



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

SECOND DIVISION

PEOPLE OF THE PHILIPPINES
Petitioner,

G.R. No. 239878


- versus -

Present:

THE HONORABLE
SANDIGANBAYAN (FIFTH
DIVISION), ALFONSO
SERVANA CASURRA,
LEONARDO LUIB EDERA, JR.,
JOCELYN ELEAZAR
MONTEROS, MARIA SEPARA
GEOTINA, ARMANDO MAPA
ELUMBA, CARLO REYNALDO
FAROLAN LOZADA, JR., and
ROSEMARIE V. PALACIO
Respondents.

PERLAS-BERNABE, S.A.J.,
Chairperson,
HERNANDO,
ZALAMEDA,
ROSARIO, and
MARQUEZ, JJ.

Promulgated:

FEB 28 2022 

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DECISION

HERNANDO, J.:

This petition for *certiorari*¹ assails the November 27, 2017 Resolution² and April 18, 2018 Resolution³ of the Sandiganbayan in Criminal Case No. SB-17-CRM-1669 for being issued with grave abuse of discretion amounting to lack or excess of jurisdiction. The Resolutions granted the motion to quash information/dismiss the case⁴ and motion (A) to quash/hold in abeyance the

¹ *Rollo*, pp. 9-48.

² *Id.* at 50-64. Penned by Associate Justice Maria Theresa V. Mendoza-Arcega, and concurred in by Associate Justices Rafael R. Lagos and Lorifel L. Pahimna.

³ *Id.* at 66-70. Penned by Associate Justice Maria Theresa V. Mendoza-Arcega, and concurred in by Associate Justices Rafael R. Lagos and Mary Ann S. Corpus-Mañalac.

⁴ *Id.* at 317-332.

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release of the warrant of arrest; and (B) to defer arraignment and other proceedings⁵ filed by respondent Jocelyn Eleazar Monteros (Monteros), and the omnibus motion to quash information and to defer arraignment⁶ filed by respondents Alfonso Servana Casurra (Casurra), Leonardo Luib Edera, Jr. (Edera), Maria Separa Geotina (Geotina), and Armando Mapa Elumba (Elumba), as adopted by respondent Carlo Reynaldo F. Lozada, Jr. (Lozada), resulting to the dismissal of the criminal case for violation of Section 3(e) of Republic Act No. (RA) 3019,⁷ otherwise known as the “Anti-Graft and Corrupt Practices Act,” against them.

The Factual Antecedents:

This case arose from a complaint⁸ filed by Task Force Abono, Field Investigation Office (Task Force) of the Office of the Ombudsman (OMB) against respondents local government officials of Surigao City: Casurra is the city mayor, Edera is the city treasurer, Monteros is the city accountant, Geotina is the city engineer and a member of the Bids and Awards Committee (BAC), Elumba is the city general services officer and a BAC member, and Lozada is the city legal officer and a BAC member.⁹ Respondent Rosemarie V. Palacio (Palacio) is a private individual who is the proprietress of Rosa “Mia” Trading.¹⁰

The task force alleged that in early 2004, the Department of Budget and Management Office issued a special allotment order amounting to ₱723,000,000.00 for the implementation of the Farm Inputs and Farm Implements Program of the Department of Agriculture.¹¹ Out of the amount, the City Government of Surigao, Surigao del Norte received ₱5,000,000.00.¹²

Thus, the city, through respondents, entered into a contract with Palacio and Rosa “Mia” Trading for the purchase of 3,332 kilograms of *Elements 15-15-30+T.E. Foliar Fertilizer* for ₱1,500 per kilogram, or a total amount of 4,998,000.00.¹³ This was allegedly done without the requisite public bidding under the procurement law.¹⁴ The city paid Rosa “Mia” Trading in two tranches.¹⁵

⁵ Id. at 333-335.

⁶ Records (vol. I), pp. 445-456.

⁷ Republic Act No. 3019, Anti-Graft and Corrupt Practices Act (1960). Approved: August 17, 1960.

⁸ *Rollo*, pp. 76-98.

⁹ Id. at 76.

¹⁰ Id.

¹¹ Id. at 51.

¹² Id.

¹³ Id. at 52.

¹⁴ Id.

¹⁵ Id.

Subsequently, the Commission on Audit (COA) post-audited the transaction. It was discovered that there is a variance between the cost of fertilizers procured and the cost of fertilizers locally canvassed, resulting to an overpricing.¹⁶

As a result, the COA issued on June 14, 2006 a Notice of Disallowance (NOD), which was subsequently amended on March 19, 2007.¹⁷

Thereafter, on July 4, 2011, Task Force Abono filed the Complaint against respondents for violation of Section 3(e) and (g) of RA 3019, Sections 10, 18, and 21 of RA 9184,¹⁸ otherwise known as the “Government Procurement Reform Act,” and its Implementing Rules and Regulations, as well as administrative charges.¹⁹

The OMB issued a resolution dated October 5, 2016 finding probable cause for the filing of an Information for violation of Section 3(e) of RA 3019.²⁰ This was approved by the Ombudsman on March 22, 2017.²¹

On September 11, 2017, an Information dated May 2, 2017 was filed before the Sandiganbayan charging respondents with violation of Section 3(e) of RA 3019.²²

¹⁶ Id. at 52, 82-85.

¹⁷ Id. at 52.

¹⁸ Entitled “An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and for Other Purposes” [GOVERNMENT PROCUREMENT REFORM ACT] (2003). Approved: January 10, 2003.

¹⁹ *Rollo*, p. 52, 76-77.

²⁰ Id. at 52. Records (vol. I), pp. 6-29.

²¹ Id. Id.

²² Id. Id. at 1-3. The Information reads:

On 3 May 2004, or sometime prior or subsequent thereto, in the Province of Isabela [sic], Philippines and within the jurisdiction of this Honorable Court, accused ALFONSO SERVANA CASURRA, LEONARDO LUIB EDERA, JR., JOCELYN ELEAZAR MONTEROS, MARIA SEPARA GEOTINA, ARMANDO MAPA ELUMBA, CARLO REYNALDO FAROLAN LOZADA, JR., high ranking public officers, being then the City Mayor, City Treasurer, City Accountant, City Engineer, City General Services Officer[,] and City Legal Officer, respectively, of the City of Surigao, Surigao del Norte, while in the performance of their official functions and taking advantage of their official positions, with evident bad faith, manifest partiality or gross inexcusable negligence, in conspiracy with ROSEMARIE V. PALACIO, Proprietress of Rosa “Mia” Trading, did then and there willfully, unlawfully, and criminally give unwarranted benefits, advantage, and preference to Rosa “Mia” Trading by entering into a contract or transaction in behalf of the government with Rosa “Mia” Trading for the purchase of 3,332 kilos of Elements 15-15-30+T.E.Foliar Fertilizer, in the absence of a public bidding in the procurement process, and causing the payment thereof in the amount of *One Thousand Five Hundred pesos* (P1,500.00) per kilo or a total of *Four Million Nine Hundred Ninety-eight Thousand pesos* (P4,998,000.00), when other commercial foliar fertilizers, with equal or higher micro nutrient content than Elements 15-15-30+T.E.Foliar Fertilizer, were readily available at the time of procurement for only One Hundred Fifty pesos (P150.00), resulting to an overprice amounting to *Four Million Four Hundred Ninety Five Thousand and Five Hundred pesos* (P4,495,500.00), *more or less*, and, which defects accused knew fully well, were in violation of Republic Act No. 9184 (The Government Procurement Reform Act) and other pertinent existing rules and regulations, to the unwarranted benefit and advantage of Rosa “Mia” Trading and undue injury to the government in the total amount of P4,495,500.00, *more or less*.

CONTRARY TO LAW.

Then on September 22, 2017, respondent Monteros filed a motion to quash information/dismiss the case and a motion (A) to quash/hold in abeyance the release of the warrant of arrest; and (B) to defer arraignment and other proceedings. Monteros claimed that her right to speedy disposition of cases was violated because of the length of time that had passed from the COA investigation in 2006 to the filing of the Information before the Sandiganbayan in 2017.²³ There was inordinate delay of 11 years and three months on the part of the OMB.²⁴ This delay, according to Monteros, divested the OMB of the authority to file the case against her; the instant Information therefore is void, and the anti-graft court has no jurisdiction over the offense charged.²⁵ Monteros subsequently moved to hold the release of the warrant of arrest and to defer arraignment and other proceedings as a consequence of the pendency of the question on the Sandiganbayan's jurisdiction.²⁶

On September 25, 2017, respondents Casurra, Edera, Geotina, and Elumba filed their omnibus motion to quash information and to defer arraignment. Respondent Lozada subsequently manifested that he adopts this motion.²⁷ Like Monteros, respondents claimed that there was inordinate delay from the fact-finding phase up to the filing of the Information.²⁸

To note, records show that respondent Palacio did not file a similar motion.

On October 19, 2017, the Office of the Special Prosecutor filed its consolidated comment/opposition²⁹ to the motions filed by accused. The prosecution countered that the delay in this case is reasonable. Delay becomes inordinate if there are arbitrary, vexatious, and oppressive actions or inactions that are attendant to the proceedings within the context of the particular circumstances attendant thereto.³⁰ The prosecution stressed that the instant case is part of the controversial "Fertilizer Fund Scam" that involved high ranking officials of the government and various non-governmental organizations; investigating the case thus requires diligence, thoroughness, and necessarily, time.³¹

²³ Id. at 53, 321-322.

²⁴ Id. at 53.

²⁵ Id. at 331.

²⁶ Id. at 333.

²⁷ Records (vol. I), pp. 488-490, 516.

²⁸ *Rollo*, p. 53.

²⁹ Id. at 336-341.

³⁰ Id. at 53.

³¹ Id. at 53-54.

Ruling of the Sandiganbayan:

In its November 27, 2017 Resolution,³² the Sandiganbayan granted the motions of respondents and dismissed the criminal case against them. The anti-graft court confirmed that more than 11 years have passed from the COA's issuance of the NOD until the filing of the Information.³³ It held that the delay is not reasonable. The prosecution's excuse that the many layers of review and the meticulous scrutiny that the case necessitates time, failed to convince.³⁴ No other plausible reason was provided to explain the delay of more than 11 years.³⁵ Also, the delay cannot be attributed to the accused as they have timely filed their affidavits and supporting documents with the OMB.³⁶ The anti-graft court added that the delay caused prejudice and anxiety to the accused.³⁷ Resultantly, respondents are acquitted.

The prosecution moved for reconsideration. In its April 18, 2018 Resolution,³⁸ the Sandiganbayan denied the motion. It added that respondents (being retired from service and dependent on their pensions) suffered from public humiliation and embarrassment due to this criminal complaint that dragged on for many years.³⁹ The court likewise reiterated that the prosecution failed to show that the delay was attributable to respondents.⁴⁰

Further, the Sandiganbayan in its September 7, 2018 Resolution⁴¹ dismissed the criminal case as regards Palacio as well.

Hence, this petition for *certiorari*.⁴² The prosecution ascribes grave abuse of discretion on the part of the Sandiganbayan in granting respondents' motions and dismissing the criminal case. The prosecution claims that the Sandiganbayan disregarded the doctrine of Balancing Test (in determining violations of the right to speedy disposition of cases) when it resorted to a mere mathematical computation of the period for fact-finding and preliminary investigation.⁴³ The prosecution then adds that the period for fact-finding investigation should not be added to the period for preliminary investigation for purposes of computing length of delay.⁴⁴

³² Id. at 50-64.

³³ Id. at 59-60.

³⁴ Id. at 60-61.

³⁵ Id. at 60.

³⁶ Id. at 60-61.

³⁷ Id. at 62.

³⁸ Id. at 66-70.

³⁹ Id. at 68.

⁴⁰ Id. at 69.

⁴¹ Records (vol. II), pp. 352-359. Penned by Associate Justice Maria Theresa V. Mendoza-Arcega, and concurred in by Associate Justices Rafael R. Lagos and Mary Ann E. Corpus-Mañalac.

⁴² Rollo, pp. 9-48.

⁴³ Id. at 21-27.

⁴⁴ Id. at 28-31.

