



Republic of the Philippines
Sandiganbayan
Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on May 31, 2018.

Present:

<i>MA. THERESA DOLORES C. GOMEZ-ESTOESTA</i>	-----	<i>Associate Justice</i>
<i>ZALDY V. TRESPESES</i>	-----	<i>Associate Justice</i>
<i>BAYANI H. JACINTO*</i>	-----	<i>Associate Justice</i>

The following joint¹ resolution was adopted:

SB-17-CRM-1724 & 1725 - People v. Enrico Reantillo Echiverri, et al.

SB-17-CRM-1766 & 1767 - People v. Enrico Reantillo Echiverri, et al.

SB-18-CRM-0063 & 0064 - People v. Enrico Reantillo Echiverri, et al.

Before the Court are accused Enrico R. Echiverri, Edna V. Centeno and Jesusa C. Garcia's three motions for consolidation filed separately in SB-17-CRM-1724 & 1725, SB-17-CRM-1766 & 1767 and SB-18-CRM-0063 & 0064 but worded similarly and containing exactly the same allegations.

In their motions, movants seek for the consolidation of these three sets of cases "with the related criminal case now pending before the Third Division, docketed as Criminal Case Nos. SB17-CRM-0650 to 0651 and entitled 'People vs. Enrico Echiverri, et al.,' for violation of Section 3 (e) of RA 3019 and Falsification of Public Documents, which has the lowest docket number covering the same accused, issues, and provenance" and assert in the main that these cases:

. . . and the aforementioned Criminal Case Nos. SB17-CRM-0650 to 0651 pending before the Third Division "are founded on the same facts" (Section 22, Rule 119), namely, the appropriation for *Statutory and Contractual Obligations for 20% Development Projects, Maintenance and*

* Per Admin Order No.284-2017 dated August 18, 2017.

¹ While these three sets of cases have not been heretofore joined or consolidated, both the prosecution and the movants have been freely referencing the three sets of cases, movants having in fact filed a single supplemental motion for all cases and the prosecution, particularly, Prosecutor Alexie Jane C. Tadeo who is handling SB-17-CRM-1724 & 1725, having adopted the comments filed by the other handling prosecutors in SB-17-CRM-1766 & 1767 and SB-18-CRM-0063 & 0064; hence, the Court deems it proper and convenient to render a Joint Resolution for this particular issue.

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Other Operating Expenses as representing the 20% IRA for local development projects, which was the subject matter of the same audit report and notice of disallowance issued by the local office of the Commission on Audit of Caloocan City and which documents, in turn, became the basis of the subsequent indictment of the accused by the Office of the Ombudsman, consolidation is proper.

All the handling prosecutors of the three sets of cases oppose² the motions on various grounds. These grounds may be distilled as follows: (1) the motions are not sanctioned by the Revised Guidelines for Continuous Trial in Criminal Cases (“Revised Guidelines”) which allow consolidation only at the instance of the prosecution; (2) consolidation is not proper because the facts and issues on which these cases were founded are entirely separate and distinct involving different complainants, different projects and issues; (3) the action of movants in seeking the consolidation of these cases only at this time is highly suspect; and (4) consolidation will not achieve its purpose since the cases are at various stages in the proceedings.

In their Supplemental Motion dated May 21, 2018, movants expound on their motion and argue that: (1) their motion is allowed under Section 22, Rule 119 of the Rules of Court and there is nothing in the Revised Guidelines which prohibit the accused from initiating the filing of a motion for consolidation; (2) all the charges for which consolidation is sought refer to IRA cases which involve the same questions of law and fact and that there is minimal variance as to the witnesses and documents listed in the pre-trial briefs pending before the different divisions; (3) the Revised Guidelines allow the consolidation of cases which are at different stages in the proceedings; and (4) the piecemeal filing of the Informations has caused tremendous prejudice to all the accused and has contributed to the congestion of the Sandiganbayan courts.

In response to the Supplemental Motion, the prosecution in SB-17-CRM-1766 & 1767 states, among other matters, that while movants knew that multiple cases were being filed against them in different divisions, they sought consolidation of the cases only after securing an acquittal from one of said divisions which exposes their ulterior motive in seeking for consolidation.³ This line of argument is being stretched by the prosecution in SB-18-CRM-0063 & 0064⁴ when it questions movants’ insistence on avoiding conflicting decisions especially in light of the acquittal rendered by another Division of this Court. The prosecution also reiterates its position

² The prosecution’s (1) “OPPOSITION (RE: MOTION DATED 03 MAY 2018)” dated May 10, 2018 in SB-17-CRM-1724 & 1725 submitted by Dir. Froilan S. Dayco and ASP II Alexie Jane C. Tadeo; (2) “COMMENT/OPPOSITION” dated May 10, 2018 filed by Dir. Froilan S. Dayco and ASP I Jackson G. Domantay in SB-17-CRM-1766 & 176; and (3) “OPPOSITION [TO: MOTION TO CONSOLIDATE DATED 03 MAY 2018]” dated May 8, 2018 filed by Dir. Froilan S. Dayco and ASP I Joshua A. Tan in SB-18-CRM-0063 & 0064. During the hearing on the motion, Pros. Domantay manifested that Pros. Tadeo will be adopting the opposition filed by him and Pros. Tan.
³ “OPPOSITION” dated May 23, 2018 filed by Dir. Dayco and ASP I Domantay (record, xxx)
⁴ “OPPOSITION [TO: SUPPLEMENTAL MOTION DATED 21 MAY 2018]” dated May 23, 2018 which Pros. Tadeo (for SB-17-CRM-1724 & 1725) likewise adopted.

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that consolidation by the accused is not allowed by the Revised Guidelines; that jurisprudence pre-Revised Guidelines are not applicable; that the cases sought to be consolidated are at different stages of the proceedings, involve different complainants, different kinds of projects, contracts and contested amounts and caused separate and distinct instances of prejudice to the government which would entail the presentation of distinct sets of evidence.

In their Reply to the prosecution's opposition⁵ -- which the prosecution in SB-18-CRM-0063 & 0064 seeks to expunge⁶ but which the Court will nevertheless consider if only to give movants every opportunity to ventilate their claims – movants expound on their arguments that the Revised Guidelines do not prohibit the accused from consolidating their cases; that the motions for consolidation were timely filed; and that the offenses charged are similar, related and arose out of the same or related or connected acts.

The motions for consolidation are denied.

Preliminarily, the Court does not share the view of the prosecution that only the prosecution can initiate any move for consolidation of cases. While it is true that the Revised Guidelines provide that:

5. Consolidations:

- (a) *Newly-filed Cases.* - When newly-filed criminal cases involving offenses based on the same facts or forming part of a series of offenses of similar character, are **accompanied by a motion for consolidation filed by the Office of the Prosecutor**, the Executive Judge shall cause the raffle to only one court which shall then resolve said motion for consolidation, preferably on the date of the arraignment and in the presence of the accused and counsel.
- (b) *Pending Cases with Multiple Accused.* - In cases involving multiple accused where a subsequent information is filed involving an accused who has been subjected to further investigation by the Office of the Prosecutor over an incident which has the same subject matter as a prior information/s against different accused, said subsequent case when filed **accompanied by a motion for consolidation from the Office of the Prosecutor** shall no longer be raffled. The subsequent case shall be assigned directly by the Executive Judge to the court where the earlier case is pending. If the earlier case is already at the trial stage and witnesses have been presented, the parties may be allowed to adopt the evidence so far presented, without prejudice to additional direct examination questions and cross-examination questions. (*Emphasis supplied*)

There is nothing in said Guidelines which expressly prohibits the accused from moving for consolidation. Neither can such a prohibition be implied

⁵ "REPLY" dated May 24, 2018.

⁶ "MOTION TO EXPUNGE [REPLY DATED 24 MAY 2018]" dated May 28, 2018 filed by Dir. Dayco, ASP 1 Tan, Salvani IV and Pintucan.

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therefrom especially when read in conjunction with Section 22, Rule 119 of the Rules of Court which states that “[c]harges for offenses founded on the same facts or forming part of a series of offenses of similar character may be tried at the discretion of the court.”

To agree with the prosecution’s view would result in the abandonment of case law applying said Section 22, Rule 119 -- wherein accused is the movant -- which the Court is not ready to do. Verily, applying by analogy the principle on statutory construction that a statute (or a rule, as in this case) should be construed not only to be consistent with itself but also to harmonize with other laws on the same subject matter, as to form a complete, coherent and intelligible system,⁷ the Revised Guidelines simply provide for the procedure for the raffling of cases for which a motion for consolidation has been filed by the Office of the Prosecutor. It does not in any way prohibit the accused from moving for consolidation once the cases have been filed in Court. Ultimately, the propriety of consolidation is left to the sound discretion of the Court. And, in this case, the Court is tasked to resolve whether the charges pending before it (*i.e.*, SB-17-CRM-1724 & 1725, SB-17-CRM-1766 & 1767 and SB-18-CRM-0063 & 0064) should be consolidated with the cases pending in the Third Division (SB-17-CRM-0650 & 0651) pursuant to the rule on consolidation found in Section 22, Rule 119 of the Rules of Court in relation to Section 2, Rule XII of the Revised Internal Rules of the Sandiganbayan.⁸

While movants assert that the charges herein are similar to the charges pending before the Third Division which has the lowest docket number, they have not actually substantiated such claim. On the contrary, the prosecution vehemently disputes such assertion.

The established rule is that courts cannot take judicial notice of a disputed fact. Neither can the Court take judicial notice of cases pending in other courts. Thus, considering that the prosecution has challenged the accuracy of the movants’ claim that the cases pending in the Third Division are similar to the cases pending herein, the Court is absolutely without any basis to assess and determine whether the cases herein are proper for consolidation with the cases pending in the Third Division. Since there is no basis for the Court to exercise its discretion then, perforce, the motions must be denied.

Additionally, for the sake of argument, if the Third Division cases are anything like the three sets of charges herein, then there is merit to the prosecution’s claim that other than having the same accused, these cases – going by the ultimate facts alleged in the Informations – are different and

⁷ *Dreamworks Construction, inc. v. Cleofe S. Janiola & Hon. Arthur A. Famini*, G.R. No. 184861, June 30, 2009.

⁸ Sec. 2. *Consolidation of Cases.* – Cases arising from the same incident or series of incidents, or involving common questions of fact and law, may be consolidated in the Division to which the case bearing the lowest docket number is raffled.

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distinct from one another considering that different projects by different people for different amounts and on different periods of time are involved.

As such, movants' fear that the cases, if not consolidated, may result in conflicting decisions is more apparent than real. Different transactions require different proof; thus, a decision rendered in one set of cases will never be in conflict with the decision in another set. A decision in one case will not affect a decision in the other.

Moreover, since it does not seem to be disputed that the cases from the different divisions which are to be consolidated in the Third Division are at different stages in the proceedings, then it is not likely that consolidation will achieve its purpose of preventing delay, clearing congested dockets, simplifying the work of the court and of saving unnecessary costs and expense. On the contrary, consolidation will only result in confusion and delay. The receiving prosecutor will have to re-assess all the exhibits and evidence gathered and/or presented by the prosecutors in the other cases which would necessarily lead to a suspension of the proceedings. As the cases involve different transactions, it may not be feasible for the accused to simply adopt evidence so far presented.

Movants' reliance on the provision in the Revised Guidelines specifically on the consolidation of pending cases is misplaced. Said rule states:

b. *Pending Cases with Multiple Accused.* - In cases involving multiple accused where a subsequent information is filed involving an accused who has been subjected to further investigation by the Office of the Prosecutor over an incident which has the **same subject matter as a prior information/s against different accused**, said subsequent case when filed accompanied by a motion for consolidation from the Office of the Prosecutor shall no longer be raffled. The subsequent case shall be assigned directly by the Executive Judge to the court where the earlier case is pending. If the earlier case is already at the trial stage and witnesses have been presented, the parties may be allowed to adopt the evidence so far presented, without prejudice to additional direct examination questions and cross-examination questions. (*Emphasis and underscoring supplied*)

A plain reading of the provision will readily show that what is being envisioned is a situation in which various individuals are involved in the same transaction; however, some of them have been charged earlier than others (hence, the phrase "over an incident which has the same subject matter as a prior information/s against different accused"). The closest example that the Court can think of is of a transaction involving several accused, one of whom is an impeachable officer. In such a case, an Information against all accused could already be filed in Court except for the impeachable officer during his or her incumbency. Once the impeachable officer ceases to be such, then a new Information will be filed against him or

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her over the same incident. In such a situation, the rule provides that the new case no longer has to be raffled and will simply be assigned directly to the court where the earlier case is pending. And, precisely because the earlier and the newer Informations all involve an incident (single) with the same subject matter, then the new accused could very well “adopt evidence so far presented, without prejudice to additional direct examination questions and cross-examination questions.”

Such procedure cannot be used in these cases since different transactions are involved. As explained above, consolidation will only result in confusion and delay as the receiving prosecutor will have to re-assess all documentary and testimonial evidence to be presented/or have been presented. In the same vein, the cases already undergoing trial will have to be suspended to await cases still in the pre-trial stage since new evidence will have to be first marked and identified. Moreover, the receiving court will not be able to observe the demeanor of witnesses already presented in the other courts. There is, thus, wisdom in the pronouncement of the Supreme Court in *Republic v. Mangrobang*⁹ that:

... It does not appear certain that consolidation is a wise step where one or both cases had already been partially heard. It might just complicate procedural requirements. The judge to whom the consolidated case will be assigned would not have had the opportunity to observe first-hand the witnesses in one of the cases. Fairness and due process might be hampered rather than helped if these case were consolidated.

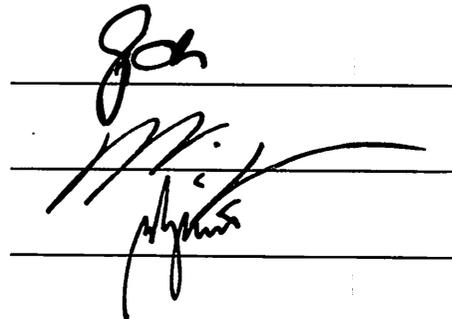
In all, the Court does not deem it imperative that the cases pending before it (SB-17-CRM-1724 & 1725, SB-17-CRM-1766 & 1767 and SB-18-CRM-0063 & 0064) should be consolidated with the cases pending with the Third Division (SB-17-CRM-0650 & 0651). Accused-movants’ “MOTIONS” in all three sets of cases all dated May 3, 2018 are thus **DENIED**.

SO ORDERED. 

GOMEZ-ESTOESTA, J.

TRESPESES, J.

JACINTO, J.



⁹ G.R. No. 130907, November 27, 2001.