



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-12-CRM-0163

For: Violation of Article 210 of the
Revised Penal Code (Direct Bribery)

SB-13-CRM-0129

For: Violation of Section 7(d) of
R.A. No. 6713 (Code of Conduct
and Ethical Standards for Public
Officials and Employees)

- versus -

Present

FERNANDEZ, SJ, J.,

Chairperson

FERNANDEZ, B, J.* and

CORPUS-MAÑALAC, J.**

ROCKY F. CAPONONG,

Accused.

Promulgated:

JUN 27 2018

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves the *Urgent Motion to Reiterate Motion for Reconsideration and to Reiterate Motion for the Issuance of Subpoena and Subpoena Duces Tecum Adtestificandum* [sic] *Upon Arnel Tugade and Manifestations*¹ filed by accused Rocky F. Caponong.

The accused prays that this Court (1) reconsider and set aside the Resolution dated May 28, 2018,² (2) compel witness Arnel Tugade

* J. Fernandez, B. participated in the Resolution dated May 28, 2018 (Per Administrative Order No. 222-2016 dated September 13, 2017; *Revised Internal Rules of the Sandiganbayan*, Rule IX, Sec. 2[a])

** J. Mañalac participated in the Resolution dated May 28, 2018 (Per Administrative Order No. 058-2018 dated January 29, 2018; *Revised Internal Rules of the Sandiganbayan*, Rule IX, Sec. 2[a])

¹ Dated June 5, 2018; Record, pp. 247-252

² Record, Vol. 2, pp. 241-244

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to appear in Court for the continuation of his cross-examination, and/or (3) cite witness Tugade in contempt of court. He avers:

1. The denial of his *Motion for Leave of Court to File Demurrer to Evidence* is premature because the cross-examination of witness Tugade has not yet been completed.
2. The prosecution committed grave error and violations of his right to due process when it rested the case notwithstanding the fact that cross-examination of witness Tugade has not yet been terminated.
3. The prosecution's refusal to present the camera used by witness Tugade during the entrapment operation is tantamount to the suppression of evidence.
4. Witness Tugade's deliberate failure and refusal to appear before this Court is a ground for citing him for contempt of court.
5. He cannot commence the presentation of his evidence because the cross-examination of witness Tugade has not yet been terminated.

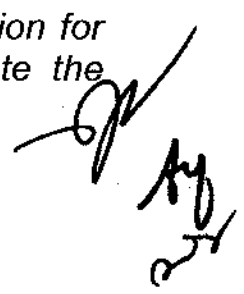
During the hearing on June 20, 2018, the prosecution countered that the accused Motion should be denied on the grounds that (1) such Motion is a second motion for reconsideration – a prohibited motion; and (2) his arguments are a mere reiteration of those in his first motion for reconsideration, which had been passed upon by the Court in the Resolution dated May 28, 2018.

THE COURT'S RULING

This Court considers the accused' *Urgent Motion* as his second motion for reconsideration and resolves to deny the same.

From a reading of the accused' Motion, it appears that the arguments therein are a mere reiteration or rehash of those in his *Urgent Motion for Reconsideration to the Resolution of the Honorable Court Dated April 11, 2018 and to Cite Arnel Tugade in Contempt of Court*³ and his *Reply to Prosecution's Comment/Opposition to the Accused Motion for Reconsideration (to the Resolution of the Honorable Court) dated April 11, 2018, Denying Accused Motion for Leave to File Demurrer to Evidence and Motion to Reiterate the*

³ Record, Vol. 2, pp. 215-218



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*Issuance of Subpoena Upon Arnel Tugade and to Bring With Him the Large Camera to be Viewed in Open Court for the Continuation of Tugade's Cross Examination and Manifestations,*⁴ all of which had been judiciously considered, and found to be without merit by this Court in the Resolution dated May 28, 2018.

The accused' claim that the cross-examination of witness Tugade has not yet been completed is belied by his own acts. The accused, in his *Motion for Leave of Court to File Demurrer to Evidence,*⁵ admitted that the prosecution had closed the presentation of its evidence-in-chief and made its formal offer of evidence. He never raised the issue at hand in his *Opposition and Comments to the Prosecution's Formal Offer of Evidence.*⁶ More glaring, he categorically and explicitly stated that he was done with his cross-examination of witness Tugade during the hearing on November 29, 2017. The pertinent portion⁷ of the transcript of said hearing reads:

CHAIRPERSON:

So you've completed your cross-examination?

ATTY. CAPONONG:

Yes, Your Honor.

The first time he raised the matter of the purported non-termination of the cross-examination of witness Tugade was in his *Reply to Prosecution's Comment/Opposition to the Accused Motion for Reconsideration* – after he explicitly stated that he had completed his cross-examination of witness Tugade, after filing his *Motion for Leave of Court to File Demurrer to Evidence*, after the denial of such *Motion for Leave of Court to File Demurrer to Evidence* in the Resolution dated April 11, 2018,⁸ and after he filed his *Urgent Motion for Reconsideration to the Resolution of the Honorable Court Dated April 11, 2018 and to Cite Arnel Tugade in Contempt of Court.*

From the foregoing, it appears that the accused' filing of the present *Urgent Motion* is nothing but a dilatory tactic or a misuse of Court processes, in contravention of the Code of Professional

⁴ Record, Vol. 2, pp. 231-A to D

⁵ Record, Vol. 2, pp. 195-197

⁶ Record, Vol. 2, pp. 173-183

⁷ TSN, November 29, 2017, pp. 27-28

⁸ Record, Vol. 2, pp. 212-213

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Responsibility,⁹ and running counter to the objective of the Rules of Court, of securing a just, speedy and inexpensive disposition of every action and proceeding.¹⁰

WHEREFORE, the *Urgent Motion to Reiterate Motion for Reconsideration and to Reiterate Motion for the Issuance of Subpoena and Subpoena Duces Tecum Adtestificandum Upon Arnel Tugade and Manifestations* of the accused is hereby DENIED. He is STERNLY WARNED that continued misuse of judicial processes shall be dealt with more severely.

SO ORDERED.


SARAH JANE T. FERNANDEZ

Associate Justice
Chairperson

We Concur:


BERNELITO R. FERNANDEZ

Associate Justice


MARYANN E. CORPUS-MAÑALAC

Associate Justice

⁹ Rule 10.03. – A lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice.

Rule 12.04. – A lawyer shall not unduly delay a case, impede the execution of judgment or misuse Court processes.

¹⁰ Rule 1, Sec. 6. – *Construction.* These Rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding.