



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
QUEZON CITY

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,

Plaintiff,

CRIM. CASE NOS.

SB-16-CRM-0783 to 0787

FOR: Violation of Sec. 3(e) of R.A.

No. 3019

-versus-

APOLINARIA H. BALISTOY,

Accused.

Present:

Lagos, J., Chairperson

Mendoza-Arcega, J., and

Corpus-Mañalac, J.

Promulgated:

May 5, 2022 *mea*

X-----X

RESOLUTION

MENDOZA-ARCEGA, J.:

This resolves the following:

- (1) *Motion for Reconsideration (Re: Order dated 18 March 2022)*¹ dated 01 April 2022 filed by the Prosecution; and
- (2) *Compliance and Manifestation (Comment/ Opposition)* dated 12 April 2022, filed by the Public Attorney's Office, through Atty. Reden B. Bides.

¹Records, Vol. 2, pp. 242-245.

In the assailed *Order*² dated 18 March 2022, this Court appointed Atty. Reden B. Bides of the Public Attorney's Office (PAO) as counsel *de officio* for accused Apolinaria Hangad Balistoy. The Order contained the following directive, to wit:

“x x x Considering that no counsel for accused Balistoy appeared today, Atty. Reden B. Bides of the Public Attorney's Office (PAO) is directed to appear as counsel *de officio* for accused Balistoy in these cases.”

The prosecution prays that the Court set aside its directive, and allow the prosecution to present its evidence *ex-parte*. The prosecution argues that a counsel *de officio* should not have been appointed considering the accused is deemed to have waived her right to appear in these cases when she jumped bail and fled the country on 01 August 2021³. Consequently, she is also deemed to have waived her right to present evidence on her behalf, and to confront and cross-examine the witnesses who will testify against her⁴. The prosecution cites *Bernardo v. People*⁵, where the Supreme Court pronounced that (i) the holding of trial *in absentia* is authorized provided the “accused has been duly notified, and the [accused's] failure to appear is unjustifiable⁶”; (ii) “the escape of [an] accused should [be] considered [as] a waiver of their right to be present at their trial”; and (iii) the accused who escaped is “deemed to have waived their right to present evidence on their own behalf and to confront and cross-examine the witnesses who testified against them.”

On the other hand, herein accused, through counsel *de officio* from the Public Attorney's Office, refutes the prosecution's arguments by saying that although the accused admittedly jumped bail, thus, waiving her right to present evidence and cross-examine the witnesses of the prosecution, “she did not lose her right to counsel⁷.” According to accused's counsel *de officio*, the Constitution and procedural rules “do not provide for any prohibition on the designation of a counsel for an accused who jumped bail.⁸” Accused's counsel *de officio* ultimately prays that the prosecution's Motion be denied for lack of legal basis to deprive the accused of the Constitutionally guaranteed right to counsel.

As contained in the *Minute Resolution dated 23 February*⁹, accused Balistoy was arraigned on 12 March 2021, where she entered a “Not Guilty” plea. Thereafter, the initial preliminary conference proceeded in due course. Accused was present with her lawyer at the time, Atty. Tyrone Cimafranca. The two also attended the second preliminary conference. However, on 7 September 2021, accused's counsel of record, Atty. Cimafranca, filed a Motion to Withdraw

² Records, Volume 2, p. 210.

³ *Id.* at 242.

⁴ *Id.*

⁵ G.R. No. 166980, 04 April 2007.

⁶ 1987 Constitution, Article III, Section 14 (2).

⁷ Paragraph 2, p. 1 of Accused's COMMENT/OPPOSITION.

⁸ *Id.*

⁹ Records, Volume 2, p. 185.

Appearance as Counsel for the Accused, which bore the conformity of the accused. This Court granted the Motion, and reminded the accused to be prepared with a new counsel on the next setting (or on 30 September 2021) for the continuation of the preliminary conference. Despite the reminder, the accused nor a new counsel failed to appear during the scheduled preliminary conference on 30 September 2021¹⁰.

This Court concluded that accused Balistoy has jumped bail and fled the country. Thereafter, this Court ordered that the accused's right to appear in the preliminary conferences has been waived, and after terminating the preliminary conference, this Court set the Pre-Trial on 18 March 2022¹¹.

On the day of the Pre-Trial, accused and counsel once again failed to appear¹². Given that there was still no entry of appearance for the accused filed ever since accused jumped bail, this Court appointed a lawyer, Atty. Reden B. Bides, from the Public Attorney's Office to appear as counsel *de officio* for the accused¹³.

Contrary to prosecution's claim that there is no basis for the appointment of a counsel *de officio* on behalf of the accused, the rules clearly provide for an accused's right to counsel. The Court can rely upon the provisions of Sections 6 and 7, Rule 116 of the Revised Rules of Criminal Procedure, thus:

Sec. 6. *Duty of court to inform accused of his right to counsel.* — Before arraignment, the court shall inform the accused of his right to counsel and ask him if he desires to have one. Unless the accused is allowed to defend himself in person or has employed a counsel of his choice, the court must assign a counsel *de officio* to defend him.

Sec. 7. *Appointment of counsel de officio.* — The Court, considering the gravity of the offense and the difficulty of the questions that may arise, shall appoint as counsel *de officio* such members of the bar in good standing, who, by reason of their experience and ability, can competently defend the accused. [x x]¹⁴

The right to be heard is a constitutionally guaranteed right, as Section 14 of Article III of the 1987 Constitution clearly provides that:

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to **be heard by himself and counsel**, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may

¹⁰ *Id.*

¹¹ *Id.* at 185-a.

¹² *Id.* at 210.

¹³ Order dated 18 March 2022; *Id.*

¹⁴ PAO v. Sandiganbayan, G.R. Nos. 154297-300, 15 February 2008, 569 PHIL 147-155.

proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.¹⁵ (*emphasis supplied*)

The *Revised Rules* reiterates this right to be heard in Rule 115, to wit:

“Section 1. *Rights of the accused at the trial.* x x x

(c) To be present and defend in person and by counsel at every stage of the proceedings, from arraignment to promulgation of the judgment. The accused may, however, waive his presence at the trial pursuant to the stipulations set forth in his bail, unless his presence is specifically ordered by the court for purposes of identification. The absence of the accused without justifiable cause at the trial of which he had notice shall be considered a waiver of his right to be present thereat. **When an accused under custody escapes, he shall be deemed to have waived his right to be present on all subsequent trial dates** until custody over him is regained. Upon motion, the accused may be allowed to defend himself in person when it sufficiently appears to the court that he can properly protect his right without the assistance of counsel. x x x”¹⁶ (*emphasis supplied*)

Law and jurisprudence dictate that the act of accused jumping bail indeed constituted a waiver of accused’s right to be present on all subsequent trial dates. However, it did not automatically operate as a waiver of her right to counsel.

The prosecution’s reliance on the pronouncements of the Supreme Court in the case of *Bernardo v. People*¹⁷ appears to be misplaced because the facts surrounding the *Bernardo* case is different from the case before us. In *Bernardo*, the accused-petitioner’s counsel *de oficio* was already appointed during arraignment, and accused-petitioner even filed a Waiver of Appearance during the course of trial.¹⁸

In the present case, the records show that accused was properly represented by her counsel of choice during arraignment and the preliminary conferences, until said counsel filed a Motion for Withdrawal of Appearance. Since then, no counsel of record appears to represent accused Balistoy. Furthermore, nothing in the records show that accused was allowed by this Court to defend herself in person without the assistance of counsel.

Hence, this Court made no mistake in appointing a counsel *de oficio* from the Public Attorney’s Office, as it is provided under the *Revised Guidelines for Continuous Trial of Criminal Cases*¹⁹ that the Court shall proceed with trial upon appointment of a counsel *de oficio* in the absence of counsel *de parte*, to wit:

“III. Procedure

x x x

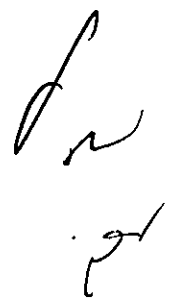
¹⁵ 1987 Constitution, 2 February 1987.

¹⁶ Section 1(c), Rule 115, Revised Rules of Criminal Procedure (as Amended), 1 December 2000.

¹⁷ G.R. No. 166980, 3 April 2007.

¹⁸ *Id.*

¹⁹ A.M. No. 15-06-10-SC (Resolution), 25 April 2017.



13. Trial

x x x

(b) *Absence of counsel de parte.* — In the absence of counsel *de parte*, the hearing shall proceed upon appointment by the court of a counsel *de oficio*. x x x²⁰

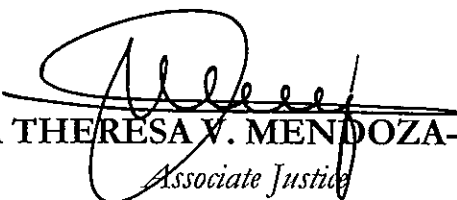
In appointing the counsel *de oficio*, the Court sought to protect and advance the accused's constitutional rights to due process, and to the speedy disposition of this case. The Court must ensure that further proceedings against the accused would not be postponed because of the accused's escape. In the words of Supreme Court Justice and Political Law expert Isagani A. Cruz, "escape can never be a legal justification²¹" to avoid being duly notified under Section 14²². There is a need for the appointment of a counsel *de oficio* precisely so that the proceedings can continue even in the absence of the accused.

WHEREFORE, premises considered, the Court resolves to **DENY** the *Motion for Reconsideration* dated 01 April 2022 filed by the Prosecution.


Accordingly, let the initial presentation of prosecution evidence proceed on **01 JUNE 2022 at 1:30 in the afternoon**, as scheduled.

SO ORDERED.

Quezon City, Philippines.


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

WE CONCUR:


RAFAEL R. LAGOS
Chairperson
Associate Justice


MARYANN E. CORPUS-MAÑALAC
Associate Justice

²⁰ *Id.*

²¹ *People v. Salas*, G.R. No. L-66469, 29 July 29, 1986, 227 PHIL 152-156.

²² 1987 Constitution, Article III.