

REPUBLIC OF THE PHILIPPINES  
SANDIGANBAYAN  
Quezon City

Fifth Division

**PEOPLE OF THE PHILIPPINES,**

*Plaintiff,*

**SB-17-CRM-0283**

- versus -

**FOR: Violation of Sec. 3 (e)  
of R.A. No. 3019, as amended**

**MELQUIADES A. ROBLES, ET AL.,**

*Accused.*

*Present:*

**LAGOS, J., Chairperson,  
MENDOZA-ARCEGA, and  
MAÑALAC, JJ.**

*Promulgated:*

December 14, 2018 *Jal*

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**RESOLUTION**

**LAGOS, J.:**

For the Court's consideration are:

- (i) Accused Elmo Stephen P. Triste (Triste) and Eduardo A. Abiva's (Abiva) *Manifestation/Objection to the Marking of Documents Presented by Lolita Soriano*,<sup>1</sup> dated September 4, 2018;
- (ii) Accused Dennis BN Acorda's (Acorda) *Manifestation/Objection (To the marking and admission of documents attached to Lolita M. Soriano's Judicial Affidavit)*,<sup>2</sup> dated October 4, 2018;
- (iii) Prosecution's *Consolidated Comment (Re: Manifestation/Objection to the Marking/Admission of Documents Presented by Lolita M. Soriano)*,<sup>3</sup> dated November 10, 2018;

<sup>1</sup> Records, Vol. 5, pp. 478-482

<sup>2</sup> *Id.*, Vol. 6, pp. 70-77

<sup>3</sup> *Id.*, pp. 318-323

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- (iv) Accused Melquiades A. Robles's (Robles) *Reply (To: Prosecution's Consolidated Comment dated 10 November 2018)*, dated 16, November 2018;<sup>4</sup> and
- (v) Accused Acorda's *Reply (To the Consolidated Comment dated 10 November 2018)* dated 19 November 2018.<sup>5</sup>

All the foregoing was spawned by the prosecution's *Manifestation and Motion*<sup>6</sup> dated June 11, 2018, shortly before the start of the prosecution's evidence, seeking the court's permission to present an additional witness, namely Lolita M. Soriano, which it had not identified during the pre-trial conference to be among its witnesses and, thus, she was not listed in the Pre-Trial Order. In the said motion, the prosecution alleged that the originals of their **marked** exhibits during pre-trial were not presented for comparison due to **unavailability**, but they had recently been **"able to locate some of the original and certified true copies of the prosecution's marked exhibits, from the Commission on Audit (COA)-Special Audit Office (SAO)."**<sup>7</sup> Hence, according to the prosecution, "For this purpose, we are submitting the Judicial Affidavit of LOLITA M. SORIANO, Supervising Administrative Officer of COA-SAO who has custody of the original and certified true copy of the documents related to the transaction of LRTA with the Joint Venture of COMM Builders and Technology Philippines Corporation, PMP, Incorporated, and Gradski Saobračaj GRAS ('Joint Venture')"<sup>8</sup> and that "...the prosecution requests that it be allowed to present this witness [Soriano] in lieu of JOY CORTEZA, which was specifically mentioned in the Pre-Trial Order."<sup>9</sup>

The prosecution's *Manifestation and Motion* was met with separate oppositions from accused Robles,<sup>10</sup> Acorda,<sup>11</sup> and Marilou B. Liscano,<sup>12</sup> whereupon the Court in its August 8, 2018 Resolution<sup>13</sup> granted the prosecution's motion stating, among others things, that "A perusal of her [Soriano's] Judicial Affidavit demonstrates that her testimony is significant in the determination of the merits of the case, as the documents to be identified will shed light on the allegations in the Information. xxxWe are mindful that the pre-trial order shall bind the parties, limit the trial matters not disposed of, and control the course of the action during the trial. This rule, however, is not without exception. The court can modify the said order

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<sup>4</sup> Records, Vol. 6, pp. 330-334

<sup>5</sup> *Id.*, pp. 349-356

<sup>6</sup> *Id.*, Vol. 4, pp. 330-343

<sup>7</sup> *Id.*, par. 3, p. 330; bold font supplied.

<sup>8</sup> *Ibid.*, par. 4; emphasis in the original.

<sup>9</sup> *Id.*, par. 5, p.331

<sup>10</sup> *Id.*, Vol. 5, p. 210

<sup>11</sup> *Id.*, p. 303

<sup>12</sup> *Id.*, p. 309

<sup>13</sup> *Id.*, Vol. 5, pp. 403-408

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to prevent manifest injustice. Strict adherence to the rules shall be dispensed with if it will result into injustice.”<sup>14</sup>

When witness Soriano was presented at the hearing on **August 15, 2018**, the proceeding was stalled, and the hearing ordered by the Court continued instead to October 10, 2018. At that August 15, 2018 hearing, Prosecutor Minerva A. Quintela started her direct examination. However, considering that her lists of exhibits did not show the particular exhibits which the witness did not have either an original or a certified true copy, she moved that a **comparison of exhibits** be first made before the Division Clerk of Court. The Court then directed further comparison of those exhibits by the prosecution with the defense counsels to be held that same day so the witness at the next hearing could testify only on the exhibits which she can identify either as a certified true copy from the original or copies from certified true copies of the exhibits.<sup>15</sup>

Accused **Triste** and **Abiva** in their joint *Manifestation/Objection* explained, as follows:

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9. During the marking of documents, the Prosecution showed two sets of documents – (a) the copies certified as true by Lolita Soriano; and (b) the originals, certified true copies and photocopies which were certified as true by Lolita Soriano.

10. Considering that there were documents that were already marked during the preliminary conference, the counsels for the Accused compared the documents marked during the preliminary conference and the documents attached to the Judicial Affidavit of Lolita Soriano and/or presented by her.

11. Through such comparison, the counsels for the Accused noticed that the documents brought by Lolita Soriano are not the originals of the documents marked by the prosecution during the preliminary conference.

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14. While the documents purport to be the same as the descriptions thereof are the same, the fact is that **the Prosecution’s marked exhibits are NOT photocopies or certified true copies of the documents brought by Lolita Soriano.**

15. The most glaring discrepancy may be seen from the marked Exhibits “D” to “D-42” which has different pages when compared to the

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<sup>14</sup> Records, Vol. 5, p. 406; citations omitted.

<sup>15</sup> *Id.*, See Order, p. 424.

original/certified true copy presented by Lolita Soriano and requested also to be marked Exhibits "D" to "D-42" last August 15, 2018.<sup>16</sup>

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Both accused reiterated their "objection to the marking of the documents presented by Lolita Soriano as contrary to the representation of the Prosecution, the same are **NOT** the originals and/or certified true copies of the documents marked during the preliminary conference."<sup>17</sup>

Accused **Acorda** in his *Manifestation/Objection* adopted the manifestation and objection of accused Triste and Abiva. In addition, he mentioned his previous objection, due to "lack of a valid" reason, to the substitution of witness Ms. Corteza with Ms. Soriano. He maintains that:

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1.06 In a hearing held on 15 August 2018, Ms. Soriano was presented as a witness for the prosecution pursuant to the *Resolution* [dated June 11 2018]. However, the Honorable Court itself stated that the cross-examination of Ms. Soriano cannot be conducted because the exhibits attached to Ms. Soriano's *Judicial Affidavit* had not been marked. To prevent any further delay to the proceedings, the Honorable Court directed the parties to conduct the comparison and markings of the exhibits.

1.07 Counsels for the defense and the prosecution then conducted a comparison of the exhibits marked during the preliminary conference and those exhibits attached to the *Judicial Affidavit* of Ms. Soriano. It is well to note that the prosecution's purpose for presenting Ms. Soriano is to authenticate the said exhibits.

1.08 Counsels for the defense, together with the Division Clerk of Court and the Prosecutor conducted the comparison of exhibits. Counsels for the defense manifested that the documents brought by Ms. Soriano for comparison are not the same as the exhibits marked by the prosecution during the preliminary conference.

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1.12 Moreover, after seeking clarification regarding the document marked as Exhibit "M", which was listed as one of the missing documents in Accused Accorda's *Comment/Opposition*, we were informed by the Prosecutor that such exhibit is actually exactly the same as that of Exhibit "C" and that the Prosecutor refrained from attaching another copy of the exhibit. Nonetheless, Accused Acorda also objects to the marking and admission of Exhibit "M" and Exhibit "C" for being mere certified true copies from photocopies and also because both exhibits do not appear to be faithful reproductions of the purported original documents.

<sup>16</sup> Records, Vol. 5, pp. 479-480; underscoring in the original; emphasis supplied.

<sup>17</sup> *Id.*, par. 20; emphasis supplied.

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1.13 Accused Acorda hereby manifests his objection to the marking and admission of Exhibits “YYYY” also on the ground that a copy of the same was not provided to the defense.

1.14 Accused Acorda also manifests his objection to the marking and admission of those exhibits stamped as “Certified True Copy from Photocopy” for violating the best evidence rule. A list of missing documents and those stamped as “*Certified True Copy from Photocopy*” is attached herewith as **Annex “1”**.<sup>18</sup>

The prosecution in its *Consolidated Comment* avers that:

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3. To recall, based on the order of the Court during the 15 August 2018 hearing, the parties were directed to conduct a **comparison of exhibits** marked by the prosecution with the documents produced by the prosecution’s witness, Lolita M. Soriano of COA.xxx
4. The comparison, however, which should have been done on the same day, as directed by the Court, did not push through. Accused did not complete the comparison because allegedly, the documents marked during the preliminary conference is different from the ones presented by COA.
5. In the respective manifestations and objections of accused Triste, Abiva, and Acorda, they are now objecting to the marking and admission of documents produced by COA witness. The objections raised are based on the arguments that the documents presented [and to be identified] by the COA witness are not originals and/or true copies of the documents marked during the preliminary conference.
6. In the *first* place, objections to the documentary evidence must be made at the time it is formally offered, not earlier. *Second*, the marking of documents is only for the purpose of identification. By marking it, the document does not automatically become the evidence of the prosecution until it is formally offered; and that the failure to object when these documents are marked, identified, and introduced during trial is not a waiver of objections to admissibility, precisely, because objections to evidence are made after the evidence is formally offered, in accordance with the rules. Hence, the objections advanced by the accused-movants are not only improper, but also premature, and therefore must be overruled.
7. Moreover, it must be noted that the testimony of the COA is not yet completed. It has not been determined and identified which ones [from the documents in custody of COA] are original/certified true copy/photocopy only, in comparison with the marked exhibits of the prosecution. It is precisely to meet that purpose, with hope of abbreviating the proceedings, that the prosecution requested the comparison of these documents.

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<sup>18</sup> Records, Vol. 6, pp. 71-73; emphasis in the original; underscoring supplied.

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In accused Robles's *Reply* to the prosecution's *Consolidated Comment*, he insists that during the comparison of the exhibits ordered by the Court "it was a common observation of all the accused that the documents brought for comparison are different from the documents marked during the preliminary conference."<sup>19</sup> Specifically:

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11. The allegedly certified true copies and allegedly original documents brought by witness Lolita M. Soriano are not the exact documents used during the investigation, in fact they are totally different documents with different contents.
12. While the documents purport to be the same as the descriptions thereof, the fact is that the prosecutions's **marked exhibits** are not photocopies or certified true copies of the documents brought by Lolita M. Soriano.
13. For instance, the document marked as Exhibit "D" series during the preliminary conference last 13 September 2017 is clearly different from the document presented by witness Soriano to be marked as Exhibit "D" series.

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18. xxx[T]he documents to be marked as Exhibits "B" to "B-18," "C," "D" to "D-42," "N,"...to "OOOO" contain the stamp "*certified true copy from photocopy,*" which means that witness Soriano does not have the original copies of these documents.<sup>20</sup>

Accused Robles further claims that "the prosecution was not able to address the issue nor justify the fact that it was not able to present during the Preliminary Conference the alleged original documents to be identified by Lolita M. Soriano when a simple perusal of the attached Judicial Affidavit of Lolita M. Soriano would reveal that she has been the COA-SOA since 20 March 2015."<sup>21</sup>

Accused Acorda in his *Reply*, addressing the "formal offer" and "admissibility" claims specifically mentioned by the prosecution in its *Consolidated Comment*, contends that "[b]oth the grounds raised by the prosecution are irrelevant. To be clear, Accused Accorda is not yet objecting to the admissibility of the exhibits. Accused is objecting to the marking of the exhibits based on the fact that **the supposed originals and certified copies from the originals brought by Ms. Lolita M. Soriano are not faithful reproductions of those already marked during the pretrial.xxx**"<sup>22</sup> To buttress this point, he quotes a part of the TSN of the

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<sup>19</sup> Records, Vol. 6, par. 10, p. 331

<sup>20</sup> *Id.*, pp. 331-332; emphasis supplied.

<sup>21</sup> *Id.*, p. 332-A

<sup>22</sup> Records, Vol. 6, par. 202, p. 350; underscoring supplied.

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August 15, 2018 conference for comparison of exhibits which includes the following:

PROS. QUINTELA

Maybe it is not a faithful reproduction because what is appearing with the one produced by COA does not bear the certified true copies of Sonia Bermilio and the Office of the Ombudsman but that does not necessarily mean that this is not an original.

