



REPUBLIC OF THE PHILIPPINES  
**Sandiganbayan**  
QUEZON CITY

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**SEVENTH DIVISION**

*MINUTES of the proceedings held on November 15, 2018.*

*Present:*

*MA. THERESA DOLORES C. GOMEZ-ESTOESTA ----- Chairperson*  
*ZALDY V. TRESPESES ----- Associate Justice*  
*BAYANI H. JACINTO\* ----- Associate Justice*

The following resolution was adopted:

**CRIMINAL CASE NO. SB-17-CRM-0070 to 0071**

**PEOPLE v. SALOME TIONGCO HABAL**

Before the Court is:

The Prosecution's "MOTION FOR RECONSIDERATION" dated September 17, 2018.

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**GOMEZ-ESTOESTA, J.:**

This resolves the prosecution's *Motion for Reconsideration*<sup>1</sup> of this Court's *Resolution*<sup>2</sup> on the prosecution's Formal Offer of Evidence, particularly against accused Salome Habal. To date, this Court has not received any comment from accused Habal despite having giving her time to file one.

In its *Motion*, the prosecution requests for a second look at Exhibit "H<sup>3</sup>", which this Court excluded for non-compliance with the Best Evidence Rule, being a mere photocopy. It maintains that said exhibit was duly identified by prosecution witness Edgardo Lunizo, who signed the document itself, thus authenticating it.

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\* Per A.O. No. 540-2018 dated November 9, 2018

<sup>1</sup> Records, Vol. 4, pp. 32-34

<sup>2</sup> Id., pp. 21-28

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The *Motion* is bereft of merit.

Exhibit "H<sup>3</sup>", which is a photocopy of the Minutes of the Pre-Bid Conference dated November 23, 2010, remains to be secondary evidence which has not been established and offered as such, and its authentication alone is not sufficient to make it admissible as secondary evidence. Said document has been offered to prove (a) that no public bidding was conducted for the extension of the security services of Variance, and (b) that no BAC Resolution/recommendation was made by the BAC for the extension of security services of Variance.<sup>3</sup> Accused Habal has been charged after signing the disbursement vouchers for the payment to Variance, whose services were secured without public bidding. Thus, the contents of Exhibit "H<sup>3</sup>" are subjects of inquiry.

Rule 130, Section 3 of the Revised Rules of Court provides:

*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;

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

In *Lee v. People*,<sup>4</sup> the Supreme Court explained:

The offeror of secondary evidence is burdened to prove the predicates thereof: **(a) the loss or destruction of the original without bad faith on the part of the proponent/offeror which can be shown by circumstantial evidence of routine practices of destruction of documents; (b) the proponent must prove by a fair preponderance of evidence as to raise a reasonable inference of the loss or destruction of the original copy; and (c) it must be shown that a diligent and bona fide but unsuccessful search has been made for the document in the proper place or places.** It has been held that where the missing document is the foundation of the action, more strictness in proof is required than where the document is only collaterally involved.

If the document is one in which other persons are also interested, and which has been placed in the hands of a custodian for safekeeping, the custodian must be required to make a search and the fruitlessness of such search must be shown, before secondary evidence can be admitted. The

<sup>3</sup> Formal Offer of Evidence dated June 28, 2018, *Records*, Vol. 3, pp. 498-558

<sup>4</sup> G.R. No. 159288, October 19, 2004

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certificate of the custody of the document is incompetent to prove the loss or destruction thereof. Such fact must be proved by some person who has knowledge of such loss.

**The proponent is also burdened to prove the due execution or existence of the original as provided in Rule 130, Section 5 of the Revised Rules of Court:**

*When the original document is unavailable.* — When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.

Rule 132, Section 20 of the Revised Rules of Court provides the procedure on how the authenticity and due execution of a private document which is offered as authentic may be proved:

*Proof of private document.* — Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:

- (a) By anyone who saw the document executed or written; or
- (b) By evidence of the genuineness of the signature or handwriting of the maker.


Any other private document need only be identified as that which it is claimed to be. (emphases supplied)

While Exhibit “H<sup>3</sup>” was authenticated by Edgar Lunizo, who signed the said document, there is no proof of the loss of the original document and the other predicates of secondary evidence, as discussed above. It thus remains inadmissible under the Best Evidence Rule.

WHEREFORE, in view of the foregoing, the prosecution’s *Motion for Reconsideration* is **DENIED** for lack of merit.

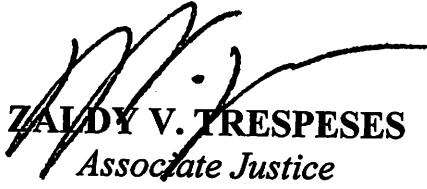
The parties are reminded of the setting for the presentation of defense evidence on January 21, 2019, at 8:30 in the morning.

SO ORDERED.

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

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WE CONCUR:

  
**ZALDY V. TRESPESES**  
*Associate Justice*

  
**BAYANI H. JACINTO**  
*Associate Justice*