

G.R. No. 229656 – PEOPLE OF THE PHILIPPINES, *petitioner versus*
HONORABLE SANDIGANBAYAN (FIRST DIVISION), MANUEL M.
LAPID, MA. VICTORIA M. AQUINO-ABUBAKAR, LEOLITA M.
AQUINO AND DEXTER ALEXANDER S.D. VASQUEZ, *respondents*.

Promulgated:

19 AUG 2019

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DISSENTING OPINION

CAGUIOA, J.:

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

The *ponencia* finds that the Sandiganbayan¹ gravely abused its discretion in dismissing the criminal case filed against respondents Manuel M. Lapid, Ma. Victoria M. Aquino-Abubakar, Leolita M. Aquino and Dexter Alexander S.D. Vasquez (private respondents) for violation of right to speedy disposition of their case on the basis of the Court's Decision in *Cagang v. Sandiganbayan*² (*Cagang*). In determining whether there was inordinate delay in the proceedings before the Office of the Ombudsman (Ombudsman), the *ponencia* focused on the timeline provided by the prosecution from the filing of the Complaint by the Field Investigation Office – Task Force Abono (FIO-Task Force Abono) on May 2, 2011 to the filing of the Information before the Sandiganbayan on November 4, 2015. The *ponencia* holds that the lapse of four (4) years and six (6) months, reckoned from the filing of the complaint, was justified due to the complexity of the issue and the number of respondents which required a thorough study of the case to determine with probability who should be indicted.

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

In *Cagang*, the Court, citing *Corpuz v. Sandiganbayan*,³ emphasized that prejudice to the accused is defined as:

¹ First Division.

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

³ 484 Phil. 899, 918 (2004).

Prejudice should be assessed *in the light of the interest of the defendant that the speedy trial was designed to protect*, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy. (Emphasis, underscoring and italics supplied).

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

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

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

Thus, I reiterate the point I raised in *Cagang* that the right to speedy disposition of cases should cover not only the preliminary investigation, but



extends further, to cover the fact-finding process.⁴ Moreover, I stress anew that:

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

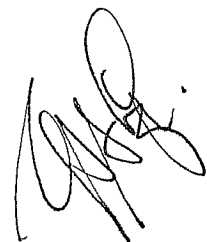
Unreasonable delay incurred during fact-finding and preliminary investigation, like that incurred during the course of trial, is equally prejudicial to the respondent, as it results in the impairment of the very same interests which the right to speedy trial protects — against oppressive pre-trial incarceration,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

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

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

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

⁵ *Id.* at 7.



government. [Their] only guarantee against oppression and tyranny are [their] fundamental liberties under the Bill of Rights which shield [them] in times of need.”⁶

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



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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

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