



**REPUBLIC OF THE PHILIPPINES  
SANDIGANBAYAN  
QUEZON CITY**

**SPECIAL THIRD DIVISION**

**PEOPLE OF THE  
PHILIPPINES,**

**THE  
Plaintiff,**

**Criminal Cases Nos. SB-  
15-CRM-0293 to 0295**

For: Violation of Section 3(e) and  
(h) of Republic Act  
(R. A.) No. 3019; and,  
Violation of Section 65 par.  
C (1) in relation to Section  
47 of R.A. No. 9184

**- versus -**

**AL SANCHEZ VITANGCOL,  
III, et al.,**

**Accused.**

*Present:*

**CABOTAJE-TANG, P.J.,**  
Chairperson  
**FERNANDEZ, B., J.**  
**FERNANDEZ, SJ.<sup>1</sup>, J.**

*Promulgated:*

AUGUST 1, 2018

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**RESOLUTION**

**CABOTAJE-TANG, PJ:**

For resolution is the prosecution's *Motion for  
Reconsideration* dated April 23, 2018.<sup>2</sup>

<sup>1</sup> Sitting as a Special Member per Administrative Order No. 262-2018 dated April 30, 2018

<sup>2</sup> pp. 495-502, Vol. V, Record

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Invoking Section 1, Rule 10 of the Rules on Electronic Evidence (REE), the prosecution prays for a reconsideration of the Court's denial of its oral motion to present its intended witness Ambassador Josef Rychtar by electronic means. According to the prosecution, the testimony of Ambassador Rychtar is vital to its cases because at the time material to these cases, Ambassador Rychtar and Josef Husek, CEO and Chairperson of the Board of Inekon Group, allegedly had a series of meetings with accused Vitangcol III, De Vera and Maralit; that accused Vitangcol III and De Vera proposed to the Inekon Group to enter into a joint venture agreement for the maintenance of the MRT3; and, that the accused extorted money from them in exchange for the said maintenance contract.<sup>3</sup>

The prosecution claims that, through the Department of Foreign Affairs (DFA), it had exhausted all reasonable efforts to compel Ambassador Rychtar's attendance in Court. The Czech Republic cannot, however, readily accommodate the DFA's request because of the absence of any mutual legal assistance treaty on criminal matters between the Republic of the Philippines and the Czech Republic. However, Ambassador Rychtar, currently Czech Republic's Ambassador to Chile, had expressed willingness to testify *via* video conferencing.<sup>4</sup>

It further claims that allowing Ambassador Rychtar to testify *via* video conferencing will not prejudice the accused and the jurisdiction of the Court considering that the video conferencing will be done at the Philippine Embassy in Chile and that the intended witness will be duly sworn to by the consul and/or duly authorized representative of the Philippines who has the power to administer oath; that the accused will have the right to confront and cross-examine Ambassador Rychtar and the Court can properly observe his demeanor because the video conferencing will be conducted in real time using the latest available technology.<sup>5</sup>

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<sup>3</sup> pp. 1-2, Motion for Reconsideration; pp. 495-496, Vol. V, Record

<sup>4</sup> p. 2, Motion for Reconsideration; p. 496, Vol. V, Record

<sup>5</sup> p. 3, Motion for Reconsideration; p. 497, Vol. V, Record

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Accused Al Sanchez Vitangcol III opposes the subject motion on the following grounds: (1) the proposed video conferencing violates the accused's constitutional right to confront the witness face to face; (2) in **Ang vs. Court of Appeals**,<sup>6</sup> the Supreme Court held that the REE does not apply to criminal actions; (3) contrary to the prosecution's claim, Ambassador Rychtar is not willing to testify as he refused to receive the *subpoena* since the same is not in compliance with the Czech Republic's law on international judicial cooperation; (4) the testimony *via* video conferencing is a circumvention of the provisions of Republic Act (R.A.) No. 8792<sup>7</sup> which mandates that there should be reciprocity between the countries before the benefits and privileges of the law can be had;<sup>8</sup> (5) the allowance of electronic testimony envisions it to be within the Philippine territory and not outside the bounds of the reach of the Philippine laws; (6) if such video conferencing is allowed, Ambassador Rychtar cannot be charged with perjury because he is not within the Philippine territory; (7) Ambassador Rychtar is avoiding the service of *subpoena* on him in relation to the charge of perjury against him pending before the Mandaluyong City Office of the Prosecutor; (8) the Court cannot observe the demeanor of a witness through a video conferencing to the prejudice of the accused; and (9) the prosecution had abused the generosity of the Court in its multiple attempts to extend the presentation of its evidence to the prejudice and damage of accused Vitangcol III and it should have filed its formal offer of evidence as directed by the Court.<sup>9</sup>

Arturo Soriano also filed an opposition to the subject motion. Similar to accused Vitangcol III, he argues that the testimony *via* video conferencing is violative of Section 14(2), Article III of the Constitution. Emphasizing the need to confront the witness face to face, accused Soriano cites **Go vs.**

