



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-11-CRM-0458

For: Violation of Section 3(e) of R.A. No. 3019

- versus -

SB-11-CRM-0459

For: Violation of Article 217 in relation to
Article 48 of the Revised Penal Code
(Malversation of Public Funds thru
Falsification of Public Documents)

MIGUEL D. ESCOBAR, ET AL.,
Accused.

Present:

FERNANDEZ, SJ, J.

Chairperson

MIRANDA, J. and

VIVERO, J.

Promulgated:

MAY 07 2019

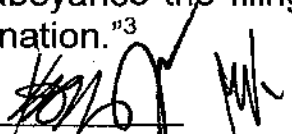
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RESOLUTION

FERNANDEZ, SJ, J.

This resolves the *Omnibus Motion*¹ filed on January 16, 2019 by accused Miguel D. Escobar, together with the *Comment/Opposition*² filed on January 28, 2019 by the prosecution.

In his *Motion*, accused Escobar asks this Court to re-open the case "for the purpose of conducting cross-examination on the prosecution's last witness in the interest of substantial justice" and "to hold in abeyance the filing of comment pending the request for cross examination."³


¹ Dated January 15, 1987; Record, Vol. V, pp. 342-343.

² Dated January 25, 2019; Record, Vol. V, pp. 346-349.

³ Omnibus Motion dated January 15, 2019, p. 1; Record, Vol. V, p. 342.

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Accused Escobar claims that neither he nor his counsel, Atty. Maria Nympha Mandagan, were notified of the presentation of the prosecution's last witness; hence, no representative of accused Escobar appeared during said witness' presentation.⁴

Relevant Antecedents

1. In view of its receipt of OCA Circular No. 166-2016, informing the Court of the suspension of Atty. Maria Nympha C. Mandagan from the practice of law for a period of one (1) year, the First Division of the Sandiganbayan, in its Resolution dated August 10, 2016,⁵ directed accused Escobar to engage the services of a new counsel, and for said counsel to enter his or her appearance, within ten (10) days from notice.

2. In its Resolution dated August 17, 2016, the First Division informed the parties that the hearings on October 17, 18, 19, and 20, 2016 previously set to be held in Davao City would instead be held at the Sandiganbayan, Quezon City.⁶

3. Atty. Mandagan, through one Carlos Blanca, received a copy of the August 10, 2016 and August 17, 2016 Resolutions on September 1, 2016.⁷

However, the copies of the same Resolutions, sent through registered mail to accused Escobar at Brgy. Kawas, Alabel, Sarangani Province, were returned unserved, with the same notations "*RTS No one to receive. Party not around. 10/21/16.*"⁸

4. During the hearing on October 17, 2016,⁹ neither the accused nor their counsels appeared. Hence, the hearings set on that day and on October 18, 19, and 20, 2016 were cancelled and reset to February 20, 21, and 22, 2017.

5. On October 18, 2016, Atty. Mandagan filed a *Manifestation*¹⁰ informing this Court's First Division that, in view of its August 10, 2016 Resolution directing accused Escobar to secure the services of another counsel, she would not be appearing in all the proceedings in the instant case, viz:

⁴ Omnibus Motion dated January 15, 2019, p. 1; Record, Vol. V, p. 342.

⁵ Record, Vol. V, p. 32.

⁶ Record, Vol. V, p. 34.

⁷ Record, Vol. V, pp. 51 & 52.

⁸ Both received by the Court on November 8, 2016; Record, Vol. V, pp. 85-86 (August 10, 2016 Resolution) and pp. 87-88 (August 17, 2016 Resolution).

⁹ Order dated October 17, 2016; Record, Vol. V, p. 68.

¹⁰ Dated October 18, 2016; Record, Vol. V, pp. 70-72.

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7. Considering that this Court practically directed the accused to engage the services of a new counsel and prevented the undersigned to practice her profession despite the pendency of her motion for reconsideration, with utmost respect to this court, she will not appear in all the proceedings of the above-entitled case.

