi-judicial. What is important is that the accused may already be prejudiced by the proceeding for the right to speedy disposition of cases to be invoked.
>
> *Second*, a case is deemed initiated upon the filing of a formal complaint prior to a conduct of a preliminary investigation. This Court acknowledges, however, that the Ombudsman should set reasonable periods for preliminary investigation, with due regard to the complexities and nuances of each case. Delays beyond this period will be taken against the prosecution. The period taken for fact-finding investigations prior to the filing of the formal complaint shall not be included in the determination of whether there has been inordinate delay.

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[35] *Cagang v. Sandiganbayan*, supra note 23.
[36] *Id.*
[37] 407 U.S. 514 (1972).
[38] *Cagang v. Sandiganbayan*, supra note 23.

> ***Third*, courts must first determine which party carries the burden of proof. If the right is invoked within the given time periods contained in current Supreme Court resolutions and circulars,[171] and the time periods that will be promulgated by the Office of the Ombudsman, the defense has the burden of proving that the right was justifiably invoked. If the delay occurs beyond the given time period and the right is invoked, the prosecution has the burden of justifying the delay.**
>
> If the defense has the burden of proof, it must prove *first*, whether the case is motivated by malice or clearly only politically motivated and is attended by utter lack of evidence, and *second*, that the defense did not contribute to the delay.
>
> **Once the burden of proof shifts to the prosecution, the prosecution must prove *first*, that it followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; *second*, that the complexity of the issues and the volume of evidence made the delay inevitable; and *third*, that no prejudice was suffered by the accused as a result of the delay.**
>
> *Fourth*, determination of the length of delay is never mechanical. Courts must consider the entire context of the case, from the amount of evidence to be weighed to the simplicity or complexity of the issues raised.
>
> An exception to this rule is if there is an allegation that the prosecution of the case was solely motivated by malice, such as when the case is politically motivated or when there is continued prosecution despite utter lack of evidence. Malicious intent may be gauged from the behavior of the prosecution throughout the proceedings. If malicious prosecution is properly alleged and substantially proven, the case would automatically be dismissed without need of further analysis of the delay.
>
> Another exception would be the waiver of the accused to the right to speedy disposition of cases or the right to speedy trial. If it can be proven that the accused acquiesced to the delay, the constitutional right can no longer be invoked.
>
> **In all cases of dismissals due to inordinate delay, the causes of the delays must be properly laid out and discussed by the relevant court.**
>
> ***Fifth*, the right to speedy disposition of cases or the right to speedy trial must be timely raised. The respondent or the accused must file the appropriate motion upon the lapse of the statutory or procedural periods. Otherwise, they are deemed to have waived their right to speedy disposition of cases.** (emphases added)

We now apply the Balancing Test, as refined in ***Cagang*** to the present case:

### a. First Test: The Length of Delay

Sections 3 and 4, Rule 112 of the Rules of Criminal Procedure set the

period for conducting preliminary investigations, *viz.*:

> Section 3. Procedure. — The preliminary investigation shall be conducted in the following manner:
>
> (a) The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish probable cause. They shall be in such number of copies as there are respondents, plus two (2) copies for the official file. The affidavits shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath, or, in their absence or unavailability, before a notary public, each of who must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.
>
> **(b) Within ten (10) days after the filing of the complaint,** the investigating officer shall either dismiss it if he finds no ground to continue with the investigation, or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents.
>
> The respondent shall have the right to examine the evidence submitted by the complainant which he may not have been furnished and to copy them at his expense. If the evidence is voluminous, the complainant may be required to specify those which he intends to present against the respondent, and these shall be made available for examination or copying by the respondent at his expense.
>
> Objects as evidence need not be furnished a party but shall be made available for examination, copying, or photographing at the expense of the requesting party.
>
> **(c) Within ten (10) days from receipt of the subpoena** with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of this section, with copies thereof furnished by him to the complainant. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit.
>
> (d) If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the ten (10) day period, the investigating officer shall resolve the complaint based on the evidence presented by the complainant.
>
> (e) The investigating officer may set a hearing if there are facts and issues to be clarified from a party or a witness. The parties can be present at the hearing but without the right to examine or cross-examine. They may, however, submit to the investigating officer questions which may be asked to the party or witness concerned.
>
> **The hearing shall be held within ten (10) days from submission** of the counter-affidavits and other documents or from the expiration of the period for their submission. It shall be **terminated within five (5) days**.

> **(f) Within ten (10) days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial.** (3a)
>
> Section 4. Resolution of investigating prosecutor and its review. — If the investigating prosecutor finds cause to hold the respondent for trial, he shall prepare the resolution and information. x x x
>
> **Within five (5) days from his resolution**, he shall forward the record of the case to the provincial or city prosecutor or chief state prosecutor, or to the Ombudsman or his deputy in cases of offenses cognizable by the Sandiganbayan in the exercise of its original jurisdiction. **They shall act on the resolution within ten (10) days from their receipt thereof** and shall immediately inform the parties of such action. (Emphases added)

The Manual for Prosecutors, on the other hand, adds:

> SEC. 58. Period to resolve cases under preliminary investigation. - The following periods shall be observed in the resolution of cases under preliminary investigation:
>
> x x x x
>
> b.) The **preliminary investigation of all other complaints involving crimes cognizable by the Regional Trial Courts shall be terminated and resolved within sixty (60) days from the date of assignment.**
>
> x x x x
>
> In all instances, the total period (from the date of assignment to the time of actual resolution) that may be consumed in the conduct of the formal preliminary investigation **shall not exceed the periods prescribed therein.**

Hence, it is apparent that the Rules on Criminal Procedure and the Manual for Prosecutors are consistent in giving investigating officers and the prosecuting agency a maximum of sixty (60) days from date of assignment to conclude preliminary investigations.

Here, it is undisputed that the DOJ took about **ten (10) years and five (5) months** from the filing of the complaint on September 12, 2007 before it issued Resolution dated February 8, 2019 finding probable cause to indict petitioners for violation of Monetary Board Resolution No. 1460[39] in relation to Section 3, RA 7653.

In ***Javier and Tumamao v. Sandiganbayan***,[40] the Court considered the **five (5) year period** from the filing of the complaint until the Ombudsman's

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[39] Directing the bank to: 1) immediately stop issuing unfunded manager's checks; 2) strictly comply with the provisions Section 102 of R.A. No. 7653 with regard to overdraft balances in its demand deposit account with BSP and 3) present pertinent documents on disbursements on third party assets for transfer under the name of BankWise totaling more than P163 Million, a substantial portion of which were lodged under the miscellaneous assets account; *rollo*, p. 45.

[40] G.R. No. 237997, June 10, 2020.

approval of the resolution finding probable cause against therein petitioner as unreasonably long, *viz.*:

> Thus, for purposes of computing the length of delay in the present case, the Cagang guidelines will be followed, and the case against Javier and Tumamao would be deemed initiated only upon the filing of the complaint, or on April 27, 2011. Javier and Tumamao were given the opportunity to be heard, and were therefore able to file their counter-affidavits on November 15, 2011 and November 22, 2011, respectively. After these dates, it appears from the record that the case had become dormant until December 5, 2016 when the Ombudsman approved the resolution finding probable cause against Javier and Tumamao.
>
> There is thus **an unexplained delay of five years from the time the counter-affidavits were filed to the termination of the preliminary investigation through the approval of the Ombudsman's resolution finding probable cause.**
>
> x x x x
>
> Thus, as the preliminary investigation was terminated beyond the 10-day period provided in the Revised Rules of Criminal Procedure, the burden of proof thus shifted towards the prosecution to prove that the delay was not unreasonable. In any event, **the period of delay in this case — five years — was extraordinarily long that there could conceivably be no procedural rule that would justify said delay.** Undoubtedly, therefore, the burden was on the prosecution to provide justifications for the delay. (Emphasis supplied; citations omitted)

In ***Remulla v. Sandiganbayan (Second Division)***,[41] it took the investigation a total of **nine (9) years** before an information was filed against petitioner therein. Meanwhile, in ***Catamco v. Sandiganbayan Sixth Division***,[42] preliminary investigation took **almost five (5) years**. In all these cases with periods shorter than the present controversy, the Court ruled that there was an inordinate delay.

**b. Second Test: The reason for delay**

To stress, the DOJ investigation took about **ten (10) years and five (5) months** to conclude. Clearly, this is way beyond the periods for investigation set forth under Section 3, Rule 112 of the Rules of Criminal Procedure and the Manual for Prosecutors. In accordance with ***Cagang***, it is the DOJ which has the burden of proving that the delay in the resolution of petitioners' cases was not unreasonable

In its comment, the OSG admits to the delay but attributes it to the changes in leadership in the DOJ during the course of the investigation, the complexity of the case, as well as the DOJ's workload.

But these circumstances do not excuse the delay here of about **ten (10)**

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[41] 808 Phil. 739, 743 (2017).
[42] G.R. Nos. 243560-62 & 243261-63, July 28, 2020.

