



Republic of the Philippines

Sandiganbayan

Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on 16 January 2024.

Present:

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

Justice ZALDY V. TRESPESES ----- Member

Justice GEORGINA D. HIDALGO ----- Member

The following resolution was adopted:

***Crim. Case No. SB-09CRM-0040-42, 0045-46, 0048-50, 0054-55, 0058-61, and 0068-69
- People vs. ANTONIO P. BELICENA, et al.***

This resolves the following:

1. Accused Asuncion Magdaet's "CONSOLIDATED MOTION FOR PARTIAL RECONSIDERATION" dated November 26, 2023 and electronically filed on November 28, 2023;¹ and
2. Prosecution's "OPPOSITION" dated January 4, 2024.²

TRESPESES, J.

For resolution is accused Asuncion Magdaet's *Consolidated Motion for Partial Reconsideration* of the Order dated 22 November 2023 and the Prosecution's Opposition thereto.

Record shows that accused Magdaet agreed to file the necessary pleading for the adoption of testimonies of other witnesses and documents identified by them in Crim. Cases Nos. SB-09-CRM-0087, etc. and SB-12-CRM-0151 to 0162 after securing the TSNs³ in said cases. However, she filed her *Consolidated Manifestation and Motion for Leave to Adopt the Testimonies of Witnesses and the Documents they Identified* only on 22 November 2023, which was the last hearing date for the presentation of said accused's witness. The prosecution opposed the motion because it was not given sufficient time to peruse the motion and the voluminous documents attached thereto as it was only filed on the same date. The prosecution also argued that no transcripts of stenographic notes (TSNs) and judicial affidavits (JAs) of the witnesses, whose testimonies she wanted to adopt were attached

¹ Record, Vol. 14, pp. 55-296.

² Record, Vol. 14, pp. 321-325.

³ Record, Vol. 13, pp. 192-195 (Consolidated Explanation and Motion dated 24 September 2023 filed by accused Magdaet)

Minute Resolution

People v. Antonio P. Belicena et al.

Crim. Case Nos. 09CRM-0040-42, 0045-46,

0048-50, 0054-55, 0058-61, and 0068-69

Page 2 of 14

X-----X

so that it could intelligently comment on the motion. Thus, after deliberation, the court denied accused Magdaet's *Consolidated Manifestation and Motion for Leave to Adopt the Testimonies of Witnesses and the Documents they Identified*.

ACCUSED MAGDAET'S MOTION

Accused Magdaet moves to partially reconsider the court's 22 November 2023 Order. She alleges that in Crim. Case Nos. SB-09-CRM-0087, etc., a similar motion was granted by the court even though the transcripts of stenographic notes and judicial affidavit of witnesses requested to be adopted were not attached to the motion.

Accused also argues that the prosecution of the consolidated criminal cases pending in this division and in other divisions of this court were being handled only by one office, the Office of the Special Prosecutor. Thus, it would be impossible that the handling prosecutors did not have "case meetings" considering that they are being supervised by only one DSP in the textile/Belicena cases.

She claims that Exhibits 1 to 32, the judicial affidavits of the witnesses and the documents they identified were already attached to the records.⁴ She further claims that it was her counsel who purchased the TSN using his own money as accused is unemployed currently with no source of income. Besides, Prosecutor Joshua Tan was always present and heard the testimony of the witnesses during their presentation since the three consolidated criminal cases involving Express Colour Industries, Inc., Filstar and Circular Knitting Industries Corp. were heard simultaneously. Thus, the prosecution was not prejudiced by the submission of accused's *Consolidated Manifestation and Motion for Leave to Adopt the Testimonies of Witnesses and the Documents they Identified* dated 20 November 2023.

Nonetheless, in support of this motion, accused submitted the following documents:

- a. Judicial Affidavit dated July 5, 2021 of Majidi John Rufo Bola;
- b. Judicial Affidavit dated June 8, 2022 of Purita S. Napenas;
- c. Order dated January 26, 2023 of the court in Crim. Case Nos. SB-09-CRM-0087, etc.;
- d. Resolution dated October 20, 2023 of the court in Crim. Case Nos. SB-09-CRM-0087, etc.;

⁴ Records, Vol. 4, pp. 28-203.

