



**REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY**

SPECIAL THIRD DIVISION

**PEOPLE
OF THE
PHILIPPINES,**

Plaintiff,

**Criminal Case No. SB-17-
CRM-2081**

For: Violation of Section 3(e),
Republic Act (R. A.) No.
3019

- versus -

TOMASA L. GUARDO, et al.
Accused.

Present:

CABOTAJE-TANG, P.J.,
Chairperson
FERNANDEZ, B., J. and
MENDOZA-ARCEGA,¹ J.

Promulgated:

MAY 21, 2018

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RESOLUTION

CABOTAJE-TANG, PJ:

For resolution is the *Motion to Recuse* dated February 27, 2018, filed by accused Joseph C. Sy.²

Invoking Section 1, Rule 137 of the Rules of Court and Rule 3.12 Canon 3 of the Code of Judicial Conduct, accused

¹ Sitting as a special member per Administrative Order No. 148-2018 dated March 12, 2018

² pp. 369-381, Vol. II, Record

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Sy seeks the “voluntary recusal of the Honorable Justices of the Third (3rd) Division on the ground of his perceived bias, hostility, prejudice or prejudgment.” According to the accused-movant, the Justices exhibited extraordinary interest against him when they *motu proprio* gathered evidence about his citizenship; that the Court asked questions regarding the administrative cases involving his citizenship issue without any evidence on record concerning the said administrative cases during the hearing on his motion to travel abroad; that several days thereafter, the Court denied his motion to travel. He argues that “independent readings” and “research” are not within the official duty of the magistrates of the Court because they are bound to consider only the evidence presented by the parties during the hearings.³ He contends that the Justices used the “output of their independent readings and research as evidence” against him. Purportedly, this is contrary to the rules that courts are not mandated to take judicial notice of the decisions of other courts or even records of other cases that have been tried or are pending in the same court or before the same Judge.⁴ Citing **Tabuena vs. Sandiganbayan**,⁵ he argues that the Justices “made an impression that they gathered additional evidence for the prosecution by inserting extraneous evidence in the proceedings through clarificatory questioning” which is a denial of the due process requirement of the cold neutrality of an impartial judge.⁶

The prosecution opposes the subject motion. It argues that the Court is not bound to limit itself to the evidence presented by the parties during the hearing of accused Sy’s motion to travel abroad; that the Court has an inherent right to conduct “independent research” on the citizenship of accused Sy as further guide in arriving at an appropriate resolution of his motion to travel abroad. It also argues that Rule 3.12, Canon 3 of the Code of Judicial Conduct has no application when the Court conducted clarificatory question on the citizenship of accused Sy during the hearing on his

³ at pp. 1-9, Motion to Recuse; pp. 369-377, Vol. II, Record

⁴ at pp. 11-12, Motion to Recuse; pp. 379-380, Vol. II, Record

⁵ 268 SCRA 332 (1997)

⁶ at p. 11, Motion to Recuse; p. 377, Vol. II, Record

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motion to travel; that the said rule applies only during the trial on the merits where the Court will be bound to consider only the evidence presented by the parties. According to the prosecution, the conduct of the Court was merely done to guide it in determining whether the accused would still return to the Philippines if allowed to travel abroad. Thus, it was appropriate for the Court to conduct an independent research on accused Sy's citizenship.

THE RULING OF THE COURT

The Court finds the subject motion bereft of merit.

The rule on inhibition and disqualification of judges is governed by Section 1, Rule 137 of the Rules of Court, to wit:

Section 1. Disqualification of judges. — No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

Thus stated, the rule contemplates two (2) kinds of self-disqualification. The first paragraph enumerates the instances when the judge is prohibited and disqualified from



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sitting on and deciding a case. The prohibition is compulsory simply because the judge is conclusively presumed to be incapable of impartiality. **The second paragraph speaks of voluntary inhibition; whether or not the judge can sit in and try the case is left to his discretion, depending on the existence of just and valid reasons not included in the first paragraph, but in exercising the discretion, he must rely only on his conscience.**⁷

In this case, accused Sy seeks the inhibition of the Justices of the Third Division on the grounds of “perceived bias, hostility, prejudice or prejudgment” allegedly manifested by the Justices during the hearing on his motion to travel abroad. Thus, accused Sy’s motion for inhibition is anchored on the said second paragraph or refers to voluntary inhibition.

The aspect of voluntary inhibition, as stated in the second paragraph, involves the use of discretion. Undoubtedly, it partakes of voluntariness and is a matter of conscience that is addressed primarily to the judge's sense of fairness and justice. This discretion is an acknowledgment of the fact that judges are in a better position to determine the issue of inhibition, as they are the ones who directly deal with the litigants in their courtrooms. The decision on whether he should inhibit himself, however, must be based on his rational and logical assessment of the circumstances prevailing in the case brought before him.⁸

In this case, accused Sy failed to establish a valid or just reason for the Justices of the Special Third Division to voluntarily inhibit themselves from further hearing this case.

Accused Sy claims that the Justices exhibited bias, hostility, prejudice or prejudgment because they made their own research and readings relative to his citizenship, which are purportedly not found in the record of this case; and, that the Court thereafter denied his motion to travel abroad. He then concludes that the Justices are disqualified from

⁷ *Lai vs. People*, 761 SCRA 156 (2015)

⁸ *Calayag vs. Sulpicio Lines, Inc.* 803 SCRA 308 (2016)

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participating in this case because of their personal knowledge of disputed evidentiary facts concerning the proceedings.

A careful reading of the transcript of the stenographic notes (TSNs) during the said hearing on accused Sy's motion to travel abroad shows that the Court inquired from him whether the issue of his Philippine citizenship has been resolved with finality. The Court informed him that they found out about the issue when they made their own research on his citizenship. The question on the citizenship arose after the prosecution's vigorous objection to accused Sy's motion for authority to travel on the ground that there is a great probability of flight on the part of accused Sy because he bears a Chinese name and may have a strong family ties in Hongkong or China where he is set to travel.

It must be stressed that the trial judges in this jurisdiction are judges of both the law and the facts. The judge has the right, nay the duty, to ask questions to elicit relevant facts and to make the records bear the truth. He is not a mere figurehead or an umpire in a trial and it is his duty to see that justice is done. He cannot be expected to remain always passive and stoic during the proceedings. Being the arbiter, the judge may properly intervene in the presentation of evidence to expedite the progress of the trial and prevent unnecessary waste of time.⁹

In this case, the Court inquired on the citizenship of accused Sy during the hearing on his motion for leave to travel abroad merely to elicit additional information thereon which the Court deemed very relevant to the resolution of his aforesaid motion. Consider:¹⁰

Pros. Ferrer:

We are interposing our vigorous objection, Your Honors, to the motion of the accused on the following grounds, Your Honors:

⁹ *People vs. Medina, Sr.*, 404 SCRA 248 (2003)

¹⁰ pp. 3-5; 8-12, TSN, January 11, 2018



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1. The prosecution does not see absolute necessity for accused Sy to travel abroad, to travel to Hongkong and China, Your Honors, on January 17 to 31;

2. Your Honors, we object to ensure his appearance in Court; and

3. Your Honors, more important one --- (interrupted)

PJ Cabotaje-Tang: What is your second one?

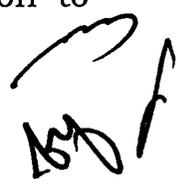
Pros. Ferrrer: 2) To ensure his appearance in Court, Your Honors; and
3) More important one, Your Honors, the probability of flight on the part of accused Sy cannot be discounted because:

1) He is bearing a Chinese name, Your Honors, and he may have strong family ties in Hongkong or China, Your Honors; and

2) It appears from his motion, Your Honors, that he has several business connections in China and Hongkong, such that, there is a great probability, Your Honors, that once he is out to travel abroad to Hongkong and China, he can already establish his office there, Your Honors, and no longer return to the Philippines. So, he can transact his business with these Chinese companies, Your Honors. So, with that, we are interposing our vigorous objections, Your Honors.

PJ Cabotaje-Tang: All right. Any reply counsel to the objection?

Atty. Manalo: Yes, Your Honor, First of all, Your Honor, we would like to make of record that it is not our intention, Your Honor, nor is it Mr. Sy's intention to



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pester the Court with filing of his "Motion for an Allow Departure Order," Your Honor. We understand that this is the third time. We understand that it is almost template for the prosecution to give their objections on the ground of indispensability, probability of flight and the fact, the simple fact that Mr. Sy has a Chinese lineage, Chinese ancestry, and has established business connections in China and Hongkong, we believe that these are not sufficient reasons, Your Honor, to deny it. Mr. Sy, his right to practice his business occupations as well as his right to travel as a Filipino, Your Honor. The truth of the matter, Your Honor, is that Mr. Sy is not an ordinary businessman or an ordinary "negosyante" as the prosecution would like to portray Mr. Sy to be. Mr. Sy is the Chairman of the Board of a public listed company and the market capitalization of its company is quite substantial at 14.5 Billion.

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PJ Cabotaje-Tang:
Atty. Manalo:

Where is Mr. Sy?
He is present, Your Honor.

PJ Cabotaje-Tang:
Mr. Sy:

Mr. Sy, can you come forward please?
Yes, Your Honor.

PJ Cabotaje-Tang:
Mr. Sy:

Do you have a dual citizenship?
No, only one.

PJ Cabotaje-Tang:
Mr. Sy:

So, you are only a Filipino citizen ---
(interrupted)
Yes.

PJ Cabotaje-Tang:
Mr. Sy:

And you do not have a Chinese citizenship?
No.



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- PJ Cabotaje-Tang: The Court made its research regarding you Mr. Sy and it has found out that there ha[ve] been issues about your Philippine citizenship. Has the issue of your Philippine citizenship been resolved with finality?
- Mr. Sy: (Asking Atty. Lazaro to come forward.)
- Atty. Lazaro: Good afternoon, Your Honor please, I am Atty. Noel B. Lazaro, with your permission please. I have entered my appearance as collaborating counsel. I have personal knowledge of the issues relating to the question of the Honorable Court.
- PJ Cabotaje-Tang: Yes. Can you --- (Interrupted)
- Atty. Lazaro: If I'm allowed, Your Honors, I will be glad to expound on that, Your Honor.
- PJ Cabotaje-Tang: Yes. Can you respond to the question of the Court?
- Atty. Lazaro: Yes, Your Honor, Mr. Sy, Your Honor, is a holder of a Philippine passport. He is also a natural-born Filipino citizen as revealed by his birth certificate. I understand he also has a Filipino voters ID, Your Honor. There were issues about his citizenship, Your Honor, as brought about by some of his business controversies because some companies that had some issues against the company of Mr. Sy used the citizenship issue, Your Honor, by way of leverage in order to get their request or demands for payment of some royalties, Your Honor. So, this has been by way of a complaint before the Securities and Exchange Commission. I happened to be the lawyer there, Your Honor, and I was able to secure a ruling from the Securities and Exchange Commission



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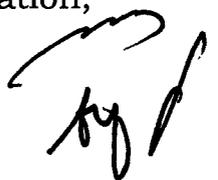
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that Mr. Sy is indeed a Filipino citizen and the complainant was not able to stop this or overcome the official public document showing that he is a Filipino citizen, Your Honor. The Securities and Exchange Commission, Your Honor, passed upon, Your Honor, the ---

PJ Cabotaje-Tang: Let's cut this short.
Atty. Lazaro; Yes, Your Honor.

PJ Cabotaje-Tang: But do you also confirm that, actually, the National Bureau of Investigation conducted an investigation on the matter of his citizenship and there was in fact a recommendation by the NBI to further inquire into how Mr. Sy actually acquired Natural Filipino Citizenship.

Atty. Lazaro: I will go to that point, Your Honor. Just to continue my narrative, Your Honor, because this is important. After we were able to secure a favorable ruling from the Securities and Exchange Commission, the same complainant or group of complainants, Your Honors, some of which are hiding under anonymity, Your Honor, went to the Bureau of Immigration, Your Honor. This time narrating the same set of circumstances, Your Honor, attacking the citizenship of Mr. Sy. So, in the Bureau of Immigration, Your Honor, again we were able to secure a favorable ruling whereby the Bureau of Immigration said on certain terms that Mr. Sy is indeed a Filipino citizen and the complainant again was not able to overcome the authenticity of official public documents. Now, the same complainant, Your Honor, was not content, Your Honor, with that kind of ruling by the Bureau of Immigration,



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and in fact, Your Honor, the Board of Commissioners of the Bureau of Immigration has so ordered, Your Honor, that Mr. Sy is a Filipino citizen. What they did, Your Honor, was to make a mockery of the procedure because instead of going out on the field which they did, Your Honor, they went to the National Bureau of Investigation, Your Honor. This time, Your Honor, mirroring the same complaint, Your Honor, and the Bureau of Investigation, Your Honor, to our chagrin forwarded the complaint to the Department of Justice, Your Honor, where the case is now pending. Mr. Sy has submitted his counter-affidavit there, Your Honor, and the case is now pending, Your Honor, a resolution. It has taken, I think about, if I am not mistaken, a little over a year, almost two (2) years now, Your Honor, and there has been no resolution yet, Your Honor, and we stand by that presumption under the law, Your Honor.

