Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

ROMULO L. NERI,
Petitioner,

- versus -

SANDIGANBAYAN (FIFTH DIVISION) and PEOPLE OF THE PHILIPPINES,
Respondents.

G.R. No. 202243

Present:

VELASCO, JR., *J.*, Chairperson
PERALTA,
ABAD,
MENDOZA, and
LEONEN, *JJ.*

Promulgated:

AUG 07 2013

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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[1] 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[2] 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[3] National Broadband Network (NBN) Project, the Office of the Ombudsman (OMB), on May 28, 2010, filed with the Sandiganbayan two (2) criminal Informations, the first against Benjamin Abalos, for

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[1] *Rollo*, pp. 41-43. Approved by Associate Justices Roland B. Jurado, Alexander G. Gesmundo, and Alex L. Quiroz.

[2] Id. at 44-47.

[3] Stands for Zhing Xing Telecommunications Equipment, Inc.

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[4] 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 4th 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[5] 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.[6]

In the meantime, a pre-trial conference was conducted in the *Abalos* case following which the Fourth Division issued on September 17, 2010 a

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[4] Abalos, Jose Miguel T. Arroyo and Leandro R. Mendoza.

[5] The 6th witness, Edzel Regalado, concluded his testimony on June 23, 2011, records, Vol. 2, p. 119.

[6] Records, Vol. 2, pp. 135, 140.

Pre-Trial Order[7] 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.[8]

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.[9]

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**.[10] (Emphasis added.)

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[7] Id., Vol. 3, pp. 137-145.
[8] *Rollo*, p. 56.
[9] Id. at 85, Prosecution's Reply to the Opposition to Motion for Consolidation.
[10] Id. at 43.

According to the Fifth Division, citing *Domdom v. Sandiganbayan*,[11] 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.
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> [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.
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> [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.
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> [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.
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> [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

[11] G.R. Nos. 182382-83, February 24, 2010, 613 SCRA 528.

> [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.[12]

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 (4th) 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[13] 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 that 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.[14]

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*,

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[12] *Rollo*, pp. 12-13. Original in uppercase.

[13] Records, Vol. 3, pp. 182-184. Approved by Associate Justices Gregory S. Ong, Jose R. Hernandez, and Maria Cristina J. Cornejo.

[14] Id. at 184.

a compelling legal or constitutional issue raised requires the formulation of controlling principles to guide the bench, the bar and the public[15] or when, as here, the case is capable of repetition yet evading judicial review.[16] *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.[17]

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.[18] 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*)[19] (citations and emphasis omitted; italicization in the original.)

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[15] *Integrated Bar of the Philipopines v. Atienza*, G.R. No. 175241, February 24, 2010, 613 SCRA 518, 523.

[16] *David v. Macapagal-Arroyo*, G.R. Nos. 171396, etc., May 3, 2006, 489 SCRA 160, 215 (citations omitted); *Acop v. Guingona, Jr.*, G.R. No. 134855, July 2, 2002, 383 SCRA 577.

[17] No. L-71977, February 27, 1987, 148 SCRA 208, 212-213.

[18] *Republic v. Sandiganbayan (Fourth Division)*, G.R. No. 152375, December 13, 2011, 662 SCRA 152, 190; citing Wright and Miller, *Federal Practice and Procedure*, Civil 2d Sec. 2381, p. 427.

[19] Id. at 191-192.

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.

The counterpart, but narrowed, rule for criminal cases is found in Sec. 22, Rule 119 of the Rules of Court stating:

> Sec. 22. *Consolidation of trials of related offenses.* - Charges for offenses founded on the same facts or forming part of a series of offenses of similar character **may be tried jointly** at the discretion of the court. (Emphasis added.)

as complemented by Rule XII, Sec. 2 of the Sandiganbayan Revised Internal Rules which states:

> Section 2. *Consolidation of Cases*. – Cases arising from the same incident or series of incidents, or involving common questions of fact and law, may be consolidated in the Division to which the case bearing the lowest docket number is raffled.

Whether as a procedural tool to aid the court in dispatching its official business in criminal or civil cases, the rule allowing consolidation—in whatsoever sense it is taken, be it as a merger of several causes of actions/cases, in the sense of actual consolidation, or merely joint trial—is designed, among other reasons, to avoid multiplicity of suits, guard against oppression and abuse, attain justice with the least expense and vexation to the litigants.[20]

While the assailed resolution is silent as to the resultant effect/s of the consolidation it approved, there is nothing in the records to show that what the prosecution vied for and what the Fifth Division approved went beyond consolidation for trial or joint trial. This conclusion may be deduced from the underscored portion of the following excerpts of the resolution in question, thus:

> In its reply, the prosecution asserted that the rationale behind consolidation of cases is to promote expeditious and less expensive resolution of a controversy than if they **were <u>heard independently and separately</u>**. It is claimed that the [OMB] and [DOJ] have already requested the participation in the hearing of these cases of the ZTE executives, which will entail huge expenses if they will be **<u>presented separately for each case</u>**. x x x

[20] *Palanca v. Querubin*, Nos. L-29510-31, November 29, 1969, 30 SCRA 738, 745.

We agree with the prosecution.[21] (Emphasis added.)

Not to be overlooked is the fact that the prosecution anchored its motion for consolidation partly on the aforequoted Sec. 22 of Rule 119 which indubitably speaks of a joint trial.

Given the above perspective, petitioner should now disabuse himself of the unfounded notion that what the Fifth Division intended was a fusion into one criminal proceedings of the *Abalos* and *Neri* cases, where one is unidentifiable from the other, or worse, where he will be tried as co-accused in the *Abalos* case.

This thus brings us to the question of whether a consolidation of trial, under the factual and legal milieu it was ordered, is proper.

Jurisprudence has laid down the requisites for consolidation of trial. As held in *Caños v. Peralta*,[22] joint trial is permissible "where the [actions] arise from the same act, event or transaction, involve the same or like issues, and depend largely or substantially on the same evidence, provided that the court has jurisdiction over the cases to be consolidated and that a joint trial will not give one party an undue advantage or prejudice the substantial rights of any of the parties." More elaborately, joint trial is proper

> where the offenses charged are similar, related, or connected, or are of the same or similar character or class, or involve or arose out of the same or related or connected acts, occurrences, transactions, series of events, or chain of circumstances, or are based on acts or transactions constituting parts of a common scheme or plan, or are of the same pattern and committed in the same manner, or where there is a common element of substantial importance in their commission, or where the same, or much the same, evidence will be competent and admissible or required in their prosecution, and if not joined for trial the repetition or reproduction of substantially the same testimony will be required on each trial.[23]

In terms of its effects on the prompt disposition of cases, consolidation could cut both ways. It may expedite trial or it could cause delays. Cognizant of this dichotomy, the Court, in *Dacanay v. People*,[24] stated the dictum that "the resulting inconvenience and expense on the part of the government cannot not be given preference over the right to a speedy trial and the protection of a person's life, liberty or property." Indeed, the right to a speedy resolution of cases can also be affected by consolidation. As we intoned in *People v. Sandiganbayan*, a case involving the denial by the anti-graft court of the prosecution's motion to consolidate a criminal case for indirect bribery with another case for plunder, consolidation should be

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[21] *Rollo*, p. 42.

[22] 201 Phil. 422, 426 (1982); cited in *People v. Sandiganbayan*, G.R. No. 149495, August 21, 2003, 409 SCRA 419, 424.

[23] *Caños v. Peralta*, id. at 440.

[24] G.R. No. 101302, January 25, 1995, 240 SCRA 490, 493.

refused if it will unduly expose a party, private respondent in that instance, to totally unrelated testimonies, delay the resolution of the indirect bribery case, muddle the issues, and expose him to the inconveniences of a lengthy and complicated legal battle in the plunder case. Consolidation, the Court added, has also been rendered inadvisable by supervening events—in particular, if the testimonies sought to be introduced in the joint trial had already been heard in the earlier case.[25]

So it must be here.

