



REPUBLIC OF THE PHILIPPINES

**Sandiganbayan**

Quezon City

SIXTH DIVISION

**PEOPLE OF THE PHILIPPINES,**  
Plaintiff,

**SB-14-CRM-0107**  
For: Violation of Section 3(e)  
of R.A. No. 3019

- versus -

*Present*

**VIRGILIO PONCIANO A. OCAYA,**  
Accused.

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

*Promulgated:*

**JUL 02 2020** *[Signature]*

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## RESOLUTION

**FERNANDEZ, SJ, J.**

This resolves the *Motion to Disallow Plaintiff's Rebuttal Evidence*<sup>1</sup> filed by accused Virgilio Ponciano A. Ocaya; and the prosecution's *Comment/Opposition (To Accused Ocaya's Motion to Disallow Plaintiff's Rebuttal Evidence dated 03 June 2020)*.<sup>2</sup>

In his Motion, the accused prays that the Court (a) disallow the prosecution's presentation of Atty. Claudine B. Orocio-Isorena as rebuttal witness; (b) expunge from the records her Judicial Affidavit dated 10 March 2020; and (c) deem the present case submitted for resolution. He avers:

1. An examination of Atty. Orocio-Isorena's Judicial Affidavit would show that the prosecution is presenting her testimony to prove that he was a public officer by establishing that his former office—the Metropolitan Waterworks and Sewerage System - Regulatory Office (MWSS-RO)—is a public office.

<sup>1</sup> Dated June 3, 2020 .

<sup>2</sup> Dated June 6, 2020 and filed by electronic mail on June 8, 2020

*[Signatures]*

RESOLUTION

People vs. Ocaya

SB-14-CRM-0107

Page 2 of 6

X-----X

2. The fact that he was a public officer is a material element of the crime charged.
3. The prosecution has the burden of proof in the present case, and was bound to present all evidence during the presentation of its evidence-in-chief.
4. Atty. Orocio-Isorena's testimony and the documents attached to her Judicial Affidavit should have been presented during the presentation of the prosecution's evidence-in-chief.
5. Because the prosecution had already rested its case, said evidence is already considered to be forgotten evidence, the belated presentation of which violates the rule against piecemeal presentation of evidence.
6. Atty. Orocio-Isorena's testimony and the accompanying exhibits are not newly discovered evidence, having been in existence prior to the filing of the prosecution's Formal Offer of Evidence dated February 28, 2019. There is no reason why said evidence was not presented earlier.
7. In *People v. Padero*,<sup>3</sup> the Supreme Court explained that the function of the rebuttal evidence is to explain, repel, counteract, or disprove the evidence of the adversary.
8. Atty. Orocio-Isorena's Judicial Affidavits and the exhibits attached thereto cannot be presented as rebuttal evidence because these will be presented to prove that he was a public officer—a main issue—and not to explain, repel, counteract, or disprove "new facts" he put forth in his defense.
9. The Court had previously allowed the prosecution to present witnesses who were not specified in the amended Pre-Trial Order, and who could not be considered as alternative witnesses. Prior to that, he raised the issue of inordinate delay in the preliminary investigation for a period of almost nine (9) years.
10. The Court should not condone the prosecution's latest attempt to skirt the rules, and let him suffer needlessly by reason of the prosecution's negligence.
11. The prosecution failed to prove one of the elements of the offense charged during the presentation of its evidence-in-chief. It should not be allowed to introduce additional evidence on the main case because it would violate his rights to due process, to

<sup>3</sup> G.R. No. 106274, September 28, 1993

RESOLUTION  
People vs. Ocaya  
SB-14-CRM-0107

Page 3 of 6

X-----X

speedy trial and speedy disposition of cases, and his right against double jeopardy.

In its *Comment/Opposition*, the prosecution counters:

1. The accused' objection to the presentation of prosecution witness Atty. Orocio-Isorena is improper and premature.
2. Although the offer of testimony was included in Atty. Orocio-Isorena's Judicial Affidavit, the prosecution has not yet called her to testify, and has not yet offered her testimony before the Court.
3. The accused' insistence that the prosecution is presenting evidence-in-chief for the first time to prove a material element of the crime charged is a mere repetition of his argument in his *Motion for Leave to File Demurrer to Evidence (MFLDE)*.
4. Contrary to the accused' claim, the prosecution proved that he was a public officer by virtue of his position as Deputy Administrator of MWSS-RO. As an employee of MWSS-RO, his salary came from government funds.
5. MWSS is a government-owned and -controlled corporation created by Republic Act No. 6234. MWSS-RO is a public office, being an arm of the MWSS tasked to implement and oversee the public-private partnership between MWSS and the two private consortia.
6. The prosecution also presented numerous documents proving that the accused was a public officer. The Court admitted said documentary exhibits when the prosecution made its formal offer of evidence.
7. During the presentation of defense evidence, the accused testified that MWSS-RO is not a public office, that it does not utilize public funds, and that his compensation from MWSS-RO does not come from public funds.
8. In the Resolution denying the accused' MFLDE, the Court ruled that if unrebutted, the prosecution's evidence is *prima facie* sufficient to support a verdict of guilt against the accused.
9. The Court, as well, denied the accused' motion for reconsideration of said Resolution, wherein he argued that the MWSS-RO is not a public office.



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10. Under Rule 119, Sec. 11 of the Revised Rules of Criminal Procedure, the prosecution may disprove the accused' assertions made in his defense by presenting rebuttal evidence.
11. The jurisprudence on "forgotten evidence" and newly discovered evidence cited by the accused do not apply to the present case because the prosecution never claimed that the testimony of Atty. Orocio-Isorena is newly discovered evidence. The prosecution intended to present the same as rebuttal evidence.
12. The Court had already ruled on the matters of (a) allowing the prosecution to present witnesses who were not listed in the pre-trial order; and (b) the alleged inordinate delay in the preliminary investigation. There is no need to repeatedly raise such matters.
13. The Court gave the prosecution four (4) trial dates to present at least two (2) rebuttal witnesses. There is no ground for deeming the present case submitted for resolution.

### THE COURT'S RULING

The Court resolves to deny the accused' Motion.

First, Sections 35 and 36, Rule 132 of the 2019 Proposed Amendments to the Revised Rules on Evidence<sup>4</sup> provide:

**Sec. 35. When to make offer.** – All evidence must be offered orally.

The offer of the testimony of a witness in evidence must be made at the time the witness is called to testify.

The offer of documentary and object evidence shall be made after the presentation of a party's testimonial evidence.

**Sec. 36. Objection.** – Objection to offer of evidence must be made orally immediately after the offer is made.

Objection to the testimony of a witness for lack of a formal offer must be made as soon as the witness begins to testify. Objection to a question propounded in the course of the oral examination of a witness must be made as soon as the grounds therefor become reasonably apparent.

<sup>4</sup> A.M. No. 19-08-15-SC (effective May 1, 2020)

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The grounds for the objection must be specified.

(underscoring supplied)

On the other hand, Sec. 6 of the *Judicial Affidavit Rule*<sup>5</sup> provides:

**Sec. 6. Offer of and objections to testimony in judicial affidavit.**

– The party presenting the judicial affidavit of his witness in place of direct testimony shall state the purpose of such testimony at the start of the presentation of the witness. The adverse party may move to disqualify the witness or to strike out his affidavit or any of the answers found in it on ground of inadmissibility. The court shall promptly rule on the motion and, if granted, shall cause the marking of any excluded answer by placing it in brackets under the initials of an authorized court personnel, without prejudice to a tender of excluded evidence under Section 40 of Rule 132 of the Rules of Court.

From the aforequoted provisions, it is clear that the offer of testimonial evidence must be made at the time the witness is called to testify. Any objection to such offer must be made after the offer. The accused was served a copy of Atty. Orocio-Isorena's Judicial Affidavit pursuant to Sec. 2<sup>6</sup> of the *Judicial Affidavit Rule*. Such service of the Judicial Affidavit on the accused is not considered the prosecution's offer of testimonial evidence. As pointed out by the prosecution, it has yet to call Atty. Orocio-Isorena to testify. There being no offer of testimonial evidence, the accused' objection to the presentation of Atty. Orocio-Isorena as rebuttal witness is premature.

Second, there is no ground for this Court to deem the present case submitted for decision.

III. Procedure, 13. Trial, (e) of the *Revised Guidelines for Continuous Trial of Criminal Cases*<sup>7</sup> (Revised Guidelines) provides for the presentation of rebuttal evidence. To wit:

<sup>5</sup> A.M. No. 12-8-8-SC

<sup>6</sup> Sec. 2. *Submission of Judicial Affidavits and Exhibits in lieu of direct testimonies.* (a) The parties shall file with the court and serve on the adverse party, personally or by licensed courier service, not later than five days before pre-trial or preliminary conference or the scheduled hearing with respect to motions and incidents, the following:

(1) The judicial affidavits of their witnesses, which shall take the place of such witnesses' direct testimonies; and

(2) xxx

<sup>7</sup> A.M. No. 15-06-10-SC

**RESOLUTION**  
*People vs. Ocaya*  
**SB-14-CRM-0107**

Page 6 of 6

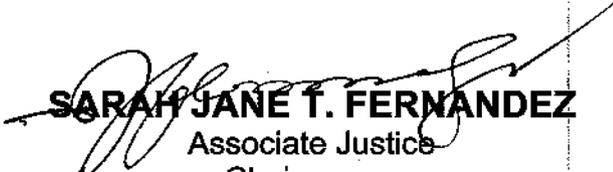
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(e) *Presentation of Rebuttal and Sur-rebuttal Evidence.* – If the court grants the motion to present rebuttal evidence, the prosecution shall immediately proceed with its presentation after the accused had rested his/her case, and orally rest its case in rebuttal after the presentation of its last rebuttal witness. Thereafter, the accused shall immediately present sur-rebuttal evidence, if there is any, and orally rest the case in sur-rebuttal after the presentation of its last sur-rebuttal witness. Thereafter, the court shall submit the case for decision.

During the hearing on January 20, 2020, this Court set the hearings for the presentation of rebuttal evidence for the prosecution on March 18 and 19, 2020, and all Wednesdays and Thursdays for the month of March.<sup>8</sup> However, the hearings on those dates did not proceed because of the suspension of all hearings in all courts nationwide due to the rising cases of COVID-19 infection.<sup>9</sup> As previously mentioned, the prosecution has yet to present Atty. Orcio-Isorena as its rebuttal witness. The present case will be submitted for decision after the prosecution has rested its case in rebuttal, or after the accused has rested his case in sur-rebuttal, if he intends to present sur-rebuttal evidence.

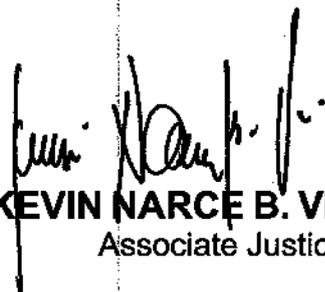
**WHEREFORE**, the accused' *Motion to Disallow Plaintiff's Rebuttal Evidence* is hereby DENIED for being premature and for lack of merit. Set the presentation of evidence for the prosecution on September 23 and 24, 2020.

SO ORDERED.

  
**SARAH JANE T. FERNANDEZ**  
Associate Justice  
Chairperson

**We Concur:**

  
**KARL B. MIRANDA**  
Associate Justice

  
**KEVIN NARCE B. VIVERO**  
Associate Justice

<sup>8</sup> Order dated January 20, 2020 (Record, Vol. 8, p. 162-A)

<sup>9</sup> Supreme Court Administrative Circular No. 31-2020 dated March 16, 2020