



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
QUEZON CITY

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CRIM. CASE NOS.
SB-18-CRM-0153 to 0156;
0160-0162

-versus-

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

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PEOPLE OF THE PHILIPPINES,
Plaintiff,

CRIM. CASE NOS.
SB-18-CRM-0157 to 0159;
0163-0165

-versus-

JEJOMAR ERWIN S. BINAY,
JR., et al.,
Accused.

Present:

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

Promulgated:

29 June 2022
Gerzel Ilagan

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RESOLUTION

MENDOZA-ARCEGA, J.:

This resolves the following: (1) *Oral Motion of the Prosecution* during the 11 May 2022 preliminary conference that the accused and/or their counsels' presence, comments, objections, and manifestations to the pre-marked exhibits

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in the said preliminary conference, should be considered waived; and (2) *Comment/Opposition (Re: Prosecution's Oral Motion at the hearing held on 11 May 2022)* dated 18 May 2022 filed by accused Jejomar C. Binay, Sr., through counsel.

During the Preliminary Conference (marking of Prosecution's Documentary Exhibits) for these cases held on 11 May 2022, and after the respective appearances for the People and for the accused were called, no appearances for the following accused were entered: (1) Jejomar C. Binay, Sr.; (2) Marjorie A. De Veyra; (3) Pio Kenneth I. Dasal; (4) Nelia Barlis; (5) Cecilio P. Lim III; (6) Raydes B. Pestaño; (7) Eleno M. Mendoza, Jr.; (8) Lorenza P. Amores; (9) Rodel R. Nayve; (10) Ralph E. Liberato; (11) Ulysses E. Orienza; (12) Giovanni I. Condes; and (13) Manolito N. Uyaco.¹

Consequently, the Prosecution moved that the lawyers and their respective clients who were not present during the preliminary conference on that day, 11 May 2022, are deemed to have waived their presence in the said preliminary conference.²

By way of Comment/Opposition, accused Jejomar C. Binay, Sr. (Binay, Sr.), through counsel, apologized to the Court for his absence despite due notice and added that his absence was "unintentional and due to mere inadvertence"³. Binay, Sr., through counsel, explained that since he had similar cases pending before the Third (3rd) Division also scheduled in the afternoon that day for preliminary conference, his counsel inadvertently failed to attend the hearing set before this Court in the morning.⁴ Accused stressed that his counsel's absence "was not intended as a waiver of his right to be present and participate in [these] proceedings" because as can be seen in the records, Binay, Sr., through counsel, has been "religiously attending and participating in all the hearings prior to the 11 May 2022 preliminary conference hearing."⁵ Accused, through counsel, thereafter argued that Prosecution's motion to have the accused's right to be present, to comment and object to the documents pre-marked is baseless for the following reasons:

1. Accused's right to counsel is guaranteed by our Constitution, our laws, and Rules of Court "to minimize the imbalance in the adversarial system where the accused is pitted against the awesome prosecutor machinery of the state." To deprive accused of this right "divests the accused of an equality in arms resulting in the denial of level playing field;"⁶
2. The Prosecution's oral motion is not yet ripe for exercise considering the fact that the said documents have not yet been offered for evidence. Accused cited Sec. 34-36, Rule 132 of the Rules of Court, and proceeded

¹ TSN dated 11 May 2022, pages 3-5.

² *Id.* at pp. 5-6.

³ Accused Binay, Sr.'s COMMENT/OPOSITION dated 18 May 2022, p. 1, paragraph 1.

⁴ *Id.* at paragraph 2.

⁵ *Id.* at paragraph 3.

⁶ *Id.* at paragraph 5.

to explain that the pre-marking of the Prosecution's evidence cannot be considered as the "proper time for [accused] to make comments/objections thereto, and his failure to do so cannot justifiably and validly bar him from exercising such right at the correct time," that is, after the formal offer of Prosecution's documentary evidence;⁷ and

3. Accused then proceeded to cite jurisprudence⁸ to explain the concept of waiver, and the requisites of a valid waiver of rights. Accused asserts that the requisites of a valid waiver of his right to make objections/comments to the pre-marked documents has "not yet ripened, and therefore, premature", and that there was "no clear intention on the part of [accused] to relinquish such right."⁹

The Court finds the Prosecution's *Oral Motion* bereft of merit.

The pertinent portion of Section 3, Rule 118 of the Revised Rules of Criminal Procedure on the non-appearance of counsel for the accused during pre-trial conference states that:

Section 3. Non-appearance at pre-trial conference. — If the counsel for the accused or the prosecutor does not appear at the pre-trial conference and does not offer an acceptable excuse for his lack of cooperation, the court may impose proper sanctions or penalties.

Further, the treatment of absence of parties during pre-trial is provided under the Revised Guidelines for Continuous Trial of Criminal Cases¹⁰, thus:

(f) Conduct of Pre-trial

- i. *Absence of parties.* - The court shall proceed with the pre-trial despite the absence of the accused and/or private complainant, provided they were duly notified of the same, and the counsel for the accused, as well as the public prosecutor, are present.