6. In its Resolution dated October 18, 2016,¹¹ the First Division set aside the Resolution dated August 10, 2016 and ruled that Atty. Mandagan shall continue to represent her clients in these cases. The October 18, 2016 Resolution was personally served upon Atty. Mandagan on November 8, 2016.¹²

7. In a Notice of Trial dated October 20, 2016, the First Division directed accused Escobar to appear personally before the Court on February 20, 21, and, 22, 2017, at 8:30 in the morning, for trial.¹³

8. The October 17, 2016 Order¹⁴ and October 20, 2016 *Notice of Trial*¹⁵ sent through registered mail to accused Escobar were returned unserved with the notation, "RS". It appears that the post office attempted to serve the said mail on November 8, 15 and 22, 2016.

9. The records do not show that Atty. Mandagan was furnished a copy of the October 17, 2016 Order and the October 20, 2016 Notice of Trial.

10. On February 20, 2017, the prosecution presented its last witness, Mr. Romeo B. Tumbaga, of the Commission on Elections. He essentially testified that a certain Velsie Banzon is not in the voters list of Brgy. Poblacion, Malapatan, Sarangani Province. Thereafter, the prosecution was given time to file its *Formal Offer of Evidence*.¹⁶

During the said hearing, there was no appearance on the part of accused Escobar nor from Atty. Mandagan. Atty. Mark Oliver C. Asis of the Public Attorney's Office, who was the counsel of accused Juanito Herminia Purisima, entered his appearance as counsel de

¹¹ Record, Vol. V, pp. 79-80.

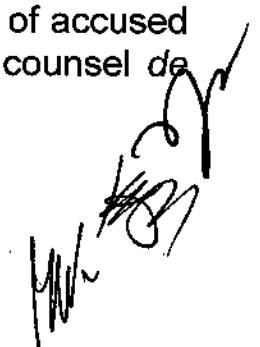
¹² Record, Vol. V, p. 89.

¹³ Notice of Trial dated October 20, 2016; Record, Vol. V, p. 95.

¹⁴ Received by the Court on February 9, 2017; Record, Vol. V, pp. 92-94.

¹⁵ Received by the Court on February 9, 2017; Record, Vol. V, p. 96.

¹⁶ TSN dated February 20, 2017, pp. 3 & 5; Order dated February 20, 2017; Record, Vol. V, p. 99.



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officio for accused Escobar upon the directive of the Court.¹⁷ The February 20, 2017 Order reads in part:

At the hearing this morning, Prosecutor Mariter V. Delfin-Santos called to the stand witness Romeo B. Tumbaga, who completed his testimony. Thereafter, Prosecutor Delfin-Santos manifested that witness Tumbaga will be her last witness, and she moved that she be given time to formally offer the prosecution's evidence. As prayed for, the prosecution is hereby given a period of twenty (20) days from today within which to file its formal offer of evidence, and the accused are hereby given a period of ten (10) days from receipt within which to file their comment/objection to the said formal offer of evidence. Thereafter, the incident will be deemed submitted for resolution.

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11. On March 1, 2017, a copy of the February 20, 2017 Order was personally served upon Atty. Mandagan and was received by a certain Carlos Blanca.¹⁸

The copy sent, through registered mail, to accused Escobar, was returned unserved, with the notation "RS". It appears that service was attempted on March 1, 8 and 15, 2017.¹⁹

12. On March 10, 2017, the prosecution filed its *Formal Offer of Exhibits*²⁰ and served a copy thereof, through registered mail, upon accused Escobar, in Kawas, Alabel, Sarangani Province. The *Formal Offer of Evidence* does not show that Atty. Mandagan was furnished a copy of the same.²¹

13. On May 8, 2017, the Court received the *Manifestation with Prayer for Inhibition and Cancellation of Scheduled Hearings*²² filed by accused Escobar representing himself, principally asking the First Division to: a) cancel the hearings set on June 19, 20 and 21, 2017, b) inhibit itself from further hearing the instant cases, and, c) return the cases to the Clerk of Court for re-raffling and re-assignment to another Division of the Court. Accused Escobar prayed that the Division to which the cases are re-raffled should resolve his prayer for opportunity to cross-examine prosecution witness Romeo Tumbaga, *viz:*

¹⁷ Minutes dated February 20, 2017; Record, Vol. V, p. 97; Appearance/Notice of Settings dated February 20, 2017; Record, Vol. V, p. 98; Resolution dated June 28, 2017, p. 3, Record, Vol. V, p. 263.
¹⁸ Record, Vol. V, p. 217.
¹⁹ Received by the Court on April 6, 2017; Record, Vol. V, pp. 224-226.
²⁰ Record, Vol. V, pp. 104-216.
²¹ Prosecution's Formal Offer of Exhibits dated March 9, 2017, p. 5; Record, Vol. V, p. 108.
²² Record, Vol. V, 236-243.

