



Republic of the Philippines
Sandiganbayan
 Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on May 22, 2019.

Present:

<i>MA. THERESA DOLORES C. GOMEZ-ESTOESTA</i> -----	<i>Chairperson</i>
<i>ZALDY V. TRESPESES</i> -----	<i>Associate Justice</i>
<i>BAYANI H. JACINTO*</i> -----	<i>Associate Justice</i>

The following resolution was adopted:

SB-11-CRM-0265 to 0270 – People v. Fidel Garcia, et al.

Relative to accused Benny Esparagoza’s “MOTION TO ALLOW ACCUSED ESPARAGOZA TO PRESENT ADDITIONAL EVIDENCE” dated May 1, 2019,¹ considering that the prosecution already filed its opposition thereto,² the Court shall now proceed to resolve the same thereby effectively dispensing with the hearing thereon on May 27, 2019 which was set by the accused “without further oral arguments and appearance.”

In said Motion, accused Esparagoza prays that he be allowed to present additional evidence of NPA attacks and harassment against Tubay, Agusan del Norte and SR Metals, Incorporated which took place last December 22, 2008 for the following purposes: (a) to paint a clear picture of the insurgency situation in Tubay, Agusan del Norte thereby corroborating his earlier testimony as to the actions taken pursuant to the various intelligence reports received from intelligence communities; (b) to validate the beliefs and actions of the accused which compelled them to institute necessary actions to protect the peace of the community; and (c) to vindicate their beliefs and actions during the August 2006 event and to help explain their mindset at the time of the incident after receiving intelligence information from various intelligence communities and the letter of Punong Barangay Alicia Guday in August 2006.

In the alternative, accused-movant is proposing that the prosecution stipulate on the incident which occurred on December 22, 2008 as contained in the official PNP Incident Report dated March 20, 2019 (attached as Annex “A” to his Manifestation dated March 21, 2019).³

* In lieu of Justice Georgina D. Hidalgo who is on official time (A.O. No. 185-2019 dated May 22, 2019).
 1 Which the Court received by courier on May 6, 2019 (while a second copy thereof was received by mail on May 16, 2019).
 2 “OPPOSITION (to the Motion to Allow accused Benny Esparagoza to Present Additional Evidence dated May 01, 2019)” dated May 16, 2019 (record, vol. 5, pp. 43-47).
 3 Record, vol. 4, p. 480.

In opposing the Motion, the prosecution argues in the main that the fact sought to be proven by the accused is completely irrelevant as it happened two years after the incident, subject matter of this case. The prosecution also maintains that the motion should be denied outright for being *pro forma* as it was set for hearing beyond ten days after its filing in violation of Sections 4 and 5, Rule 15 of the Rules of Court. Finally, the prosecution did not respond to accused-movant's proposal for stipulation.

As to the technical aspect of the motion, the *pro forma* rule is not applicable in criminal cases.⁴ The motion, nevertheless, is denied for lack of merit.

It is to be recalled that the issue under consideration was already discussed in open court during the cross-examination of accused-movant Esparagoza when his counsel, Atty. Roy Orlando D. Doyon, insisted that the NPA had attacked the Police Station of Tubay prior to August 6, 2006.⁵ Considering that the witness who would testify on said alleged fact was not listed in the Pre-Trial Order, the Court directed accused to show good cause for his presentation in Court.⁶ The Court also cautioned Atty. Doyon that it is not interested in incidents which took place after August 6, 2006.⁷

Since the alleged NPA attack occurred after August 6, 2006 – or in December 2008 to be exact -- the prosecution is correct that such incident is irrelevant to the issue being litigated herein, which is for the crime of *Prohibition, Interruption and Dissolution of Peaceful Meetings* defined and penalized under Article 131, paragraph 3 of the Revised Penal Code. Indeed, one cannot divine the motivations and beliefs of the accused on August 6, 2006 from an act which is yet to happen two years into the future. Accused has not properly argued how the alleged 2008 attack could have affected his actions on August 2006.

In fine, the fact to be proven by the presentation of the PNP Incident Report is not germane to accused-movant's defense; thus, the Court does not deem the reasons given by him as "good cause" to justify the presentation of an additional witness to identify the same.

The Court also notes that the instant Motion was filed after the extended period given to accused-movant to file his Formal Offer of Evidence had already lapsed.⁸ Procedurally, therefore, the Court could very well deem accused-movant to have waived the submission of his Formal Offer of Evidence. In the interest of justice, however, the Court will give

⁴ *People v. Colmenares & Llorico*, G.R. No. L-13284, Feb. 29, 1960.

⁵ See TSN dated Feb. 19, 2019, pp. 32-35.

⁶ *Id.*, p. 33

⁷ *Id.*, p. 31

⁸ The Formal Offer of Evidence was due to be filed on May 1, 2019 (record, vol. 5, p. 35). The instant motion was filed by accused-movant on May 2, 2019 per the Registry Receipts attached to the motion.

him a final and unextendible period of ten days from notice to file his Formal Offer of Evidence.

In relation thereto, the Court notes the prosecution's "MANIFESTATION (to the Formal Offer of Exhibits filed by accused Fidel Garcia and Jerome Pagaragan dated April 10, 2019)" that: (1) it has already received the Formal Offer of Evidence filed by accused Garcia and Pagaragan and that (2) in keeping with the Order of the Court for it to file consolidated comment to the Formal Offer of Evidence of Garcia/Pagaragan and that of Esparagoza, it will file said Consolidated Comment upon receipt of Esparagoza's Formal Offer of Evidence.

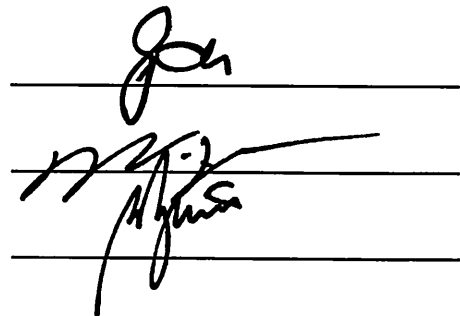
WHEREFORE, premises considered, accused Benny Esparagoza's "MOTION TO ALLOW ACCUSED ESPARAGOZA TO PRESENT ADDITIONAL EVIDENCE" dated May 1, 2019 is **DENIED** for lack of merit. Instead, in the interest of justice, accused is given an unextendible period of ten days from notice to file his Formal Offer of Evidence. Upon receipt of a copy thereof, and in keeping with the Resolution of the Court dated March 26, 2019,⁹ the prosecution is given a period of 15 days to file its Consolidated Comment to the Formal Offer of Evidence of accused Esparagoza and that of accused Fidel Garcia and Jerome Pagaragan.

SO ORDERED.

GOMEZ-ESTOESTA, J., Chairperson

TRESPESES, J.

JACINTO, J.



The image shows three horizontal lines, each with a handwritten signature above it. The top signature is in cursive and appears to be 'J. Gomez-Estoesta'. The middle signature is also in cursive and appears to be 'J. Trespeses'. The bottom signature is in cursive and appears to be 'J. Jacinto'.

⁹ Record, vol. 4, p. 482.