Criminal prosecutions primarily revolve around proving beyond reasonable doubt the existence of the elements of the crime charged. As such, they mainly involve questions of fact. There is a question of fact when the doubt or difference arises from the truth or the falsity of the allegations of facts. Put a bit differently, it exists when the doubt or difference arises as to the truth or falsehood of facts or when the inquiry invites calibration of the whole gamut of evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation.[26]

Since conviction or acquittal in a criminal case hinges heavily on proof that the overt acts constituting, or the elements, of the crime were indeed committed or are present, allegations in the information are crucial to the success or failure of a criminal prosecution. It is for this reason that the information is considered the battle ground in criminal prosecutions. As stressed in *Matrido v. People*:

> From a legal point of view, and in a very real sense, it is of no concern to the accused what is the technical name of the crime of which he stands charged. It in no way aids him in a defense on the merits. That to which his attention should be directed, and in which he, above all things else, should be most interested, are the facts alleged. The real question is not did he commit the crime given in the law in some technical and specific name, but **did he perform the acts alleged in the body of the information in the manner therein set forth**.[27] (Emphasis supplied.)

The overt acts ascribed to the two accused which formed the basis of their indictments under the separate criminal charge sheets can be summarized as follows:

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[25] Supra note 22, at 425-426.

[26] *Santos v. Committee on Claims Settlement*, G.R. No. 158071, April 2, 2009, 583 SCRA 152, 159-160.

[27] G.R. No. 179061, July 13, 2009, 592 SCRA 534, 540.

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1. Directly or indirectly having financial or pecuniary interest in the business transaction between the Government of the Republic of the Philippines (GRP) and ZTE for the implementation of the NBN Project, which requires the review, consideration and approval by the accused, as then NEDA Director General;
2. Meeting, having lunch and playing golf with representatives and/or officials of the ZTE;
3. Meeting with then COMELEC Chairman Benjamin Abalos; and
4. Sending his emissary/representative, Engr. Rodolfo Noel Lozada, to meet 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.

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1. Having financial or pecuniary interest in the business transaction between the GRP and the ZTE for the implementation of the Philippines' NBN;
2. Attending conferences, lunch meetings and golf games with said ZTE officials in China, all expenses paid by them and socializing with them in China and whenever they were here in the Philippines;
3. Offering bribes to petitioner in the amount of PhP 200,000,000 and to Jose de Venecia III President and General Manager of AHI in the amount of USD 10,000,000, being also another proponent to implement said NBN Project of the Government; and
4. Arranging meetings with Secretary Leandro Mendoza of the Department of Transportation and Communications (DOTC).[29]

As can be gleaned from the above summary of charges, the inculpatory acts complained of, the particulars and specifications for each of the cases are dissimilar, even though they were allegedly done in connection with the negotiations for and the implementation of the NBN Project. Due to this variance, the prosecution witnesses listed in the pre-trial order in the *Neri* case are also different from the list of the people's witnesses lined up to testify in the *Abalos* case, albeit some names appear in both the pre-trial orders. This can be easily seen by a simple comparison of the list of witnesses to be presented in the cases consolidated. The witnesses common to both cases are underscored. Thus:

In *People v. Neri*, the following are named as witnesses,[30] viz:

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[28] *Rollo*, pp. 49, 50.
[29] Id. at 53-54.
[30] Records, Vol. 3, p. 12.

1. Benjamin Abalos
2. Jose de Venecia Jr.
3. Jose de Venecia III
4. Rodolfo Noel "Jun" Lozada
5. Dante Madriaga
6. Jarius Bondoc
7. Leo San Miguel
8. Sec. Margarito Teves
9. Representative of the Bureau of Immigration and Deportation;
10. Employees of the Wack Wack Golf and Country Club
11. Airline Representatives (2)
12. Raquel Desiderio – DOTC, Asec. Administrative and Legal Affairs
13. Atty. Frederick Fern Belandres, DOTC
14. Atty. Geronimo Quintos
15. Nilo Colinares
16. Elmer Soneja
17. Lorenzo Formoso
18. Records Custodian, DOTC
19. Senate Secretary or any of her duly authorized representative
20. Director General of the Senate Blue Ribbon Committee or any of his duly authorized representative
21. Representative of NEDA;
22. ZTE Officials
23. Ramon Sales
24. Hon. Gloria Macapagal-Arroyo
25. Atty. Jose Miguel Arroyo
26. Others.

In *People v. Abalos*, the following are the listed witnesses,[31] to wit:

1. Atty. Oliver Lozano
2. Mr. Jose De Venecia III
3. Engr. Rodolfo Noel Lozada
4. Engr. Dante Madriaga
5. Secretary Romulo L. Neri
6. Mr. Jarius Bondoc
7. Speaker Jose De Venecia, Jr.
8. Atty. Ernesto B. Francisco
9. Congresswoman Ana Theresa H. Baraquel
10. TESDA Chairman Emmanuel Joel J. Villanueva
11. Mr. Leo San Miguel
12. Secretary Margarito Teves
13. Atty. Raquel T. Desiderio
14. Atty. Frederick Fern M. Belandres
15. Atty. Geronimo V. Quintos

[31] *Rollo*, pp. 125-127.

16. Mr. Nilo Colinares
17. Mr. Elmer A. Soneja
18. Asst. Secretary Lorenzo Formoso
19. Atty. Harry L. Roque
20. Vice-President Teofisto T. Guingona, Jr.
21. Dr. Ma. Dominga B. Padilla
22. Fr. Jose P. Dizon
23. Mr. Roel Garcia
24. Mr. Bebu Bulchand
25. Mr. Renato Constantino, Jr.
26. Mr. Ferdinand R. Gaite
27. Mr. Guillermo Cunanan
28. Mr. Amado Gat Inciong
29. Mr. Rafael V. Mariano
30. Ms. Consuelo J. Paz
31. Atty. Roberto Rafael J. Pulido
32. Antonia P. Barrios, Director III, Senate Legislative Records & Archives Services
33. The Personnel Officer, Human Resource Management Office, Commission on Elections (COMELEC)
34. Representative/s from the Wack-Wack Golf and Country Club, Mandaluyong City
35. Representative/s from the Philippine Airlines (PAL)
36. Representative/s from Cathay Pacific Airways
37. Representative/s from the Cebu Pacific Airlines
38. Representative/s from the COMELEC
39. Representative/s from the National Economic & Development Authority (NEDA)
40. Representative/s from the Board of Investments
41. Representative/s from the Department of Trade and Industry (DTI)
42. Representative/s from the Department of Foreign Affairs (DFA)
43. Representative/s from the Bureau of Immigration
44. Representative/s from the National Bureau of Investigation (NBI)
45. Representative/s from the Securities and Exchange Commission (SEC)
46. Representative/s from the National Statistics Office (NSO)
47. Representative/s from the Embassy of the People's Republic of China to the Philippines
48. Representative/s from the Central Records Division, Office of the Ombudsman
49. Representative/s from the Department of Transportation and Communications (DOTC)
50. Representative/s from the Philippine Senate

The names thus listed in the pre-trial order in the *Abalos* case do not yet include, as aptly observed by the Fourth Division in its adverted October

19, 2012 Resolution,[32] additional names allowed under a subsequent resolution. In all, a total of at least 66 warm bodies were lined up to testify for the prosecution.

It can thus be easily seen that veritably the very situation, the same mischief sought to be avoided in *People v. Sandiganbayan*[33] which justified the non-consolidation of the cases involved therein, would virtually be present should the assailed consolidation be upheld. Applying the lessons of *People v. Sandiganbayan* to the instant case, a consolidation of the *Neri* case to that of *Abalos* would expose petitioner Neri to testimonies which have no relation whatsoever in the case against him and the lengthening of the legal dispute thereby delaying the resolution of his case. And as in *People v. Sandiganbayan*, consolidation here would force petitioner to await the conclusion of testimonies against Abalos, however irrelevant or immaterial as to him (Neri) before the case against the latter may be resolved—a needless, hence, oppressive delay in the resolution of the criminal case against him.

