

Republic of the Philippines
Sandiganbayan
Quezon City

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

SB-18-CRM-0534
For: *Violation of Section 3(e)*
of R.A. 3019

BENJAMIN SALVA DECENA,
Accused.

X -----X

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

SB-18-CRM-0535
For: *Malversation of*
Public Property

BENJAMIN SALVA DECENA,
Accused.

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

Promulgated:

X -----X
September 13, 2022
Genol L. Lizon

RESOLUTION

CORPUS-MAÑALAC, J.

This resolves accused Decena's *Motion for the Issuance of Subpoena Duces Tecum & Ad Testificandum*¹ dated August 30, 2022 as well as the prosecution's opposition² thereto.

Accused alleges in his motion that during the presentation of its rebuttal evidence, the prosecution presented the testimony of Emelita A. Ibasco, incumbent Mayor of Bula, Camarines Sur, who testified, among other things, that the vehicle in the possession of the said municipality is a vehicle with plate number UTI 963, however, she did not confirm that it is one of the multi-purpose vehicles distributed by Congressman Sal Fortuno.

¹ Records, Volume (Vol.) 2, pages (pp.) 458-459.

² *Ibid.*, pp. 460-462.

The accused now wishes himself and Vincent S. Dasmariñas, GSO of Buhi, Camarines Sur, to be recalled to prove that the aforesaid vehicle was one of those distributed by Congressman Fortunato. He, thus, prays for the issuance of a *subpoena duces and ad testificandum* to Vincent S. Dasmariñas.

The prosecution objects to the said motion as allegedly the intended testimony as regards the vehicle with plate number UTI 963 would be irrelevant to the material allegations of the Information in these cases, which involve a multi-purpose vehicle with plate number UTI 763. Mr. Dasmariñas already testified on September 26, 2019 that the vehicle with plate number UTI 763 was the same vehicle received by the accused in his capacity as Mayor of Bula, Camarines Sur.

THE COURT'S RULING

We grant the motion.

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

(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.

In the interest of substantial justice, the Court believes and so holds that the accused should be given the opportunity to present his sur-rebuttal evidence as this Court already allowed the same in its *Resolution dated July 12, 2022*³ when the prosecution's move to present its rebuttal evidence was granted, *viz:*

WHEREFORE, premises considered, the instant motion is granted, the Court's *May 30, 2022 Resolution* is reconsidered, the prosecution is allowed to present two (2) additional witnesses, **Mayor Amelita A. Ibasco** and **DILG Regional Director Anthony C. Nuyada**, in support of its evidence-in-chief **subject to cross-examination and sur-rebuttal presentation of evidence by the defense.**⁴ [Emphasis supplied.]

³ Records, Vol. 2, pp.

⁴ *Ibid.*, p. 429

As regards the propriety of the recall, the Supreme Court, in the case of *People v. Rivera*,⁵ pointed out that before the trial court exercises its discretion to grant or deny the recall, the movant must show some concrete, substantial ground therefor, to wit:

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,⁹ viz.:

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

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

A careful look at the motion reveals that what accused Decena apparently aims to do in sur-rebuttal is for himself and Mr. Dasmariñas to be recalled "*to prove that the vehicle with Plate Number UTI 963 was indeed one of the multi-purpose vehicles distributed by Congressman Sal Fortuno,*" on the theory that it was this donated vehicle that went to the municipality of Bula, Camarines Sur, and not the vehicle with plate no. UTI 763 which is the subject of these cases. While this point could have been asked and clarified on cross-examination of Ibasco during rebuttal, such failure of the accused may not be taken advantage of to deprive him of due process to prove his point by way of presentation of sur-rebuttal. The function of the court is to ferret out the truth and to put primacy on constitutional safeguards of human life and liberty.⁶ The truth regarding the accused's guilt may only be ferreted

⁵ *People v. Hon. Bayani S. Rivera, et al.*, G.R. No. 98376, August 16, 1991.

⁶ *People v. Brendo P. Pagal*, GR No. 241257, September 29, 2020.

out on the basis of evidence presented in court, and it is but apt to allow the accused the maximum leeway to present his defense as a matter of substantial justice.

The presentation of the intended witnesses is without prejudice to the right of the prosecution to cross-examine and interpose its objections at the most opportune time. Be it noted that the Court's exercise of its discretion in these cases shall not in any way be construed as favoring the accused, as the court will still have to rule on the admissibility and relevancy of the evidence presented.


WHEREFORE, premises considered, the instant motion is **GRANTED**. The defense is allowed to present two (2) sur-rebuttal witness, the accused himself and Vincent S. Dasmariñas on September 29, 2022 at 1:30 in the afternoon.

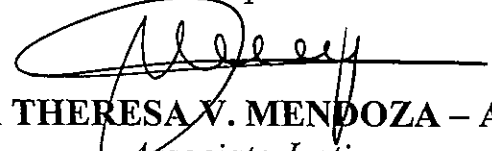
Let a *subpoena duces tecum and ad testificandum* issue for intended witness **Vincent S. Dasmariñas** of the LGU of Buhi, Camarines Sur to bring with him documents pertinent to vehicle with plate number UTI 963 and testify before this Court on **September 28, 2022 at 1:30 in the afternoon** as previously scheduled.

SO ORDERED.


MARYANN E. CORPUS – MAÑALAC
Associate Justice

WE CONCUR:


RAFAEL R. LAGOS
Associate Justice
Chairperson


MARIA THERESA V. MENDOZA – ARCEGA
Associate Justice