



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Criminal Case No.:

SB-08-CRM-0307 to 0370

FOR 0307 to 0338: Violation of Sec. 3(e), RA 3019

FOR 0339 to 0370: Falsification of Public Documents

- *versus* -

CELSO Z. FERNANDEZ, III
Accused.

Present:

Lagos, J., Chairperson,
Mendoza –Arcega, J., and
Corpus-Mañalac, J.

Promulgated:

July 06, 2018 *jal*

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RESOLUTION

MENDOZA-ARCEGA, J.:

This resolves the prosecution's oral motion as per the Minutes¹ of the proceedings dated April 25, 2018 and Celso Z. Fernandez III's (accused) Comment (To: Prosecution's Motion to Consider Waived the Presentation of Defense's Documentary Exhibits Not yet Compared and Re-Marked)² dated June 14, 2018.

For failure of the accused to appear on two consecutive hearings scheduled on April 20, 2018 and April 25, 2018, the prosecution moved that the defense' presentation of the documentary exhibits set for comparison and remarking be waived, and that the accused be reminded to provide her with a copy of the Judicial-Affidavit before the scheduled hearing, together with the copies of the exhibits which had already been compared and remarked.

¹ Record, Vol. 6, page 360.

² Attached to the Record.

RESOLUTION

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People vs. Celso Z. Fernandez III

In his Comment, the accused asserts that the primary purpose of the hearing is for the comparison of the original of the documentary exhibits attached to the original Judicial Affidavit of the accused, with their corresponding photocopies and to obtain stipulations in respect of the same. The accused further avers that since the comparison of the documents is almost complete, the State will not be materially prejudiced if the same be scheduled before trial. Finally, he claims that their failure to appear during the said hearings were understandable and excusable. The cancellation and resetting on April 20, 2015 was due to his counsel's scheduled hearing the day before at Santiago, Isabela. Accused was advised to push through with the schedule, and his counsel will just try to catch up. Nonetheless, the prosecution agreed to cancel the scheduled hearing and have it reset on April 25, 2018. Unfortunately, the defense failed to appear before this Court on the rescheduled hearing. Accused had the misconception that his counsel would be available on the said date, however, the latter had to attend another hearing at the Metropolitan Trial Court of Makati. Be that as it may, accused was unable to appear before this Court on April 25, 2018 because of the sudden demise of his brother-in-law.

Upon perusal of the facts and circumstances of this case, We deny the prosecution's motion.

The defense' failure to appear for two consecutive hearings should not necessarily imply as waiver of his right to present evidence nor should it be a ground to disallow the defense another day in court. While it is true that the right to present evidence may be waived, expressly or impliedly, it cannot be presumed that the defense made such waiver in this case. The accused's failure to appear on two proceedings will not necessarily imply that he is impliedly waiving his right to present. It is apparent that the accused is eager to present his defense, however, due to his lawyer's complex work schedule, both their appearances in court were affected. To note, we do not think that the accused's failure to appear was capricious in order to stall the proceedings of this case. The successive postponement of hearings due to justifiable failure of the accused and his counsel to appear cannot be viewed as oppressive to the cause of the State.

As one of fundamental rights of the accused, he is entitled to be informed of the accusations against him and accordingly refute the same by presenting his defense. Article III, Section 14 (2) of the 1987 Constitution provides in part that in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel. Reinforcing this right is Section 1(c), Rule 115³, which provides that the accused has the right to be present and defend in person and by counsel at every stage of the proceedings, from arraignment to promulgation of the judgment.

³ Revised Rules on Criminal Procedure.

It must also be emphasized that the right of the accused to defend his case must be accorded with significance. The Supreme Court has consistently ruled:

“The right of an accused during trial are given paramount importance in our laws and rules on criminal procedure. Among the fundamental right of the accused is the right to be heard by himself and counsel. Verily, this right is even guaranteed by the Constitution itself. This right has been recognized and established in order to make sure that justice is done to the accused. Further, the constitutional right of the accused to be heard in his defense is inviolate. No court of justice under our system of government has the power to deprive him of that right.”

Indeed, the Constitution allows waiver of such right. However, the Supreme Court guards the accused against involuntary waivers as in the case of *People vs. Bodoso*⁴, stating:

“It is elementary that the existence of waiver must be positively demonstrated since a waiver by implication cannot be presumed. The standard of waiver requires that it not only must be voluntary, but must be knowing, intelligent, and done with sufficient awareness of the relevant circumstances and likely consequences. There must be persuasive evidence of an actual intention to relinquish the right. Mere silence of the holder of the right should not be easily construed as surrender thereof; the courts must indulge every reasonable presumption against the existence and validity of such waiver. Necessarily, where there is a reservation as to the nature of any manifestation or proposed action affecting the rights of the accused to be heard before he is condemned, certainly, the doubt must be resolved in his favour to be allowed to proffer evidence in his behalf.”

