



Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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THIRD DIVISION

NEPTALI P. SALCEDO,
Petitioner,

G.R. Nos. 223869-960

- versus -

Present:

**THE HONORABLE THIRD
DIVISION OF THE
SANDIGANBAYAN and PEOPLE
OF THE PHILIPPINES,**
Respondents.

PERALTA, J., *Chairperson,*
LEONEN,
REYES, A., JR.,
HERNANDO, and
CARANDANG,* *JJ.*

Promulgated:

February 13, 2019

X-----
Supreme Court X

DECISION

PERALTA, J.:

Before this Court is a petition for *certiorari* filed by petitioner Neptali P. Salcedo (*Salcedo*) seeking to reverse and set aside the January 23, 2015¹ and the February 12, 2016² Resolutions issued by the Special Third Division of the Sandiganbayan (*Sandiganbayan*) in Criminal Cases Nos. SB-13-CRM-0001 to 0046 and SB-13-CRM-0047 to 0092.

The antecedent facts are as follows:

Culled from the record, it appears that on October 8, 2007, then Congressman Neil C. Tupas, Jr. (*Cong. Tupas, Jr.*) of the Fifth District of Iloilo requested the Commission on Audit (*COA*) to conduct an audit examination on the implementation of the various projects of the Municipality of Sara, Iloilo. Acting on the said request, the COA created a special audit

* Designated Additional Member per Special Order No. 2624 Jated November 28, 2018.
¹ Penned by Associate Justice Amparo M. Cabotaje-Tang, with Associate Justices Samuel R. Martires (a retired member of this Court) and Alex L. Quiroz, concurring; *rollo* pp. 18-32.
² *Id.* at 62-77.

team sometime in July 2008 that later on conducted a seven (7)-day audit investigation focusing on several priority projects of the Municipality of Sara funded by the Provincial Government of Iloilo and the Office of Senator Franklin Drilon. On July 17, 2008, the COA special audit team issued several Audit Observation Memoranda and directed petitioner Salcedo, then the incumbent Municipal Mayor of the Municipality of Sara, to submit his comment thereon. On September 30, 2008, the Office of the Mayor of the Municipality of Sara submitted the required comment to the COA special audit team.

On October 14, 2008, Cong. Tupas, Jr. filed three separate complaints-affidavits charging petitioner Salcedo and other officials of the Municipality of Sara with violations of Section 3(g) of Republic Act No. 3019 (*R.A. No. 3019*), otherwise known as the *Anti-Graft and Corrupt Practices Act*, before the Office of the Ombudsman-Visayas (*OMB-Visayas*), Regional Office, Iloilo, arising from the alleged illegal releases of government funds. The complaints quoted portions of the findings of the COA audit team contained in its special audit report. These complaints were docketed as CPL-C-08-1893, CPL-C-08-1894 and CPL-C-08-1895 (*CPLS*). Subsequently, the OMB-Visayas requested from the COA the submission of the pertinent audit report so it can properly evaluate the recommendations of the special audit team and validate the allegations of Cong. Tupas, Jr.


In January 2009, the COA submitted to the OMB-Visayas its audit report, together with a joint affidavit executed by the special audit team. The relevant findings of the COA are as follows:

Labor payrolls amounting to a total of P1,834,400.00 were deemed to be of doubtful validity due to the following occurrences; (i) similarity in the signatures of the supposed laborers who worked on the projects; (ii) time roll portions were pasted over once or twice with another time roll; (iii) certain entries like name of project and period covered were written over correction fluid; and (iv) lack of signatures to signify receipt of wages by the concerned laborers.³

According to the COA, the irregularities in the disbursement of government funds can be readily observed from the face of the payrolls and/or the supporting documents for each project which strongly suggest that the local government officials involved should be held criminally liable.

Thereafter, the OMB-Visayas issued a Consolidated Final Evaluation, dated July 17, 2009, upgrading the CPLs to criminal and administrative cases which were docketed as OMB-V-C-09-0284-1 and OMB-V-A-09-0284-2, respectively. On October 28, 2009, the OMB-Visayas issued another Evaluation Report directing that each COA finding be docketed separately as

³ *Id.* at 39.



each dealt with a set of circumstances different from the others to attain an efficient and speedy investigation. Later, the OMB-Visayas upgraded anew the complaints into six (6) criminal cases. It concurred with the findings of the COA and recommended that criminal cases for Malversation of Public Funds through Falsification of Public Documents and Violation of Section 3(e) of R.A. No. 3019 be filed against the following officials of the Municipality of Sara, Iloilo, namely: (1) Municipal Mayor Salcedo, (2) Municipal Treasurer Edna A. Pacrim (*Pacrim*) and (3) Municipal Engineer Roel C. Salcedo (*Roel*). One of these criminal cases was docketed as OMB-V-C-09-0392-K which gave rise to the criminal Informations subject of the present petition.

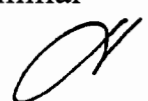
The OMB-Visayas directed the accused to file their counter-affidavits and submit controverting evidence. Instead of filing their counter-affidavits, the three accused adopted their Comment to the Audit Observation Memorandum Ref. No. 411-001-2008, dated May 12, 2008, which they previously submitted during the COA audit. Attached to the said Comment are the joint affidavits executed by the alleged laborers who attested that they worked at the various projects, confirmed to have signed the payrolls, and received their respective wages. Also appended was the affidavit of the Municipal Engineer, who explained the alterations and superimpositions in the time books and payrolls.