What is more, there is a significant difference in the number of witnesses to be presented in the two cases. In fact, the number of prosecution witnesses in the *Neri* case is just half of that in *Abalos*. Awaiting the completion in due course of the presentation of the witnesses in *Abalos* would doubtless stall the disposition of the case against petitioner as there are more or less thirty-five (35) prosecution witnesses listed in *People v. Abalos* who are not so listed in *People v. Neri*. In the concrete, this means, in the minimum, awaiting the completion of the testimonies of thirty-five (35) additional witnesses, whose testimonies are unrelated to the charges against him, before the case against petitioner may finally be disposed of, one way or another. Also, petitioner will be exposed to an extra thirty-five (35) irrelevant testimonies which even exceed those relating to his case, since the prosecution only has roughly about twenty-six (26) witnesses for his case. Further still, any delay in the presentation of any of the witnesses in *People v. Abalos* would certainly affect the speedy disposition of the case against petitioner. At the end of the day, the assailed consolidation, instead of contributing to the swift dispensation of justice and affording the parties a just, speedy and inexpensive determination of their cases, would achieve the exact opposite.

Before the Sandigabayan and this Court, petitioner has harped and rued on the possible infringement of his right to speedy trial should consolidation push through, noting in this regard that the *Neri* case is on its advanced stage but with the prosecution unable to continue further with its case after presenting six witnesses.

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[32] Records, Vol. 3, pp. 182-184.
[33] Supra note 22.

Petitioner's point is well-taken. In *Dacanay*, a case involving a request for separate trial instead of a joint trial, the Court upheld an accused's right to a speedy trial, guaranteed by Sec. 14 (2), Art. III of the Constitution, over the claim of the prosecution that a joint trial would make the resolution of the case less expensive.[34] In *Dacanay*, Dacanay moved for immediate and separate trial, which the People opposed on the ground that a separate trial, if approved, would entail a repetitive presentation of the same evidence instead of having to present evidence against Dacanay and his co-accused only once at the joint trial. According to the respondent therein, this will result in inconvenience and expense on the part of the Government,[35] the very same reasons given by the prosecution in the case at hand. There, as later in *People v. Sandiganbayan*,[36] We held that the rights of an accused take precedence over minimizing the cost incidental to the resolution of the controversies in question.

Clearly then, consolidation, assuming it to be proper owing to the existence of the element of commonality of the lineage of the offenses charged contemplated in Sec. 22 of Rule 119, should be ordered to achieve all the objects and purposes underlying the rule on consolidation, foremost of which, to stress, is the swift dispensation of justice with the least expense and vexation to the parties. It should, however, be denied if it subverts any of the aims of consolidation. And *Dacanay* and *People v. Sandiganbayan* are one in saying, albeit implicitly, that ordering consolidation—likely to delay the resolution of one of the cases, expose a party to the rigors of a lengthy litigation and in the process undermine the accused's right to speedy disposition of cases—constitutes grave abuse of discretion. Not lost on the Court of course and certainly not on the Sandiganbayan's Fourth Division is the resulting absurdity arising from the consolidation of trial where the accused (Neri) in one case would be the prosecution's main witness in the other case.

WHEREFORE, premises considered, the assailed Resolution of the Sandiganbayan Fifth Division dated February 3, 2012 in Criminal Case No. SB-10-CRM-0099 and its Resolution dated April 26, 2012 are hereby **REVERSED** and **SET ASIDE**. Let Criminal Case No. SB-10-CRM-0098 and Criminal Case No. SB-10-CRM-0099 proceed independently and be resolved with dispatch by the Divisions of the Sandiganbayan to which each was originally raffled.

No pronouncement as to costs.

SO ORDERED.

PRESBITERO J. VELASCO, JR.
Associate Justice

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[34] Supra note 24, at 493-494; see also *Mari v. Gonzales*, G.R. No. 187728, September 12, 2011, 657 SCRA 414, 423-426.

[35] *Dacanay*, id. at 493.

[36] Supra note 22, at 425.

WE CONCUR:

DIOSDADO M. PERALTA
Associate Justice

ROBERTO A. ABAD
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice