



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

Criminal Case No.:
SB-18-CRM-0279 to 0282
*For: Violation of Sec. 3(e)
R.A. No. 3019 as amended.*

ROQUE R. ABLAN, JR., et al.,
Accused.

X-----X

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

Criminal Case No.:
SB-18-CRM-0283 to 0286
*For: Malversation of
Public Funds.*

REINERIO B. BELARMINO, JR., et al.,
Accused.

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

Promulgated:
October 29, 2018 *lea*

X-----X

RESOLUTION

MENDOZA-ARCEGA, J.:

For consideration in this resolution are the following incidents:

(1) the *Motion for Reconsideration* (of the Order Denying Motion to Quash dated September 18, 2018)¹ filed by accused Francisco

¹ Records, Volume II, pages 101-103.

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Cabulot Casil (accused Casil) and the prosecution's *Comment/Opposition* (Compliance with the Notice of Minute Resolution dated September 24, 2018)² dated September 28, 2018; and

(2) the Prosecution's *Motion for Reconsideration* (Re: Resolution dated August 22, 2018) dated August 31, 2018 and accused Lourdes Valdez Gonzales' (accused Gonzales) *Comment/Opposition* dated October 15, 2018.

In accused Casil's motion, he pleads for the reconsideration of the Court's Order dated August 3, 2018 denying to admit his Motion to Quash, which reads as follows:

“When this motion was called neither the accused-movant Francisco Cabuloy Casil nor his counsel appeared. It appears that it was accused himself who had set this motion for hearing today at 8:30 in the morning Prosecutor Elmo Cortez manifested that he has not received a copy of a motion. Acting on Prosecutor Cortez's motion to deny the same and for lack of interest of the accused to prosecute his motion, the MOTION TO QUASH INFORMATION is DENIED.

SO ORDERED.”

Accused Casil and his counsel did not attend the hearing set on August 3, 2018, believing in good faith that the Order to Comment on accused Gonzales also includes his client. Casil now moves the said order to be reversed on the basis of the doctrine held in *BPI vs. Court of Appeals*³ stating that “a court can dismiss a case on the ground of *non-prosequitur*, the real test of such power is whether, under the circumstances, plaintiff is chargeable with want of due diligence in failing to proceed with reasonable promptitude. In the absence of a pattern or a scheme to delay the disposition of the case or a wanton failure to observe the mandatory requirement of the rules on the part of the plaintiff, as in the case at bar, courts should decide to dispense rather than wield their authority to dismiss.” In his plea to be heard, accused Casil insists that the motion to quash is his last resort to seek redress against the delay of the Ombudsman in resolving his case. To emphasize his interest in participating in the case against him, he asserts that he actively prosecuted his Motion to Quash Information in another case also pending before this Court. Thus, he urged for the Court's reversal of the order dated 3 August 2018, in the interest of substantial justice and fair play.

² Records, Volume II, pages 113-116.

³ G.R. No. 117385, February 11, 1999.

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The prosecution, in opposing Casil's assertion and sustaining the Court's denial to the Motion to Quash, pointed out that the accused together with his counsel has the liberty to set the hearing of the motion, thus, they are expected to be more diligent in prosecuting their Motion; moreover, they drafted the said motion, they are free to set the same on the schedule that they see fit. In which case, their failure to appear on the scheduled hearing is an abandonment of their Motion.

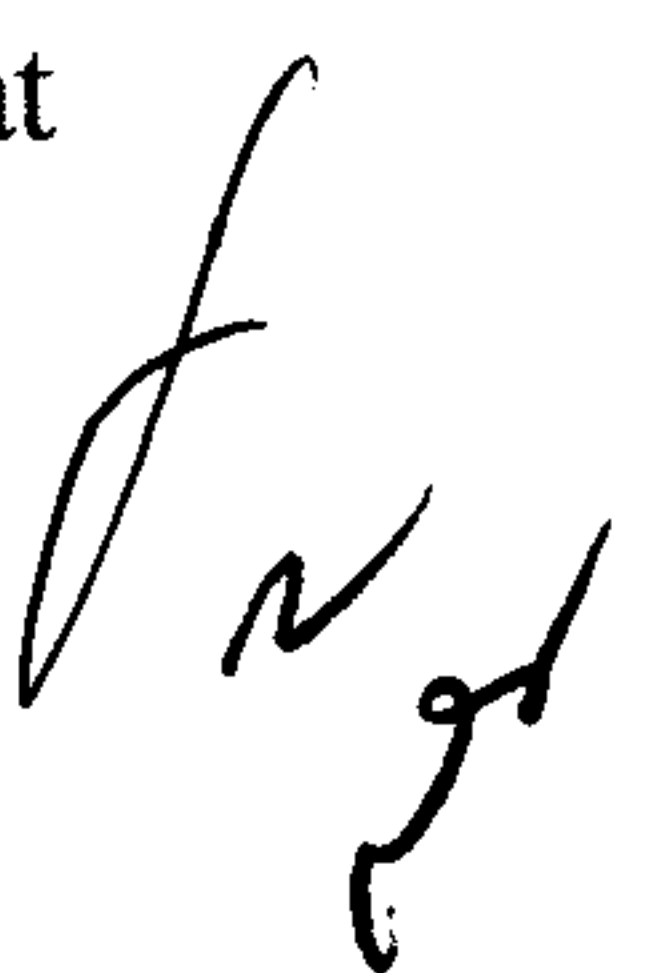
As to the prosecution's motion for reconsideration, the latter implores this Court to set aside its Resolution dated August 22, 2018 which granted the Motion to Quash filed by accused Gonzales that dismissed the charges against her. The prosecution's claim is hinged on the fact that it was not shown that accused Gonzales was prejudiced in the course of the preliminary investigation of this case. In its plea, the prosecution insists that just like any allegations, "prejudice" requires clear and convincing evidence, which the accused failed to present in his Motion to Dismiss. Thus, there is no showing that accused was made to endure any vexatious process during the period of preliminary investigation. Moreover, in case there was inordinate delay, and the accused was prejudiced, it is upon the accused to prove that he has been prejudiced in the conduct of the preliminary investigation.