The prosecution also claims that the delay in this case is reasonable and warranted under the circumstances.⁴⁵ The OMB is deluged with cases filed before it; there is a steady stream of cases reaching the office.⁴⁶ The Sandiganbayan should not have "closed its eyes" to these factors in determining inordinate delay.⁴⁷

Next, the prosecution claims that respondents did not assert their right to speedy disposition of cases at any time before the filing of the Information; in fact, they maximized the benefits of the OMB processes.⁴⁸ The right should be asserted at the first instance.⁴⁹ Respondents, however, sat on their right during the fact-finding and preliminary investigation; they did not initiate any move at the OMB level to assert their right.⁵⁰

Lastly, the prosecution avers that the prejudice claimed to have been suffered by respondents has no factual support.⁵¹ The Sandiganbayan merely relied on bare allegations of prejudice as respondents did not adduce any proof of actual prejudice resulting from the delay.⁵²

Monteros, in her Comment,⁵³ counters that the prosecution failed to show that the Sandiganbayan acted with grave abuse of discretion in granting the motions. Their right to speedy disposition of cases has been violated since it took the OMB 11 years and three months to file an Information against respondents.⁵⁴ The prosecution did not provide an explanation for the delay given that the transactions were not complex and that the OMB should be accustomed to evaluating such transactions as it was already conducting similar investigations on the "Fertilizer Fund Scam" all over the country.⁵⁵ Monteros also reiterated that respondents suffered anxiety, humiliation, and depression by reason of the length of time the case remained pending.⁵⁶ As such, the petition violates the prohibition on double jeopardy.⁵⁷

Respondents Casurra, Edera, Geotina, Elumba, and Lozada likewise filed their joint comment⁵⁸ raising the same arguments as Monteros,⁵⁹ but they

⁴⁵ Id. at 31-32.

⁴⁶ Id.

⁴⁷ Id. at 32.

⁴⁸ Id. at 32-35.

⁴⁹ Id. at 33-34.

⁵⁰ Id. at 34.

⁵¹ Id. at 35-37.

⁵² Id.

⁵³ Id. at 199-218.

⁵⁴ Id. at 206-209.

⁵⁵ Id. at 210-212.

⁵⁶ Id. at 212-214.

⁵⁷ Id. at 215-217.

⁵⁸ Id. at 375-393.

⁵⁹ Id.

cited the case of *Cagang v. Sandiganbayan*⁶⁰ (*Cagang*) in arguing that there was inordinate delay.

Palacio did not file a comment or any pleading before this Court.

The prosecution, in its reply,⁶¹ reiterated its arguments in the petition. Notably, it added that based on *Cagang* as well, the fact-finding investigation of the OMB is not yet adversarial in nature, thus, the period for it should not be counted in determining delay.⁶² The prosecution also emphasized that there were cases where this Court ruled that the right to speedy disposition of cases was not violated despite the lapse of a considerable amount of time during the investigation of the OMB.⁶³

Issue

The issue for resolution is whether the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction in granting the motions filed by respondents, which resulted to the dismissal of the criminal case and their acquittal.

Our Ruling

The petition has no merit. The Court finds that the Sandiganbayan did not commit grave abuse of discretion in dismissing the criminal cases.

At the outset, the Court emphasizes that the dismissal of the instant criminal case against respondents constitutes acquittal. Thus, it may only be assailed through a petition for *certiorari* under Rule 65 of the Rules of Court,⁶⁴ as done here by the prosecution. Grave abuse of discretion must be alleged in order for the petition to prosper.⁶⁵ It must be shown that respondent court or tribunal “acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction;”⁶⁶ it must be “so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.”⁶⁷

⁶⁰ 837 Phil. 815 (2018).

⁶¹ *Rollo*, pp. 399-411.

⁶² *Id.* at 402.

⁶³ *Id.* at 405 citing *Tello v. People*, 606 Phil. 514 (2009), *Perez v. People*, 568 Phil. 491 (2008), *Bernat v. Sandiganbayan*, 472 Phil. 869 (2004).

⁶⁴ *Villa Gomez v. People*, G.R. No. 216824, November 10, 2020.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

In contention here is the Sandiganbayan's dismissal of the criminal cases against respondents by reason of inordinate delay.

The Constitution guarantees every person's right to speedy disposition of cases. Article III, Section 16 states:

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

The Court, in *Cagang v. Sandiganbayan*,⁶⁸ laid down the guidelines for determining if there is a violation of the right to speedy disposition of cases:

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.

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, 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.

⁶⁸ *Cagang v. Sandiganbayan*, supra note 60.

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.⁶⁹

Applying the guidelines in *Cagang*, the Court finds that there is a violation of respondents' right to speedy disposition of cases.

Period for fact-finding investigation not included in the determination of inordinate delay.

Initially, it is very clear in *Cagang* that the period taken for fact-finding investigations shall not be included in the determination of whether there is inordinate delay; the period shall be reckoned from the filing of a formal complaint.⁷⁰ In other words, inordinate delay on cases filed with the OMB primarily pertains to the period taken for preliminary investigation.

In this regard, the Sandiganbayan erred in including the period for fact-finding in its determination of the period relevant to inordinate delay.

The Sandiganbayan summarized the dates relevant for inordinate delay:

1. July 4, 2011 – Task Force Abono filed a complaint before the OMB;

⁶⁹ Id. at 880-882 Citations omitted.

⁷⁰ Id.

2. August 10, 2011 – an Order directing respondents (accused) to file their respective counter-affidavits and supporting documents was issued;
3. September 14, 2011 – respondent Geotina filed her counter-affidavit;
4. September 20, 2011 – respondents Lozada, Monteros, and Casurra filed their counter-affidavits;
5. October 18, 2011 – respondent Edera filed his counter-affidavit;
6. April 17, 2012 – respondents filed their supplemental counter-affidavits;
7. April 20, 2012 – an Order directing the parties to file their verified position papers was issued;
8. June 14, 2012 – respondents Edera, Monteros, Geotina, Elumba, and Lozada filed their position paper;
9. November 4, 2013 – the case was submitted for resolution;
10. October 5, 2016 – the OMB issued a resolution finding probable cause for violation of Section 3(e) of RA 3016;
11. March 22, 2017 – the Honorable Ombudsman approved the resolution;
12. April 26, 2017 and May 2, 2017 – respondents filed their Motions for Reconsideration of the October 5, 2016 Resolution of the OMB;
13. September 11, 2017 – an Information dated May 2, 2017 was filed before the Sandiganbayan charging respondents with violation of Section 3(e) of RA 3019.⁷¹

In fine, the OMB's preliminary investigation of the case started from the filing of the complaint on July 4, 2011 and ended on the filing of the Information before the Sandiganbayan on September 11, 2017. Again, the period for fact-finding investigations shall not be included in the determination of inordinate delay. Thus, it took six years, two months, and seven days for the OMB to conduct its preliminary investigation. The question now is whether this amount of time constitutes inordinate delay.

Prosecution bears the burden of proof; it failed to show that the delay was reasonable.

Cagang states that the burden of proof to justify the delay shifts depending on when the right was invoked. The defense bears the burden if the right was invoked within the periods prescribed by this Court, the Rules of Court, or the OMB for the conduct of preliminary investigation; the prosecution bears the burden if the right was invoked beyond the set periods, and it must show that the delay was justifiable under the factors provided in *Cagang*.⁷²

⁷¹ *Rollo*, pp. 54-55.

⁷² *Cagang v. Sandiganbayan*, supra note 60. "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

As the Rules of Procedure of the Office of the Ombudsman⁷³ then in effect do not provide for the period within which the preliminary investigation shall be concluded, the periods provided for in Rule 112 of the Rules of Court shall have suppletory application.⁷⁴ Applying Sections 3(f) and 4, Rule 112 of the Rules of Court,⁷⁵ the graft investigation officer shall have 10 days after the investigation to determine probable cause; then, he has five days from resolution to forward the records of the case to the Ombudsman, who shall act upon the resolution within 10 days from receipt.

Here, it is clear that the prescribed periods were not observed. As can be gleaned, the case was submitted for resolution on November 4, 2013. But looking closely, records show that the last pleading was submitted on June 14, 2012, when respondents submitted their position papers. As there were no further submissions or orders for parties to submit further pleadings as well as hearings, the case should have been submitted for resolution as early as June 14, 2012.

It was only on October 5, 2016 when the OMB issued a resolution finding probable cause, which is almost three years after the case was submitted for resolution, or more than four years from the date the last pleadings were submitted—clearly way beyond the 10-day period. Further,

⁷³ Ombudsman Administrative Order No. 07, Re: Rules of Procedure of the Office of the Ombudsman (1990).

⁷⁴ *Catamco v. Sandiganbayan*, G.R. Nos. 243560-62 & 243261-63, July 28, 2020. See *id.*

⁷⁵ Section 3. Procedure. — The preliminary investigation shall be conducted in the following manner:

x x x x

(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. He shall certify under oath in the information that he, or as shown by the record, an authorized officer, has personally examined the complainant and his witnesses; that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof; that the accused was informed of the complaint and of the evidence submitted against him; and that he was given an opportunity to submit controverting evidence. Otherwise, he shall recommend the dismissal of the complaint.

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.

No complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy.

x x x x

the Ombudsman herself approved the resolution only on March 22, 2017, which is almost six months after the issuance of the resolution—again way beyond the five-day and 10-day period respectively prescribed for the transmittal of the records to her office and for her to act upon the resolution.

The next step is the determination of when respondents invoked their right to speedy disposition of cases. The timing of invocation affects which side bears the burden of proof to justify the delay. Records show that the earliest time respondents invoked the right was when respondent Monteros filed a motion for reconsideration of the OMB October 5, 2016 Resolution.⁷⁶ The right was invoked after the lapse of the periods prescribed, resulting to the burden shifting to the prosecution.

As the prosecution bears the burden, it shall prove that the delay was reasonable. Following the parameters in *Cagang*, the prosecution failed to do so. It merely made allegations that the OMB is deluged with cases and that the instant case is complex. These excuses fail to convince the Court.

While the Court recognizes the reality of institutional delay in government agencies, including the OMB, this solely does not justify the office's failure to promptly resolve cases before it.⁷⁷ The OMB cannot just claim institutional delay or the "steady stream" of cases reaching its office as an excuse for not resolving cases timely. After all, the Constitution itself, as enforced and bolstered by The Ombudsman Act of 1989, requires the OMB to promptly act on complaints filed before it against public officials and government employees.⁷⁸ As further stated in jurisprudence, the allegation of heavy case load of a particular government agency should "still be subject to proof as to its effects on a particular case, bearing in mind the importance of the right to speedy disposition of cases as a fundamental right."⁷⁹ The OMB should clearly show that delay is inevitable because of the peculiar circumstances of each specific case, which it failed to do so in this case. The OMB here failed to show that this specific procurement of fertilizer had peculiar circumstances to make delay inevitable.

The Court understands that the instant case is part of the so called "Fertilizer Fund Scam" cases. However, this does not mean that the case is highly complex that requires a serious amount of time. Records show that the instant case involves only one transaction: the procurement of fertilizer that

⁷⁶ Records (vol. I), pp. 408-429.

⁷⁷ *Catameo v. Sandiganbayan*, supra note 74.

⁷⁸ *Id.*, citing CONSTITUTION, Article XI, Sec. 12, and Republic Act No. 6770, AN ACT PROVIDING FOR THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN, AND FOR OTHER PURPOSES [THE OMBUDSMAN ACT OF 1989], Sec. 13 (1989). Approved: November 17, 1989.

⁷⁹ *Javier v. Sandiganbayan*, G.R. No. 237997, June 10, 2020.

was paid in two tranches. There is also no allegation that respondents here conspired with other government officials involved in the other Fertilizer Fund Scam cases elsewhere in the country. Further, there are only seven respondents. To add, the OMB was in effect assisted by the COA in the latter's issuance of the NOD. In fact, it was the primary basis of the Task Force's filing of the complaint. Likewise, there was no showing that the records of this case were voluminous that would necessitate a number of years for the conduct of review.

In the cases of *Javier v. Sandiganbayan*⁸⁰ and *Catamco v. Sandiganbayan*⁸¹ (*Catamco*), which also involve the "Fertilizer Fund Scam," the OMB also posited the same arguments of complexity and voluminous records. The Court, in ruling that there was inordinate delay, disregarded the OMB's arguments absent proof as regards the assertions. Similarly in the instant case, the OMB did not show proof of complexity and volume that would make the delay inevitable and justified.

For the Court, the delay was unreasonable. Six years, two months, and seven days for the preliminary investigation of a case involving a single transaction and seven respondents is too long a period for this Court to accommodate.

Respondents suffered prejudice.

In addition to the discussion, the prosecution must show that respondents did not suffer prejudice as a result of the delay. In this regard, the prosecution failed to show that respondents did not suffer prejudice. The Court recognizes that the inordinate delay places the accused in a protracted period of uncertainty which may cause "anxiety, suspicion, or even hostility."⁸² The Court also recognizes that the lengthy delay would result to the accused's inability to adequately prepare for the case which would result to the deterioration or loss of evidence, leading to impairment of the accused's defense.⁸³

Thus, it is inevitable that respondents in this case suffer the same predicament. Surely, they suffered anxiety due to the long period of uncertainty while waiting for the resolution of the case. The delay affected

⁸⁰ *Supra*.

⁸¹ *Supra* note 74.

⁸² *Zaldivar-Perez v. Sandiganbayan*, G.R. No. 204739, November 13, 2019.

⁸³ *Id. Martinez III v. People*, G.R. No. 232574, October 1, 2019.

their ability to prepare for their defense. As found by the Sandiganbayan, respondents suffered public humiliation and embarrassment as a result of the case dragging on for so long.⁸⁴ These circumstances constitute the actual prejudice that respondents have suffered as a result of the delay.⁸⁵

Right was timely invoked.

Cagang requires that the right to speedy disposition of cases must be timely raised. In *Catamco*⁸⁶ and *Alarilla v. Sandiganbayan*,⁸⁷ the Court, applying *Cagang*, considered the filing of a motion for reconsideration of the OMB resolution finding probable cause as a timely invocation of the right.

Here, the Court considers the motion for reconsideration⁸⁸ filed by Monteros before the OMB sufficient for purposes of determining whether the respondents' right to speedy disposition had been violated. Her invocation of the right in the motion is deemed to cover the other respondents as they are co-respondents in a single case and it assails a single resolution that applies to all of them. In any event, worthy of great consideration is respondents' immediate filing of the motions to quash before the Sandiganbayan after the filing of the Information. These circumstances show that respondents did not in any way sleep or waive their right to speedy disposition of cases.

Considering all the foregoing, respondents' right to speedy disposition of cases was undoubtedly infringed. The Sandiganbayan therefore did not commit grave abuse of discretion in dismissing the criminal case against them.

As for respondent Palacio, the Court notes that the instant petition did not assail the Sandiganbayan September 7, 2018 Resolution⁸⁹ that dismissed the criminal case as against her. The instant petition assails only the Sandiganbayan Resolutions that dismissed the criminal case as against the rest of the respondents. Thus, Palacio's acquittal still stands.

WHEREFORE, the petition is **DISMISSED**. The November 27, 2017 Resolution and April 18, 2018 Resolution of the Sandiganbayan in Criminal Case No. SB-17-CRM-1669 are hereby **AFFIRMED**.

⁸⁴ *Rollo*, p. 68.

⁸⁵ See *Martinez III v. People*, supra note 83.

⁸⁶ Supra note 74.

⁸⁷ G.R. Nos. 236177-210, February 3, 2021.

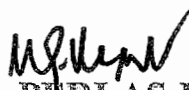
⁸⁸ Records (vol. I), pp. 408-429.


⁸⁹ Records (vol. II), pp. 352-359.

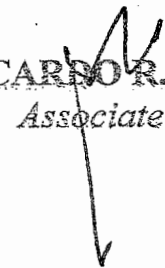
SO ORDERED.


RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

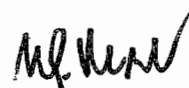

RODIL V. ZALAMEDA
Associate Justice


RICARDO R. ROSARIO
Associate Justice

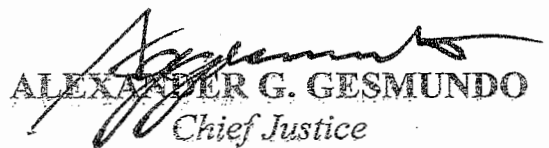

JOSE MIDAS P. MARQUEZ
Associate Justice

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.

**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