7 1 1

Minute Resolution

People v. Antonio P. Belicena et al.

Crim. Case Nos. 09CRM-0040-42, 0045-46,

0048-50, 0054-55, 0058-61, and 0068-69

Page 3 of 14

X-----X

- e. TSN dated November 18, 2021 taken in the proceedings held in Crim. Case Nos. SB-12-CRM-0151 to 0162;
- f. TSN dated July 20, 2022 taken in the proceedings held in Crim. Case Nos. SB-12-CRM-0151 to 0167;
- g. TSN dated October 19, 2022 taken in the proceedings held in Crim. Case Nos. SB-12-CRM-0151 to 0167.

PROSECUTION'S OPPOSITION

The prosecution counters that a cluster of the Office of the Special Prosecutor, Office of the Ombudsman, is made up of multiple bureaus, which are made up of several individual prosecutors. It is possible that a single prosecution cluster would be made up of about six prosecution bureaus, each composed of at least three to seven prosecutors and each is expected to be assigned to different cases. Thus, to imply that the assigned prosecutor in these cases should be aware of all the cases assigned to others is absurd.

There is also no cogent reason why the ruling on 22 November 2023 should be disturbed as the accused has not cited any reason why the court committed any error to merit reconsideration. Accused also did not give any logical reason why the TSNs or judicial affidavits sought to be adopted were not appended or furnished the prosecution at the time the motion was made. Thus, the prosecution asserts that its right to due process in relation to the Motion to Adopt is concerned was patently violated.

The prosecution adds that if accused Magdaet did not have the resources to reproduce the TSNs and JAs, they may have at least sent copies via electronic mail because the cost of scanning is not equivalent to the cost of reproducing and mailing hard copies thereof. There was no indication in accused Magdaet's Motion to Adopt that she lacked the resources to photocopy the TSNs or JAs. Thus, this belated reasoning on her financial difficulty is clearly an afterthought.

Further, Atty. Galindez was granted a lot of leeway in presenting his witnesses during the trial. He simply did not present them during the time allotted to him. To now seek the adoption of witness testimonies in other cases, with the reasonable expectation that cross-examination will necessitate additional trial dates, will thus serve to indirectly circumvent the court's Order designating 22 November 2023 as the deadline for the presentation of accused Magdaet's defense.

The prosecution also posits that the court's generosity in accommodating accused's various predicaments has already been stretched too thin. Whether such predicaments are understood or should be viewed

1 1 2

Minute Resolution

People v. Antonio P. Belicena et al.
Crim. Case Nos. 09CRM-0040-42, 0045-46,
0048-50, 0054-55, 0058-61, and 0068-69
Page 4 of 14

X-----X

sympathetically, the result is that the trial of the case will inevitably be lengthy. In fact, the resulting delay in the proceedings of these cases is already detrimental to the prosecution's right to speedy disposition of cases. Accused also failed to explain why the witnesses who were not listed in the pre-trial order are now sought to be presented through an adopted testimony.

Finally, the prosecution alleges that after reviewing the TSNs and JAs, it failed to recognize how the testimonies will redound, or be relevant to the defense of accused Magdaet. Therefore, on the basis of relevancy alone, the testimonies should not be allowed.

OUR RULING

After a careful study, the court resolves to **grant** accused Magdaet's *Consolidated Motion for Partial Reconsideration*.

***On the Consolidated Motion
for Partial Reconsideration***

It should be noted that accused's *Consolidated Manifestation and Motion for Leave to Adopt the Testimonies of Witnesses and the Documents they Identified* was denied because the prosecution was not accorded due process. Records show that the prosecution was not given sufficient time to review the motion and that the TSNs and JAs were not attached thereto.

