EN BANC

G.R. No. 241257 – PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, **v. BRENDO P. PAGAL a.k.a. "DINDO,"** *Accused-Appellant.*

Promulgated:
September 29, 2020

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CONCURRING OPINION

LEONEN, *J.*:

I concur with Associate Justice Alexander G. Gesmundo's *ponencia*. The assailed May 18, 2018 Decision of the Court of Appeals must be reversed and set aside. Accused-appellant Brendo P. Pagal a.k.a. "Dindo" must be acquitted of the charge of murder.

The resolution of this case centers on the proper appreciation and application of an accused's most basic rights: to be held to answer for a criminal offense only with due process of law,[1] and to be presumed innocent until the prosecution proves their guilt beyond reasonable doubt.[2] Failing compliance with these rights, acquittal inevitably ensues. Moreover, in proper cases, pending criminal proceedings must cease, foreclosing any further proceedings and absolving the accused of criminal liability.

From these, two pivotal doctrinal propositions may be identified. First, in appropriate cases where the continuation of the proceedings would perpetuate violations of an accused's constitutional rights, subsequent proceedings become pointless. Second, as a consequence of this inefficacy, a full dismissal that amounts to acquittal must ensue.

I

A basic, ineluctable precept underlies all criminal proceedings: that the prosecution carries the burden of proving an accused's guilt beyond reasonable doubt. Its case must rise on its own merits, not trusting on the weakness of the defense. This is a matter of due process. The prosecution's

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1 CONST., art. III, sec. 14(1) states:
SECTION 14. (1) No person shall be held to answer for a criminal offense without due process of law.

2 The Revised Rules of Criminal Procedure identifies this as the first of the rights of an accused during trial. Rule 115, Section 1(a) states that an accused has the right "[t]o be presumed innocent until the contrary is proved beyond reasonable doubt." This is in keeping with the 1987 Constitution which, in Article III, Section 14 (2) provides that "[i]n all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved."

failure to discharge its burden necessarily negates the accused's criminal liability. In *Macayan, Jr. v. People*:[3]

> This rule places upon the prosecution the task of establishing the guilt of an accused, relying on the strength of its own evidence, and not banking on the weakness of the defense of an accused. Requiring proof beyond reasonable doubt finds basis not only in the due process clause of the Constitution, but similarly, in the right of an accused to be "presumed innocent until the contrary is proved." "Undoubtedly, it is the constitutional presumption of innocence that lays such burden upon the prosecution." Should the prosecution fail to discharge its burden, it follows, as a matter of course, that an accused must be acquitted. As explained in *Basilio v. People of the Philippines*:
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> > We ruled in *People v. Ganguso*:
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> > > An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as, excluding the possibility of error, produce absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.
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> Well-entrenched in jurisprudence is the rule that the conviction of the accused must rest, not on the weakness of the defense, but on the strength of the prosecution. The burden is on the prosecution to prove guilt beyond reasonable doubt, not on the accused to prove his innocence.[4]

II

In the ordinary course of things, the prosecution completes its presentation of evidence. Only then do the accused present their evidence. From these, judgment is rendered, either convicting or acquitting the accused. This sequence of events confirms the prosecution's basic duty to establish guilt beyond reasonable doubt.

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3 756 Phil. 202 (2015) [Per J. Leonen, Second Division].

4 Id. at 213–214 citing CONST., art. III, sec. 1; CONST., art. III, sec. 14(2); *People v. Solayao*, 330 Phil. 811, 819 (1996) [Per J. Romero, Second Division]; and *Boac v. People*, 591 Phil. 508 (2008) [Per J. Velasco, Jr., Second Division].

Accordingly, at the appropriate stage of the proceedings—when it is manifest that the prosecution has failed to discharge its burden—the Revised Rules of Criminal Procedure facilitate a means through which the accused may be relieved of the ordeal of standing prolonged trial, sparing them from the vexation of continuing criminal prosecution. Rule 119, Section 23 provides:

> SECTION 23. Demurrer to evidence. — After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.
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> If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.
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> The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.
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> If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.
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> The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by certiorari before judgment.

The 1987 Constitution provides benchmarks that define how trial should be conducted. These are all designed to serve the accused's right to due process. They also confirm the prosecution's duty to secure a conviction through its own decorous, prompt, and disciplined efforts. Article III, Section 14 reads in full:

> SECTION 14. (1) No person shall be held to answer for a criminal offense without due process of law.
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> (2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

Article III, Section 14(1) articulates the demand of due process. Meanwhile, Section 14(2) spells out the prosecution's duty to establish guilt beyond reasonable doubt. It also identifies norms that serve the general, overarching principles of due process and guilt having to be shown by the prosecution itself: first, the right of an accused "to be heard by [him/her]self and counsel"; second, the need for an accused "to be informed of the nature and cause of the accusation against him [or her]"; third, the imperative of "a speedy, impartial, and public trial"; fourth, the right "to meet the witnesses face to face"; and fifth, the right "to have compulsory process to secure the attendance of witnesses and the production of evidence in his [or her] behalf."

