



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NANCY A. CATAMCO (formerly  
NANCY C. PEREZ),  
Petitioner,

G.R. Nos. 243560-62

- versus -

SANDIGANBAYAN SIXTH  
DIVISION; OFFICE OF THE  
OMBUDSMAN; and PEOPLE OF  
THE PHILIPPINES,  
Respondents.

X-----X  
POMPEY M. PEREZ,  
Petitioner,

G.R. Nos. 243261-63

Present:

- versus -

PERALTA, J., Chairperson,  
CAGUIOA,  
REYES, JR.,  
LAZARO-JAVIER, and  
LOPEZ, JJ.

SANDIGANBAYAN (SIXTH  
DIVISION),  
Respondent.

Promulgated:

JUL 28 2020

X-----X

DECISION

CAGUIOA, J.:

The instant consolidated Petitions for *Certiorari*<sup>1</sup> filed by the petitioner Nancy A. Catamco (Catamco), docketed as G.R. Nos. 243560-62, and by

<sup>1</sup> Rollo (G.R. Nos. 243560-62), pp. 3-71; rollo (G.R. Nos. 243261-63), pp. 3-26.

petitioner Pompey M. Perez (Perez), docketed as G.R. Nos. 243261-63, assail the Resolution<sup>2</sup> dated August 7, 2018 and Resolution<sup>3</sup> dated October 12, 2018 of the Sixth Division of the Sandiganbayan in SB-18-CRM-0337, SB-18-CRM-0338 and SB-18-CRM-0339, both of which denied their respective motions to dismiss the case for lack of merit.

### The Facts

In 2004, a Memorandum of Agreement<sup>4</sup> was executed between the Department of Agriculture and the Municipal Government of Poro, represented by Municipal Mayor Edgar R. Rama (Mayor Rama), by which the amount of ₱5,000,000.00 would be released to the municipality for the procurement of farm inputs and implements for distribution to farmers.<sup>5</sup> The municipality utilized the fund for the purchase of biochemical fertilizers for farmer-beneficiaries under the plant now, pay later scheme.<sup>6</sup> Mayor Rama was authorized by the Sangguniang Bayan to directly purchase liquid Vitacrop fertilizers from Perzebros Company, which was owned by herein petitioners Perez and Catamco.<sup>7</sup>

Sometime in 2006, based on an alleged finding of the Commission on Audit (COA) of overpricing and irregularities in the procurement process,<sup>8</sup> the Office of the Ombudsman (Ombudsman) launched Task Force Abono (TFA) to specifically conduct a fact-finding investigation into the purported “fertilizer fund scam.”<sup>9</sup>

A Complaint dated December 27, 2012<sup>10</sup> was thereafter filed by the TFA on June 21, 2013<sup>11</sup> against Perez, Catamco and the other public officials involved in the transaction. The Complaint alleged that the following circumstances, *inter alia*, evinced collusion between the public and private respondents: (i) there was a shortage of 225 bottles delivered as against the purchase order of 3,333 units; (ii) the macronutrient specifications in the label were not met when the fertilizers were subjected to laboratory testing; (iii) based on a canvass conducted from other suppliers of fertilizers with equivalent macronutrient compositions, “Vitacrop” was overpriced by at least 1,092%; (iv) there was no justification to resort to direct contracting; (v) Perzebros was only incorporated two (2) months prior to the award of the procurement contract; and (vi) it took only a day from the issuance of the Sangguniang Bayan Resolution authorizing the municipal mayor to directly purchase

<sup>2</sup> *Rollo* (G.R. Nos. 243261-63), pp. 28-42. Penned by Sandiganbayan Associate Justice Sarah Jane T. Fernandez, with Associate Justices Karl B. Miranda and Kevin Narce B. Vivero, concurring.

<sup>3</sup> *Id.* at 45-55.

<sup>4</sup> *Rollo* (G.R. Nos. 243560-62), pp. 261-262.

<sup>5</sup> *Rollo* (G.R. Nos. 243261-63), p. 96.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Audit Observation Memorandum No. 2004-003 dated July 6, 2004, *rollo* (G.R. Nos. 243560-62), pp. 312-315; Audit Observation Memorandum No. 2005-06 dated June 5, 2005, *rollo* (G.R. Nos. 243560-62), pp. 327-330.