It cannot be gleaned from these provisions that the consequence of accused and/or their counsel's absence during the preliminary conference is an automatic waiver of their right to be present and/or their right to make comments, objections or manifestations to the pre-marked exhibits in the said preliminary conference.

Unlike in civil cases where the rules provide that non-appearance at pre-trial without any valid cause, when so required, shall cause the dismissal of the action¹¹, the absence of the accused and/or their respective counsel during the preliminary conference in criminal cases shall not affect the proceedings. Preliminary conferences, which form part of pre-trial, are held primarily to

⁷ *Id.* at paragraphs 6-8.

⁸ *Mabugay-Otamias v. Republic* (G.R. No. 189516, 08 June 2016); *Sps. Valderama v. Macalde* (G.R. No. 165005, 16 September 2005); *Heirs of Reyes v. Calumpang* (G.R. No. 138463, 30 October 2006).

⁹ *Id.* at paragraphs 9-11.

¹⁰ A.M. No. 15-06-10-SC.

¹¹ Sec. 5, Rule 18, 2019 Amendments to the 1997 Rules of Civil Procedure (A.M. No. 19-10-20 SC).

abbreviate court proceedings, ensure the prompt disposition of criminal cases and to decongest court dockets¹² because during the preliminary conference, the court, through the Branch COC:

1. Assists the parties in reaching a settlement of the civil aspect of the criminal case;
2. Facilitates the marking of the documents to be presented as exhibits with copies thereof attached to the records after comparison;
3. Ascertains from the parties the undisputed facts and admissions on the genuineness and due execution of documents marked as exhibits; and
4. Considers such other matters as may aid in the prompt disposition of the case.¹³

Therefore, absence of the accused and/or their respective counsels during the scheduled preliminary conference do not operate as an automatic waiver of their presence, comments, objections, and manifestations to the pre-marked exhibits in the said preliminary conference. The accused, through their counsel, will still have the opportunity to comment or object to the Prosecution's exhibits after the formal offer of evidence has been made.

When it comes to rules of procedure, "[i]t is well to remember that [the Supreme] Court, in not a few cases, has consistently held that cases shall be determined on the merits, after full opportunity to all parties for ventilation of their causes and defense, rather than on technicality or some procedural imperfections. In so doing, the ends of justice would be better served. x x x Indeed, rules of procedure are mere tools designed to expedite the resolution of cases and other matters pending in court. A strict and rigid application of the rules that would result in technicalities that tend to frustrate rather than promote justice must be avoided."¹⁴

At this point, we take note of the absence during the preliminary conference on 11 May 2022 of the counsels for the following accused: (1) Jejomar C. Binay, Sr.; (2) Marjorie A. De Veyra; (3) Pio Kenneth I. Dasal; (4) Nelia Barlis; (5) Cecilio P. Lim III; (6) Raydes B. Pestaño; (7) Eleno M. Mendoza, Jr.; (8) Lorenza P. Amores; (9) Rodel R. Nayve; (10) Ralph E. Liberato; (11) Ulysses E. Orienza; (12) Giovanni I. Condes; and (13) Manolito N. Uyaco. Their non-appearance is duly reflected in the minutes of the preliminary conference.¹⁵

We remind the prosecution and defense that no evidence shall be allowed to be presented and offered during the trial in support of a party's evidence-in-chief other than those that had been identified and pre-marked during the pre-

¹² A.M. No. 03-1-09-SC.

¹³ *Id.*

¹⁴ *Sps. Su v. Bontilao, et. al.*, (G.R. No. 238892, September 04, 2019, citing *Malixi v. Baltazar*, G.R. No. 208224, November 22, 2017, and *Durban Apartments Corporation v. Catacutan*, 514 Phil. 187, 195 (2005)).

¹⁵ TSN dated 11 May 2022, pages 2-5.



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trial, and any other evidence that will not be indicated or listed in the pre-trial order shall be considered waived by the parties.¹⁶

A final note, the Court also reminds the counsels for the accused to be mindful of the schedule of the preliminary conference hearings of their clients, and to make sure that they punctually appear at court hearings on behalf of their clients. As provided under Canon 12 of the Code of Professional Responsibility, “[a] lawyer shall exert every effort and consider it his duty to assist in the speedy and efficient administration of justice.”


WHEREFORE, premises considered, the *Oral Motion* of the **Prosecution** on 11 May 2022, is hereby **DENIED**. Accordingly, let the preliminary conference set on 20 July 2022 at 9:30 in the morning proceed as scheduled.

SO ORDERED.

Quezon City, Philippines.


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

WE CONCUR:


KAFAEL R. LAGOS
Chairperson
Associate Justice


MARYANN E. CORPUS-MAÑALAC
Associate Justice

¹⁶ A.M. No. 03-1-09-SC.