REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-18-CRM-0240
For: Violation of Sec. 3(e) of R.A. No. 3019

SB-18-CRM-0241
For: Plunder

SB-18-CRM-0242
For: Direct Bribery under Art. 210 of the RPC

SB-18-CRM-0243
For: Violation of P.D. No. 46

Present

- versus -

FERNANDEZ, SJ, *J.*,
Chairperson
MIRANDA, *J.* and
TRESPESES,* *J.*

AL C. ARGOSINO, ET AL.
Accused.

Promulgated:

JAN 28 2019

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves the following:

1. *Motion to Inhibit*[1] filed by accused Michael B. Robles; and,

2. *Urgent Motion for Inhibition (with Manifestation)*[2] filed by accused Al C. Argosino.

* In view of the inhibition of J. Vivero (Per Administrative Order No. 295-2018 dated May 25, 2018)
[1] Dated January 7, 2019; Record, Vol. 9, pp. 224-233
[2] Dated January 14, 2019; Record, Vol. 9, pp. 344-350

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In his *Motion to Inhibit*, accused Robles seeks the voluntary inhibition of Associate Justice Sarah Jane T. Fernandez. He further prays that action on his Motion for Reconsideration of the Resolution dated November 12, 2018 be held in abeyance pending the resolution of his instant Motion. He avers:

1. They were illegally deprived of their liberty.

    a. The accused posted bail for their temporary liberty in SB-18-CRM-0240, 0242 and 0243. They were nonetheless detained and deprived of their liberty in connection with SB-18-CRM-0241.

    b. At that time, no warrant of arrest was shown to them.

2. The Court's subsequent resolutions further show that as long as Justice Fernandez takes part in the proceedings, it is unlikely that the accused will get justice and a fair trial.

3. A judge should not only be impartial, but must also appear to be impartial. Furthermore, a judge should not only render a just, correct and impartial decision, but should also do so in a manner as to be free from any suspicion as to his or her fairness, impartiality, and integrity.

4. Justice Fernandez was a classmate of Atty. Laurence Hector B. Arroyo, counsel for accused Wenceslao A. Sombero, Jr.

    a. Should the accused be acquitted, Justice Fernandez may be suspected of being biased and partial towards the accused.

    b. Conversely, should the accused be convicted, Justice Fernandez would be suspected of convicting them only to dispel any suspicion of bias and partiality.

5. To avoid any suspicion or perception of bias and partiality, Justice Fernandez should voluntary inhibit.

In his *Urgent Motion for Inhibition*, accused Argosino manifested that he is adopting the *Motion to Inhibit* filed by accused Robles, and prays that (1) the Justices inhibit themselves from hearing the present cases; (2) the proceedings be deferred until the resolution of his Motion; and (3) the cases be re-raffled to another Division. He further avers:

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1. Associate Justices Karl B. Miranda and Zaldy V. Trespeses should likewise inhibit on the ground of partiality, bias and unfairness, as seen in the Court's handling of the present cases and the Resolutions it issued.

2. The grounds for inhibition cited by accused Robles also extend to Justices Miranda and Trespeses.

3. Allegations of bias and partiality are just and cogent grounds for voluntary inhibition.

4. "Lack of faith and trust" in the actions of a judge also constitute sufficient grounds for voluntary inhibition.

In its *Consolidated Opposition (To Accused Robles' Motion to Inhibit dated 07 January 2019 and Accused Argosino's Urgent Motion to Inhibit dated 14 January 2019)*,[3] the prosecution counters:

1. Accused Robles' claim of illegal deprivation of liberty holds no water because they (accused Robles and Argosino) voluntarily surrendered. Moreover, he raised the issue only after his Motion to Quash, Petition for Bail, and Motions for Reconsideration were resolved.

2. Early in the proceedings, and at the first instance, Justice Fernandez disclosed that she and Atty. Arroyo were classmates in law school. The prosecution did not find the matter objectionable. At the time, none of the parties moved for her inhibition.

3. It is well-settled that inhibition is not allowed at every instance that a schoolmate or classmate appears before the judge as counsel for one of the parties.

4. In several cases, the Supreme Court explained that perceived bias or impartiality is not sufficient basis for inhibition. Bias and prejudice must be proved with clear and convincing evidence.

5. Accused Robles and Argosino failed to cite any occasion showing that any of the members of the Court had been partial towards Atty. Arroyo and/or accused Sombero.

[3] Dated January 21, 2019; Record, Vol. 12, pp. 311-319

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THE COURT'S RULING

The Court resolves to deny the respective Motions of accused Robles and Argosino for being devoid of merit.

Rule 137, Sec. 1 of the Rules of Court provides for the grounds for the disqualification of judges. The first paragraph pertains to grounds for compulsory inhibition, while the second paragraph pertains to voluntary inhibition. *viz.*:

> **Sec. 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.
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> (underscoring supplied)

Indeed, under the second paragraph of Rule 137, Sec. 1 of the Rules of Court, Judges or Justices may, in the exercise of their sound discretion, voluntarily inhibit from the proceedings. But it bears stressing that such inhibition must be for just or valid reasons only. In *Pagoda Philippines, Inc. v. Universal Canning, Inc.*,[4] the Supreme Court even emphatically held that the provision does not give Judges or Justices the unfettered discretion to decide whether to desist from hearing a case. To wit:

> The judges right, however, must be weighed against their duty to decide cases without fear of repression. "Verily, the second paragraph of Section 1 of Rule 137 does not give judges the unfettered discretion to decide whether to desist from hearing a case. The inhibition must be for just and valid causes. The mere imputation of bias or partiality is not enough ground for them to inhibit, especially when the charge is without basis. This Court has to be shown acts or conduct clearly indicative of arbitrariness or prejudice before it can brand them with the stigma of bias or partiality."

[4] G.R. No. 160966, October 11, 2005

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Accused Robles and Argosino seek the voluntary inhibition of this Court's Justices on two (2) grounds. *First*, that Atty. Laurence Hector B. Arroyo, counsel for accused Sombero, was a classmate of Justice Fernandez; and *second*, bias and partiality on the part of the Justices.

A. Atty. Arroyo was a classmate of Justice Fernandez

At the outset, it must be pointed out that although Atty. Arroyo and Justice Fernandez were batchmates and classmates in some subjects in law school, and batchmates in college, Atty. Arroyo was merely an acquaintance. She does not recall any substantial interaction between them, if there was any interaction at all, after they took the bar examinations and became lawyers, or even when they were students.

Now to resolve the issue at hand.

The Supreme Court has held that a classmate's appearance before a Judge as counsel for one of the parties *per se* is not a ground for voluntary inhibition. There should be clear and convincing proof of bias and prejudice.

In *Query of Executive Judge Estrella T. Estrada*,[5] it was held:

> It is clear from a reading of the law that intimacy or friendship between a judge and an attorney of record of one of the parties to a suit is no ground for disqualification. In *Vda. De Bonifacio v. B.L.T. Bus Co., Inc.* (34 SCRA 618, 631), we held that the fact "that one of the counsels in a case was a classmate of the trial judge is not a legal ground for the disqualification of said judge. To allow it would unnecessarily burden other trial judges to whom the case would be transferred. Ultimately, confusion would result, for under a different rule, a judge would be barred from sitting in a case whenever one of his former classmates (and he could have many) appeared." Likewise, the rule applies when the lawyer of the defendant was a former associate of the judge, when he was practising law (Austria v. Masaquel, 20 SCRA 1247, 1255)
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> x x x

[5] A.M. No. 87-9-3918-RTC, October 26, 1987

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> Inhibition is not allowed at every instance that a friend, classmate, associate or patron of a presiding judge appears before him as counsel for one of the parties to a case. x x x

In *Jimenez v. People*,[6] it was held:

> It is well-established that inhibition is not allowed at every instance that a schoolmate or classmate appears before the judge as counsel for one of the parties. A judge, too, is not expected to automatically inhibit himself from acting in a case involving a member of his fraternity, such as Jimenez in the present case.
>
> In the absence of clear and convincing evidence to prove the charge of bias and prejudice, a judge's ruling not to inhibit oneself should be allowed to stand.

