



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-16-CRM-0580**
Plaintiff, For: Violation of Section 3(e)
of R.A. No. 3019, as amended

SB-16-CRM-0581
For: Malversation of Public Funds
(Art. 217 of the Revised Penal Code)

Present

- versus -

ESTEBAN R. SIA, ET AL.

Accused.

FERNANDEZ, SJ, J.,
Chairperson
MIRANDA, J. and
VIVERO, J.

Promulgated:

OCT 04 2019

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves the following:

1. Prosecution's *Motion to Discharge Accused Genara M. Kasayan*;¹
2. Accused Esteban R. Sia's *Comment/Opposition to Motion to Discharge Accused Genara M. Kasayan*;²
3. Accused Esperato A. Del Socorro's *Comment (To Accused Kasayan's Motion to be Discharged)*,³ and

¹ Dated August 2, 2019; Record, Vol. 4, pp. 329-334

² Dated August 9, 2019; Record, Vol. 5, pp. 200-203

³ Dated August 19, 2019; Record, Vol. 5, pp. 212-214

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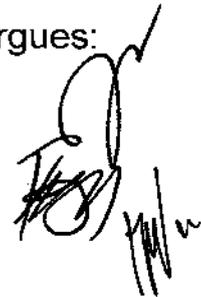
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4. Accused Genara M. Kasayan's *Omnibus Comment to the State's Motion to Discharge Accused Kasayan and the Comment/Opposition of Accused Sia*.⁴

In its Motion, the prosecution prays that accused Kasayan be discharged in these cases to testify as state witness. It avers:

1. The requirements before an accused can be discharged to testify as state witness had been complied with.
2. There is absolute necessity for the testimony of accused Kasayan. She will testify on the following matters:
 - a. The existence of the conspiracy between accused Del Socorro and Sia in the release of the subject cash advances;
 - b. Accused Sia's deliberate failure to liquidate the subject cash advances despite her numerous verbal and written demands, and his extra-judicial admission of his unliquidated cash advances; and
 - c. The relevant documents that would establish the guilt of accused Sia and Del Socorro.
3. There is no other direct evidence available except for accused Kasayan's testimony. She has personal knowledge of the circumstances surrounding the release of the subject cash advances.
4. The documents marked by the prosecution will corroborate accused Kasayan's testimony in its material points and confirm that she is the "least guilty" in the present cases.
5. Accused Kasayan's claim that she has never been convicted of any crime involving moral turpitude is supported by the National Bureau of Investigation (NBI) Clearance, Office of the Ombudsman Certification, Regional Trial Court, 7th Judicial Region Certification; and 13th Municipal Circuit Trial Court, 7th Judicial Region Certificate.⁵

In his *Comment/Opposition*, accused Sia argues:



⁴ Dated September 10, 2019 and filed on September 11, 2019

⁵ Annex C of Motion

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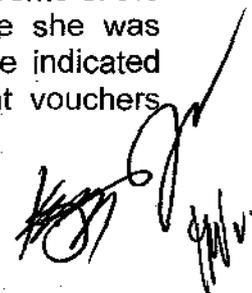
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1. There is no absolute necessity for the testimony of accused Kasayan because she had already executed her Judicial Affidavit. There will nothing new for her to testify on.
2. The Informations allege that there was a conspiracy among the three (3) accused. The act of one is the act of all. Therefore, if accused Kasayan will be discharged, the other accused should likewise be discharged.
3. Accused Kasayan appears to be the most guilty. Her office as Municipal Accountant made possible the availability and disbursement of the funds to accused Sia and Del Socorro.

In his *Comment*, accused Del Socorro manifests that he has no serious objections to the prosecution's Motion. However, considering that he and accused Kasayan are similarly situated, he should also be discharged as state witness.

In her *Omnibus Comment*, accused Kasayan agrees to be discharged as state witness. She avers:

1. She should never have been indicted as an accused in the first place.
2. Although the prosecution does not agree with her professions of innocence, she and the prosecution agree that she is qualified to be discharged to be a state witness.
 - a. There is absolute necessity for her testimony. She can identify documents in her possession, which, if admitted, are direct evidence of the guilt of accused Sia. She alone can testify on the circumstances surrounding said documents.
 - b. There is no other direct evidence for the proper prosecution of the offenses committed except for her testimony. Without her testimony, the documents relied upon by the prosecution are, at best, circumstantial, and not sufficient for a conviction beyond reasonable doubt.
 - c. The testimonies of the witnesses previously presented by the prosecution already corroborate some of the material points in her Judicial Affidavit.
 - d. She does not appear to be the most guilty. Some of the cash advances involved were given before she was appointed as Accountant. Furthermore, she indicated her protest in writing, on the disbursement vouchers.



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themselves, by noting the running balance of the unliquidated cash advances. Moreover, she repeatedly reminded accused Sia to liquidate his cash advances. She also had no participation in the issuance and presentation of the checks for payment. Clearly, she was not in conspiracy with her co-accused.

THE COURT'S RULING

The Court resolves to grant the prosecution's Motion.

