



Republic of the Philippines
Sandiganbayan
Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on 31 August 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:

Crim. Case No. SB-16-CRM-0770 - People vs. Mariano M. Malones, et al.

This resolves the following:

1. The prosecution's "MOTION FOR PARTIAL RECONSIDERATION (RE: RESOLUTION DATED JULY 6, 2018)" dated 13 July 2018;¹ and
2. Accused Mariano Malones, Cecilio Montefrio and Jimmy M. Borra's "COMMENT ON THE MOTION FOR PARTIAL RECONSIDERATION (Re: RESOLUTION DATED 06 JULY 2018)" dated 10 August 2018.²

TRESPESES, J.

Before the Court is the prosecution's motion for partial reconsideration of our 6 July 2018 Resolution, as well as accused Mariano Malones, Cecilio Montefrio and Jimmy Borra's (collectively referred to as "accused") comment thereon.

PROSECUTION'S MOTION

In its motion, the prosecution moves for reconsideration of the Court's ruling which excluded Exhibits "B," "K," "L," "O," "V," "W," "X," "Z," "AA," "BB," "BB-1," "CC," "CC-1" and "DD" ("excluded exhibits") in evidence.

The prosecution claims that these excluded exhibits are public documents, the existence of which have been admitted by the defense

¹ *Rollo*, Vol. IV, pp. 38-45.

² *Id.* at pp. 60-63.

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(except **Exhibits “W”** and **“X”**) in the Joint Stipulation of Facts/Pre-trial Order. As such, the prosecution concludes, their authenticity and due execution are already presumed.

The prosecution enumerates the persons who identified the following exhibits:

1. **Exhibit “B”** was identified by witnesses Melba Joy C. Payofelin and Jose B. Barredo, Jr.;
2. **Exhibits “L”** and **“V”** were identified by witness Barredo, Jr. as pro-forma documents prepared by Feshan;
3. **Exhibits “Z”** and **“AA”** were identified by witness Barredo, Jr. as the copy of the disbursement vouchers, where his signatures appear in Box E to acknowledge two tranches of payment from the Municipality of Maasin. The prosecution argues that they may be taken as part of his independent relevant statement;
4. **Exhibit “BB”** is attached as Annex AA of witness Garillo’s Complaint, while **Exhibit “BB-1”** was identified by witness Payofelin;
5. **Exhibit “CC”** is attached as Annex “BB” of the Complaint of witness Garillo, while **Exhibit “CC-1”** was identified by witness Payofelin;
6. **Exhibit “DD”** was identified by witness Payofelin. Barredo, Jr. also identified the exhibit and authenticated the same as a copy of the receipt that he issued as evidence of payment received from the Municipality of Maasin. Hence, the prosecution concludes, it may be taken as part of Barredo, Jr.’s independent relevant statement; and
7. While their existence was not admitted by the accused, **Exhibits “W”** and **“X”** were identified by witnesses Payofelin and Barredo, Jr., with the latter even authenticating them as documents evidencing his delivery of the liquid fertilizer to the Municipality of Maasin.

Citing *Heirs of Ochoa v. GS Transport Corporation*,³ the prosecution argues that the requirement of authentication does not apply to public documents. In their presentation as evidence, the due execution and authenticity of public documents are already presumed. The prosecution then concludes that the best evidence rule no longer applies in the present case because the accused admitted their existence, and their authenticity and due execution are presumed (as held in the cited jurisprudence).

³ 691 Phil. 35-45 (2012).

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ACCUSED'S COMMENT

In their comment, accused reiterates that under Rule 132, Sections 24 and 25, the following rules govern the presentation of public documents in evidence:

Section 24. *Proof of official record.* — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.

Section 25. *What attestation of copy must state.* — Whenever a copy of a document or record is attested for the purpose of evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court.

Accused contend that in the instant case, the prosecution failed to conform to the mode of proving public documents. Witness Payofelin testified that the exhibits presented were merely certified true copies of machine copies (i.e., photocopies) of the documents she gathered. Meanwhile, witness Barredo, Jr. has no legal custody of the documents, and hence, is not competent to authenticate them.

Accused further argue that because the subject of inquiry is the contents of the exhibits, the original document must be produced, in accordance with the best evidence rule embodied in Rule 130, Section 3 of the Rules of Court, and citing *Heirs of Prodon v. Heirs of Alvarez*.⁴

Finally, accused underscore that under Rule 130, Section 36 of the Rules of Court, witnesses can only testify on facts which are within their personal knowledge. As Barredo, Jr. was not privy to the documents and had not witnessed the due execution thereof, accused assert that Barredo, Jr. cannot testify as to their contents.

⁴ 717 Phil. 54-76 (2013).

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OUR RULING

We deny the prosecution's motion for partial reconsideration for lack of merit.

The prosecution's enumeration of who identified the excluded exhibits is unavailing because the exclusion is based on the non-production of the original (or at least certified true copies of the original) copy of the documents in evidence.

We reiterate that under Section 3, Rule 130 of the Rules of Court,⁵ the general rule is that the original document itself must be presented when the subject of inquiry is the contents of the document.

