

SUPREME COURT OF THE PHILIPPINES
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SEP 18 2019

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ELENITA S. BINAY,
Petitioner,

G.R. No. 213957-58

Present:

-versus-

LEONEN, J., *Acting Chairperson*,
CAGUIOA,*
REYES, A., JR.,
HERNANDO, and
INTING, JJ.

OFFICE OF THE OMBUDSMAN,
SANDIGANBAYAN (THIRD
DIVISION), OFFICE OF THE
SPECIAL PROSECUTOR, and
PEOPLE OF THE PHILIPPINES,
Respondents.

Promulgated:
August 7, 2019

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DECISION

LEONEN, J.:

Generally, this Court will not interfere with the Office of the Ombudsman's determination of probable cause, unless there is a clear and convincing showing of grave abuse of discretion.¹

For this Court's resolution is a Petition for Certiorari and Prohibition² seeking to nullify the Office of the Ombudsman's Consolidated Resolution³ and Resolution.⁴ In the Office of the Ombudsman's Consolidated Resolution, then Makati City Mayor Elenita S. Binay (Mayor Binay) was added among the accused in both the Information for violation of Section

* Designated additional Member per Raffle dated July 29, 2019.

¹ See *Roxas v. Hon. Vasquez*, 411 Phil. 276 (2001) [Per J. Ynares-Santiago, First Division].

² *Rollo*, pp. 3-49.

³ Id. at 50-87. The Consolidated Resolution dated August 29, 2013 was penned by Assistant Special Prosecutor II Arieta P. Say.

⁴ Id. at 88-107. The Resolution dated June 16, 2014 was penned by Assistant Special Prosecutor II Arieta P. Say and Assistant Special Prosecutor III Leni Bajo-Padaca.

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3(e) of Republic Act No. 3019 and in the amended Information for malversation.⁵

Records disclose that from September 2001 to February 2002, the Commission on Audit's Special Task Force of Local Government Units audited the financial transactions of the local government units in Metro Manila. The audit focused on their purchase of supplies, materials, and equipment amounting to ₱1 million and above.⁶

The audit revealed that on March 14, 2001, the City of Makati, through its General Services Department Head Ernesto A. Aspillaga (Aspillaga) and former Mayor Binay, entered into a contract with Apollo Medical Equipment and Supplies (Apollo), which was represented by its owner, Apollo B. Carreon (Carreon).⁷ Under the contract, the City of Makati was to purchase from Apollo ₱38,799,700.00 worth of hospital beds and bedside cabinets for the Ospital ng Makati.⁸

Below is the breakdown of the contract price:

Item	Quantity	Price per Unit
Hospital beds	188	₱ 148,000.00
Bedside cabinets	220	₱ 17,850.00
Intensive Care Unit beds	10	₱ 545,000.00
Orthopedic beds	4	₱ 480,000.00 ⁹

To facilitate the payment of the hospital items, Check No. 06279, covered by Disbursement Voucher No. 1730, was issued on April 30, 2001. This, however, only covered the amount of ₱35,106,910.91.¹⁰

The audit revealed that the contract was awarded to Apollo without the benefit of public bidding.¹¹ Instead, the public officials involved allegedly relied on Apollo's representation that it was the sole and exclusive Philippine distributor of UGM-Medysis of New Jersey, USA. However, when Apollo delivered the beds, it was discovered that the beds were not manufactured by UGM-Medysis, but by Juhng Mei Medical Instruments Co., Ltd. (Chya Hung Medical Treatment Instruments Factory Co., Ltd.), a Taiwanese company.¹²

⁵ Id. at 85-87.

⁶ Id. at 268.

⁷ Id. at 51, 53, and 269.

⁸ Id. at 51 and 61.

⁹ Id. at 112.

¹⁰ Id. at 51.

¹¹ Id. at 75.

¹² Id. at 51-52.