ATTY. EVANGELISTA

It is an original but not an original of what was marked.

PROS. QUINTELA

**Not the original of what was marked.**

ATTY. LIEZEL DE LEON [Executive Clerk of Court III]

**Not the original of what was marked.**

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ATTY. LIEZEL DE LEON

**Documents as marked during the Preliminary Conference are different from the original.**<sup>23</sup>

### RULING

After due consideration, the Court finds herein accused Triste, Abiva and Acorda's objections to be well-taken.

Section 1, Rule 118 of the Rules of Court, provides:

SECTION 1. *Pre-trial; mandatory in criminal cases\**. – In all criminal cases cognizable by the Sandigabayan,...the court shall, after arraignment and within thirty (30) days from the date the court acquires jurisdiction over the person of the accused, unless a shorter period is provided in special laws or circulars of the Supreme Court, order a **pre-trial conference** to consider the following:

- (a) plea bargaining;
- (b) stipulation of facts
- (c) marking for identification of evidence of the parties;
- (d) waiver of objections to admissibility of evidence;
- (e) modification of the order of trial if the accused admits the charge but interposes a lawful defense; and
- (f) such matters as will promote a fair and expeditious trial of the criminal and civil aspects of the case. (secs. 2 and

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<sup>23</sup> *Id.*, pp. 350-351, 353; emphasis supplied.

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3, Cir. 38-98) [\*See also Republic Act 8493 and SC  
Circular No 38-98]<sup>24</sup>

During the preliminary conference held on January 16, 2018, the records of the case indicate that “Prosecutor Minerva A. Quintela manifested that per information received from the LRTA and the Commission on Audit (COA), the said offices cannot provide the original copies of the documents supposedly for comparison in today’s preliminary conference. Thereafter, Prosecutor Quintela reserved the presentation of the original copies of the documents in the course of trial.”<sup>25</sup>

It was in the course of the trial on August 15, 2018 that the prosecution’s presentation of evidence was stumped. The Court noted that the purported original of the documents to be identified by witness Soriano were not “marked,” hence, the Court directed “further comparison of these exhibits by the prosecution with the defense counsels...so that the witness [Ms. Soriano] at the next hearing can testify only on the exhibits which she can identify either as a certified true copy from the original or copies from certified true copies of the exhibits,”<sup>26</sup> i.e., to compare the documents brought by witness Lolita Soriano with the exhibits marked during the pre-trial conference. As emphatically noted by accused Triste and Abiva, “the documents brought by Lolita Soriano are not the originals of the documents marked by the prosecution during the preliminary conference; xxx[T]hat the prosecution’s marked exhibits are not photocopies or certified true copies of the documents brought by Lolita Soriano.”<sup>27</sup> Likewise, accused Acorda had noted, “...that the documents brought by Ms. Soriano for comparison are not the same as the exhibits marked by the prosecution during the preliminary conference,” and he likewise argues as unacceptable “the marking and admission of those exhibits stamped as ‘**Certified True Copy from Photocopy**’ for violating the best evidence rule.”<sup>28</sup> Finally, based on the the statement of Executive Clerk of Court III Liezel De Leon, per the transcript of stenographic notes during the August 15, 2018 court ordered comparison, it was obvious that “[d]ocuments as marked during the Preliminary Conference are different from the original.”<sup>29</sup>

The issue at this juncture is simply whether the purported documents brought by witness Lolita Soriano at trial are the ‘originals’ or ‘certified true copies’ of the documents pre-marked during the preliminary conference by the prosecution as its exhibits. Otherwise stated, are the exhibits marked by the prosecution during the preliminary conference authentic copies of the

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<sup>24</sup> The Revised Rules of Court, Compiled & Edited by CBSI Editorial Staff, 2005 Eleventh Edition (Lawyers’ Edition); underscoring supplied.

<sup>25</sup> Records, Vol. 4, p.110, Minutes of the proceedings held on January 16, 2018.

<sup>26</sup> *Supra*, Note 15 on p. 3 hereof.

<sup>27</sup> See Note 16.

<sup>28</sup> See Note 18.

<sup>29</sup> See Note 23.