The essence of due process is simply an opportunity to be heard.⁵ One is heard when he or she is afforded a fair and reasonable opportunity to explain his or her side of the controversy.⁶ In here, accused Magdaet has already submitted the documents requested by the prosecution for its perusal. Moreover, the prosecution was also given the chance to be heard when it was able to give its comment/opposition to the Motion to Adopt incorporated in their *Opposition* to the instant motion for partial reconsideration. Since the prosecution has already been given an opportunity to give its side, it necessarily follows that it has been accorded due process.

Accordingly, in the interest of substantial justice, and to provide the defense with an equal opportunity to substantiate its defenses, the *Consolidated Motion for Partial Reconsideration* is granted, and the *Consolidated Manifestation and Motion for Leave to Adopt the Testimonies of Witnesses and the Documents they Identified* may now be given due course.

⁵ *Espina v. Soriano, Jr.*, G.R. Nos. 208436, 208569, 209279, etc., 25 July 2023.

⁶ *Ampatuan, Sr. v. Secretary of Justice*, G.R. No. 200106, 22 February 2023.

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Minute Resolution

People v. Antonio P. Belicena et al.
Crim. Case Nos. 09CRM-0040-42, 0045-46,
0048-50, 0054-55, 0058-61, and 0068-69
Page 5 of 14

X-----X

***On the Consolidated Manifestation
and Motion for Leave to Adopt the
Testimonies of Witnesses and the
Documents they Identified***

In the *Consolidated Manifestation and Motion for Leave to Adopt the Testimonies of Witnesses and the Documents they Identified*, accused Magdaet alleges that the following witnesses were presented in Crim. Case Nos. SB-12-CRM-0151 to 0162:

1. Carmelo T. Casibang Jr. (stipulated on November 10, 2021);
2. Purita S. Napeñas (July 20, 2022 and October 19, 2022);
3. Majidi John Rufo Bola (November 18, 2021).

She also claims that on 26 January 2018, during the testimony of Atty. Mary Tifanie H. Gerona in Cases No. SB-09-CRM-0087-0088, 0097-0098, 0107-00108, 0117-0018, 0127-0028, the parties marked, stipulated, and identified documents.

Accused now prays that the testimonies of Casibang Jr., Napeñas, Bola and Atty. Gerona, as well as the documents they identified during their testimonies, be adopted. Accused also prays that the exhibits in the Judicial Affidavit of Charmelle P. Recoter dated 17 November 2023 be corrected and/or remarked to conform to the proposed markings. She further prays for the remarking of exhibits stipulated on 21 September 2023.

The prosecution counters that after reviewing the TSNs and JAs, they appear to be irrelevant to accused Magdaet's case.

After careful evaluation, the court **grants** accused Magdaet's *Consolidated Manifestation and Motion for Leave to Adopt the Testimonies of Witnesses and the Documents they Identified*.

The adoption by accused Magdaet of the testimony of Bola given on 18 November 2021 in Crim. Case Nos. SB-12-CRM-0151 to 0162 is allowed considering that Bola was included by accused Magdaet in the list of witnesses as shown in the Pre-trial Order dated 13 December 2018. Such adoption, instead of the presentation of said witness, conforms to the doctrine on speedy disposition of cases. The court only notes that no document was attached to his judicial affidavit for identification.

The court also allows the adoption of the testimonies and documents identified by Casibang, Jr., Napenas and Atty. Gerona notwithstanding that they were not listed as witness in the Pre-trial Order, and accused Magdaet

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Minute Resolution

People v. Antonio P. Belicena et al.
Crim. Case Nos. 09CRM-0040-42, 0045-46,
0048-50, 0054-55, 0058-61, and 0068-69
Page 6 of 14

X-----X

did not reserve the right to present additional witnesses and exhibits during the trial.

It should be noted that the court has the discretion to allow introduction of additional evidence during trial other than those which had been previously presented, marked, and identified during pre-trial. Under A.M. No. 03-1-19-SC⁷, admission of evidence not identified during pre-trial is not absolutely prohibited, thus:

B. CRIMINAL CASES

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2. After the arraignment, the court shall forthwith set the pre-trial conference within thirty days from the date of arraignment, and issue an order: (a) requiring the private offended party to appear thereat for purposes of plea-bargaining except for violations of the Comprehensive Dangerous Drugs Act of 2002, and for other matters requiring his presence; (b) referring the case to the Branch COC, if warranted, for a preliminary conference to be set at least three days prior to the pre-trial to mark the documents or exhibits to be presented by the parties and copies thereof to be attached to the records after comparison and to consider other matters as may aid in its prompt disposition; and (c) ***informing the parties that no evidence shall be allowed to be presented and offered during the trial other than those identified and marked during the pre-trial except when allowed by the court for good cause shown.*** A copy of the order is hereto attached as Annex "E". In mediatable cases, the judge shall refer the parties and their counsel to the PMC unit for purposes of mediation if available.

The above-quoted provision clearly allows for an exception, i.e. when allowed by the court for good cause shown. It is worth noting that the court retains the discretion to allow the introduction of additional evidence if there are valid grounds.

Here, accused Casibang's testimony was subject to stipulation on 10 November 2021 in Crim. Case Nos. SB-12-CRM-0151 to 0162. Thus, although he was not listed as witness in these cases, adoption is allowed since his testimony was already admitted and stipulated by the parties.

As for Napenas, who also testified in Crim. Case Nos. SB-12-CRM-0151 to 0162 on 20 July 2022, and 19 October 2022, her testimony, and the documents she identified were also adopted in SB-09-CRM-0087, etc., in

⁷ Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-trial and Use of Deposition-Discovery Measures.

1 1 2

Minute Resolution

People v. Antonio P. Belicena et al.
Crim. Case Nos. 09CRM-0040-42, 0045-46,
0048-50, 0054-55, 0058-61, and 0068-69
Page 7 of 14

X-----X

which accused Magdaet is also one of the accused. As such, the court allows the adoption in these cases.

The court also allows the adoption by accused Magdaet of the testimony and documents identified by Atty. Gerona in Crim. Case Nos. SB-09-CRM-0087, etc. Accused alleges that during the testimony of Atty. Gerona on 26 January 2023, documents were marked, identified, and stipulated by the parties. Further, during the hearing on 22 November 2023 in these cases, the court declared that it may take judicial notice of her signature on documents as said documents form part of the records of this Division and accords the presumption of regularity on the part of Atty. Gerona.⁸

Consequently, the adoption of the following exhibits identified by Atty. Gerona in Crim. Case Nos. SB-09-CRM-0087, etc., which were also listed in the Pre-trial Order in these cases, is allowed as they have already been subject to stipulation:

<i>Marking in SB-09-CRM-0087, 0088, 0097, 0098, 0107, 0108, 0117, 0118, 0127, 0128</i>	<i>Document Description</i>	<i>Proposed marking in SB-09-CRM-0040, 0045, 0048 and 0054</i>
"1"	Department of Finance Organization Chart (certified true copy from the record on file)	"1"
"2"	Once Stop Shop Inter-Agency Duty Drawback Center Organizational Chart (certified true copy from the record on file)	"2"
"3"	Department of Finance Department Personnel Order No. 5192, Series of 1992 (certified true copy from the record on file)	"3"
"4"	Outline of Procedure in the Processing of Tax Credit Application of Raw Materials of the Direct Exporter	"4"

⁸ Record, Vol. 14, pp. 052-053.

7 1 7

Minute Resolution

People v. Antonio P. Belicena et al.

Crim. Case Nos. 09CRM-0040-42, 0045-46,

0048-50, 0054-55, 0058-61, and 0068-69

Page 8 of 14

X-----X

	(certified true copy from the record on file)	
"4-A"	Sample of Claimant Information Sheet (certified true copy from the record on file)	"4-A"
"5"	OSS Duty Drawback Center Office Order 93-13 dated August 30, 1993 (certified true copy from the record on file)	"5"
"6"	OSS Duty Drawback Center Office Order 93-07A dated July 2, 1993 (certified true copy from the record on file)	"6"
"7"	OSS Duty Drawback Center Office Order 93-17 dated November 3, 1993 (certified true copy from the record on file)	"7"
"8"	Memorandum dated January 28, 1998 from the Secretary of Finance to the President of the Philippines (certified true copy from the record on file)	"8"
"9"	Memorandum from the Executive Secretary dated June 30, 1998 (certified true copy from the record on file)	"9"
"9-A"	Letter dated July 1, 1998 attached to Exhibit "9") (certified true copy from the record on file)	"9-A"
"10"	Department of Finance Department Order 93-92 (certified true copy from the record on file)	"10"

7 1 2

Minute Resolution

People v. Antonio P. Belicena et al.