Moreover, the manufacturer's invoice for the transaction showed that the items' actual total cost was merely ₱2,447,376.14, which was well below ₱36,431,700.00, the amount paid to Apollo.¹³

As a result of these findings, two (2) Complaints were filed separately by the Commission on Audit and one Roberto G. Brillante (Brillante) before the Office of the Ombudsman.¹⁴

On May 9, 2011, the Office of the Overall Deputy Ombudsman issued a Resolution¹⁵ finding probable cause to indict 15 officials for violation of Section 3(e)¹⁶ of Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act, and for malversation of public funds through falsification.¹⁷ The 15 officials who were indicted are:

- a. Nicanor V. Santiago, Jr. (SG 27), Former City Administrator, Makati City;
- b. Ernesto A. Aspillaga (SG 27), Head, General Services Department, Makati City;
- c. Ramoncito R. Coronel (SG 25), Officer-in-Charge, Assistant Medical Director, Ospital ng Makati;
- d. Lolita G. Valdez (SG 16), Head, Nursing Services, Ospital ng Makati;
- e. Althea C. Suico (SG 14), Nurse, Department of Obstetrics and Gynecology, Ospital ng Makati;
- f. Maria Perpetua Q. Reyeg (SG 16), Head Nurse, Department of Medicine, Ospital ng Makati;
- g. Jaime P. de los Reyes (SG 11), Administrative Officer I, General Services Division, Makati City;
- h. Conrado B. Pamintuan (SG 14), Supply Officer II, Supply and Property Division, Makati City;
- i. Rudolfo B. Fernandez, Chief, Supply and Property Department Office

¹³ Id. at 52.

¹⁴ Id. at 91.

¹⁵ Id. at 108-142. The Resolution was approved by then Acting Ombudsman Orlando C. Casimiro on May 23, 2011.

¹⁶ Republic Act No. 3019 (1960), sec. 3 provides:

SECTION 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

.....

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

¹⁷ *Rollo*, pp. 53-54.

of the Treasurer, Makati City;

- j. Eduardo G. de Guzman (SG 6), Storekeeper II, Supply and Property Division, General Services Department, Makati City;
- k. Nestor R. Bulos (SG 11), Storekeeper IV, General Services Department, Makati City;
- l. Lilia Nonato (SG 6), Clerk III, Supply and Property Department, General Services Division, Makati City;
- m. Ligaya Ibay (SG 6), Inspector, Medical Section, Supply and Property Department, General Services Division, Makati City;
- n. Apollo B. Carreon, and
- o. Carmen C. Maano[.]¹⁸

No probable cause was found against Mayor Binay. In so ruling, the Office of the Overall Deputy Ombudsman cited the Arias doctrine:

As the final approving authority for the Award of Purchase and of the Purchase Orders, respondent Binay is within the scope of the Arias doctrine, the evidence showing that she had relied in good faith on the representations of respondent Aspillaga, as City General Services Officer, and of respondent Santiago, as City Administrator, that the transaction was regular on its face.

A painstaking review of the evidence reveals that respondents Santiago and Coronel had crafted the Purchase Requests and Purchase Orders so well that by the time that the City Government of Makati had to issue the Award of Purchase dated 13 March 2001, there was nothing before respondent Binay that would have behooved her to examine the purchase further.

Without any further evidence, the signatures of respondent Binay on the Purchase Requests, Purchase Orders, and Award of Purchase, standing alone, cannot sustain a finding of probable cause sufficient to prosecute respondent Binay for Violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act.¹⁹

On July 4, 2011, two (2) Informations were filed before the Sandiganbayan based on the May 9, 2011 Ombudsman Resolution.²⁰ The cases were raffled to the Sandiganbayan Third Division.²¹

Three (3) Motions for Reconsideration were filed, all assailing the Ombudsman Resolution. The first was filed by Ramoncito R. Coronel,

¹⁸ Id. at 139-140.

¹⁹ Id. at 135-136.

²⁰ Id. at 174.

²¹ Id. at 172.

Jaime P. Delos Reyes, Conrado B. Pamintuan, Eduardo G. De Guzman, and Lilia Nonato. The second was filed by Aspillaga and Nicanor V. Santiago, Jr. (Santiago). The third was filed by Ma. Perpetua B. Reyeg.²²

Former City Administrator Santiago and Former City General Services Head Aspillaga argued that they could not be held liable for malversation because they were not the funds' custodians. They averred that it was Mayor Binay who not only was the custodian, but was also the approving authority in their disbursement.²³

On August 29, 2013, the Office of the Special Prosecutor issued a Consolidated Resolution²⁴ recommending the inclusion of Mayor Binay as an accused for violation of Section 3(e) of Republic Act No. 3019. She also recommended that the Information for malversation through falsification be withdrawn and an amended information for malversation against Mayor Binay and the other accused be filed.²⁵ It justified the finding of probable cause against Mayor Binay:

With respect to Binay, the *Arias* doctrine cannot be properly invoked so as to relieve her from any liability. It is undeniable that Binay extensively participated in the most decisive parts of the procurement process and in the eventual disbursement of funds. On the whole, she had an extensive and active participation in this transaction for which she cannot disclaim responsibility and liability. She cannot feign good faith in claiming that she merely relied in the representations of Aspillaga and Santiago. As the local chief executive of the City of Makati, it is her bounden duty to see to it that laws are faithfully complied with. Good faith is a matter of defense that should be determined in the course of trial.

...

....

Quite notable, likewise, is the unusual haste in the procurement of the subject items. It took only thirty (30) days from February 12, 2001 to award the contract to Apollo on March 14, 2001. It cannot be ignored that the amount involved in this procurement is not a measly sum of P36Million. Considering the magnitude of the amount involved before her, it should have put her on guard to have assured the propriety of the transaction.

There was likewise no claim nor proof that the need for the subject items was urgent or under an emergency that would prompt a hasty procurement. Absent such a situation, the Committee on Awards of which she is the chairman, could have directed a re-assessment or re-validation of Apollo's credentials in order to comply with the mandatory requisites of resorting to exclusive distributorship or at best directed the conduct of a

²² Id. at 50-51.

²³ Id. at 58.

²⁴ Id. at 50-87.

²⁵ Id. at 85-87.



public bidding.²⁶ (Citations omitted)

On October 4, 2013, then Ombudsman Conchita Carpio Morales (Ombudsman Carpio Morales) approved the Consolidated Resolution.²⁷ Subsequently, the Informations²⁸ filed before the Sandiganbayan were amended to reflect the recommendation in the August 29, 2013 Consolidated Resolution.

Mayor Binay filed a Motion for Reconsideration,²⁹ but this was denied in the Office of the Special Prosecutor's June 16, 2014 Resolution,³⁰ which was approved by Ombudsman Carpio Morales.³¹

Thus, Mayor Binay comes to this Court through a Petition for Certiorari³² under Rule 65 of the Rules of Court, seeking, among others, to nullify public respondent Office of the Ombudsman's Consolidated Resolution finding probable cause against her. She also prays that a temporary restraining order or a writ of preliminary injunction be issued to enjoin public respondents Office of the Special Prosecutor and Sandiganbayan from continuing with the trial or any other proceeding in the criminal cases against her.³³

Petitioner argues that since neither the Commission on Audit nor Brillante moved for reconsideration of the May 9, 2011 Resolution, it turned final and executory and, thus, could not be reviewed or reversed by public respondent Office of the Ombudsman.³⁴ She maintains that the doctrine of finality of judgment applies to preliminary investigations it had conducted.³⁵

Petitioner also avers that her right to due process was violated when she was not served with copies of her co-accused's motions for reconsideration. She claims that she was not informed of the allegations contained in these pleadings, which effectively deprived her of her right to be notified and heard.³⁶

Finally, petitioner contends that the failure of public respondent Office of the Ombudsman to immediately resolve the complaints against her constitutes a violation of her right to speedy disposition of cases.³⁷

²⁶ Id. at 74-75.

²⁷ Id. at 87.

²⁸ Id. at 184-193.

²⁹ Id. at 143-155.

³⁰ Id. at 88-107.

³¹ Id. at 105.

³² Id. at 3-46.

³³ Id. at 44-45.

³⁴ Id. at 25.

³⁵ Id. at 26.

³⁶ Id. at 31.

³⁷ Id. at 36.

On November 24, 2014, this Court ordered public respondents to file their Comment.³⁸

In their Comment,³⁹ public respondents countered that the filing of motions for reconsideration by petitioner's co-accused prevented the May 9, 2011 Resolution from attaining finality.⁴⁰

Furthermore, public respondents maintain that a sitting Ombudsman has the authority to abrogate a predecessor's ruling.⁴¹

Finally, they belie petitioner's claim of violation of her constitutional rights to due process⁴² and speedy disposition of cases.⁴³

On April 6, 2015, this Court required petitioner to file a reply.⁴⁴

In her Reply,⁴⁵ petitioner insists that the failure of the Commission on Audit and Brillante to move for reconsideration rendered public respondent Office of the Ombudsman's May 9, 2011 Resolution final and executory.⁴⁶

On July 22, 2015, this Court required the parties to file their respective memoranda.⁴⁷

In her Memorandum,⁴⁸ petitioner reiterates her argument that the May 9, 2011 Resolution became final and executory when the complainants failed to move for reconsideration.⁴⁹ She further insists that her right to due process and speedy disposition of cases were violated, citing the same reasons she mentioned in her Petition.⁵⁰

In their Memorandum,⁵¹ public respondents reiterate that the filing by petitioner's co-accused of their motions for reconsideration gave public respondent Office of the Ombudsman an opportunity to reexamine the entire

³⁸ Id. at 256-257.

³⁹ Id. at 265-289.

⁴⁰ Id. at 278.

⁴¹ Id. at 279.

⁴² Id. at 280-281.

⁴³ Id. at 281-285.

⁴⁴ Id. at 299-300.

⁴⁵ Id. at 311-335.

⁴⁶ Id. at 318.

⁴⁷ Id. at 336-337.

⁴⁸ Id. at 354-400.

⁴⁹ Id. at 375.

⁵⁰ Id. at 381-386.

⁵¹ Id. at 401-449.

case.⁵²

For this Court's resolution are the following issues:

First, whether or not public respondent Office of the Ombudsman acted without or in excess its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, in issuing the August 29, 2013 Resolution finding probable cause against petitioner Mayor Elenita S. Binay and the June 16, 2014 Resolution denying her Motion for Reconsideration;

Second, whether or not petitioner's right to due process was violated when she was not served with a copy of her co-accused's Motions for Reconsideration; and

Finally, whether or not petitioner's right to speedy disposition of cases was violated when public respondent Office of the Ombudsman failed to immediately resolve the complaints against her.

The Petition lacks merit.

I

Rule 65 of the Rules of Court provides the instances when a petition for Certiorari and Prohibition may be filed:

SECTION 1. Petition for Certiorari. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

.....

SECTION 2. Petition for prohibition. — When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the

⁵² Id. at 424-426.

respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.

In *Singian, Jr. v. Sandiganbayan*,⁵³ grave abuse of discretion was defined as:

“... the capricious and whimsical exercise of judgment on the part of the public officer concerned which is equivalent to an excess or lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.”⁵⁴

Mere “disagreement with the Ombudsman’s findings is not enough to constitute grave abuse of discretion.”⁵⁵ It is necessary for the petitioner to prove “that the Ombudsman conducted the preliminary investigation in such a way that amounted to a virtual refusal to perform a duty under the law.”⁵⁶

This Court does not find that public respondent Office of the Ombudsman acted with grave abuse of discretion when it determined the existence of probable cause against petitioner. The May 9, 2011 Resolution had not yet attained finality when the Ombudsman received the initial finding.

“The filing of a motion for reconsideration is an integral part of the preliminary investigation proper.”⁵⁷ Only when all the parties have been given an opportunity to file their respective motions for reconsideration will the preliminary investigation be completed.

Moreover, settled is the rule that a sitting Ombudsman has the power to revoke or alter the rulings of a predecessor within the bounds of law. In *Alvarez v. People*,⁵⁸ this Court decreed:

The Ombudsman is not precluded from ordering another review of a complaint, for he or she may revoke, repeal or abrogate the acts or previous rulings of a predecessor in office. And *Roxas v. Hon. Vasquez* teaches that new matters or evidence are not prerequisites for a reinvestigation, which is simply a chance for the prosecutor, or in this case the Office of the Ombudsman, to review

⁵³ 718 Phil. 455 (2013) [Per J. Del Castillo, Second Division].

⁵⁴ Id. at 473.

⁵⁵ *Reyes v. The Office of the Ombudsman*, 810 Phil. 106, 115 (2017) [Per J. Leonen, Second Division].

⁵⁶ Id.

⁵⁷ *Office of the Ombudsman v. Castro*, 510 Phil. 380, 388 (2005) [Per J. Ynares-Santiago, First Division].