**years and five (5) months**.

As petitioners have aptly noted, their case was already submitted for resolution before the DOJ as early as August 29, 2008. Since then, the DOJ no longer conducted any further investigation nor collected additional evidence; the prosecution already had all pieces of evidence in its possession. Surely, the processing of these documents could not have taken ten (10) years to conclude. Conspicuously, the prosecution itself brought to fore that when the case got reassigned to Assistant State Prosecutor Vilma D. Lopez-Sarmiento on January 23, 2019, **she concluded the investigation in less than a month** and finalized the DOJ Resolution on February 8, 2019. If the investigation truly took less than a month for the resolution to be finalized, then the rest of the delay, about ten (10) years and four (4) months, was unaccounted for, unexplained, and certainly inordinate.

Although the Court in ***Cagang*** recognized institutional delay as a reality that must be addressed and should not be taken against the State, the Court, nonetheless, qualified that such institutional delay must be taken in the proper context, *viz.*:

> Institutional delay, in the proper context, should not be taken against the State... The prosecution should not be prejudiced by private counsels' failure to protect the interests of their clients or the accused's lack of interest in the prosecution of their case.
>
> For the court to appreciate a violation of the right to speedy disposition of cases, **delay must not be attributable to the defense. Certain unreasonable actions by the accused will be taken against them.** This includes delaying tactics like failing to appear despite summons, filing needless motions against interlocutory actions, or requesting unnecessary postponements that will prevent courts or tribunals to properly adjudicate the case. When proven, this may constitute a waiver of the right to speedy trial or the right to speedy disposition of cases.

Here, petitioners neither caused nor contributed to the delay -- no dilatory tactics were employed, nor needless motions, filed. In fact, the delay appears to be imputable purely on the prosecution. Hence, institutional delay could not be validly raised and considered in favor of the prosecution. For in this context, there is no one else to blame but itself.

In sum, the Court concludes that the prosecution's unjustified delay in the preliminary investigation violated petitioners' right to speedy disposition of their cases.

**c. Third Test: Assertion of petitioners' right**

The OSG, nevertheless, counters that petitioners had effectively waived their right to a speedy disposition of their cases for failure to assert said right during the pendency of the DOJ's ten (10)-year investigation.

We are not convinced.

***Javier and Tumamao*** elucidates that it is not petitioners' duty to follow up on the status of their cases, *viz.*:

> The reason why the Court requires the accused to assert his right in a timely manner is to **prevent construing the accused's acts, or to be more apt, his inaction, as acquiescence to the delay.** x x x
>
> x x x x
>
> Here, the Court holds that Javier and Tumamao's acts, or their inaction, did not amount to acquiescence. **While it is true that the records are bereft of any indication that Javier and/or Tumamao "followed-up" on the resolution of their case, the same could not be construed to mean that they acquiesced to the delay of five years.**
>
> For one, the case of Coscolluela v. Sandiganbayan (Coscolluela) provides that **respondents in preliminary investigation proceedings do not have any duty to follow up on the prosecution of their case.** The Court categorically stated:
>
> > **Being the respondents in the preliminary investigation proceedings, it was not the petitioners' duty to follow up on the prosecution of their case.** Conversely, it was the Office of the Ombudsman 's responsibility to expedite the same within the bounds of reasonable timeliness in view of its mandate to promptly act on all complaints lodged before it.
>
> The Court in Cagang did not explicitly abandon Coscolluela — considering that it explicitly abandoned People v. Sandiganbayan in the said case — and even cited it in one of its discussions. Thus, the pronouncements in Coscolluela remain good law, and may still be considered in determining whether the right to speedy disposition of cases was properly invoked.
>
> x x x **[R]espondents like Javier and Tumamao have no legitimate avenues to assert their fundamental right to speedy disposition of cases at the preliminary investigation level. It would be unreasonable to hold against them — and treat it as acquiescenee — the fact that they never followed-up or asserted their right in a motion duly filed.**
>
> **Lastly, the Court holds that Javier and Tumamao timely asserted their rights because they filed the Motion to Quash at the earliest opportunity. Before they were even arraigned, they already sought permission from the Sandiganbayan to file the Motion to Quash to finally be able to assert their right to speedy disposition of cases. To the mind of the Court, this shows that Javier and Tumamao did not sleep on their rights, and were ready to assert the same given the opportunity. Certainly, this could not be construed as acquiescence to the delay.** (Emphases and underscoring supplied; citations omitted)

Even then, petitioners had actually timely asserted their right to speedy disposition of their cases before the trial court. As borne in the records, the DOJ issued its Resolution finding probable cause on February 8, 2019. Thereafter, petitioners timely assailed said resolution through a *Manifestation with Motion to Adopt*[43] dated May 28, 2019 and *Entry of Appearance with Motion to Dismiss*[44] dated June 18, 2019. And when the trial court denied their motions, petitioners did not take much time in assailing the Orders of denial through the present Petition for *Certiorari* dated December 9, 2019. To reiterate, they did not use any dilatory tactic nor contribute to the delay.

Clearly, the OSG's assertion that petitioners have acquiesced to the delay is absolutely devoid of basis.

**d. Fourth Test: Prejudice as a result of the delay**

***Corpuz v. Sandiganbayan***[45] guides the Court on how to assess the prejudice caused by the delay, thus:

> 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 added)

Here, petitioners were unduly prejudiced by the ten (10)-year delay because access to records and contact to witnesses could prove to be too difficult to effectively defend themselves in trial. More, they were never informed or updated on the status of the investigation, depriving them of any opportunity to adequately prepare for any impending trial, mentally, physically, and even financially – especially considering their advanced age. In fact, petitioners mentioned that the delay made them believe that the proceedings had been terminated due to the sheer length of time that they were left hanging. Verily, without having the opportunity to prepare, they were left fully vulnerable, with neither a shield nor a sword in hand to defend a blow and parry an attack.

In ***Magante v. Sandiganbayan***,[46] the Court noted that prejudice from delay is most serious when a defendant is rendered unable to adequately prepare his case, as here. There is also prejudice when defense witnesses could no longer accurately recall events in the distant past.

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[43] *Rollo*, pp. 79-80.
[44] *Id.* at 70-78.
[45] 484 Phil. 899, 918 (2004).
[46] 836 Phil. 1108, 1125 (2018), citing *Corpuz v. Sandiganbayan*, 484 Phil. 899 (2004).

In fine, the Court agrees with petitioners that the DOJ was guilty of inordinate delay in issuing its Resolution dated February 8, 2019 only about ten (10) years and five (5) months from the filing of the complaint.

***The trial court acted in grave abuse of discretion when it denied petitioners' motion to dismiss and/or quash***

Grave abuse of discretion is the capricious or whimsical exercise of judgment equivalent to lack or excess of jurisdiction. It must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.[47]

Here, petitioners sufficiently established that the trial court acted in grave abuse of discretion in denying their motions to dismiss and/or quash. Indeed, procedural rules are clear on the periods for resolving cases and jurisprudence is rich with analogous situations on which the trial court could have based its rulings. As it was, however, the trial court denied petitioners' motions without properly determining whether there was inordinate delay in accordance with ***Cagang***. Had the trial court applied the balancing test and guidelines in ***Cagang***, it would have discovered for itself that inordinate delay had indeed attended the DOJ investigation and that petitioners' right to speedy disposition of their cases had been violated by reason thereof. Thus, a reversal of the assailed rulings is in order.

**ACCORDINGLY**, the petition for *certiorari* is **GRANTED**. The Orders dated August 13, 2019, October 1, 2019 and October 7, 2019 of the Regional Trial Court - Branch 58, Makati City in ***People v. Emerito P. Manalo, et al.*** (Criminal Case Nos. 19-00774, 19-00775, 19-00778, 19-00780, 19-00781, 19-00782, 19-00784, 19-00787, 19-00789, 19-00796, 19-00797, 19-00798, 19-00799, 19-00801, 19-00803, 19-00804, 19-00806, 19-00807, and 19-00810.), ***People v. Vicente J. Campa, Jr. et al.***, (Criminal Case Nos. 19-00773, 19-00777, 19-00783, 19-00786, 19-00793, 19-00801, 19-00802, 19-00805, 19-00807, 19-00808, and 19-00809), and ***People v. Perfecto M. Pascua*, et al.** (Criminal Case Nos. 19-00790, 19-00794, and 19-00808.) are **NULLIFIED**. The charges against **VICENTE J. CAMPA, JR.** and **PERFECTO M. PASCUA** are **DISMISSED** on ground of inordinate delay.

**SO ORDERED.**

**AMY C. LAZARO-JAVIER**
*Associate Justice*

[47] *Yu v. Judge Reyes-Carpio*, 667 Phil. 474, 481-482 (2011).

**WE CONCUR:**

**ESTELA M. PERLAS-BERNABE**
*Chairperson*

**MARIO V. LOPEZ**
*Associate Justice*

**RICARDO R. ROSARIO**
*Associate Justice*

**JHOSEP Y. LOPEZ**
*Associate Justice*

## ATTESTATION

I attest that the conclusion 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.

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

## 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.

**ALEXANDER G. GESMUNDO**
*Chief Justice*