After issues had been joined, the OMB-Visayas issued a Resolution dated March 11, 2011, finding probable cause against petitioner Salcedo, Pacrim and Roel, and recommended their indictment for thirty (30) counts of Malversation of Public Funds through Falsification of Public Documents and one (1) count for Violation of Section 3(e) of R.A. No. 3019. Said Resolution was approved by then Acting Ombudsman Orlando C. Casimiro on May 30, 2011.

On July 5, 2011, Salcedo and his co-respondents filed a Motion for Reconsideration dated June 29, 2011, praying for the dismissal of the complaints against them on the ground of lack of legal and factual basis and for being imperfect or premature. Before acting on the said motion for reconsideration, however, the OMB-Visayas issued an Amended Resolution⁴ dated December 8, 2011, modifying its March 11, 2011 Resolution by charging each of the accused with forty-six (46) counts of Malversation of Public Funds through Falsification of Public Documents and another forty-six (46) counts for Violation of Section 3(e) of R.A. No. 3019. The Amended Resolution was approved by then Ombudsman Conchita Carpio Morales on December 5, 2012.

Consequently, the corresponding ninety-two (92) Informations, all dated December 8, 2011, were filed before the Third Division of the Sandiganbayan on January 3, 2013, which were docketed therein as Criminal

⁴ *Id.* at 38-44.



Cases Nos. SB-13-CRM-0001 to 0046 (46 counts of Violation of Sec. 3(e) of R.A. No. 3019) and Criminal Case Nos. SB-13-CRM-0047 to 0092 (46 counts of Malversation through Falsification of Public Documents). Since almost all of the Informations for Malversation of Public Funds through Falsification of Public Documents, except the Information docketed as Criminal Case No. SB-13-CRM-0063, involve the amounts higher than ₱22,000.00, a bail of Eighty Thousand Pesos (₱80,000.00) was recommended to each accused for their provisional liberty.

On February 25, 2013, petitioner Salcedo filed a Motion for Reconsideration of the March 11, 2011 Resolution, but the same was denied by the OMB-Visayas in its April 12, 2013 Order.⁵ Salcedo then posted bail sometime in September 2013. Thereafter, Salcedo filed a Motion to Quash dated March 20, 2014, anchored on the ground that the allegations in all the Informations do not constitute the respective offenses charged therein. Petitioner also pointed out that the ninety-two Informations contradicted the findings of the OMB-Visayas that he allegedly falsified the time books and payrolls for thirty (30) projects. The prosecution refuted Salcedo's claim in its Opposition dated May 14, 2014. In the meantime, Roel and Pacrim filed a Motion for Reduction of Bail.


On April 30, 2014, the prosecution filed a Manifestation with Omnibus Motion dated April 28, 2014, seeking for the withdrawal of the Informations for malversation through falsification docketed as Criminal Cases Nos. SB-13-CRM-0047 to 0062 and 0064 to 0092 and the admission of Amended Informations. The amendment sought in each Information was for the substitution of the phrase "*NO BAIL RECOMMENDED*" to the original "*BAIL BOND RECOMMENDED: P80,000.00 (each).*" In addition, the prosecution prayed for the cancellation of Salcedo's surety bond in Criminal Case Nos. SB-13-CRM-0047 to 0092, and for the denial of the Motion for Reduction of Bail filed by Roel and Pacrim.

On January 23, 2015, the Sandiganbayan issued its first assailed Resolution denying Salcedo's Motion to Quash the Informations and granted the prosecution's prayer for the admission of the Amended Informations which reflected the phrase "*NO BAIL RECOMMENDED*" in the malversation through falsification cases. The *fallo* of the said Resolution provides:

WHEREFORE, premises considered, the Court hereby:

1. PARTIALLY GRANTS the prosecution's Manifestation with Omnibus Motion dated April 28, 2014. Accordingly, except for Case No. SB-13-CRM-0063, the Amended Informations in Cases Nos. SB-13-CRM-0047 to 0062, and 0064 to 0092 are admitted and the surety bond posted by accused Neptali Salcedo is cancelled. Accused Neptali Salcedo, however, is

⁵ *Id.* at 33-37.



allowed to post bail in the reduced amount of P40,000.00 in Case No. SB-13-CRM-0063;

2. PARTIALLY GRANTS accused Roel Salcedo and Edna Pacrim's Motion for Reduction of Bail dated March 20, 2014 insofar as Cases Nos. SB-13-CRM-0001 to 0046 and in Case No. SB-13-CRM-0063 are concerned. Accordingly, accused Roel Salcedo and Edna Pacrim are allowed to post bail in the reduced amount of P15,000.00 for each count of violation of Section 3(e) of Republic Act No. 3019 and the reduced amount of P20,000.00 for malversation through falsification of public document in Case No. SB-13-CRM-0063. THE SAME TO BE PAID IN CASH.


3. DENIED accused Neptali Salcedo's Motion to Quash dated March 20, 2014 for lack of merit.

Let warrants of arrest be issued against accused Neptali Salcedo, Edna Pacrim and Roel Salcedo in Cases Nos. SB-13-CRM-0047 to 0092.

SO ORDERED.⁶

According to the Sandiganbayan, all the Informations contained the requisite factual averments constituting the essential elements of the crime charge. It ruled that it is not material whether ninety-two or thirty Informations should be filed, in the determination of whether the Informations should be quashed on the ground that the allegations do not constitute an offense. Also, it held that the recommendation of no bail for Criminal Cases Nos. SB-13-CRM-0047 to 0062 and 0064 to 0092 is proper since the complex crime of Malversation through Falsification of Public Documents carries with it the penalty of *reclusion perpetua* where the amount allegedly malversed is greater than ₱22,000.00 under Article 217, paragraph 4 in relation to Article 48 of the Revised Penal Code. It, likewise, took into consideration the 2000 Bail Bond Guide of the Department of Justice where it was provided, among others, that no bail shall be recommended for the crime of malversation through falsification if the amount involved is ₱22,000.00 and higher.

In the light of the foregoing pronouncements, the Sandiganbayan ordered the cancellation of the surety bond posted by Salcedo in Criminal Cases Nos. SB-13-CRM-0047 to 0062 and 0064 to 0092, but he was allowed to post bail in the amount of ₱40,000.00 for Criminal Case No. SB-13-CRM-0063 as the amount allegedly malversed therein is only ₱20,000.00. Meanwhile, the Sandiganbayan reduced the amount of bail to be posted by Roel and Pacrim to one-half of the bail recommended in Criminal Cases Nos. SB-13-CRM-0001 to 0046, and the two were allowed to post bail fixed at ₱20,000.00 for Criminal Case No. SB-13-CRM-0063. Their motion for reduction of bail in Criminal Cases Nos. SB-13-CRM-0047 to 0062 and 0064 to 0092 was denied by the anti-graft court because the same allegedly involved a non-bailable offense.



⁶ *Id.* at 31-32.

Thereafter, Salcedo filed an Urgent Motion for Reconsideration dated February 17, 2015, questioning the admission of the Amended Informations for Criminal Cases Nos. SB-13-CRM-0047 to 0062 and 0064 to 0092 on the ground that inordinate delay attended the conduct of the preliminary investigation of his alleged crimes, in violation of his constitutional right to speedy disposition of cases. Further, he argued anew that the allegations in the Informations were insufficient to indict him of the crimes of Violation of Section 3(e) of R.A. No. 3019, as well as the complex crime of Malversation through Falsification of Public Documents. He insisted that his mere act of signing the time books and payrolls could not be considered as a prohibited act that would satisfy one of the elements of Violation of Section 3(e) of R.A. No. 3019. Also, he again contended that the Informations for malversation through falsification did not allege that falsification is a necessary means of committing the malversation. Petitioner averred that the penalty for malversation through falsification is not *reclusion perpetua* but *reclusion temporal* in its maximum period to *reclusion perpetua* and thus, he should be allowed to post bail in Criminal Cases Nos. SB-13-CRM-0047 to 0062 and 0064 to 0092.

On the other hand, Roel and Pacrim filed an Omnibus Motion insisting that they should be allowed to post bail for Criminal Case Nos. SB-13-CRM-0047 to 0092 because malversation through falsification is aailable offense and it is not one of the heinous crimes enumerated in Republic Act No. 7659. By way of an alternative prayer, Roel and Pacrim sought for the dismissal of the cases against them on the ground of violation of their right to due process and speedy disposition of cases.

On February 12, 2016, the Sandiganbayan issued its second assailed Resolution, the dispositive portion of which states:

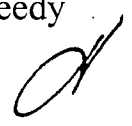
WHEREFORE, the Court denies the following motions for lack of merit and/or for being *pro forma*:

1. Urgent Motion for Reconsideration dated February 17, 2015 filed by accused Neptali Salcedo; and
2. Omnibus Motion dated February 23, 2015 filed by accused Roel Salcedo and Edna Pacrim.

SO ORDERED.⁷

The Sandiganbayan observed that except for the allegation of violation of their right to speedy disposition of cases, all the other disquisitions and arguments advanced by petitioner Salcedo, Roel and Pacrim in their respective motions for reconsideration were mere reiterations of those which it had already considered and passed upon through its January 23, 2015 Resolution. It held that there was no violation of the accused's right to speedy

⁷ *Id.* at 72.



disposition of cases because on the basis of the facts and circumstances surrounding the preliminary investigation, a reasonable delay was expected of the OMB-Visayas. It pointed out that the accused did not invoke their right to speedy disposition of cases before the OMB-Visayas but only did so after the filing of the Informations. Moreover, the anti-graft court declared that there was no showing of any deliberate attempt to delay the proceedings before the OMB-Visayas. Lastly, the Sandiganbayan ruled that the specifics sought by Salcedo to be alleged in the Amended Informations are evidentiary in nature and are matters of defense which Salcedo may present during trial on the merits.

Unsatisfied, petitioner Salcedo filed an Urgent Motion to Set Aside with Motion to Reinstate Bail dated February 23, 2016, before the Sandiganbayan. Citing the ruling in *People v. Valdez*,⁸ Salcedo prayed for the setting aside of the no bail recommendation in the Informations for Criminal Cases Nos. SB-13-CRM-0047 to 0062 and 0064 to 0092 and that he would be allowed to post bail. Petitioner, likewise, sought for the reinstatement of the surety bond he previously posted.

Thereafter, Salcedo filed, on April 27, 2016, the present petition for *certiorari* ascribing grave abuse of discretion on the part of the Sandiganbayan in issuing the January 23, 2015 and February 12, 2016 Resolutions. In support of his petition, Salcedo raised the following issues:

1. Whether or not the Honorable Third Division of the Sandiganbayan gravely abused its discretion in issuing the questioned Resolutions with respect to the denial of bail for the complex crime of Malversation thru Falsification, tantamount to lack or excess of its jurisdiction.
2. Whether or not the Honorable Third Division of the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of its jurisdiction when it ruled that the four years and three months that it took for the Ombudsman to file the Informations in the present cases is reasonable delay consistent with the right to speedy disposition of cases.⁹

On October 14, 2016, the Sandiganbayan, guided by the ruling in the *Valdez* case, issued a Resolution granting bail to Salcedo and his co-accused, Roel and Pacrim, in the malversation through falsification cases. The surety bond previously posted by Salcedo was reinstated.

The Court's Ruling



We deny the petition.

⁸ 774 Phil. 723 (2015).

⁹ *Rollo*, p. 8.

At the outset, record shows that the issue of the denial of Salcedo's right to bail has been rendered moot by the October 14, 2016 Resolution of the Sandiganbayan, which granted bail to him and his co-accused in accordance with the pronouncements of this Court in *People v. Valdez*. In said case, we declared that an accused charged with the complex crime of Malversation of Public Funds thru Falsification of Official/Public Documents that involves an amount in excess of ₱22,000.00 is entitled to bail as a matter of right. The Court wrote, thus:

At this point, there is no certainty that Valdez would be found guilty of Malversation of Public Funds thru Falsification of Official/Public Documents involving an amount that exceeds P22,000.00. Falsification, like an aggravating circumstance, must be alleged and proved during the trial. For purposes of bail proceedings, it would be premature to rule that the supposed crime committed is a complex crime since it is only when the trial has terminated that falsification could be appreciated as a means of committing malversation. Further, it is possible that only the elements of one of the constituent offenses, *i.e.*, either malversation or falsification, or worse, none of them, would be proven after full-blown trial.

It would be the height of absurdity to deny Valdez the right to bail and grant her the same only after trial if it turns out that there is no complex crime committed. Likewise, it is unjust for Us to give a stamp of approval in depriving the accused person's constitutional right to bail for allegedly committing a complex crime that is not even considered as inherently grievous, odious and hateful. To note, Article 48 of the RPC on complex crimes does not change the nature of the constituent offenses; it only requires the imposition of the maximum period of the penalty prescribed by law. When committed through falsification of official/public documents, the RPC does not intend to classify malversation as a capital offense. Otherwise, the complex crime of Malversation of Public Funds thru Falsification of Official/Public Documents involving an amount that exceeds P22,000.00 should have been expressly included in Republic Act No. 7659. If truly a non-bailable offense, the law should have already considered it as a special complex crime like robbery with rape, robbery with homicide, rape with homicide, and kidnapping with murder or homicide, which have prescribed penalty of *reclusion perpetua*.

Verily, the question as to whether Salcedo and his co-accused are entitled to bail has already been fully and correctly resolved by the Sandiganbayan. A case becomes moot when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits. Courts will not determine a moot question in a case in which no practical relief can be granted.¹⁰ To indulge in academic discussion of a case presenting a moot question is unnecessary because a judgment thereon cannot have any practical legal effect or cannot be enforced.¹¹

Nevertheless, it has not escaped this Court's attention that Salcedo engaged in forum shopping with respect to this issue of the deprivation of his

¹⁰ *Baldo, Jr. v. Commission on Elections, et al.*, 607 Phil. 281, 286 (2009).

¹¹ *Pagdanganan v. Court of Appeals*, G.R. No. 202678, September 5, 2018.

right to bail for the criminal cases of Malversation through Falsification of Public Documents.

Forum shopping exists when a party repetitively avails himself of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in, or already resolved adversely by, some other court. It is considered an act of malpractice as it trifles with the courts and abuses their processes.¹²

Normally, petitions for *certiorari* and appeals are beyond the scope of forum shopping because of their nature and purpose which is to grant a litigant the remedy to elevate his case to a superior court for review. **This presupposes, however, that the appeal or the petition for *certiorari* is properly and regularly filed in the usual course of judicial proceedings, and not when the relief sought, through a petition for *certiorari* or appeal, is still pending with or has yet to be decided by the respondent court or court of origin, tribunal, or body exercising judicial or quasi-judicial authority.**¹³

In the case at bench, the Sandiganbayan has yet to resolve Salcedo's Urgent Motion to Set Aside with Motion to Reinstate Bail when he filed the present petition for *certiorari* before this Court. This is pristine clear from paragraph 15 of his petition which states:

15. Meanwhile, all the accused, including Petitioner herewith, filed a Motion for the reinstatement of the bail of Petitioner and for the set bail for Accused Roel Salcedo and Edna Pacrim pursuant to the ruling of the Supreme Court in *People vs. Valdez*. As of the time of the filing of this Petition, the said Motion remain unresolved by the Third Division of the Sandiganbayan; x x x¹⁴

Salcedo, in obvious anticipation of an adverse ruling on his Urgent Motion to Set Aside with Motion to Reinstate Bail, filed the instant petition without waiting for the Sandiganbayan's resolution, hoping to obtain a favorable ruling from this forum. Notably, Salcedo utilized our ruling in *People v. Valdez* to support his claim for entitlement to bail in the present petition for *certiorari* as he did in his Urgent Motion to Set Aside with Motion to Reinstate Bail. He, likewise, prayed for the same relief in both of these remedies, that is, to be allowed to post bail for his provisional liberty. Clearly, the petitioner committed forum shopping by simultaneously raising the same issue of the denial of his right to bail before the Sandiganbayan and this Court, relying on the same ground and founded on the same facts.

¹² *Fontana Development Corporation, et al. v. Vukasinovic*, 795 Phil. 913, 920 (2016).

¹³ *Villamor, Jr. v. Hon. Manalastas, et al.*, 764 Phil. 456, 467 (2015). (Emphasis ours)

¹⁴ *Rollo*, p. 8. (Citation omitted).

Salcedo and his lawyer must be reminded that forum shopping constitutes abuse of court processes, which tends to degrade the administration of justice, wreaks havoc upon orderly judicial procedure, and adds to the congestion of the heavily burdened dockets of the courts.¹⁵ Forum shopping is considered an anathema to the orderly administration of justice. Accordingly, the instant petition must be dismissed outright as Salcedo and his counsel clearly committed the abhorrent practice of forum shopping.

Even if the Court is willing to overlook this procedural lapse, the present petition would just the same fail. The issuance by the Sandiganbayan of the assailed Resolutions were not tainted with grave abuse of discretion.

Salcedo asserts that the Sandiganbayan committed grave abuse of discretion amounting to lack of jurisdiction when it declared that there was no unreasonable delay in the resolution by the OMB-Visayas of the cases. He contends that the long delay that characterized the proceedings for the determination of probable cause has resulted in the violation of his constitutional right to speedy disposition of cases. According to him, the proceedings have unquestionably been marred with vexatious and capricious delay meriting the dismissal of the criminal cases. He posits that the ninety-two (92) Informations should have been quashed by the Sandiganbayan considering that the Ombudsman had lost its authority to file them since his constitutional right to the speedy disposition of cases was grossly violated by the protracted conduct of the preliminary investigation for four (4) years and almost three (3) months. Petitioner invoked the Court's pronouncements in *Tatad v. Sandiganbayan*,¹⁶ *Duterte v. Sandiganbayan*,¹⁷ *Angchangco, Jr. v. Ombudsman*,¹⁸ and *Coscolluela v. Sandiganbayan*¹⁹ to advance his theory.

In its Comment dated November 21, 2016,²⁰ respondent People of the Philippines, through the Office of the Special Prosecutor, prays for the dismissal of the petition, arguing that the OMB-Visayas did not incur inordinate delay in the conduct of the preliminary investigation and that it had taken proper action in the ordinary course of things and in accord with its mandate. Respondent stresses that the parameters necessary to determine whether there was unreasonable delay have been clearly explained by the Sandiganbayan in the assailed February 12, 2016 Resolution. It posits that Salcedo never raised any objections regarding the purported delay in the proceedings when the cases were still pending before the OMB-Visayas, but raised the issue for the first time in his Urgent Motion for Reconsideration dated February 17, 2015 after his Motion to Quash was denied by the

¹⁵ *Luzon Iron Development Group Corporation v. Bridgestones Mining and Development Corporation, et al.*, 802 Phil. 839, 847-848 (2016).

¹⁶ 242 Phil. 563 (1988).

¹⁷ 352 Phil. 557 (1998).

¹⁸ 335 Phil. 766 (1997).

¹⁹ 714 Phil. 55 (2013).

²⁰ *Rollo*, pp. 376-389.

Sandiganbayan. It disputed the applicability of the cases cited by petitioner as their factual milieu differs with present cases. Finally, respondent alleges that the Sandiganbayan did not abuse its discretion in issuing the assailed Resolutions since they were anchored on a judicious appreciation of the facts and application of relevant laws and jurisprudence.

The Court has never set a threshold period for terminating the preliminary investigation proceedings before the Office of the Ombudsman premised on the fact that the constitutionally guaranteed right to speedy disposition of cases is a relative or flexible concept.²¹ It is consistent with delays and depends upon the circumstances of a particular case, and thus, it cannot be quantified into specified number of days or months. It is quite difficult to ascertain with definiteness and precision when said right have been denied. The Court cannot exactly say how long is too long in a system where justice is supposed to be swift but thorough and correctly considered. Due to the imprecision of this right, the length of delay that will provoke an inquiry is necessarily dependent upon the peculiar circumstances of each case.

The amorphous/unstructured characteristic of this right would sometimes lead to the remedy of dismissal of a case when the said right had been trampled upon. This certainly has a drastic and radical consequence because it would mean that an accused, who may be guilty of a grave offense, would go scot-free without being tried and held responsible for the charge. Viewed in this light, we deemed it wise to review the facts and circumstances of the case at bench to properly determine whether Salcedo's right to speedy disposition of cases had been violated considering that what is at stake here is the dismissal of the criminal cases for forty-six counts of Malversation through Falsification of Public Documents and forty-six counts of Violation of Section 3(e) of R.A. No. 3019.

The right to speedy disposition of cases is enshrined in Section 16, Article III of the Constitution which declares in no uncertain terms that "All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies." The constitutional pledge mandates the swift resolution or termination of a pending case or proceeding. The right to a speedy disposition of cases is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays.²² What the Constitution prohibits are unreasonable, arbitrary and oppressive delays which render rights nugatory.²³

In *Dela Peña v. Sandiganbayan*,²⁴ the Court laid down certain guidelines to determine whether the right to speedy disposition of cases has been violated, to wit:

²¹ *Enriquez, et al. v. Office of the Ombudsman*, 569 Phil. 309, 316 (2008).
²² *Tello v. People*, 606 Phil. 514, 519 (2009).
²³ *Braza v. The Honorable Sandiganbayan*, 704 Phil. 476, 495 (2013).
²⁴ 412 Phil. 921, 929 (2001).

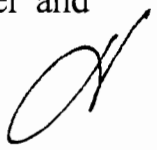
The concept of speedy disposition is relative or flexible. A mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case. Hence, the doctrinal rule is that in the determination of whether that right has been violated, the factors that may be considered and balanced are as follows: (1) the length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.

Measured by the foregoing yardstick, and after a meticulous scrutiny of the circumstances surrounding the proceedings before the OMB-Visayas, the Court finds that Salcedo's right to speedy disposition of cases has not been transgressed.

Record discloses that three separate complaints-affidavits were filed on October 14, 2008 against petitioner Salcedo, Pacrim and Roel based on the findings of the COA that they committed irregularities in the disbursement of government funds. Thereafter, the investigatory process was set in motion before the OMB-Visayas. Upon its request, the COA submitted its special audit report to the OMB-Visayas sometime January 2009. On July 17, 2009, the OMB-Visayas issued a Consolidated Evaluation Report and upgraded the complaints to criminal and administrative cases. On October 28, 2009, the OMB-Visayas issued another Evaluation Report and, thereafter, the complaints were upgraded anew into six criminal cases against petitioner, Pacrim and Roel. When the accused were required to file their respective counter-affidavits, they instead adopted their Comment to the Audit Observation Memorandum Ref. No. 411-001-2008. No clarificatory hearing or further investigation was conducted in the interim that could have added a new dimension to the cases. On March 11, 2011, the OMB-Visayas issued a Resolution finding probable cause against petitioner and his co-accused. This Resolution was modified by an Amended Resolution dated December 8, 2011 ordering that each of the accused should be charged with forty-six (46) counts of Malversation of Public Funds through Falsification of Public Documents and another forty-six (46) counts for Violation of Section 3(e) of R.A. No. 3019. The Amended Resolution was approved by Ombudsman Carpio Morales on December 5, 2012 and the ninety-two Informations were filed on January 3, 2013.

Concededly, the preliminary investigation proceedings took a protracted amount of time of four (4) years, two (2) months and twenty (20) days to complete. However, the Court observes that Salcedo failed to seasonably assert his right to speedy disposition of cases. In *Cagang v. Sandiganbayan*,²⁵ the Court ruled that the accused must invoke his or her constitutional right to speedy disposition of cases in a timely manner and

²⁵ G.R. Nos. 206438 and 206458, July 31, 2018.



failure to do so even when he or she has already suffered or will suffer the consequences of delay constitutes a valid waiver of that right.

Salcedo is deemed to have slept on his right to speedy disposition of cases. He never decried the time spent for the preliminary investigation proceedings against him before the OMB-Visayas. Nor did he, at that time, take any step whatsoever to expedite the disposition of the cases by, for instance, filing a motion for early resolution. Seemingly, Salcedo was insensitive to the implications and contingencies of the projected criminal prosecution posed against him. He merely sat and waited until the Informations were filed against him before the Sandiganbayan.

As aptly pointed out by the Office of the Special Prosecutor, Salcedo asserted his right to speedy disposition of cases only for the first time in his Urgent Motion for Reconsideration dated February 17, 2015, after his Motion to Quash, dated March 20, 2014, was denied by the Sandiganbayan. It is noteworthy that his original position for the quashal of the Informations was the alleged insufficiency of the allegations in the Informations to constitute the offense charge, but when the same was found to be without merit by the anti-graft court, he invoked violation of his right to speedy disposition of cases by way of an additional ground – undoubtedly a mere afterthought.

It bears stressing that when and how an accused asserts his right should be given strong evidentiary value in determining whether the accused is being deprived of the right. The Court's ruling in *The Ombudsman v. Jurado*,²⁶ citing the case of *Perez v. People*,²⁷ is instructive, to wit:

x x x Whether and how a defendant asserts his right is closely related to the other factors we have mentioned. The strength of his efforts will be affected by the length of the delay, to some extent by the reason for the delay, and most particularly by the personal prejudice, which is not always readily identifiable, that he experiences. The more serious the deprivation, the more likely a defendant is to complain. The defendant's assertion of his speedy trial right, then, is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right. We emphasize that failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial.

Every accused in a criminal case has the intense desire to seek an acquittal, or at least, to see the swift end of the accusation against him. To this end, it is natural for him to exert every and all efforts available and within his capacity in order to resist prosecution. Here, Salcedo's inaction gives the impression that the supervening delay seems to have been without his objection, and hence, it was implied with his acquiescence. Indeed, Salcedo's silence may be considered as a waiver of his right.

²⁶ 583 Phil. 133, 148 (2008).

²⁷ 568 Phil. 491, 513-514 (2008).

