



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
QUEZON CITY

SEVENTH DIVISION

MINUTES of the proceedings held on September 13, 2019.

Present:

JUSTICE MA. THERESA DOLORES C. GOMEZ-ESTOESTA ----- Chairperson
JUSTICE ZALDY V. TRESPESES ----- Associate Justice
JUSTICE GEORGINA D. HIDALGO ----- Associate Justice

The following resolution was adopted:

CRIMINAL CASE NOS. SB-12-CRM-0164 to 0167

PEOPLE v. JESUS A. VERZOSA, ET AL.

Before the Court are the following:

1. Prosecution's 'MOTION FOR RECONSIDERATION (RE: THE RESOLUTION DATED JULY 24, 2019)' dated August 5, 2019
2. Prosecution's "MANIFESTATION [Re: The Prosecution's Motion for Reconsideration (Re: The Resolution dated July 24, 2019)]" dated August 27, 2019;
3. Accused Romeo C. Hilomen's "COMMENT/OPPOSITION [Re: Motion for Reconsideration (Re: The Resolution dated July 24, 2019) dated 05 August 2019]" dated August 19, 2019;
4. Accused Mansue N. Lukban's "COMMENT [ON THE MOTION FOR RECONSIDERATION DATED AUGUST 5, 2019]" dated August 23, 2019;
5. Accused Avensuel G. Dy's "COMMENT/OPPOSITION (on Prosecution's Motion for Reconsideration dated August 5, 2019)" dated August 26, 2019;
6. Accused Jose Miguel T. Arroyo's "COMMENT" dated August 27, 2019;
7. Accused Hilario B. De Vera's "COMMENT (Re: Motion for Reconsideration dated 05 August 2015) with MANIFESTATION" dated August 27, 2019;
8. Accused Maria Linda Padojinog's "COMMENT AND/OR OPPOSITION (Re: Motion for Reconsideration dated August 5, 2019)" dated August 27, 2019;
9. Accused Job Nolan Antonio's "OPPOSITION TO PROSECUTION'S MOTION FOR RECONSIDERATION" dated August 24, 2019; and

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10. Accused Jesus A. Verzosa's "COMMENT/OPPOSITION (Re: Motion for Reconsideration dated 5 August 2019)" dated August 18, 2019.

GOMEZ-ESTOESTA, J.:

Before this Court is the Prosecution's *Motion for Reconsideration*¹ of this Court's *Resolution* dated July 24, 2019 insofar as it excluded the following documents, as well as the accused's respective *Comments/Oppositions*² to the Prosecution's Motion.

A. Exhibits "II-10", "II-11", "II-12", "II-13", "II-17", "GG-85", "GG-86" to "GG-87", "GG-88", "GG-89", "GG-90", "GG-91", "GG-93", "GG-94", "GG-95" and "GG-106", which were excluded for violation of the *Best Evidence Rule*.

Ground: These documents were compared with the originals during marking.

Accused's Comments:

Alleged comparison not duly established; no transcript cited, or reference to the document compared with	Hilomen, Antonio, Verzosa
No comparisons have been made on these documents.	Arroyo
Exhibits do not indicate "original compared."	De Vera
Pre-Trial Order dated March 24, 2014 states that these are mere photocopies. The exhibits were also marked as "photocop[ies]".	Padojinog
Secondary evidence not duly established	Hilomen, Padojinog

Ruling:

A perusal of the *Pre-Trial Order* dated March 24, 2014³ reveals that contrary to the representation of the Prosecution, the above documents were marked as **photocopies**,⁴ hence, properly excluded.

B. Exhibits "B" to "B-1", "B-2", "C" to "C-1", "D", "D-1" to "D-5", "E", "E-1" to "E-2", "E-3", "F", "F-1" to "F-2", "F-3", "F-4" to "F-8", "G", "G-1" to "G-2", "G-3" to "G-5", "H", "H-1" to "H-36", "I", "I-1" to "I-3", "I-4", "I-5", "I-6", "J", "J-1" to "J-62", "J-63" to "J-68", "J-69" to "J-75", "J-79", "J-81" to "J-83", "J-84", "J-85", "J-86" to

¹ *Records*, Vol. 25, pp. 496-505

² Hilomen – *Records*, Vol. 26, pp. 105-109-I; Lukban – *Id.*, pp. 159-169; Dy – *Id.* pp. 170-172; Arroyo – *Id.*, pp. 173-181; De Vera – *Id.*, pp. 244-249; Padojinog – *Id.*, pp. 311-318; Antonio – *Id.*, pp. 319-322-A; Verzosa – *Id.*, pp. 323-328

³ *Records*, Vol. 11-a, pp. 240-435

⁴ Exhibits "II-10", "II-11", "II-12", "II-13", "II-17" – *Id.*, p. 390; "GG-85" – *Id.*, pp. 285-286; "GG-86" to "GG-87", "GG-88", "GG-89", "GG-90", "GG-91", "GG-93", "GG-94" – *Id.*, p. 286; "GG-95" – *Id.*, p. 287; "GG-106" – *Id.*, p. 288

"J-88", "J-143" to "J-145", "J-146" to "J-148", "J-150", "J-151", "J-152" to "J-166", "J-167" to "J-174", "J-175", "J-176" to "J-256", "J-257" to "J-338", "J-339" to "J-339-a", "J-340" to "J-341", "J-342", "J-343", "J-344", "J-345", "J-346" to "J-363", "J-364" to "J-387", "J-388", "J-389", "J-390", "J-391" to "J-422", "J-423", "J-430", "J-431", "J-432", "J-433", "J-434" to "J-435", "J-436", "J-436-a", "J-437", "J-438", "J-439", "J-440", "J-441", "J-442", "J-443" to "J-444", "J-445" to "J-446", "J-448", "J-449", "J-450", "J-451", "J-452", "J-453" to "J-456", "J-457" to "J-457-a", "J-458", "J-459", "J-460", "J-460-a", "J-464" to "J-466", "J-467", "J-468", "J-469", "J-470", "J-471", "J-472", "J-473" to "J-475", "J-476" to "J-540", "J-548" to "J-567", "J-568", "J-569", "J-569-a", "J-588", "J-589", "J-590", "J-591" to "J-593", "J-594" to "J-625", "J-626" to "J-627", "J-645" to "J-657", "J-658", "J-659", "K-400", "L-26" to "L-27", "L-28", "M", "N", "N-1", "N-2", "N-3" to "N-8", "N-9" to "N-10", "O", "O-1", "O-2", "P", "P-1", "Q", "Q-1" to "Q-2", "Q-3", "Q-4" to "Q-5", "Q-6", "Q-7", "Q-8" to "Q-9", "Q-10" to "Q-11", "Q-12", "Q-13", "Q-14", "R", "S", "T", "T-1", "T-2", "T-4" to "T-5", "T-4-A", "T-6", "T-7", "U", "U-1", "V-1" to "V-10" (as to the entries not signed by Agahan), "V-11" to "V-38", "V-41" to "V-47", "V-50" to "V-54", "V-55", "V-63", "V-64", "V-66" to "V-69", "V-73", "V-75" to "V-77", "V-80" to "V-91", "V-93", "V-94", "V-96" to "V-100", "V-102", "V-104", "V-107" to "V-127", "V-129" to "V-168-a", "V-170" to "V-193", "X", "Z" to "Z-1", "AA", "AA-1", "BB", "CC", "CC-1", "CC-2", "CC-3" to "CC-5", "CC-6", "CC-7", "DD", "DD-1", "EE", "EE-1", "EE-2" to "EE-3", "FF", "FF-1" to "FF-7", "GG", "GG-1" to "GG-6", "GG-85", "GG-86" to "GG-87", "GG-88", "GG-89", "GG-90", "GG-91", "GG-92", "GG-93", "GG-94", "GG-95", "GG-96", "GG-97", "GG-98", "GG-99", "GG-100", "GG-101", "GG-102", "GG-103", "GG-104", "GG-105", "GG-106", "GG-107", "GG-108", "GG-109", "GG-110", "HH", "HH-1" to "HH-2", "II", "II-2" to "II-4", "II-5", "II-6", "II-10", "II-11", "II-12", "II-13", "II-15", "II-16", and "II-17", which were excluded for not having been properly authenticated by the witness who identified them.

Ground 1: These documents were submitted to the Office of the Ombudsman, and confirmed by witness Atty. Sambajon as annexes to his Complaint.

Accused's Comments:

Sambajon not competent to authenticate these documents, as he had no actual participation in their execution and preparation and execution.	Hilomen, Dy (as to Exhibit "J-441"), Arroyo, De Vera, Padojinog, Antonio, Verzosa
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Ruling:

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This group of documents is comprised of both private and public documents. In *Salas v. Sta. Mesa Corp.*,⁵ the Supreme Court explained:

Whether a document is public or private is relevant in determining its admissibility as evidence. **Public documents are admissible in evidence even without further proof of their due execution and genuineness. On the other hand, private documents are inadmissible in evidence unless they are properly authenticated.** Section 20, Rule 132 of the Rules of Court provides:

Section 20. Proof of private documents. 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.

Petitioner and respondents agree that the documents presented as evidence were mere copies of the audited financial statements submitted to the BIR and SEC. Neither party claimed that copies presented were certified true copies of audited financial statements obtained or secured from the BIR or the SEC which under Section 19 (c), Rule 132 would have been public documents. Thus, the statements presented were private documents. Consequently, authentication was a precondition to their admissibility in evidence.

During authentication in court, a witness positively testifies that a document presented as evidence is genuine and has been duly executed or that the document is neither spurious nor counterfeit nor executed by mistake or under duress. In this case, petitioner merely presented a memorandum attesting to the increase in the corporation's monthly market revenue, prepared by a member of his management team. While there is no fixed criterion as to what constitutes competent evidence to establish the authenticity of a private document, the best proof available must be presented. The best proof available, in this instance, would have been the testimony of a representative of SMMC's external auditor who prepared the audited financial statements. Inasmuch as there was none, the audited financial statements were never authenticated. (emphases supplied)

Insofar as the private documents are concerned, Atty. Sambajon's identification of these documents as the same documents submitted to the Office of the Ombudsman and attached to his Complaint is not tantamount to an attestation as to the genuineness and due execution thereof. This is not the proper authentication sanctioned by the rules.

Proof of public documents is discussed under Ground 2 below.

Ground 2: Exhibits B" to "B-1", "B-2", "C" to "C-1", "D", "D-1" to "D-5", "E", "E-1" to "E-2", "E-3", "F", "F-1" to "F-2", "F-3", "F-4" to "F-8", "G", "G-1" to "G-2", "G-3" to "G-5", "M", "N", "N-1", "N-2", "N-3" to "N-8",

⁵ G.R. No. 157766, July 12, 2007

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“N-9” to “N-10”, “O”, “O-1”, “O-2”, “P”, “P-1”, “Q”, “Q-1” to “Q-2”, “Q-3”, “Q-4” to “Q-5”, “Q-6”, “Q-7”, “Q-8” to “Q-9”, “Q-10” to “Q-11”, “Q-12”, “Q-13”, “Q-14”, “R”, “S”, “T”, “T-1”, “T-2”, “T-4” to “T-5”, “T-4-A”, “T-6”, “T-7”, “U”, “U-1”, “X”, “Z” to “Z-1”, “AA”, “AA-1”, “BB”, “CC”, “CC-1”, “CC-2”, “CC-3” to “CC-5”, “CC-6”, “CC-7”, “DD”, “DD-1”, “EE”, “EE-1”, “EE-2” to “EE-3” are self-authenticating public documents.

Accused’s Comments:

They are still hearsay, even if in the nature of public documents.	Hilomen
The Prosecution failed to follow the requirements for the presentation of public documents. The documents do not appear to be the official and original copies. Sambajon is not competent to authenticate certified copies as he is not the legal custodian of these documents.	Lukban

Prosecution’s Manifestation dated August 27, 2019

To bolster its position on the admissibility of these documents, the Prosecution filed a *Manifestation*⁶ to emphasize that (a) the requirement of authentication only pertains to private documents; (b) these documents were gathered from various government agencies, hence, self-authenticating public documents; (c) they were properly identified by witness Atty. Sambajon as they were gathered in the course of the investigation of the FIO.

Ruling:

Chief Justice Lucas Bersamin,⁷ in his concurring and dissenting opinion in *Republic v. Sandiganbayan*,⁸ explained that to be admissible, public documents must be **proved** in accordance with pertinent provisions of Rule 132 of the Rules of Court, thus:

As to the exhibits classified as public documents, I note that they did not conform to the mode of proving public documents as delineated in Sections 23, 24, 25, 27, 28 and 30, Rule 132 of the Rules of Court. Indeed, those rules prescribed — in lieu of authentication — the form and manner by which public documents could be offered as evidence in judicial proceedings.

Public documents classified under Section 19 (a) of Rule 132 must be proved in accordance with Section 24 of the Rule, to wit:

Section 24. Proof of official record. — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in foreign country, the

⁶ Records, Vol. 26, pp. 182-243

⁷ Then Associate Justice

⁸ G.R. No. 188881, April 21, 2014

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certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.

Some of the exhibits that fell under this category of public documents — (a) Exhibit "MMM" (Memorandum issued by Presidential Assistant, Juan C. Tuvera, to Hon. Teodoro Peña, Minister of Natural Resources); (b) Exhibit "RRR" (Complaint in Civil Case No. 89-5268); (c) Exhibit "SSS" (Answer with Compulsory Counterclaim in Civil Case No. 89-5268); (d) Exhibit "EEEE" (TSN of the testimony of Evelyn Singson); (e) Exhibit "VVVVV" (Memorandum dated June 6, 2003 of Director Danilo Daniel, PCGG Research and Development Department, to the PCGG Commissioners); and (f) Exhibit "BBBBB" (Memorandum dated 23 April 2003 of Director Danilo Daniel, PCGG Research and Development Department, to PCGG Commissioners) — did not meet the requirement of proof because they merely plain photocopies. **Exhibit "ZZZ" (Questioned Documents Report), although marked as "original," was inadmissible for lacking the attestation required by Section 24.**

Exhibit "UUU" (RTC Order dated June 4, 1996 in Civil Case No. 89-5268), also a Section 19 (a) document, was a certified true copy of the original. However, the certification was made by Asset Privatization Trust, not by the Regional Trial Court that had apparently issued the order and held the legal custody of the document. **It does not also appear that the certification was written in accordance with the form of attestation required by Section 25 of Rule 132 of the Rules of Court, to wit:**

Section 25. What attestation of copy must state. — Whenever a copy of a document or record is attested for the purpose of evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court. (emphases supplied)

There is nothing to establish that the copies of these documents, merely identified by Atty. Sambajon, were certified by the officer having legal custody thereof.

Ground 3: The excluded attachments of the FIO Complaint are the same documents attached as annexes to the COA Report and CIDG Documents.

Ruling:

Moreover, in its *Manifestation*, the Prosecution alludes to exhibits excluded by this Court, which are supposedly the same as exhibits it admitted. It attached a matrix of these exhibits, which only highlights the fact that the allegedly same documents bear different markings. When resolving a Formal Offer of Evidence, this Court scrutinizes each document to ascertain its admissibility, not its likeness to other offered documents bearing different

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markings. This is especially true when the Prosecution's documents are voluminous, to say the least.

The Annexes to the COA Report were admitted on the stipulation that these were secured in the course of the audit and were made the basis of the findings and evaluation of the said audit report. The attachments to the FIO Complaint clearly cannot be covered by the same stipulation.

On the other hand, the CIDG Documents, which were likewise annexes to the FIO Complaint, were admitted on the stipulations (1) that prospective witness PSSupt. Danao, Records Officer of PNP-CIDG would identify these as part of the records of the agency attached to the Complaint-Affidavit submitted by AFCCD and officially transmitted to the Office of the Ombudsman; and (2) on the existence of these documents. The purportedly same documents which bear different markings and were excluded were not covered by these stipulations.

In any event, it would be pointless to admit copies of documents already admitted.

C. Exhibits "J-453" to "J-456", "J-542", "K-400" and "T-3", photographs which were excluded for lack of proper authentication.

Ground: These were documents gathered in the course of the official investigation, and were identified by witness Atty. Sambajon as part of the annexes to his Complaint.

Accused's Comments:

Sambajon not competent to authenticate these documents, as he had no actual participation in their execution and preparation and execution.	Hilomen
Persons who took the photos were not presented to authenticate them.	Lukban, Padojinog, Verzosa
While considered part of the stipulation that these were part of the documents transmitted by the AFCCD to the Office of the Ombudsman, that it was PSSupt. Edgar Danao who took these pictures was not part of the offer for stipulation of his intended testimony.	Padojinog

Ruling:

As held in *Sison v. People*:⁹

The rule in this jurisdiction is that photographs, when presented in evidence, must be identified by the photographer as to its production and testified as to the circumstances under which they were produced. The value of this kind of evidence lies in its being a correct representation or reproduction of the original, and its admissibility is determined by its accuracy in portraying the scene at the time of the crime. The photographer, however, is not the only witness who can identify the pictures he has taken.

⁹ G.R. Nos. 108280-83 & 114931-33, November 16, 1995.

The correctness of the photograph as a faithful representation of the object portrayed can be proved prima facie, either by the testimony of the person who made it or by other competent witnesses, after which the court can admit it subject to impeachment as to its accuracy. Photographs, therefore, can be identified by the photographer or by any other competent witness who can testify to its exactness and accuracy.

Again, Atty. Sambajon, not being the person who took these photographs or one capable of testifying as to their exactness and accuracy, was incompetent to authenticate them.

D. Exhibits "J-461" to "J-463", "J-543" to "J-547", "J-628" to "J-644", "K-7" to "K-8", "K-198" to "K-199", "K-200" to "K-205", "K-206" to "K-220", "K-222" to "K-229", "K-230" to "K-235", "K-236" to "K-237", "K-238" to "K-243", "K-251" to "K-253", "K-254" to "K-255", "K-256" to "K-257", "K-258", "K-259" to "K-261", "K-262" to "K-263", "K-264" to "K-266", "K-271" to "K-274", "K-275" to "K-276", "K-277" to "K-282", "K-283" to "K-284", "K-285" to "K-286", "K-287", "K-288" to "K-290", "K-291" to "K-293", "K-294" to "K-299", "K-300", "K-301" to "K-302", "K-323" to "K-330", "K-331" to "K-333", "K-401", "K-403" to "K-404", "K-405", "K-414" to "K-415", "K-416" to "K-419", which were excluded for not having been properly authenticated by their respective affiants.

Ground: These were documents gathered in the course of the official investigation, and were identified by witness Sambajon as part of the annexes to his Complaint.

Accused's Comments:

An affidavit is merely hearsay evidence where its affiant did not take the witness stand.	Hilomen, Lukban, De Vera, Padojinog, Antonio, Verzosa
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Ruling:

Atty. Sambajon, who merely collated these documents cannot take the place of their actual affiants who alone could attest to the truth of their sworn statements and answer questions on cross-examination. Indeed,

Affidavits are classified as hearsay evidence since they are not generally prepared by the affiant but by another who uses his own language in writing the affiant's statements, which may thus be either omitted or misunderstood by the one writing them. Moreover, the adverse party is deprived of the opportunity to cross-examine the affiants. For this reason, affidavits are generally rejected for being hearsay, unless the affiant themselves are placed on the witness stand to testify thereon.¹⁰

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

¹⁰ *People's Bank and Trust Co. v. Leonidas*, G.R. No. L-47815. March 11, 1992.


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Anent the following Motions for Leave to File Demurrer to Evidence received by this Court, namely:

Movant/s	Pending Incidents	Date Received by the Court
Avensuel G. Dy	Motion for Leave to File Demurrer to Evidence dated August 1, 2019 (set for hearing on Aug 5, 2019)	02-Aug-19
Ruben Gongona	Motion for Leave to File Demurrer to Evidence dated August 1, 2019 (set for hearing on August 5, 2019)	01-Aug-19
Roman E. Loreto	Motion for Leave to File Demurrer to Evidence (with attached Motion to Demur Evidence) dated August 2, 2019 (set for hearing on Aug 5, 2019)	05-Aug-19
Claudio D.S. Gaspar	Motion for Leave to File Demurrer to Evidence dated August 3, 2019 (set for hearing on Aug 9, 2019)	05-Aug-19
Leocadio Salva Cruz Santiago, Jr.	Motion for Leave to File Demurrer to Evidence dated August 5, 2019 (set for hearing on Aug 9, 2019)	06-Aug-19
Ermilando Villafuerte	Motion for Leave of Court to File Demurrer to Evidence dated August 4, 2019 (set for hearing on Aug 9, 2019)	05-Aug-19
Mansue Nery Lukban	Motion for Leave to File Demurrer to Evidence dated August 5, 2019 (set for hearing on Aug 9, 2019)	05-Aug-19
Ronald D. Roderos	Motion for Leave of Court to File Demurrer to Evidence dated August 5, 2019 (set for hearing on Aug 13, 2019)	06-Aug-19
Jose Miguel T. Arroyo	Motion for Leave to File Demurrer to Evidence dated August 3, 2019 (set for hearing on Aug 13, 2019)	05-Aug-19
Romeo Capacillo Hilomen	Motion for Leave of Court to File Demurrer to Evidence dated August 2, 2019 (set for hearing on Aug 13, 2019)	05-Aug-19
Ticman, Soriano, and Ubalde	Motion for Leave of Court to File Demurrer to Evidence dated August 6, 2019 (set for hearing on Aug 16, 2019)	05-Aug-19
Job Nolan Antonio	Motion for Leave to File Demurrer to Evidence dated August 3, 2019 (set for hearing on Aug 16, 2019)	29-Aug-19
Maria Linda Padojinog	Motion for Leave of Court to File Demurrer to Evidence dated August 5, 2019 (set for hearing on Aug 15, 2019)	30-Aug-19
Luis L. Saligumba	Motion for Leave of Court to File Demurrer to Evidence dated August 5, 2019 (set for hearing on Sept 2, 2019)	08-Aug-19

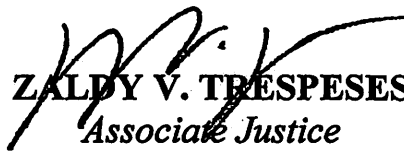
The Prosecution is hereby directed to file its Consolidated Comment/Opposition within a non-extendible period of five (5) days from receipt hereof, pursuant to Section 23 of Rule 119 of the Rules of Criminal Procedure.

SO ORDERED.


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

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WE CONCUR:


ZALDY V. TRESPESES
Associate Justice


GEORGINA D. HIDALGO
Associate Justice

