

## THIRD DIVISION

[ G.R. No. 202243, August 07, 2013 ]

**ROMULO L. NERI, PETITIONER, VS. SANDIGANBAYAN (FIFTH DIVISION) AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

### DECISION

**VELASCO JR., J.:**

#### The Case

Assailed and sought to be nullified in this Petition for Certiorari Prohibition and Mandamus under Rule 65, With application for preliminary injunction and a temporary restraining order, are the Resolution<sup>[1]</sup> dated February 3, 2012 of the Fifth Division of the Sandiganbayan in SB-10-CRM-0099 entitled *People of the Philippines v. Romulo L. Neri*, as well as its Resolution<sup>[2]</sup> of April 26, 2012 denying petitioner's motion for reconsideration.

#### The Facts

Petitioner Romulo L. Neri (Neri) served as Director General of the National Economic and Development Authority (NEDA) during the administration of former President Gloria Macapagal-Arroyo.

In connection with what had been played up as the botched Philippine-ZTE<sup>[3]</sup> National Broadband Network (NBN) Project, the Office of the Ombudsman (OMB), on May 28, 2010, tiled with the Sandiganbayan two (2) criminal Informations, the first against Benjamin Abalos, for violation of Section 3(h) of Republic Act No. (RA) 3019, as amended, otherwise known as the *Anti-Graft and Corrupt Practices Act*, docketed as **SB-10-CRM-0098** (*People v. Abalos*), and eventually raffled to the **Fourth Division** of that court. The second Information against Neri, also for violation of Sec. 3(h), RA 3019, in relation to Sec. 13, Article VII of the 1987 Constitution, was docketed as **SB-10-CRM-0099** (*People v. Neri*) and raffled to the **Fifth Division** of the Sandiganbayan. Vis-à-vis the same project, the Ombudsman would also later file an information against Macapagal-Arroyo and another information against her and several others<sup>[4]</sup> docketed as SB-11-CRM-0467 and SB-11-CRM-0468 to 0469, respectively, all of which ended up, like SB-10-CRM-0098, in the anti-graft court's 4<sup>th</sup> Division.

The accusatory portion of the Information against Neri reads as follows:

That during the period from September 2006 to April 2007, or thereabout in Metro Manila x x x and within the jurisdiction of this Honorable Court, the above-named accused x x x being the then Director General of the [NEDA], a Cabinet position and as such, is prohibited by Sec. 13 of Article VII of the 1987 Constitution [from being financially interested in

any contract with, or in any franchise or special privilege granted by the Government] but in spite of [said provision], petitioner, while acting as such, x x x directly or indirectly have financial or pecuniary interest in the business transaction between the Government of the Republic of the Philippines and the Zhing Xing Telecommunications Equipment, Inc., a Chinese corporation x x x for the implementation of the Philippine x x x (NBN) Project, which requires the review, consideration and approval of the NEDA, x x x by then and there, meeting, having lunch and playing golf with representatives and/or officials of the ZTE and meeting with the COMELEC Chairman Benjamin Abalos and sending his emissary/representative in the person of Engineer Rodolfo Noel Lozada to meet Chairman Abalos and Jose De Venecia III, President/General Manager of Amsterdam Holdings, Inc. (AHI) another proponent to implement the NBN Project and discuss matters with them. (*Rollo*, pp. 48-50.)

In the ensuing trial in the *Neri* case following the arraignment and pre-trial proceedings, six (6) individuals took the witness stand on separate dates<sup>[5]</sup> to testify for the prosecution. Thereafter, the prosecution twice moved for and secured continuance for the initial stated reason that the prosecution is still verifying the exact address of its next intended witness and then that such witness cannot be located at his given address.<sup>[6]</sup>

In the meantime, a pre-trial conference was conducted in the *Abalos* case following which the Fourth Division issued on September 17, 2010 a Pre-Trial Order<sup>[7]</sup> containing, among other things, a list of witnesses and documents the prosecution intended to present. On October 27, 2010, Neri, whose name appeared high on the list, took the witness stand against Abalos in the *Abalos* case.<sup>[8]</sup>

On January 3, 2012, in **SB-10-CRM-0099**, the Office of the Special Prosecutor (OSP), OMB, citing Sec. 22, Rule 119 of the Rules of Court in relation to Sec. 2 of the Sandiganbayan Revised Internal Rules, moved for its consolidation with **SB-10-CRM-0098** (*People v. Abalos*), SB-11-CRM-0467 (*People v. Arroyo, et al.*) and SB-11-0468 to 469 (*People v. Arroyo*). The stated reason proffered: to promote a more expeditious and less expensive resolution of the controversy of cases involving the same business transaction. And in this regard, the prosecution would later manifest that it would be presenting Yu Yong and Fan Yang, then president and finance officer, respectively, of ZTE, as witnesses all in said cases which would entail a substantive expense on the part of government if their testimonies are given separately.<sup>[9]</sup>

Neri opposed and argued against consolidation, and, as he would later reiterate, contended, among other things that: (a) SB-10-CRM-0099, on one hand, and the other cases, on the other, involve different issues and facts; (b) the desired consolidation is oppressive and violates his rights as an accused; (c) consolidation would unduly put him at risk as he does not actually belong to the Abalos group which had been negotiating with the ZTE officials about the NBN Project; (d) he is the principal witness and, in fact, already finished testifying, in the *Abalos* case; (e) the trial in the *Neri* and *Abalos* cases are both in the advanced stages already; and (f) the motion is but a ploy to further delay the prosecution of SB-10-CRM-0099, considering the prosecution's failure to present any more witnesses during the last

two (2) scheduled hearings.

To the opposition, the prosecution interposed a reply basically advancing the same practical and economic reasons why a consolidation order should issue.

By Resolution dated February 3, 2012, the Sandiganbayan Fifth Division, agreeing with the position thus taken by the OSP, granted the consolidation of SB-10-CRM-0099 with SB-10-CRM-0098, disposing as follows:

WHEREFORE, the prosecution's Motion to Consolidate is hereby GRANTED. The instant case (SB-10-CRM-0099) is now ordered consolidated with SB-10-CRM-0098, the case with the lower court docket number pending before the Fourth Division of this Court, **subject to the conformity of the said Division.**<sup>[10]</sup> (Emphasis added.)

According to the Fifth Division, citing *Domdom v. Sandiganbayan*,<sup>[11]</sup> consolidation is proper inasmuch as the subject matter of the charges in both the *Abalos* and *Neri* cases revolved around the same ZTE-NBN Project. And following the movant's line, the anti-graft court stated that consolidation would allow the government to save unnecessary expenses, avoid multiplicity of suits, prevent delay, clear congested dockets, and simplify the work of the trial court without violating the parties' rights.

Neri sought a reconsideration, but the Fifth Division denied it in its equally assailed April 26, 2012 Resolution.

### **The Issues**

Petitioner Neri is now before the Court on the submission that the assailed consolidation order is void for having been issued with grave abuse of discretion. Specifically, petitioners allege that respondent court gravely erred:

- [A] x x x in ordering a consolidation of the subject criminal cases when the Revised Rules of Criminal Procedure does not allow a consolidation of criminal cases, only a consolidation of trials or joint trials in appropriate instances.
- [B] x x x in ordering the consolidation because petitioner will now be tried for a crime not charged in the information in x x x SB-10-CRM-0099 and this is violative of his constitutional right to be informed of the nature and cause of the accusation against him. Worse, conspiracy was not even charged or alleged in that criminal information.
- [C] x x x in ordering the consolidation for it would surely prejudice the rights of petitioner as an accused in x x x SB-10-CRM-0099 because he does not actually belong to the Abalos Group which had been negotiating with the ZTE Officials about the NBN Project.
- [D] x x x in ordering the consolidation for it would just delay the trial of the case against the petitioner, as well as that against Abalos, because these cases are already in the advanced stages of the trial. Worse, in the Abalos case, the prosecution has listed 50 witnesses and it has still to present 33 more witnesses while in the case against the petitioner the prosecution (after presenting six witnesses) has no more

witnesses to present and is now about to terminate its evidence in chief. Clearly, a consolidation of trial of these two (2) cases would unreasonably and unduly delay the trial of the case against the petitioner in violation of his right to a speedy trial.

[E] x x x in not finding that the proposed consolidation was just a ploy by the prosecution to further delay the prosecution of x x x SB-10- CRM-0099 because during the last two (2) hearings it has failed to present any more prosecution witnesses and there appears to be no more willing witnesses to testify against the petitioner. x x x

[F] x x x in not finding that it would be incongruous or absurd to allow consolidation because petitioner was the principal witness (as he already finished testifying there) against Abalos in x x x SB-10- CRM-0098.<sup>[12]</sup>

### **The Court's Ruling**

The petition is meritorious, owing for one on the occurrence of a supervening event in the Sandiganbayan itself. As may be recalled, the assailed resolution of the Sandiganbayan Fifth Division ordering the consolidation of SB-10-CRM-0099 (the *Neri* case) with SB-10-CRM-0098 (the *Abalos* case) pending with the Fourth Division, was subject to the "conformity of the said (4<sup>th</sup>) Division." On October 19, 2012, the Fourth Division, on the premise that consolidation is addressed to the sound discretion of both the transferring and receiving courts, but more importantly the latter as the same transferred case would be an added workload, issued a Resolution<sup>[13]</sup> refusing to accept the *Neri* case, thus:

WHEREFORE, the foregoing premises considered, the Fourth Division RESPECTFULLY DECLINES to accept SB-10-CRM-0099 (*Neri* case) for consolidation with SB-10-CRM-00998 (*Abalos* case) pending before it.

The Sandiganbayan Fourth Division wrote to justify, in part, its action:

The Fourth Division already heard accused *Neri* testify against the accused in the *Abalos* case, and in the course of the presentation of his testimony (on direct examination, on cross-examination and based on his reply to the questions from the Court), the individual members of the Fourth Division, based on accused *Neri*'s answers as well as his demeanor on the dock, had already formed their respective individual opinions on the matter of his credibility. Fundamental is the rule x x x that an accused is entitled to nothing less than the cold neutrality of an impartial judge. This Court would not want accused *Neri* to entertain any doubt in his mind that such formed opinions might impact on the proper disposition of the *Neri* case where he stands accused himself.<sup>[14]</sup>

While it could very well write finis to this case on the ground of mootness, the actual justiciable controversy requirement for judicial review having ceased to exist with the supervening action of the Fourth Division, the Court has nonetheless opted to address the issue with its constitutional law component tendered in this recourse.

The unyielding rule is that courts generally decline jurisdiction over cases on the ground of mootness. But as exceptions to this general norm, courts will resolve an

issue, otherwise moot and academic, when, *inter alia*, a compelling legal or constitutional issue raised requires the formulation of controlling principles to guide the bench, the bar and the public<sup>[15]</sup> or when, as here, the case is capable of repetition yet evading judicial review.<sup>[16]</sup> *Demetria v. Alba* added the following related reason:

But there are also times when although the dispute has disappeared, as in this case, it nevertheless cries out to be resolved. Justice demands that we act then, not only for the vindication of the outraged right, though gone, but also for the guidance of and as a restraint upon the future.<sup>[17]</sup>

The interrelated assignment of errors converged on the propriety, under the premises, of the consolidation of SB-10-CRM-0099 with SB-10- CRM-0098.

Consolidation is a procedural device granted to the court as an aid in deciding how cases in its docket are to be tried so that the business of the court may be dispatched expeditiously while providing justice to the parties.<sup>[18]</sup> Toward this end, consolidation and a single trial of several cases in the court's docket or consolidation of issues within those cases are permitted by the rules.

As held in *Republic v. Sandiganbayan (Fourth Division)*, citing American jurisprudence, the term "consolidation" is used in three (3) different senses or concepts, thus:

- (1) Where all except one of several actions are stayed until one is tried, in which case the judgment [in one] trial is conclusive as to the others. This is not actually consolidation but is referred to as such. (*quasi consolidation*)
- (2) Where several actions are combined into one, lose their separate identity, and become a single action in which a single judgment is rendered. This is illustrated by a situation where several actions are pending between the same parties stating claims which might have been set out originally in one complaint. (*actual consolidation*)
- (3) Where several actions are ordered to be tried together but each retains its separate character and requires the entry of a separate judgment. This type of consolidation does not merge the suits into a single action, or cause the parties to one action to be parties to the other. (*consolidation for trial*)<sup>[19]</sup> (citations and emphasis omitted; italicization in the original.)

To be sure, consolidation, as taken in the above senses, is allowed, as Rule 31 of the Rules of Court is entitled "Consolidation or Severance." And Sec. 1 of Rule 31 provides:

Section 1. *Consolidation*. – When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.