



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

Third Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Crim. Case No.
**SB-17-CRM-1526 to
1527**
*For: Violation of Section
Section 3(e), R.A. No.
3019, as amended*

Crim. Case No.
SB-17-CRM-1531
*For: Malversation
through Falsification*

Crim. Case No.
SB-17-CRM-1544
*For: Malversation of
Public Funds*

-versus-

**MARINA P. CLARETE,
ET AL.,**
Accused.

Present:

Cabotaje-Tang, A.M., *PJ,*
Chairperson
Fernandez, B.R., *J.* and
Moreno, R.B. *J.*

PROMULGATED:

SEPTEMBER 1, 2022

X

X

X-----X

RESOLUTION

Moreno, J.:

For resolution are the *Tender of Excluded Evidence* dated July 15, 2022 filed by accused Arthur C. Yap¹ and his *Urgent Manifestation and Submission* filed on July 26, 2022. The Prosecution, through the Office of the Special Prosecutor, filed its *Opposition x x x* on August 1, 2022.

In his *Tender of Excluded Evidence*, accused Yap tendered the testimony of Josephine Relampagos, Department Head of the Human Resources Management and Development Office of the Provincial Government of Bohol; and the certified copy of his (Yap's) Service Record. Yap argued that he should still be allowed to make a tender of excluded evidence considering that the presentation of his evidence has not been terminated. He additionally claimed that the certified true copy of his service record is admissible without need of authentication, and that the purpose for which it is being tendered is not inconsistent with the stipulation of facts in the Pre-trial Order.

Yap recounted that he intended to present Relampagos as his first witness on July 13, 2022, but this Court disallowed the presentation of his witness since it had already been stipulated during the pre-trial conference that Yap was the secretary of the DAR at all times relevant to the subject criminal cases.

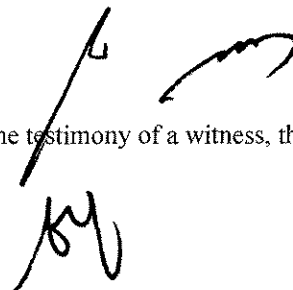
Yap additionally recalled that his counsel made a tender of excluded evidence with regard to Relampagos' testimony during the July 14, 2022 hearing, but the prosecution again objected and argued that the proper time to make such tender should have been on July 13, 2022.

In his *Urgent Manifestation and Submission*, Yap averred that he filed his Tender of Excluded Evidence on July 15, 2022, but failed to attach the subject Service Record due to sheer oversight. Accordingly, he submitted a copy of this service record (referred to as Exhibit "1-Yap") through the said *Urgent Manifestation*.

In its *Opposition*, the prosecution prayed that Yap's *Tender of Excluded Evidence* be disallowed. It maintained that Yap should have made his offer of proof or tender of excluded evidence during the scheduled hearing for the reception of Relampagos' testimony, i.e., , July 13, 2022, applying by analogy Section 35 of Rule 132.²

¹ Received through mail on July 22, 2022.

² **Section 35. When to make offer.** — As regards the testimony of a witness, the offer must be made at the time the witness is called to testify.

Handwritten signature and initials in black ink, appearing to be 'M' and 'J'.

The prosecution also argued that the testimony of Relampagos is irrelevant and immaterial to the subject cases, considering that Yap was being prosecuted for his act of signing the Memorandum of Agreement (MOA) between the Department of Agriculture (DA) and National Agribusiness Corporation (NABCOR), as well as the Addendum to the MOA which eventually led to the release of the PDAF of Representative Marina P. Clarete to Florida Alberto of the *Kabuhayan at Kalusugang Alay sa Masa Foundation, Inc.*

The prosecution further reiterated that Yap made an unconditional stipulation in the Pre-trial Order that he was the DA Secretary at all times relevant to the criminal cases.

THE COURT'S RULING:

After due consideration, we find merit in the contention of accused Yap. Accordingly, we allow the tender of excluded evidence

Section 40, Rule 132 provides:

Sec.40. Tender of excluded evidence. - If documents or things offered in evidence are excluded by the court, the offeror may have the same attached to or made part of the record. If the evidence excluded is oral, the offeror may state for the record the name and other personal circumstances of the witness and the substance of the proposed testimony.