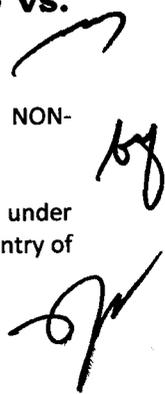
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<sup>6</sup> 618 SCRA 592 (2010)

<sup>7</sup> AN ACT PROVIDING FOR THE RECOGNITION AND USE OF ELECTRONIC COMMERCIAL AND NON-COMMERCIAL TRANSACTIONS, PENALTIES FOR UNLAWFUL USE THEREOF, AND OTHER PURPOSES

<sup>8</sup> SECTION 39. Reciprocity. — All benefits, privileges, advantages or statutory rules established under this Act, including those involving practice of profession, shall be enjoyed only by parties whose country of origin grants the same benefits and privileges or advantages to Filipino citizens.

<sup>9</sup> pp. 505-516, Vol. V, Record



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**People.**<sup>10</sup> He likewise argues that there is nothing in the REE which states that testimonial examination can be done even if the witness is outside the Philippines. He further argues that while the REE covers criminal cases, its application should not be violative of the provision of the constitution and jurisprudence which provides for the constitutional rights to a public trial and face-to-face confrontation of a witness. He points out that the prosecution should have availed of Section 15, Rule 119 of the Rules of Court<sup>11</sup> instead to enable the Court to consider Ambassador Rychtar's testimony.<sup>12</sup>

On June 14, 2018, accused Mario dela Cruz and Manolo Maralit also filed their opposition to the subject motion. Accused dela Cruz and Maralit argue that the prosecution failed to show that the presentation of the testimony of Ambassador Rychtar through electronic means is necessary. They claim that Ambassador Rychtar's willingness to testify voluntarily will be done not out of recognition of the Court's judicial authority allegedly because the motion to present the testimony of Ambassador Rychtar through electronic means is premised on the Court's lack of judicial authority to compel his attendance through the Court's compulsory processes. Thus, they conclude that the alleged safeguard claimed by the prosecution that the testimony will be taken before the Philippine Embassy in Chile "offers limited comfort." Citing also **Go vs. People**,<sup>13</sup> they assert that the Republic may have no authority to prosecute Ambassador Rychtar for perjury if he will be allowed to testify *via* video conferencing. They point to several cases where the Supreme Court rejected the alternative modes of presenting testimonial evidence merely on the ground that the intended witness is out of the country<sup>14</sup> or

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<sup>10</sup> 677 SCRA 213 (2002)

<sup>11</sup> SECTION 15. Examination of Witness for the Prosecution. — When it satisfactorily appears that a witness for the prosecution is too sick or infirm to appear at the trial as directed by the court, or has to leave the Philippines with no definite date of returning, he may forthwith be conditionally examined before the court where the case is pending. Such examination, in the presence of the accused, or in his absence after reasonable notice to attend the examination has been served on him, shall be conducted in the same manner as an examination at the trial. Failure or refusal of the accused to attend the examination after notice shall be considered a waiver. The statement taken may be admitted in behalf of or against the accused.

<sup>12</sup> pp. 520-532, Vol. V, Record

<sup>13</sup> *supra* note 10

<sup>14</sup> p. 3, Opposition; p. 591, Vol. V, Record

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when a witness refused to personally appear to testify out of fear that disclosing his knowledge of then President Ferdinand Marcos's illicit transactions may place his life in jeopardy<sup>15</sup> or the use of deposition merely to accommodate a witness who resides abroad.<sup>16</sup> They, too, point out that the prosecution has repeatedly taken advantage of the Court's leniency considering that despite the Court's warning, the prosecution still failed to present Ambassador Rychtar.<sup>17</sup>

After a thorough review of the argument of the prosecution, the Court finds the subject motion for reconsideration bereft of merit.

To begin with, the Court had granted the prosecution's Urgent Motion to Defer Filing of Formal Offer of Evidence until the resolution of subject motion for reconsideration in its Minute Resolution dated April 30, 2018.<sup>18</sup>

Section 1, Rule 10 of A.M. No. 01-701-SC<sup>19</sup> dated July 17, 2001 provides:

**Rule 10**  
**EXAMINATION OF WITNESSES**

**Section 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 as may be necessary under the circumstances, including the protection of the rights of the parties and witnesses concerned.

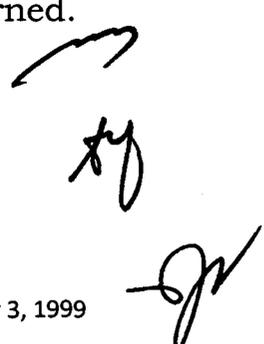
<sup>15</sup> Republic vs. Sandiganbayan, 358 SCRA 284 (2001)

<sup>16</sup> Northwest Airlines, Inc. vs. Cruz, G.R. No. 137136, November 3, 1999

<sup>17</sup> pp. 589-595, Vol. V, Record

<sup>18</sup> p. 557, Vol. V, Record

<sup>19</sup> The Rules on Electronic Evidence (REE)

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The above-quoted provision clearly requires the Court to first determine the necessity for the presentation of the testimonial evidence by electronic means before it will authorize the said presentation.

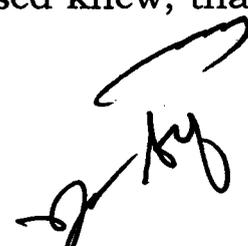
In these cases, the Court finds that the prosecution failed to establish the need to present Ambassador Rychtar *via* video conferencing.

The present Informations charge the accused with violation of Sections 3(e) and (h) of R.A. No. 3019 (*SB-15-CRM-0293 and 0294*) and violation of Section 65 par. C (1) in relation to Section 47 of R. A. No. 9184 (*SB-15-CRM-0295*).

In SB-15-CRM-0293, the accused are charged with giving unwarranted benefits, advantage, and preference to PH Trams and its Joint Venture Partner Comm Builders and Technology Philippines Corporation (CB&T) through evident bad faith, manifest partiality or gross inexcusable negligence when they recommended and entered into an *interim* maintenance contract of MRT3 with said PH Trams and CB&T despite PH Trams's disqualification under R.A. No. 9184 on account of accused Vitangcol III's relationship with accused Soriano, his uncle-in-law and one of the directors of PH Trams.

In SB-15-CRM-0294, accused Vitangcol III is charged in conspiracy with the other accused for taking part in the award of the *interim* contract for MRT3 to the Joint Venture of PH Trams and Comm Builders and Technology Philippines Corporation (CB&T) while having a direct or indirect financial or pecuniary interest in PH Trams.

In SB-15-CRM-0295, accused is charged with submitting an "Affidavit of Disclosure" containing a false statement and/or declaration that none of the PH Trams' incorporators is related by consanguinity or affinity up to the third civil degree to the Head of Procuring Entity, members of the Bids and Awards Committee (BAC), Technical Working Group, the BAC Secretariat and the Head of the Project Management Office or the end-user unit, when in fact, as all the accused knew, that



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accused Soriano, one of PH Trams' incorporators, is a relative by affinity within the third civil degree of accused Vitangcol.

In insisting that the testimony of its intended witness Ambassador Rychtar is vital to prove its case, the prosecution makes the following claims:

3. At the time material to the instant cases, Ambassador Rychtar was the Czech Republic Ambassador to the Philippines. He, together with Josef Husek, CEO and Chairman of the Board of Inekon Group, had a series of meetings with accused Al Sanchez Vitangcol III, Wilson Tigno De Vera and Manolo Mayo Maralit, wherein accused Vitangcol III and De Vera proposed to the Inekon Group to enter into a joint venture agreement with his (Vitangcol's) "people" for the maintenance of the MRT3, extorting money from them (Husek and Rychtar) in exchange of the said maintenance contract. It can be reasonably inferred that the "people" adverted to refers to the incorporators of PH Trams as accused De Vera and Maralit (who are incorporators of PH Trams) were present during the said meetings.

It is thus clear that the proposed testimony of Ambassador Rychtar is immaterial to the present cases. To be sure, these cases do not involve any alleged extortion by the accused on the Inekon Group.

With the aforesaid disquisition, the resolution of all the other issues by the accused is rendered unnecessary.

**WHEREFORE**, the Court **DENIES** the prosecution's *Motion for Reconsideration* dated April 23, 2018, for lack of merit.


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Accordingly, the Court reiterates its directive in its Order dated April 16, 2018, for the prosecution to formally offer its evidence within ten (10) days from receipt hereof, personally serving a copy thereof to the defense counsel. The counsel are likewise given a similar period of ten (10) days from receipt of the said copy of the formal offer of evidence within which to file their respective comments or opposition thereto. Thereafter, the said Formal Offer of Evidence shall be deemed submitted for resolution.

Set the presentation of the defense evidence on September 4, 5, 11, 12, 18, 19, 25 and 26, 2018, all at 8:30 in the morning, as previously scheduled.

Necessarily, the hearing scheduled on August 1, 7, 8, 14, 15, 28 and 29, 2018, are cancelled.

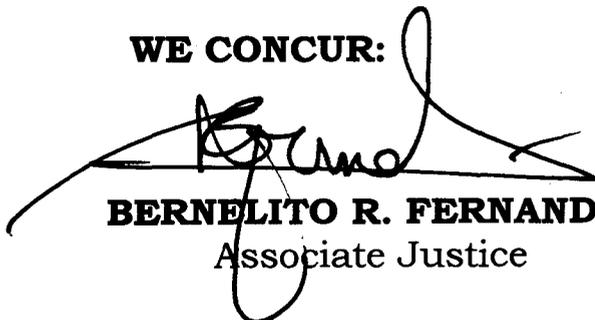
**SO ORDERED.**

Quezon City, Metro Manila



**AMPARO M. CABOTAJE-TANG**  
Presiding Justice  
Chairperson

**WE CONCUR:**



**BERNELITO R. FERNANDEZ**  
Associate Justice



**SARAH JANE T. FERNANDEZ**  
Associate Justice