Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, Petitioner,	**G.R. No. 233063**
	Present:
- versus -	PERALTA, *J.*, *Chairperson*, LEONEN, REYES, A., JR., HERNANDO, and CARANDANG,* *JJ.*
HON. SANDIGANBAYAN (FIFTH DIVISION), REYNALDO O. PAROJINOG, SR., AND NOVA PRINCESS E. PAROJINOG ECHAVEZ, Respondents.	**Promulgated:** February 11, 2019

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D E C I S I O N

PERALTA, *J.*:

Assailed in this petition for *certiorari* are the Resolutions, dated April 7, 2017[1] and June 14, 2017,[2] issued by the Sandiganbayan in SB-16-CRM-1206.

In an anonymous letter[3] dated August 23, 2010, the Ombudsman was requested to conduct an investigation against respondents Reynaldo O. Parojinog, Sr., then Mayor of Ozamiz City, Misamis Occidental, and Nova Princess E. Parojinog-Echavez, Mayor Parojinog's daughter, for possible violation of Section 3(h) of Republic Act No. (*RA*) 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, to wit:

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* Designated as additional member per Special Order No. 2624 dated November 28, 2018.

1 *Rollo*, pp. 45-58. Penned by Associate Justice Maria Theresa V. Mendoza-Arcega, and concurred in by Associate Justices Rafael R. Lagos and Reynaldo P. Cruz.

2 *Id.* at 60-63.

3 Requesting for a conduct of investigation against the officials of Ozamiz City, Province of Misamis Occidental.

> 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:
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> x x x x
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> (h) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.

On December 22, 2010, the Office of the Ombudsman-Mindanao endorsed the letter to the Commission on Audit (*COA*) for a conduct of a special audit on the matter. The COA submitted a copy of the Joint Affidavit and Special Audit Report dated September 26, 2011 which disclosed deficiencies in the procurement for the improvement/renovation of the multi-purpose building/ Ramirez Gymnasium in Lam-an, Ozamiz City by the local government of Ozamiz City. The payment for the renovation project was suspended in audit, through notice of suspension no. 13-001-101(08), as it was discovered, based on the audit, that the end user of the renovation project was the local government unit of Ozamiz City, represented by respondent Mayor Parojinog, the father of respondent Echavez who is the managing partner of Parojinog and Sons Construction Company to which the renovation project was awarded; that the relationship of father and daughter falls within the third civil degree of consanguinity which transaction is prohibited by Section 47 of the Revised Implementing Rules and Regulations of RA 9184 or the Government Procurement Reform Act.

On December 8, 2014, a formal complaint was filed by the Ombudsman Field Investigation Unit against respondents. On January 7, 2015, the Office of the Ombudsman-Mindanao issued a Joint Order[4] directing the respondents, among others, to submit their counter-affidavits. On February 13, 2015, respondents filed a motion[5] for additional time to file their counter-affidavits and which they filed[6] on March 3, 2015. On July 22, 2015, a subpoena *duces tecum*[7] was issued to the COA and the Department of Public Works and Highways (*DPWH*) for them to submit certified true copies of documents relating to the bidding, evaluation, and acceptance of the gymnasium project. The other respondents filed a supplemental to their position paper on October 16, 2015, and their motion to admit annexes on October 23, 2015.

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4 *Rollo*, pp. 72-76.
5 *Id.* at 77-82.
6 *Id.* at 90-107.
7 *Id.* at 120-122.

On November 27, 2015, the graft investigation officer submitted a Resolution[8] finding probable cause to indict herein respondents for violation of Section 3(h) of RA 3019. The Resolution was approved[9] by the Ombudsman on April 29, 2016. Respondents filed their motion for reconsideration which was denied in an Order[10] dated June 30, 2016.

On November 23, 2016, an Information for violation of Section 3(h) of RA 3019 against respondents was filed with the Sandiganbayan. The accusatory portion of the Information reads:

> During the period of April to May 2008, or sometime prior or subsequent thereto, in Ozamiz City, Misamis Occidental, Philippines, and within this Honorable Court's jurisdiction; REYNALDO OZAMIZ PAROJINOG, SR. as Mayor (SG 27) o[f] Ozamiz City; while in the performance of his administrative and/or official functions and in conspiracy with his daughter NOVA PRINCESS ENGRACIA PAROJINOG-ECHAVEZ, Managing Partner of Parojinog & Sons Construction Company (PSCC); willfully, unlawfully, and criminally possessed a financial or pecuniary interest in PSCC- a company owned by his family-when it participated as a bidder and was awarded the project for the [I]mprovement/Renovation of Multi-Purpose Building/Ramiro Gymnasium, Lam-an, Ozamiz City and when the local government of Ozamiz City as end user, represented by Parojinog, accepted said project as completed.[11]

Respondent Mayor Parojinog filed his Motion to Quash[12] dated February 17, 2017 on the ground that the facts charged did not constitute an offense. Later, both respondents filed an Omnibus Motion[13] to Quash Information and to Dismiss SB-16-CRM-1206, contending that the facts alleged in the Information did not constitute an offense warranting the quashal thereof and that their right to a speedy disposition of cases had been violated.

On April 7, 2017, the Sandiganbayan issued its first assailed Resolution, the decretal portion of which reads:

> WHEREFORE, in the light of the foregoing, the Omnibus Motion is hereby GRANTED. The Information is ordered QUASHED and the instant case is DISMISSED for violation of accused's constitutional right to speedy disposition of cases[.]
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> Accordingly, the hold-departure issued by the Court against the accused is hereby LIFTED and SET ASIDE, and the bonds they posted for

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8 *Id.* at 123-133.
9 *Id.* at 132.
10 *Id.* at 136-145.
11 *Id.* at 48-49.
12 *Id.* at 146-154.
13 *Id.* at 155-182.

> their provisional liberty are ordered RELEASED, subject to the usual accounting and auditing procedures.[14]

In granting the motion to quash, the Sandiganbayan ruled that the following elements need to be proven in order to constitute a violation of Section 3(h) of RA 3019, to wit: (1) the accused is a public officer; (2) he has a direct or indirect financial or pecuniary interest in any business, contract, or transaction; and (3) he either (a) intervenes or takes part in his official capacity in connection with such interest, or (b) is prohibited from having such interest by the Constitution or by any law. It found that the allegation in the Information that the subject business is owned by the family of respondent Mayor Parojinog was glaringly deficient as it did not state if he had any interest in the business; hence, the second element had not been properly alleged. As to the third element, it found that the Information did not state how respondent Mayor Parojinog intervened or participated in furtherance of the alleged financial interest nor did it state that he had any financial interest prohibited by the Constitution or by any other law; that the acceptance of the project only after it was completed cannot amount to intervention or participation of respondent Mayor Parojinog in order that the project could push through since it was the DPWH which bidded out and awarded the project to the company.

The Sandiganbayan dismissed the case because there was a violation of respondents' right to a speedy disposition of cases. It took into consideration the period from the receipt by the Office of the Ombudsman–Mindanao of the anonymous letter-complaint up to the filing of the Information in this case, which amounted to a total of five (5) years and eleven (11) months; that the delay could not be ignored by separating the fact-finding investigation from the conduct of preliminary investigations as all stages to which the accused was exposed should be included; that there was no explanation offered for such delay. The Sandiganbayan found that respondents had raised the issue of the violation of their right to a speedy disposition of cases in their motion for reconsideration of the Resolution finding probable cause; and even if they did not, there was no need to follow up their case. There was prejudice to the respondents since relevant documents could have already been lost since the subject business was only required to keep its business books, accounts and other documents for three years.

Petitioner People of the Philippines filed a motion for reconsideration which the Sandiganbayan denied in the second assailed Resolution dated June 14, 2017.

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[14] *Id.* at 58.

The Sandiganbayan found that petitioner failed to address its finding that the fact-finding investigation period must be considered in determining whether there was inordinate delay. It also found that petitioner violated Sections 4 and 5, Rule 15 of the Rules of Court regarding hearing of motion and notice of hearing, and resultantly, the motion was reduced to a mere scrap of paper which did not toll the period to appeal.

Hence, this petition for *certiorari* filed by petitioner raising the following issues:

I.

THE PUBLIC RESPONDENT SANDIGANBAYAN ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RECKONING THE CONDUCT OF PROCEEDINGS - AND THE IMPUTATION OF DELAY - FROM THE CONDUCT OF THE FACT-FINDING INVESTIGATION BY THE OFFICE OF THE OMBUDSMAN, WHICH CONSTITUTES A COLLATERAL ATTACK ON THE RULE-MAKING POWER OF THE OMBUDSMAN AND A DEROGATION OF ITS CONSTITUTIONAL MANDATE TO CONDUCT AN INVESTIGATION.

II.

THE PUBLIC RESPONDENT SANDIGANBAYAN ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN MERELY RESORTING TO A MATHEMATICAL COMPUTATION OF THE PERIOD CONSTITUTING THE ALLEGED DELAY, WITHOUT REGARD TO THE FACTS AND CIRCUMSTANCES SURROUNDING THE CASE AS WELL AS THE PRECEDENTS THAT DEFINE THE PARAMETERS OF INORDINATE DELAY.

III.

THE PUBLIC RESPONDENT SANDIGANBAYAN ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THAT VIOLATIONS OF SECTIONS 4 & 5 OF RULE 15 OF THE RULES OF COURT ARE FATAL TO PETITIONER'S MOTION FOR RECONSIDERATION.[15]

We first address the third issue raised by petitioner regarding the Sandiganbayan's finding that it violated Sections 4 and 5, Rule 15 of the Rules of Court in the filing of its motion for reconsideration, which did not toll the running of the period to appeal.

Sections 4 and 5, Rule 15 of the Rules of Court provide that:

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15 *Id.* at 14-15.

> Sec. 4. Hearing of motion. – Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.
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> Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.
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> Sec. 5. Notice of hearing. – The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

In *Cabrera v. Ng*,[16] we held:

> The general rule is that the three-day notice requirement in motions under Sections 4 and 5 of the Rules of Court is mandatory. It is an integral component of procedural due process. "The purpose of the three-day notice requirement, which was established not for the benefit of the movant but rather for the adverse party, is to avoid surprises upon the latter and to grant it sufficient time to study the motion and to enable it to meet the arguments interposed therein."
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> "A motion that does not comply with the requirements of Sections 4 and 5 of Rule 15 of the Rules of Court is a worthless piece of paper which the clerk of court has no right to receive and which the court has no authority to act upon." "Being a fatal defect, in cases of motions to reconsider a decision, the running of the period to appeal is not tolled by their filing or pendency."
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> Nevertheless, the three-day notice requirement is not a hard and fast rule. When the adverse party had been afforded the opportunity to be heard, and has been indeed heard through the pleadings filed in opposition to the motion, the purpose behind the three-day notice requirement is deemed realized. In such case, the requirements of procedural due process are substantially complied with.[17] (Citations omitted.)

The Sandiganbayan found that petitioner failed to furnish the respondents a copy of the motion for reconsideration at least three days before the date of hearing as prescribed in Section 4, Rule 15 of the Rules of Court. Petitioner claims that it sent the motion for reconsideration and notice of hearing to respondents' counsel 15 days before the scheduled hearing; thus, there was enough time to reach them. However, as respondents stated in their Comment, the unit number in the address of the respondents' counsel was wrongly written, *i.e.*, Unit 1002 which should be Unit 1102; thus, the motion was only received by respondents' counsel one day before the date of hearing. Notwithstanding, we find that respondents were given the opportunity to be heard as they were able to file their opposition to

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16 729 Phil. 544 (2014).

17 *Id.* at 550.

petitioner's motion for reconsideration, and controvert the arguments raised therein. Thus, the requirement of procedural process was met.

The Sandiganbayan also found that petitioner failed to comply with Section 5, Rule 15 of the Rules of Court on the rule of setting the hearing of the motion for reconsideration not later than 10 days after the filing of the motion. Here, the motion for reconsideration was filed on April 27, 2017 and was set for hearing on May 12, 2017, however, considering that an examination of the petition shows its merit, we decide to relax the strict application of the rules of procedure in the exercise of our equity jurisdiction.

In *Atty. Gonzales v. Serrano*,[18] we held:

> Rules of procedure exist to ensure the orderly, just and speedy dispensation of cases; to this end, inflexibility or liberality must be weighed. Thus, the relaxation or suspension of procedural rules, or exemption of a case from their operation is warranted only by compelling reasons or when the purpose of justice requires it.[19] (Citation omitted.)

Petitioner contends that the Sandiganbayan committed grave abuse of discretion amounting to lack of jurisdiction in dismissing the complaint for violating respondents' right to a speedy disposition of cases.

The right to the speedy disposition of cases is enshrined in Article III of the Constitution, which declares:

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

"The constitutional right is not limited to the accused in criminal proceedings but extends to all parties in all cases, be it civil or administrative in nature, as well as all proceedings, either judicial or quasi-judicial."[20] "In this accord, any party to a case may demand expeditious action from all officials who are tasked with the administration of justice."[21] "This right, however, like the right to a speedy trial, is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delays."[22]

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18 755 Phil. 513 (2015).

19 *Id.* at 527.

20 *People v. Sandiganbayan, 5th Div., et al.*, 791 Phil. 37, 52, citing *Cadalin v. Philippine Overseas Employment Administration's Administrator*, 308 Phil. 728, 772 (1994).

21 *Id.* at 52-53, citing *Capt. Roquero v. The Chancellor of UP-Manila, et al.*, 628 Phil. 628, 639 (2010).

22 *Id.* at 53, citing *Dela Peña v. Sandiganbayan*, 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."[23] 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.[24]

In dismissing the complaint for violation of respondents' right to a speedy disposition of cases, the Sandiganbayan found that from the time the Office of the Ombudsman-Mindanao officially took cognizance of the case by referring the letter to the COA for audit up to the filing of the Information, a total of five (5) years and eleven (11) months had elapsed; and that there was no explanation for the delay. It cited the case of *People v. Sandiganbayan, et al.*,[25] where we declared:

> The guarantee of speedy disposition under Section 16 of Article III of the Constitution applies to all cases pending before all judicial, quasi-judicial or administrative bodies. The guarantee would be defeated or rendered inutile if the hair-splitting distinction by the State is accepted. Whether or not the fact-finding investigation was separate from the preliminary investigation conducted by the Office of the Ombudsman should not matter for purposes of determining if the respondents' right to the speedy disposition of their cases had been violated.[26]

Our ruling in the cited case of *People v. Sandiganbayan, et al.*,[27] where we held that fact-finding investigations are included in the period for determination of inordinate delay has already been abandoned. In *Cagang v. Sandiganbayan, et al.*,[28] we made the following disquisition, thus:

> *People v. Sandiganbayan, Fifth Division* must be re-examined.
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> When an anonymous complaint is filed or the Office of the Ombudsman conducts a motu proprio fact-finding investigation, the proceedings are not yet adversarial. Even if the accused is invited to attend these investigations, this period cannot be counted since these are merely preparatory to the filing of a formal complaint. At this point, the Office of the Ombudsman will not yet determine if there is probable cause to charge the accused.
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> This period for case build-up cannot likewise be used by the Office of the Ombudsman as unbridled license to delay proceedings. If its

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23 *Id.*, citing *Binay v. Sandiganbayan*, 374 Phil. 413, 447 (1999).

24 *Id.*, citing *Alvizo v. Sandiganbayan*, 292-A Phil. 144, 155 (1993); *Dansal v. Judge Fernandez, Sr.*, 383 Phil. 897, 906 (2000); and *Blanco v. Sandiganbayan*, 399 Phil. 674, 682 (2000).

25 723 Phil. 444 (2013).

26 *Id.* at 493.

27 *Supra* note 25.

28 G.R. Nos. 206438, 206458, and 210141-42, July 31, 2018.

> investigation takes too long, it can result in the extinction of criminal liability through the prescription of the offense.
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> Considering that fact-finding investigations are not yet adversarial proceedings against the accused, the period of investigation will not be counted in the determination of whether the right to speedy disposition of cases was violated. Thus, this Court now holds that for the purpose of determining whether inordinate delay exists, a case is deemed to have commenced from the filing of the formal complaint and the subsequent conduct of the preliminary investigation. In *People v. Sandiganbayan, Fifth Division*, the ruling that fact-finding investigations are included in the period for determination of inordinate delay is abandoned. (Citations omitted.)

Clearly, the period devoted for fact-finding investigations before the filing of the formal complaint is not included in the determination of whether there has been inordinate delay. Hence, in this case, the period from the receipt of the anonymous complaint by the Office of the Ombudsman-Mindanao, on August 23, 2010, until December 7, 2014 should not be considered in the determination of the presence of inordinate delay. This is so because during this period, respondents were not yet exposed to adversarial proceedings, but only for the purpose of determining whether a formal complaint against them should be filed based on the result of the fact-finding investigation.

Therefore, the reckoning point to determine if there had been inordinate delay should start to run from the filing of the formal complaint with the Office of the Ombudsman-Mindanao, on December 8, 2014, up to the filing of the Information on November 23, 2016. Here, it appears that after the filing of the formal complaint on December 8, 2014, the Office of the Ombudsman-Mindanao issued a Joint Order dated January 7, 2015 directing respondents, among others, to submit their counter-affidavits, which they did on March 3, 2015 after some extensions of time. Thereafter, a subpoena *duces tecum* was issued to the COA and the DPWH. The other respondents filed a Supplement to Position Paper on October 16, 2015 and followed by a Motion to Admit Annexes of the Supplemental Counter-Affidavits on October 23, 2015. On November 27, 2015, the Graft Investigation Officer submitted to the Ombudsman a Resolution finding probable cause. The Resolution was approved by the Ombudsman on April 29, 2016 and the Information was filed on November 23, 2016.

We find that the period from the filing of the formal complaint to the subsequent conduct of the preliminary investigation was not attended by vexatious, capricious, and oppressive delays as would constitute a violation of respondents' right to a speedy disposition of cases. We find the period of less than two years not to be unreasonable or arbitrary. In fact, respondents did not raise any issue as to the violation of their right to a speedy

disposition of cases until the issuance of the Ombudsman's Resolution finding probable cause.

Finally, we note that the Sandiganbayan granted respondents' motion to quash the Information on the ground that the facts did not constitute an offense, and since it dismissed the case due to the violation of respondents' right to a speedy disposition of cases, it did not order the amendment of the information as provided under Section 4, Rule 117 of the Rules of Court, to wit:

> Section 4. Amendment of complaint or information. — If the motion to quash is based on an alleged defect of the complaint or information which can be cured by amendment, the court shall order that an amendment be made.
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> If it is based on the ground that the facts charged do not constitute an offense, the prosecution shall be given by the court an opportunity to correct the defect by amendment. The motion shall be granted if the prosecution fails to make the amendment, or the complaint or information still suffers from the same defect despite the amendment.

Petitioner did not assail the finding of the Sandiganbayan regarding the insufficiency of the allegations in the Information. Considering our finding that there was no violation of respondents' right to a speedy disposition of cases, hence, the case should not be dismissed and, therefore, petitioner should be given an opportunity to amend the Information and correct its defect pursuant to Section 4, Rule 117 of the Rules of Court. Notably, respondent Mayor Parojinog had already died on July 30, 2017[29] as shown by his death certificate; thus, the Information should only be filed against respondent Echavez.

WHEREFORE, the petition is **GRANTED**. The Resolutions dated April 7, 2017 and June 14, 2017, issued by the Sandiganbayan in SB-16-CRM-1206, are hereby **REVERSED** and **SET ASIDE**. The Prosecution is hereby given the chance to **AMEND** the Information against respondent Nova Princess E. Parojinog-Echavez for violation of Section 3(h) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

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29 *Rollo*, p. 389.

WE CONCUR:

MARVIC M.V.F. LEONEN
Associate Justice

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