Similarly, in *Kilosbayan Foundation v. Janolo*,[7] it held:

> Inhibition is not allowed at every instance that a schoolmate or classmate appears before the judge as counsel for one of the parties, however. In one case, the Court ruled that organizational affiliation *per se* is not a ground for inhibition.

From the foregoing, it is clear that to be a ground for voluntary inhibition, it is not enough to show that counsel for one of the parties was a classmate of the Judge or Justice. The party seeking the inhibition of the Judge or Justice must also show proof of bias on the part of the Judge or Justice.

Here, accused Robles and Argosino have only established that Justice Fernandez and Atty. Arroyo were classmates. They, however, failed to prove any bias on her part. Their claim that Justice Fernandez will be subject to suspicions of bias and partiality, for or against the accused, by the mere fact that she and Atty. Arroyo were classmates, is not grounded on evidence, much less, clear and convincing evidence, but on speculation, surmises or conjectures.

B. Bias and partiality

Bias, prejudice and partiality have been recognized as valid reasons for the voluntary inhibition of a Judge or Justice.[8] However, it

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[6] G.R. Nos. 209195 and 209215, September 17, 2014
[7] G.R. No. 180543, July 27, 2010
[8] Please see *Ong v. Basco*, G.R. No. 167899, August 6, 2008

has been repeatedly held[9] that mere imputation thereof is not sufficient for inhibition. Such bias, prejudice and partiality cannot be grounded on mere suspicion, but must be proved by clear and convincing evidence that can overcome the presumption that the Judge or Justice will perform his or her duties according to law without fear or favor.

The Supreme Court's Decision in *Ramiscal v. Hernandez*[10] is instructive as to how bias and partiality on the part of a Judge or Justice is established. *viz.*:

> In denying the motions for his inhibition, Justice Hernandez explained that petitioner failed to impute any act of bias or partiality on his part, to wit:
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> > What can reasonably be gleaned from jurisprudence on this point of law is the necessity of proving bias and partiality under the second paragraph of the rule in question. The proof required needs to point to some act or conduct on the part of the judge being sought for inhibition. In the Instant Motions, there is not even a single act or conduct attributed to Justice Hernandez from where a suspicion of bias or partiality can be derived or appreciated. In fact, it is oddly striking that the accused does not even make a claim or imputation of bias or partiality on the part of Justice Hernandez. Understandably, he simply cannot make such allegation all because there is none to be told. If allegations or perceptions of bias from the tenor and language of a judge is considered by the Supreme Court as insufficient to show prejudgment, how much more insufficient it becomes if there is absent any allegation of bias or partiality to begin with.
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> We find the above explanation well-taken and thus uphold the assailed Resolution upon the grounds so stated. We have ruled in *Philippine Commercial International Bank v. Dy Hong Pi*, that the mere imputation of bias or partiality is not enough ground for inhibition, especially when the charge is without basis. Extrinsic evidence must further be presented to establish bias, bad faith, malice, or corrupt purpose, in addition to palpable error which may be inferred from the decision or order itself. This Court has to be shown acts or conduct of the judge clearly indicative of arbitrariness or prejudice before the latter can be branded the stigma of being biased or partial.
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> (underscoring supplied)

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[9] Please see *Spouses Leopoldo Hizon and Perlita Dela Fuente Hizon v. Spouses Gigi Dela Fuente and Josephine Mangahas*, G.R. No. 152328, March 23, 2004; *Kilosbayan v. Janolo*, G.R. No. 180543, August 18, 2010; *People v. Dela Torre-Yadao*, G.R. Nos. 162144-54, November 13, 2012; *Villamor v. Manalastas*, G.R. No. 171247, July 22, 2015; *Republic of the Philippines v. Sereno*, G.R. No. 237428, May 11, 2018

[10] G.R. Nos. 173057-74, September 20, 2010

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Thus, for bias and partiality to be a valid ground for the inhibition of a Judge or Justice, it is not enough to allege that there is bias or partiality on the part of the Judge or Justice. The party seeking such inhibition must, first, allege specific acts or conduct clearly indicative of arbitrariness or prejudice, and second, present clear and convincing evidence to prove such allegations.

This Court finds that accused Robles and Argosino not only failed to prove bias and partiality on the part of Justices Fernandez, Miranda and Trespeses. They also failed to state specific acts indicative of bias and partiality on the part of this Court's Justices.

According to accused Robles and Argosino, they were illegally deprived of their liberty, and hence, there was bias and partiality on the part of Justices Fernandez, Miranda and Trespeses. They further claim that the Court's Resolutions also show bias and partiality on the part of this Court's Justices.

A careful reading of accused Robles and Argosino's Motions would, however, show that they are barren of anything that would support such bare allegation of illegal deprivation of the accused' liberty. Moreover, contrary to their claim of illegal deprivation of liberty, accused Argosino and Robles voluntarily surrendered in SB-18-CRM-0240, 0242 and 0243 on April 10, 2018. Afterwards, they insisted on leaving the premises of the Court even before their bail bonds were approved by the Court. Absent any allegation of acts or conduct indicative of arbitrariness or prejudice on the part of this Court's Justices, there would be nothing to prove.

On a different note, in *Dipatuan v. Mangotara*,[11] it was held that adverse and erroneous rulings, by themselves, do not prove bias and prejudice. Bias, bad faith, malice or corrupt purpose must be proved by extrinsic evidence showing that the opinion was grounded on some basis other than what the Judge or Justice learned from participating in the case. *viz.*:

> Moreover, complainant failed to cite any specific act that would indicate bias, prejudice or vengeance warranting respondent's voluntary inhibition from the case. Complainant merely pointed on the alleged adverse and erroneous rulings of respondent Judge to their prejudice. By themselves, however, they do not sufficiently prove bias and prejudice.

[11] A.M. No. RTJ-09-2190, April 23, 2010

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> To be disqualifying, the bias and prejudice must be shown to have stemmed from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case. Opinions formed in the course of judicial proceedings, although erroneous, as long as they are based on the evidence presented and conduct observed by the judge, do not prove personal bias or prejudice on the part of the judge. As a general rule, repeated rulings against a litigant, no matter how erroneous and vigorously and consistently expressed are not a basis for disqualification of a judge on grounds of bias and prejudice. Extrinsic evidence is required to establish bias, bad faith, malice or corrupt purpose, in addition to the palpable error which may be inferred from the decision or order itself. Although the decision may seem so erroneous as to raise doubts concerning a judge's integrity, absent extrinsic evidence, the decision itself would be insufficient to establish a case against the judge.
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> (underscoring supplied)

Here, accused Robles and Argosino merely made a general statement that this Court's Resolutions are proof that this Court's Justices were biased. They did not even cite any specific Resolution, or any particular instance which would indicate that this Court's rulings were grounded on something other than what was learned during the course of the proceedings. Their allegation of bias and partiality being sorely lacking, determining if they were able to prove such allegation would be nothing but an exercise in futility.

In fine, accused Robles and Argosino failed to show any just or valid reason for the inhibition of Justices Fernandez, Miranda and Trespeses.

WHEREFORE, the Court rules as follows:

1. Accused Robles' *Motion to Inhibit* is hereby DENIED for lack of merit.

2. Accused Argosino's *Urgent Motion for Inhibition* is hereby DENIED for lack of merit.

SO ORDERED.

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SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:

KARL B. MIRANDA
Associate Justice

ZALDY V. TRESPESES
Associate Justice