The rule is that evidence formally offered by a party may be admitted or excluded by the court. If a party's offered documentary or object evidence is excluded, he may move or request that it be attached to form part of the records of the case. If the excluded evidence is oral, he may state for the record the name and other personal circumstances of the witness and the substance of the proposed testimony. These procedures are known as offer of proof or tender of excluded evidence and are made for purposes of appeal. If an adverse judgment is eventually rendered against the offeror, he may in his appeal assign as error the rejection of the excluded evidence.³

The records bear out that Yap intended to present Relampagos on July 13, 2022 to, among others, identify and authenticate Yap's service record; and that this Court disallowed the presentation of Relampagos after we did not allow the presentation of Yap's second intended witness. Pursuant to Section 40 of Rule 132, herein accused Yap is given the option to move or request that the excluded evidence be attached to form part of the records of the case, and if the excluded evidence is oral, he may state for the record the

Documentary and object evidence shall be offered after the presentation of a party's testimonial evidence. Such offer shall be done orally unless allowed by the court to be done in writing.

³ See *Fortune Tobacco Corporation v. Commissioner of Internal Revenue*, G.R. No. 192024, July 1, 2015.



name and other personal circumstances of the witness and the substance of the proposed testimony. Notably, Section 40 did not provide for a period within which a tender of excluded evidence can be made. To be sure, the option to make the evidence form part of the record is given to the offeror not for the Court of origin to change its ruling on the disallowance of the presentation of the evidence, but for purposes of appeal.

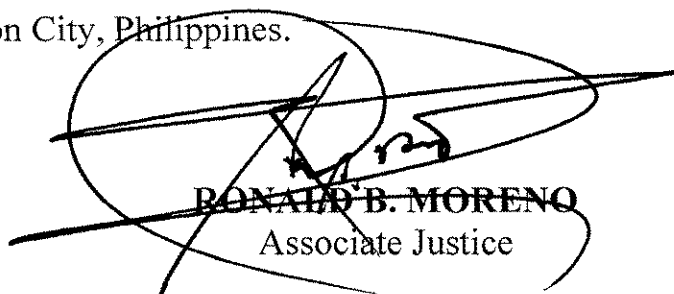
Lest we be misunderstood, the Court is not in any way ruling on the propriety of our previous orders disallowing the presentation of Yap's intended witnesses. We nonetheless recognize the option given to the offeror (herein accused Yap) to make the excluded evidence form part of the case records in order to preserve a record of these pieces of evidence for appeal. Indeed, the appellate court will better understand and appreciate the assignment of error if the evidence involved is included in the record of the case.⁴

WHEREFORE, in light of all the foregoing, the Court rules as follows:

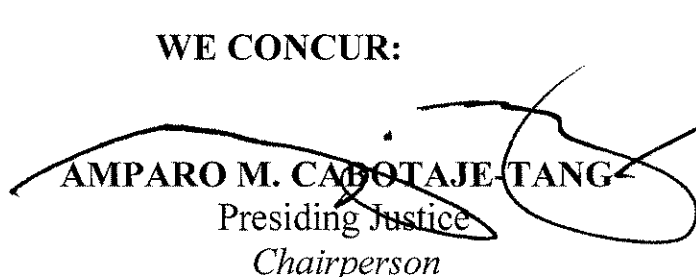
- (a) the *Tender of Excluded Evidence* filed by accused Arthur C. Yap is **ALLOWED**;
- (a) the excluded evidence is ordered **ATTACHED** to the case records; and
- (b) Yap's *Urgent Manifestation and Submission* is **NOTED**.

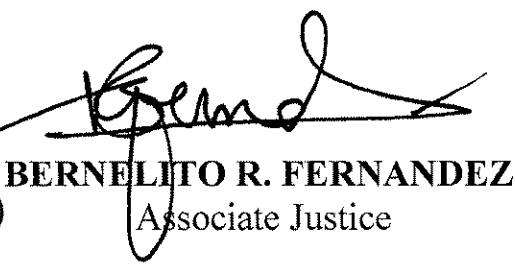
SO ORDERED.

Quezon City, Philippines.


RONALD B. MORENO
Associate Justice

WE CONCUR:


AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson


BERNELITO R. FERNANDEZ
Associate Justice

⁴ See *Cruz-Arevalo v. Judge Querubin-Layosa*, A.M. No. RTJ-06—2005.