



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-18-CRM-0536**
Plaintiff, For: Violation of Sec. 3(e)
of R.A. No. 3019

Present

- versus -

GERARDO A. NOVERAS,
ET AL.,

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

Accused.

Promulgated:

JUN 22 2022

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves the *Motion for Leave to Recall Witness Hazel DC. Baltazar (with her attached Judicial Affidavit)*¹ filed by accused Ricardo Q. Bautista, Simeon A. De Castro, Benedicto S. Rojo and Norma R. Clemente; and the prosecution's *Opposition (Re: Motion for Leave to Recall Witness Hazel Baltazar dated June 15, 2022)*.²

In their Motion, accused Bautista, De Castro, Rojo and Clemente (accused Bautista, et al.) pray that the Court issue an order recalling Ms. Hazel DC. Baltazar as witness. They aver:

1. During the hearing on May 30, 2022, they presented Ms. Baltazar as their witness. However, their counsel was constrained to terminate her testimony because Ms. Baltazar intimated to him before the hearing that she was not able to bring the originals of the documents required in the subpoena

¹ Dated June 15, 2022 and filed by electronic mail on June 16, 2022

² Dated June 17, 2022 and filed by electronic mail on even date

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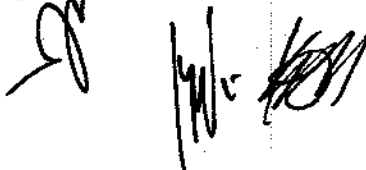
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and the original of her appointment and designation as custodian of the subject documents.

2. After the testimony of witness Donna M. Nayve-Lopez, the Court directed them to prepare the judicial affidavit of the other witnesses. However, they were able to prepare the judicial affidavits of Mr. Bernard De Lumen and Rhia Sigua only. Their counsel requested Ms. Baltazar to come to his office to finalize her judicial affidavit on June 13, 2022.
3. Ms. Baltazar will testify on vital documents that were marked as their exhibits.

In its *Opposition*, the prosecution counters:

1. During the hearing on May 30, 2022, accused Bautista, et al. brought five (5) witnesses, and chose to present Ms. Baltazar as their second witness. They should have conferred with her before the hearing, and there should have been no surprise as to whether or not Ms. Baltazar brought the originals of the subject documents.
2. Ms. Baltazar testified that she does not have the original of her designation as records custodian. She never said that she does not have the originals of the documents required in the subpoena. In fact, she had not yet been asked about the said documents during her direct examination.
3. Counsel for accused Bautista, et al. concluded Ms. Baltazar's direct examination without reservation, and the prosecution manifested that it will not conduct cross-examination. Thereafter, Ms. Baltazar completed her testimony.
4. Accused Bautista, et al. wants Ms. Baltazar's recall so she could testify on the same subject matter of her already completed testimony.
5. In *People v. Rivera*, it was held that before the court exercises its discretion to grant or deny the recall, the movant must show some concrete, substantial ground therefor.
6. Accused Bautista, et al. were given ample opportunity to present Ms. Baltazar, and they terminated her testimony on their own accord. They failed to show concrete, substantial ground for Ms. Baltazar's recall as witness.
7. Ms. Baltazar's testimony will violate the *One-day Examination of Witness Rule*, which provides that a witness must be fully examined in one day.



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THE COURT'S RULING

The Motion of accused Bautista, et al. is devoid of merit and must be denied.

Sec. 9, Rule 132 of the 2019 Amendments to the 1989 Revised Rules on Evidence³ provides:

Sec. 9. Recalling witness. – After the examination of a witness by both sides has been concluded, the witness cannot be recalled without leave of court. The court will grant or withhold leave in its discretion, as the interests of justice may require.

In *People v. Rivera*,⁴ the Supreme Court explained that before a court may exercise its discretion to grant or deny recall, there must be a satisfactory showing of some concrete, substantial ground therefor. *Viz.:*

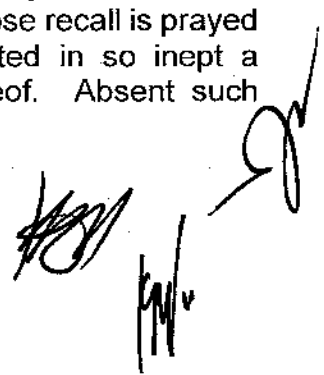
There is no doubt that a Trial Court has discretion to grant leave for the recall of a witness. This is clear from a reading of Section 9, Rule 132 of the Rules of Court, as amended, *viz.:*

x x x

But obviously that discretion may not be exercised in a vacuum, as it were, entirely, isolated from a particular set of attendant circumstances. The discretion to recall a witness is not properly invoked or exercisable by an applicant's mere general statement that there is a need to recall a witness "in the interest of justice," or "in order to afford a party full opportunity to present his case," or that, as here, "*there seems to be many points and questions that should have been asked*" in the earlier interrogation. To regard expressed generalities such as these as sufficient ground for recall of witnesses would make the recall of witness no longer discretionary but ministerial. Something more than the bare assertion of the need to propound additional questions is essential before the Court's discretion may rightfully be exercised to grant or deny recall. There must be a satisfactory showing of some concrete, substantial ground for the recall. There must be a satisfactory showing on the movant's part, for instance, that particularly identified material points were not covered in the cross-examination, or that particularly described vital documents were not presented to the witness whose recall is prayed for, or that the cross-examination was conducted in so inept a manner as to result in a virtual absence thereof. Absent such

³ A.M. No. 19-08-15-SC dated October 8, 2019

⁴ G.R. No. 98376, August 16, 1991



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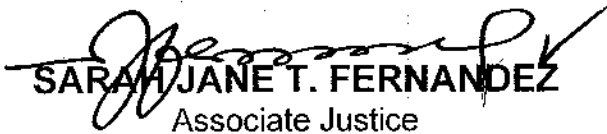
particulars, to repeat, there would be no foundation for a trial court to authorize the recall of any witness.

Here, accused Bautista, et al. merely state that Ms. Baltazar "will testify on vital documents that were marked as exhibits for the accused." This falls short of the requirement of concrete, substantial ground for her recall as witness.

According to accused Bautista, et al., before the hearing on May 30, 2022, Ms. Baltazar intimated to their counsel that she did not bring the originals of the documents. Yet despite having been apprised of the unavailability of the originals of the documents before the hearing, and despite having other witnesses who they could have presented instead of Ms. Baltazar, they still decided to present Ms. Baltazar, who completed her testimony. Furthermore, their counsel manifested that they will just present another witness to testify on the documents. All these indicate accused Bautista, et al.'s intention to forgo the presentation of Ms. Baltazar's testimony on the supposedly vital documents. They cannot now ask for her recall because they changed their mind, and solely based on their bare assertion that Ms. Baltazar "will testify on vital documents."

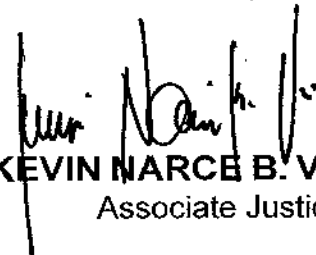
WHEREFORE, accused Bautista, De Castro, Rojo and Clemente's Motion is hereby DENIED for lack of merit.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
Associate Justice