These normative benchmarks are confirmed in Rule 115[5] of the Revised Rules of Criminal Procedure, which provides for an accused's rights during trial.

Ultimately, even when trial conforms to all of the Constitution's normative benchmarks, and the accused's rights during trial are respected, acquittal will ensue for as long as the prosecution is unable to establish guilt beyond reasonable doubt. This is the logical consequence of lack of proof beyond reasonable doubt despite the prosecution's potentially best efforts.

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[5] RULES OF COURT, Rule 115 provides:

RULE 115
Rights of Accused

SECTION 1. Rights of accused at the trial. — In all criminal prosecutions, the accused shall be entitled to the following rights:

(a) To be presumed innocent until the contrary is proved beyond reasonable doubt.
(b) To be informed of the nature and cause of the accusation against him.
(c) To be present and defend in person and by counsel at every stage of the proceedings, from arraignment to promulgation of the judgment. The accused may, however, waive his presence at the trial pursuant to the stipulations set forth in his bail, unless his presence is specifically ordered by the court for purposes of identification. The absence of the accused without justifiable cause at the trial of which he had notice shall be considered a waiver of his right to be present thereat. When an accused under custody escapes, he shall be deemed to have waived his right to be present on all subsequent trial dates until custody over him is regained. Upon motion, the accused may be allowed to defend himself in person when it sufficiently appears to the court that he can properly protect his right without the assistance of counsel.
(d) To testify as a witness in his own behalf but subject to cross-examination on matters covered by direct examination. His silence shall not in any manner prejudice him.
(e) To be exempt from being compelled to be a witness against himself.
(f) To confront and cross-examine the witnesses against him at the trial. Either party may utilize as part of its evidence the testimony of a witness who is deceased, out of or can not with due diligence be found in the Philippines, unavailable or otherwise unable to testify, given in another case or proceeding, judicial or administrative, involving the same parties and subject matter, the adverse party having the opportunity to cross-examine him.
(g) To have compulsory process issued to secure the attendance of witnesses and production of other evidence in his behalf.
(h) To have speedy, impartial and public trial.
(i) To appeal in all cases allowed and in the manner prescribed by law.

III

Jurisprudence has considered the effects of the prosecution's utter and abject inability to discharge its function in the midst of trial. When it is manifest that the prosecution—despite its competence and all reasonable opportunity being afforded to it—has all but abandoned its duty to prove an accused's guilt, it becomes unjust for one to continue to stand trial, or otherwise be put in jeopardy of having to be made criminally liable. "The Bill of Rights provisions of the 1987 Constitution were precisely crafted to expand substantive fair trial rights and to protect citizens from procedural machinations which tend to nullify those rights."[6]

This unjustness—borne not by the fault of the accused, but of those who should be dutifully pursuing the case against the accused—has led this Court to rule that delays and missteps not only during trial, but even in stages preceding trial proper, are fatal to the continued pursuit of criminal cases.

In *Tatad v. Sandiganbayan*,[7] this Court considered "inordinate delay" and how it justified the "radical relief" of dismissing a criminal complaint:

> In a number of cases, this Court has not hesitated to grant the so-called "radical relief" and to spare the accused from undergoing the rigors and expense of a full-blown trial where it is clear that he has been deprived of due process of law or other constitutionally guaranteed rights. Of course, it goes without saying that in the application of the doctrine enunciated in those cases, particular regard must be taken of the facts and circumstances peculiar to each case.[8]

In *Tatad*, this Court found that the manner by which the proceedings were conducted had been "politically motivated[,]"[9] ultimately running afoul of due process:

> We find the long delay in the termination of the preliminary investigation by the Tanodbayan in the instant case to be violative of the constitutional right of the accused to due process. Substantial adherence to the requirements of the law governing the conduct of preliminary investigation, including substantial compliance with the time limitation prescribed by the law for the resolution of the case by the prosecutor, is part of the procedural due process constitutionally guaranteed by the fundamental law. Not only under the broad umbrella of the due process clause, but under the constitutionally guarantee of "speedy disposition" of

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6 *Abadia v. Court of Appeals*, 306 Phil. 690, 698–699 (1994) [Per J. Kapunan, En Banc].