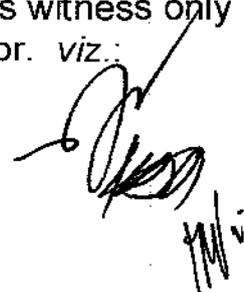
Sec. 17, Rule 119 of the Rules of Court, which provides for the requirements for the discharge of an accused to be a state witness, reads:

Sec. 17. – *Discharge of accused to be state witness.* – When two or more persons are jointly charged with the commission of any offense, upon motion of the prosecution before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state when, after requiring the prosecution to present evidence and the sworn statement of each proposed state witness at a hearing in support of the discharge, the court is satisfied that:

- (a) There is absolute necessity for the testimony of the accused whose discharge is requested;
- (b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused;
- (c) The testimony of said accused can be substantially corroborated in its material points;
- (d) Said accused does not appear to be the most guilty; and
- (e) Said accused has not at any time been convicted of any offense involving moral turpitude. Evidence adduced in support of the discharge shall automatically form part of the trial. If the court denies the motion for discharge of the accused as state witness, his sworn statement shall be inadmissible in evidence.

In *People v. Sandiganbayan*,⁶ the Supreme Court held that courts should generally defer to the judgment of the prosecution and deny a motion to discharge an accused as witness only in clear cases of failure to meet the requirements therefor. viz.:

⁶ G.R. Nos. 185729-32, June 26, 2013



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Sec. 6. Form of Testimony. – The testimony of witnesses shall consist of the duly subscribed written statements given to law enforcement or peace officers or the affidavits or counter affidavits submitted before the Office of the Ombudsman, and if such are not available, testimonies shall be in the form of judicial affidavits, in accordance with the Judicial Affidavit Rule. In all other cases where the culpability or the innocence of the accused is based on the testimonies of the alleged eyewitnesses, the testimonies of these witnesses shall be in oral form.

Under the Judicial Affidavit Rule,⁷ the Judicial Affidavit only takes the place of the direct testimony of a witness. The adverse party—in this case, the accused—shall have the right to cross-examine the witness, and the party presenting the witness—in this case, the prosecution—may also examine the witness on re-direct.⁸ The right of the accused to cross-examine the witness is especially important because not affording the accused the opportunity to do so would be in violation of an accused’ constitutional right of confrontation.⁹

Accused Sia then argues that if one accused in a conspiracy is discharged, all should be discharged because the act of one is the act of all. This does not persuade. In *People v. Ocimar*,¹⁰ in clarifying that “the most guilty” does not necessarily pertain to the severity of the penalty imposed, the Supreme Court explained:

Ocimar contends that in the case at bar Bermudez does not satisfy the conditions for the discharge of a co-accused to become a state witness. He argues that no accused in a conspiracy can lawfully be discharged and utilized as a state witness, for not one of them could satisfy the requisite of appearing not to be the most guilty. Appellant asserts that since accused Bermudez was part of the conspiracy, he is equally guilty as the others.

We do not agree. x x x. But even assuming that he later became part of the conspiracy he does not appear to be the most

⁷ A.M. No. 12-8-8-SC

⁸ **Sec. 7. Examination of the witness on his judicial affidavit.** – The adverse party shall have the right to cross-examine the witness on his judicial affidavit and on the exhibits attached to the same. The party who presents the witness may also examine him as on re-direct. In every case, the court shall take active part in examining the witness to determine his credibility as well as the truth of his testimony and to elicit the answers that it needs for resolving the issues.

⁹ **Constitution. Art. III, Sec. 14.** x x x (2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. x x x (underscoring supplied)

¹⁰ G.R. No. 94555, August 17, 1992

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guilty. What the law prohibits is that the most guilty will be set free while his co-accused who are less guilty will be sent to jail. And by "most guilty" we mean the highest degree of culpability in terms of participation in the commission of the offense, and not necessarily the severity of the penalty imposed. While all the accused may be given the same penalty by reason of conspiracy, yet one may be considered least guilty if We take into account his degree of participation in the perpetration of the offense. x x x

(underscoring supplied)

In fine, accused Sia has not convinced this Court that there is a clear case of failure to meet the requirements of Sec. 17, Rule 119 of the Rules of Court to warrant the denial of the prosecution's Motion.

This Court cannot grant accused Del Socorro's prayer that he also be discharged as a state witness. The discharge of an accused as state witness is left to the prosecution's discretion. The Court can only determine if the legal requirements therefor, as provided in Sec. 17, Rule 119 of the Rules of Court, have been complied with. In *People v. Ocimar*,¹¹ it was held:

Besides, the matter of discharging a co-accused to become a state witness is left largely to the discretion of the trial fiscal, subject only to the approval of the court. The reason is obvious. The fiscal should know better than the court, and the defense for that matter, as to who of the accused would best qualify to be discharged to become state witness. The public prosecutor is supposed to know the evidence in his possession ahead of all the rest. He knows whom he needs to establish his case.

(underscoring supplied)

WHEREFORE, the prosecution's Motion is hereby GRANTED. As prayed for, accused GENARA M. KASAYAN is DISCHARGED from the present cases to testify as state witness.

SO ORDERED.



¹¹ *Ibid.*

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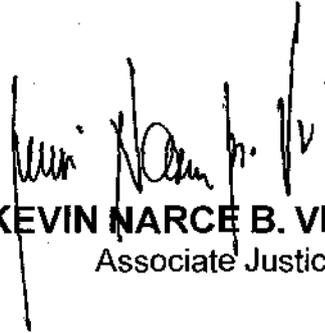
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SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
Associate Justice