



Republic of the Philippines

Sandiganbayan

Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on 20 September 2018.

Present:

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

The following resolution was adopted:

Crim. Case No. SB-16-CRM-1236 - People vs. VICENTE A. FERNANDEZ.

This resolves the following:

1. Prosecution's "MOTION FOR PARTIAL RECONSIDERATION (RE: RESOLUTION DATED AUGUST 6, 2018)" dated 17 August 2018;¹ and
2. Accused's "COMMENT/OPPOSITION (to the Prosecution's Motion for Partial Reconsideration)" dated 5 September 2018.²

TRESPESES, J.

Before the Court is the prosecution's motion for partial reconsideration of its Resolution dated 6 August 2018,³ pertaining to the ruling on the latter's formal offer of documentary exhibits.

THE PROSECUTION'S MOTION

In its Motion, the prosecution seeks partial reconsideration of the Resolution, specifically the Court's exclusion of Exhibits "VV," "WW," "XX," and "YY" ("subject exhibits").

The prosecution argues that accused, through counsel, admitted that he signed Annexes "A" and "B." These Annexes were later allowed by the Court to be marked as Exhibits "VV" and "WW," citing witness Melody Angoy's testimony on 12 April 2018. The prosecution adds that accused's confirmation/admission in open court of Annexes "A" and "B" in witness Angoy's Judicial Affidavit makes the best evidence rule inapplicable. Under

¹ *Rollo*, Vol. III, pp. 444-451.

² *Id.* at 467-472.

³ *Id.* at 438-441.

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Section 4, Rule 129 of the Rules of Court,⁴ an admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof.

The prosecution also alleges that witness Angoy presented the originals and certified true copies from which Exhibits “XX” and “YY” were derived. Hence, the prosecution argues that the said exhibits were properly authenticated.

Finally, the prosecution avers that, although these matters were not amply provided in the enumerated purposes of the exhibits in its formal offer, they may be considered by the Court in the interest of fairness because these are borne out by the records.

ACCUSED’S COMMENT/OBJECTION

In his Comment/Opposition, accused alleges that the prosecution has admitted that the subject exhibits are mere photocopies. Citing *Country Bankers Insurance Corporation v. Lagman*,⁵ accused argues that before a party is allowed to present secondary evidence to prove the contents of the original, the offeror must prove (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. Moreover, the party must give a satisfactory explanation for the non-production of the original instrument. Also, when more than one copy of the original exists, all of them must appear to have been lost, destroyed or cannot be produced before secondary evidence can be allowed. A photocopy may not be used without accounting for the original thereof.

Accused further avers that in the instant case, the prosecution did not even attempt to explain whether the originals of Exhibits “VV” and “WW” existed or were duly executed and the reason for their unavailability. In addition, considering that correspondences between government offices undoubtedly have several original copies, the subject exhibits would have had several originals. However, the prosecution did not even make an attempt to account for the various originals of the subject exhibits.

Accused belies the prosecution’s claim that the best evidence rule does not apply to Exhibits “VV” and “WW” because accused already admitted them in open court. Accused counters that, at most, there was an admission as to their existence, but not as to their contents. Accused further argues that

⁴ Sec 4. Judicial admissions. — An admission, verbal or written, made by the party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

⁵ 669 Phil. 205-221 (2011).

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even assuming that accused admitted the existence of the subject documents, the prosecution is still required to prove their due execution, loss and contents.

Accused additionally claims that the subject exhibits are also inadmissible because they were not certified by the custodian thereof as correct and faithful reproduction of their originals. The originals of Exhibits "VV" and "WW" are in the official custody of the Office of the Municipal Mayor. The original of Exhibit "XX" is in the custody of DILG Provincial Officer. Exhibit "YY" was certified by Heherson Rosalem although another prosecution witness, Charito Pangan, previously testified that she had custody thereof. However, it was witness Angoy who identified the documents.

Accused emphasized that apart from admitting that she is not the subject documents' custodian, Angoy further confessed that she brought the original copies of the documents unofficially and without a court order. Thus, the documents are also inadmissible for violating the rule of irremovability of public records.

Finally, there was no stipulation or proof adduced to the effect that the photocopies offered were faithful reproductions of the originals.

OUR RULING

We **deny** the prosecution's motion for partial reconsideration.

We reiterate our ruling in the assailed 6 August 2018 Resolution that under Section 3, Rule 130 of the Rules of Court, the original document itself must be presented in court when the subject of inquiry is the contents of the document. Only when the original is unavailable may a photocopy be admissible in evidence, pursuant to Section 5, Rule 130. However, before a party is allowed to adduce secondary evidence, it must prove (1) the existence or due execution of the original; (2) the loss or destruction of the original or the reason for its non-production in court; and (3) the unavailability of the original is not attributable to bad faith on the part of the offeror. As we stressed in the said Resolution, citing *Country Bankers Corporation v. Lagman*⁶ the correct order of proof is as follows: existence, execution, loss, and contents.

The prosecution disregarded the above rules in presenting Exhibits "VV,"⁷ "WW,"⁸ "XX"⁹ and "YY".¹⁰

⁶ *Supra* at note 4.

⁷ Exhibit "VV" is a photocopy of the letter dated 4 December 2014 of accused to Vice Mayor Elmer L. Javelona.

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The subject exhibits are plain photocopies of the letters they purport to represent. However, contrary to the established rules in presenting secondary evidence, they were presented without prior proof of the original documents' existence and loss or reason for unavailability.

While the TSN reflects that Angoy brought to court the supposedly original documents from which the photocopies were sourced, the manner by which these were presented is also not in accordance with the Rules.

First, it is apparent on the face of the subject exhibits that Angoy is neither the author nor recipient of the documents, as to make her competent to identify them.

Second, Angoy admitted that she is not the custodian of the original documents she brought to court.¹¹

In particular, she testified that she only unofficially "borrowed" the original of the document from which **Exhibit "VV"** was derived.¹²

Regarding **Exhibit "WW,"** Angoy further testified that the original document, which was photocopied to produce Exhibit "WW," was obtained by her from the DILG Provincial Office with the consent of Provincial Director Bing Baldovino.¹³

As for **Exhibit "XX,"** Angoy testified that the original of this document was endorsed to her by former DILG Provincial Director Abito D. Bernasor, in her capacity as the Municipal Local Government Operations Officer (MLGOO) of the Municipality.¹⁴

As regards **Exhibit "YY,"** Angoy produced a photocopy of supposedly the same document, which she claimed was obtained from the DILG Legal Section. She admitted that it was certified only by Mr. Heherson Rosalem, whom she identified as the Officer-in-Charge.¹⁵ Meanwhile, defense counsel manifested that this certification was not signed. Moreover, another prosecution witness, Charito Pangan, had previously testified that it was she who has legal custody of the said document.¹⁶

⁸ Exhibit "WW" is a photocopy of the letter dated 10 December 2014 of accused to Abito D. Bernasor of DILG Provincial Office, Davao del Sur.

⁹ Exhibit "XX" is a photocopy of the letter dated 11 December 2014 of DILG Provincial Officer Abito D. Bernasor to accused.

¹⁰ Exhibit "YY" is a photocopy of the letter dated 7 November 2014 of accused to DILG Regional Director Wilhelm M. Suyco, CESO III.

¹¹ TSN, 12 April 2018, p. 29.

¹² Id. at 33-39.

¹³ Id. at 39-40.

¹⁴ Id. at 41-42.

¹⁵ Id. at 42-44.

¹⁶ Id. at 43.

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Third, assuming that witness Angoy indeed produced the original documents from which the subject exhibits were photocopied, there was no stipulation or admission obtained from the defense that the subject exhibits were faithful reproductions of the said originals.

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

SO ORDERED.


ZALDY V. TRESPESES
Associate Justice

WE CONCUR:


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


GEORGINA D. HIDALGO
Associate Justice