



REPUBLIC OF THE PHILIPPINES  
**Sandiganbayan**  
QUEZON CITY

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**SEVENTH DIVISION**

MINUTES of the proceedings held on May 9, 2019.

*Present:*

JUSTICE MA. THERESA DOLORES C. GOMEZ-ESTOESTA ----- Chairperson  
JUSTICE ZALDY V. TRESPES ----- Member  
JUSTICE GINA D. HIDALGO ----- Member

The following resolution was adopted:

**Criminal Case No. 26353**

**PEOPLE v. FRANCISCO C. REYES**  
JOSE M. GARCIA  
ROBERT NACIANCENO  
ALFREDO N. MACAPUGAY  
RAMON B. MATEO  
DANTE M. VILLORIA  
BENJAMIN MALINAO  
CONSTANTINO P. ROSAS  
OCTAVIO P. CABABA  
**DICKSON C. LIM**  
TEODORO C. LIM  
FLORENCE CO LIM  
ATTY. MARGARITO CHAN

This resolves the following:

1. Accused Dickson Lim's "**OMNIBUS MOTION FOR RECONSIDERATION and MOTION TO REINSTATE MOTION FOR RECONSIDERATION**" dated May 8, 2019;<sup>1</sup> and

2. Opposition orally made in open Court by Prosecutor Joshua Tan and Prosecutor Marical Acayan during the hearing of the Motion on May 9, 2019.

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The resolution of the present *Omnibus Motion* comes at a time when the Court may have appeared to have already closed its mind to the plight of accused Dickson Lim who has since been held under detention for the final and executory effect of the judgment of conviction rendered against him for

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<sup>1</sup> Record, Volume 11, no pagination yet

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failure to: (i) physically surrender; and (ii) file a motion for leave of court to avail of the remedies available, stating the reasons for his absence, within 15 days from date of promulgation of judgment, as stated in the Order dated May 6, 2019.<sup>2</sup> The Court has been consistent with the application of Section 6, Rule 120, as expounded in the cases of *Jaylo v. Sandiganbayan*<sup>3</sup> and *Villena v. People*.<sup>4</sup> Too consistent, as a matter of fact, that in its Resolution dated May 7, 2019 denying accused's *Very Urgent Ex-Parte Motion for Furlough*, the Court ruled:

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At this point in time, accused Dickson Lim is already a convicted person under the custody of the law who has lost his right to avail of remedial measures when he failed to file the necessary motion within 15 days after the promulgation of a judgment *in absentia* convicting him of the crime as charged. The Court is merely complying with the ruling in *Jaylo v. Sandiganabayan* where the Supreme Court expounded on Section 6 of Rule 120, as follows:

Section 6, Rule 120, of the Rules of Court, does not take away per se the right of the convicted accused to avail of the remedies under the Rules. It is the failure of the accused to appear without justifiable cause on the scheduled date of promulgation of the judgment of conviction that forfeits their right to avail themselves of the remedies against the judgment.

It is not correct to say that Section 6, Rule 120, of the Rules of Court diminishes or modifies the substantive rights of petitioners. It only works in pursuance of the power of the Supreme Court to "provide a simplified and inexpensive procedure for the speedy disposition of cases." This provision protects the courts from delay in the speedy disposition of criminal cases — delay arising from the simple expediency of nonappearance of the accused on the scheduled promulgation of the judgment of conviction.

In this case, petitioners have just shown their lack of faith in the jurisdiction of the Sandiganbayan by not appearing before it for the promulgation of the judgment on their cases. Surely they cannot later on expect to be allowed to invoke the Sandiganbayan's jurisdiction to grant them relief from its judgment of conviction.

It is incumbent upon the accused to show justifiable cause for their absence at the promulgation of the judgment of conviction.

According to petitioners, even if we were to apply Section 6, Rule 120, the conditions under which an accused loses the remedies available in the Rules of Court do not obtain in this case.

<sup>2</sup> Record, Volume 10, pp. 502-503

<sup>3</sup> G.R. No. 183152-54, January 21, 2015

<sup>4</sup> G.R. No. 184091, January 31, 2011

It is argued that for the provision to apply, it must be shown that 1) the accused was notified of the scheduled date of promulgation, and that 2) the accused failed to appear at the promulgation of the judgment of conviction without justifiable cause.

