



REPUBLIC OF THE PHILIPPINES  
**SANDIGANBAYAN**  
QUEZON CITY

**THIRD DIVISION**

**PEOPLE OF THE  
PHILIPPINES,**

**Plaintiff,**

**Criminal Case No. SB-16-  
CRM-0080 and 0084**

**Criminal Case No. SB-16-  
CRM-0440 to 0442**

- versus -

**JEJOMAR C. BINAY, SR., et  
al.**

**Accused.**

*Present:*

**CABOTAJE-TANG, P.J.,**  
Chairperson,  
**FERNANDEZ, B., J.** and  
**MORENO, J.**

*Promulgated:*

MAY 12, 2022

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**RESOLUTION**

**CABOTAJE-TANG, P.J.:**

For resolution are the [1] *Motion for Reconsideration* dated December 13, 2021,<sup>1</sup> filed, through counsel, by accused-movant Efren M. Canlas, and [2] *Motion with Leave of Court to Admit Opposition* dated April 12, 2022,<sup>2</sup> filed by the prosecution, in Criminal Cases SB-16-CRM-0080 and 0084, and SB-16-CRM-0440 to 0442.

<sup>1</sup> pp. 268-274, Volume XIII, Record

<sup>2</sup> pp. 502-505, Volume XIII, Record

### **Accused Canlas' Motion for Reconsideration**

Accused Canlas' motion seeks the reconsideration of the Court's *Resolution* promulgated on November 12, 2021,<sup>3</sup> which partially granted the prosecution's *Omnibus Motion Re: Marking of Plaintiff's Exhibits* filed on May 3, 2021. He claims that he filed an *Opposition* dated May 28, 2021, to challenge the *Omnibus Motion* on the issue of constitutionality of the documents sought to be submitted and marked, *i.e.*, Exhibits "B"-series. However, the Court resolved the prosecution's motion without considering the constitutional issues he raised. He further claims that the Court simply granted the prosecution's motion without even discussing the merits thereof. The Court also did not establish or discuss the grounds to affirm the constitutionality of the assailed documents sought to be marked.<sup>4</sup>

Thus, the said accused asserts that he is invoking his constitutional right to due process of the law and requests the Court to revisit its *Resolution* dated November 12, 2021, and to resolve his *Opposition* on the merits.<sup>5</sup>

Reiterating the arguments that he previously raised, he argues that the *Omnibus Motion* should be denied considering that the documents sought to be marked by the prosecution emanate and result from a special audit which failed to comply with Section 15 of Commission on Audit (COA) Circular No. 2009-006.<sup>6</sup> As factual basis for his allegation that the special audit failed to comply with the mentioned COA circular, he referenced the *Memorandum* dated October 22, 2020, issued by the concerned state auditors from the COA, and the ensuing *Indorsement Letter* dated October 30, 2020 of Director IV Danilo M. Lagason of the COA Systems and Technical Services Sector (Technical Services Office), copies of which were duly attached to his *Opposition*. Per accused Canlas, the said *Memorandum* and *Letter*, both of which were issued by the COA, confirm in clear and unequivocal language the non-compliance with the requirements of Section 15 of COA Circular 2009-006 of the special audit of the Makati City Hall Parking Building II.<sup>7</sup> He also referenced the letter of State Auditor Amalia P. Manabat from the COA Local Government Sector-NCR, Audit Group C-Makati to his

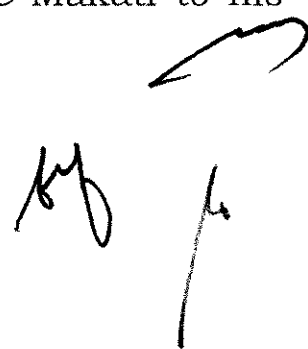
<sup>3</sup> pp. 175-176, *Volume XIII, Record*

<sup>4</sup> pp. 268-269, *Volume XIII, Record*

<sup>5</sup> p. 269, *Volume XIII, Record*

<sup>6</sup> pp. 269-271, *Volume XIII, Record*

<sup>7</sup> p. 269, *Volume XIII, Record*

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counsel dated 21 October 2020, categorically stating that there was no available document showing compliance with the said Section 15 of COA Circular 2009-006.<sup>8</sup>