Moreover, there is nothing on record that would demonstrate that the delay in the conclusion of the preliminary investigation was deliberately availed of for an impermissible purpose. There is no showing that delay in the proceedings was intentionally resorted to gain some tactical advantage over Salcedo and his co-accused or to harass or prejudice them. No impure motive can be imputed to the OMB-Visayas other than the fact that it regularly performed its duty in its apparent desire to unravel the mystery behind the alleged anomalous disbursements of public funds during the implementation of various projects in the Municipality of Sara, Iloilo.

The Court does not find it unreasonable for the graft investigating officer to embark into the detailed investigation of the cases. The record shows that the alleged illegal releases of government funds are complex and numerous. The cases pertain to thirty (30) different projects located in several barangays within the Municipality of Sara, Iloilo and each project has its own sets of payrolls and time books, which involved numerous transactions reflected in voluminous supporting documents. In addition, the complaints were filed against three (3) public officials with different accountabilities and varying modes of participation. More importantly, the responsibility of each has to be established. True, the COA's special audit report has enumerated the scope of the audit, the disbursements involved, the schemes allegedly employed by the accused and the possible basis for the filing of complaints against them. However, the prosecution is not bound by the findings of the Commission on Audit; it must rely on its own independent judgment in the determination of probable cause.²⁸ The graft investigator had to verify, analyze, validate and examine such audit report *vis-à-vis* the evidence submitted by the parties.


We note that the said investigation was not an easy task for the OMB-Visayas as shown in its Evaluation Report dated October 28, 2009, thus:

Each of the findings of the COA is separate and distinct from all others: precisely they were independently enumerated in the audit report. Apparently, the only thing they share in common is the fact that they pertain to projects all implemented or undertaken in the Municipality of Sara, Iloilo and most likely by the same officials of said local government unit. But then again, each finding has a set of circumstance of its own; in fact, several, if not all, issues are even comprised of several distinct transactions or projects within themselves.

For an efficient and speedy investigation of the findings, it would be best that each issue/finding be separately docketed. In that way, each finding can be thoroughly looked and resolved as soon as it becomes ready for resolution. For certain, each issue calls for its own pace of investigation, depending on the circumstances involve[d]; be separating the issues, then,

²⁸

Binay v. Sandiganbayan, 374 Phil. 413, 451 (1999).



no issue ripe for resolution shall be stalled by the slower progress in the others.²⁹

Notably, it took the OMB-Visayas a period of two (2) years, four (4) months and twenty-eight (28) days to find probable cause against Salcedo and his co-accused, from the filing of the three complaints on October 14, 2008 to the issuance of the Resolution on March 11, 2011. It appears, however, that accused were merely afforded sufficient opportunities to ventilate their respective defenses in the interest of justice, due process and fair investigation. A reasonable deferment of the proceedings may be allowed or tolerated to the end that cases may be adjudged only after full and free presentation of the evidence by all the parties. The issuance of the Amended Resolution, dated December 8, 2011, is not without an excuse. The OMB-Visayas felt the genuine need to modify its March 11, 2011 Resolution because the thirty (30) projects were actually covered by forty-six payrolls, and each allegedly falsified payroll should be treated as equivalent to one count of malversation thru falsification and one count of violation of Section 3(e) of R.A. No. 3019.

Anent the fact that the December 8, 2011 Amended Resolution was approved by Ombudsman Carpio Morales only on December 5, 2012, the Court finds the following explanation proffered by the Office of the Special Prosecutor to be acceptable:

Petitioner next points to the one-year period which it took “the Ombudsman to approve the *Amended Resolution*.” Perhaps, the petitioner lost sight of the changes in the leadership within the OMB from the time that probable cause was found under the 11 March 2011 *Resolution* up to the time that the *Amended Resolution* was approved on 5 December 2011. As appearing in the 11 March 2011 Resolution, it was Acting Ombudsman Orlando Casimiro who headed the OMB when the cases were resolved. Subsequently, Ombudsman Conchita Carpio Morales assumed office and the cases were subjected to a further review. These levels of review could not be avoided, given the change in leadership and the need for thoroughness. These levels of review were never intended to – and did not, in fact – vex, oppress or otherwise disadvantage petitioner and his co-accused.³⁰

The government is naturally not expected to go forward with the trial and incur costs unless it is convinced and satisfied that it has an iron-clad case to make a worthwhile indictment. Thoroughness and correctness should not be compromised or sacrificed at the altar of expediency.

At this juncture, the Court takes judicial notice of the fact that the cases against Salcedo and his co-accused are not the only cases pending before the OMB-Visayas. The nature of the Office of the Ombudsman encourages

²⁹ *Rollo*, pp. 378-379.

³⁰ *Id.* at 384.

individuals who clamor for efficient government service to freely file their complaints against alleged/suspected wrongdoings of government personnel which inevitably results in a steady stream of cases reaching the Ombudsman.³¹ Naturally, the disposition of those cases, including these cases subject of the present petition, would take some time. Obviously, petitioner merely ventured into a mathematical computation of the period from the filing of the three complaints to the filing of the ninety-two Informations to support his thesis of violation of his right to speedy disposition of cases.

Lastly, there is no allegation, much less proof, that Salcedo was persecuted, oppressed or was made to undergo any vexatious process during the preliminary investigation. Admittedly, anxiety typically accompanies a criminal charge. However, not an iota of evidence was adduced to show that petitioner ever suffered anxiety of such nature and degree that it became oppressive, unnecessary and notoriously disproportionate to the nature of the criminal charges, and more importantly, sufficient to justify the severe remedy of dismissing the indictments.

The Court finds that Salcedo's reliance on the doctrines in *Tatad v. Sandiganbayan*, *Duterte v. Sandiganbayan*, *Angchangco, Jr. v. Ombudsman*, and *Coscolluela v. Sandiganbayan*, is misplaced.

In *Tatad v. Sandiganbayan*, we held that the long delay of three years in the termination of the preliminary investigation by the Tanodbayan was violative of Tatad's constitutional right to due process and right to speedy disposition of cases against him because: (1) political motivation played a vital role in activating and propelling the prosecutorial process; (2) there was blatant departure from the established procedures prescribed for the conduct of a preliminary investigation; and (3) the long delay in the conclusion of the proceedings could not be justified on the basis of the records.

On the other hand, the petitioners in *Duterte v. Sandiganbayan* were denied the right to a preliminary investigation altogether. They were not served with copies of the complaint-affidavits and were merely directed to comment on a civil complaint against them and on a special audit report of the Commission on Audit. Petitioners were clueless that a preliminary investigation was being conducted against them and, thus, could not have urged the speedy resolution of their case. It was only on February 22, 1996, or four years later, that they received the resolution recommending the filing of informations against them. Also, informations were filed against petitioners in that case despite the absence of adequate ground to hold them liable for the crime charged.

³¹ *Dansal v. Judge Fernandez, Sr.*, 383 Phil. 897, 909 (2000); *Mendoza-Ong v. Sandiganbayan*, 483 Phil. 451, 455 (2004).


Similarly in *Coscolluela v. Sandiganbayan*, the petitioners could not have urged the speedy resolution of their case because they were unaware that the investigation against them was still on-going. They were only informed of the March 27, 2013 Resolution and Information against them only after the lapse of six long years, or when they received a copy of the latter after its filing with the Sandiganbayan on June 19, 2009. In this regard, they could have reasonably assumed that the proceedings against them have already been terminated. The foregoing serves as a plausible reason as to why they never followed-up on the case altogether.

In *Angchangco, Jr. v. Ombudsman*, the Court dismissed the criminal complaints for failure of the Office of the Ombudsman to resolve the criminal charges against petitioner for more than six years despite the fact that Angchangco, Jr had filed several omnibus motions for early resolution. Angchangco, Jr. even filed a motion to dismiss. Sadly, however, the Office of the Ombudsman failed to act on the said motions. For the past six years, petitioner remained under a cloud, and since his retirement in September 1994, he has been deprived of the fruits of his retirement after serving the government for more than forty-two years all because of the inaction of the respondent Ombudsman.

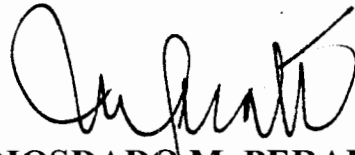
Unlike in the *Tatad, Duterte, Coscolluela* and *Angchangco, Jr.* cases where the delay were manifestly oppressive and arbitrary, the facts of the cases subject of the present petition do not evince vexatious, capricious and oppressive delay in the conduct of preliminary investigation. Accordingly, We find no compelling reason to accord in the case at bench the same radical relief of dismissal granted by the Court in those cases cited by petitioner Salcedo.

To conclude, there was no arbitrary and inordinate delay contemplated under the Constitution to support Salcedo's assertion that his right to speedy disposition of cases was violated. The prolonged termination of the preliminary investigation in the subject cases should not be a cause for an unfettered abdication by the Sandiganbayan of its duty to try and determine the controversies in Criminal Cases Nos. SB-13-CRM-0001 to 0046 and Criminal Case Nos. SB-13-CRM-0047 to 0092. Let us give the Sandiganbayan the chance to ferret out the truth as to the criminal culpability of Salcedo and his co-accused or absolve them and erase any taint in their names, if innocent.

WHEREFORE, the petition for *certiorari* is **DENIED**. The assailed January 23, 2015 and the February 12, 2016 Resolutions issued by the Special Third Division of the Sandiganbayan in Criminal Cases Nos. SB-13-CRM-0001 to 0046 and SB-13-CRM-0047 to 0092 are **AFFIRMED**.



SO ORDERED.



DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:



MARVIC MARIO VICTOR F. LEONEN
Associate Justice

Reyes
ANDRES B. REYES, JR.
Associate Justice



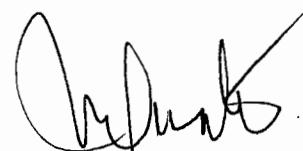
RAMON PAUL L. HERNANDO
Associate Justice



ROSMARI D. CARANDANG
Associate Justice

ATTESTATION

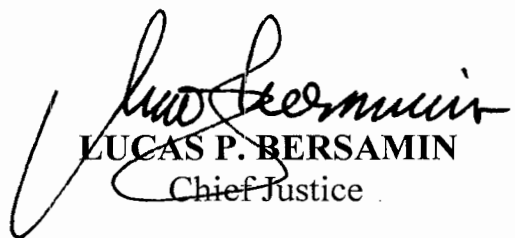
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Associate Justice
Chairperson, Third 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.



LUCAS P. BERSAMIN
Chief Justice