



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-16-CRM-1207 and 1208**
Plaintiff, For: Violation of Section 3(b)
of R.A. No. 3019

Present


- versus -

FERNANDEZ, SJ, J.,
Chairperson
MIRANDA, J. and
TRESPESES,* J.

AL SANCHEZ VITANGCOL III,
ET AL.,

Accused.

Promulgated:

APR 24 2018 

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RESOLUTION

FERNANDEZ, SJ, J.

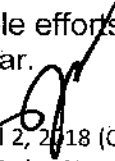
This resolves the prosecution's *Motion to Authorize the Presentation of Testimonial Evidence by Electronic Means*.¹

In its Motion, the prosecution prays that this Court allow Mr. Josef Husek (Mr. Husek) and Amb. Josef Rychtar (Amb. Rychtar) to testify via real time video conferencing. It avers:

1. The present cases involve alleged extortion attempts of the accused against Mr. Husek and Amb. Rychtar. Therefore, their respective testimonies are vital to the prosecution of the present cases.
2. It had exhausted all reasonable efforts to compel the attendance of Mr. Husek and Amb. Rychtar.

* The incident was submitted for resolution on April 2, 2018 (Order dated March 19, 2018); In view of the vacancy in the Sixth Division (Per Administrative Order No. 071-2018 dated February 1, 2018; *Revised Internal Rules of the Sandiganbayan*, Rule XII, Sec. 3)

¹ Dated March 12, 2018; Record, Vol. 2, pp. 283-305




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- a. It requested the Department of Foreign Affairs (DFA) to coordinate with its counterpart in the Czech Republic regarding the subpoenas issued to said witnesses.
 - b. The Czech Republic responded that it cannot accommodate the DFA's request due to the absence of any mutual legal assistance treaty or reciprocity agreement on criminal matters between the Republic of the Philippines and the Czech Republic.
3. Mr. Husek cannot attend the hearings in the present cases by reason of his health condition and business responsibilities in his home country. On the other hand, Amb. Rychtar cannot attend the hearings because of his responsibilities as Czech Ambassador to Chile. However, both Mr. Husek and Amb. Rychtar expressed their willingness to testify via video conferencing.
 4. Sec. 1, Rule 10 of the Rules on Electronic Evidence,² as expanded to apply to criminal cases,³ allows the presentation of testimonial evidence by electronic means.
 5. If allowed to testify via video conferencing, Mr. Husek and Amb. Rychtar will give their testimonies within the compound of the Philippine Embassy in the Czech Republic and Chile, respectively. They will be duly sworn to by the consul and/or a duly authorized representative of the Philippines with the power to administer oaths.
 6. The accused' right to confront and cross-examine the witness will not be violated. The video conferencing will be conducted in real time using the latest available technology. Hence, the Court will be able to observe the demeanor of the witnesses.

During the hearing set on March 19, 2018, the accused were given ten (10) days within which to file their respective Comment/Opposition to the prosecution's Motion.⁴

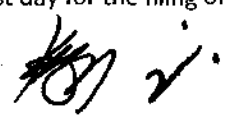
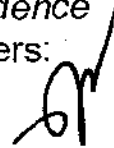
In his *Comment/Opposition (To the Prosecution's Motion to Authorize the Presentation of Testimonial Evidence by Electronic Means)*,⁵ accused Al Sanchez Vitangcol III counters:

² A.M. No. 01-7-01-SC

³ A.M. No. 01-7-01-SC Re: Expansion of the Coverage of the Rules on Electronic Evidence dated September 24, 2002

⁴ Order dated March 19, 2018; March 29, 2018 being a legal holiday, the last day for the filing of the Comment/Opposition was on April 2, 2018.

⁵ Dated March 27, 2018; Record, Vol. 2, pp. 316-325



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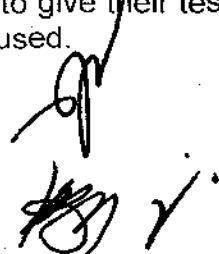
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1. Although the Supreme Court issued the Resolution dated September 24, 2002, expanding the coverage of the Rules on Electronic Evidence to criminal cases, it was held in *Ang v. Court of Appeals*⁶ that said Rules do not apply to criminal cases.
2. Conversely, in the later case of *People v. Enojas*,⁷ relied upon by the prosecution, the Supreme Court affirmed the applicability of the Rules on Electronic Evidence to criminal cases. However, *Enojas* is not authoritative on the issue of the taking of testimonial evidence by electronic means. The issue in that case is the admissibility of text messages sent through a mobile phone.
3. Sec. 2, Rule 10 of the Rules on Electronic Evidence contemplates a situation where the examination of a witness by electronic means is done within the Philippines, or within the court's jurisdiction.
4. If the respective testimonies of Mr. Husek and Amb. Rychtar are as vital as the prosecution claims, then it should have prepared for their testimonies as early as a year ago, not when it had already spent all the hearing dates allotted to it.
5. The prosecution became aware of the Czech Republic's objection to taking the testimonies of Mr. Husek and Amb. Rychtar as early as January 2017. In the letter dated January 16, 2017, the Director of the International Department for Criminal Matters of the Ministry of Justice of the Czech Republic set forth the conditions for the grant of the prosecution's request for mutual legal assistance. However, more than one (1) year after the receipt of the letter, the prosecution has not complied with any of the conditions. This belies the prosecution's claim that it has exhausted all reasonable efforts to compel the attendance of Mr. Husek and Amb. Rychtar.
6. The prosecution has not presented any proof to support its allegations of Mr. Husek and Amb. Rychtar's inability to make a trip to the Philippines for the purpose of testifying in the present cases.
7. The prosecution has not presented the emails showing that Mr. Husek and Amb. Rychtar are willing to testify in the present cases.
8. Allowing Mr. Husek and Amb. Rychtar to give their testimony by electronic means will prejudice the accused.

⁶ G.R. No. 182835, April 20, 2010

⁷ G.R. No. 204894, March 10, 2014



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- a. Neither the Court nor the accused will have a chance to observe the actual atmosphere in the venue.
- b. The Court will not be able to closely and personally observe the demeanor of the witnesses while they are testifying.
- c. There will be no way of telling if the witnesses are being coached by other people in the venue.
- d. Mr. Husek and Amb. Rychtar cannot be held criminally responsible for any falsehood they may make while testifying in the manner proposed by the prosecution. In fact, a criminal complaint for perjury against Mr. Rychtar is pending before the Public Prosecutor's Office in Mandaluyong City. The preliminary investigation could not proceed because the subpoena could not be served upon Amb. Rychtar, who is no longer in the Philippines.

This Court did not receive accused Wilson Tigno De Vera's Comment/Opposition within the period given for the filing of the same.

THE COURT'S RULING

The Court resolves to deny the prosecution's motion.

First, the issue of whether or not Rule 10 of the Rules on Electronic Evidence applies to criminal cases.

The general rule is that the examination of a witness must be done orally in open court. Sec. 1, Rule 132 of the Rules of Court provides:

Sec. 1. Examination to be done in open court. – The examination of witnesses presented in a trial or hearing shall be done in open court, and under oath or affirmation. Unless the witness is incapacitated to speak, or the question calls for a different mode of answer, the answers of the witness shall be given orally.

(underscoring supplied)

In *Go v. People*,⁸ the Supreme Court explained that the reason for this is to protect the constitutionally guaranteed rights of the accused – whose liberty is at stake – to a public trial, and to meet the

⁸ G.R. No. 185527, July 18, 2012

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witnesses face to face.⁹ While this is the general rule, it is not without exceptions. *Viz.*:

The examination of witnesses must be done orally before a judge in open court. This is true especially in criminal cases where the Constitution secures to the accused his right to a public trial and to meet the witnesses against him face to face. The requirement is the "safest and most satisfactory method of investigating facts" as it enables the judge to test the witness' credibility through his manner and deportment while testifying. It is not without exceptions, however, as the Rules of Court recognizes the conditional examination of witnesses and the use of their depositions as testimonial evidence in lieu of direct court testimony.

(underscoring supplied)

Among the exceptions to the general rule include examination of witnesses under Sections 12, 13 and 15, Rule 119 of the Rules of Court,¹⁰ where depositions may be used in lieu of direct examination in court during trial. Likewise, Sections 23 to 27 of the Rule on Examination of a Child Witness¹¹ allow the exclusion of the public and/or the accused during the examination of a child witness.

The prosecution contends that Sec. 1, Rule 10 of the Rules on Electronic Evidence is also an exception to the general rule. This Court is inclined to agree.

The Rules on Electronic Evidence originally applied only to civil cases, and quasi-judicial and administrative cases.¹² The coverage of said Rules was expanded to include criminal cases in A.M. No. 01-7-01-SC, *Re: Expansion of the Coverage of the Rules on Electronic Evidence* dated September 24, 2002.¹³ Sec. 2, Rule 1 of the Rules on

⁹ *Constitution. Art. III, Sec. 14. (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. (underscoring supplied)

¹⁰ Taking of depositions in criminal cases

¹¹ Sec. 23. Excluding the public; Sec. 24. Persons prohibited from entering and leaving courtroom; Sec. 25. Live-link television testimony in criminal cases where the child is a victim or a witness; Sec. 26. Screens, one-way mirrors, and other devices to shield child from the accused; and Sec. 27. Videotaped deposition.

¹² Sec. 2, Rule 1

¹³ In *Ang v. Court of Appeals* (G.R. No. 182835, April 20, 2010), the Supreme Court stated that the Rules on Electronic Evidence do not apply to criminal actions. However, in the more recent case of *People v. Enojas*

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Electronic Evidence, as amended, does not provide for any exception to the applicability of the Rules on Electronic Evidence to criminal cases. In the absence of any pronouncement of the Supreme Court that certain provisions of the said Rules do not apply to criminal cases, the entirety of the Rules on Electronic Evidence, including Rule 10¹⁴ is deemed to apply to criminal cases.

Having established that Rule 10 of the Rules on Electronic Evidence applies to criminal cases, the next issue to be resolved is whether or not Mr. Husek and Amb. Rychtar may be allowed to give their respective testimonies via video conferencing. This Court rules in the negative.

Sec. 1, Rule 10 of the Rules on Electronic Evidence does not specifically provide for allowing a witness to testify by means of video conferencing, but the phrase "presentation of testimonial evidence by electronic means" is broad enough to include the presentation of testimonial evidence through video conferencing. The provision reads:

Sec. 1. *Electronic testimony.* – After summarily hearing the parties pursuant to Rule 9 of these Rules, the court may authorize the presentation of testimonial evidence by electronic means. Before so authorizing, the court shall determine the necessity for such presentation and prescribe terms and conditions as may be necessary under the circumstance, including the protection of the rights of the parties and witnesses concerned.

(emphasis and underscoring supplied)

Under Sec. 1, the Court may authorize the presentation of testimonial evidence by electronic means – including video conferencing – after determining the necessity for such presentation. Therefore, the Court may allow Mr. Husek and Amb. Rychtar to testify via video conferencing if it is shown that the same is necessary. Here, the prosecution failed to convince this Court that such means of presentation of testimonial evidence is necessary.

Considering that the accused, in the presence of Amb. Rychtar, allegedly requested or demanded from INEKON representatives, including Mr. Husek, money in the amount of \$30 million,¹⁵ and a 60%-

(G.R. No. 204894, March 10, 2014), the Supreme Court recognized the applicability of the Rules on Electronic Evidence to criminal cases. Both cases involve text messages, not testimonial evidence.

¹⁴ Examination of witnesses

¹⁵ Crim. Case No. SB-16-CRM-1207

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40% sharing agreement,¹⁶ it appears that the respective testimonies of Mr. Husek and Amb. Rychtar are vital to the prosecution of the present cases. However, the prosecution failed to show that Mr. Husek and Amb. Rychtar cannot come to the Philippines for the purpose of testifying in the present cases.

According to the prosecution, Mr. Husek cannot attend the hearing in the present cases because of his health condition and his business responsibilities in his home country, while Amb. Rychtar cannot attend the same due to his responsibilities as Czech Ambassador to Chile. The prosecution, however, failed to substantiate these bare allegations. It appears that the prosecution was able to communicate with Mr. Husek and Amb. Rychtar by email, but it did not present their correspondence showing that it attempted, but ultimately failed to make arrangements with them for traveling to the Philippines for the purpose of attending the hearing in the present cases. Neither did the prosecution show how the aforementioned reasons render Mr. Husek and Amb. Rychtar absolutely incapable of coming to the Philippines to give their respective testimonies.

In fine, the wording of Sec. 1, Rule 10 of the Rules on Electronic Evidence is sufficiently broad as to include the presentation of evidence by means of video conferencing. However, the prosecution failed to establish the necessity of employing such means, as required by the said provision.

WHEREFORE, the prosecution's Motion is hereby **DENIED** for lack of merit.

The settings are maintained to allow the prosecution to present its witnesses in person.

SO ORDERED.

Handwritten signatures and initials, including a large signature, a smaller signature, and the letter 'i'.

¹⁶ Crim. Case No. SB-16-CRM-1208

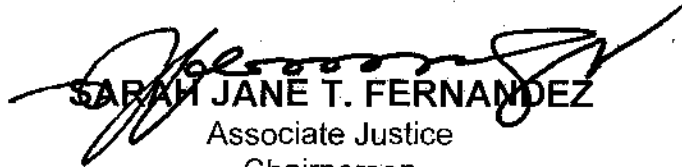
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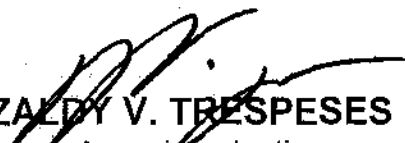
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SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA
Associate Justice


ZALDY V. TRESPESSES
Associate Justice