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WHEREFORE, premises considered, it is respectfully prayed of this Honorable Court, to cancel the hearings of the above-entitled cases scheduled on June 19, 20 and 21, 2017, all at 8:30 in the morning, to inhibit itself from further hearing the cases, to return the cases to the Clerk of Court for re-raffing and re-assignment to another division of the court which should resolve accused Escobar's prayer for opportunity to cross-examine Prosecution Witness Romeo Tumbaga, and to dispense with and excuse the non-appearance of the accused during said hearing dates and in the submission of this pleading which he is submitting without further oral arguments.²³

His *Manifestation* indicated his address as Blk. 5 Extn., Dadiangas Heights Subdivision, Barangay City Heights, General Santos City.²⁴

14. In its Resolution dated June 28, 2017, the First Division denied accused Escobar's *Manifestation with Prayer for Inhibition and Cancellation of Scheduled Proceedings*.²⁵ In the said Resolution, it explained:

Accused Escobar likewise ascribes bias to this Court when it allowed Tumbaga to testify without allegedly notifying him or his counsel of the hearing. This Court finds his argument untenable. The records show that the hearing on February 20, 2017 was in fact a resetting of the hearing scheduled on October 17, 2016. The Order informing accused Escobar of the new hearing dates, and a Notice of Trial, dated October 20, 2016, were served upon accused Escobar through registered mail. However, both mail were returned to this Court as accused Escobar failed to update this Court of his current address where he may be served with court processes, especially when Atty. Mandagan earlier manifested her withdrawal of appearance. Moreover, during the testimony of witness Tumbaga, this Court appointed a counsel *de officio* for accused Escobar. Nevertheless, even if accused Escobar was indeed deprived of his right to cross-examine the witness, a motion for inhibition is not the proper remedy to address such issue.²⁶

15. Later, in a Resolution dated October 4, 2017, the First Division granted accused Escobar's *Motion for Reconsideration*²⁷ and voluntarily inhibited itself from further hearing the instant

²³ At p. 1; Record, Vol. V, p. 236.

²⁴ At p. 2; Record, Vol. V, p. 237.

²⁵ Resolution dated June 28, 2017; Record, Vol. V, pp. 261-264.

²⁶ At p. 3; Record, Vol. V, p. 263.

²⁷ *Manifestation with Motion for Reconsideration of Resolution Promulgated June 28, 2017 and Cancellation of Scheduled Hearings* dated September 18, 2017 and filed on September 20, 2017; Record, Vol. V, pp. 285-297.

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cases.²⁸ The Resolution explained the reason for the First Division's inhibition, *viz*:

While the Court takes strong exception to the accused-movant's allegation of partiality towards him, as it believes that it has been handling and it still can handle these cases with utmost impartiality, however, it deems it circumspect to recuse itself from further hearing the instant cases, to avoid suspicion of bias and in order to maintain and preserve the trust and faith of the parties in this Court.

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16. The cases were re-raffled to the Sixth Division.²⁹

17. In its Order dated October 12, 2018,³⁰ while noting that there is no proof that accused Escobar personally received the Order of the Court dated February 20, 2017, this Court directed accused Escobar to file his comment on or objection to the prosecution's Formal Offer of Exhibits within a non-extendible period of five (5) days from notice.

This Court likewise directed accused Escobar to manifest, within five (5) days from receipt of the Resolution, whether he will retain the services of Atty. Mandagan, engage the services of a new counsel, or he will continue to represent himself.

18. Accused Escobar representing himself subsequently filed a *Manifestation and Motion for a New Period within which to File Comment on or Objections to Prosecution's Formal Offer of Exhibits*,³¹ *viz*:

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4. Moreover, Atty. Maria Nympha Mandagan says that she was not furnished with a copy of the Formal Offer of Exhibits of the Prosecution and neither was he furnished with a copy of the same;

5. It will be Atty. Maria Nympha Mandagan who will be preparing and filing his Comments on or Objections to the Formal Offer of Exhibits of the Prosecution;

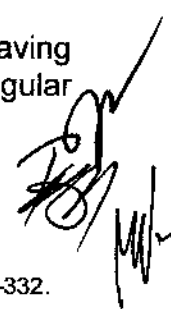
6. Atty. Maria Nympha Mandagan will, however, be leaving for the United States of America later this month for her regular

²⁸ Record, Vol. V, 304.

²⁹ Record, Vol. V, pp. 310-312.

³⁰ Record, Vol. V, p. 325.

³¹ Received through courier by the Court on November 23, 2017; Record, Vol. V, pp. 330-332.



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annual medical check-up in that country and she expects to be back in the Philippines on or about January 15, 2019;

7. Considering that, on the basis of its Pre-Trial Brief, the Prosecution must have formally offered voluminous documents as exhibits for admission, Atty. Maria Nympha Mandagan would be needing a new period of at least 15 days from January 15, 2019 or until January 30, 2019 to peruse over the exhibits and be able to intelligently prepare accused Escobar's Comments on or Objections to the Prosecution's Formal Offer of Exhibits;³²

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19. In a Resolution dated November 23, 2018,³³ this Court denied accused Escobar's prayer for a fresh period of 15 days from January 15, 2019 within which to file comment or objection to the prosecution's *Formal Offer of Exhibits*, and, instead, directed Atty. Mandagan to file her comment or objections thereto within a non-extendible period of five (5) days from receipt of said resolution.

20. Atty. Mandagan, through one Menandro Oli, was personally served a copy of the November 23, 2018 Resolution on December 6, 2018,³⁴ while accused Escobar received a copy thereof on January 8, 2019.³⁵

Instead of filing accused Escobar's *Comment* on the prosecution's *Formal Offer of Evidence*, Atty. Mandagan filed the present *Omnibus Motion* on January 16, 2019.

RULING

The *Omnibus Motion* filed by accused Escobar is denied for having been belatedly filed and for lack of merit.

First. Atty. Mandagan was furnished a copy of the February 20, 2017 Order on March 1, 2017.³⁶ She had been, thus, notified that the prosecution has completed the presentation of its testimonial evidence. But she did not move for reconsideration nor did she move that accused Escobar be allowed to cross-examine Mr. Romeo B. Tumbaga.³⁷

³² At pp. 1-2; Record, Vol. V, pp. 330-331.

³³ Record, Vol. V, p. 334.

³⁴ Record, Vol. V, p. 338.

³⁵ Record, Vol. V, p. 335.

³⁶ Record, Vol. V, p. 217.

³⁷ Manifestation and Motion for a New Period within which to File Comments on or Objections to Prosecution's Formal Offer of Exhibits dated November 20, 2018, p. 2; Record, Vol. V, p. 331.

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Accused Escobar was already aware of the termination of the testimony of Mr. Tumbaga as early as when he filed his *Manifestation with Prayer for Inhibition* on May 8, 2017. In said *Manifestation*, he argued that he was deprived of due process when he was not notified of the February 20, 2017 hearing. He prayed that the case be re-raffled to another division, to resolve his prayer for opportunity to cross-examine Mr. Tumbaga. Notably, in the said *Manifestation*, accused Escobar did not move to be allowed to cross-examine Mr. Tumbaga. The records is bereft of any *Motion for Reconsideration* of the February 20, 2017 Order, or *Motion to cross-examine witness Tumbaga*.

Accused Escobar also did not ask to cross examine Mr. Tumbaga when he filed his *Motion for a New Period within which to File Comment or Objection to Prosecution's Formal Offer of Exhibits*.³⁸

It was only through the present *Omnibus Motion* that accused Escobar moved that the Court allow him to cross examine Mr. Tumbaga, on the ground that he was denied his right to cross examine the prosecution's last witness. The *Omnibus Motion* was filed on January 16, 2019, almost 23 months after receipt by Atty. Mandagan of the February 20, 2017 Order.

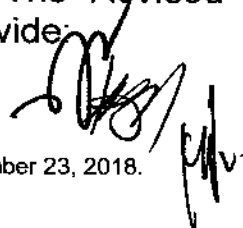
Clearly, the period to move for a reconsideration of the February 20, 2017 Order had long lapsed when accused Escobar filed the present *Omnibus Motion*.

Second. The claim of accused Escobar that he was deprived of his right to cross-examine the witness is specious. Atty. Mandagan was duly notified of the October 18, 2016 Resolution of this Court's First Division setting aside its earlier directive for accused Escobar to secure the services of a new counsel in lieu of Atty. Mandagan, and expressly allowing Atty. Mandagan to continue representing accused Escobar. She received the Resolution on November 8, 2016.³⁹ She did not apprise the Court that she could not continue to represent accused Escobar.

The First Division of this Court could not be faulted for continuing with the proceedings in light of the repeated absences of accused Escobar and his counsel. The *Revised Guidelines for Continuous Trial of Criminal Cases* provide:

³⁸ Received through private courier by this Court on November 23, 2018.

³⁹ Record, Vol. V, p. 89.



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13. Trial

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(b) *Absence of counsel de parte.* - In the absence of the counsel de parte, the hearing shall proceed upon appointment by the court of a counsel *de officio*.

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Here, the First Division appointed a counsel *de officio* for accused Escobar during the February 20, 2017 proceedings. Notice of the February 20, 2017 hearing was sent to accused Escobar's address on record but was returned unserved because there was no one to receive it. According to accused Escobar, he no longer resides in the address and has moved to Block 5 Extension, Dadiangas Heights Subdivision, Barangay City Heights, General Santos City. However, the Court's records do not show any notice of change of address of accused Escobar.

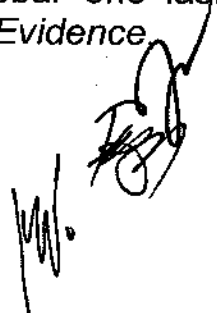
The Supreme Court in ***Garrucho vs. Court of Appeals***⁴⁰ said that in the absence of a proper and adequate notice to the court of a change of address, the service of the order or resolution of a court upon the parties must be made at the last address of their counsel on record. It is the duty of the party and his counsel to device a system for the receipt of mail intended for them, just as it is the duty of the counsel to inform the court officially of a change in his address. It is also the responsibility of a party to inform the court of the change of his address so that in the event the court orders an order or resolution to be served on the said party, he can receive the said resolution or order.

Since accused Escobar did not inform the Court of the change in his address and the unserved notices and orders, and in view of his repeated absence, the Court had no choice but to proceed with the trial.

Perforce, the present *Motion* should be denied for being filed out of time and for lack of merit.

The Court notes that the period to file *Comment on the Formal Offer of Evidence* has long lapsed. Nonetheless, in the interest of substantial justice, the Court will give accused Escobar one last opportunity to file his *Comment on the Formal Offer of Evidence*.

⁴⁰ G.R. No. 143791, January 14, 2005.



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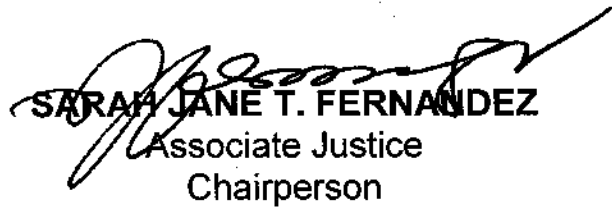
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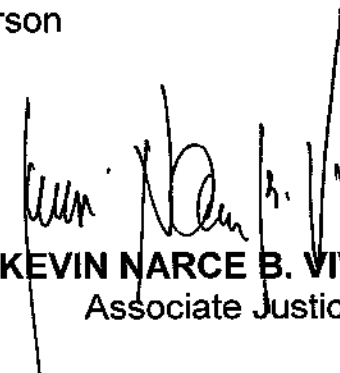
WHEREFORE, the *Omnibus Motion* filed by accused Miguel D. Escobar is **DENIED** for being filed out of time and for lack of merit. Accused is given a final and non-extendible period of five (5) days from notice hereof within which to file his comment and/or objection to the prosecution's *Formal Offer of Exhibits*.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

WE CONCUR:


KARL B. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
Associate Justice