



REPUBLIC OF THE PHILIPPINES

Sandiganbayan
QUEZON CITY

SEVENTH DIVISION

MINUTES of the proceedings held on August 16, 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-12- CRM-0164 to 0167 – People vs. P/DIR. GEN. Jesus Ame Verzosa, et. al.,

This resolves the following:

1. Accused Jesus Ame Verzosa’s “**MANIFESTATION/ MOTION**” dated August 1, 2023;¹
 2. Accused Romeo Capacillo Hilomen’s “**COMMENT [Re: Manifestation/Motion]**” dated August 11, 2023.²
 3. Prosecution’s “**COMMENT/OPPOSITION**” dated August 11, 2023.³
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GOMEZ-ESTOESTA, J.:

In the court’s *Resolution*⁴ dated July 26, 2023, the *Motion for Leave to Recall Witness Ret. Police Major General Lurimer B. Detran* of accused P/Dir. Gen. Jesus Ame Verzosa was denied, as partly quoted below:

WHEREFORE, accused Verzosa’s *Motion for Leave to Recall Witness Ret. Major General Lurimer B. Detran* is **DENIED** insofar as it seeks to recall P/Gen Detran to further discuss the approval process of the procurement documents relevant to the purchase of the helicopters.

Being not in the process of a recall but as a witness for accused Verzosa, P/Gen. Detran is allowed to testify for accused Verzosa for the sole purpose of **refuting** the allegations that accused Gaspar made during the latter’s presentation of defense evidence.

¹ Records, Vol. 35, pp. 130-146.
² Records, Vol. 35, pp. 182-192.
³ Records, Vol. 35, pp. 178-180.
⁴ Records, Vol. 35, pp. 50-73.

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For this purpose, the hearing scheduled for the presentation of said witness on August 7, 2023 at 8:30 in the morning shall PROCEED, as scheduled.

Accused P/Dir. Gen. Jesus Ame Verzosa, through counsel, is directed to submit a Judicial Affidavit anew that is re-calibrated for this purpose.

SO ORDERED.

Accused Verzosa now files a *Manifestation/Motion* dated August 1, 2023 praying that:

1. The striking out of *questions and answers number 19 to 25* be **ALLOWED** in lieu of the filing of a new Judicial Affidavit of Ret. P/Gen. Lurimer B. Detran.

2. The *Motion for Reconsideration, as regards questions and answers no. 30 to 32* involving Accused General Romeo C. Hilomen, be **GRANTED** in the interest of substantial justice. x x x

Preliminarily, the court issued its *Resolution* dated August 4, 2023, which granted the first prayer of accused Verzosa to strike off **Question & Answer Nos. 19 to 25** instead of submitting a re-calibrated Judicial Affidavit of P/Maj. Gen. Detran. Meantime, the court directed the prosecution and other accused to comment on the *Manifestation/Motion* of accused Verzosa insofar as his prayer to retain Q&A Nos. 30 to 32. The relevant portions of the *Resolution* dated August 4, 2023, are quoted below:

In consideration of these incidents, the Court resolves, thus:

1. With accused Verzosa's manifestation that he is amenable to the striking off of Question and Answer Nos. 19 to 25 in P/Maj. Gen. Detran's second Judicial Affidavit, **LET** the same be stricken off by the Division Clerk of Court from the Judicial Affidavit attached to the case records. Consequently, accused Verzosa's motion for the court to dispense with requiring him to file a recalibrated judicial affidavit for P/Maj. Gen. Detran is **GRANTED**. The second Judicial Affidavit submitted by P/Maj. Gen. Detran remains for the purpose of the taking of his testimony.

2. On whether to strike off or retain Question and Answer Nos. 30 to 32 in P/Maj. Gen. Detran's second Judicial Affidavit insofar as the lack of signature of accused Hilomen in BAC Resolution No. 2009-36 and NC Resolution No. 2009-04 are concerned, let the prosecution and all other defense counsels be given an opportunity to comment on the same before the matter is submitted for resolution. Hence, the prosecution and all other defense counsels are given a period of five (5) days from notice to comment thereon."

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The arguments of accused Verzosa in the *Manifestation/Motion* and the respective *Comments* of accused Hilomen and the Prosecution are discussed below:

ACCUSED VERZOSA'S MANIFESTATION / MOTION

Accused Verzosa moves for the reconsideration of the court's *Resolution*⁵ dated July 26, 2023 insofar as it disallowed Q&A Nos. 30 to 32. He argues that there was no discrepancy between the earlier testimony of P/Maj. Gen. Detran and these questions in the Second Judicial Affidavit.

Moreover, the lack of signature in the BAC Resolutions of accused Hilomen was raised only during the testimony of P/Gen. Albert M. Magno ("P/Gen. Magno") on June 19, 2023. At such time, P/Gen Magno was asked by the Prosecution regarding the absence of the signature of P/Gen. Romeo Capacillo Hilomen ("accused Hilomen") on NC Resolution No. 2009-04. Accused Verzosa claims that P/Maj. Gen. Detran should be able to likewise refute this statement and explain the lack of signature of accused Hilomen as this may be viewed as an irregularity in the procurement process.

Finally, accused Verzosa claims that allowing Q&A Nos. 30 to 32 would be aligned with his constitutional right to present his defense evidence.

ACCUSED HILOMEN'S COMMENT

Accused Hilomen states that Q&A Nos. 30 to 32 are unnecessary as the absence of accused Hilomen's signature in *BAC Resolution No. 2009-36* and *NC Resolution No. 2009-04* were already evident in the documents themselves. There would be nothing more to expound or elucidate. Further, the copies of the said resolutions were made available to all of the accused. Thus, these issues could have been posed as additional direct examination questions when P/Maj. Gen. Detran testified on the procurement process.

Moreover, the questions do not relate to any allegation or statement made by any of the other co-accused. These Q&As were sought to be allowed only to supplement the answers of P/Gen. Albert M. Magno during the latter's cross-examination. Thus, accused Hilomen prays that the *Manifestation/Motion* be denied.

⁵ Records, Vol. 35, pp. 50-73.

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PROSECUTION'S COMMENT/OPPOSITION

The Prosecution maintains its position that allowing the contested questions would only delay the proceedings. The absence of accused Hilomen's signature would best be addressed by another witness, given the coverage of Detran's earlier testimony. The testimony of P/Maj. Gen. Detran can no longer be repaired by recalling him just to amplify or clarify his previous testimony which has been found deficient or questionable by the assertions of another defense witness.

THE COURT'S RULING

Accused Verzosa's prayer to retain Question and Answer Nos. 30 to 32 of the Second Judicial Affidavit cannot be considered.

First, it is not on the fact there was no discrepancy between the earlier testimony of the witness and his Second Judicial Affidavit, but on the fact that there was no similar allegation made in the earlier testimony, that the court disallowed Q&A Nos. 30 to 32. There was none with which to base Q&A Nos. 30 to 32 in the process of a *recall*. These questions, which were later thought should have been asked, cannot be allowed to repair or rehabilitate a testimony.

Second, accused Verzosa's claim that the absence of the signature of accused Hilomen in BAC Resolution No. 2009-36 and NC Resolution No. 2009-04 may be perceived as an irregularity in the procurement process is not his burden to prove or disprove, as this basically concerns the prosecution (in proving there was such an irregularity) and accused Hilomen (in disproving the same). The damage, if any, to accused Verzosa's role as HOPE has not been elucidated at this point for the court to give much leeway, even in the exercise of its judicial discretion.

For reference, the contested portions of P/Maj. Gen. Detran's Second Judicial Affidavit are quoted below:

Q29: I am now showing you copies of *BAC Resolutions Nos. 2009-13, 2009-17, 2009-22, and 2009-36* and *NC Resolution 2009-04*. What, if any, is the relation of these documents to the documents that you mentioned?

A29: Those are the documents that I was referring to.

(**Manifestation:** Copies of the *BAC Resolutions Nos. 2009-13, 2009-17, 2009-22, and 2009-36*, are attached as *Annexes "A-1", "A-2", "A-3", and "A-4"*. These were earlier marked as Exhibits "*K-74 to K-75/MM-110 to MM-111*", "*K-76 to K-77/MM-136 to MM-137*", "*K-78 to K-79/MM-140 to MM-141*", and "*MM-153 to MM-154*" for the Prosecution and as Exhibits "*57-Verzosa*", "*58-Verzosa*", "*60-Verzosa*" and "*51-a-Verzosa*"

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to 51-b-Verzosa” for Gen. Verzosa. A copy of the *NC Resolution 2009-04* is attached as Annexes “A-5” earlier marked as Exhibits “MM-150” to “MM-151” for the Prosecution.)

Q30: I could see that NC Resolution No. 2009-04 and Resolution No, 2009-36 do not bear the signature of General. Hilomen. Why is that so?

A30: He was unavailable at the time those documents were sent to his office. But we were able to confirm his approval in the execution and implementation of these documents.

Q31: What, if any, is the effect of the absence of the signature of Mr. Hilomen in those documents(?)

A31: None, Sir

Q32: Why do you say so?

A32: It is because, as mentioned, we were able to confirm his approval in the execution and implementation of these documents. Also, the BAC and the Negotiation Committee are collegial bodies. For as long as the majority of the members have approved any action, it is deemed carried.

Despite the weight of such testimony, the face value of *BAC Resolution No. 2009-36* and *NC Resolution No. 2009-04* would still show that these were unsigned by accused Hilomen. It is notable that through the years that trial went on, accused Hilomen himself has chosen to stay silent on the *reason* why these were unsigned, as he focused more on the simple unbidden fact that these documents were left unsigned by him. If Q&A Nos. 30 to 32 of the Second Judicial Affidavit be retained and allowed as part of the testimony of the witness, this will only open another loop in the sequence of defense presentation, causing a never-ending cycle, which cannot be done at this instance.

Third, accused Verzosa’s posture that the incorporation of Q&A Nos. 30 to 32 of the Second Judicial Affidavit is necessary considering that the absence of the signature of accused Hilomen was raised only *after* P/Maj. Gen. Detran has testified during his cross-examination, evidently seeks a belated remedy.

Verily, the best opportunity to clarify the issue on the absence of the signature of accused Hilomen was during the *re-direct examination* of P/Gen. Magno. The answer of the witness during cross-examination could have been rehabilitated by posing questions, if deemed necessary, to witness P/Gen. Magno which would have immediately filled the perceived gap. Refuting P/Gen. Magno’s testimony through *another witness* would be a belated attempt to cure the failure of the counsel to propound questions during the re-direct examination of accused Verzosa’s own witness. The opportunity not taken cannot be claimed through the testimony of another.

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In any case, P/Maj. Gen. Detran has testified on the following dates: January 18, February 1, and February 15, 2021. In comparison, the absence of the signature has been on the face of the documents to which accused Verzosa had access to at the outset. Accused Verzosa has even adopted the following exhibits through the same counsel way back in October 19, 2020:⁶

1. NHQ-NC Resolution No. 2009-04;⁷ and
2. NHQ-BAC Resolution No. 2009-36;⁸

As held in *People v. Rivera*,⁹ the counsel of an accused could not move for the recall of a witness based on the sole ground that there were additional questions that should have been asked. To reiterate:

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. (emphasis supplied and citations omitted)

For these reasons, the striking off of Q&A Nos. 30 to 32 from the Second Judicial Affidavit of witness P/Major General Lurimer B. Detran is maintained.

⁶ Order dated October 19, 2020. Records, Vol. 29, pp. 219-222.

⁷ Exhibits "MM-150" and "MM-151" / "4" (Recometa) / "58" and "58-a" (Verzosa) / "9", "9-A", "9-A-1" (Villafuerte) / "4", "4-a" to "4-c" (Ticman and Soriano) / "16" and "16-a" (Roderos) / "10", "10-A", "10-A-1" (Hilomen).

⁸ Exhibits "MM-153" and "MM-154" / "51", "51-a" and "51-b" (Verzosa) / "5", "5-a" to "5-f" (Ticman and Soriano) / "11" to "11-A" (Hilomen) / "10" to "10-a-1" (Villafuerte) / "17" to "17-A" (Roderos).

⁹ G.R. No. 98376, August 16, 1991.

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WHEREFORE, accused Verzosa's *Manifestation/Motion* is **DENIED** insofar as it seeks to retain Question & Answer Nos. 30 to 32 in the Second Judicial Affidavit of Ret. P/Major General Lurimer B. Detran.

For this purpose; the hearing scheduled for the presentation of said witness on *September 4, 2023 at 8:30 in the morning* shall **PROCEED**, as scheduled, under the same Judicial Affidavit, but with the following ordered stricken off:

1. Q&A Nos. 19 to 25; and
2. Q&A Nos. 30 to 32.

SO ORDERED.


MA. THERESA DOLORES C. GOMEZ-ESTOESTA

Associate Justice

Chairperson

WE CONCUR:


ZALBY V. TRESPES

Associate Justice


GEORGINA D. HIDALGO

Associate Justice