



Republic of the Philippines

Sandiganbayan

Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on 17 May 2022.

Present:

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

Justice ZALDY V. TRESPESES ----- Member

Justice GEORGINA D. HIDALGO ----- Member

The following resolution was adopted:

Crim. Case No. SB-18-CRM-0297, 0308, 0311, 0312, 0313, 0316, 0317, 0320, 0321 and 0324 - People vs. RODERICK MENDENILLA PAULATE, et al.

This resolves the following:

1. Accused Roderick Paulate and Vicente Bajamunde's "MOTION FOR RECONSIDERATION (to the Order dated 27 April 2022)" dated and electronically filed on May 2, 2022;¹

2. Prosecution's "OPPOSITION [TO THE MOTION FOR RECONSIDERATION DATED 02 MAY 2022]" dated May 4, 2022.²

TRESPESES, J.

For resolution is accused Roderick Paulate and Vicente Bajamunde's Motion for Reconsideration of the Court's Order dated 27 April 2022 waiving the presentation of defense witness COA representative, Ms. Emilda G. Navarro, and the Prosecution's Opposition thereto.

ACCUSED'S MOTION

Accused claim that the unavailability of the intended witness, Ms. Navarro, was due to circumstances beyond their control. They also deny that they did not exercise diligent effort to secure and present their witness during the last hearing. In fact, during the first week of April, their counsel, Atty. Nonato, exerted efforts to search and coordinate with the witness by going to and fro the Quezon City Hall, Main Office of the Commission on Audit and Valenzuela City. Upon inquiry from the COA Main Office on the

¹ Record, Vol. 6, pp. 344-355.

² Id. at 362-373.

7 7. 1

Minute Resolution

People v. Roderick Mendenilla Paulate, et al.

Crim. Case Nos. SB-18-CRM-0297, 0308,

0311-0313, 0316-0317, 0320-0321 and 0324

Page 2 of 6

X-----X

process of allowing its employees to testify as witness, Atty. Nonato was informed that there was a need to submit a written request to the Office of the Chairperson. Upon such advice, he sent a request letter dated 18 April 2022 to the COA-Office of the Chairperson. On 22 April 2022, the COA-Legal Service Sector sent a reply email seeking clarification on the absence of a subpoena from the Sandiganbayan addressed to Ms. Navarro. Under Sec. 5 of A.M. No. 12-8-8-SC,³ resort to subpoena is necessary only if the intended witness unjustifiably refused to appear and testify in court. Based on the aforesaid provision, Atty. Nonato was of the impression that there was no need to request for a subpoena since Ms. Navarro did not unjustifiably refuse the request of the defense. Thus, accused assert that the failure to request for a subpoena considering that efforts were already underway to prepare the judicial affidavit cannot be construed as failing to exercise diligent efforts on the part of the defense.

Finally, accused admit that the Manifestation/Motion was not accompanied by the original receipt evidencing payment of the postponement fee because it was filed through electronic mail. Notwithstanding, in compliance with A.M. No. 15-06-10,⁴ which states that the official receipt may be submitted not later than the next hearing date, accused attached to their motion for reconsideration the official receipt for the postponement fee.

THE PROSECUTION'S OPPOSITION

The Prosecution counters that the presentation of defense evidence has been reset several times at the instance of accused and that the latter were already given stern warning that no further motions of similar tenor would be entertained. However, despite warning, accused again filed a Manifestation and Motion dated 26 April 2022 seeking to reset the 27 April 2022 hearing due to unavailability of their witness.

The prosecution avers that accused were aware that the court will not anymore entertain any further resetting and thus, they should have exerted efforts to locate viable witnesses and alternate witnesses to obviate any circumstance that would prevent them from presenting their intended witness on the scheduled trial date. Thus, after the hearing on 29 March 2022, accused should have prepared their witnesses which include issuance of subpoena, taking judicial affidavits and assessing witnesses who could take the place of one another in case the intended witness is unavailable. Apparently, accused's counsel made no such preparations. It alleges that if only accused's counsel browsed the records, he would not have wasted time

³ Judicial Affidavit Rule

⁴ Revised Guidelines for Continuous Trial of Criminal Cases

7 1 7

Minute Resolution

People v. Roderick Mendenilla Paulate, et al.

