



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
QUEZON CITY

SEVENTH DIVISION

MINUTES of the proceedings held on May 10, 2018

Present:

MA. THERESA DOLORES C. GOMEZ-ESTOESTA ----- Chairperson
ZALDY V. TRESPESES ----- Associate Justice
BAYANI H. JACINTO ----- Associate Justice*

The following resolution was adopted:

Crim. Case Nos. 25122 to 25145 – People v. Jose Ramiscal, et al.

Before this Court are:

1. Accused Nilo J. Flaviano's "MOTION FOR LEAVE OF COURT TO AVAIL OF EXTRA-ORDINARY REMEDIES" dated April 16, 2018;
2. Accused Nilo J. Flaviano's "COMPLIANCE" dated May 7, 2018; and
3. Accused Nilo J. Flaviano's "MOTION FOR BAIL AND/OR TO ALLOW ACCUSED TO CONTINUE ON PROVISIONAL LIBERTY DURING THE PENDENCY OF HIS MOTION FOR RECONSIDERATION AND/OR APPEAL" dated April 23, 2018.

Before this Court is accused Nilo J. Flaviano's *Motion for Leave of Court to Avail of Extra-Ordinary Remedies*¹ in relation to his conviction rendered *in absentia* on April 13, 2018.

In Accused Flaviano's *Motion*, which was accompanied by his wife Johanna M. Flaviano's affidavit on his condition, a Medical Abstract, and photos and video of his current state, he, through counsel, explained that he has been receiving medical treatment since 2010, and that in 2012, he had to undergo brain surgery after hitting his head in an accident. He has since become totally bedridden, has tubes attached to his body for survival, and is no longer capable of any physical and mental activity. He subsequently

* Per A.O. No. 284-2017 dated August 18, 2017

¹ Records, Vol. 7, pp. 231-239

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submitted a Medical Certificate issued by Dr. Marinel Animas Lim, a government physician.²

The Prosecution interposed no objection to accused Flaviano's *Motion for Leave of Court to Avail of Extra-Ordinary Remedies*.

Accused Flaviano has also filed *ad cautelam* (a) Motion for Bail and/or to Allow Accused to Continue on Provisional Liberty during the Pendency of his Motion for Reconsideration and/or Appeal,³ and (b) Motion for Reconsideration,⁴ in the event that leave is granted.

Section 6, Rule 120 provides:

Section 6. Promulgation of judgment. — The judgment is promulgated by reading it in the presence of the accused and any judge of the court in which it was rendered. However, if the conviction is for a light offense, the judgment may be pronounced in the presence of his counsel or representative. When the judge is absent or outside of the province or city, the judgment may be promulgated by the clerk of court.

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In case the accused fails to appear at the scheduled date of promulgation of judgment despite notice, the promulgation shall be made by recording the judgment in the criminal docket and serving him a copy thereof at his last known address or thru his counsel.

If the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these rules against the judgment and the court shall order his arrest. **Within fifteen (15) days from promulgation of judgment, however, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state the reasons for his absence at the scheduled promulgation and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within fifteen (15) days from notice.**

The Rules allow the accused to regain his standing in court in order to avail of these remedies by: (a) his surrender, and (b) his filing of a motion for leave of court to avail of these remedies, stating therein the reasons for his absence, within 15 days from the date of promulgation of judgment. If the trial court finds that his absence was for a justifiable cause, the accused shall be allowed to avail of the said remedies within 15 days from notice or order finding his absence justified and allowing him the available remedies against the judgment of conviction.⁵

Accused Flaviano's *Motion* sufficiently depicted his unfortunate state justifying his absence during the promulgation of judgment on April 13, 2018. Moreover, the medical certificate issued by Dr. Marinel Animas Lim detailing accused Flaviano's current medical condition carries the presumption of

² *Submission* dated May 3, 2018, *id.*, pp. 314-317; and *Compliance* dated May 7, 2018, *id.*, pp. 318-320

³ *Id.*, pp. 240-243

⁴ *Id.*, pp. 244-266

⁵ *Villena, et al. v. People, et al.*, G.R. No. 184091, January 31, 2011

regularity, and is accorded credence by this Court.⁶ In the same vein, this Court comprehends the impossibility of accused Flaviano's surrender in order to avail of his remedies after conviction. Hence, for humanitarian reasons, such remedies are made available to accused Flaviano without his physical submission to this Court.

WHEREFORE, in view of the foregoing, accused Nilo J. Flaviano's *Motion for Leave of Court to Avail of Extra-Ordinary Remedies and Motion for Bail and/or to Allow Accused to Continue on Provisional Liberty during the Pendency of his Motion for Reconsideration and/or Appeal* are **GRANTED**.

Considering that accused Flaviano's surety bond⁷ had already expired, and taking into account his medical expenses, he is allowed to post cash bail in the reduced amount of Seventy-Two Thousand Pesos (₱72,000.00), applying by analogy the three-fold rule,⁸ without the necessity of his personal appearance, within thirty (30) days from receipt of this Resolution. The photos and video already attached to the *Motion for Leave of Court to Avail of Extra-Ordinary Remedies* are considered sufficient to comply with the requisite profile pictures as are usually attached to the cash bail.

With the grant of accused Flaviano's *Motion for Leave of Court to Avail of Extra-Ordinary Remedies*, his *Motion for Reconsideration* dated April 23, 2018 is necessarily **ADMITTED**.

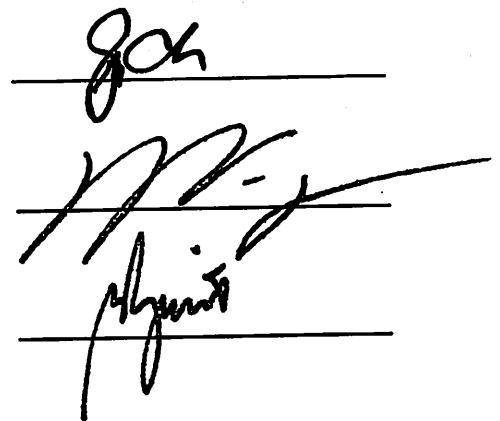
The Prosecution is given 30 days from receipt of this Resolution within which to file its *Consolidated Comment* on the Motion for Reconsideration dated April 27, 2018 filed by accused Jose Ramiscal, and Motion for Reconsideration dated April 23, 2018 filed by accused Nilo Flaviano. The accused are given 15 days within which to file their Reply thereto, after which said motions are deemed submitted for resolution.

SO ORDERED.

GOMEZ-ESTOESTA, J., *Chairperson*

TRESPESES, J.

JACINTO, J.



⁶ *Tarapen v. People*, G.R. No. 173824, August 28, 2008; Section 44, Rule 130 of the Revised Rules on Evidence

⁷ Peoples Trans-East Asia Insurance Company, dated April 7, 1999

⁸ Lowest bail recommended under the Informations is ₱24,000 x 3