**RESOLUTION**

**People vs. Robles, et al.**


**SB-17-CRM-0283**

**Page 9 of 9**

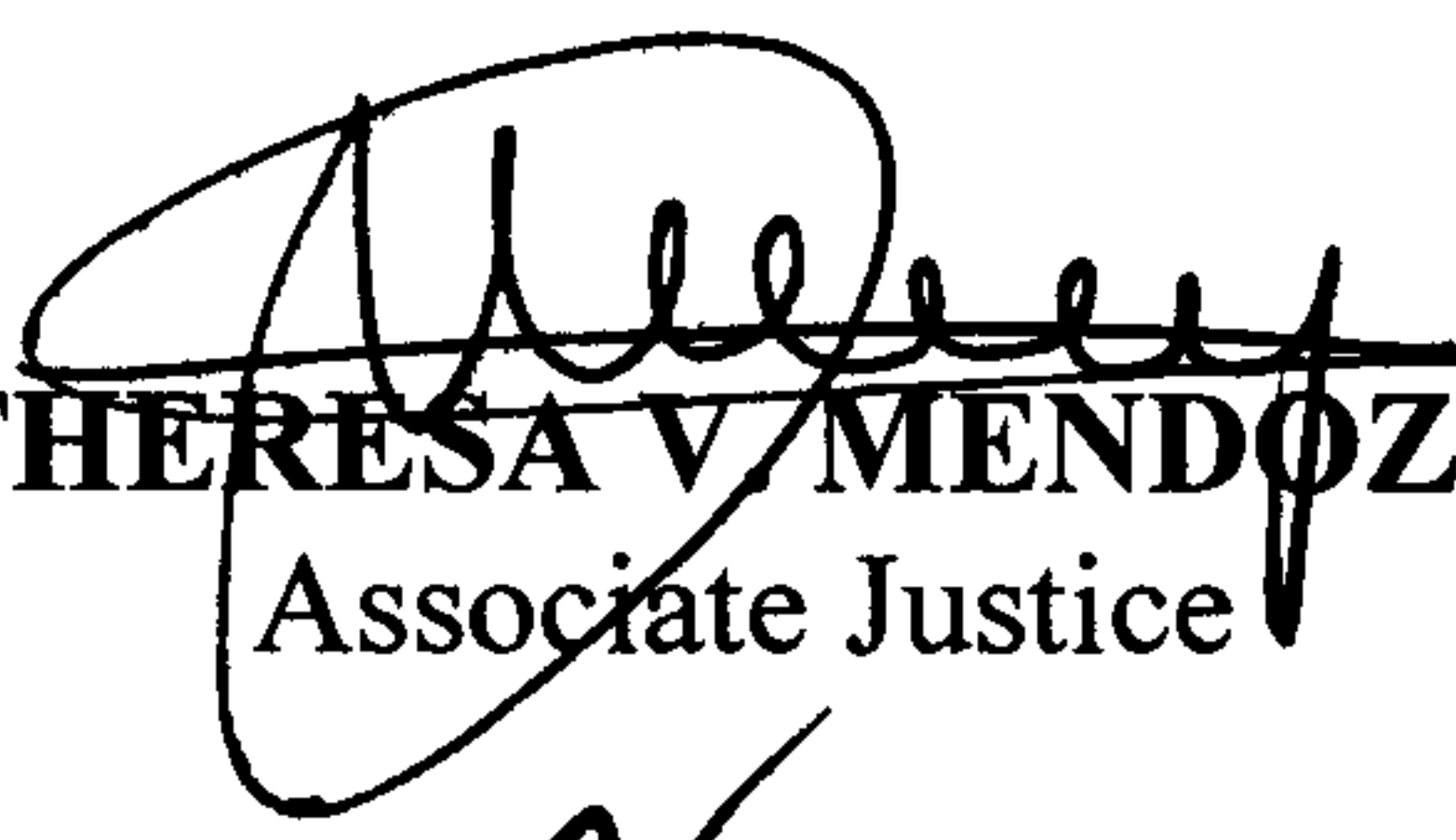
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documents brought in by the said witness during the trial? Clearly, these are not so. It should be emphasized that the Court at this juncture is to rule only on whether the documents mentioned in Soriano's judicial affidavit can be marked as part of the prosecution's evidence.

**WHEREFORE**, in view of the foregoing, the objections of accused Triste, Abiva, and Acorda are **SUSTAINED** and the requested markings of the documents produced by witness Lolita M. Soriano which are not originals or certified true copies of the documents pre-marked during the preliminary conferences, are **DENIED**. The next hearing on this case shall be on January 17, 2019 at 1:30 in the afternoon.

**SO ORDERED.**

  
**RAFAEL R. LAGOS**  
Associate Justice  
Chairperson

**WE CONCUR:**

  
**MARIA THERESA V. MENDOZA-ARCEGA**  
Associate Justice

  
**MARYANN E. CORPUS-MAÑALAC**  
Associate Justice