<sup>9</sup> *Rollo* (G.R. Nos. 243261-63), p. 38.

<sup>10</sup> *Id.* at 36.

<sup>11</sup> *Rollo* (G.R. Nos. 243560-62), p. 398.

fertilizers from Perzebros, to the completion of the delivery, and the acceptance and inspections of the fertilizers by the municipal government.<sup>12</sup>

On July 19, 2013, the Ombudsman directed the respondents to file their respective counter-affidavits. The respondents filed their respective counter-affidavits from September 12, 2014 to May 20, 2015.<sup>13</sup>

After more than two (2) years, or on July 17, 2017, the Ombudsman issued its Resolution<sup>14</sup> finding probable cause to indict Perez, Catamco and their co-respondents, including Mayor Rama, for one (1) count of violation of Section 3(e) of Republic Act (R.A.) No. 3019 and two (2) counts of Malversation under Article 217 of the Revised Penal Code (RPC).<sup>15</sup> Said Resolution was approved on August 1, 2017.<sup>16</sup>

Thereafter, petitioners Perez, Catamco, and two other co-respondents filed their motions for reconsideration on August 23, 2017, September 25, 2017 and September 28, 2017, respectively.<sup>17</sup> These were denied in an Order<sup>18</sup> dated November 10, 2017 and approved on January 18, 2018. Four (4) months thereafter, the corresponding Informations<sup>19</sup> were filed before the Sandiganbayan.<sup>20</sup>

Before arraignment, Catamco and Perez each moved for the dismissal of the case against them claiming that the Ombudsman's inordinate delay of more than twelve (12) years, from the conduct of its investigation in 2006 until the filing of the Information in court, violated their constitutional right to speedy disposition of cases.<sup>21</sup>

In its *Consolidated Comment/Opposition*,<sup>22</sup> the Ombudsman prayed for the dismissal of the motions, arguing that time it took to conclude the investigation in the instant case, from the filing of the Complaint in 2013 until the filing of the Information in 2018, cannot be considered as inordinate delay because of the need to meticulously review and evaluate the numerous records and considering the fact that a steady stream of cases reaches the Ombudsman.<sup>23</sup>

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<sup>12</sup> *Rollo* (G.R. Nos. 243261-63), pp. 98-99.

<sup>13</sup> *Id.* at 36.

<sup>14</sup> *Id.* at 94-115.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 117-122.

<sup>19</sup> *Rollo* (G.R. Nos. 243560-62), pp. 74-82.

<sup>20</sup> *Rollo* (G.R. Nos. 243261-63), p. 37.

<sup>21</sup> *Id.* at 28-31.

<sup>22</sup> *Rollo* (G.R. Nos. 243560-62) pp. 396-405.

<sup>23</sup> *Id.* at 397-399.

### **Ruling of the Sandiganbayan**

In its Resolution dated August 7, 2018, the Sandiganbayan denied petitioners' respective motions to dismiss. Applying the "Balancing Test,"<sup>24</sup> the Sandiganbayan found that petitioners' right to speedy disposition of their case was not violated. While the Sandiganbayan conceded that there was a delay of four (4) years and seven (7) months to issue a Resolution, it agreed with the Ombudsman's claim that such delay was justified due to the voluminous records and number of respondents involved. The Sandiganbayan further noted that jurisprudence has recognized that the steady stream of cases reaching the Ombudsman would inevitably cause some delay. The Sandiganbayan also found the length of delay in this case as reasonable because the Ombudsman had to wait for all respondents to file their respective counter-affidavits.

Moreover, the Sandiganbayan ruled that the delay did not only prejudice petitioners and their co-accused, it also made it harder for the prosecution, who has the burden of proving the guilt of the accused, to prove its case.

Perez and Catamco moved for reconsideration of the Sandiganbayan's Resolution, but the same was denied in a Resolution dated October 12, 2018.

Hence, the consolidated Petitions.

### **Issue**

Whether the Sandiganbayan gravely abused its discretion amounting to lack or excess of jurisdiction in denying the motions to dismiss respectively filed by petitioners.

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

The consolidated petitions are impressed with merit. The Court rules that the Sandiganbayan gravely abused its discretion in denying petitioners' respective motions to dismiss for violation of their right to speedy disposition of cases. To be sure, a straightforward application of the guidelines provided by the Court in the recent case of *Cagang v. Sandiganbayan, Fifth Division (Cagang)*,<sup>25</sup> compels the grant of these petitions.

In *Cagang*, the Court laid down the following guidelines in resolving issues concerning 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

<sup>24</sup> *Rollo* (G.R. Nos. 243261-63), p. 35.

<sup>25</sup> G.R. Nos. 206438, 206458 & 210141-42, July 31, 2018, 875 SCRA 374.



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.

*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.


14. Based on the timeline of events, the need to meticulously and assiduously review and evaluate the numerous records, and the mathematical computations required to conclude the existence of probable cause, the lapse of time in the resolution of the present cases can hardly be considered inordinate delay resulting in a violation of the accused's right to speedy disposition of cases. Any delay attendant to the resolution of the present cases was reasonable and normal in the ordinary process of justice, and accused themselves contributed to the delay when they asked for additional time to file counter-affidavits.

15. The Supreme Court also made the following pronouncement in *Dansal v. Fernandez Sr.*:

The Court is not unmindful of the duty of the Ombudsman under the Constitution and Republic Act No. 6770 to act promptly on Complaints brought before him. But such duty should not be of cases at the expense of thoroughness and correctness. Judicial notice should be taken of the fact that the nature of the Office of the Ombudsman encourages individuals who clamor for efficient government service to freely lodge their Complaints against wrongdoings of government personnel, thus resulting in a steady stream of cases reaching the Office of the Ombudsman.<sup>39</sup> (underscoring in the original)

In other words, to justify the delay in the preliminary investigation, the Ombudsman merely claimed that it needed time to meticulously evaluate and review numerous records and relied heavily on this Court's recognition in a previous case of the steady stream of cases handled by the Ombudsman. However, while this Court has indeed recognized the reality and inevitability of institutional delay,<sup>40</sup> it does not, by itself, justify the Ombudsman's failure to comply with the periods provided under the rules. No less than the Constitution mandates the Ombudsman to act promptly on complaints filed before it,<sup>41</sup> which duty was further reinforced by R.A. No. 6670<sup>42</sup> or "The Ombudsman Act of 1989," to promote efficient government service to the people. Thus, absent any proof of how the steady stream of cases or heavy workload affected the resolution of a case, the Ombudsman cannot repeatedly hide behind this generic excuse.

In *Coscolluela v. Sandiganbayan*,<sup>43</sup> the Court ruled that absent any extraordinary complication, which the Ombudsman must adequately prove, "such as the degree of difficulty of the questions involved in the case, or any event external thereto that effectively stymied [the Ombudsman's] normal work activity," any delay in the resolution of the preliminary investigation is

<sup>39</sup> *Rollo* (G.R. Nos. 243560-62), p. 399.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Approved on November 17, 1989.

<sup>43</sup> 714 Phil. 55 (2013).

not justified.<sup>44</sup> Further, in *Cagang*, the Court held that once delay is established, the prosecution has the burden to prove, among others, that the issues are so complex and the evidence so voluminous, which render the delay inevitable.<sup>45</sup>

Here, despite the glaring lack of proof of any of these circumstances, the Sandiganbayan still ruled that the delay in the resolution of the Complaint against petitioners was reasonable. The Sandiganbayan blindly agreed with, and even justified, the Ombudsman's unsubstantiated claims of "voluminous records" by taking notice that this case is part of the "Fertilizer Fund Scam."

According to the prosecution, considering the voluminous records that the Office of the Ombudsman had to meticulously review, and the number of respondents, the delay in the termination of the preliminary investigation is justified.

This Court is inclined to agree with the prosecution. In *Mendoza-Ong v. Sandiganbayan*, citing *Dansal v. Fernandez*, the Supreme Court recognized that the steady stream of cases reaching the Office of the Ombudsman would inevitably cause some delay. To wit:

x x x. "Speedy disposition of cases" is consistent with reasonable delays. The Court takes judicial notice of the fact that the nature of the Office of the Ombudsman encourages individuals who clamor for efficient government service to lodge freely their complaints against alleged wrongdoing of government personnel. A steady stream of cases reaching the Ombudsman inevitably results. Naturally, disposition of those cases would take some time. x x x

x x x x

As for the delay in the fact-finding investigation, nothing in the records indicate the exact date when the fact-finding investigation of the Office of the Ombudsman commenced. In any event, it appears that the Office of the Ombudsman created Task Force Abono, the nominal complainant in the preliminary investigation, to conduct an investigation on transactions in connection with the Fertilizer Fund Scam. Said Fertilizer Fund Scam did not involve only a handful of transactions, but numerous transactions, concerning many local government units and officials from several regions. This necessarily translates to voluminous records that the Office of the Ombudsman must evaluate.<sup>46</sup>

Even worse, while the Sandiganbayan, found, as a fact, that the instant case is simple and does not require a long time to resolve, it nonetheless ruled that delay here was reasonable given the numerous cases handled by the Ombudsman, *viz.*:

**The present cases involve only a few of such transactions, i.e., those in the Municipality of Poro, Cebu. While this Court finds that the cases at bar do not involve unusually complex factual or legal issues,**

<sup>44</sup> Id. at 63.

<sup>45</sup> Supra note 25, at 458.

<sup>46</sup> *Rollo* (G.R. Nos. 243261-63), pp. 37-38.



**the time it took to conduct the fact-finding investigation is not unreasonable, considering the number of transactions subject of the fact-finding investigation. To be sure, individual cases not involving complex factual or legal issues should not take long to resolve. However, it is undeniable that numerous cases — both related and not related to the Fertilizer Fund Scam, regardless of the complexity involved, would take more time to dispose of.**<sup>47</sup> (Emphasis and underscoring supplied)

In *Martinez III v. People*,<sup>48</sup> (*Martinez III*) petitioners therein were also charged for violation of Section 3(e) of R.A. No. 3019 in relation to the local government's purchase, in 2004, of fertilizers from Sikap Yaman. The TFA filed the complaint on May 11, 2011. On July 20, 2011, the Ombudsman ordered petitioners therein to file their respective counter-affidavits, which were filed on September 19, 2011. The Ombudsman's Resolution finding probable cause was issued on February 2, 2015 and the corresponding Informations were filed before the Sandiganbayan on June 28, 2016.<sup>49</sup>

The Ombudsman claimed that it promptly and expeditiously acted on the case considering that it was part of the so-called "Fertilizer Fund Scam," which involved high ranking public officials and non-government organizations. The Court, however, found the Ombudsman's excuse totally bereft of merit and ruled that the delay in the conduct of the preliminary investigation violated petitioners' right to the speedy disposition of their case, viz.:

It is quite notable that from the time the petitioners were ordered to submit their counter-affidavit on July 20, 2011, it took the Office of the Ombudsman until June 28, 2016, or *almost five years* from the time they were required to submit their counter-affidavits, to file the corresponding informations. Given the unusual length of such interval, the Prosecution bears the burden to justify the prolonged conduct of the preliminary investigation, but it did not offer any suitable explanation.

**The representation by the OSG that the Office of the Ombudsman had investigated the present case in conjunction with the other Fertilizer Fund scam cases did not sufficiently justify the close to five years spent in conducting the preliminary investigation.** There was no allegation, to start with, that the petitioners had conspired with those involved in the other so-called Fertilizer Fund scam cases, which might have explained the long period necessary for the preliminary examination. **The delay was really inordinate and oppressive considering that the informations ultimately filed against the petitioners did not appear to have resulted from a complex preliminary investigation that involved the review of voluminous documentary and other evidence.** Moreover, the petitioners were only initially charged for their non-compliance with COA Circular No. 96-003 that concerned accounting and auditing guidelines on the release of fund assistance to NGOs and people's organizations. **Under the circumstances, the protracted preliminary investigation by the Office**

<sup>47</sup> Id. at 38.

<sup>48</sup> G.R. No. 232574, October 1, 2019.

<sup>49</sup> Id. at 2.



