



REPUBLIC OF THE PHILIPPINES

Sandiganbayan
QUEZON CITY

SEVENTH DIVISION

MINUTES of the proceedings held on June 22, 2023.

Present:

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

Justice ZALDY V. TRESPESES ----- Member

Justice GEORGINA D. HIDALGO ----- Member

The following resolution was adopted:

SB-23-CRM-0044 – People v. Herbert Constantine M. Bautista, et al.

This resolves the following:

1. Accused Herbert Constantine M. Bautista's "MANIFESTATION WITH MOTION TO DISMISS"¹ dated June 5, 2023; and
2. Prosecution's "OPPOSITION (TO: MANIFESTATION WITH MOTION TO DISMISS 05 JUNE 2023)"² dated June 9, 2023.

GOMEZ-ESTOESTA, J.:

The material antecedents follow:

On May 17, 2023, the prosecution filed its *Pre-Trial Brief*.³

On the following day, during pre-trial, the parties stipulated on several matters in open court as delineated in the Order dated May 18, 2023. On this premise, the court directed the prosecution to "re-calibrate or re-purpose the nature of the presentation of its evidence by submitting an amended Pre-Trial Brief delineating the number of documentary exhibits and witnesses they shall be presenting, after reflecting the number of documentary exhibits covered by the stipulations which necessarily meant dispensation of their presentation as evidence."⁴

¹ Records, Vol. 2, pp. 370-378.

² Records, Vol. 2, pp. 406-419.

³ Records, Vol. 2, pp. 135-142 (through electronic mail).

⁴ Order dated May 18, 2023 (Records, Vol. 2, p. 221).

Resolution

People v. Bautista, et al.

SB-23-CRM-0044

Page 2 of 7

X-----X

In compliance with the court's directive, the prosecution filed its *Amended Pre-Trial Brief* on May 30, 2023.⁵

Accused Herbert Constantine M. Bautista (“**accused Bautista**”) now assails the compliance made by the prosecution in its Pre-Trial Briefs via the present *Motion to Dismiss* citing procedural errors allegedly committed by the prosecution.

ACCUSED BAUTISTA'S MOTION TO DISMISS

The grounds cited by accused Bautista are summarized below:

Citing Section 6 (e) and (f), Rule 18 of the *Rules of Court*, accused Bautista chiefly argues that the prosecution's Pre-Trial Briefs violate the Rules because they failed to indicate the: (1) **purpose of the documents or exhibits** intended to be offered; and (2) **substance or summary of the witnesses' respective testimonies**.

Accused Bautista also objects to the prosecution's **general reservation** of documents and witnesses citing that the latter's 23 intended witnesses' testimonies remain undisclosed, in violation of Section 2 (g) (4), Rule 18, *supra*.

Further, in contravention of Sections 2 and 6, Rule 18, *supra*, the prosecution failed to include: (1) a concise statement of the case and the reliefs prayed for; and (2) a brief statement of points of law and citation of authorities.

As a result of the procedural transgressions, accused Bautista contends that the prosecution's Briefs are but a mere scrap of paper, and the latter should be deemed to have failed to file a pre-trial brief. Accused Bautista advances that the failure to file a pre-trial brief has the same effect as failure to appear at the pre-trial: dismissal of the case with prejudice.

He thus prays for the dismissal of the instant case with prejudice.

PROSECUTION'S OPPOSITION

The prosecution defends that there is no existing rule in which the filing of a deficient pre-trial brief will automatically result to the dismissal of a criminal case.

During pre-trial on May 18, 2023, the court ordered the prosecution to delineate the number of documentary exhibits and witnesses it shall present to harmonize the pre-trial brief with the stipulations already made. The

⁵ Records, Vol. 2, pp. 311-317 (through electronic mail).

171

Resolution

People v. Bautista, et al.

SB-23-CRM-0044

Page 3 of 7

X-----X

prosecution emphasizes that the court did not order it to state the purposes of its documentary exhibits, nor was there any directive to indicate the nature of testimony of its intended witnesses.

The prosecution counters that accused Bautista misinterpreted the Rules because pre-trial briefs are not required in *criminal cases*; the provisions accused Bautista alluded to have specific application to pre-trial in *civil cases* only.

