



REPUBLIC OF THE PHILIPPINES

**Sandiganbayan**

Quezon City

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*Seventh Division*

***MINUTES of the proceedings held on October 15, 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-13-CRM-0096 to 0101 – People of the Philippines vs. Antonio P. Belicena, et al.***

This resolves the following:

1. Prosecution's "OMNIBUS MOTION"<sup>1</sup> dated September 5, 2018; and
2. Accused Raul C. De Vera and Rosanna P. Diala's "COMMENT/OPPOSITION"<sup>2</sup> dated September 19, 2018.

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**HIDALGO, J.:**

Submitted for Resolution are the Prosecution's Omnibus Motion dated September 5, 2018 and accused Raul C. De Vera and Rosanna P. Diala's Comment/Opposition thereto dated September 19, 2018.

In its Omnibus Motion, the Prosecution, through the Office of the Special Prosecutor ("OSP" for brevity), prays, among others, that its Formal Offer of Evidence be admitted and the scheduled hearing set on September 25 and 26, 2018 be cancelled and moved to a later date as may be allowed by this Court's calendar.

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<sup>1</sup> Record, Vol. 4, pp. 206-246.

<sup>2</sup> Id. at 256-260.

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### **Arguments offered in support of the admission of the Formal Offer of Evidence**

The OSP in its attempt to convince this Court to admit its formal offer of evidence, offered its sincerest apologies in not filing on time its Formal Offer of Evidence and explained that during its actual preparation, some originally marked exhibits were misplaced. Fortunately, after diligent search, said documents were found to have mixed up with the record of terminated cases. The OSP maintained that it neither had an intention to defy the orders of this Court nor violated the rights of the accused for a speedy disposition of the case.

### **Arguments offered to cancel the hearing previously set on September 25 and 26, 2018.**

Anent the resetting of the previously scheduled hearing on September 25 and 26, 2018, the handling Assistant Special Prosecutor further explained that she will be travelling to the United States until September 29, 2018 as per approved Travel Authority No. 153-SP dated August 23, 2018, and that, she has not yet unloaded the present case to the Prosecution Bureau assigned to this Court such that she will be the one who will continue the prosecution of this case.

In their **COMMENT/OPPOSITION**, accused Raul C. De Vera (“accused De Vera” for brevity) and accused Rosanna P. Diala (“accused Diala” for brevity) contended that the arguments offered by the prosecution in its Omnibus Motion utterly lack merit.

Specifically, they argued that, the failure of the prosecution to file its Formal Offer of Evidence is sanctioned by **Section 13 (c) of the Revised Guidelines for Continuous Trial of Criminal Cases** which mandates that formal offer of evidence should be made on the same day immediately after the presentation of its last witness. This notwithstanding, the Court gave the prosecution a certain period of time within which to file its Formal Offer of Evidence. Unfortunately, despite the Court’s leniency, it failed to comply and file the same.

Accused likewise invoked **Section 34, Rule 132 of the Revised Rules on Evidence** which states that “**the court shall consider no evidence which has not been formally offered.**” This being the case, the filing of a formal offer of evidence is not just a trivial matter and its failure to file the same within the period given shall be deemed a waiver to submit it.

Furthermore, they insisted that the invocation of “substantial justice” in its favor deserves scant consideration.

In arguing in this line, accused theorized that the OSP’s apologies in

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its Omnibus Motion and admission that it simply has no excuses for failing to submit the Formal Offer of Evidence do not constitute “good cause” in order to justify the belated filing of the Formal Offer of Evidence. Accused relied on the legal principle that “the bare invocation of the interest of substantial justice is not a magic wand that will automatically compel this Court to suspend the rules.”

This Court has not received a Comment/Opposition of accused Antonio P. Belicena and Uldarico P. Andutan, Jr., from the time the Omnibus Motion was submitted for Resolution on September 14, 2018.

Nevertheless, after all the arguments were heard by this Court, the Court now considers the submitted Omnibus Motion and Comment/Opposition for resolution.

After going over the respective arguments of all the parties and the factual circumstances of the present cases, this Court is inclined to DENY the Omnibus Motion.

Allow us to explain.

The Rules of Court provides that “the court shall consider no evidence which has not been formally offered.”<sup>3</sup>

In the case of *Heirs of Pedro Pasag, et al. vs. Spouses Lorenzo and Florentina Parocha, et al.*,<sup>4</sup> the Supreme Court explained the necessity for the filing of a formal offer of evidence. Thus:

“A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. On the other hand, this allows opposing parties to examine the evidence and object to its admissibility. Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court.”

