



Republic of the Philippines

Sandiganbayan

Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on 27 September 2022.

Present:

Justice ZALDY V. TRESPESES ----- Acting Chairperson

Justice GEORGINA D. HIDALGO ----- Member

Presiding Justice AMPARO M. CABOTAJE-TANG ----- Member*

The following resolution was adopted:

Crim. Case No. SB-22-CRM-0117 - People vs. MARC RED ARCADIO MARINÑAS, et al.

This resolves the following:

1. Accused Er German T. Robin's "MOTION FOR PARTIAL RECONSIDERATION" dated 16 September 2022 and electronically filed on September 17, 2022;¹
2. Prosecution's "COMMENT/OPPOSITION" dated and electronically filed on September 21, 2022.²

TRESPESES, J.

This resolves the Motion for Partial Reconsideration filed by the accused Er German T. Robin ("accused") and the Prosecution's Comment/Opposition thereto.

ACCUSED'S MOTION

Accused asks for this Court to reconsider the Order dated 9 September 2022 admitting *in toto* the Amended Information dated 31 August 2022 attached to the prosecution's "Compliance with Motion for Leave to Amend Information and to Admit Amended Information" filed on September 5, 2022.

* Sitting as Special Member per Administrative Order No. 138-2022 dated 20 June 2022 in view of the inhibition of Justice Ma. Theresa Dolores C. Gomez-Estoesta.

¹ Record, Vol. 8, pp. 33-35

² Id. at Vol 8, pp. 440-447

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Accused contends that the Amended Information added or inserted monikers or aliases in the party-names of some accused which were not borne in the original Information, one of which is "10th MAN" for herein accused.

Accused reminds this Court that during the proceedings on September 9, 2022, before the arraignment, accused verbally objected to the addition or insertion of the said moniker in his name in the proposed Amended Information for being utterly baseless, the same was denied by this Court. Thus, during arraignment, accused refused to enter his plea.

Accused submits that the insertion or addition of the alias "10th MAN" in the designation of accused Robin in the new information is absolutely unnecessary and a pure afterthought, as he is completely identified by his true and complete legal name or designation under the original Information and did or does not carry nor was or is popularly known by that moniker. He posits that the insertion of the moniker despite lack of new evidence or submission during the stage of "reconsideration" maliciously projects, wittingly or unwittingly, an undue or inflammatory impression that Robin was indeed part of the alleged syndicate, thereby causing prejudice to his constitutional right to be presumed innocent until proven guilty.

THE PROSECUTION'S OPPOSITION

The prosecution refutes accused's arguments in their Comment/Opposition dated 21 September 2022, as follows:

1. Accused Robin's motion for the deletion or striking-off of the alias "10th MAN" in his name both in the caption and in the body of the amended information is without merit. The inclusion of his nickname in the Amended Information is provided under Section 7, Rule 110 of the Rules of Court which states that the complaint or information must state the name and surname of the accused or any appellation or nickname by which he has been or is known. Contrary to accused assertion that the inclusion was a mere afterthought, the nickname was provided by witness Dale Ignacio in one of his *Sinumpaang Salaysay*.
2. Furthermore, the inclusion of accused nickname was done before arraignment. Section 14, Rule 10 allows the amendment of Information in form or in substance, without leave of court, at any time before accused enters his plea. (*Underscoring in the original*)

The prosecution prays that the motion be denied for lack of merit.

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OUR RULING

We **deny** the motion for reconsideration.

Section 14 of Rule 110 of the Revised Rules of Criminal Procedure is instructive as to when an information may be amended, it provides:

A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.

However, any amendment before plea, which downgrades the nature of the offense charged in or excludes any accused from the complaint or information, can be made only upon motion by the prosecutor, with notice to the offended party and with leave of court. The court shall state its reasons in resolving the motion and copies of its order shall be furnished all parties, especially the offended party. (n)

If it appears at any time before judgment that a mistake has been made in charging the proper offense, the court shall dismiss the original complaint or information upon the filing of a new one charging the proper offense in accordance with section 19, Rule 119, provided the accused shall not be placed in double jeopardy. The court may require the witnesses to give bail for their appearance at the trial. (14a)

Further, as correctly pointed out by the prosecution, Section 7 of Rule 110 of the Revised Rules of Criminal Procedure allows the inclusion of any appellation or nickname by which the accused has been known, it provides:

Sec. 7. Name of the accused. – The complaint or information must state the name and surname of the accused *or any appellation or nickname* by which he has been or is known. If his name cannot be ascertained, he must be described under a fictitious name with a statement that his true name is unknown.

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(Emphasis supplied)

The Supreme Court held in *Binay v. Ombudsman*³ citing *Dichaves v. Office of the Ombudsman*,⁴

As a general rule, this Court does not interfere with the Office of the Ombudsman's exercise of its constitutional mandate. Both the Constitution and Republic Act No. 6770 (The Ombudsman Act of 1989)

³ G.R. No. 213957-58, August 7, 2019

⁴ 802 Phil. 564 (2016)

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give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees. The rule on non-interference is based on the "respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman[.]"

An independent constitutional body, the Office of the Ombudsman is "beholden to no one, acts as the champion of the people[,] and [is] the preserver of the integrity of the public service." Thus, it has the sole power to determine whether there is probable cause to warrant the filing of a criminal case against an accused. This function is executive in nature.

Indubitably, the prosecution has control over who and how to charge an offense. It is the prosecution's prerogative to amend the information as they see fit, in form or in substance, before the arraignment. The amendment may include the addition of an appellation or a nickname by which the accused is known.

As regards the assertion that accused did or does not carry nor was or is popularly known as "10th MAN," and that the insertion of the moniker, despite lack of new evidence maliciously projects an inflammatory impression that he was indeed part of the alleged syndicate, this Court is guided by the principle of the presumption of innocence enshrined in the 1987 Constitution and jurisprudence. In *People v. Maglinas*⁵ the Supreme Court held:

To overcome this constitutional right in favor of the accused, the prosecution must hurdle two things: first, the accused enjoys the constitutional presumption of innocence until final conviction; conviction requires no less than evidence sufficient to arrive at a moral certainty of guilt, not only with respect to the existence of a crime, but, more importantly, of the identity of the accused as the author of the crime. Second, the prosecution's case must rise and fall on its own merits and cannot draw its strength from the weakness of the defense.

The burden to prove the guilt of the accused beyond reasonable doubt and to overcome the presumption of innocence remains with the prosecution. In the case at hand, the foregoing claims delve into the merits of the case which involve evidentiary matters better resolved during trial.

WHEREFORE, premises considered, accused Er German T. Robin's Motion for Partial Reconsideration dated 16 September 2022 is **DENIED** for lack of merit.

SO ORDERED.

⁵ G.R. No. 255496, August 10, 2022

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Quezon City, Philippines



ZALDY V. TRESPES

Associate Justice

Acting Chairperson

WE CONCUR:



GEORGINA D. HIDALGO

Associate Justice



AMPARO M. CABOTAJE-TANG

Presiding Justice

SEP 13 2022