**of the Ombudsman evidently ran counter to the aforesaid express constitutional mandate to promptly act on complaints filed with it.**<sup>50</sup>  
(Emphasis and underscoring supplied)

Similar to *Martinez III*, it also took the Ombudsman almost *five years* to complete the preliminary investigation in this case from the time petitioners were ordered to file their counter-affidavits on July 19, 2013 until the corresponding Informations were filed before the Sandiganbayan, on April 27, 2018.

Moreover, a perusal of the Ombudsman's Resolution and the Informations filed against petitioners shows that the issues in this case are simple, straightforward and are easily determinable **considering that only one transaction is involved**. There was also no allegation that petitioners herein had conspired with those involved in the other so called "Fertilizer Fund Scam" cases. In fact, the Ombudsman's primary findings that petitioners violated the Procurement Law and that the transaction was made with undue haste are mere reiterations of the audit findings and previous issuances of the COA.<sup>51</sup> While a meticulous review and verification of documents may have been necessary given the number of respondents in this case, a protracted investigation of more than two (2) years from the time the last counter-affidavit was filed is still quite unreasonable **especially considering that, at the end of the day, the Ombudsman merely relied on, and even adopted as its only facts, the audit findings and previous issuances of the COA**. In this light, the Ombudsman's delay in the termination of the preliminary investigation against all respondents was clearly unjustified.

Lastly, the Court finds that petitioners timely asserted their rights at the earliest possible time. In their motions for reconsideration of the Ombudsman's resolution finding probable cause, petitioners already invoked their right to speedy disposition of cases.<sup>52</sup>

Verily, by simply following the guidelines of *Cagang*, the Court is left with no choice but to consider the prosecution's failure to prove sufficient justification for the delay. And, in view of petitioners' timely invocation of their right to speedy disposition of cases, it is quite evident that the Sandiganbayan committed grave abuse of discretion in denying the motions to dismiss the case.

**WHEREFORE**, the consolidated petitions are hereby **GRANTED**. The assailed Resolutions dated August 7, 2018 and October 12, 2018 of the Sixth Division of the Sandiganbayan are **ANNULLED** and **SET ASIDE**. The Sandiganbayan is ordered to **DISMISS** Criminal Case Nos. SB-18-CRM-0337, SB-18-CRM-0338, and SB-18-CRM-0339 for violation of petitioners' Constitutional right to speedy disposition of cases.

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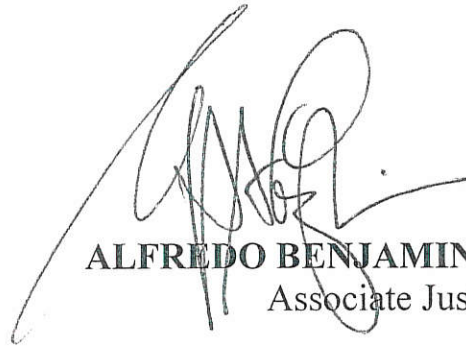
<sup>50</sup> Id. at 7.

<sup>51</sup> *Rollo* (G.R. Nos. 243261-63), pp. 103-113.

<sup>52</sup> See id. at 39, 119.



**SO ORDERED.**

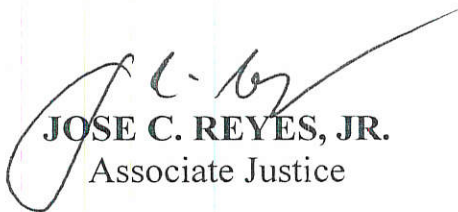


**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

WE CONCUR:



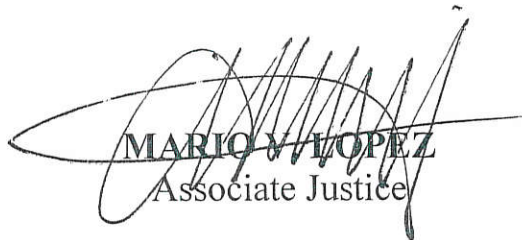
**DIOSDADO M. PERALTA**  
Chief Justice  
Chairperson



**JOSE C. REYES, JR.**  
Associate Justice



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



**MARIO V. LOPEZ**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**DIOSDADO M. PERALTA**  
Chief Justice