The determination of the accused to present the original of the exhibits is a manifestation of his willingness to be heard and to present evidence in support his defense. The mere non-appearance of the accused and his counsel for two consecutive hearings should not necessarily imply a waiver of the accused’s Constitutional right to be heard.

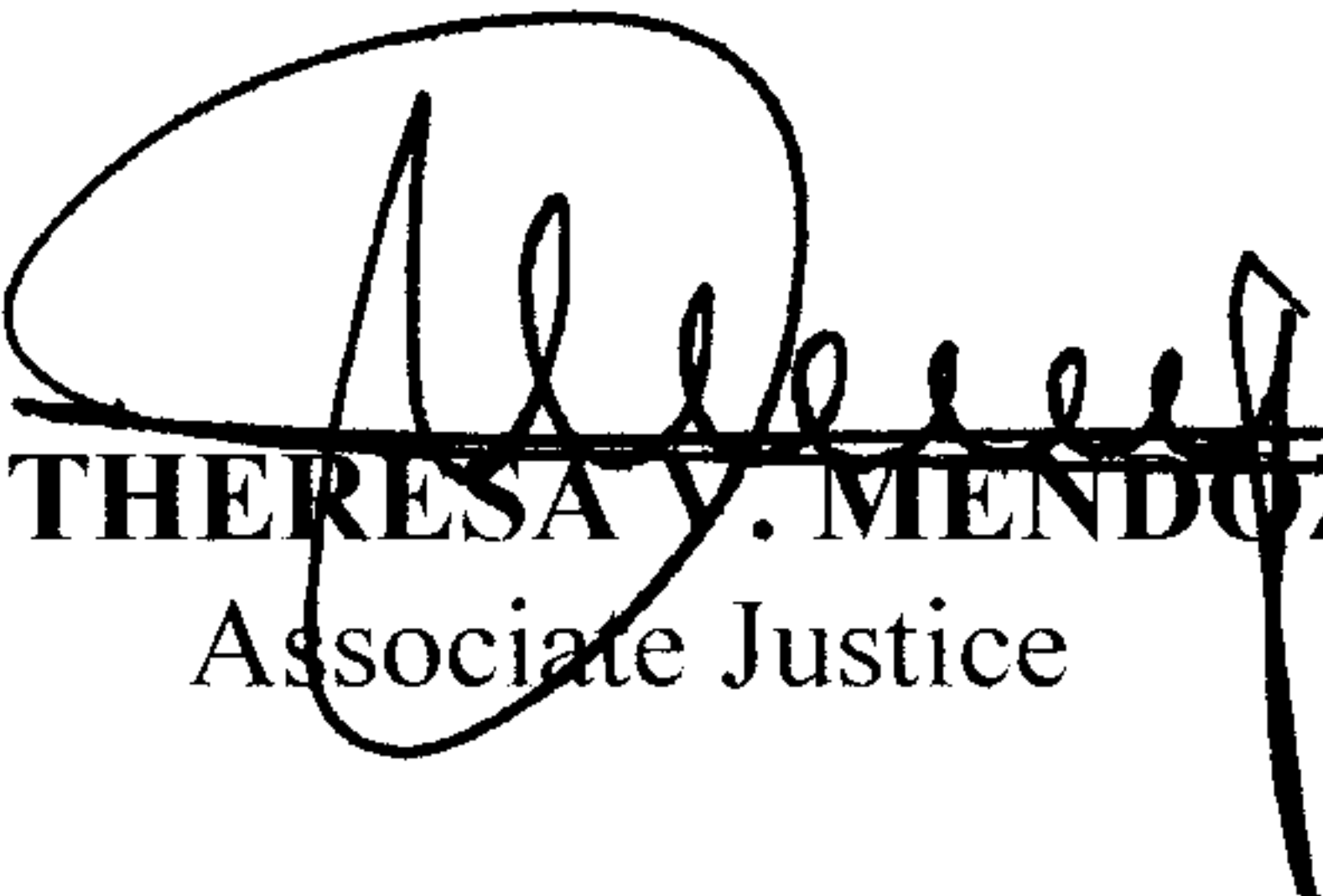
It is apparent that the accused sought for a number of postponements and We have granted the same since it is the mandate of substantial justice to give the accused a day in court. A speedy disposition of the case at the expense of the accused’s fundamental right should not be encouraged in any proceeding. Thus, to afford the accused an ample opportunity to be heard, this

⁴ G.R. No. 149382-149383, March 5, 2003.

Court allows the reception of the documentary exhibits for comparison with those already presented and subject the same for remarking.


WHEREFORE, Prosecutor Sheri P. Zales' oral motion is hereby **DENIED**. Let the accused, Celso Z. Fernandez III, continue to present his documentary exhibits for comparison and remarking on July 24, 2018.

SO ORDERED.


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

WE CONCUR:


RAFAEL R. LAGOS
Associate Justice
Chairperson


MARYANN E. CORPUS -MAÑALAC
Associate Justice