Accused Gonzales opposed the said motion by asserting that the Court's resolution is in accordance with the standards set in the numerous cases set by the Supreme Court. For the Court to affirm the said resolution, the accused reiterates that it is doubtful if the prosecution could seriously question the prejudice and hardships Gonzales suffered as a consequence of the inordinate delay in the disposition of the complaint against her. Among other things, she has been "dismissed from the service" as a result of the accompanying administrative case decided by the Office of the Ombudsman. Accused Gonzales has spent so much time, money, and other resources defending herself in these cases which are based on a procurement made 14 years ago, in 2004.

The Court's Ruling

*On Accused Francisco Casil's
Motion for Reconsideration*

Upon faithful admission of Casil's counsel that his absence during the August 3, 2018 hearing was based on his understanding that the Order to Comment on accused Gonzales necessarily includes his client, this Court is inclined to grant the present motion. The failure of the accused to be present on the date of the hearing should not be automatically taken against the accused as "lack of interest" to prosecute his case. Counsel has given his apologies for their non-appearance during the hearing, coupled by the fact that



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they have pending cases in this Court, which the accused does not abandon, leads Us to conclude that accused still has interest to pursue his defense.

It will be an injustice on the part of the accused if he will be deprived of his day in Court due to the negligence of his counsel. Likewise, there is no reason to burden the accused for his non-appearance since he has no desire to undermine the judicial process but due to his counsel's oversight. Section 6, Rule 1 of the Rules of Court provides that rules shall be liberally construed in order to promote their objective in securing a just, speedy and inexpensive disposition of every action and proceeding. In the interest of substantial justice, the Court warrants the reconsideration of its Order dated August 3, 2018.

*On the Prosecution's
Motion for Reconsideration*

As to the prosecution's claim that accused Gonzales failed to show that she was prejudiced in the course of the investigation, We reiterate Our finding in the August 22, 2018 Resolution, to wit:

“In considering the prejudice caused to the accused-movant, the case of *Remulla* is also persuasive. In the said case, as in the present circumstances, the protracted period of uncertainty over their criminal case caused them prejudice, living under a cloud of anxiety, suspicion and even, hostility.”

After judicious perusal of the prosecution's motion for reconsideration, the Court is led to conclude that the arguments raised in said motion are mere rehash of those asserted in the prosecution's Comment dated July 11, 2018. Indeed, the prosecution did not raise any new matters or issues to permit the reversal of the assailed Resolution. Therefore, there is no cogent reason to discuss the same.

The Supreme Court has emphasized this principle in this light:

“In the same manner, we readily found that, despite the lengthy and repetitious submissions of petitioner in its pleadings filed with this Court as earlier enumerated, all the arguments therein are also mere rehashed versions of what it posited before respondent court. We have patiently given petitioner's postulates the corresponding thorough and objective review but, on the real and proper issues so completely and competently discussed and resolved by respondent court, petitioner's obvious convolutions of the same arguments are evidently unavailing. x x”⁴

⁴ *Komatsu Industries (Phils.) Inc. vs. CA*, G.R. 127682, April 24, 1998.

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Finally, it must be pointed out that accused Gonzales must be considered as similarly situated as that of her co-accused with regard to the preliminary investigation conducted by the Ombudsman. Cases against them were also dismissed for violation of their constitutional right to speedy disposition of cases, therefore it is only appropriate to dismiss the case against accused Gonzales on similar standing.


WHEREFORE, premises considered, the Court hereby resolves to:

- (1) **GRANT** the *Motion for Reconsideration* filed by accused Francisco Cabuloy Casil. The Order dated September 18, 2018 is **SET ASIDE**. Let a new hearing be set on **November 23, 2018** for accused Casil's Motion to Quash. Atty. Ricardo M. Moreño is hereby given a stern warning that a repetition of the same or similar act shall be dealt with accordingly; and
- (2) **DENY** the Prosecution's *Motion for Reconsideration* (RE: Resolution dated August 22, 2018) for utter lack of merit.

SO ORDERED.


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

WE CONCUR:


RAFAEL R. LAGOS
Chairperson
Associate Justice


MARYANN E. CORPUS-MAÑALAC
Associate Justice