Petitioners insist that the Sandiganbayan did not bother to determine whether their absence at the promulgation of judgment was without justifiable cause. In other words, as petitioners would have it, it was incumbent upon the Sandiganbayan to take pains to find out whether their absence at the promulgation was without justifiable cause, and only then could the court conclude that petitioners have lost the remedies available in the Rules of Court against the judgment of conviction.

It is well to note that Section 6, Rule 120, of the Rules of Court also provides the remedy by which the accused who were absent during the promulgation may reverse the forfeiture of the remedies available to them against the judgment of conviction. In order to regain their standing in court, the accused must do as follows: 1) surrender and 2) file a motion for leave of court to avail of the remedies, stating the reasons for their absence, within 15 days from the date of the promulgation of judgment.

In *Villena v. People*, we stated that the term "surrender" contemplates the act by the convicted accused of physically and voluntarily submitting themselves to the jurisdiction of the court to suffer the consequences of the judgment against them. Upon surrender, the accused must request permission of the court to avail of the remedies by making clear the reasons for their failure to attend the promulgation of the judgment of conviction.

Clearly, the convicted accused are the ones who should show that their reason for being absent at the promulgation of judgment was justifiable. If the court finds that the reasons proffered justify their nonappearance during the promulgation of judgment, it shall allow them to avail of the remedies. Thus, unless they surrender and prove their justifiable reason to the satisfaction of the court, their absence is presumed to be unjustified.

Since accused has since remained under detention to serve a *final sentence*, while his co-accused are still enjoying provisional liberty pending the resolution of their respective Motions for Reconsideration, the filing of the present *Omnibus Motion*, sparked by the oral arguments held thereon, should only generate a re-evaluation of the Court's ruling on the matter.

In his *Omnibus Motion*, accused points to the deprivation of his constitutional right to due process with the outright denial of his Motion for Reconsideration despite the timely filing of the same within the 15-day reglementary period allowed for appeals. He claims that although he may have been absent during promulgation, his counsel was nonetheless present, who thereafter gave a justifiable reason to explain his non-appearance. This was allegedly noted and considered by the Court since no warrant of arrest

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was issued against him, as he was effectively allowed to enjoy his provisional liberty under his original bond. He thereafter prays that his Motion for Reconsideration be reinstated as he has a meritorious case.

The Prosecution, on the other, strongly vociferated its opposition to accused's *Omnibus Motion*, maintaining that the Court's reliance on *Jaylo v. Sandiganabayan* was proper, and that with accused's failure to surrender and file a motion for leave to avail of remedies allowed by law within 15 days from promulgation, he has already lost his standing to be allowed to be heard of the present *Omnibus Motion*.

A re-assessment of the attending circumstances leading to accused's detention is necessitated.

During the promulgation of judgement, this was what transpired:

AJ TRESPESES:

For Mr. Lim and Mr. Chan?

ATTY. MACAVINTA:

Yes, your Honor.

**Mr. Lim, your Honor, cannot make it today, for the reason that he had a previous engagement. Anyway, I am representing him.**

PROS. DELA TORRE:

We invoke, your Honor, if they do not show justifiable reason of their absence today, they will lose ....

AJ TRESPESES:

How about accused Lim? He is not here?

COUNSEL:

Your Honor, he had a previous personal commitment, your Honor.

AJ TRESPESES:

More important than this?

ATTY. MACAVINTA:

Yes, I understand the gravity, your Honor. But with the kind indulgence of this Honorable Court, this is also very important to him. It has been scheduled long time, your Honor.

CHAIRPERSON:

But he is still in the Philippines?

ATTY. MACAVINTA:

Yes, your Honor. So, I am still representing him.

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CHAIRPERSON:

Atty. Macavinta, there are only 3 who are present in today's promulgation.

ATTY. MACAVINTA:

Yes, your Honor.

Mr. Lim is being represented by me, your Honor.

CHAIRPERSON:

Of course, only that he has previous engagement.

CLERK OF COURT:

All right.

So, what do you say, Atty. Macavinta?

ATTY. MACAVINTA:

We can proceed your Honor, with the promulgation because we are very anxious about the Decision.

CHAIRPERSON:

So, the promulgation will only affect the following: Engr. Macapugay, Mr. Mateo who are present in court, and Mr. Chan who is likewise in court.

ATTY. MACAVINTA:

And also Mr. Lim, as represented by me, your Honor.

CHAIRPERSON:

Yes, right, with caution under Sec. 6 of Rule 120, there are consequences for promulgation in absentia.

ATTY. MACAVINTA:

Yes, your Honor.

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(After promulgation)

ATTY. MACAVINTA:

We will file a motion for reconsideration, Your Honor.

AJ TRESPESES:

For the meantime, accused are still covered by their original bonds and are provisionally at liberty.

ATTY. MACAVINTA:

Yes, your Honor.

AJ TRESPESES:

**While exhausting remedial measures.**

CHAIRPERSON:

For Mr. Cababa and Mr. Lim, promulgation of judgment will be made in absentia by recording the judgment in the criminal docket of the Court.

AJ TRESPESES:

Okay, O R D E R . . .

### ORDER

In today's promulgation of *Decision*, accused Alfredo Macapugay and Ramon Mateo appeared, represented by Atty. Santos Catubay, Jr., as well as Margarito Chan, represented by Atty. Nelson S. Macavinta. Accused Octavio P. Cababa and his counsel of record failed to appear; the service of notice for today's promulgation indicate that they could no longer be found at their respective last known addresses. As for accused Dickson Lim, Atty. Nelson S. Macavinta, who is still representing him, manifested that his client could not come to court due to a prior commitment.

As to accused Dante Villoria, his wife Lourdes Villoria appeared before the Court bearing an unnotarized Medical Certificate stating that said accused is suffering from various illness and he being of advanced age makes it extremely difficult for him to attend today's promulgation. The Court notes the absence of his counsel Atty. Ramoncito Mison, who, according to Mrs. Villoria, could not attend today's promulgation because of a prior engagement despite notice.

Promulgation of judgment proceeded for accused Macapugay, Mateo and Chan, while judgment was promulgated as to accused Cababa and Dickson Lim *in absentia*. They were found **GUILTY** beyond reasonable doubt for Violation of Sec. 3 (e) of R.A. 3019 and were a meted penalty of imprisonment of six (6) years and one (1) month, as minimum to eight (8) years, as maximum with perpetual disqualification from public office. Further, they were found jointly and severally liable to pay the government the amount of **Three Million Two Hundred Ninety-One Thousand & One Hundred Forty Pesos (₱3,290,140.00)**.

Accused Macapugay, Mateo and Chan manifested their intention to resort to remedial measures available to them.

Let a copy of the Decision be served to accused Cababa at his last known address or through his counsel. Also, let a copy of the Decision be served to Atty. Macavinta, in behalf of accused Dickson Lim. Further, let a warrant of arrest be issued against accused Cababa.

Meantime, upon motion by their respective counsels and without objection on the part of the prosecution, accused Macapugay, Mateo

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and Chan are granted temporary liberty to exhaust remedial measures under their original bonds.

Pending verification of the fact of death of accused Reyes and Nacianceno from the Philippine Statistics Authority (PSA), as undertaken by Prosecutor Dela Torre, and the proper substantiation of accused Villoria's medical condition, promulgation of judgment as against them was deferred to June 7, 2019.

As moved by Prosecutor Dela Torre, Atty. Mison is directed to show cause within five (5) days from receipt of this notice to explain why he should not be cited in contempt for his failure to appear despite notice.

**SO ORDERED.**

Evidently, as pounded by the accused, no warrant of arrest was issued by the Court against him. He thus laments why there was even a need to "surrender" when no warrant of arrest was issued against him.

Since it is the full force of Section 6 of Rule 120 which has been applied, the oft-quoted ruling held in *Jaylo v. Sandiganbayan* is reiterated thus:

Except when the conviction is for a light offense, in which case the judgment may be pronounced in the presence of the counsel for the accused or the latter's representative, the accused is required to be present at the scheduled date of promulgation of judgment. Notice of the schedule of promulgation shall be made to the accused personally or through the bondsman or warden and counsel.

The promulgation of judgment shall proceed even in the absence of the accused despite notice. The promulgation in absentia shall be made by recording the judgment in the criminal docket and serving a copy thereof to the accused at their last known address or through counsel. **The court shall also order the arrest of the accused if the judgment is for conviction and the failure to appear was without justifiable cause.**

Verily, should accused's present predicament be re-examined, it is the lack of a warrant of arrest against him which ostensibly tilts the interpretation in his favor. Accused himself harps why there is a need to "surrender" when no warrant of arrest was actually issued.

The question which thus arises is: After promulgation was held *in absentia*, has accused automatically lost his standing in Court?

The transcription of the hearing held last April 12, 2019 should peep into the mindset of the Court on whether the non-issuance of a warrant was inadvertent or not. True, accused was represented by Atty. Macavinta during promulgation, who despite having offered an excuse in his behalf, did not

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move for deferment. Instead, it was Atty. Macavinta himself who persisted that promulgation proceed, as it did, although *in absentia*. Yet, the transcription also revealed that Atty. Macavinta manifested that accused did intend to file a motion for reconsideration to which the Court responded that accused are deemed out on provisional liberty on the basis of their original bond.

While the actual intent of the Court, in contemplation of Section 6 of Rule 120, is to enforce the requirement that a promulgation *in absentia* results in the lost standing of the accused and that, for it to be regained, accused had to (a) surrender, and (b) file a motion for leave of court to avail of these remedies, stating therein the reasons for his absence, within 15 days from the date of promulgation of judgment,<sup>5</sup> it is apparent that the non-issuance of a warrant of arrest tilted a variance in the equation, considering that it is the force of the warrant of arrest which, under such circumstance, constrains the accused to "surrender." Without it, accused's argument at the outset may have been spoken well. The other rallying factor for the accused is that if he be required to file a motion for leave to avail of the remedies, was this not satisfied with Atty. Macavinta's express manifestation in open Court that he shall be filing a motion for reconsideration? The differing interpretations this scenario triggers only means that all should be taken in favor of the accused.

*In dubio pro reo.* This court is bound by the principle that in all criminal cases, all doubts should be resolved in favor of the accused.

The Court has taken to mind that accused has been present at almost all times during the hearings of this charge. It is thus at the height of irony that his mistaken notion of not having surrendered within 15 days from promulgation readily clipped his right to avail of the remedy of an appeal, or of a motion for reconsideration, and worse, be deprived of his liberty in the meantime that all other accused enjoy provisional liberty pending the appeal process.

If the Court is to dispense justice, it is not to turn a blind eye towards accused's plight.

A judgment of conviction may have been made but it is the statutory right of the accused to appeal the judgment. The records bear out that accused's *Motion for Reconsideration*<sup>6</sup> dated April 26, 2019 (which was filed jointly with Atty. Margarito Chan) was timely filed. If this be reinstated, the appeal process is truly observed. Inevitably, accused is given the chance, like the others, to seek the remedy of an appeal. This time around, the Court cannot foreclose such right on the part of the accused.

<sup>5</sup> *Villena v. People*, G.R. No. 184091, January 31, 2011

<sup>6</sup> Record, Volume 10, pp. 417-456

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WHEREFORE, the "*Omnibus Motion for Reconsideration and Motion to Reinstate Motion for Reconsideration*" filed by accused Dickson Lim is **GRANTED**.

The Order dated May 6, 2019 which issued a warrant of arrest to serve sentence against accused Dickson Lim is **RECALLED** and **SET ASIDE**. Accused Dickson Lim is ordered **RELEASED** from custody unless for some other cause which justifies his continued detention under the law.

To afford said accused his statutory right to appeal, his name is ordered **REINSTATED** in the *Motion for Reconsideration* dated April 26, 2019 which he filed jointly with Atty. Margarito Chan. The Prosecution is thus directed to consolidate its comment to the pending motions, taking into consideration the grounds likewise raised by accused Dickson Lim.

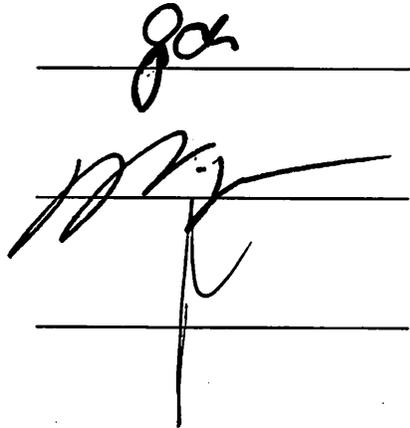
For his provisional liberty pending the appeal process, accused is directed to **POST** a bond double the amount of the original bond, or in the amount of **SIXTY THOUSAND PESOS (P60,000.00)**.

**SO ORDERED.**

**GOMEZ-ESTOESTA, J., Chairperson**

**TRESPESES, J.**

**HIDALGO, J.**



The image shows three handwritten signatures in black ink, each written over a horizontal line. The first signature is 'J. Gomez-Estoesta', the second is 'J. Trespeses', and the third is 'J. Hidalgo'. The signatures are written in a cursive, somewhat stylized manner.