



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SPECIAL SECOND DIVISION

Minutes of the proceedings held on November 28, 2016.

Present:

Hon. SAMUEL R. MARTIRES.....Associate Justice
Hon. ALEXANDER G. GESMUNDO*.....Associate Justice
Hon. MICHAEL FREDERICK L. MUSNGI.....Associate Justice

Criminal Case No. SB-11-CRM-0260 - PEOPLE OF THE PHILIPPINES vs. LUIS RAMON a.k.a. "CHITO" P. LORENZO, JR., JOCELYN a.k.a. "JOC-JOC" I. BOLANTE, IBARRA TRINIDAD C. POLIQUIT, JAIME L. PAULE, MARILYN ARAOS, JOSELITO F. FLORDELIZA, MARITES AYTONA, LEONCIA MARCO-LLANERA, JOHN DOES and JANE DOES.

On 15 August 2014, this Court¹, rendered a Resolution² *finding no probable* cause against the accused. In the same Resolution, the Court granted the Office of the Ombudsman sixty (60) days to present additional evidence on how accused Bolante, by himself or in conspiracy with his co-accused, amassed the amount stated in the subject Information.

This was followed by the filing by both sides of several motions for reconsideration of the 15 August 2014 Resolution. The prosecution objected to the finding of lack of probable cause whereas accused Lorenzo, Bolante and Poliquit claimed that the 60-day period granted to the prosecution to present evidence is not in conformity with the Rules of Court that gives the prosecution only 5 days to present evidence.

* Sitting as Special Member, in lieu of Justice Oscar C. Herrera, Jr., who inhibited himself from the case, per Administrative Order No. 40-2013 dated February 20, 2013.

¹ Composed of Justice Teresita Diaz-Baldos as Chairperson, with Justices Napoleon Inoturan and Alexander Gesmundo as members.

² Penned by Justice Inoturan.

Before the Court could resolve the motions for reconsideration, the prosecution, on 12 March 2015, filed a "MOTION WITH LEAVE OF COURT TO ADMIT THE AMENDED INFORMATION EXCLUDING JOSE B. BARREDO, JR AS ONE OF THE ACCUSED."

In its **Resolution** on 21 July 2016, the Court admitted the Amended Information ruling that *any determination of probable cause will have to be based on such Amended Information*. Consequently, the Court considered as moot and academic the several motions for reconsideration to the Court's Resolution of 15 August 2014 filed by the prosecution and accused Lorenzo, Jr., Bolante, Poliquit and Flordeliza.

Thereafter, accused Lorenzo, through a Motion for Reconsideration with Motion to Quash or Dismiss the Case³, assailed the 21 July 2016 Resolution. This was followed by the Motion for Reconsideration and Motion to Dismiss⁴ filed this time by accused Bolante and Poliquit. Accused Flordeliza also filed his own Motion for Reconsideration and Motion to Dismiss⁵.

The prosecution filed its consolidated Comment or Opposition⁶ to the motions for reconsideration of the 21 July 2016 Resolution filed by accused Lorenzo, Bolante, Poliquit and Flordeliza.

Subsequently, accused Marco-Llarena filed a motion for judicial determination of probable cause with a motion to quash⁷.

The prosecution then filed its Comment⁸ to the motion of accused Marco-Llarena.

Subsequently, Justices Baldos and Inoturan retired from service on 22 July 2016 and 01 August 2016, respectively.

With the retirement of Justices Baldos and Inoturan, the special Second Division is now composed of Justice Samuel Martires as chairperson, Justice Michael Frederick Musngi as regular member and Justice Geraldine Faith Econg as special member. Considering,

³ Records, pp. 2956 to 3009.

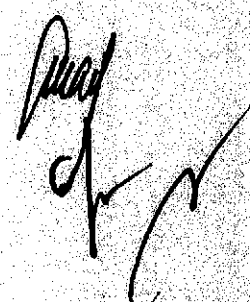
⁴ Records, pp. 3015 to 3033.

⁵ Records, pp. 3036 to 3051.

⁶ Records, pp. 3057 TO 3076.

⁷ Records, pp. 3077 to 3091

⁸ Records, pp. 3100 to 3113.

A handwritten signature in black ink, appearing to be a stylized name, possibly 'Randy' or similar, written in a cursive script.

however, that this resolution pertains to the motion for reconsideration on the admission of the Amended Information of which Justice Gesmundo had participated in, he will likewise participate in this resolution.

THE ISSUES

After perusing the motions filed by all of the accused, the Court shall confine itself to the discussion of the issue on the propriety of the admission of the Amended Information. The issue on the lack of probable cause shall be fully threshed out in a separate resolution.

THE COURT'S RULING

The motions are unmeritorious.

In his motion, accused Lorenzo insists that the Court erred in stating that "the right to determine who to prosecute is essentially an executive function, and not a judicial one." Instead, he claims that, pursuant to Section 14, Rule 110 of the Rules of Court, the amendment of an information to exclude an accused is not a matter of right on the part of the prosecution as it can only be done "with leave of court" and, therefore, it is not a mere executive function. He adds that the court ought to have explained whether Mr. Barredo is "not the most guilty among the accused" and whether "his testimony would be vital and indispensable for the prosecution of the instant case."

The Court is not persuaded.

At the outset, it must be emphasized that the prosecution sought the exclusion of Barredo from the Information in order to utilize him as state witness. Indeed, the records would show that Barredo is already covered by the Witness Protection Program of the DOJ pursuant to Republic Act No. 6981.⁹ This matter was also duly

⁹ Under the Memorandum, dated 17 October 2014, Ombudsman Carpio-Morales approved the recommendation to use Barredo as a state witness in the instant case for plunder; Records, pp. 2831-2833.

considered by the former Second Division when it admitted the Amended Information under the assailed Resolution of 21 July 2016.

The Court stands by its previous ruling that the determination of who should be criminally charged in court is essentially an executive function, not a judicial one. As the Supreme Court had held, it is the public prosecutor, as the officer authorized to direct and control the prosecution of all criminal actions, who should ascertain whether there is sufficient ground to engender a well-founded belief that an offense has been committed and that the accused is probably guilty of such offense.¹⁰

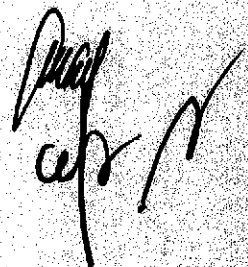
Accused Lorenzo is laboring under a misguided understanding of Section 14 of Rule 110 of the Rules of Court on amendment of complaints. The text of Section 14, Rule 110 of the Rules of Court reads in full:

Section 14. Amendment or substitution. — A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.

However, any amendment before plea, which downgrades the nature of the offense charged in or excludes any accused from the complaint or information, can be made only upon motion by the prosecutor, with notice to the offended party and with leave of court. The court shall state its reasons in resolving the motion and copies of its order shall be furnished all parties, especially the offended party.

If it appears at any time before judgment that a mistake has been made in charging the proper offense, the court shall dismiss the original complaint or information upon the filing of a new one charging the proper offense in accordance with section 19, Rule 119, provided the accused shall not be placed in double jeopardy. The court may require the witnesses to give bail for their appearance at the trial.

¹⁰ See Resayo y Cruz v. People, G.R. No. 154502, 27 April 2007.



In insisting that the court should determine whether Barredo is not the most guilty and whether his testimony is vital and indispensable, it would seem that the accused is harping on the requirements of Section 17 of Rule 119 of the Rules of Court on the discharge of an accused as witness for the state. Section 17 of Rule 119 is likewise quoted hereunder:

Section 17. Discharge of accused to be state witness. — When two or more persons are jointly charged with the commission of any offense, upon motion of the prosecution before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state when, after requiring the prosecution to present evidence and the sworn statement of each proposed state witness at a hearing in support of the discharge, the court is satisfied that:

(a) **There is absolute necessity for the testimony of the accused whose discharge is requested;**

(b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused;

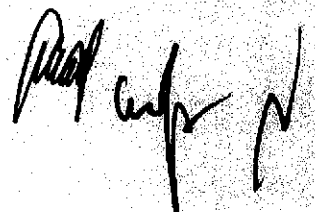
(c) The testimony of said accused can be substantially corroborated in its material points;

(d) **Said accused does not appear to be the most guilty; and**

(e) Said accused has not at any time been convicted of any offense involving moral turpitude.

xxx (Emphasis supplied)

Otherwise stated, what the accused would want to accomplish is to first satisfy the requirements under Section 17 of Rule 119 before an accused may be excluded in the Information pursuant to Section 14 of Rule 110. The question then is, should the requirements for discharge of an accused as state witness as set forth in Section 17, Rule 119 be made as additional requirements (*i.e.*, Section 14, Rule 110 and Section 17, Rule 119) or should only one provision apply (*i.e.*, Section 14, Rule 110 or Section 17, Rule 119)?



Fortunately, the question is no longer novel as it had been squarely raised and passed upon in the case of *Soberano v. People*, G.R. No. 154629, 5 October 2005. There, the Supreme Court delineated the proper instances when to apply Section 14, Rule 110 and Section 17, Rule 119. Specifically, the former applies before plea whereas the latter after trial had proceeded. The Supreme Court explained -

An amendment of the information made before plea which excludes some or one of the accused must be made only upon motion by the prosecutor, with notice to the offended party and with leave of court in compliance with Section 14, Rule 110. Section 14, Rule 110 does not qualify the grounds for the exclusion of the accused. Thus, said provision applies in equal force when the exclusion is sought on the usual ground of lack of probable cause, or when it is for utilization of the accused as state witness, as in this case, or on some other ground.

At this level, *the procedural requirements of Section 17, Rule 119* on the need for the prosecution to present evidence and the sworn statement of each state witness at a hearing in support of the discharge *do not yet come into play*. This is because, as correctly pointed out by the Court of Appeals, *the determination of who should be criminally charged in court is essentially an executive function*, not a judicial one. The prosecution of crimes appertains to the executive department of government whose principal power and responsibility is to see that our laws are faithfully executed. A necessary component of this power to execute our laws is the right to prosecute their violators. The right to prosecute vests the prosecutor with a wide range of discretion — the discretion of whether, what and whom to charge, the exercise of which depends on a smorgasbord of factors which are best appreciated by prosecutors. 30 By virtue of the trial court having granted the prosecution's motion for reinvestigation, the former is deemed to have deferred to the authority of the prosecutorial arm of the Government. 31 Having brought the case back to the drawing board, the prosecution is thus equipped with discretion — wide and far reaching — regarding the disposition thereof.

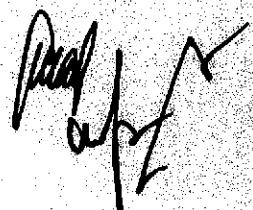
The situation is different in cases when an accused is retained in the information but his discharge as state witness is sought thereafter by the prosecution before it rests its case, in which event, the procedural (in addition to the substantive) requirements of Section 17, Rule 119 apply. Otherwise stated, when no amendment to the information is involved as a by-product of reinvestigation and trial proceeds thereafter, the *discharge of the accused falls squarely and solely within the ambit of Section 17, Rule 119.* (Underscoring supplied.)

Very clearly, since the accused in this case had not yet been arraigned, it would be premature to require the prosecution to present evidence and the sworn statement of the state witness at a hearing in support of the discharge. *It goes without saying that the court need not dwell yet on, and explain its answer to, the question of whether Barredo, the state witness, is not the most guilty and whether his testimony is vital and indispensable* to the prosecution of this case. Thus, the Court was not duty bound to pass upon these questions when it issued the assailed Resolution of 21 July 2016.

To reiterate, the determination of the persons to be prosecuted rests primarily with the prosecutor who is vested with discretion in the discharge of this function. Thus, when the prosecution opted to exclude Barredo from the original Information, and *before arraignment* of the accused, it was acting well within its discretion and authority.

Anent the ruling that the motions for reconsideration on the 15 August 2014 Resolution were rendered moot by the admission of the Amended Information

Accused Lorenzo, Bolante, Poliquit and Flordeliza all bewail in their respective motions the ruling of the Court that the motions for reconsideration on the 15 August 2014 Resolution (which found no probable cause against the accused *but* required the prosecution to present additional evidence within 60 days) were rendered moot with the admission of the Amended Information.



Accused Bolante and Poliquit insist that the Amended Information should not be admitted until the Motion for Reconsideration of the prosecution is resolved. Similarly, accused Flordeliza argues that the admission of the Amended Information is premature because the admission or non-admission of the Amended Information is necessarily dependent on the resolution of the motions for reconsideration of the 15 August 2014 Resolution. All of the accused, including Lorenzo, point to the failure of the prosecution to comply with the Court's directive to present within 60 days additional evidence as further reason to dismiss this case instead of admitting the Amended Information.

It must be recalled that the prosecution moved for reconsideration of the 15 August 2014 ruling that the evidence so far presented by the prosecution in support of the Information failed to establish the existence of probable cause.

Suffice it to say that, and as already pointed out above, the Court's resolution on the issue of probable cause raised in the prosecution's motion for reconsideration of the 15 August 2014, which is also reiterated in the instant motions for reconsideration (of the 21 July 2016 Resolution) filed by the accused, is to be fully addressed in a separate Resolution.

At this juncture, the Court sustains its earlier ruling to admit the Amended Information.

WHEREFORE, the foregoing premises considered, the motions for reconsideration insofar as the admission of the Amended Information is concerned are hereby **DENIED** for lack of merit.

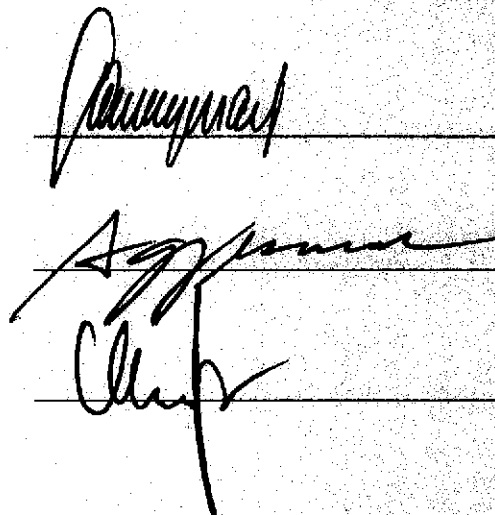
SO ORDERED.

Quezon City, Philippines.

MARTIRES, J., Chairperson

ALEXANDER G. GESMUNDO*

MUSNGI, J.



The block contains three handwritten signatures, each written over a horizontal line. The top signature is in cursive and appears to be 'Martires'. The middle signature is also in cursive and appears to be 'Alexander G. Gesmundo'. The bottom signature is in cursive and appears to be 'Musngi'.