



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:

07 July 2021 *jad*

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RESOLUTION

**MENDOZA-ARCEGA, J.:**

Under consideration is the defense's oral *Motion for Clarification*<sup>1</sup> of the Court's Resolution<sup>2</sup> dated May 21, 2021 during the conduct of the preliminary conference through video conferencing last June 4, 2021.

<sup>1</sup> Minutes of Preliminary Conference dated June 4, 2021.

<sup>2</sup> Records, Volume (Vol.) 7, pp. 340-346.

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During the said preliminary conference, Atty. Leo-Aries Wynner O. Santos<sup>3</sup> initially raised the issue as to whether the markings to be made on the prosecution evidence should only be provisional in accordance with the Resolution of the Court dated May 21, 2021. He manifested that in page 5 thereof, it was stated, "it bears stressing that the provisional marking of evidence does not impair the rights of the accused-movants." Consequently, he moved that only provisional markings be made on the documents to be presented during the preliminary conference *via* video conferencing pending the exercise of the accused's right to examine the originals.

Thereafter, the manifestation and motion of Atty. Leo-Aries Santos was joined by other defense counsels Atty. Sandra Marie Olasco- Coronel,<sup>4</sup> Atty. Jennifer Rose Reyes,<sup>5</sup> Atty. Prudente M. Soller, Jr.<sup>6</sup> and Atty. Lawrence Villanueva.<sup>7</sup> They contended that the markings to be made on the documents to be presented by the prosecution should only be provisional subject to the right of the accused to physically examine their originals. It was stressed that the markings should only become permanent until the accused's counsels have the opportunity to examine the originals, and compare them with the provisionally marked documents.

For its part, the prosecution maintained that the aforesaid resolution discusses the nature of the videoconferencing, but does not rule that the documents to be marked would be merely provisional. Permanent markings could be done, subject to the subsequent physical examination of the documents by the defense counsels before the Division Clerk of Court. It was reiterated that the dispositive portion of the assailed resolution does not state that the markings would be merely provisional; thus, the documents could be marked permanently.

**THE COURT'S RULING**

At the outset, the Court issued a Resolution dated May 21, 2021 which resolved the following:<sup>8</sup>

1. *Manifestation (Re: The Minute Resolution dated February 11, 2021) filed by accused Jejomar C. Binay, Sr., through counsel, dated March 4, 2021;*<sup>9</sup>

<sup>3</sup> Counsel for accused Efren M. Canlas and Julius V. Ramos.

<sup>4</sup> Counsel for accused Jejomar C. Binay, Jr.

<sup>5</sup> Counsel for accused Jejomar C. Binay, Sr.

<sup>6</sup> Counsel for accused Norman D. Flores.

<sup>7</sup> Counsel for accused Eleno M. Mendoza, Jr., Lorenza P. Amores, Rodol R. Nayve, Ralph E. Liberato, Ulysses E. Orienza, Giovanni I. Condes and Manolito N. Uyaco; Special Appearance for accused Marjorie A. De Veyra, Pio Kenneth I. Dasal, Nelia A. Barlis and Raydes B. Pestaño.

<sup>8</sup> Records, Vol. 7, pp. 340-346.

<sup>9</sup> *Id.*, 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;<sup>10</sup>
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;<sup>11</sup> and
4. *Consolidated Comment* filed by the prosecution, dated May 6, 2021.<sup>12</sup>

In synthesis, the foregoing motions opposed the conduct of preliminary conference *via* videoconferencing as it would deprive the accused of their right to inspect the documents to be presented by the prosecution. Hence, the Court discussed the pertinent issuances of the Supreme Court on the conduct of videoconferencing. It was further underscored, “*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 it stands, the defense counsels seek to clarify the import of the foregoing statements in relation to the pre-marking of the documents to be presented by the prosecution, *i.e.*, whether the markings are provisional or permanent. At this juncture, We must clarify that the conduct of the preliminary conference *via* videoconferencing was allowed so that the marking of exhibits may proceed. Reasonably, the marking of exhibits is still subject to the usual procedure of marking and comparison of the documents to be presented by the parties. The preliminary conference, albeit conducted through videoconferencing, should not dispense with the said requirement; otherwise, the right of the accused to inspect the genuineness of the documents would be violated.

Without **prior** comparison and inspection of the parties, the documents to be presented should be provisionally marked only. To rule otherwise would result to denial of due process. Above and beyond, the Court assured in the subject resolution that the accused will be given their day in court. Permanently marked exhibits form part of the pieces of evidence that may be used against any party in this case. It is imperative, therefore, that the documents sought to be marked must be inspected and compared with their

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<sup>10</sup> Id., pp. 290-294.

<sup>11</sup> Id., pp. 295-299.

<sup>12</sup> Id., pp. 333-337.

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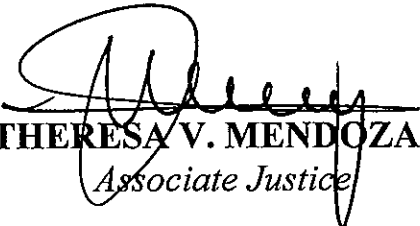
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originals first before marking them permanently. The marking of exhibits should be provisional only if the said comparison of documents has not been conducted yet. This rule applies both to the marking of exhibits of the prosecution and of the defense.

**WHEREFORE**, premises considered, it is hereby clarified that the documents to be presented by the parties during the preliminary conference *via* videoconferencing should be marked provisionally, subject to the subsequent examination and comparison with their respective originals during the in-court proceedings.

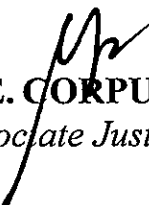
Accordingly, the setting on July 9, 2021 at 1:00 in the afternoon for the continuation of preliminary conference *via* videoconferencing shall proceed as scheduled.

**SO ORDERED.**

  
MARIA THERESA V. MENDOZA-ARCEGA  
*Associate Justice*

**WE CONCUR:**

  
RAFAEL R. LAGOS  
*Associate Justice*  
*Chairperson*

  
MARYANNE E. CORPUS-MAÑALAC  
*Associate Justice*