



REPUBLIC OF THE PHILIPPINES  
**Sandiganbayan**  
QUEZON CITY

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**SEVENTH DIVISION**

MINUTES of the proceedings held on August 10, 2018.

*Present:*

JUSTICE MA. THERESA DOLORES C. GOMEZ-ESTOESTA ----- Chairperson  
JUSTICE ZALDY V. TRESPESES ----- Associate Justice  
JUSTICE GEORGINA D. HIDALGO ----- Associate Justice

The following resolution was adopted:

**Criminal Case No. SB-15-CRM-0146 -**

**PEOPLE v. AVELINO J. GUNGOB, SR.**

This resolves the following:

1. Accused Avelino J. Gungob, Sr.'s "**MOTION FOR RECONSIDERATION [On the Order dated 17 July 2018 Denying Accused's "Motion for Leave of Court to Allow Presentation of Additional Documentary Evidence]"** dated July 27, 2018;<sup>1</sup> and

2. The Prosecution's "**OPPOSITION [To Motion for Reconsideration dated 27 July 2018]"** dated August 7, 2018.<sup>2</sup>

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**GOMEZ-ESTOESTA, J.:**

At the time accused Avelino J. Gungob, Sr. ["accused"] testified<sup>3</sup> for himself, he identified his Judicial Affidavit which incorporated therein documents not considered during pre-trial; i.e., *Request for Legal Opinion dated April 11, 2018* (intended to be marked as **Exhibit "17"**) and *Legal Opinion of the Department of Environment and Natural Resources – Environmental Management Bureau Central Office dated April 20, 2018* (intended to be marked as **Exhibit "18"**). Since the foundational framework for a good cause was not laid, said documents were not allowed to be

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<sup>1</sup> Records, Volume 2, pp. 362-368

<sup>2</sup> Id., pp. 374-384

<sup>3</sup> Hearing was held in the Regional Trial Court of Cebu City, Branch 20, on July 16, 2018

*J. K.*

presented and identified. Accordingly, Questions 25, 26, 27, 28, 29, 30 and 31 and the Answers thereto were stricken off from the Judicial Affidavit of the accused.

On July 17, 2018, accused filed (through e-mail) a *Motion for Leave of Court to Allow Presentation of Additional Documentary Evidence* which was set for hearing on the same day. The issue was resolved, thus:

After having been deliberated upon, and after having heard the arguments made between the prosecution and the defense in open Court on the *Motion for Leave of Court to Allow Presentation of Additional Documentary Evidence* referring to the Letter Request for Legal Opinion and Reply Letter dated April 20, 201[8], where no good cause was found to present such documents since the Reply Letter will merely point to who could utilize the issuance of the Environmental Compliance Certificate which is no longer material to the issue, the *Motion* is hereby DENIED.

On July 30, 2018, accused filed a *Motion for Reconsideration* seeking to set aside said Order on the following grounds:

(i) While the presentation of such pieces of evidence came late, this should be taken over by the primordial right of the accused to fully exhaust the presentation of his defense as it is his freedom that stands to be taken away from him. It is the local political landscape which made it difficult for him to secure the legal opinion of the DENR considering that the incumbent mayor is his political opponent.

(ii) this is not the time to determine the relevance and materiality of the documentary evidence sought to be presented as it is the standard of good cause which he was required to justify;

(iii) a certain latitude should be allowed him to present his evidence completely and fully to support his defense instead of excluding such documentary evidence outright. It is true that the Pre-Trial Order contained no reservation on his part to present additional documentary evidence but there none either which should equally bar him of such right; and

(iv) The legal opinion of the DENR can assist this Court in arriving at a judicious resolution of this case.

In its *Opposition*, the Prosecution argues:

(i) It is high time that the Pre-Trial Order dictate the course of the trial. Since the Pre-Trial Order did not list a DENR-EMB representative to be a defense witness, when the legal opinion purportedly appeared to be vital to the defense, accused should be strictly bound by the facts and stipulations already made in the Pre-Trial Order. Several opportunities were given for the amendment or correction of the Pre-Trial Order but none was made up to this time;

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(ii) The accused has already been given considerable latitude in the presentation of his evidence. This can be recounted from the admission of three (3) judicial affidavits of accused's witnesses despite their defective form and violation of the Notarial Law and the Judicial Affidavit Rule;

(iii) No error was pointed out in the *Motion* which should have sufficiently shown the findings and conclusions made by the Court that are not supported by law or the evidence; and

(iv) The accused failed to show good cause why he be allowed to present such evidence. The presentation of the DENR-EMB representative is both irrelevant and immaterial to the present case; it has no bearing on the issue. The accusatory portion of the Information pointed to the mere application by the accused of the ECC for Consolacion Heights Residential Subdivision, a private entity. It was not material, therefore, whether the ECC applied for was non-transferrable or whether the project under the ECC did not push through. The mere application for the ECC in behalf of a private entity already consummated the crime.

A reconsideration of accused's plea, as bolstered by the grounds stated in the *Motion*, has moved this Court to allow him to present the much requested additional evidence he seeks. This, despite the vehement objection interposed by the Prosecution.

The rule is that no evidence shall be allowed during trial if it was not identified and pre-marked during trial. This provision, however, allows for an exception: when allowed by the court for good cause shown.<sup>4</sup> The matter of good cause is to be determined by the court in the exercise of judicial discretion. Good cause means a substantial reason — one that affords a legal excuse. Whether or not a substantial reason exists is for the court to determine, as there is no hard and fast rule for determining the question as to what is meant by the term "for good cause shown."<sup>5</sup>

The legal excuse offered by the accused, or one where substantial reason subsists, is that he needed such documentary exhibits to "*completely and fully present evidence to support his defense.*" The threat to his liberty is a hovering fear. Although he is quick to admit that the presentation of such documentary exhibits came behind time, he entreats that he could not leave any stone unturned in waging for his defense.

Admittedly, the discretion exercised by this Court has to be expanded.

The opinion rendered by the DENR-EMB could have been produced at the outset if the accused sensed that it would have been valuable to his

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<sup>4</sup> *Cruz v. People*, G.R. No. 210266, June 7, 2017

<sup>5</sup> *Fortune Corporation v. Court of Appeals*, G.R. No. 108119, January 19, 1994

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defense. However, time lapsed, as is the effectivity of the ECC concerned, and it is only now that such opinion was being sought. Accused blamed it on heavy political underpinnings. How this could have tolled any difficulty in the request for opinion is actually hard to muster. The LGU has no control and supervision over a government agency such as the DENR-EMB. Why accused never asked for it earlier is only his to fathom. It is conceded, however, that the accused should be afforded every opportunity to present his evidence.

Should this Court accord a deeper appreciation on why such documentary exhibits are sought to be presented, the evidentiary value it points to may have a bearing in proving the existence or non-existence of the elements of the offense; i.e., whether accused gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.

For this alone, the accused will be given another chance to present his evidence. The Court is aware that its judicial discretion cannot be arbitrarily or unreasonably denied because to do so may bar access to relevant evidence that may be used by the accused and hence, impair his fundamental right to due process.<sup>6</sup>

WHEREFORE, the *Motion for Reconsideration* filed by accused Avelino J. Gungob, Jr. is **GRANTED**.

The Order dated July 17, 2018 (morning session) is **SET ASIDE** insofar as it denied accused's *Motion for Leave of Court to Allow Presentation of Additional Documentary Evidence*.

The presentation of defense evidence is thus considered re-opened. Let the presentation of the documentary exhibits intended to be marked as Exhibits "17" and "18" be set on *September 24, 2018, at 8:30 in the morning* at the Fourth Division Courtroom.

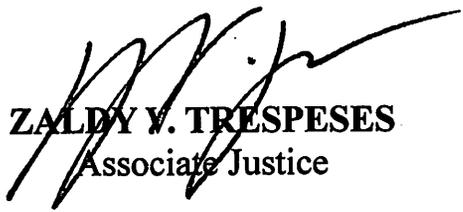
SO ORDERED.

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

<sup>6</sup> Vide: *Alberto v. COMELEC, et al.*, G.R. No. 132242, July 27, 1999

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**WE CONCUR:**



**ZALDY V. TRESPESES**  
Associate Justice



**GEORGINA D. HIDALGO**  
Associate Justice

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