PJ Cabotaje-Tang:

Thank you.

Atty. Manalo:

We are willing to submit to the Court, Your Honor, the pertinent rulings issued by the Securities and Exchange Commission as well as the Bureau of Immigration, if the Court will require.

PJ Cabotaje-Tang:

The Court is well aware of that. It has its independent readings and research.

Atty. Lazaro:

Thank you for the clarification, Your Honor.

PJ Cabotaje-Tang:

Precisely, the Court is asking that from you. Anyway, the Court will now consider the motion submitted [for

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resolution.] You may now sit down, Mr. Sy.

It is clear that the questions propounded by the Court do not evince even the slightest tinge of bias and prejudice. The Court merely performed its duty to ask questions to elicit relevant facts to properly aid it in resolving the motion for authority to travel. To be sure, the Court has the duty to ensure that any accused before it should always be within its reach.

The Court likewise finds that the questions asked during the hearing on accused Sy's motion to travel abroad does not indicate any partiality on the part of the Justices as a ground to inhibit themselves under Rule 3.12, Canon 3 of the Code of Judicial Conduct,¹¹ now Section 5, Canon 3 of the New Code of Judicial Conduct for the Judiciary.¹²

As earlier discussed, the questions of the Court were mere clarifications on a relevant issue, *i.e.*, citizenship, in the resolution of the motion to travel abroad. Questions designed to clarify points and to elicit additional relevant evidence are not improper.¹³

Moreover, the counsel for accused Sy was heard on this particular issue as can be seen from the TSNs quoted earlier.

¹¹ Rule 3.12. — A judge should take no part in a proceeding where the judge's impartiality might reasonably be questioned. These cases include, among others, proceedings where:

(a) the judge has personal knowledge of disputed evidentiary facts concerning the proceeding;

¹² SECTION 5. Judges shall disqualify themselves from participating in any proceedings in which they are unable to decide the matter impartially or in which it may appear to a reasonable observer that they are unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where

(a) The judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;

¹³ People vs. Medina, *supra* note 9

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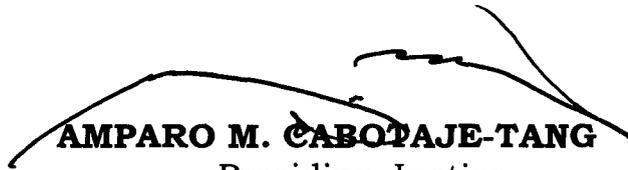
In fact, he confirmed that there is a pending issue on accused Sy's citizenship before the DOJ.

The Supreme Court has held that mere imputation of bias, partiality, and prejudgment is not enough ground, absent clear and convincing evidence that can overcome the presumption that the judge will perform his duties according to law without fear or favor. It will not disqualify a judge based on speculations and surmises or the adverse nature of the judge's rulings towards those who seek to inhibit him.¹⁴

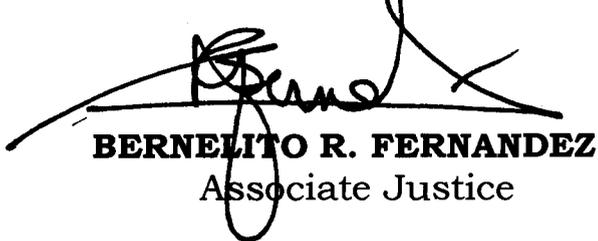
WHEREFORE, the Court **DENIES** accused Joseph C. Sy's *Motion to Recuse* dated February 27, 2018, for lack of merit.

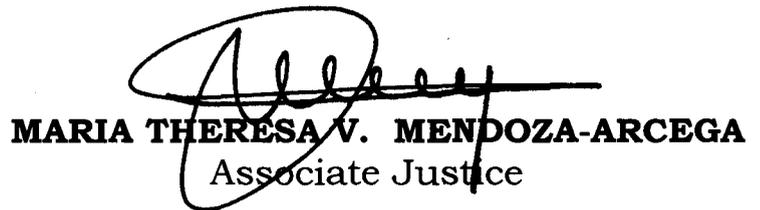
SO ORDERED.

Quezon City, Metro Manila


AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson

WE CONCUR:


BERNELITO R. FERNANDEZ
Associate Justice


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

¹⁴ *People vs. dela Torre-Yaddao*, 685 SCRA 264 (2012)