



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
QUEZON CITY

SEVENTH DIVISION

MINUTES of the proceedings held on June 17, 2019.

Present:

JUSTICE MA. THERESA DOLORES C. GOMEZ-ESTOESTA ----- Chairperson
JUSTICE ZALDY V. TRESPESES ----- 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. The Prosecution's "**URGENT MOTION FOR RECONSIDERATION** [to the Order dated 09 May 2019] dated May 15, 2019;¹ and
2. Accused Dickson Lim's "**VERIFIED COMMENT/OPPOSITION** (to the Prosecution's Urgent Motion for Reconsideration dated 15 May 2019)" dated May 22, 2019.²

¹ Record, Volume 11, pp. 82-92

² Id., pp. 108-120

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GOMEZ-ESTOESTA, J.:

The effect of an Order of release from detention being immediately executory, as was the tenor of the questioned Resolution dated May 9, 2019, the Prosecution has now filed an *Urgent Motion for Reconsideration* seeking to set aside such Order of release to fully impose against Dickson Lim [“accused”] the “*mandatory effects of promulgation of judgment in absentia.*”³

THE PROSECUTION’S STANCE

The Prosecution believes that the full application of Section 6, Rule 120 of the Revised Rules on Criminal Procedure on promulgation *in absentia* should have been applied. Having failed to appear during promulgation, the accused has lost his standing in Court and can only be reinstated of the same if he: (i) surrendered in court; and (ii) filed a motion for leave to avail of remedies. The loss of such right to avail of post-judgment remedies is only a consequence of accused’s lost standing in court. This is not even dependent on the reason for his absence during promulgation. The non-issuance of a warrant of arrest did not even operate to blur or vary the procedure; otherwise, the Court has just extended the accused some courtesy resulting to an “absurd situation” since accused has not even filed a motion for leave and yet, now has a pending motion for reconsideration which the Court is tasked to rule upon. For the Court to consider the principle of “*in dubio pro reo*” at this instance is thus gravely erroneous. Regardless of whether a warrant of arrest was issued, it cannot be denied that promulgation *in absentia* was what transpired. The Court did not even rule on whether an excuse such as a “prior commitment” constituted justifiable reason for the accused to absent himself during promulgation, which should have been the very crux to allow him to regain his standing in court. Even at the risk of being perceived as cold-hearted and gutless, the Prosecution bewails that it is simply beholden to perform its beholden task in the greater scheme of things.

THE ACCUSED’S COMMENT/OPPOSITION

Through a new counsel, the accused generally harps on his right to appeal his judgment of conviction without sacrificing his right to liberty in the guise of technicality. He points to the fatal mistake of his former counsel in having given him an ill advise that his absence during promulgation may not be an issue later on. He submits that his absence was not intentional since he was made to believe that: (i) he could not ask for a postponement contrary to the Prosecution’s allegation in its *Motion*; and that (ii) he would be acquitted. Hence, he had reasonable expectations that his former counsel would be able to provide him competent legal representation on how to avail of legal remedies, only to be subjected to the shocking situation of having been deprived of his liberty and of his right to appeal. Accused differs that he

³ Urgent Motion for Reconsideration, p. 10

should not be likened to an accused who jumped bail or who escaped from prison for the full application of a “*trial in absentia*,” as in promulgation *in absentia*, considering that he has long submitted himself to the Court’s jurisdiction, has been arraigned, and tried, with no intention to subvert the judicial process and frustrate the promulgation of judgment. His circumstances should only allow him to seek the remedy of an appeal without holding him in prison.

THE COURT’S RULING

The *Motion*, no matter how fervid the argument, should be denied.

The Prosecution’s quest to seek a full implementation of Section 6 of Rule 120 cannot be doubted, as this was the original action of the Court in having detained the accused at the outset.

A reconsideration of the same, however, was made per Resolution dated May 9, 2019. The accused was released since a strict implementation of Section 6 could not be fully effected in the face of: (i) the non-issuance of a warrant of arrest, when one should have been issued following *Jaylo v. Sandiganbayan*;⁴ and (ii) the non-finding that accused’s absence was unjustified, when such should have been made, following *Villena v. People*.⁵

⁴ *Jaylo v. Sandiganbayan* 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.

⁵ *Villena v. People* ruled:

However, the Rules allow the accused to regain his standing in court in order to avail of these remedies by: (a) his surrender, and (b) his filing of 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. If the trial court finds that his absence was for a justifiable cause, the accused shall be allowed to avail of the said remedies within 15 days from notice or order finding his absence justified and allowing him the available remedies against the judgment of conviction.

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While it is the physical absence of the accused during promulgation which should be taken against him, his loss of standing in Court is not automatic as Section 6 provides, thus:

SECTION 6. Promulgation of judgment — The judgment is promulgated by reading it in the presence of the accused and any judge of the court in which it was rendered. However, if the conviction is for a light offense the judgment may be pronounced in the presence of his counsel or representative. When the judge is absent or outside the province or city, the judgment may be promulgated by the clerk of court.

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In case the accused fails to appear at the scheduled date of promulgation of judgment despite notice, the promulgation shall be made by recording the judgment in the criminal docket and serving him a copy thereof at his last known address or thru his counsel.

If the judgment is for conviction and the failure of the accused to appear was **without justifiable cause**, he shall lose the remedies available in these Rules against the judgment and **the court shall order his arrest**. Within fifteen (15) days from promulgation of judgment however, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state the reasons for his absence at the scheduled promulgation and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within fifteen (15) days from notice. [Emphasis supplied]

The present ruling should only be maintained.

WHEREFORE, the Prosecution's *Urgent Motion for Reconsideration* is **DENIED**.

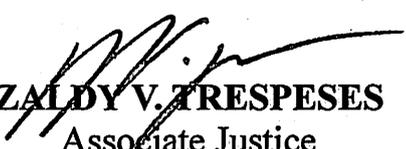
From receipt of this Resolution, the Prosecution has a fresh period of twenty (20) days to file its consolidated comment to the motions for reconsideration filed by: (i) Ramon Mateo; and (ii) Atty. Margarito Chan and Dickson Lim. Thereafter, the motions are deemed submitted for resolution.

SO ORDERED.

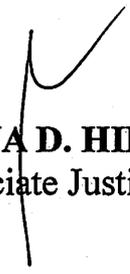

MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Associate Justice, Chairperson

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WE CONCUR:



ZALDY V. TRESPESES
Associate Justice



GEORGINA D. HIDALGO
Associate Justice

