



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

QUEZON CITY

SEVENTH DIVISION

MINUTES of the proceedings held on November 29, 2022.

Present:

MA. THERESA DOLORES C. GOMEZ-ESTOESTA ----- Chairperson
ZALDY V. TRESPESES ----- Associate Justice
GEORGINA D. HIDALGO ----- Associate Justice

The following resolution was adopted:

CRIMINAL CASE NOS. SB-17-CRM-2140 TO 2141

PEOPLE v. JUNIO NORBERTO RAGRAGIO, ET AL.

Before the Court are the following:

1. Accused Rosendo Calleja's "MOTION TO ADMIT MOTION FOR RECONSIDERATION" dated November 17, 2022 (with attached MOTION FOR RECONSIDERATION dated November 17, 2022); and
2. Prosecution's "COMMENT/OPPOSITION (to MOTION TO ADMIT MOTION FOR RECONSIDERATION) dated November 24, 2022.

GOMEZ-ESTOESTA, J.:

This resolves accused Calleja's *Motion to Admit* his *Motion for Reconsideration* of this court's *Resolution* dated October 18, 2022 on his *Formal Offer of Evidence*.¹ He alleges that his counsel received such *Resolution* on October 20, 2022, but was only able to file a *Motion for Reconsideration* on November 17, 2022, as the handling counsel was on extended medical leave.

¹ *Records*, Vol. 8, pp. 285-294.

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The prosecution objected² to the admission of the *Motion for Reconsideration*, on ground that it was filed way beyond the five-day period prescribed in the Revised Guidelines on the Continuous Trial of Criminal Cases. Accused Calleja is represented by a law firm, and any of its other members could have filed a timely motion for reconsideration. That the handling counsel was on leave is not a meritorious reason to invoke the interest of substantial justice to act upon a motion belatedly filed.

RULING

It is true that accused Calleja filed the motion for reconsideration beyond the five-day period prescribed under the Rules. As this court takes heed from jurisprudence explaining that *the provisions on reglementary periods are strictly applied, indispensable as they are to the prevention of needless delays, and are necessary to the orderly and speedy discharge of judicial business*,³ it is noted, however, that these cases are not set for hearing until January 12, 2023. Hence, no delay will be caused by the resolution of accused Calleja's *Motion*.

The court, therefore, **ADMITS** the *Motion for Reconsideration* for the reason stated thereon.

At this instance, accused Calleja's *Motion for Reconsideration* is found to be partly meritorious, as found in the application of the Original Document Rule (formerly the Best Evidence Rule).

The concurring and dissenting opinion of Justice Bersamin in the case of *Republic v. Sandiganbayan* is worthy of emphasis, viz:⁴

Although the application of the Best Evidence Rule may be simple, determining whether the contents or terms of a writing are the subject of the inquiry, or whether a piece of evidence (other than the original document) intends to prove the contents of a writing, is more difficult than it seems. In *Railroad Management Company LLC v. CFS Louisiana Midstream Co.*, the US Court of Appeals (Fifth Circuit), which was faced with the complex task of determining whether to admit in evidence the affidavits of certain witnesses that had been submitted in evidence supposedly to prove the *existence* of an assignment agreement, acknowledged the difficulty in applying the Best Evidence Rule particularly because the party proffering the affidavits had contended that they were not intended to "prove the content" of the document (agreement), but only their "existence." It

² *Records*, Vol. 8, pp. 303-306.

³ *Communication and Information Systems Corp. v. Mark Sensing Australia Pty. Ltd., et al.*, G.R. No. 192159, January 25, 2017.

⁴ G.R. No. 188881, April 21, 2014, 733 PHIL 196-260, concurring and dissenting opinion of Justice Bersamin.

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held that the affidavits were in fact submitted to prove the contents of the agreement, and observed as follows:

The purpose, flexibility, and fact-intensive nature of the application of the best evidence rule persuade us that the following factors are appropriately considered when distinguishing between whether it is the content of the document or merely its existence that a witness intends to testify concerning:

(a) the relative importance of content in the case, (b) the simplicity or complexity of content and consequent risk of error in admitting a testimonial account, (c) the strength of the proffered evidence and the presence or absence of bias or self-interest on the part of the witnesses, (d) the breadth of the margin for error within which mistake in a testimonial account would not undermine the point to be proved, (e) the presence or absence of the actual dispute as to content, (f) the ease or difficulty of producing the writing, and (g) the reasons why the proponent of other proof of its content does not have or offer the writing itself.

Indeed, when the terms or contents of a writing must be proved to make a case or put up a defense, the Best Evidence Rule is controlling. But when the terms or contents are not in issue, and the matter to be proved exists independently of the writing and can be satisfactorily established by parol evidence (or other secondary evidence), the latter is equally primary. (emphasis supplied)

Guided by the foregoing, Exhibits “6” and “7” were offered “to prove that the Cash Position Reports show sufficient funds to make the payment to Nikka Trading”. These relate to the **contents** of the documents, and should be proven by the original of the document under Rule 130, Section 3 of the Revised Rules on Evidence or the Original Document Rule.

Since Exhibits “6” and “7” are public documents, they may be evidenced by a **copy attested by the officer having legal custody of the record**, or by his or her deputy, as provided under Rule 132, Section 24. In identifying these documents, witnesses Imma Bombase and accused Calleja **authenticated mere copies** thereof that are inadmissible under the Original Document Rule. While these are public documents certified by *Anna Liza A. Estrella*, there is no proof that such person had legal custody of such documents.

Contrary to accused Calleja’s arguments, there is nothing in Rule 132, Section 24 that dispenses with the required attestation of a copy of a public document by its legal custodian if there is a party to the document that testified on its contents.

The same is true with Exhibits “8”, “9” and “18”, which were offered as proof that they are the bases for the certification of availability of funds and preparation of checks. Hence, only the originals, or certified copies duly attested by their legal custodian, are admissible in evidence.

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On the other hand, Exhibit "12", PNR Advice of Check Issued and Cancelled, was offered only to prove that a check was prepared for the payment to Nikka Trading, while Exhibit "17", Audit Observation Memorandum dated March 7, 2013, was offered to prove that he was not among the recipients thereof. Both documents raise no issue on their contents, hence, copies thereof are admissible in evidence, without need of further attestation from the records custodian.

WHEREFORE, in view of the foregoing, accused Calleja's *Motion for Reconsideration* is **ADMITTED** and **GRANTED IN PART**.

The exclusion of Exhibits "12" and "17" per Resolution dated October 18, 2022 is recalled. Instead, they are **ADMITTED** for the purposes for which they were offered as evidence for accused Rosendo Cea Calleja.

The parties are reminded of the setting for the presentation of defense evidence by accused Nierva on *January 12, 2023 at 8:30 a.m.* before the Fourth/Seventh Division courtroom.

SO ORDERED.


MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Associate Justice, Chairperson

WE CONCUR:


ZALBY V. PRESPESES
Associate Justice


GEORGINA D. HIDALGO
Associate Justice