The prosecution distinguishes that, in civil procedure, the *Rules* require the indication of the purposes of the documentary exhibits and a summary of testimonies of witnesses. The reason therefor is that in the filing of a complaint or answer, the judicial affidavits of witnesses are already required to be appended. Since judicial affidavits are appended, the purposes for which intended documentary exhibits are to be marked, or the summary of the testimony of each witness, are immediately determinable. In contrast, in criminal cases, transactional witnesses and custodians of records are to be subpoenaed during the course of the proceedings. As such, the substance and extent of these witnesses' testimonies could only be determined at a later date. In fact, the prosecution points out that Section 35, Rule 132 of the *Revised Rules on Evidence* states that the offer of the testimony or purposes for the documentary evidence will only be made at the time these pieces of evidence are offered.⁶

The prosecution further argues that under the *Revised Guidelines for Continuous Trial in Criminal Cases*, courts must strictly comply with the guidelines in the conduct of pre-trial under *A.M. No. 03-1-09-SC*. According to the latter, pre-trial in civil cases is separately outlined from criminal cases; where the requirement to file a pre-trial brief can be found under the pre-trial procedure in civil cases, no requirement to submit a pre-trial brief is mandated by the pre-trial guide in criminal cases.

Moreover, the prosecution questions the seeming incompatibility of accused Bautista's invocation of strict compliance with the *Rules* only when convenient, when in fact the latter himself has violated the same, as follows:

1. accused Bautista caused defective service of his Motion for Consolidation and Urgent Omnibus Motions, which were made to a

⁶ The cited provision reads:

SEC. 35. When to make offer. — All evidence must be offered orally.

The offer of the testimony of a witness in evidence must be made at the time the witness is called to testify.

The offer of documentary and object evidence shall be made after the presentation of a party's testimonial evidence.

Resolution

People v. Bautista, et al.

SB-23-CRM-0044

Page 4 of 7

X-----X

certain Lyn Dimayuga who is “neither [connected with] the Office of the Ombudsman nor the Office of the Special Prosecutor[;]”⁷

2. the violation of the 3-day service in serving pre-trial briefs;
3. the violation of the court’s Order by not observing the five-day period for filing said briefs before the scheduled arraignment and pre-trial; and
4. that the present Motion violates the rule of filing identical motions repeatedly⁸ and the Omnibus Motion Rule.

The prosecution thus prays for the denial of the Motion.

THIS COURT’S RULING

Pre-trial, including the filing and contents of pre-trial briefs, in civil and criminal cases is an essential part of judicial processes, and it is governed by the Rules of Procedure and relevant Supreme Court issuances.

In **civil cases**, pre-trial is covered by Rule 18 of the *Rules of Civil Procedure*. Section 6, *supra*, directs the parties to file their respective pre-trial briefs containing the following:⁹

Section 6. Pre-trial brief. — The parties **shall** file with the court and serve on the adverse party, in such manner as shall ensure their receipt thereof at least three (3) calendar days before the date of the pre-trial, their respective pre-trial briefs which shall contain, among others:

- (a) A concise statement of the case and the reliefs prayed for;
- (b) A summary of admitted facts and proposed stipulation of facts;
- (c) The main factual and legal issues to be tried or resolved;
- (d) The propriety of referral of factual issues to commissioners;
- (e) The documents or other object evidence to be marked, stating the purpose thereof;
- (f) The names of the witnesses, and the summary of their respective testimonies; and

⁷ Prosecution’s Opposition [To: Manifestation with Motion to Dismiss 05 June 2023] (Records, Vol. 2, p. 413).

⁸ *Vide: Philippine National Bank v. Intestate Estate of Francisco De Guzman*, G.R. No. 182507, June 18, 2010.

⁹ Section 6, Rule 18 of the *Rules of Civil Procedure*, as amended; *see also* Section I, Sub-Section A 2 of the Guidelines to be Observed in the Conduct of Pre-Trial under A.M. No. 03-1-09-SC dated July 13, 2004.

8 9 |

Resolution

People v. Bautista, et al.

SB-23-CRM-0044

Page 5 of 7

X-----X

(g) A brief statement of points of law and citation of authorities.

Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial. (Emphasis supplied)

Further, with the aim of swiftly terminating pre-trial, Section 2 (g), *supra*, requires the parties to:

(g) The requirement for the parties to:

1. Mark their respective evidence if not yet marked in the judicial affidavits of their witnesses;
2. Examine and make comparisons of the adverse parties' evidence vis-a-vis the copies to be marked;
3. Manifest for the record stipulations regarding the faithfulness of the reproductions and the genuineness and due execution of the adverse parties' evidence;
4. Reserve evidence not available at the pre-trial, but only in the following manner:
 - i. For testimonial evidence, by giving the name or position and the nature of the testimony of the proposed witness;
 - ii. For documentary evidence and other object evidence, by giving a particular description of the evidence.

No reservation shall be allowed if not made in the manner described above.

Notably, under the *Rules of Civil Procedure*, the contents of the pre-trial briefs are mandatory, and non-compliance therewith has the same effect as failure to appear at pre-trial: possible dismissal of the action with prejudice.¹⁰

On the other hand, in **criminal procedure**, pre-trial is likewise mandatory under Rule 118 of the *Revised Rules of Criminal Procedure*, viz:

SECTION 1. Pre-trial; mandatory in criminal cases. — In all criminal cases cognizable by the Sandiganbayan, Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial

¹⁰ Section 5, Rule 18 of the *Rules of Civil Procedure* provides:

Section. 5. Effect of failure to appear. — When duly notified, the failure of the plaintiff and counsel to appear without valid cause when so required, pursuant to the next preceding Section, shall cause the dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant and counsel shall be cause to allow the plaintiff to present his or her evidence ex-parte within ten (10) calendar days from termination of the pre-trial, and the court to render judgment on the basis of the evidence offered.

1 2 1

Resolution

People v. Bautista, et al.

SB-23-CRM-0044

Page 6 of 7

X-----X

Court and Municipal Circuit Trial Court, the court shall, after arraignment and within thirty (30) days from the date the court acquires jurisdiction over the person of the accused, unless a shorter period is provided for in special laws or circulars of the Supreme Court, order a pre-trial conference to consider the following:

- (a) plea bargaining;
- (b) stipulation of facts;
- (c) marking for identification of evidence of the parties;
- (d) waiver of objections to admissibility of evidence;
- (e) modification of the order of trial if the accused admits the charge but interposes a lawful defense; and
- (f) such matters as will promote a fair and expeditious trial of the criminal and civil aspects of the case.

Unlike in civil cases, however, no counterpart provision exists in either the *Revised Rules of Criminal Procedure* or in the *Guidelines to be Observed in the Conduct of Pre-Trial* regarding non-compliance with the required contents of a pre-trial brief as having the same effect as a party's failure to appear.¹¹ To emphasize, under the *Revised Guidelines for Continuous Trial of Criminal Cases*, absence of a party is **not** cause for the dismissal of a criminal case.¹²

- i. Absence of parties. - The court shall proceed with the pre-trial despite the absence of the accused and/ or private complainant, provided they were duly notified of the same, and the counsel for the accused, as well as the public prosecutor, are present.

Accused Bautista cavils that the prosecution's *Amended Pre-Trial Brief* is fatally defective for non-compliance with the rules governing pre-trial in civil cases, specifically Rule 18 of the *Rules of Civil Procedure*. At this juncture, it must be emphasized that what primarily governs the pre-trial of this case is the *Revised Rules of Criminal Procedure*.¹³ The *Rules of Civil Procedure* applies only in a suppletory character, not as a substitute, to criminal cases such as the present case. Consequently, whether or not the prosecution's pre-trial briefs contain a description of the purpose of the documents or exhibits intended to be offered, or the substance or summary of the witnesses' respective testimonies, ultimately the non-filing or lack of substantial compliance thereof, is not a ground for the dismissal of a criminal case under the present *Rules*.

¹¹ A.M. No. 03-1-09-SC dated July 13, 2004.

¹² Section III, Sub-Section 8 (f) Paragraph i of the Revised Guidelines for Continuous Trial of Criminal Cases.

¹³ In relation to the Revised Guidelines for Continuous Trial of Criminal Cases (A.M. No.15-06-10-SC dated April 25, 2017) and the Guidelines to be Observed in the Conduct of Pre-Trial (A.M. No. 03-1-09-SC dated July 13, 2004).

7 7 1

Resolution

People v. Bautista, et al.

SB-23-CRM-0044

Page 7 of 7

X-----X

In criminal cases, the duty of the prosecution is to establish the guilt of the accused by proof beyond reasonable doubt, whereas the duty of the defense is to parry the prosecution's thrusts. The duty of the court is to then receive the parties' respective viewpoints, carefully weigh the same, and render judgment in accordance with law. In the same way that the prosecution cannot impose upon the accused how to set up his defense, the accused cannot dictate on the general strategy employed by the prosecution.

Accused Bautista's carpings, therefore, find no relevant advocacy at this instance.

WHEREFORE, accused Herbert Constantine M. Bautista's *Motion to Dismiss* dated June 5, 2023 is **DENIED**.

SO ORDERED.


MA. THERESA DOLORES C. GOMEZ-ESTOESTA

Chairperson
Associate Justice

WE CONCUR:


ZALDY V. TRESPESES

Associate Justice


GEORGINA D. HIDALGO

Associate Justice