7 242 Phil. 563 (1988) [Per J. Yap, En Banc].

8 Id. at 573 citing *Salonga v. Cruz Pano*, 219 Phil. 402 (1985) [Per J. Gutierrez, En Banc]; *Mead v. Argel*, 200 Phil. 650 (1982) [Per J. Vasquez, First Division]; *Yap v. Lutero*, 105 Phil. 1307 (1959) [Per J. Concepcion, En Banc]; and *People v. Zulueta*, 89 Phil. 752 (1951) [Per J Bengzon, First Division].

9 Id. at 575.

> cases as embodied in Section 16 of the Bill of Rights (both in the 1973 and the 1987 Constitutions), the inordinate delay is violative of the petitioner's constitutional rights. A delay of close to three (3) years cannot be deemed reasonable or justifiable in the light of the circumstance obtaining in the case at bar. We are not impressed by the attempt of the Sandiganbayan to sanitize the long delay by indulging in the speculative assumption that "the delay may be due to a painstaking and grueling scrutiny by the Tanodbayan as to whether the evidence presented during the preliminary investigation merited prosecution of a former high-ranking government official." In the first place, such a statement suggests a double standard of treatment, which must be emphatically rejected. Secondly, three out of the five charges against the petitioner were for his alleged failure to file his sworn statement of assets and liabilities required by Republic Act No. 3019, which certainly did not involve complicated legal and factual issues necessitating such "painstaking and grueling scrutiny" as would justify a delay of almost three years in terminating the preliminary investigation. The other two charges relating to alleged bribery and alleged giving of unwarranted benefits to a relative, while presenting more substantial legal and factual issues, certainly do not warrant or justify the period of three years, which it took the Tanodbayan to resolve the case.[10]

Notably, the determination of inordinate delay has not been confined to whether there were underlying political considerations. In *Cagang v. Sandiganbayan, Fifth Division*:[11]

> Political motivation, however, is merely one of the circumstances to be factored in when determining whether the delay is inordinate. The absence of political motivation will not prevent this Court from granting the same "radical relief." Thus, in *Angchangco v. Ombudsman*, this Court dismissed the criminal complaints even if the petition filed before this Court was a petition for mandamus to compel the Office of the Ombudsman to resolve the complaints against him after more than six (6) years of inaction:
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> > Here, the Office of the Ombudsman, due to its failure to resolve the criminal charges against petitioner for more than six years, has transgressed on the constitutional right of petitioner to due process and to a speedy disposition of the cases against him, as well as the Ombudsman's own constitutional duty to act promptly on complaints filed before it. For all these past 6 years, petitioner has remained under a cloud, and since his retirement in September 1994, he has been deprived of the fruits of his retirement after serving the government for over 42 years all because of the inaction of respondent Ombudsman. If we wait any longer, it may be too late for petitioner to receive his retirement benefits, not to speak of clearing his name. This is a case of plain injustice which calls for the issuance of the writ prayed for.[12] (Citations omitted)

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[10] Id. at 575–576.

[11] G.R. Nos. 206438, 206458, and 210141–42, July 31, 2018, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64581> [Per J Leonen, En Banc].

[12] Id.

Cagang further clarified that in "determining whether inordinate delay exists, a case is deemed to have commenced from the filing of the formal complaint and the subsequent conduct of the preliminary investigation."[13] It adds:

> What may constitute a reasonable time to resolve a proceeding is not determined by "mere mathematical reckoning." It requires consideration of a number of factors, including the time required to investigate the complaint, to file the information, to conduct an arraignment, the application for bail, pre-trial, trial proper, and the submission of the case for decision. Unforeseen circumstances, such as unavoidable postponements or force majeure, must also be taken into account.
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> . . . .
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> The determination of whether the delay was inordinate is not through mere mathematical reckoning but through the examination of the facts and circumstances surrounding the case. Courts should appraise a reasonable period from the point of view of how much time a competent and independent public officer would need in relation to the complexity of a given case. If there has been delay, the prosecution must be able to satisfactorily explain the reasons for such delay and that no prejudice was suffered by the accused as a result. The timely invocation of the accused's constitutional rights must also be examined on a case-to-case basis.[14] (Citations omitted)

Since *Tatad*, many other cases have similarly considered inordinate delay and how it justified the "radical relief" of dismissing a case: *Angchangco, Jr. v. Ombudsman*,[15] *Duterte v. Sandiganbayan*,[16] *Roque v. Ombudsman*,[17] *Cervantes v. Sandiganbayan*,[18] *Lopez, Jr. v. Ombudsman*,[19] *Licaros v. Sandiganbayan*,[20] *People v. SPO4 Anonas*,[21] *Enriquez v. Ombudsman*,[22] *People v. Sandiganbayan, First Division*,[23] *Inocentes v. People*,[24] *Almeda v. Ombudsman*,[25] *People v. Sandiganbayan, Fifth Division*,[26] *Torres v. Sandiganbayan*,[27] and *Remulla v. Sandiganbayan*.[28]