Crim. Case Nos. 09CRM-0040-42, 0045-46,

0048-50, 0054-55, 0058-61, and 0068-69

Page 9 of 14

X-----X

"11"	Department of Finance Resolution No. 92-02 dated August 10, 1992 (certified true copy from the record on file)	"11"
"12"	Letter to Dr. Cecilia Soriano dated October 29, 1992 from the Secretary of Finance (certified true copy from the record on file)	"12"
"13"	Letter to the Department of Finance dated May 20, 1993 from the Department of Budget and Management (certified true copy from the record on file)	"13"
"14"	CSC Resolution 94-0647 dated February 3, 1994 (certified true copy from the record on file)	"14"
"15"	Administrative Order No. 138 dated July 19, 1994 (certified true copy from the record on file)	"15"
"16"	Letter to the Secretary of Finance from the Department of Budget and Management dated December 26, 1994 (certified true copy from the record on file)	"16"
"17"	Letter to the Secretary of Finance from the DBM dated July 21, 1995 (certified true copy from the record on file)	"17"
"18"	Letter to the Secretary of Finance from the	"18"

7 1 2

Minute Resolution

People v. Antonio P. Belicena et al.

Crim. Case Nos. 09CRM-0040-42, 0045-46,

0048-50, 0054-55, 0058-61, and 0068-69

Page 10 of 14

X-----X

	DBM dated February 5, 1996 (certified true copy from the record on file)	
"19"	Letter to the Secretary of Finance from the Board of Investment dated November 18, 1993 (certified true copy from the record on file)	"19"
"20"	RA 7844, Export Development Act of 1994 (certified true copy from the record on file)	"20"
"21"	Rules and Regulation to Implement Export Development Act (certified true copy from the record on file)	"21"
"22"	Agreement between the Board of Investment and Department of Finance and dated October 13, 2000 (certified true copy from the record on file)	"22"
"23"	Rules and Regulations to implement the guidelines on Transferability of Tax Credit Certificate issued under Art. 21 of the Omnibus Investment Code of the Philippines of 1987 (certified true copy from the record on file)	"23"
"24"	Amendment to the Rules to implement the guidelines on Transferability of Tax Credit Certificate issued under Article 21	"24"

J V 2

Minute Resolution

People v. Antonio P. Belicena et al.

Crim. Case Nos. 09CRM-0040-42, 0045-46,

0048-50, 0054-55, 0058-61, and 0068-69

Page 11 of 14

X-----X

	of the Omnibus Investment Code of the Philippines of 1987 (certified true copy from the record on file)	
"25"	Letter to the One Stop Shop from the Executive Director of Industrial Group 1987 (certified true copy from the record on file)	"25"
"26"	Office Order dated November 5, 1993 issued by the Under Secretary of the Department of Finance (certified true copy from the record on file)	"26"
"27"	Office Order 93-09 dated July 23, 1993 of Tax Credit and Duty Drawback Center, Department of Finance (certified true copy from the record on file)	"27"
"28"	Office Order dated October 2, 1993 issued by the Acting Secretary of the Department of Finance (certified true copy from the record on file)	"28"
"29"	Office Order dated November 4, 1996 issued by the Acting Secretary of the Department of Finance (certified true copy from the record on file)	"29"
"30"	Final Report, Monitoring of Tranche 3 of Philippine Support Development Program, August 1993 (certified	"30"

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Minute Resolution

People v. Antonio P. Belicena et al.

