REPUBLIC OF THE PHILIPPINES
Sandiganbayan
QUEZON CITY

SEVENTH DIVISION

MINUTES of the proceedings held on November 19, 2018.

Present:

Justice MA. THERESA DOLORES C. GOMEZ-ESTOESTA -----*Chairperson*
Justice ZALDY V. TRESPESES ---------- *Member*
Justice BAYANI H. JACINTO[*] ---------- *Member*

The following resolution was adopted:

SB-15-CRM-0116 to 0118 – People v. Juanito Padilla Abergas

This resolves the following:

1. Prosecution's "Motion for Reconsideration" dated October 8, 2018; and

2. Accused Juanito Padilla Abergas's "Comment (to Prosecution's Motion for Reconsideration of the Resolution on its Formal Offer of Exhibits)" dated October 18, 2018.

GOMEZ-ESTOESTA, J.:

The prosecution seeks the reconsideration of the Court's Resolution[1] dated September 28, 2018 which *excluded* twenty one (21) exhibits, all disbursement vouches ("**DVs**"), namely Exhibits "KK", "LL", "MM", "NN", "OO", "QQ", "RR", "SS", "TT", "UU", "VV", "WW", "XX", "ZZ", "EEE", "FFF", "GGG", "HHH", "III", "JJJ", "KKK", on ground that what were submitted were merely "*certified machine copies*", and therefore the same were not authenticated and proved in the manner provided in the *Rules of Court*.

In its Motion for Reconsideration, the prosecution argued that the basis for the introduction of secondary evidence obtains, which are: (1) the execution or existence of the original; (2) the loss and destruction of the

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[*] Per Administrative Order No. 540-2018 dated November 9, 2018

[1] Records, Vol. 3, pp. 463-466

original or its non-production in court; and (3) the unavailability of the original is not due to bad faith on the part of the proponent. Firstly, witness Ma. Theresa V. Carrillo ("**Carrillo**") established the existence of the original DVs which comprise the excluded exhibits, when she averred that she had reviewed said documents in the scope of her fact-finding investigation of accused Juanito Padilla Abergas ("**accused**"). Secondly, witness Rafael O. Taleon, Jr. ("**Taleon**") explained the non-production of the DVs in court; Commission on Audit ("**COA**") officials had requested the audit team leader of the Department of Public Works and Highways ("**DPWH**") Region VII, and the defunct Regional Legal Adjudication Office, for the production of said documents, but Auditor Sonia Lao replied that the same could not be retrieved, hence only certified machine copies of the DVs could be produced by witness Taleon. Thirdly, no bad faith was present on the part of the prosecution considering that the original DVs could not be produced by it. Thus, the prosecution prayed that a new ruling be issued admitting the aforementioned excluded exhibits.

In his Comment, the accused countered that secondary evidence cannot be presented without the prosecution having established the fact of the loss of the originals. The witnesses did not even give a reason why the original DVs have been lost, and the prosecution did not show that they exerted diligent efforts to secure the same. In fact, witness Taleon merely asserted that he was instructed to retrieve the files from the Regional Legal Adjudication Office (now defunct). Neither did the prosecution identify the specific place in which said documents were stored. Moreover, the prosecution's Motion was fatally defective for non-compliance with the 3-day notice rule. This is because accused, through counsel, belatedly received a copy of said pleading on October 12, 2018, which is the same day that the Motion was heard. Thus, the accused prayed for the denial of the prosecution's Motion for Reconsideration.

OUR RULING

The prosecution's Motion fails to persuade.

Section 3, Rule 130 of the *Revised Rules on Evidence* reads:

> 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:
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> (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;
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> (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
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> (d) When the original is a public record in the custody of a public officer or is recorded in a public office. (2a)

The *best evidence rule* requires that the original document(s) be produced whenever its contents are the subject of inquiry. By way of exception, a party may adduce secondary evidence to prove the contents of an original document if he or she has established the loss or destruction or unavailability of all the copies of the original of the said document. Pertinently, *Ebreo v. Ebreo* explains:[2]

> "Where there are two or more originals, it must appear that all of them have been lost, destroyed or cannot be produced before secondary evidence can be given of any one. For example, a lease was executed in duplicate, one being retained by the lessor and the other by the lessee. Either copy was, therefore, an original, and could have been introduced as evidence of the contract without the production of the other. One of these originals could not be found. The non-production of the other was not accounted for it was held that "under these circumstances, the rule is that no secondary evidence of the contents of either is admissible until it is shown that originals must be accounted for before secondary evidence can be given of any one."
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> **Indeed, before a party is allowed to adduce secondary evidence to prove the contents of the original of the deed, the offeror is mandated to prove the following:**
>
> **"(a) the execution and existence of the original (b) the loss and destruction of the original or its non-production in court; and (c) unavailability of the original is not due to bad faith on the part of the offeror."** (Emphasis supplied)

While the prosecution insists that its secondary evidence consisting of "certified machine copies" of DVs are admissible in evidence, the fact of the matter is that it has not adequately established the loss, destruction, or unavailability of the original DVs in question.

Witness Taleon disclosed that he was the custodian of the notices of disallowance and the *photocopies* of the DVs.[3] The original DVs, and other supporting documents and/or records, were handled by the fact-finding team in the course of their investigation, of which witness Carrillo was a member. Witness Carrillo revealed that she obtained the originals of said documents

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[2] G.R. No. 160065, February 28, 2006 quoting *Santos v. Santos*, 396 Phil. 928, 940-941 (2000)
[3] TSN dated July 16, 2018 (morning), p. 10

from COA Region VII. As part of standard procedure, the original DVs and supporting documents were submitted by DPWH Region VII to the COA for post-audit.[4] The possession of said documents presumably remained with the COA absent any showing that there was a deviation from the standard procedure. Still, the prosecution was not able to present the custodian of the *original* DVs, nor did they obtain certified true copies of said originals. Since the COA retained possession of the DVs subject of these cases, it is difficult to believe the prosecution's theory that the same were simply unavailable and could not be produced in court. Even assuming *arguendo* that the DVs are admissible, since what were submitted by the prosecution were mere machine copies, they have no probative value as proof of their respective contents.[5]

The importance of laying the basis for the introduction of secondary evidence cannot be emphasized enough as explained by esteemed author Antonio R. Bautista, as follows:[6]

> The predicate for the introduction of secondary evidence must be punctiliously laid x x x **Our courts require prior proof of high-intensity or diligent search in order to establish the loss of the original. *Government v. Martinez*[ ] exemplifies the judicial resistance to the admission of secondary evidence to prove the contents of an original where the search for the original has not been established to have been diligent enough**:
>
> > "As the failure of the oppositor to present the original document in question was not accounted for; as it is not proper to suppose that the original could not have been presented within a reasonable time if he had exercised due diligence for he or his counsel had the means opportunity and time to find the original if it really existed; as no proof was adduced that said document had been lost, or destroyed, or that proper search thereof was made in the general files of notarial documents in the City of Manila, or that an attempt was made to secure a copy thereof if it existed in said files; as the notary, Gregorio Yulo, a person well known in Iloilo, was not asked directly and clearly as to the whereabouts of said documents or some particular or data about it in order to obtain from him some conclusive and categorical answer; as said notary has not been presented at the trial to be examined on these points; and lastly, as it was not shown that the party interested in the presentation of said document, who is Julio Salvador, had made a diligent and proper, but fruitless, search for said document in any place where it could probably be found — therefore the secondary evidence presented by the oppositor of the testimony of the witnesses, Saez and Madrenas, and the certified copy issued by the registrar of deeds of Iloilo, Exhibit 2, is of no value for [t]he purposes intended and such evidence was improperly considered by the court in reaching the

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[4] Judicial Affidavit of Carrillo (Records, Vol. 2, p. 248); TSN dated July 16, 2018 (morning), pp. 22-24
[5] *Vide: Commissioner of Internal Revenue v. Hantex Trading Co.*, G.R. No. 136975, March 31, 2005
[6] ANTONIO R. BAUTISTA, BASIC EVIDENCE 30-31 (2007 ed.) which cited *Government v. Martinez*, G.R. No. 11889, January 10, 1918

> conclusion that said Julio Salvador was the owner of the lots in question." (Emphasis supplied)

From the foregoing, since there is no basis to admit the secondary evidence proffered by the prosecution, said evidence does not fall within the exception to the best evidence rule, which mandates the presentation of the original documents. As such, a departure from the Court's previous legal stand is unwarranted.

WHEREFORE, the prosecution's *Motion for Reconsideration* dated October 8, 2018 is **DENIED**.

This now considers the accused's *Motion for Leave of Court to File Demurrer to Evidence*. Before resolving the same, the prosecution is directed to file comment thereon within a non-extendible period of five (5) days from notice hereof, after which the same shall be submitted for resolution.

SO ORDERED.

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

WE CONCUR:

ZALDY V. TRESPESES
Associate Justice

BAYANI H. JACINTO
Associate Justice