As discussed in the assailed 6 July 2018 Resolution, one of the exceptions to this rule is when the original document is a public record in the custody of a public officer or is recorded in a public office. For this class of documents, Section 7, Rule 130 of the Rules of Court⁶ provides that the certified photocopies of originals by the public officer who has custody thereof are also admissible in evidence.

In the case at bar, the prosecution alleges that the excluded exhibits pertain to public documents. If so,⁷ then the said documents may be proved by the production of the original thereof or by a copy of the original thereof duly certified by its legal keeper.

⁵ Section 3. Original document must be produced; exceptions. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

- (a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
- (b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
- (c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and
- (d) When the original is a public record in the custody of a public officer or is recorded in a public office.

⁶ Section 7. Evidence admissible when original document is a public record. — When the original of document is in the custody of public officer or is recorded in a public office, its contents may be proved by a certified copy issued by the public officer in custody thereof.

⁷ Contrary to the prosecution's assertion, Exhibits "O" (certified true copy of a photocopy of the Letter-Quotation of Julie Gregorio of Feshan Philippines, Inc. President to accused Malones), "X" (certified true copy of a photocopy of the Delivery Receipt of BioNature), "BB-1" (certified true copy of a photocopy of duplicate check in the amount of Php643,500.00 signed by accused Malones), "CC," "CC-1" (certified true copy of a photocopy of the check in the amount of Php345,510.00 signed by accused Malones) and "DD" (certified true copy of a photocopy of the Official Receipt issued by Feshan Philippines, Inc.) are private documents. Their originals are required to be presented. As discussed in the assailed Resolution, the offeror must prove the following before a party is allowed to adduce secondary evidence to prove the contents of the original: (1) the existence or due execution of the original; (2) the loss and destruction of the original or the reason for its non-production in court; and (3) on the part of the offeror, the absence of bad faith to which the unavailability of the original can be attributed.

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However, the excluded exhibits do not pertain to the original documents themselves. Neither were they certified true copies of the originals attested to by their legal custodian. On their face, Exhibits “B,” “K,” “L,” “O,” “V,” “W,” “X,” “Z,” “AA,” “BB,” “BB-1,” “CC,” “CC-1” and “DD” are mere *certified photocopies of photocopies*. Hence, these excluded exhibits do not satisfy the conditions for their admission in evidence as public documents.

There is also no merit to the prosecution’s assertion that the defense’s admission of the existence of some of the excluded exhibits (Exhibits “B,” “K,” “Z,” “AA,” “BB,” “CC” and “DD”)⁸ gives rise to a conclusive presumption of their due execution.

The rule is that a public document “enjoys the presumption of regularity. It is a *prima facie* evidence of the truth of the facts stated therein and a conclusive presumption of its existence and due execution.”⁹ Clearly, the said rule applies only to the *actual* public document or its certified true copy. It does not apply to the excluded exhibits, which are merely photocopies of photocopies of the purportedly original public documents.

We are likewise not persuaded by the prosecution’s contention that Exhibits “Z,”¹⁰ “AA”¹¹ and “DD”¹² may be admitted in evidence because they are part of Barredo, Jr.’s independent relevant statement.

In *Bedol v. Commission on Elections*,¹³ the Supreme Court discusses the doctrine of independent relevant statement in this manner:

Another exception to the hearsay rule is the doctrine of independently relevant statements, where only the fact that such statements were made is relevant, and the truth or falsity thereof is immaterial. The hearsay rule does not apply; hence, the statements are admissible as evidence. Evidence as to the making of such statement is not secondary but primary, for the statement itself may constitute a fact in issue or be circumstantially relevant as to the existence of such a fact.

The doctrine finds no application in determining the admissibility of the documentary Exhibits “Z,” “AA” and “DD.” The said exhibits were excluded not on the ground that they were hearsay. Instead, they were excluded on the ground that they are not the original documents or their certified true copies.

⁸ TSN, 28 July 2017, pp. 9-11.

⁹ *Chua v. Westmont Bank, et al.*, 683 Phil. 56-69 (2012).

¹⁰ Exhibit “Z” is the certified true copy of a photocopy of an undated and unnumbered disbursement voucher for the amount of Php643,500.00 signed by accused Malones, Montefrio and Madarico.

¹¹ Exhibit “AA” is the certified true copy of a photocopy of another undated and unnumbered disbursement voucher for the amount of Php349,000.00, signed by Malones, Borra and Madarico.

¹² Exhibit “DD” is a certified true copy of a photocopy of Official Receipt No. 3012 issued by Feshan Philippines, Inc. in the amount of Php643,500.00.

¹³ *Bedol v. Commission on Elections*, 621 Phil. 498-518 (2009).

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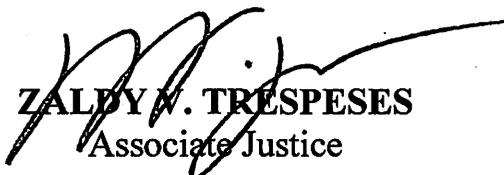
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WHEREFORE, in view of the foregoing, the prosecution's motion for partial reconsideration of the Court's 6 Jul 2018 Resolution is **DENIED** for lack of merit.

SO ORDERED.



ZALBY N. TRESPESES
Associate Justice

WE CONCUR:



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



GEORGINA D. HIDALGO
Associate Justice