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13 Id.
14 Id.
15 335 Phil. 766 (1997) [Per J. Melo, Third Division].
16 352 Phil. 557 (1998) [Per J. Kapunan, Third Division].
17 366 Phil. 368 (1999) [Per J. Panganiban, Third Division].
18 366 Phil. 602 (1999) [Per J. Pardo, First Division].
19 417 Phil. 39 (2001) [Per J. Gonzaga-Reyes, Third Division].
20 421 Phil. 1075 (2001) [Per J. Panganiban, En Banc].
21 542 Phil. 539 (2007) [Per J. Sandoval-Gutierrez, First Division].
22 569 Phil. 309 (2008) [Per J. Sandoval-Gutierrez, First Division].
23 723 Phil. 444 (2013) [Per J. Bersamin, First Division].
24 789 Phil. 318 (2016) [Per J. Brion, Second Division].
25 791 Phil. 129 (2016) [Per J. Del Castillo, Second Division].
26 791 Phil. 37 (2016) [Per J. Peralta, Third Division].
27 796 Phil. 856 (2016) [Per J. Velasco, Jr., Third Division].
28 808 Phil. 739 (2017) [Per J. Mendoza, Second Division].

IV

As in those cases, the prosecution's sheer inaction here means that it has failed to diligently and timely pursue its case. Such failure amounts to a violation of an accused's constitutional rights, warranting the "radical relief" of putting an end to the proceedings.

The prosecution failed to establish accused-appellant's guilt despite having multiple opportunities to do so. The *ponencia* recounts the material incidents in detail: For over eight months, hearings were repeatedly set for the presentation of the prosecution's evidence. Yet, not once did the prosecution present a witness.[29] The *ponencia*'s summation of the prosecution's own fatal negligence hits the nail on its head:

> This is not a situation where the prosecution was wholly deprived of the opportunity to perform its duties under the 2000 Revised Rules that would warrant a remand. In this case, the prosecution was already given a reasonable opportunity to prove its case against accused-appellant. Regrettably, the State squandered its chances to the detriment of accused-appellant. If anything, the State, given its vast resources and awesome powers, cannot be allowed to vex an accused with criminal prosecution more than once. The State should, first and foremost, exercise fairness.[30]

The prosecution's lackadaisical attitude was what led to its failure to establish its case. It had its chance and blew it. To give the prosecution a second chance despite its demonstrated negligence would be unfairly generous to it. It would give it an unfair advantage, an opportunity to win a case that it had lost on its own.

More than being overly generous to the prosecution, it would be a violation of accused-appellant's right to due process and to be deemed innocent unless the prosecution is able to establish his guilt beyond reasonable doubt. It would be a dangerous precedent that will, in the future, enable cavalier prosecution at the expense of our cherished civil liberties.

V

This Court cannot afford to be distracted by the coincidence that accused-appellant happened to have made a guilty plea. This is not the point on which the case turns. I echo the *ponencia*'s words that "the conviction of the accused shall be based solely on the evidence presented by the prosecution. The improvident plea of guilty by the accused is negligible."[31] Whichever way the accused pleads during arraignment, their right to be

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29 Ponencia, p. 2.
30 Id. at 26.
31 Id. at 23.

presumed innocent—along with the prosecution's concomitant duty to establish guilt beyond reasonable doubt—remains. The nature of a criminal proceeding as one where the burden of proof lies in the prosecution is not altered by the plea that the accused makes.

Some members of this Court maintain that the improvidence of accused-appellant's guilty plea should entail the remand of the case to the trial court.[32] I maintain reservations to this. It is a potentially dangerous proposition that amounts to our justice system turning a blind eye to the inherently unjust, even possibly outright damning, manner by which the accused are induced to declare their guilt. Consistent with due process and the prosecution's burden, improvident pleas should be viewed with immense distrust, not as an opportunity for the prosecution to reset its game plan.

Improvident pleas of guilt bring to mind the same considerations of being untrustworthy as those that, in the classic case of *Miranda v. Arizona*,[33] had led the United States Supreme Court—and our own legal system, following *Miranda*'s example—to maintain that confessions of guilt obtained under dubious circumstances deserve no credence and are inadmissible. Of course, the circumstances in *Miranda* were different, having involved admissions obtained during custodial investigation. This case involves an acknowledgment of guilt obtained in open court, in the presence of a judge.

