



Republic of the Philippines
Sandiganbayan
Quezon City

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-21-CRM-0010 & 0011

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

- versus -

Present:

NICANOR E. FAELDON, ET AL.,
Accused.

LAGOS, J., *Chairperson,*
MENDOZA-ARCEGA, and
CORPUS-MAÑALAC, JJ.

Promulgated:

February 20, 2024

X-----
[Signature] X

RESOLUTION

J. MAÑALAC:

For consideration is the *Manifestation and Omnibus Motion*¹ dated February 6, 2024 filed by accused Nicanor E. Faeldon, through counsel, on even date, *viz.*: (1) a motion for reconsideration of the Order² dated January 30, 2024 which reset the presentation of a prosecution witness; (2) a motion for the issuance of subpoenas *ad testificandum*; and (3) a manifestation with regard to a portion of the assailed Order.

A summary of the relevant antecedents is outlined below.

On January 30, 2024, at 1:30 p.m., the prosecution was scheduled to present its witness, Mr. Panfilo M. Lacson.

On the said day, during the hearing, the prosecution, through Assistant Special Prosecutor (ASP) II Ryan Rey S. Quilala, informed the Court that they received a message from the intended witness “at around 10:30 this morning that he has sore throat, clogged nose and joint pains.”³

Eventually, the Court, upon the prosecution’s motion, reset the presentation of the intended witness to the agreed date March 7, 2024.⁴

¹ Records, Vol. 7, pp. 81-84.

² *Id.* at 59-60.

³ TSN, January 30, 2024, p. 4.

⁴ Records, Vol. 7, p. 59. TSN, January 30, 2024, p. 7.

Moreover, the Court ordered the prosecution to “submit on the next setting a notarized medical certificate attesting to the said medical condition of the witness.”⁵

For clarity, the relevant allegations in accused Faeldon’s manifestation and omnibus motion are hereunder reproduced. First, on the motion for reconsideration, quoted *verbatim*:

x x x x

2. In order to determine whether or not the intended witness’s excuse or reason for absenting himself from the scheduled hearing was either valid, flimsy and/or made-up, herein counsel turned to readily available data on the internet. Lo and behold, said intended witness was actually pre-occupied with tweeting (through X), before, during and immediately after the scheduled hearing;

x x x x

4. Obviously, said witness considered himself fit enough to compose and send-out successive tweets, but did not consider himself fit enough to obey this Court’s Order to appear and testify [x x x] last 30 January 2024;
5. For which reason, we implore the Court to reconsider its 30 January 2024 [Order] and grant our Motion to consider the said witness’s absence as a waiver of the prosecution’s right to present him as a testimonial witness[.]⁶

Second, on the motion for the issuance of subpoenas *ad testificandum*, quoted *verbatim*:

6. To aid the Court in determining whether or not the intended witness’s excuse or reason for absenting himself from the scheduled hearing was either valid or made-up, it is imperative to determine, first-hand, from the medical professional who will issue the medical certificate as well as from the notary public, before whom the medical certificate will be subscribed, to answer the following very simple questions:

Whether or not the medical professional advised the intended witness that he was not fit enough to testify before the Court last 30 January 2024;

Whether or not the medical professional advised the intended witness that he was fit enough to compose and send-out successive tweets between 29-31 January 2024; and

Whether or not the medical professional actually and personally appeared before the notary public before whom the medical certificate will be (or was) subscribed.

⁵ Records, Vol. 7, p. 59.

⁶ *Id.* at 81-82.

7. For the above purpose, we respectfully move the Court to direct the prosecution to submit [x x x] the required notarized medical certificate and the respective complete addresses of the medical certificate issuer and the notary public, at least ten (10) days before the scheduled resetting on 07 March 2024, to enable the Court to send-out the Subpoena/s herein prayed for[.]⁷

Finally, on the manifestation, quoted *verbatim*:

8. On Par. 2 [of] Page 1 of this Court's aforesaid Order, it was stated that the counsel for [a]ccused Lim, Jr. and Ursal would not be coming, as said counsel would not be interposing any objection to the resetting;
9. Herein [c]ounsel is bewildered how said counsel could have known beforehand of the resetting, when the public prosecutor personally informed the undersigned (after the hearing) that he himself learned of the resetting prayed for only at around 10:30 a.m. last 30 January 2024;
10. Respectfully, who tipped-off the counsel for [a]ccused Lim, Jr. and Ursal? More importantly, and from the standpoints of fairness and equality before the law, why wasn't herein counsel given the same courtesy, considering that her mobile phone number and email address have long been on this Court's staff's file?⁸

Thus, accused Faeldon prays for a reconsideration of the assailed Order, in particular to consider the absence of the intended witness as a waiver of the prosecution's right to present him as witness, and for the issuance of subpoenas *ad testificandum* to the medical doctor and the notary public.

On February 15, 2024, the prosecution filed its *Comment*⁹ dated February 14, 2024 arguing that the "[c]ounsel for accused Faeldon merely reiterated what she has already vented out"¹⁰ during the hearing, and that "the overzealousness of accused Faeldon to request for [subpoenas *ad testificandum*] has nothing to do with the merits of the instant cases against him nor does it add any probative value thereto."¹¹ It adds that the omnibus motion is unwarranted and does not serve any other purpose but to delay the proceedings.

RULING

After considering the attendant circumstances, the Court resolves to deny the omnibus motion.

⁷ *Id.* at 82-83.

⁸ *Id.* at 83.

⁹ *Id.* at 105-107.

¹⁰ *Id.* at 105.

¹¹ *Id.*



The Court finds no cogent reason to reconsider the assailed Order, in particular the resetting of the presentation of the prosecution's intended witness, Mr. Lacson, to March 7, 2024, the date agreed upon by the parties.¹²

The following exchange during the January 30, 2024 hearing is revealing:

HON. JUSTICE MAÑALAC:

[x x x] May we hear from Atty. Magsuci.

ATTY. MAGSUCI:

Your Honors, forgive me Fiscal, but we will have to move that the prosecution be considered to have waived the presentation of the witness as this scheduled hearing has long been scheduled and the prosecution did not object, and I also personally drove myself from Oriental Mindoro, Your Honors.

HON. JUSTICE MAÑALAC:

Any comment on that, Prosecutor?

PROS. QUILALA:

Your Honor, we apologize for the inconvenience caused to the counsel for the accused, Your Honor, but **this is just the first time that the prosecution has requested for a cancellation of the hearing, Your Honor, and the circumstance is truly beyond our control, Your Honor.**

HON. JUSTICE MAÑALAC:

Okay. How about Atty. Espina?

ATTY. ESPINA, JR.:

We have no objection, Your Honors.

x x x x

HON. JUSTICE MAÑALAC:

Okay. Anyway, as you said, this is just the first time that Senator Lacson failed to come. **Provided, you can show us or present on the next setting a medical certificate, a notarized medical certificate of the Senator.**

PROS. QUILALA:

Yes, Your Honor. I have already informed him, Your Honor, to provide.

HON. JUSTICE MAÑALAC:

¹² TSN, January 30, 2024, p. 7.

And he committed to submit one?

PROS. QUILALA:

Yes, Your Honor

HON. JUSTICE MAÑALAC:

Okay. Atty. Magsuci, any further comment on that?

ATTY. MAGSUCI:

Then I will submit to the judgment of the Court, Your Honor.

HON. JUSTICE MAÑALAC:

Okay. This is just the first time. Provided, on the next setting, please provide us a valid reason, if at all, you would still not be able to present the Senator.

Can you commit, however, just for the peace of mind of Atty. Magsuci, that if for the next hearing the Senator will not be coming, we will waive the presentation?

PROS. QUILALA:

Yes, Your Honor.¹³ (Emphasis supplied)

Indeed, the Court sees no good or logical reason not to reset the presentation of the said witness in view of his absence, considering that this resetting was the first time for the prosecution in this trial. *Garces v. Valenzuela*¹⁴ is instructive:

It is entirely in the discretion of courts to allow or refuse adjournments and postponements, in the exercise of which all the attendant circumstances and the rights of all the parties should be taken into account; and the exercise of that discretion will not ordinarily be interfered with unless the trial court's action is clearly in abuse of that discretion or is otherwise clearly erroneous. [x x x].

At this point, to consider such absence as a waiver of the right of the prosecution to present him as witness is a measure way too harsh, given that it propounded an apparently valid reason, subject to the submission of proof. In the event, however, that he would still be absent in the next hearing, the prosecution, as shown above, even committed to waive the right to present him as witness.

It must be emphasized that the State, like any other litigant, is entitled to its day in court, and to a reasonable opportunity to present its case.¹⁵

¹³ *Id.* at 4-6.

¹⁴ G.R. No. L-55226, February 28, 1989.

¹⁵ *People v. Leviste*, G.R. No. 104386, March 28, 1996.

On the motion for the issuance of subpoenas *ad testificandum* to the medical doctor and the notary public *vis-à-vis* the notarized medical certificate to be submitted by the said witness, the Court finds the requested subpoenas to be unnecessary and pointless. A contrary view would only result in undue delay in the proceedings, as the matter of the requested subpoenas is inconsequential to the main issues in these cases.

The only requirement is that the fact of illness must be established by some satisfactory sworn statement, either in the shape of an affidavit or the certificate of a physician that satisfies the court of the inability of the party¹⁶ or, in this instance, a witness to be present.

Thus, whether the notarized medical certificate that was directed to be submitted would be satisfactory is to be determined by the Court itself at the proper time. At the moment, the Court affirms the resetting of the hearing for the presentation of the said witness.


As for the manifestation, the Court accordingly notes the same for its information.

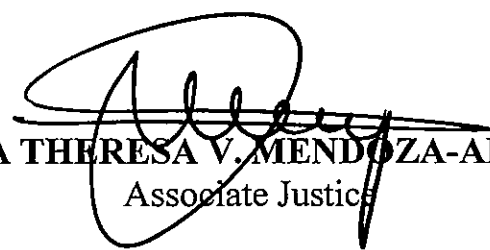
WHEREFORE, in light of the foregoing premises, the *Omnibus Motion* dated February 6, 2024 of accused Nicanor E. Faeldon is **DENIED** for lack of merit. The *Manifestation* dated February 6, 2024 is **NOTED**.

SO ORDERED.


MARYANN E. CORPUS-MAÑALAC
Associate Justice

WE CONCUR:


RAFAEL R. LAGOS
Associate Justice
Chairperson


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice