



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City
FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CRIM. CASE No. SB-14-
CRM-0256 to 0266

-versus-

For: Graft [Sec. 3 (e), R.A.
No. 3019]

JOSE "JINGGOY" P. EJERCITO
ESTRADA, et al.,

Accused.

Present:

Lagos, J., Chairperson,
Mendoza-Arcega, J., and
Corpus-Mañalac, J.

Promulgated:

March 20, 2023

x ----- *Gezyl P. Lisuan* ----- x

RESOLUTION

MENDOZA-ARCEGA, J.:

Posed for resolution are the following:

1. Accused Jose "Jinggoy" P. Ejercito Estrada's *Omnibus Motion [(A) For Stipulation; and/or (B) For Production and Specification; and/or (C) For Judicial Notice* dated January 12, 2023;¹ and
2. The prosecution's *Comment (Re: Accused Senator Jinggoy Ejercito Estrada's Omnibus Motion dated January 12, 2023)* dated January 27, 2023.²

¹ Record, Volume 27, pp. 64-197.

² *Id.*, pp. 221-227.

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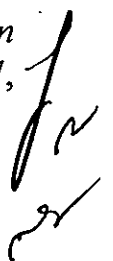
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In the *Omnibus Motion*, Senator Estrada argued:

1. Incident to the pre-trial proceedings, the prosecution listed in its *Amended Pre-trial Brief* the names of its witnesses to be presented during the trial.
2. Then on August 11, 2022, the prosecution filed a *Manifestation with Proposal for Stipulations* stating that it intends to present its remaining witnesses.
3. The prosecution is preparing to terminate the presentation of its evidence-in-chief, and will be omitting some of its witnesses which will be crucial to the evidence of the present cases.
4. Senator Estrada relied upon the prosecution's representation in its pleadings as to the witnesses who will be presented, and the import of their testimonies. Apparently, Senator Estrada was misled by such representation when the prosecution decided not to present them. He resorted to the instant motion to prevent the suppression of evidence tending to prove his innocence.
5. Consequently, Senator Estrada moves for:
 - a. Stipulation on the testimonies of the following witnesses not presented by the prosecution or, in lieu thereof, judicial notice be taken thereof:
 - a.1. Carmencita N. Delantar;
 - a.2. Susan P. Garcia;
 - a.3. Mary Arlene Joyce B. Baltazar;
 - a.4. Marina C. Sula;
 - a.5. Ruby C. Tuason; and
 - a.6. Dario V. Sabilano.

The prosecution presented the foregoing witnesses in the Plunder Case (SB-14-CRM-0239), but they will no longer be presented in the instant Graft Cases. Consequently, he requests for stipulation of their testimonies under oath in the Plunder Case.

- b. Stipulation on and/or judicial notice of (a) the *Joint Stipulation on Witness Benhur K. Luy's Direct Testimony* dated November 17,



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2014; and (b) the *Joint Stipulation on the Proposed Testimony of Merlina Suñas* dated February 16, 2015 filed in the Plunder Case.

b.1. During the Plunder Case, upon the suggestion of the Court, the prosecution and the defense (both Senator Estrada and Janet Lim Napoles) entered into a joint stipulation on the testimonies of prosecution witnesses Benhur K. Luy and Merlina P. Suñas.

b.2. The parties were directed by the Court to discuss, and if amenable, to enter into stipulation on the matter of the faked or forged signatures on various documents submitted as liquidation papers of the various PDAF Projects involved in the Plunder Case (which are the same ones in the instant consolidated Graft Cases).

b.3. Thus, on November 17, 2014, the parties agreed to stipulate and to jointly execute their *Joint Stipulation (on Witness Benhur K. Luy's Direct Testimony)*³ dated November 17, 2014.

Likewise, on February 16, 2015, they stipulated and executed their *Joint Stipulation on the Proposed Testimony of Merlina P. Suñas* dated February 16, 2015.⁴

b.4. Hence, Senator Estrada requests for stipulation on the authenticity of the *Joint Stipulation (on Witness Benhur K. Luy's Direct Testimony)*⁵ dated November 17, 2014, and the *Joint Stipulation on the Proposed Testimony of Merlina P. Suñas* dated February 16, 2015.⁶

If the prosecution fails or refuses to stipulate thereon, Senator Estrada moves that judicial notice be taken by the Court.

c. Stipulation on and/or judicial notice of the People of the Philippines' *Comment* dated July 14, 2021 in G.R. No. 254892.

³ *Id.*, pp. 101-126.

⁴ *Id.*, pp. 127-155.

⁵ *Id.*, pp. 101-126.

⁶ *Id.*, pp. 127-155.

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c.1. On January 18, 2021, Senator Estrada filed a *Petition for Certiorari* dated January 18, 2021 (docketed as G.R. No. 254892) with the Supreme Court arising from an incident in the instant consolidated Graft Cases.

c.2. In G.R. No. 254892, the People of the Philippines filed its *Comment (on the Petition for Certiorari dated January 18, 2021) and Opposition (to the application for the issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction)*⁷ dated July 14, 2021 to the Petition.

c.3. In its *Comment*, the People of the Philippines declared, "xxx Relevantly, some of the requested documents are inexistent, as stated by the prosecution in its *Comment and Opposition* dated May 15, 2020, such as those falling under Items C (Seizure, Acquisition, and Turnover Reports and Papers), D (Chain of Custody Forms/ Chain of Custody and Control Forms), and E (Affidavits and Interview Notes) of petitioner's motion, xxx

c.4. Thus, the accused requests for stipulation as to the filing of the People's *Comment* dated July 14, 2021 and specifically, the declaration therein as to the non-existence of the above documents evidencing non-observance of procedures in handling object and electronic evidence (Hard Disk Drive).

If the prosecution is unwilling to enter into such stipulation, that the Court to take judicial notice thereof.

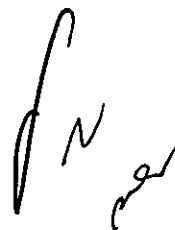
- d. Production, specification, stipulation on, and/or judicial notice of evidence on meetings and communications involving Senator Estrada (or the absence thereof).

In gist, Senator Estrada requests for stipulation on the factual matters below as the prosecution failed to present any evidence on the alleged transactions covered by the following:

- d.1. SARO No. ROCS-08-01697;⁸

⁷ *Id.*, pp. 156-197.

⁸ Criminal Case No. SB-14-CRM-0256.



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- d.2. SARO No. ROCS-08-01698;⁹
- d.3. SARO No. ROCS-08-03116;¹⁰
- d.4. SARO No. ROCS-09-01612;¹¹
- d.5. SARO No. ROCS-08-06025;¹²
- d.6. SARO No. ROCS-09-02769;¹³
- d.7. SARO No. G-09-07579;¹⁴
- d.8. SARO No. F-09-09579;¹⁵
- d.9. SARO No. G-09-07076;¹⁶ and
- d.10. SARO No. ROCS-09-02770.¹⁷

For its part, the prosecution countered as follows:

1. Senator Estrada filed the instant motion as part of his plan in laying the groundwork to later on protest that the non-presentation of the witnesses he listed in the said motion is tantamount to suppression of evidence.
2. The prosecution has the exclusive prerogative to determine the witnesses it wishes to present based on its own assessment of their necessity. Indeed, the prosecution need not present all of its listed witnesses; instead, it needs only to present as many as may be needed to meet the quantum of proof.
3. If Senator Estrada believes that the testimonies of the witnesses he listed in the motion will be favorable to him, his recourse is not to ask for stipulation from the prosecution, but to present them as his own witnesses or even as hostile witnesses. Since it is still the prosecution's turn in presenting its witnesses, it should be the former which should propose for stipulations from the defense as to the testimonies of its witnesses or the tenor thereof.
4. The prosecution has repeatedly attempted to submit matters for stipulation with Senator Estrada for purposes of expediting these cases. Unfortunately, the same were either rejected or simply ignored by him.

⁹ Criminal Case No. SB-14-CRM-0257.

¹⁰ Criminal Case No. SB-14-CRM-0258.

¹¹ Criminal Case No. SB-14-CRM-0259.

¹² Criminal Case No. SB-14-CRM-0260 to 0261.

¹³ Criminal Case No. SB-14-CRM-0262.

¹⁴ Criminal Case No. SB-14-CRM-0263.

¹⁵ Criminal Case No. SB-14-CRM-0264.

¹⁶ Criminal Case No. SB-14-CRM-0265.

¹⁷ Criminal Case No. SB-14-CRM-0266.



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5. He cannot ask the Court to take judicial notice of mere specific portions of testimonies for the purposes mentioned in the *Omnibus Motion*.
6. With respect to the "production, specification, stipulations on, and/or judicial notice of evidence on meetings and communications involving Senator Estrada (or the absence thereof)," these are matters of defense repeatedly raised by Senator Estrada since the onset of the proceedings.

THE COURT'S RULING

Upon scrutiny of the records, the Court finds the *Omnibus Motion* partly meritorious.

Briefly stated, Senator Estrada seeks to stipulate on and/or that judicial notice be taken on the following matters:

1. Testimonies of the aforesaid prosecution witnesses who were presented during the Plunder Case;
2. *Joint Stipulation (on Witness Benhur K. Luy's Direct Testimony* dated November 17, 2014, and *Joint Stipulation on the Proposed Testimony of Merlina Suñas* dated February 16, 2015 filed in the Plunder Case; and
3. People's *Comment* dated July 14, 2021 to Senator Estrada's *Petition for Certiorari* dated January 18, 2021 (docketed as G.R. No. 254892) filed before the Supreme Court.

Moreover, he moves for the production, specification, stipulation on, and/or judicial notice of evidence on meetings and communications involving the subject SAROs.

To begin, the Court shall discuss the propriety of taking judicial notice on the matters raised by Senator Estrada.

Judicial notice is the cognizance of certain facts that judges may properly take and act on without proof because these facts are already known to them.¹⁸ Judicial notice is either mandatory or discretionary. Mandatory

¹⁸ *Juan v. Juan, et al.*, G.R. No. 221732, August 23, 2017 citing *Republic v. Sandiganbayan, et al.*, 678 Phil. 358, 425 (2011).

judicial notice is found in Section 1, Rule 129 of the 2019 Revised Rules on Evidence:¹⁹

Section 1. *Judicial notice, when mandatory.* - A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, official acts of the legislative, executive and judicial departments of the National Government of the Philippines, the laws of nature, the measure of time, and the geographical divisions.

Under Section 2 of the same rule, judicial notice is discretionary when:

Section 2. *Judicial notice, when discretionary.* - A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions.

Put differently, it is the assumption by a court of a fact without need of further traditional evidentiary support.²⁰ The principle is based on convenience and expediency in securing and introducing evidence on matters which are not ordinarily capable of dispute and are not *bona fide* disputed.²¹ In essence, judicial notice supersedes formal proof, yet it carries equal force.²²

In the instant motion, mandatory judicial notice is not applicable since the enumeration in Section 1, Rule 129 is exclusive. The subject testimonies, *Stipulations* and *Comment* are not official acts of the judicial department. Still, the matters raised by Senator Estrada fall under discretionary judicial notice. The Court, in the exercise of its discretion, takes judicial notice of the same in view of the ruling in *People v. Tundag*;²³ to wit:

“Section 2 of Rule 129 enumerates the instances when courts may take discretionary judicial notice of facts -

XXX XXX

Thus, it can be considered of public knowledge and judicially noticed that the scene of the rape is not always nor necessarily isolated or secluded for lust is no respecter of time or place. The offense of rape can

¹⁹ A.M. No. 19-08-15-SC.

²⁰ Juan v. Juan, *supra* note 18.

²¹ *Id.* Citations omitted.

²² Chief Justice Diosdado M. Peralta and Justice Eduardo B. Peralta, Jr., *Insights on Evidence*, p. 97 (2020 Ed.) citing Weissenberger and Duane, *Vide*, p. 75.

²³ G.R. Nos. 135695-96, October 12, 2000.

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and has been committed in places where people congregate, e.g. inside a house where there are occupants, a five (5) meter room with five (5) people inside, or even in the same room which the victim is sharing with the accused's sister.²⁴

The Court has likewise taken judicial notice of the Filipina's inbred modesty and shyness and her antipathy in publicly airing acts which blemish her honor and virtue.²⁵

On the other hand, matters which are capable of unquestionable demonstration pertain to fields of professional and scientific knowledge. For example, in *People v. Alicante*,²⁶ the trial court took judicial notice of the clinical records of the attending physicians concerning the birth of twin baby boys as "premature" since one of the alleged rapes had occurred 6 to 7 months earlier.

As to matters which ought to be known to judges because of their judicial functions, an example would be facts which are ascertainable from the record of court proceedings, e.g. as to when court notices were received by a party. xxx xxx" (Emphasis supplied.)

The issues in the Plunder Case are intimately related with the present Graft Cases. The testimonies and admissions made will shed light on the veracity of the allegations against the accused. Besides, both cases arose out of the same antecedents. To be sure, the general rule is that the courts are not authorized to take judicial notice of the contents of the records of other cases.²⁷ However, this rule admits of exceptions, such as when the other case has a close connection with the matter in controversy in the case at hand.²⁸ Apropos is the ruling in *Degayo v. Magbanua-Dinglasan, et al.*:²⁹

As we aptly stated in *Republic v. CA*,³⁰ citing Justice Edgardo L. Paras:

"A court will take judicial notice of its own acts and records in the same case, of facts established in prior proceedings in the same case, of the authenticity of its own records of another case between the same parties, of the files of related cases in the same court, and of public records on file in the same court. In addition

²⁴ *Id.*, citing *People v. Villar*, G.R. No. 127572, January 19, 2000, pp. 10-11; *People v. Geromo*, G.R. No. 126169, December 21, 1999, p. 6; *People v. Sandico*, 307 SCRA 204, 214-215 (1999); *People v. Sangil*, 276 SCRA 532 (1997).

²⁵ *Id.*, citing *People v. Taño*, G.R. No. 133872, May 5, 2000, p. 11; *People v. Alquizalas*, 305 SCRA 367, 375 (1999); *People v. Lapinoso*, 303 SCRA 664, 676 (1999).

²⁶ G.R. No. 127026-27, May 31, 2000, p. 27.

²⁷ *Trinidad v. People*, G.R. No. 239957, February 18, 2019.

²⁸ *Id.*, citing *Degayo v. Magbanua-Dinglasan*, 757 Phil. 376, 390 (2015), citing *Tiburcio v. People's Homesite & Housing Corporation*, 106 Phil. 477, 483-484 (1959).

²⁹ G.R. Nos. 173148, April 6, 2015. Citations omitted.

³⁰ G.R. No. 119288, August 18, 1997.

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judicial notice will be taken of the record, pleadings or judgment of a case in another court between the same parties or involving one of the same parties, as well as of the record of another case between different parties in the same court." (Emphasis supplied.)

Judicial notice signifies that there are certain "*facta probanda*," or propositions in a party's case, as to which he (sic) will not be required to offer evidence; these will be taken for true by the tribunal without the need of evidence.³¹ Courts may take cognizance of facts that are already known to them, and what is readily known need not be proved precisely because it will be redundant to do so. Judicial notice is based upon convenience and expediency for it would certainly be superfluous, inconvenient, and expensive both to parties and the court to require proof, in the ordinary way, of facts which are already known to courts.³² Since the testimonies, *Stipulations* and *Comment* all arose out of the same issue, *i.e.*, the PDAF controversy, judicial notice is appropriate in these cases.

Nonetheless, the evidence pertaining to the meetings and communications covered by the subject SAROs are matters of defense which should be threshed out in a full-blown trial for the Court's appreciation. It is premature, if not improper, to take judicial notice of the said evidence since these are the bone of contention in the present Graft Cases. It bears emphasis that matters of judicial notice must be authoritatively settled and not doubtful.

Lastly, Senator Estrada claimed that the non-presentation of the above-mentioned witnesses is considered suppression of evidence. His stance harps on a wrong premise.

The prosecution correctly argued that it has the exclusive prerogative to determine the witnesses it wishes to present based on its own assessment of their necessity. It only needs to present as many as may be needed to meet the quantum of proof. As held in *People v. Tuan*.³³

The prosecution has the exclusive prerogative to determine whom to present as witnesses. The prosecution need not present each and every witness but only such as may be needed to meet the quantum of proof necessary to establish the guilt of the accused beyond reasonable doubt. The testimonies of the other witnesses may, therefore, be dispensed with if they are merely corroborative in nature. The Court has ruled that the

³¹ *People v. Rullepa*, G.R. No. 131516, March 5, 2003.

³² *Id.*

³³ 628 SCRA 226.

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non-presentation of corroborative witnesses does not constitute suppression of evidence and is not fatal to the prosecution's case.³⁴

The adverse presumption arising from suppression of evidence is not applicable when the evidence is likewise available to the other party.³⁵ Under Rule 131, Section 3(e) of the Rules of Court, the rule that "evidence willfully suppressed would be adverse if produced" does not apply if (a) **the evidence is at the disposal of both parties**; (b) the suppression was not willful; (c) it is merely corroborative or cumulative; and (d) the suppression is an exercise of a privilege.³⁶

In the instant cases, there can be no suppression of evidence since the evidence is at the disposal of both parties, *i.e.*, the defense may present the above witnesses as his own, or even as hostile witnesses. *People v. Boringot*³⁷ is instructive:

Section 3 (e), Rule 131 of the Revised Rules on Evidence provides that evidence willfully suppressed would be adverse if produced, unless contradicted and overcome by other evidence. In *Ritualo v. People*,³⁸ the Court clarified that the adverse presumption of suppression of evidence does not apply where the evidence suppressed is merely corroborative or cumulative in nature.

In the same vein, in *Angeles v. People*,³⁹ the Court reiterated the rule that the adverse presumption from a suppression of evidence is not applicable in the following instances: (1) the suppression is not willful; (2) the evidence suppressed or withheld is merely corroborative or cumulative; (3) the evidence is at the disposal of both parties; and (4) the suppression is an exercise of a privilege.

In this regard, there is no showing that the said witnesses were not available to the accused.⁴⁰ **One of the constitutional rights of the accused is to have compulsory process to secure the attendance of witnesses and the production of evidence in his or her behalf.**⁴¹

If accused-appellant believed that the testimonies of the witnesses aforementioned would support his defense, what he could have done was to call them to the stand and have them testified as

³⁴ *Id.*, citing *People v. Pidoy*, 405 SCRA 339.

³⁵ *People v. Buenafior*, G.R. No. 140001, June 27, 2001.

³⁶ *People v. Padrigone*, G.R. No. 137664, May 9, 2002 citing *People v. Andal*, 279 SCRA 474 (1997). Emphasis supplied.

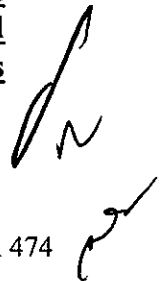
³⁷ *People v. Boringot*, G.R. No. 245544, March 21, 2022.

³⁸ 608 Phil. 548, 570 (2009).

³⁹ 588 Phil. 335, 343-344 (2008).

⁴⁰ *Id.*

⁴¹ *Ritualo v. People*, *supra* note 38.



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his own witnesses or as hostile witnesses.⁴² Unfortunately, it is too late in the day for him to avail of this remedy. x x x x (Emphasis supplied.)

WHEREFORE, the Court hereby resolves as follows:

1. The motion to take judicial notice of the following is **GRANTED**:

a. Testimonies of Carmencita N. Delantar, Susan P. Garcia, Mary Arlene Joyce B. Baltazar, Marina C. Sula, Ruby C. Tuason and Dario V. Sabilano in the Plunder Case (Criminal Case No. SB-14-CRM-0239);

b. *Joint Stipulation on Witness Benhur K. Luy's Direct Testimony* dated November 17, 2014, and the *Joint Stipulation on the Proposed Testimony of Merlina Suñas* dated February 16, 2015 which were both filed in the Plunder Case (Criminal Case No. SB-14-CRM-0239); and

c. People of the Philippines' *Comment (on the Petition for Certiorari dated January 18, 2021) and Opposition (to the application for the issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction)*⁴³ dated July 14, 2021 (docketed as G.R. No. 254892) filed before the Supreme Court.

2. The motion for production, specification, stipulation on, and/or judicial notice of evidence on meetings and communications involving Senator Estrada is **DENIED** for lack of merit.

Accordingly, the continuation of presentation of evidence for the prosecution on March 27, 2023 at 8:30 in the morning is maintained.

SO ORDERED.



⁴² Angeles v. People, *supra* note 39.

⁴³ *Id.*, pp. 156-197.

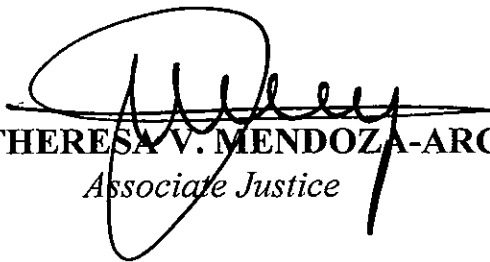
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MARIA THERESA V. MENDOZA-ARCEGA

Associate Justice



RAFAEL R. LAGOS

Associate Justice

Chairperson



**MARYANN E.
CORPUS-MAÑALAC**

Associate Justice