Strict adherence to the filing of the formal offer of evidence was emphasized by the Supreme Court in the case of *Nelia A. Constantino vs. Court of Appeals, et al.*<sup>5</sup>, where the Supreme Court ruled that an admission of a formal offer of evidence after the lapse of a period to file the same is to “*condone an inexcusable laxity if not, non-compliance with a court order*”

<sup>3</sup> Rule 132, Section 34, Revised Rules on Evidence

<sup>4</sup> GR No. 155483, April 27, 2007

<sup>5</sup> GR No. 116018, November 13, 1996

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***which, in effect, would encourage needless delays and derail the speedy administration of justice.***” (emphasis supplied)

Records cannot deny that truly, the OSP had failed thrice to file the formal offer within the period given by this Court. In fact, record shows that on May 2, 2018, after the OSP presented its last witness, the handling prosecutor requested twenty (20) days from said date to file its formal offer.<sup>6</sup> Thereafter, on May 22, 2018, the OSP moved for extension of ten (10) days to file its formal offer which was granted in a Resolution of even date. Then on June 1, 2018, it again asked for another five (5) days or until June 6, 2018 to file the formal offer.<sup>7</sup>

However, after June 6, 2018, the Court observed that after a considerable period of time has lapsed, the OSP still failed to file its formal offer of evidence without asking this Court for another extension of time to file its formal offer of evidence, thus prompting this Court to issue an Order that the OSP has waived its right to do so.<sup>8</sup> **Specifically, records will reveal that, after the last extension of time given to the OSP i.e. June 6, 2018, it took the OSP three (3) months and five (5) days to move and seek the indulgence of this Court to admit its formal offer alleging that the documents sought to be offered “got mixed up with the set of folders of terminated cases that were intended to be archived<sup>9</sup>, is not acceptable. If at all, this amounts to OSP’s failure to exercise due care of its record of exhibits.**

In sum, the failure of the OSP to ask for an extension of time before the lapse of June 6, 2018 and the belated filing of the Omnibus Motion only on September 11, 2018, is anathema to the efficient, effective, and expeditious dispensation of justice which this Court seeks to uphold.

In *Republic of the Philippines vs. Fe Roa Gimenez and Ignacio B. Gimenez*,<sup>10</sup> the Supreme Court explicitly ruled that “*rules of procedure are not ends in themselves. The object of these rules is to assist and facilitate a trial court’s function to be able to receive all the evidence of the parties, and evaluate their admissibility and probative value in the context of the issues presented by the parties’ pleadings in order to arrive at a conclusion as to the facts that transpired. Having been able to establish the facts, the trial court will then be able to apply the law and determine whether a complainant is deserving of the reliefs prayed for in the pleading.*” (emphasis supplied)

Anent the prayer for cancellation of the previously set hearing on

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<sup>6</sup> Record, Vol. 4, pp. 153-154.

<sup>7</sup> *Id.* at 202, Order dated July 27, 2018.

<sup>8</sup> *Id.*

<sup>9</sup> Record, Vol. 4, p. 206

<sup>10</sup> GR No. 174673, January 11, 2016

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September 25 and 26, 2018, since this Court had already issued an Order dated September 25, 2018<sup>11</sup>, which cancelled those dates and set the initial presentation of defense evidence on November 29, 2018 at 8:30 in the morning, this Court finds no need to act on the same because it has become moot and academic.

**WHEREFORE**, on the basis of our disquisitions above, the Omnibus Motion is **DENIED FOR LACK OF MERIT**.

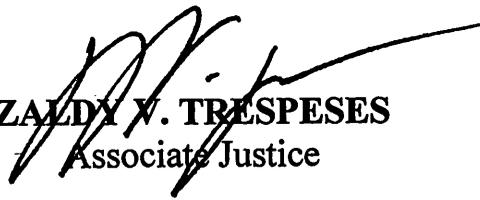
In the meantime, and as already ruled by this Court in its Order dated September 25, 2018, the hearing set for the initial presentation of defense evidence on November 29, 2018 at 8:30 in the morning stands.

**SO ORDERED.**

  
**GEORGINA D. HIDALGO**  
Associate Justice

**WE CONCUR:**

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

  
**ZALDY V. TRESPESSES**  
Associate Justice

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<sup>11</sup> Record, vol. 4, p. 255