



**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:

JULY 30, 2018

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RESOLUTION

CABOTAJE-TANG, PJ:

For resolution is the *Motion for Reconsideration (Re: Resolution 21 May 2018) With Motion to Defer Arraignment and Pre-trial* dated June 4, 2018, filed by accused Joseph C. Sy.²

Accused Sy prays for a reconsideration of the Court's Resolution promulgated on May 21, 2018, which denied his motion to recuse. In support of his motion for

¹ J. Maria Theresa V. Mendoza-Arcega is a signatory to the assailed Resolution.

² pp. 403-416, Vol. III, Record

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reconsideration, he poses the following arguments: (1) the mere appearance of bias and partiality is enough ground for a judge to inhibit in a case; (2) the Court's admission that they conducted their own research on him created the appearance that the pending issue was resolved based on the independent findings of the Court and not based on the evidence on record; and (3) even the most honest intention of the Court cannot erase the appearance of bias and partiality created by its act of gathering information regarding his citizenship.³

Citing Section 5, Canon 3 of the New Code of Judicial Conduct for the Judiciary and several jurisprudence,⁴ accused Sy asserts that that "independent readings" and "research" are not within the official duty of the magistrates of the Court because a Court resolution must be based on evidence on record. Thus, he claims that the act of the justices in making an independent research on his citizenship despite the fact that he already submitted his Philippine passport evinces bias and partiality. He further claims that *personal knowledge of facts in a case is a ground for disqualification when obtained extra-judicially.*⁵ He argues that such personal knowledge obtained from independent research cannot be erased by the Court's subsequent questioning on his citizenship; that such questioning made by the Court during the hearing goes beyond acceptable clarificatory questioning to aid in the prosecution and is a denial of a due process requirement of the cold neutrality of an impartial judge. He points out that prior to the Court's questioning, there is no evidence on record concerning administrative cases involving his citizenship.⁶

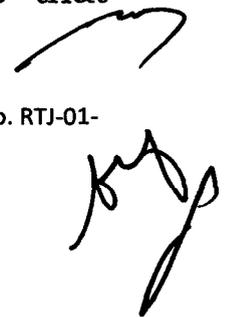
In its opposition to the subject motion, the prosecution contends that accused Sy merely reiterated "the old arguments" he raised in his motion to recuse which had been passed upon by the Court in its assailed Resolution. Nevertheless, the prosecution maintains that there is no slightest perception, appearance or suspicion of bias that

³ p. 3, *Motion for Reconsideration*; p. 405, Vol II, Record

⁴ *Verozosa vs. Contreras*, A.M. No. MTJ-06-1636, March 12, 2007; *Pascual vs. Bonifacio*, A.M. No. RTJ-01-1625, March 10, 2003; *Castillo vs. Juan*, 62 SCRA 124 (1975)

⁵ pp. 4-9, *Motion for Reconsideration*; pp. 406-411, Vol. III, Record

⁶ pp. 11-12, *Motion for Reconsideration*; pp 413-414, Vol. III, Record



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could be attributed to the Court when it made “its inherent right in conducting its own queries and doing independent researches on the citizenship” of accused Sy because the same was done by the Court to guide it in arriving at an appropriate resolution of accused Sy’s motion to travel. To the prosecution, accused Sy’s imputation of bias and partiality upon the Court is simply based on speculations and surmises.⁷

The Court finds the subject motion for reconsideration bereft of merit.

In the subject motion, accused Sy insists that the Court grant his motion to recuse on the alleged ground that the Court showed bias and partiality when it made its own independent research on his citizenship and made it the basis in denying his motion to travel. This is purportedly because the Court is bound to consider only the evidence presented by the parties.

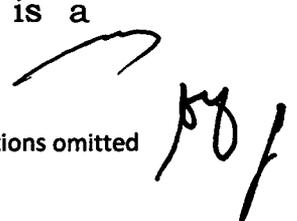
As the prosecution correctly points out, accused Sy’s arguments are a mere reiteration of the arguments he had raised in his motion to recuse which were thoroughly considered and passed upon by the Court in its assailed Resolution, to wit:⁸

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

⁷ pp. 451-453, Vol. III, Record

⁸ at pp. 4-12, Resolution promulgated on May 21, 2018; pp. 389-397, Vol. III, Record; citations omitted



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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.

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 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

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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.

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:

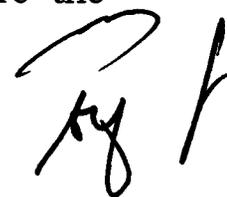
... ..

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, now Section 5, Canon 3 of the New Code of Judicial Conduct for the Judiciary.

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.

Moreover, the counsel for accused Sy was heard on this particular issue as can be seen from the TSNs quoted earlier. In fact, he confirmed that there is a pending issue on accused Sy's citizenship before the DOJ.



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The Supreme Court has held that mere imputation of bias, partiality, and prejudice 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.

With the denial of the subject motion, there is no longer any tenable ground to defer accused Sy's arraignment and pre-trial.

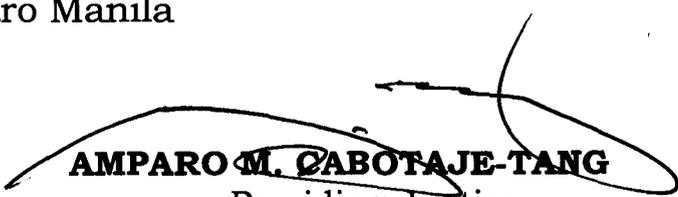
In sum, the Court finds that accused Sy has failed to present any sound reason for the Court to overturn its Resolution promulgated on May 21, 2018.

WHEREFORE, the Court **DENIES** accused Joseph C. Sy's *Motion for Reconsideration (Re: Resolution 21 May 2018) With Motion to Defer Arraignment and Pre-trial* dated June 4, 2018, for lack of merit and/or for being *pro forma*.

Set the arraignment and pre-trial of accused Joseph C. Sy on August 24, 2018 at 8:30 in the morning.

SO ORDERED.

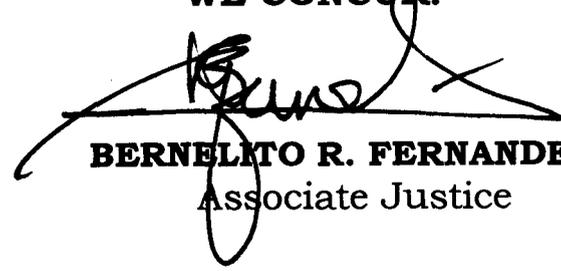
Quezon City, Metro Manila



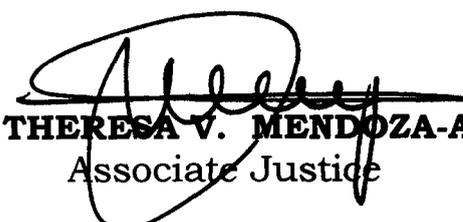
AMPARO M. CABOTAJE-TANG

Presiding Justice
Chairperson

WE CONCUR:



BERNELTO R. FERNANDEZ
Associate Justice



MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice