



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CRIM. CASE Nos. SB-18-
CRM-0153 to 0159

For: Violation of Sec. 3(e),
R.A. No. 3019, as amended

-versus-

CRIM. CASE Nos. SB-18-
CRM-0160 to 0165

JEJOMAR C. BINAY, SR. et al.,
Accused.

For: Falsification of Public
Document

Present:

Lagos, J., Chairperson,
Mendoza-Arcega, J., and
Corpus-Mañalac, J.

Promulgated:

21 May 2021 *Jed*

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RESOLUTION

MENDOZA-ARCEGA, J.:

For resolution are the following:

1. *Manifestation (Re: The Minute Resolution dated February 11, 2021) filed by accused Jejomar C. Binay, Sr., through counsel, dated March 4, 2021;*¹

¹ Records, Volume 7, pp. 276-282, 303-308.

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2. *Request for Reconsideration* filed by accused Virginia P. Garcia through counsel, dated March 5, 2021;²
3. *Motion for Reconsideration (Re: Minute Resolution of February 11, 2021, allowing the conduct of preliminary conference by videoconference)* filed by accused Efren M. Canlas and Julius V. Ramos, through counsel, dated March 8, 2021;³ and
4. *Consolidated Comment* filed by the prosecution, dated May 6, 2021.

In the *Manifestation (Re: The Minute Resolution dated February 11, 2021)* filed by accused Jejomar C. Binay, Sr. ("Binay, Sr.") dated March 4, 2021, the accused stated as follows:

- a.) The Court, through its Minute Resolution dated February 11, 2021, granted the prosecution's Motion to Allow the Prosecution to Attend Preliminary Conference *via* Videoconferencing dated February 9, 2021;
- b.) Accused Binay, Sr. was not given the opportunity to comment or oppose the said motion;
- c.) Accused Binay, Sr. fully understands and comprehends the health risks posed by holding the scheduled preliminary conference in-court and face-to-face. However, it bears stressing that the purpose of the said conference is for the accused to be confronted with the originals of the documents to be presented against him;
- d.) To allow the pre-marking to be continued *via* videoconferencing will deprive the accused of the full opportunity to thoroughly inspect the documents to be presented and marked by the prosecution, some of which have stamps, seals, embossed markings, which require physical or tactile examination; and
- e.) If the videoconference hearing is allowed, the accused would certainly be deprived of his right to observe, comment and essentially, object to the presentation of the document at the proper time for being inadmissible.

² Id., pp. 290-294.

³ Id., pp. 295-299.

Handwritten signature and initials in the bottom right corner of the page.

In the *Request for Reconsideration* filed by accused Virginia P. Garcia dated March 5, 2021, the following averments were raised:

- a.) The online preliminary conference defeats the purpose of pre-marking of documents that requires the physical comparison of the originals or certified true copies with the documents to be marked;
- b.) Since the prosecution said that the marked documents will be made available for physical examination as soon as permissible, the online pre-marking will just be a duplication of work because documents will still be presented and examined on a later date; and
- c.) The online pre-marking will, at the most, makes the markings only provisional because it will still be subject to comparison with originals or certified true copies of the documents.

Anent the *Motion for Reconsideration (Re: Minute Resolution of February 11, 2021, allowing the conduct of preliminary conference by videoconference)* filed by accused Efren M. Canlas and Julius V. Ramos dated March 8, 2021, both accused maintained:

- a.) On February 11, 2021, the accused, through counsel and *via* electronic mail, received a copy of the prosecution's Motion to Allow the Prosecution to Attend Preliminary Conference *via* Videoconferencing dated February 9, 2021;
- b.) On February 17, 2021, the accused filed their opposition to the preliminary conference *via* videoconferencing;
- c.) Nevertheless, on February 18, 2021, the accused received a notice on even date granting the said motion; and
- d.) The conduct of preliminary conference *via* videoconferencing will result into meaningless duplicity of work, without comparison of documents which is one of the objectives of preliminary conference proceedings. Such scheme would result in unintentional waiver of the right of the accused to examine the genuineness of evidence against them.

For its part, the prosecution countered that at the onset, it provided the accused with the List of Documents to be marked as exhibits, and the machine copies of the documents to be viewed and marked during the preliminary

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conference. Aside from sending the scanned copies of the said documents through electronic mail, the prosecution also provided the accused with hard copies of the documents through registered mail. Further, the prosecution made an undertaking that the marked documents and their originals will be made available for physical examination and comparison of the accused as soon as permissible.

Moreover, the prosecution noted that accused Binay, Sr. only filed a manifestation asking that the preliminary conference be done in-court at a later date, but does not contain a notice of hearing. It contended that a manifestation merely informs the Court about a certain matter involving the case, and does not require any affirmative action by the latter. The conduct of videoconferencing is now considered as the alternative mode to in-court proceedings pursuant to Supreme Court Administrative Matter No. 20-12-01-SC (Re: Proposed Guidelines on the Conduct of Videoconferencing) dated December 9, 2020, or the Court Videoconferencing Guidelines, to ensure that hearings *via* videoconferencing are conducted in an orderly manner and that the constitutional rights of the accused are protected. The prosecution respects the right of the accused to examine the genuineness of the evidence against them. This is precisely the reason why the prosecution has repeatedly emphasized that the marked documents and the originals thereof will be made available for physical examination and comparison of the accused as soon as health and safety of all the parties permit.

THE COURT'S RULING

Upon assiduous examination of the records, the Court finds the instant motions devoid of merit.

To begin, the rule-making power of the Supreme Court is vested by no other than the 1987 Constitution. Section 5(5), Article VIII thereof specifies that it has the power to “promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar, and legal assistance to the under-privileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. xxx”

In A.M. No. 20-12-01-SC, the Supreme Court recognized the use of videoconferencing technology for the conduct of court proceedings due to the declaration of states of public health emergency and calamity, and the imposition of the community quarantine in varying degrees across the

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country, resulting in reduced court operations, suspension of hearings nationwide, except on urgent matters, and the physical closure of courts.

The most recent circular of the Supreme Court, Administrative Circular (A.C.) No. 33-2021, is instructive. It states that considering that the National Capital Region has been placed under GCQ,⁴ all first and second level courts, including appellate collegiate courts (except the Supreme Court), may conduct fully-remote videoconferencing hearings from May 15-31, 2021, with notice to the Office of the Court Administrator. Consequently, Presiding Justice Amparo M. Cabotaje-Tang issued a Memorandum dated May 14, 2021 allowing the Divisions of the Sandiganbayan to continue the conduct of fully remote videoconferencing hearings subject to the discretion of the Division Chairperson.

Preceding the above circular is A.C. No. 29-2021 regarding the work arrangement in courts on May 3-14, 2021. The circular mandates that the courts in ECQ⁵ and MECQ⁶ areas shall continue to operate during this period through fully remote videoconferencing, which must be maximized so as not to delay the trial of cases and court processes. It further states that judges are to conduct fully remote videoconferencing hearings on pending cases and all other matters, whether urgent or not, regardless of their physical location and without prior permission from the Office of the Court Administrator.

With the foregoing, the Court deems it proper to conduct the scheduled preliminary conference *via* fully remote videoconferencing to guarantee the safety of all court personnel, especially of the parties in these cases. The accused-movants' postulation that their right to examine the documents and pieces of evidence will be violated is unsubstantiated and merely conjectural. Besides, the accused-movants admitted in their respective motions that the prosecution made an undertaking to allow them to physically examine and compare the documents and their originals as soon as it becomes permissible. At any rate, it bears stressing that the provisional marking of evidence does not impair the rights of the accused-movants since they are not in any way prohibited to examine the same during in-court proceedings albeit on a later date. The originals can be presented for comparison even during the trial proper. All accused will be given their day in court.

As regards the Manifestation filed by Binay, Sr., the prosecution correctly pointed out that a manifestation merely informs the Court on a particular matter involving the case. The Court cannot grant any relief in the absence of notice of hearing as it partakes the nature of a motion. Elementary

⁴ General Community Quarantine

⁵ Enhanced Community Quarantine

⁶ Modified Enhanced Community Quarantine

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is the rule that a motion without notice of hearing is *pro forma*, a mere scrap of paper.⁷ It presents no question which the court could decide.⁸

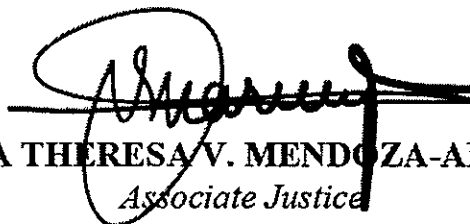
In closing, the Court completely understands the predicament of the accused-movants. Yet, We cannot turn a blind eye to this pandemic that has already claimed so many lives. Our paramount consideration is the health and safety of everyone—including of the party litigants.

IN VIEW WHEREOF, the Court hereby resolves as follows:

1. The *Manifestation (Re: The Minute Resolution dated February 11, 2021)* filed by accused Jejomar C. Binay, Sr. dated March 4, 2021 is **NOTED**;
2. The *Request for Reconsideration* filed by accused Virginia P. Garcia dated March 5, 2021 is **DENIED** for utter lack of merit; and
3. The *Motion for Reconsideration (Re: Minute Resolution of February 11, 2021, allowing the conduct of preliminary conference by videoconference)* filed by accused Efren M. Canlas and Julius V. Ramos dated March 8, 2021 is **DENIED** for utter lack of merit.

Accordingly, the setting on June 4, 2021 at 1:30 in the afternoon for the continuation of preliminary conference *via* videoconferencing shall proceed as scheduled.

SO ORDERED.



MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

⁷ Fajardo v. Court of Appeals, et al., G.R. No. 140356, March 20, 2001.

⁸ *Id.*

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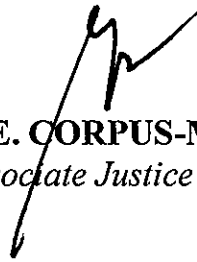
WE CONCUR:



RAFAEL R. LAGOS

Associate Justice

Chairperson



MARYANN E. CORPUS-MAÑALAC

Associate Justice