



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 -

**AL SANCHEZ VITANGCOL III,
ET AL.,**

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

Accused.

Promulgated:

JUL 03 2018

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves the prosecution's *Motion for Partial Reconsideration (On the Resolution dated 24 April 2018)*.¹

The prosecution prays that this Court reverse and set aside its Resolution dated April 24, 2018,² and allow Mr. Josef Husek (Mr. Husek) and Amb. Josef Rychtar (Amb. Rychtar) to testify via video conferencing. It avers:

1. Its *Motion to Authorize the Presentation of Testimonial Evidence by Electronic Means* was denied because of its failure to substantiate the allegations therein, that Mr. Husek and Amb. Rychtar could not come to the Philippines to testify.

* J. Trespeses participated in the assailed Resolution (Per Administrative Order No. 071-2018 dated February 1, 2018; *Revised Internal Rules of the Sandiganbayan*, Rule IX, Sec. 2[a]).

¹ Dated April 30, 2018; Record, Vol. 2, pp. 351-355

² Record, Vol. 2, pp. 339-346

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2. It could have proved the inability of Mr. Husek and Amb. Rychtar to personally come to court to testify. However, it opted not to attach the email correspondences with said witnesses for privacy reasons.
3. By reason of the transcendental importance of said email communications, it attached printouts of the same to the instant Motion, placed in a sealed brown envelope for this Court's consideration.

In his *Comment/Opposition (to the Prosecution's Motion for Partial Reconsideration dated April 30, 2018)*,³ accused Al Sanchez Vitangcol III counters:

1. The Court gave the prosecution one last setting to present its witnesses in person on May 11, 2018. However, the prosecution squandered the opportunity to present its witnesses on said date.
2. The prosecution's concealment of the email communications with Mr. Husek and Amb. Rychtar from the defense is tantamount to a "prosecutorial misconduct."
3. The prosecution's concealment of the email constitutes a violation of the accused' right to due process. It would be impossible for the accused to properly prepare their comment or opposition if they could not examine the contents of the email.
4. The purported email in the "sealed envelope" is subject to the Rules on Electronic Evidence (REE). Thus, said emails must be authenticated in the manner provided in said Rules.
5. Prosecutor Ryan Christopher A. Moreno violated the Code of Professional Responsibility and must be disciplined. The suppression of facts or the concealment of witnesses capable of establishing the innocence of the accused is a cause for disciplinary action.

Accused Wilson Tigno De Vera, in his *Comment/Opposition*,⁴ counters:

1. The ground relied upon by the prosecution is not the proper subject of a motion. The subject emails are not newly discovered evidence, but rather, forgotten evidence.
2. The evidence relied upon by the prosecution, which was submitted solely for the eyes of the Court, is a mere scrap of

³ Dated May 10, 2018; Record, Vol. 2, pp. 363-371

⁴ Dated May 15, 2018, Record, Vol. 2, pp. 372-373

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paper. It is also self-serving because it deprives the accused of the rights to confrontation, due process and equal protection of the laws.

THE COURT'S RULING

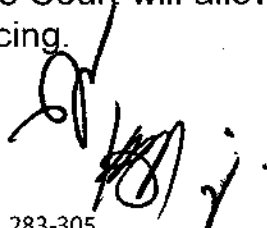
In the Resolution dated April 24, 2018, this Court denied the prosecution's *Motion to Authorize the Presentation of Testimonial Evidence by Electronic Means*⁵ on the ground of its failure to show the necessity of using video conferencing as a means of presenting testimonial evidence. In its present *Motion for Partial Reconsideration*, the prosecution submitted printouts of the email correspondences with Amb. Josef Rychtar (Amb. Rychtar) and Dr. Vit Makarius, the lawyer of Mr. Josef Husek (Mr. Husek).

The Court, after examining the said printouts, and in the interest of justice, resolves to grant the prosecution's Motion. Said printouts, which essentially explained the reason for the inability of said witnesses to travel to the Philippines to testify in the present cases, do not constitute a part of the prosecution's evidence in chief.