Accused Canlas argues that considering the aforesaid circumstances and per the Supreme Court's pronouncement in ***Liwanag v. Commission on Audit***,<sup>9</sup> the alleged non-compliance by the audit team with Section 15 of COA Circular 2009-006 violated his constitutional guarantee to due process. As such, the special audit, and anything emanating from it, *i.e.*, Exhibits "B"-series, which the prosecution sought to mark in its *Omnibus Motion*, are constitutionally infirm and void *ab initio*. Further claiming that it is sound judicial policy, especially in criminal proceedings, for the Court to resolve issues of constitutionality at the earliest opportunity to prevent poisoned material from tainting trial records, and that per ***Apo Cement Corporation v. Mingson Mining Corporation***,<sup>10</sup> anything rendered without due process are void *ab initio* and may be attacked at any time, directly or collaterally, he argues that the Court should already declare the unconstitutionality of the documents sought to be marked **without waiting for the subject documents to be presented or offered as evidence**.<sup>11</sup>

In addition to the arguments he raised in his *Opposition*, accused Canlas likewise claims in his *Motion for Reconsideration* that based on the categorical confirmation by the COA Systems and Technical Services Sector (Technical Services Office) and the Supervising Auditor of the City Government of Makati of the special audit team's violation of COA Circular 2009-006, no presumption of regularity may be accorded to the subject documents.<sup>12</sup>

He also claims that the pendency of the accused's appeal from the Notice of Disallowance No. 2018-002 before the COA does not bar the Court from declaring the unconstitutionality of the subject documents since the issues pending before the COA are far different from those raised herein.<sup>13</sup>

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<sup>8</sup> *Id*

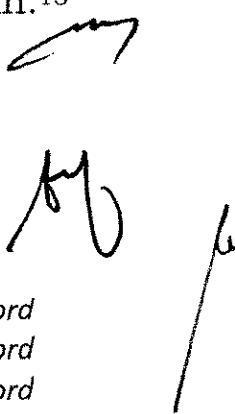
<sup>9</sup> 912 SCRA 250 (2019)

<sup>10</sup> 740 SCRA 383 (2014)

<sup>11</sup> pp. 269-271, *Volume XIII, Record*

<sup>12</sup> pp. 270-271, *Volume XIII, Record*

<sup>13</sup> pp. 271-272, *Volume XIII, Record*

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**Prosecution's Motion with Leave of Court  
to Admit Opposition**

On April 12, 2022, the prosecution filed a *Motion with Leave of Court to Admit Opposition* with an attached *Opposition to Accused Canlas' Motion for Reconsideration* of even date. In its motion, the prosecution, citing honest oversight, admits that it failed to submit on time an opposition to accused Canlas' motion for reconsideration of the Court's November 12, 2021 *Resolution*.<sup>14</sup> Begging the understanding of the Court for the unintentional lapses, it prayed for the admission of the *Opposition to Accused Canlas' Motion for Reconsideration*.<sup>15</sup>

In the *Opposition*,<sup>16</sup> the prosecution argues that accused Canlas' motion failed to point out serious errors or irregularities that would warrant the reversal of the assailed resolution, and that his arguments are mere reiterations or rehash of old arguments from his previous pleadings which were already denied by the Court.<sup>17</sup> Nonetheless, it reiterated that it is premature at this stage of the proceedings for accused Canlas to oppose the prosecution's right to mark its exhibits which were the subject of the COA audit as members of the Fraud Audit Team enjoy the presumption of regularity on the performance of duty when they conducted the audit.<sup>18</sup>

**THE COURT'S RULING**

In the interest of fully resolving accused-movant Canlas' *Motion for Reconsideration*, the Court resolves to **GRANT** the prosecution's *Motion with Leave of Court to Admit Opposition* and **ADMIT** the *Opposition to Accused Canlas' Motion for Reconsideration*.

***Accused Canlas' Motion for Reconsideration lacks merit.***

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<sup>14</sup> p. 502, Volume XIII, Record

<sup>15</sup> pp. 502-503, Volume XIII, Record

<sup>16</sup> pp. 506-508, Volume XIII, Record

<sup>17</sup> p. 506, Volume XIII, Record

<sup>18</sup> p. 507, Volume XIII, Record

After due consideration of the claims of all parties, the Court resolves to **DENY** the motion for reconsideration filed by accused Canlas.

At their core, accused Canlas' *Opposition* and *Motion for Reconsideration* can be distilled as an **objection** to the **use** by the prosecution of Exhibits "B"-series as **evidence** in the pending criminal cases against him and his co-accused. The objection is grounded on the supposed incompetency – and as such, inadmissibility – of the documents, having been the product of an audit which purportedly violated accused Canlas' constitutional right to due process, and thus void *ab initio*.

Such objections, however, **must be made or raised** by a party **within the periods prescribed by the Rules of Court**, which periods depend on the type of evidence objected to. Corollary to this, the Court can only **consider and rule upon these objections** when **seasonably made**.

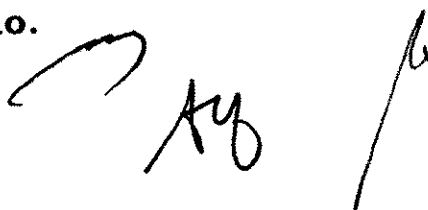
Rule 132, Section 36 of the Rules of Court provides that "[o]**bjection** to offer evidence **must be made** orally **immediately after the offer is made**." As to when the offer must be made, Rule 132, Section 35 instructs that the "offer of **documentary** and object evidence shall be **made after the presentation of a party's testimonial evidence**."

From these provisions, it is clear that no objection can be interposed **unless the evidence objected to has been offered** by the party presenting the evidence. Simply put, an **objection to evidence cannot be made in advance of the offer of the evidence sought to be introduced**.

In this case, **no party has yet to formally offer any evidence**. In fact, per the *Omnibus Motion* objected to by accused Canlas, Exhibits "B"-series are only being submitted to the Court by the prosecution for **marking**.

Is the submission of documents for marking the same as formally offering them, such that an objection can already be made by an opposing party at the time an intended evidence is marked by the party introducing it?

**The answer is simply no.**

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The **identification** of documentary evidence, which includes its **marking**, is a **distinct and different stage** of trial from the **offer of evidence**.<sup>19</sup> Identification is done at pre-trial stage and is accompanied by the marking of the evidence as an exhibit. Marking is merely the labelling of a document or object as an exhibit for the party marking the same. Offer, on the other hand, is done only when the party offering the evidence rests its case.<sup>20</sup>

Notably, the mere fact that a particular document is identified and marked as an exhibit **does not mean that it has already been offered as part of the evidence**. It must be emphasized that any evidence which a party desires to submit for the consideration of the court **must formally be offered by the party; otherwise, it is excluded and rejected, and may not be considered by the Court as evidence**.<sup>21</sup>

On the other hand, just because a party identified and marked a document as an exhibit **does not mean that they are bound to offer the evidence. Parties may opt to formally offer their evidence if they believe that it will advance their cause or not do so at all**.<sup>22</sup>

Thus, while accused Canlas may take issue on the competency of Exhibits "B"-series, **his objection to the documents, at this juncture, must nevertheless be denied by the Court for being premature as the prosecution has yet to formally offer Exhibits "B"-series**. Not having been formally offered yet, there is no evidence that the Court can consider at this stage of the proceedings, following Rule 132, Section 34 of the Rules of Court,<sup>23</sup> and thus no evidence for accused Canlas to object to.

The same reasoning likewise prevents the Court from declaring the unconstitutionality of Exhibits "B"-series as prayed for by accused Canlas. As aptly said in the case cited by accused Canlas,

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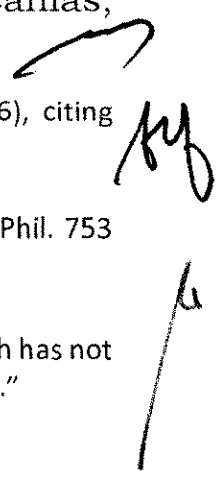
<sup>19</sup> *Pilipinas Shell Petroleum Corp., v. Commissioner of Customs*, 801 Phil. 806 (2016), citing *Interpacific Transit, Inc. v. Aviles*, 264 Phil. 753 (1990)

<sup>20</sup> *Id.*; *Rules of Court*, Rule 132, Section 35

<sup>21</sup> *Magsino v. Magsino*, 893 SCRA 118 (2019); *Interpacific Transit, Inc. v. Aviles*, 264 Phil. 753 (1990)

<sup>22</sup> *Pilipinas Shell Petroleum Corp., v. Commissioner of Customs*, 801 Phil. 806 (2016)

<sup>23</sup> *Rules of Court*, Rule 132, Section 34 states: "The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified."

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***Apo Cement Corp. v. Mingson Mining Industries Corp***,<sup>24</sup> “[a] decision rendered without due process is *void ab initio* and may be attacked at any time directly or collaterally by means of a separate action, or by resisting such decision **in any action or proceeding where it is invoked**.” Thus, while accused Canlas may believe he has basis to claim that Exhibits “B”-series emanate from an audit that was conducted without due process, and as are thus null and void and may be attacked in any action, **the attack can only be done once Exhibits “B”-series are invoked in the cases at bar.**

To “invoke” something means to put it into effect or operation.<sup>25</sup> In the context of evidence, and in line with our previous discussions on the difference between the identification of an exhibit and its offer as evidence by the party introducing it, the identification and marking of documentary evidence, such as Exhibits “B”-series, **does not equate to it being invoked by the prosecution in these proceedings** *first*, because of the precept that parties are not **bound to offer evidence that have been** identified and marked as exhibits, *i.e.*, they may not use them *at all* in proving the guilt of the accused, and *second*, following Rule 132, Section 34 which mandates the Court to **only consider** evidence that has been **formally offered**. This means that **until and unless** the prosecution actually formally offers **Exhibits “B”-series** as part of its evidence, **after the presentation of its testimonial evidence**, the **Court may not declare them as unconstitutional**, because they are not yet being invoked by the prosecution. To declare them, **at this juncture**, as unconstitutional would be **tantamount to ruling on the admissibility** of documents **which are yet to be considered as evidence** under the Rules of Court. Such an act would clearly **overstep the bounds of Court’s jurisdiction** and **violate the prosecution’s right to due process.**


Accused Canlas posits that it is “sound judicial policy especially in criminal proceedings to resolve issues of constitutionality at the earliest opportunity to prevent tainted material from poisoning the trial record”<sup>26</sup> as an accused is constitutionally guaranteed from contending against such material pursuant to the due process clause of the Constitution. He likewise posits that relegating the matter of unconstitutionality to the time when the prosecution would be

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<sup>24</sup> 740 SCRA 383 (2014)

<sup>25</sup>Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/invoke>. Accessed 25 April 2022

<sup>26</sup> pp. 269-270, Volume XIII, Record



tendering its formal offer of evidence would be too late because of the unconscionable serious prejudice that would be meanwhile visited on the accused by an underserved trial.<sup>27</sup>

Laudable as accused Canlas' points may be, it must be borne in mind that due process is not a monopoly of the defense.<sup>28</sup> Indeed, the State is entitled to due process as much as the accused. Furthermore, while a litigation is not a game of technicalities, it is a truism that **every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice.**<sup>29</sup> As extensively discussed by the Court in this resolution, the prosecution is yet to formally offer the documents as evidence. Thus, the Court may not, **at this point**, prevent it from identifying and marking documents which it may deem useful in the prosecution of these cases. Again, to do so would be tantamount to the **Court violating the prosecution's right to due process.**

**WHEREFORE**, in light of all the foregoing, the Court resolves to:

- (1) **GRANT** the *Motion with Leave of Court to Admit Opposition* dated April 12, 2022, filed by the prosecution; and
- (2) **DENY** the *Motion for Reconsideration* dated December 13, 2021, filed by accused Canlas, for lack of merit.

**SO ORDERED.**

Quezon City, Philippines

  
**AMPARO M. CABOTAJE-TANG**

Presiding Justice  
Chairperson

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<sup>27</sup> *Id*

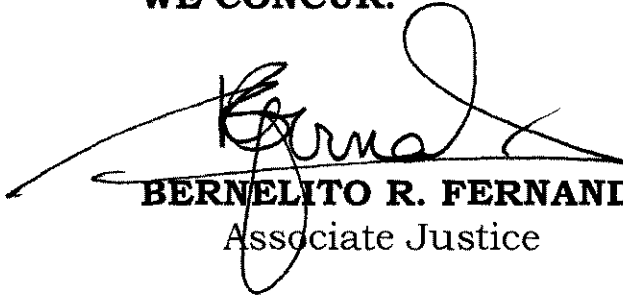
<sup>28</sup> *People v. Webb*, 371 Phil. 491 (1999)

<sup>29</sup> *Id*

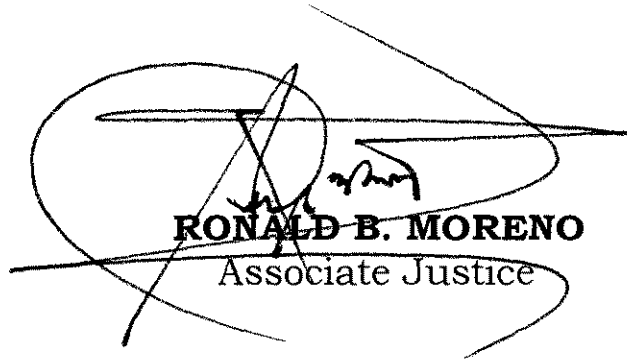




**WE CONCUR:**



**BERNELITO R. FERNANDEZ**  
Associate Justice



**RONALD B. MORENO**  
Associate Justice

