

REPUBLIC OF THE PHILIPPINES
Sandiganbayan
QUEZON CITY

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CRIM. CASE NO. SB-13-CRM-0908

- versus -

PRESENT:

**PONFERRADA, J.
MIRANDA, &
MUSNGI,* JJ.**

MARIANO C.J. MARTINEZ,
Accused.

Promulgated:

August 22, 2017 / *md*

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R E S O L U T I O N

This resolves the following: (1) Motion for Extension of Time to File Formal Offer of Evidence dated June 19, 2017, of the prosecution; (2) Motion for Reconsideration dated June 23, 2017, of the prosecution; (3) Comment/ Opposition to the Prosecution's Motion for Extension of Time to file Formal Offer of Evidence dated June 27, 2017, of accused Martinez; and (4) Comment/ Opposition to the Prosecution's Motion for Reconsideration dated July 6, 2017, of accused Martinez.

In its Motion for Reconsideration, the prosecution seeks to reconsider the Order of the Court dated June 14, 2017, that ordered it to formally offer its exhibits within five (5) days and gave the accused a similar period to submit his comments and/or objections. The prosecution prays that the private complainant, Victor Lua, be compelled to appear and to testify in this case, and that he be directed to explain why he should not be cited in contempt of Court for disobeying the subpoena issued to him. Pending resolution of its

* Special Member in view of the vacancy of the vacancy in the Sixth Division, per Administrative Order No. 124-2017 dated April 4, 2017.

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motion for reconsideration; the prosecution also prays that the filing of the formal offer of evidence be deferred.

In its opposition, accused Martinez claims that the prosecution's motion for reconsideration be denied because the prosecution had been given enough time to present its witnesses and that out of the six trial dates, it was able to present only one witness in one trial date. Accused Martinez points out that the unavailability of one witness should not be used as a ground for postponement of the scheduled hearing since there are still other witnesses who can be presented. Invoking the right of the accused to speedy trial, accused Martinez maintains that the prosecution has already been given its day in court which, however, it failed to maximize.

The Court denies the motion for reconsideration.

Upon perusal of the records of this case, it appears that as early as March 24, 2017, when the prosecution moved for continuance of the proceedings on the ground that it cannot locate its witnesses, the Court has already warned the prosecution that if it does not present its witnesses in the next settings allotted to it, the prosecution shall be deemed to have waived their presentation. As it is, the prosecution was already given ample time and opportunity to present its witnesses, and despite the Court's warnings, it failed to do so. Hence, the Court is constrained to consider it as a waiver on the part of the prosecution and to terminate the presentation of its testimonial evidence.

Anent its motion to cite Victor Lua in contempt of court, the prosecution is well reminded of the procedural requirements under Section 3, Rule 71 of the Revised Rules of Civil Procedure, before the Court can take action thereon. *"To be sure, since an indirect contempt charge partakes the nature of a criminal charge, conviction cannot be had merely on the basis of written pleadings. A respondent in a contempt charge must be served with a copy of the motion/petition. Unlike in civil actions, the Court does not issue summons on the respondent. While the respondent is not required to file a formal answer similar to that in ordinary civil actions, the court must set the contempt charge for hearing on a fixed date and time on which the respondent must make his appearance to answer the charge. On the date and time of the hearing, the court shall proceed to investigate the charges and consider such answer or testimony as the respondent may make or offer. The mode of procedure and rules of evidence therein are assimilated to criminal prosecutions. If he fails to appear on that date after due notice without justifiable reason, the court may order his arrest, just like the accused in a criminal case who fails to appear when so required. The court does not declare the respondent in a contempt charge in default."*¹

Thus, the motion for contempt shall be treated independently from the proceedings of this case.

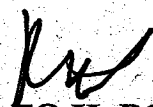
¹ *Esperida vs. Jurado, Jr., G.R. No. 172538, April 25, 2012*

[Handwritten signatures]

WHEREFORE, the prosecution's motion for reconsideration is **DENIED**. However, in the interest of justice, for the last time, the prosecution is given ten (10) days from receipt hereof to formally offer its exhibits, and the defense is given a similar period of ten (10) days from receipt thereof to file its comments/objections. If the prosecution fails to formally offer its exhibits within the said period, it shall be deemed to have waived its right to do so, and the Court shall consider the prosecution to have rested its case.

As regards the Motion for Contempt, let copy of the motion be served to Victor Lua at his given address and let the same be set on November 16, 2017, at 8:30 in the morning. Let notice be sent for him to appear on said setting.

SO ORDERED.

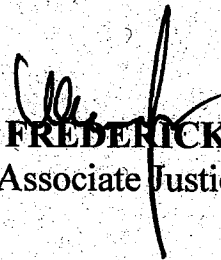


RODOLFO H. PONFERRADA

Associate Justice
Chairperson



KARL B. MIRANDA
Associate Justice



MICHAEL FREDERICK L. MUSNGI
Associate Justice