Crim. Case Nos. SB-18-CRM-0297, 0308,

0311-0313, 0316-0317, 0320-0321 and 0324

Page 3 of 6

X-----X

and effort to locate Ms. Navarro because her judicial affidavit clearly indicated that she is assigned at COA Valenzuela.

Moreover, when accused's counsel went to COA Valenzuela on 22 April 2022, by that date, there was already a violation of the judicial affidavit rule and a viable witness cannot anymore be presented. Considering that accused's counsel has been appearing before the Sandiganbayan, it would be improbable for him not to know that it is necessary to request for the issuance of a subpoena to compel court attendance of government employees as witnesses.

OUR RULING

We **grant** the motion for reconsideration.

Under A.M. No. 15-06-10, III (2)(d) or the Revised Guidelines for Continuous Trial of Criminal Cases, postponements may be allowed under certain circumstances, thus:

(d) *Motion for postponement- A motion for postponement is prohibited, except if it is based on acts of God, force majeure or physical inability of the witness to appear and testify.* If the motion is granted based on such exceptions, the moving party shall be warned that the presentation of its evidence must still be finished on the dates previously agreed upon.

A motion for postponement, whether written or oral, shall at all times be accompanied by the original official receipt from the Office of the Clerk of Court evidencing payment of the postponement fee under Sec. 21 (b), Rule 141, to be submitted either at the time of the filing of said motion or not later than the next hearing date. The Clerk of Court shall not accept the motion unless accompanied by the original receipt. (Emphasis supplied)

In these cases, accused assert that the motion for postponement of the 27 April 2022 was due to circumstances beyond their control. To recall, accused through their counsel, Atty. Nonato, moved to reset the hearing because of the physical inability of Ms. Navarro, the intended witness from COA, to appear and testify as her office needs to finalize the Annual Audit Report and Exit Conference with the Mayor of City of Valenzuela. In the instant motion, accused's counsel reiterated the efforts exerted to locate and secure the presence of the witness and submitted proof of their request to allow Ms. Navarro to testify as witness. Records also show the exchange of emails between him and the lawyer from the COA-Legal Service Sector where the latter asked for a subpoena issued by the Court addressed to Ms. Navarro. While Atty. Nonato admitted that he failed to secure a subpoena, he justified the omission and alleged that under Sec. 5 of A.M. No. 12-8-8-

7 1 7

Minute Resolution

People v. Roderick Mendenilla Paulate, et al.

Crim. Case Nos. SB-18-CRM-0297, 0308,

0311-0313, 0316-0317, 0320-0321 and 0324

Page 4 of 6

X-----X

SC⁵ resort to court-issued subpoena is necessary only when the intended witness unjustifiably refused to appear and testify before the Court.

However, the Court cannot give credence to the excuses given by Atty. Nonato in justifying the claim that the postponement was based on the exception provided under the rules. Records show that the trial dates for the presentation of accused's evidence have been set as early as November 2021. Therefore, the defense has more than enough time to prepare their witnesses and secure their judicial affidavits considering that the witnesses they intend to present were already identified in the Pre-Trial Order.⁶ Moreover, the pre-trial order shows that accused listed 11 people plus any one of the 30 alleged job order employees, or a relative or friend, as witnesses. Considering that there were only five trial dates left including the 27 April 2022 hearing, the defense should have prepared its witnesses and informed them of the dates when they may be called to testify. Had accused's counsel been more diligent in preparing his witnesses, the present circumstance could have been avoided and counsel will have time to prepare his alternate witness. Unfortunately, he failed in this respect.

It is basic that the setting of trial dates is for the purpose of complying with the time limits provided under the Speedy Trial Act in order to protect accused's right to a speedy trial of all criminal cases. Hearing dates are set so that trial may proceed with dispatch and terminated within the prescribed period. Thus, they should not be neglected or ignored at will. Verily, the setting of dates is not a mere matter of procedure which the parties may ignore or disregard to the prejudice of the orderly administration of justice.

In these cases, the trial dates for the presentation of evidence were previously set and agreed upon by the parties and counsels. Thus, to ask for a resetting because one of at least 12 witnesses is not available, without any alternate witness prepared, necessarily frustrates the protection against unreasonable delay in the prosecution of cases and violates the constitutional mandate of speedy dispensation of justice.

As officers of the court, lawyers have the duty to assist in the speedy administration of cases. Like the court, they are instruments to advance its ends — the speedy, efficient, impartial, correct and inexpensive adjudication of cases and the prompt satisfaction of final judgments.

⁵ **Section 5. Subpoena.** - If the government employee or official, or the requested witness, who is neither the witness of the adverse party nor a hostile witness, unjustifiably declines to execute a judicial affidavit or refuses without just cause to make the relevant books, documents, or other things under his control available for copying, authentication, and eventual production in court, the requesting party may avail himself of the issuance of a subpoena ad testificandum or duces tecum under Rule 21 of the Rules of Court. The rules governing the issuance of a subpoena to the witness in this case shall be the same as when taking his deposition except that the taking of a judicial affidavit shall be understood to be ex parte.

⁶ Record, Vol. 3, pp. 469-500 (dated 8 July 2019).

7 1 2

Minute Resolution

People v. Roderick Mendenilla Paulate, et al.

Crim. Case Nos. SB-18-CRM-0297, 0308,

0311-0313, 0316-0317, 0320-0321 and 0324

Page 5 of 6

X-----X

Lawyers should not only help attain these objectives but should avoid acts that obstruct or prevent their realization, charged as they are with the primary task of assisting in the speedy and efficient administration of justice.⁷ Therefore, they should not be allowed to trifle with court processes by agreeing to the trial dates and not show up, or by showing up unprepared without a witness, and consequently waste the court's precious time.

Notwithstanding the foregoing, the Court opts not to deny the motion based merely on technical grounds. Even if the excuses given do not justify relaxation of the rules, the Court finds that accused should not be prejudiced by their counsel's laxity. We must be reminded that deciding a case is not a mere play of technicalities. Where the ends of substantial justice shall be better served, the application of technical rules of procedure may be relaxed.⁸ Besides the prosecution will not be prejudiced by the presentation of a witness from COA because whatever may be established could be refuted if it is not in accordance with the truth.

Accordingly, in order to better serve the interest of justice without any unnecessary delay, the Court allows the defense to present as witness the representative from COA in order that the testimony may be taken into consideration when the case is submitted for decision. However, pursuant to A.M. No. 15-06-10, III (2)(d) which states that the presentation of evidence must still be finished on the dates previously agreed upon, the Court maintains the remaining number of trial dates. Considering that there are only three trial dates left which are as follows: 31 May, 28 June, and 13 July 2022, accused are reminded to present all their witnesses and finish the presentation evidence within those dates. As mentioned in the 27 April 2022 Order, the settings on 31 May will be conducted through videoconferencing hearing using the Philippine Judiciary 365 platform, while the settings on 28 June and 13 July, 2022 will be conducted in-court at the Fourth Division courtroom, Sandiganbayan. Accused are also advised to coordinate with and assist their counsel in locating their witnesses to avoid further delay.

WHEREFORE, premises considered, accused Roderick Paulate and Vicente Bajamunde's Motion for Reconsideration is **GRANTED** and the Court's Order dated 27 April 2022 waiving the presentation of COA representative as witness is reversed and set aside.

Let a subpoena *ad testificandum* issue for intended witness Emilda G. Navarro of COA to appear and testify before this Court on 28 June 2022 at 8:30 o'clock in the morning.

⁷ *Edrial v. Quilat-Quilat*, G.R. No. 133625, 6 September 2000 (394 PHIL 284-298).

⁸ *Reliable Industrial and Commercial Security Agency, Inc. v. Court of Appeals*, G.R. No. 190924, 14 September 2021.

7 1 7

Minute Resolution

People v. Roderick Mendenilla Paulate, et al.

Crim. Case Nos. SB-18-CRM-0297, 0308,

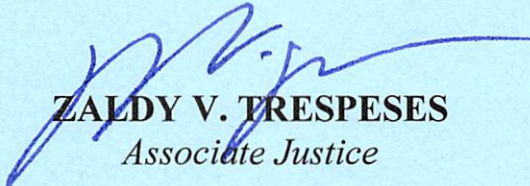
0311-0313, 0316-0317, 0320-0321 and 0324

Page 6 of 6

X-----X


SO ORDERED.

Quezon City, Philippines.



ZALDY V. TRESPESES
Associate Justice

WE CONCUR:



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



GEORGINA D. HIDALGO
Associate Justice