



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
QUEZON CITY

SEVENTH DIVISION

MINUTES of the proceedings held on October 23, 2019.

Present:

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

The following resolution was adopted:

SB-09-CRM-0044, 0052, 0057, 0062-0067, 0085-0086, 0091-0092, 0095-0096, 0105-0106, 0115-0116, 0125-0126, 0131-0132 & 0135-0136 – People v. Antonio Belicena, et al.

This resolves the following:

1. Prosecution's "Motion for Reconsideration (Re: Order dated 06¹ June 2019)" dated 29 January² 2019;
2. Accused Sonia L. Dacasin, Sonia G. Carmona, Ma. Carmencita C. Camara, and Catalina Bautista's "Comment/Objection (to the Prosecution's Motion for Reconsideration)" dated July 12, 2019; and
3. Accused Grace Chingkoe's "Comment/Opposition" dated July 12, 2019.

GOMEZ-ESTOESTA, J.:

The prosecution questions the Court's Order³ dated June 4, 2019, which *excluded* several of the former's documentary exhibits for not being properly identified and/or authenticated under the *Rules of Court*. The prosecution argues that the excluded exhibits are part and parcel of the investigation conducted by witness (ret.) Justice Virgilio Abejo being documents appended to the report made by said witness as a result of the investigation. Since the defense had allegedly stipulated that said witness could identify all of the documents appended to the report, the prosecution's exhibits should not have

¹ The questioned ruling of the Court was issued on June 4, 2019

² The pleading, filed on June 24, 2019, appears to be erroneously dated

³ Records, Vol. 12, pp. 5-22

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been excluded by the Court. Moreover, in the event that the original copies of its documentary exhibits had been lost, the prosecution posits that the presentation of secondary evidence is allowable. Witness Glenn Suanes had testified that he had pulled out several original documents of tax credit dockets, including those pertaining to Express Colour Industries, Inc., and that the same had been transmitted to another person. Thus, it prayed that the Court issue a new ruling admitting all of its documentary exhibits.

The Oppositions respectively filed by accused Grace Chingkoe, Sonia L. Dacasin, Sonia G. Carmona, Ma. Carmencita C. Camara, and Catalina Bautista raised common grounds in support of their supposition that the prosecution's exhibits were properly excluded. What was subject of stipulation by the parties was *not* that witness Justice Virgilio Abejo could identify *all* of the documents appended to his Investigation Report, but that he could identify said Report and only *two* documents, namely the Ex Parte Order dated January 1, 1996 by the Pollution Adjudication Board and the Affidavit dated November 20, 2002 of Angelito Perez. Relatedly, all of the documents appended to the Report, save for Exhibit "QQ" in Criminal Case Nos. SB-09-CRM-0044 and 0052, had not been offered in evidence by the prosecution. Moreover, there is no basis to allow the presentation of secondary evidence. Witness Glenn Suanes did not identify specifically which documents he allegedly pulled out from the Records Section, and the prosecution did not establish the loss or unavailability of their excluded exhibits. It was thus prayed that the prosecution's motion be denied.

OUR RULING

The Motion is denied.

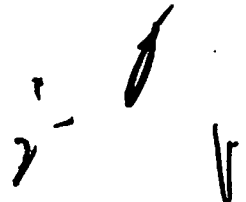
First. The parties had not stipulated that witness Justice Virgilio Abejo could identify *all* of the documents attached to the Investigation Report made by him. As a matter of fact, the stipulations were limited to only the identification of the Investigation Report and the Affidavit dated November 20, 2002 executed by Angelito Perez marked as Exhibit "J" (for all cases), viz:⁴

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PROSECUTOR RYAN REY S. QUILALA:

Your [H]onor if the counsel for the defense are willing to stipulate that retired Justice Abejo will testify, he will be able to identify his

⁴ TSN dated July 23, 2015, pp. 21-24, 31-32



investigation report, that he was the team leader of the Special Presidential Task Force 156, [Y]our [H]onor.

AJ GESMUNDO

They are proposing stipulations that if the witness is ask[ed], he will be able to identify his investigation report, previously marked as what?

PROSECUTOR RYAN REY S. QUILALA:

Previously marked as Exhibit "E" for Criminal Cases 0062 up to 0067, [Y]our [H]onor[.]

PROSECUTOR SHERI P. ZALES

And Exhibit "B" for 0057, [Y]our [H]onor.

PROSECUTOR EPRES

Your [H]onor, same Exhibit "C" for Criminal Cases 0044 and 0052, [Y]our [H]onor[.]

AJ GESMUNDO

Response for the defense?

PROSECUTOR RYAN REY S. QUILALA:

Yes, [Y]our [H]onor[.]

AJ GESMUNDO

That he can identify the report?

PROSECUTOR SHERI P. ZALES

Yes, [Y]our [H]onor, that he can identify the report, [Y]our [H]onor[.]

ATTY. TASARRA:

Your [H]onor, [insofar] as accused Recoter, Gomez and Tordesillas are concern[ed], we are willing to stipulate on that matter, [Y]our [H]onor.

ATTY. GALIDEZ:

Same with accused Magdaet, [Y]our [H]onor.

AJ GESMUNDO

That he can identify the report?

ATTY. GALINDEZ

Yes, [Y]our [H]onor[.]

ATTY. MARGATE:

Same with accused Grace Tan Chingkie, Carmona, Camara and Dacasin

AJ GESMUNDO



Memorize mo pangalan ng kliente ninyo.

ATTY. MARGATE

Yes, [Y]our [H]onor[.]

ATTY. TUGDAY

Admitted for accused Andutan, [Y]our [H]onor.

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PROSECUTOR RYAN REY S. QUILALA:

Your [H]onor, on page 24 of the Investigation Report of Justice Abejo, he mentioned as Annex "J" the affidavit of Angelito Perez dated 20 November 2002 which was attached as earlier mentioned as Annex "J" which was marked as Exhibit "L" for 0062 up to 0067, [Y]our [H]onor[.]

PROSECUTOR EPRES

And also for 0044 and 0052, [Y]our [H]onor[.]

AJ GESMUNDO

Okay[,] are you willing to stipulate [on] that Affidavit?

ATTY. TASARRA

What is the proposal for stipulation, [Y]our [H]onor?

PROSECUTOR RYAN REY S. QUILALA:

That if shown to him, he will be able to identify it as part of [the] Annexes of his investigation.

ATTY. TASARRA

Yes, [Y]our [H]onor for accused Tordesillas, Recoter and Gomez, we will stipulate on that, [Y]our [H]onor[.]

ATTY. MARGATE

Yes, [Y]our [H]onor, we will stipulate, [Y]our [H]onor, as part of the report, [Y]our [H]onor[.]

ATTY. GALINDEZ:

Yes, [Y]our [H]onor, we will stipulate, [Y]our [H]onor, as part of the report, [Y]our [H]onor[.] (Emphasis supplied)

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Additionally, it may be recalled that the Court admitted Exhibits "W," "X," "Y," "Z," "AA," "BB," "CC," "CC-1," "DD," "EE," "KK," "LL," and "MM," as part of the investigation conducted by the Task Force. However, for the remainder of the documents in relation to the investigation conducted by witness Justice Virgilio Abejo, either said documents were not formally offered in evidence by the prosecution, in which case the Court could not

consider the same,⁵ or were not properly authenticated in the manner provided by the *Rules. Chua v. Court of Appeals*⁶ teaches the procedure on how to present documentary evidence, in this wise:

[F]irstly, the document should be authenticated and proved in the manner provided in the rules of court; secondly, the document should be identified and marked for identification; and thirdly, it should be formally offered in evidence to the court and shown to the opposing party so that the latter may have an opportunity to object thereon.

Absent proper authentication of the documentary exhibits offered by the prosecution, or any stipulation by the parties on the existence and authenticity thereon, the exclusion of the same was warranted.

Second. Section 3, Rule 130 of the *Revised Rules on Evidence* reads:

SECTION 3. 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; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office. (2a)

The *best evidence rule* requires that the original document(s) be produced whenever its contents are the subject of inquiry. By way of exception, a party *may* adduce secondary evidence to prove the contents of an original document if he or she has established the loss or destruction or unavailability of all the copies of the original of the said document. Pertinently, *Ebreo v. Ebreo* explains:⁷

"Where there are two or more originals, it must appear that all of them have been lost, destroyed or cannot be produced before secondary evidence can be given of any one. For example, a lease was executed in duplicate, one being retained by the lessor and the other by the lessee. Either copy was, therefore, an original, and could have been introduced as evidence of the contract without the production of the other. One of these

⁵ Section 34, Rule 132 of the Revised Rules on Evidence mandates that the court shall consider no evidence which has not been formally offered

⁶ G.R. No. 88383, February 19, 1992

⁷ G.R. No. 160065, February 28, 2006 quoting *Santos v. Santos*, 396 Phil. 928, 940-941 (2000)

originals could not be found. The non-production of the other was not accounted for it was held that "under these circumstances, the rule is that no secondary evidence of the contents of either is admissible until it is shown that originals must be accounted for before secondary evidence can be given of any one."

Indeed, before a party is allowed to adduce secondary evidence to prove the contents of the original of the deed, the offeror is mandated to prove the following:

"(a) the execution and existence of the original (b) the loss and destruction of the original or its non-production in court; and (c) unavailability of the original is not due to bad faith on the part of the offeror." (Emphasis supplied)

Jurisprudence further provides that the correct order of proof is as follows: existence, execution, loss, and contents.⁸

In these cases, while the prosecution relied on the Affidavit⁹ of Glenn Suanes, which stated that the original dockets of the tax credit certificate applications of Express Colour Industries, Inc. had been lost, as basis for the presentation of secondary evidence, no proof of the specific contents of said dockets was given, other than the fact that the same contained tax credit certificate applications.

Even assuming *arguendo* that the prosecution may adduce secondary evidence, it bears stressing that all the exhibits that were excluded by the Court, save for those which had never been formally offered, were still *not* properly authenticated. To recall, none of said exhibits, some of which were private documents, were identified by any of the prosecution's witnesses. Furthermore, while several exhibits consisting of certified copies were attested to by Jesus G. Salvador of the Central Records Division of the Office of the Ombudsman, said official was never presented to identify the copies that he had certified. The mere fact that the same were collected by the Special Presidential Task Force in the course of its investigation and subsequently turned over to the Office of the Ombudsman for storage, did not make them *per se* public records.¹⁰ The exclusion of the prosecution's exhibits, therefore, was justified.

In fine, absent adherence to the proper procedure of authentication of evidence, a departure from the Court's previous legal stance is unwarranted.

WHEREFORE, the Prosecution's *Motion for Reconsideration (Re: Order dated 06 June 2019)* dated 29 January 2019¹¹ is **DENIED**.

⁸ *Country Bankers Insurance Corp. v. Lagman*, G.R. No. 165487, July 13, 2011

⁹ *Records*, Vol. 8, pp. 494-495


¹⁰ *Republic v. Cuenca*, G.R. No. 198393, April 4, 2018

¹¹ *Supra* notes 1 and 2

With the denial of the *Motion for Reconsideration*, the directive to the prosecution to comment on the two motions for leave to file demurrer to evidence respectively filed by accused Sonia Dacasin, Sonia Carmona, Carmencita Camara, Catalina Bautista, and Grace Chingkoe, within a non-extendible period of five (5) days, per Resolution dated June 19, 2019,¹² is reiterated.

While the *Motion for Reconsideration* was pending, accused Asuncion Mesa Magdaet, Gomez, Recoter, and Tordesillas filed a *Consolidated Motion for Leave of Court to File Demurrer to Evidence* dated June 18, 2019. The prosecution is likewise directed to comment on the same within a non-extendible period of five (5) days from notice hereof.

SO ORDERED.


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

WE CONCUR:


ZALDY V. TRESPESES
Associate Justice


GEORGINA D. HIDALGO
Associate Justice

¹² Records, Vol. 12, p. 61