⁵⁸ 668 Phil. 216 (2011) [Per J. Villarama, First Division].

and re-evaluate its findings and the evidence already submitted.⁵⁹
(Emphasis in the original, citations omitted)

Similarly, in *Roxas v. Hon. Vasquez*.⁶⁰

In criminal prosecutions, a reinvestigation, like an appeal, renders the entire case open for review. It matters not that the complainants did not seek a reinvestigation or reconsideration of the dismissal of the charges against petitioners. *Consistent with its independence as protector of the people and as prosecutor to ensure accountability of public officers, the Ombudsman is not and should not be limited in its review by the action or inaction of complainants.* On the other hand, it is clear from Section 15 of R.A. 6770 that the Ombudsman may *motu proprio* conduct a reinvestigation to assure that the guilty do not go unpunished.

Likewise, petitioners' insistence that the Ombudsman and the Sandiganbayan had lost jurisdiction over them after the initial dismissal of the charges against them is untenable. In the case of *Abdula v. Guiani*, this Court held:

With respect to the allegation that the respondent had no legal authority to order a reinvestigation of the criminal charge considering that the said charge had been previously dismissed as against them, we hold that respondent did not abuse his discretion in doing so.

It is not material either that no new matter or evidence was presented during the reinvestigation of the case. It should be stressed that reinvestigation, as the word itself implies, is merely a repeat investigation of the case. New matters or evidence are not prerequisites for a reinvestigation, which is simply a chance for the prosecutor, or in this case the Office of the Ombudsman, to review and re-evaluate its findings and the evidence already submitted.⁶¹ (Emphasis supplied, citations omitted)

This Court will not interfere with the Office of the Ombudsman's determination of probable cause except when it acted with grave abuse of discretion.⁶² In *Dichaves v. Office of the Ombudsman*:⁶³

As a general rule, this Court does not interfere with the Office of the Ombudsman's exercise of its constitutional mandate. Both the Constitution and Republic Act No. 6770 (The Ombudsman Act of 1989) give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees. The rule on non-interference is based on the "respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman[.]"

⁵⁹ Id. at 254.

⁶⁰ 411 Phil. 276 (2001) [Per J. Ynares-Santiago, First Division].

⁶¹ Id. at 286–287.

⁶² *Tetangco v. Ombudsman*, 515 Phil. 230, 234–235 (2006) [Per J. Quisumbing, Third Division].

⁶³ 802 Phil. 564 (2016) [Per J. Leonen, Second Division].

An independent constitutional body, the Office of the Ombudsman is “beholden to no one, acts as the champion of the people[,] and [is] the preserver of the integrity of the public service.” Thus, it has the sole power to determine whether there is probable cause to warrant the filing of a criminal case against an accused. This function is *executive* in nature.

The executive determination of probable cause is a highly factual matter. It requires probing into the “existence of such *facts and circumstances* as would excite the belief, in a reasonable mind, *acting on the facts within the knowledge of the prosecutor*, that the person charged was guilty of the crime for which he [or she] was prosecuted.”

The Office of the Ombudsman is armed with the power to investigate. It is, therefore, in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause. As this Court is not a trier of facts, we defer to the sound judgment of the Ombudsman.

....

While, indeed, this Court may step in if the public prosecutor gravely abused its discretion in acting on the case, such grave abuse must be substantiated, not merely alleged.⁶⁴ (Emphasis in the original, citations omitted)

The Office of the Ombudsman may have full discretionary powers to determine whether a criminal case should be filed before the Sandiganbayan. But once it files a case, it passes full control over it to the Sandiganbayan.⁶⁵ The Sandiganbayan is empowered to proceed with trial in the “manner it determines best conducive to orderly proceedings and speedy termination of the case.”⁶⁶

II

Contrary to petitioner’s postulation, her failure to receive a copy of the Motions for Reconsideration does not result in a violation of her right to due process.

In *Reyes v. The Office of the Ombudsman*,⁶⁷ this Court explained that a preliminary investigation is not a part of trial. Consequently, it need not be subjected under the same due process requirements mandated during trial:

Preliminary investigation is not part of trial and is conducted only to establish whether probable cause exists. Consequently, it is not subject to the same due process requirements that must be present during trial. In *Webb v. De Leon*:

⁶⁴ Id. at 589–591.

⁶⁵ *Ramiscal, Jr. v. Sandiganbayan*, 645 Phil. 69 (2010) [Per J. Carpio, Second Division].

⁶⁶ Id. at 83.

⁶⁷ 810 Phil. 106 (2017) [Per J. Leonen, Second Division].

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Considering the low quantum and quality of evidence needed to support a finding of probable cause, we also hold that the DOJ Panel did not gravely abuse its discretion in refusing to call the NBI witnesses for clarificatory questions. The decision to call witnesses for clarificatory questions is addressed to the sound discretion of the investigator and the investigator alone. If the evidence on hand already yields a probable cause, the investigator need not hold a clarificatory hearing. To repeat, probable cause merely implies probability of guilt and should be determined in a summary manner. Preliminary investigation is not a part of trial and it is only in a trial where an accused can demand the full exercise of his rights, such as the right to confront and cross-examine his accusers to establish his innocence. In the case at bar, the DOJ Panel correctly adjudged that enough evidence had been adduced to establish probable cause and clarificatory hearing was unnecessary.

A person's rights during preliminary investigation are limited to those provided by procedural law. Rule 112, Section 3 of the Rules of Court provides:

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

....

(b)....

The respondent shall have the right to examine the evidence submitted by the complainant which he may not have been furnished and to copy them at his expense. If the evidence is voluminous, the complainant may be required to specify those which he intends to present against the respondent, and these shall be made available for examination or copying by the respondent at his expense.

(c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of this section, with copies thereof furnished by him to the complainant. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit.

Under procedural law, a respondent under preliminary investigation has the right to examine the evidence submitted by the complainant, but he does not have a similar right over the evidence submitted by his or her co-respondents.⁶⁸ (Emphasis supplied, citations

⁶⁸ Id. at 119-120.

omitted)

All the same, petitioner cannot insist that she was deprived of due process. It has been consistently held that “due process is satisfied when the parties are afforded fair and reasonable opportunity to explain their side of the controversy or an opportunity to move for a reconsideration of the action or ruling complained of.”⁶⁹ Petitioner does not deny that she moved for reconsideration of the assailed August 29, 2013 Consolidated Resolution. She was given the opportunity to question the decision against her. She was not denied due process.

III

Similarly, petitioner’s claim that her right to speedy disposition of cases was violated cannot stand.

In *Cagang v. Sandiganbayan*,⁷⁰ this Court stressed that the delay in the resolution and termination of a preliminary investigation “is not determined through mere mathematical reckoning but through the examination of the facts and circumstances surrounding each case.”⁷¹ We clarified that a number of factors are to be considered in determining whether a person’s right to speedy disposition of cases had indeed been violated.⁷²

Cagang laid down the guidelines in determining whether there has been a violation of the right to speedy disposition of cases:

This Court now clarifies the mode of analysis in situations where the right to speedy disposition of cases or the right to speedy trial is invoked.

First, the right to speedy disposition of cases is different from the right to speedy trial. While the rationale for both rights is the same, the right to speedy trial may only be invoked in criminal prosecutions against courts of law. The right to speedy disposition of cases, however, may be invoked before any tribunal, whether judicial or quasi-judicial. What is important is that the accused may already be prejudiced by the proceeding for the right to speedy disposition of cases to be invoked.

Second, a case is deemed initiated upon the filing of a formal complaint prior to a conduct of a preliminary investigation. This Court acknowledges, however, that the Ombudsman should set reasonable periods for preliminary investigation, with due regard to the complexities and nuances of each case. Delays beyond this period will be taken against

⁶⁹ *Roxas v. Vasquez*, 411 Phil. 276, 287 (2001) [Per J. Ynares-Santiago, First Division].

⁷⁰ G.R. Nos. 206438, 206458, and 210141-42, July 31, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64581>> [Per J. Leonen, En Banc].

⁷¹ *Id.*

⁷² *Id.*

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.

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.⁷³

An examination of the records reveals that petitioner's right to speedy disposition was not violated. Public respondents have sufficiently explained

⁷³ Id.

the delay in the resolution of the Complaints.

From the time public respondent Office of the Ombudsman received the Complaints in 2003, various fact-finding investigations had been conducted before the Field Investigation Office was able to file the Supplemental Complaints in 2005.⁷⁴ Aside from the Field Investigation Office, the Preliminary Investigation and Administrative Adjudication Bureau, the Preliminary Investigation, Administrative Adjudication and Review Bureau, and the Office of the Special Prosecutor each conducted separate investigations.⁷⁵ Moreover, the Complaints involved 23 respondents, each of whom was given the opportunity to submit and present counter-affidavits and evidence. Petitioner herself submitted her Counter-Affidavit only in 2008, three (3) years after the Field Investigation Office's Supplemental Complaints had been filed.⁷⁶ Additionally, public respondent Office of the Ombudsman strictly scrutinized the Commission on Audit's allegations involving the alleged numerous fraudulent transactions done within a 24-month period from September 2000 to September 2001.⁷⁷

It must be noted that petitioner only invoked her right to speedy disposition of cases after the August 29, 2013 Consolidated Resolution had been issued. Prior to this, petitioner never raised it as an issue. Nor did she file any written manifestation or motion for the early resolution of the case.⁷⁸

WHEREFORE, the Petition is **DISMISSED**. The August 29, 2013 Consolidated Resolution and the June 16, 2014 Resolution of the Office of the Ombudsman in Criminal Case Nos. SB-11-CRM-0272 and SB-11-CRM-0273 (OMB-C-C-05-0048-B and OMB-C-C-03-0166-C) are **AFFIRMED**.

SO ORDERED.



MARVIC M.V.F. LEONEN

Associate Justice

⁷⁴ *Rollo*, pp. 52-53.

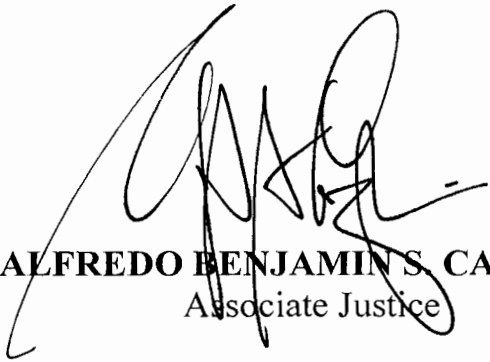
⁷⁵ *Id.* at 100.

⁷⁶ *Id.* at 436.

⁷⁷ *Id.* at 437.

⁷⁸ *Id.* at 101.

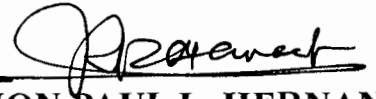
WE CONCUR:



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



ANDRES B. REYES, JR.
Associate Justice



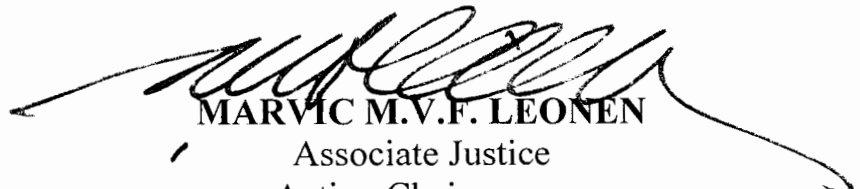
RAMON PAUL L. HERNANDO
Associate Justice



HENRIJEAN PAUL B. INTING
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.



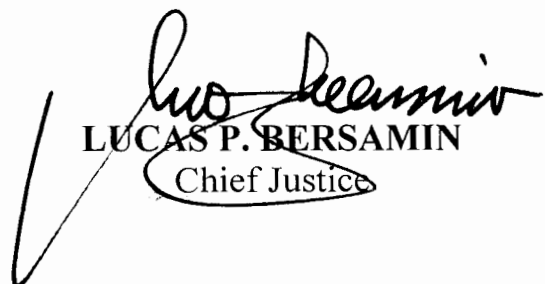
MARVIC M.V.F. LEONEN
Associate Justice
Acting Chairperson

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.

CERTIFIED TRUE COPY

Mis-DCBatt
MISAEI DOMINGO C. BATTUNG III
Deputy Division Clerk of Court
Third Division
SEP 18 2019



LUCAS P. BERSAMIN
Chief Justice