Yet, that difference actually makes an improvident plea even more problematic. Officers conducting custodial investigation may be expected to be inclined to pursue an accused's guilt. Of course, this does not excuse the use of wrongful methods in custodial investigation, but at least it accounts for it. A judge, on the other hand, is duty bound to proceed with utmost care and impartiality. That an improvident plea was obtained under the watch of a supposedly diligent and fair judge invites greater distrust. All the more, the yielded plea should carry no weight and cannot induce subsequent action.

The members of this Court who urge a remand also assert that it will address a potential miscarriage of justice suffered by the prosecution.[34] I take exception to giving the prosecution here a chance to rebuild its case owing to how its strategy or vigor may have been affected by accused-appellant's plea.[35] I reiterate that its duty to establish guilt beyond reasonable doubt remained the same regardless of the plea entered by accused-appellant. The constitutional imperative is not weakened by an accused's posture.

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32 J. Perlas-Bernabe, Dissenting Opinion, pp. 7–8; J. Zalameda, Dissenting Opinion, pp. 4–5.

33 384 U.S. 436 (1966).

34 J. Zalameda, Dissenting Opinion, pp. 4–5; J. Perlas-Bernabe, Dissenting Opinion, pp. 7–8.

35 J. Perlas-Bernabe, Dissenting Opinion, pp. 7–8.

It is well to disabuse prosecutors, law enforcers, and similarly situated officers of the notion that their work is made easier by an accused's declaration of liability. Our Constitution wisely maintains the presumption of innocence—regardless of antecedent circumstances, such as supposed admissions of guilt—precisely to keep law enforcement and the prosecution on their toes, that they may proceed only with utmost care. The same injunction applies to the Judiciary, that it may render judgments of conviction only when warranted by proof beyond reasonable doubt.

The potential miscarriage of justice suffered by an accused wrongly convicted is far greater than that which lackadaisical prosecution stands to suffer. This is granting that it can even be called a "miscarriage of justice" on the part of negligent prosecution. Our Bill of Rights is a bundle of protections adopted with the intent of guarding against the State's excesses. The State has immense resources and unparalleled competencies at its disposal. Against these, individuals can only count on the State's temperance and forthrightness. In discharging its judicial function, this Court must see to the protection of individuals, rather than the inordinate enabling of government when it must face the consequences if its own indolence.

VI

Attention has also been called to the material adduced during the preliminary investigation.[36] However, it is dangerous for this Court to make an independent consideration of what transpired in and what was adduced during the prior stage of preliminary investigation, when its real task is to appraise the consequences of the how the trial itself was conducted. Although related, preliminary investigation and trial are distinct processes. In this regard, as the *ponencia* notes, "there is nothing in the [case] records that would show the guilt of accused-appellant."[37] The prosecution's case should stand on its own during trial. For this Court to go out of its way to bring into the equation what transpired during preliminary investigation—particularly at this late juncture—runs the risk of this Court making itself a surrogate for the prosecution, where it is already making its own case to convict accused-appellant.

If at all, the supposed strength of inculpatory matters considered during preliminary investigation only makes things worse for the prosecution, whose abject inaction during trial was blatant. If, indeed, there had been a solid case against accused-appellant as adduced during

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[36] J. Zalameda, Dissenting Opinion, pp. 3–4; J. Lazaro-Javier, Dissenting Opinion, p. 2.
[37] Ponencia, p. 26.

preliminary investigation, it is more damning that the prosecution bungled its chance at the proper opportunity to demonstrate its case to the trial court.

At this point, accused-appellant's guilty plea has been used as nothing more than a smokescreen to hide the prosecution's own dismal and inexcusable negligence. It is not this Court's desire to see crimes go unaddressed. However, it is our primordial duty to uphold constitutional rights. This duty compels us to rule for an acquittal at every instance that the prosecution fails to discharge its burden. For whatever unsavory consequences, if there be any, the prosecution need only look at itself. It only has itself to blame for bungling the chance to win its case. It cannot look to this Court to bend the standards—anchored on no less than the Constitution—to afford it another shot at doing what it has already shown itself incapable of accomplishing.

ACCORDINGLY, I vote that the Court of Appeals' May 8, 2018 Decision in CA-G.R. CR-HC No. 01521 be **REVERSED and SET ASIDE**, and that accused-appellant Brendo P. Pagal a.k.a. "Dindo" be **ACQUITTED** of the charge of murder.

MARVIC M.V.F. LEONEN
Associate Justice

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EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court