



REPUBLIC OF THE PHILIPPINES

**Sandiganbayan**

Quezon City

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*Seventh Division*

***MINUTES of the proceedings held on August 20, 2018***

*Present:*

<i>Justice MA. THERESA DOLORES C. GOMEZ-ESTOESTA--</i>	<i>Chairperson</i>
<i>Justice ZALDY V. TRESPESES -----</i>	<i>Member</i>
<i>Justice GEORGINA D. HIDALGO-----</i>	<i>Member</i>

The following resolution was adopted:

***Crim. Case Nos. SB-13-CRM-00565 to 0572 – People of the Philippines vs. Alfredo Castillo, Jr., et al.***

This resolves the following:

1. The prosecution's "Motion to Discharge accused Silvino M. Uera to be a State Witness" dated January 18, 2017;<sup>1</sup> and
2. The prosecution's "Motion to Discharge accused Amelita C. Bales to be a State Witness" dated November 24, 2017.<sup>2</sup>

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**HIDALGO, J.:**

Before this Court for resolution are:

- (1) **Motion to Discharge Accused Silvino M. Uera to be State Witness dated January 18, 2017; and**
- (2) **Motion to Discharge Accused Emelita C. Bales to be State Witness dated November 24, 2017.**

Both motions relate to the Informations filed by the Ombudsman, charging accused Alfredo Castillo, Jr. (Castillo, Jr.), then Mayor of the Municipality of Alfonso Castañeda, Nueva Vizcaya, Emelita C. Bales (Bales) and Silvino M. Uera (Uera) for Violation of Section 3(e), Republic Act. No. 3019, as amended, and for Estafa under Article 315 (2) (a) of the Revised Penal Code.

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<sup>1</sup> Record, Vol. 2, pp. 74-86.

<sup>2</sup> Id. at 114-122.

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As alleged in the Informations dated March 26, 2013,<sup>3</sup> sometime in August 2005, accused Castillo, Jr., conspiring and confederating with co-accused Bales and Uera, willfully, unlawfully, and feloniously defrauded several barangays of Alfonso Castañeda, Nueva Vizcaya of their funds by falsely and fraudulently representing that, as municipal mayor, he will be engaging the services of a contractor to undertake various projects in said barangays. Blank checks drawn from the accounts of the barangays were issued to pay for the services of the contractor. Accused Castillo, Jr., after filling out the blank portion of the checks, caused the encashment of these checks and instead of using the cash to finance the projects in the various barangays, misappropriated and converted the same for his personal use and benefit.

Accused Uera was arraigned on August 1, 2013 while accused Bales was arraigned on April 22, 2014. To date, accused Castillo, Jr. remains at large. Preliminary Conference was held on June 26, 2014.<sup>4</sup>

Trial proceeded and the prosecution presented witnesses James R. Lapuz, Jr. on January 14, 2015; Mayor Philip A. Dacayo on April 7, 2015; Conrado Sierra Gaffuy on April 8, 2015; Romeo Dupaya Reyes on July 29, 2015; Engr. Nicholson Kidmay on October 28, 2015; Temmy Gabogen, Rodel Gabogen, Noli Mantile and Antonio Pasigian on July 4, 2016; and George dela Cruz on August 30, 2016.

In the interim, the Motions to Discharge accused Uera and Bales to be State Witnesses were filed.

In support of his request for immunity, accused Uera, Castillo, Jr.'s former security bodyguard, executed a *Sinumpaang Salaysay* dated March 26, 2014, describing in detail his knowledge about the charges filed:

- (1) He, as security body guard, was personally instructed by the principal accused Castillo Jr. to sign checks and other documents;
- (2) He personally accompanied the principal accused to meetings with co-accused Bales, the contractor;
- (3) He personally accompanied the principal accused to meetings with then Vice-Mayor Gerry Pasigian and with the different barangay chairmen;

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<sup>3</sup> Record, Vol. 2, pp. 1-24.

<sup>4</sup> Id., Vol. 1, p. 297.

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(4) He personally accompanied the principal accused to the Development Bank of the Philippines (DBP), Solano Branch on several occasions and personally saw the principal accused Castillo, Jr. bring out from the bank brown envelopes, brown paper bags, or boxes containing bundles of money;

(5) Having personal and professional ties with the principal accused Castillo, Jr. and his wife, he witnessed on several occasions the spouses counting money upon leaving the bank; and

(6) Having personal and professional ties with the principal accused Castillo, Jr., he has personal knowledge of the properties purchased by said principal accused.<sup>5</sup>

Accused Bales, for her part and in support of her request for immunity, executed an Affidavit dated March 15, 2017, stating the following:

(1) She, as former contractor of California Energy-Casecan Water & Energy Company, was personally persuaded by the principal accused Castillo, Jr. to accept a so-called Road Rehabilitation Project in four barangays of the Municipality of Alfonso Castañeda, saying that it was a joint project between the Mayor's Office and the Office of Association of Barangay Captains;

(2) She was instructed by the principal accused to sign bank documents and blank checks for the release of the project fund or what she termed as "mobilization";

(3) She was never contacted by the principal accused after she was compelled to sign the checks for "mobilization" and that the supposed funds for the equipment rentals and advance payment were never given to her by accused Castillo, Jr.;

(4) Having personal and professional ties with the principal accused Castillo, Jr., she has personal knowledge of the properties purchased by the principal accused; and

(5) She has knowledge that principal accused Castillo, Jr. thereafter purchased several condominium

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<sup>5</sup> Id. at 75-76.

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units in Quezon City, resorts, and hectares of land in Pantabangan and Baler.<sup>6</sup>

It was alleged in the same Motions that on December 22, 2016 and October 10, 2017, the Office of the Ombudsman respectively granted the requests of accused Uera and Bales for immunity in relation to the alleged unlawful and fraudulent acts made by accused Castillo, Jr.<sup>7</sup>

After the termination of the testimonies of accused Uera and Bales, this Court issued an Order dated July 4, 2018, submitting for resolution the prosecution's separate motions to discharge them as state witnesses.

Hence, this Resolution.

**Section 17, Rule 119 of the Rules of Court** provides for the requisites that must be considered by the Court for the discharge of one or more of several accused so that they can be witnesses for the State.

**“Section 17. Discharge of accused to be state witness.**  
— When two or more persons are jointly charged with the commission of any offense, upon motion of the prosecution before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state when, after requiring the prosecution to present evidence and the sworn statement of each proposed state witness at a hearing in support of the discharge, the court is satisfied that:

(a) There is absolute necessity for the testimony of the accused whose discharge is requested;

(b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused;

(c) The testimony of said accused can be substantially corroborated in its material points;

(d) Said accused does not appear to be the most guilty; and

(e) Said accused has not at any time been convicted of any offense involving moral turpitude.

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<sup>6</sup> Id. at 115-116.

<sup>7</sup> Id., Vol. 2, pp. 75, 115.

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Evidence adduced in support of the discharge shall automatically form part of the trial. If the court denies the motion for discharge of the accused as state witness, his sworn statement shall be inadmissible in evidence.”

In addition thereto, a participant in the commission of the crime, to be discharged as a state witness pursuant to Rule 119, **must be one charged as an accused in the criminal case.** The discharge operates as an acquittal of the discharged accused and shall be a bar to his future prosecution for the same offense, unless he fails or refuses to testify against his co-accused in accordance with his sworn statement constituting the basis for his discharge. **The discharge is expressly left to the sound discretion of the trial court, which has the exclusive responsibility to see to it that the conditions prescribed by the rules for that purpose exist.**<sup>8</sup>

A “state witness” is one of two or more persons jointly charged with the commission of a crime but who is discharged with his consent as such accused so that he may be a witness for the State. A state witness is a person, himself a *particeps criminis*, having personal knowledge of the crime but not appearing to be the “most guilty” among the accused, and upon motion of the prosecutor, may be discharged from the Information and utilized as a State witness, provided there is no other person who can pinpoint the role of the accused against whom his testimony is offered.<sup>9</sup>

This Court shall now determine whether the Ombudsman’s Motions to Discharge Accused Uera and Bales to be State Witnesses comply with the requirements provided under **Section 17, Rule 119 of the 2000 Revised Rules of Court.**

**(1) *There is absolute necessity for the testimony of accused Uera and Bales.***

The Supreme Court, in the case of *Manuel J. Jimenez, Jr. vs. People of the Philippines*<sup>10</sup> (*Jimenez case*), states that the requirement of absolute necessity for the testimony of a state witness “**depends on the circumstances of each case regardless of the number of the participating conspirators.**” (emphasis supplied)

Likewise, the Supreme Court explained in the *Jimenez case* that “absolute necessity” exists for the testimony of an accused sought to be discharged **when he or she alone has knowledge of the crime.** In more

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<sup>8</sup> *Datu Andal Ampatuan, Jr., vs. Sec. Leila de Lima, et al.*, G.R. No. 197291, April 3, 2013.

<sup>9</sup> Rules of Court, Rule 119, Section 17. See *Salvanera vs. People*, G.R. No. 143093, May 21, 2007; see also *People vs. Proceso Binsol, et al.*, No. L-8346, January 22, 1957.

<sup>10</sup> G.R. No. 209195, September 17, 2014.

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concrete terms, necessity is not there when the testimony would simply corroborate or otherwise strengthen the prosecution's evidence.

Before we determine whether or not the testimonies of accused Uera and Bales are absolutely necessary, this Court has to rely on the Informations filed by the Office of the Ombudsman. The reason is obvious—said office conducted initial investigation and evaluation of the facts surrounding the Complaints filed. Having performed its task, the Office of the Ombudsman, acting as the prosecutor herein, is in the better position to determine who among the accused would best qualify to be discharged to become a State witness or State witnesses as the case may be. In these cases, the Office of the Ombudsman stated in its Motions to Discharge that it has granted immunity to the requests of accused Uera and Bales to be discharged as state witnesses. The said Office is, thus, deemed to have found absolute necessity to discharge them, considering the circumstances and evidence in its possession. In *Salvanera vs. People*,<sup>11</sup> the Supreme Court pertinently held:

In *Chua v. Court of Appeals*, we ruled that the trial court has to rely on the information offered by the public prosecutor as to who would best qualify as a state witness. The prosecutor knows the evidence in his possession and the witnesses he needs to establish his case. In *Mapa v. Sandiganbayan*, we held:

The decision to grant immunity from prosecution forms a constituent part of the prosecution process. It is essentially a tactical decision to forego prosecution of a person for government to achieve a higher objective. It is a deliberate renunciation of the right of the State to prosecute all who appear to be guilty of having committed a crime. Its justification lies in the particular need of the State to obtain the conviction of the more guilty criminals who, otherwise, will probably elude the long arm of the law. Whether or not the delicate power should be exercised, who should be extended the privilege, the timing of its grant, are questions addressed solely to the sound judgment of the prosecution. The power to prosecute includes the right to determine who shall be prosecuted and the corollary right to decide whom not to prosecute.

Following the findings of the Office of the Ombudsman, this Court, therefore, finds the first requirement to be present.

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<sup>11</sup> *Supra* note 9; citations omitted.

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To be specific and after a careful reading of Uera's handwritten *Sinumpaang Salaysay*<sup>12</sup> in support of his request for immunity, it appears that as a driver and personal bodyguard of accused Castillo, Jr., he has personal ties with accused Castillo and his wife, Jolly Castillo. Notably, he said and we quote:

*“Sa tatlong (3) term po niyang naging mayor ay nitong July 2005 lang po ako nakapasok kay Mayor Castillo, Jr. bilang security bodyguard. Ang ibinigay po niyang trabaho ko ay security guard sa kanyang bahay. At kapag nasa municipal hall po ay security rin po sa pinto ng Office of the Mayor. Kapag may meeting po sa ibang bayan, sa Solano o Bayumbong Nueva Vizcaya o sa Manila ay isinasama rin po ako ni Mayor Castillo, Jr. Kadalasan pong kasama naming sa biahe ay si Mrs. Mayora Jolly Castillo at kapatid ni Mayor, Mr. Jojo Castillo and driver, Mr. Danny Sarmiento.”*

He continued to state that, on several occasions, he personally saw accused Castillo, Jr. meet with his co-accused Bales, the contractor of the projects which never materialized. He personally accompanied accused Castillo, Jr. to DBP Solano Branch on several occasions and saw him go out from the bank carrying brown paper bags or boxes containing money, not to mention the fact that he saw accused Castillo, Jr. and his wife counting big amount of money.

Meanwhile and for her part, accused Bales in her Affidavit<sup>13</sup> said that she was personally persuaded by accused Castillo, Jr. to undertake the alleged Road Rehabilitation Project that never took place; and that accused Castillo, Jr. instructed her to sign bank documents and blank checks for the release of the fund or what she termed as “mobilization.”

Gauging from the above assertions of accused Uera and Bales, without being repetitious, indeed, the testimonies of these two accused are essential for the successful prosecution of the above cases.

Moreover, the need to discharge accused Uera and Bales is also bolstered by the finding that the stipulated testimonies of the following witnesses relate only to the following facts:

- a) **James R. Lapuz, Jr.** That he is the branch cashier of DBP, Solano Branch, having been appointed as such on January 1, 2014, and that, in answer to the subpoena, he brought with him different statements of account for the year 2005 reflecting the

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<sup>12</sup> Record, Vol. 2, pp. 80-86.

<sup>13</sup> Id. at 119-123.

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bank transactions and withdrawals as alleged in the Information.<sup>14</sup>

- b) **Mayor Philip A. Dacayo.** That he was a commissioned Notary Public in the year 2006 in Bayombong, Nueva Vizcaya; that on July 24, 2006, affiants Putado Gabongen, Engangen Pasigian, Milton Suaking and Tomas K. Cawad, appeared before him and subscribed and swore before him; that he can identify four (4) different *Salaysays* (Exhibits "A" to "A-2", "D" to "D-2", Exhibit "B" to "B-2" and "E" to "E-2"). Lastly, that he can identify the signature above the name of the affiants.<sup>15</sup>
- c) **Conrado Sierra Gaffuy.** His stipulated testimony relates to the transmittal of the documents from the Office of the Provincial Prosecutor to the Office of the Ombudsman, some of which are in the original form and the rest are photocopies.<sup>16</sup>
- d) **Romeo Dupaya Reyes.** That he is at present the Municipal Local Government Operation of the Municipality of Alfonso Castañeda, Nueva Vizcaya and as such, he has direct supervision of the barangay captains. His duties and functions include providing technical assistance to municipal and barangay officials and other local functionaries. His stipulated testimony also provides that he was not aware and not informed of any special project between accused Castillo, Jr. and Barangay Lipuga, Barangay Cawayan, Barangay Abuyo.<sup>17</sup>
- e) **Engr. Nicholson Kidmay.** That he holds the position of Engineer I and was designated as OIC-Municipal Engineer of the Municipal Engineering Office of the Municipality of Alfonso, Castañeda, Nueva Vizcaya since January 2015 up to present and as such, he is tasked to implement different projects included in the Annual Investment Plan and projects directed by the Municipal Mayor.<sup>18</sup>
- f) **Temmy Gabogen, Rodel Gabogen, Noli Mantile and Antonio Pasigian.** They are the incumbent barangay chairpersons of the barangays in Alfonso Cateñeda, Nueva Vizcaya and their duties include the enforcement of

<sup>14</sup> Order dated January 14, 2015, id., Vol. 1, p. 346.

<sup>15</sup> Order dated April 7, 2015, id. at 357-357.

<sup>16</sup> Order dated April 8, 2015, id. at 360-362.

<sup>17</sup> Order dated July 29, 2015, id. at 378-379.

<sup>18</sup> Order dated October 28, 2015, id. at 388-389.

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ordinances and laws, negotiating and signing of contracts, maintenance of public order, assisting the City and/or Municipal mayor and Sangguniang Bayan in the performance of their duties and functions, the preparation of annual executive and supplemental budget to ensure the delivery of personal and basic services and the performance of other duties as mandated by their positions.<sup>19</sup>

- g) **George dela Cruz.** He holds the position of Municipal Planning and Development Coordinator of the Municipality of Alfonso Castañeda since 1993 up to present; as such, his duties and functions include the formulation of economical plans for the implementation of the projects in the said municipality.<sup>20</sup>

which, even when taken as a whole, are not sufficient to prove the prosecution's case. Simply put, the Court notes that there are no categorical statements from the stipulated testimonies that will prove all the elements of the crimes charged to include the participation of all the accused as the culprits.

***(2) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of accused Uera and Bales.***

As earlier found, and in addition to our discussions above, owing to the personal knowledge of accused Uera and Bales on how the crimes charged were perpetuated, it is best that they be discharged as State witnesses; otherwise, there would be no direct evidence against accused Castillo, Jr. In other words, without the testimony of accused Bales, there is no way the prosecution will prove that accused Castillo, Jr. misappropriated and converted the money of the different barangays for his own personal use and benefit. And except for the testimony of accused Bales, there is no other direct evidence that would show that Castillo, Jr. instructed her to sign checks and other bank documents enabling him to convert into cash the checks issued by the barangay captains purposely to finance the intended projects for the various barangays in the Municipality of Alfonso Castañeda, Nueva Vizcaya.

***(3) The testimonies of accused Uera and Bales can be substantially corroborated in its material points.***

The testimonies of accused Uera and Bales are complemented by the stipulated testimonies of witnesses **Temmy Gabogen, Rodel Gabogen, Noli Mantile and Antonio Pasigian.** Perforce, their combined testimonies will

<sup>19</sup> Order dated July 4, 2016, id., Vol. 2, pp. 44-45.

<sup>20</sup> TSN, August 30, 2016, p. 4.

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readily show that despite receipt of the amount of Ten Million Four Hundred Thousand Pesos (₱10,400,000.00) by accused Castillo Jr., the intended projects were not undertaken, thereby validating Uera and Bales' allegations that Castillo, Jr. misappropriated and converted the amount for his own personal use and benefit.

In the *Jimenez case*,<sup>21</sup> the Supreme Court emphasized that to resolve a motion to discharge under Section 17, Rule 119 of the Revised Rules of Criminal Procedure, the Rules only require that the testimony of the accused sought to be discharged be substantially corroborated in its material points, not on all points.

**(4) *Accused Uera and Bales do not appear to be the most guilty.***

The term "most guilty" refers to the highest degree of culpability in terms of participation in the commission of the offense and does not necessarily mean the severity of the penalty imposed. While all the accused may be given the same penalty by reason of conspiracy, yet one may be considered to have lesser or the least guilt taking into account his degree of participation in the commission of the offense.<sup>22</sup> Gauging from the alleged participation of accused Uera and Bales, as compared to the alleged acts of Castillo, Jr., there is no mistaking that the former do not appear to be the most guilty in the commission of the crimes charged.

From the evidence submitted by the prosecution in support of its motion to discharge accused Uera, it appears that while he personally accompanied accused Castillo, Jr. to a meeting with accused Bales and that he also accompanied the former to a series of meetings with then Vice Mayor Gerry Pasigian with the different barangay captains of the Municipality of Solano, Nueva Vizcaya, these events alone do not indicate that he had any direct participation in hatching the plan of undertaking various barangay projects that did not materialize because the funds allotted to the same were allegedly misappropriated.

On the other hand, accused Bales' participation was limited to the fact that she was merely instructed by accused Castillo Jr. to sign bank documents and blank checks for the release of the project fund.<sup>23</sup>

Additionally, both accused indicated in their sworn statements their good faith. Particularly, Uera was forced to sign the checks and never received any amount when said checks were encashed; while Bales even expressed her disagreement to sign the documents.<sup>24</sup>

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<sup>21</sup> Supra note 10.

<sup>22</sup> *Jimenez case*, id.

<sup>23</sup> Record, Vol. 2, p. 115.

<sup>24</sup> Id. at 120.

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In light of these considerations, this Court reiterates that accused Uera and Bales do not appear to be the most guilty and, therefore, may be discharged as state witnesses without prejudice to the satisfaction of the last requirement. **At any rate, the discharge of an accused to be utilized as a state witness because he does not appear to be the most guilty is highly factual in nature as it largely depends on the appreciation of who had the most participation in the commission of the crime.**<sup>25</sup>

**(5) Accused Uera and Bales have not at any time been convicted of any offense involving moral turpitude.**

Both accused Uera and Bales “attest that they have not at any time been convicted of any offense involving moral turpitude.”<sup>26</sup> Sans evidence to the contrary, the presumption that what both accused said is true shall be given them.

Our discussions above taken all together, this Court, therefore, rules that accused Uera and Bales have satisfied the requisites for their discharge to be State witnesses under the Revised Rules of Criminal Procedure. Jurisprudence states that **“the discharge of the accused shall amount to an acquittal and shall be a bar to future prosecution for the same offense, unless the accused fails or refuses to testify against his co-accused in accordance with his or her sworn statement constituting the basis for the discharge.”**<sup>27</sup> (emphasis ours)

**WHEREFORE**, the Motion to Discharge Accused Silvino M. Uera to be State Witness dated January 18, 2017 and the Motion to Discharge Accused Emelita C. Bales to be State Witness dated November 24, 2017 are **GRANTED**. Consequently, accused Silvino M. Uera and Emelita C. Bales are discharged to be witnesses for the State in these cases.

As prayed for, set the continuation of prosecution’s evidence on September 24, 2018 at 8:30 in the morning.

**SO ORDERED.**

  
**GEORGINA D. HIDALGO**  
Associate Justice

We Concur:

  
**MA. THERESA DOLORES C. GOMEZ-ESTOESTA**  
Chairperson/Associate Justice

  
**ZALDY V. TRESPESSES**  
Associate Justice

<sup>25</sup> Jimenez case, supra note 9.

<sup>26</sup> Record, Vol. 2, pp. 76, 116.

<sup>27</sup> Revised Rules of Criminal Procedure, Rule 119, Sec. 18. See *Bernardo vs. Del Rosario*, No. L-18237, January 31, 1964.