This Court reiterates its ruling in the assailed Resolution, that Rule 10, Sec. 1 of the REE is broad enough to include the presentation of testimonial evidence by 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.

The prosecution has shown the necessity of allowing Amb. Rychtar and Mr. Husek to testify via video conferencing. The printouts of the email correspondences support the prosecution's assertions in its *Motion to Authorize the Presentation of Testimonial Evidence by Electronic Means*. Thus, this Court will allow said witnesses to testify by means of video conferencing.



⁵ Dated March 12, 2018; Record, Vol. 2, pp. 283-305

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The following are the terms and conditions that must be complied with to protect the rights of the parties, to comply with the provisions of the REE, and also considering that this Court currently does not have the facilities and/or equipment necessary for video conferencing:

1. Mr. Husek shall give his testimony at the Philippine Embassy in Prague, Czech Republic. On the other hand, Amb. Rychtar will give his testimony at the Philippine Embassy in Santiago, Chile. Both locations shall be considered as an extension of the courtroom during the proceedings;
2. The prosecution shall be responsible for making arrangements with Mr. Husek and Amb. Rychtar, and with said Philippine Embassies for the testimonies of said witnesses;
3. The rooms where the witnesses will be testifying must be well-lit;
4. The prosecution shall provide for, and shall bear all the costs of the video conferencing facilities and/or the necessary equipment, as well as other costs in connection therewith, including, but not limited to the installation and operation of such facilities and/or equipment;
5. The video conferencing equipment must have the following features:
 - a. It must be able to record the proceedings, in accordance with Rule 10, Sec. 3 of the REE;⁶
 - b. The Court and all parties must be able to view each other, and converse with each other simultaneously;
 - c. The Court and all parties must be able to clearly see each others' facial expressions, and clearly understand the persons who are speaking;
 - d. The Court and all parties must be able to view and examine relevant documents;
 - e. Monitors in the courtroom must be sufficiently large as to enable the public to view the remote proceedings;

⁶ Sec. 3. *Storage of electronic evidence.* – The electronic evidence and recording thereof as well as the stenographic notes shall form part of the record of the case. Such transcript and recording shall be deemed *prima facie* evidence of such proceedings.

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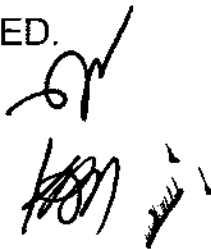
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- f. The internet connection must be suitable for video conferencing, without disconnections, lags or other such interruptions;
- g. There should be a minimum of three (3) cameras at the places where the testimonies will be given.
 - i. One camera must be located in front of, and close to the witness.
 - ii. The other two (2) cameras must enable the Court to see the entire room where the testimonies will be given. At all times, the two (2) other cameras should be visible from each of these cameras.
- 6. The Court or its duly authorized representative shall inspect and test the video conferencing facilities and/or equipment located in the Philippines prior to the hearing date/s. The Court will allow the presentation of said witnesses by video conferencing only if it is convinced that the video conferencing facilities and/or equipment has all the required features; and
- 7. This Court shall discontinue the video conferencing if it appears that technical issues, if any, will cause the violation or tend to cause the violation of the rights of the accused.

WHEREFORE, the prosecution's *Motion for Partial Reconsideration* is hereby GRANTED. Let the hearings be set on August 31, 2018 at 8:30 a.m. for the testimony of Amb. Rychtar, and on September 7, 2018 at 1:30 p.m. for the testimony of Mr. Husek. In the event that the prosecution will be unable to comply with the aforestated conditions, said hearing dates will be maintained for the presentation of said witnesses in person. Such hearing dates shall be final and the prosecution will not be given any further additional hearing dates for said witnesses.

SO ORDERED.



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SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA
Associate Justice


ZALDY V. TRESPESES
Associate Justice