Crim. Case Nos. 09CRM-0040-42, 0045-46,

0048-50, 0054-55, 0058-61, and 0068-69

Page 12 of 14

X-----X

	true copy from the record on file)	
"31"	Streamlining Duty Drawback System in the Philippines, June 1998 (certified true copy from the record on file)	"31"
"32"	Memorandum dated August 25, 1995, Personal Service Division of Department of Finance (certified true copy from the record on file)	"32"

Further, as prayed for, to avoid confusion and to make it consistent with the proposed marking in the above table, the exhibits mentioned in the Judicial Affidavit of Charmelle P. Recoter are ordered remarked as follows:

<i>Marking in the Judicial Affidavit of Charmelle P. Recoter dated November 17, 2023</i>	<i>Document Description</i>	<i>New Marking as Corrected</i>
"33"	Once Stop Shop Inter-Agency Duty Drawback Center Organizational Chart (certified true copy from the record on file)	"2"
"43"	Outline of Procedure in the Processing of Tax Credit Application of Raw Materials of the Direct Exporter (certified true copy from the record on file)	"4"
"35"	Office Order 93-07A dated July 2, 1993	"6"
"36"	Office Order 93-13 dated August 30, 1993	"5"

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Minute Resolution

People v. Antonio P. Belicena et al.
Crim. Case Nos. 09CRM-0040-42, 0045-46,
0048-50, 0054-55, 0058-61, and 0068-69
Page 13 of 14

X-----X

"37"	Office Order 93-17 dated November 3, 1993	"7"
"44"	Checklist of Document Requirements for Investment Group of Express Colour Industries Inc. marked as Exhibit C ³ (page 24 of the Prosecution's Formal Offer of Exhibits dated January 21, 2022)	"33"
"45"	Memorandum dated February 18, 1997 issued by Raymond R. Babasoro to Atty. Antonio P. Belicena, Assistant Secretary of Department of Finance-One Stop Shop Tax Credit and Duty Drawback Center (DOF-OSS Center), previously marked as Exhibit "HHH" and Exhibit "25" in Crim. Case Nos. SB-12-CRM-0151 to 0162 pending before the Honorable Court	"34"

The exhibits stipulated on September 21, 2023 as identified in the Judicial Affidavit of Agnes Padilla are also remarked as follows:

<i>Marking as per order dated September 21, 2023</i>	<i>Document Description</i>	<i>New Marking as Corrected</i>
"29"	Letter dated August 11, 2023 addressed to Deputy Executive Director Ernesto Q.	"35"

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Minute Resolution

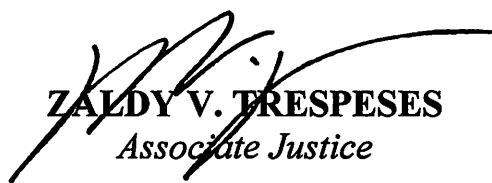
People v. Antonio P. Belicena et al.
Crim. Case Nos. 09CRM-0040-42, 0045-46,
0048-50, 0054-55, 0058-61, and 0068-69
Page 14 of 14

X-----X


	Hiansen of the DOF OSS Center	
"29-A"	CSC Report on the Organization Development Project for OSS Center Phase 1	"36"
"30"	CSC Final Report on the Organization Development Project for OSS Center Book 1	"37"
"31"	CSC Final Report on the Organization Development Project for OSS Center Book 2	"38"


WHEREFORE, premises considered, Asuncion Magdaet's *Consolidated Motion for Partial Reconsideration* of the Order dated 22 November 2023 is **GRANTED**. Consequently, said accused's *Consolidated Manifestation and Motion for Leave to Adopt the Testimonies of Witnesses and the Documents of Exhibits they Identified* is also granted. The Court allows the accused to adopt the testimonies and documentary evidence stated therein, including the cross-examination questions, redirect, and recross propounded on those witnesses.

SO ORDERED.


ZALDY V. TRESPESES
Associate Justice

WE CONCUR:


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


GEORGINA D. HIDALGO
Associate Justice