



Republic of the Philippines

Sandiganbayan

Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on 13 March 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:

Prosecution's "MOTION TO STRIKE OFF TESTIMONIES OF CARMELO T. CASIBANG, JR., PURITA S. Napeñas AND MAJIDI JOHN RUFO BOLA]" dated February 12, 2024.¹

TRESPESES, J.

This resolves the Prosecution's Motion to Strike Off the testimonies of Carmelo T. Casibang, Jr., Purita S. Napeñas and Majidi John Rufo Bola in Crim. Case No. SB-12-CRM-0151 to 0162 which were allowed to be adopted in the present case.

ANTECEDENTS

Accused Magdaet's "*Consolidated Motion for Partial Reconsideration*" was granted in the Resolution dated 16 January 2024,² which also granted the "*Consolidated Manifestation and Motion for Leave to Adopt the Testimonies of Witnesses and the Documents of Exhibits they Identified*". Consequently, the court allowed the adoption by accused Magdaet of the testimonies of witnesses including the cross-examination questions, redirect and re-cross propounded, as well as the documentary evidence specified in her motion to adopt.

The prosecution did not file any manifestation of its intention to cross-examine the witnesses. However, on 12 February 2024, the prosecution filed the instant motion praying that the testimony of Carmelo T. Casibang, Jr., Purita S. Napeñas and Majidi John Rufo Bola including the transcript of

¹ Record, Vol. 14, pp. 371-378;379-386.

² Id. at pp. 340-353.

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stenographic notes in Crim. Case No. SB-12-CRM-0151 to 0162 be stricken off the records for being hearsay.

PROSECUTION'S MOTION TO STRIKE

The prosecution alleges that they were denied due process when they were not given the opportunity to cross examine Casibang, Jr., Napeñas and Bola because said witnesses were not presented in court. It cites Section 49 of Rule 130 of the Revised Rules on Evidence and argues that Casibang Jr., Napeñas and Bola are not dead or out of the country, or unavailable or unable to testify. They are also not considered witnesses who cannot, with due diligence, be located anywhere in the country, as they have been in court to testify in other SB cases. Thus, their testimonies are not exempt from the hearsay rule.

The prosecution adds that although the adoption includes the cross, re-direct and re-cross of Casibang, Jr., Napeñas and Bola in other cases, they cannot be viewed as a substitute for the prosecution's actual opportunity to cross-examine them in these cases. In fact, the prosecution did not agree to adopt in these cases, its own cross examination, and any re-cross examination of Casibang, Napeñas and Bola in other SB cases. Not having been given the opportunity to cross examine the witnesses, the prosecution claims that it was deprived of its right to due process.

To afford the prosecution due process, it argues that accused Magdaet should have presented them anew as proposed witnesses. However, this is no longer practicable because said accused had already used up all trial dates allotted to her due to continuous and repeated re-settings. Accused also did not request for additional trial dates because she was aware that she had no trial dates remaining to present her additional testimonial evidence. On the other hand, the prosecution could not be expected to be the proper party to ask for additional trial dates solely to accommodate additional witnesses for the accused.

With accused Magdaet having exhausted all her trial dates, the prosecution has reasonable basis to conclude that accused was deemed to have terminated her presentation of evidence. For failure of accused to present his additional witnesses, the prosecution was deprived of the opportunity to cross-examine them in court. Thus, their testimonies are deemed hearsay and consequently, their judicial affidavits and TSNs in other SB cases must be stricken off the record.

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During the hearing of the motion on 15 February 2024, the prosecution also asserted that the testimonies are irrelevant since they pertain to Circular Knitting while these cases pertain to Express Colour.

Atty. Galindez, counsel of accused Magdaet, did not file any comment to the motion despite sufficient time given to him to do so.

OUR RULING

The motion is meritorious.

On the right to cross-examine the other party's witnesses

It should be noted that the January 16, 2024 Order exclusively addressed the adoption of testimony of witnesses to expedite the proceedings. The permission to adopt was not based on Section 47, Rule 130 of the Rules on Evidence or the testimony or deposition at a former proceeding as an exception to the hearsay rule, which must meet the following requisites:

1. The testimony or deposition of a witness deceased or otherwise unable to testify;
2. The testimony was given in a former case or proceeding, judicial or administrative;
3. Involving the same parties;
4. Relating to the same matter;
5. The adverse party having had the opportunity to cross-examine him.

Evidently, not all the requisites are present here. The prosecution correctly points out that the proposed testimonies do not qualify as an exception to the hearsay rule under Section 49 because none of the witnesses identified are dead, unavailable, or unable to testify. Therefore, the witness/deponent must be presented anew for oral examination in open court at the trial or hearing. This is a requirement under the rules of evidence. Section 1, Rule 132 of the Rules of Court is clear that "(t)he examination of witnesses presented in a trial or hearing shall be done in open court, and under oath or affirmation. Unless the witness is incapacitated to speak, or the question calls for a different mode of answer, the answers of the witness shall be given orally."

As held in *Sales v. Sabino*³:

While depositions may be used as evidence in court proceedings, they are generally not meant to be a substitute for the actual testimony in

³ *Sales v. Sabino*, G.R. No. 133154, 9 December 2005 (513 PHIL 203-210).

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open court of a party or witness. Stated a bit differently, ***a deposition is not to be used when the deponent is at hand. Indeed, any deposition offered during a trial to prove the facts therein set out, in lieu of the actual oral testimony of the deponent in open court, may be opposed and excluded on the ground of hearsay.***

The right to cross-examine a witness is fundamental to the principle of due process. Its purpose is to test the truthfulness of the statements of a witness made on direct examination. As such, the opportunity of cross-examination has been regarded as an essential safeguard of the accuracy and completeness of a testimony.⁴ Under the hearsay rule, evidence that cannot be tested by cross-examination are excluded.⁵ Absent the cross-examination, the testimonies of Casibang, Napeñas and Bola through their judicial affidavits given in other Belicena cases are deemed hearsay.

Although the court permitted the adoption of testimonies of Casibang, Napeñas and Bola, which included the cross, redirect and re-cross examination, the court did not take away the prosecution's right to conduct cross-examination. In fact, in the other Belicena cases, the prosecution was given opportunity to clarify whether they intend to conduct cross-examination because the court posits that it cannot be assumed that the prosecution will not conduct additional cross examination on the same witnesses. Such adoption also did not forfeit the prosecution's right to conduct cross-examination. In *People v. Ang*,⁶ the Supreme Court ruled:

Eventually, the ruling in Cuenco Vda. De Manguerra was later on expounded and clarified by former Associate Justice Arturo D. Brion in an En Banc Decision in the case of Republic v. Sandiganbayan, where it was held that "depositions are not meant as substitute for the actual testimony in open court of a party or witness." Generally, the deponent must be presented for oral examination in open court at the trial or hearing. This is a requirement of the rules on evidence under Section 1, Rule 132 of the Rules of Court. ***Even if an "opportunity for cross-examination was afforded during the taking of the deposition," such examination "must normally be accorded a party at the time that the testimonial evidence is actually presented against him [or her] during the trial or hearing of a case."***

Unlike the assigned prosecutor in the *Belicena* case docketed as SB-09-CRM-0087, etc., who chose not to conduct additional cross-examination on the adopted testimonies, despite his reservations about the adoption itself; Prosecutor Tan, in these cases, harps on about the lack of cross-examination. Therefore, it is procedurally proper to open such witnesses' testimonial evidence so that the prosecution can conduct additional cross-examination.

⁴ *Republic v. Sandiganbayan*, G.R. No. 152375, 13 December 2011, 678 PHIL 358-481.

⁵ *Republic v. Sandiganbayan, 5th Division*, G.R. Nos. 195837, 198221, 198974 & 203592, 3 October 2023.

⁶ *People v. Ang*, G.R. No. 231854, 6 October 2020.

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To admit the testimony of Casibang, Jr., Napeñas and Bola without the cross-examination in the present case would deprive the prosecution of its right to due process.

However, as the prosecution points out, accused Magdaet has already exhausted all the trial days allotted to her. It should be recalled that the four dates⁷ given to accused Magdaet were all cancelled at her instance. Also, the court has given accused additional five trial dates⁸ due to accused's counsel's personal circumstance but only three witnesses were presented. Considering the foregoing, the court is now compelled to scrutinize the proposed testimonies to determine whether they are relevant to these cases to warrant the presentation of the witnesses and afford the prosecution due process by conducting additional cross-examination on them.

To recall, the court allowed the adoption because: Casibang's testimony in SB-12-CRM-0151, etc. has already been subject to stipulation; Napeñas' testimony in SB-12-CRM-0151 was also allowed to be adopted in SB-09-CRM-0087, and Bola was listed as witness in the Pre-trial Order by accused Magdaet in these cases and the adoption of his testimony in SB-12-CRM-0151, etc. would conform to the speedy disposition of cases.

On the relevance of the adopted testimonies

Evidence is admissible when it is relevant to the issues and is competent, i.e., it is not excluded by the law or the Rules of Court. Relevancy of evidence is assessed in terms of its relation to the fact in issue as to induce belief in its existence or non-existence.⁹

A. Casibang

On 10 November 2021, Casibang was called to the witness stand to testify on SB-12-CRM-0151 to 0162. However, his testimony did not push through. Records show that the prosecution objected on the presentation of Casibang because the proposed testimony pertains on matters not of his own personal knowledge particularly on Exhibits "7"¹⁰, "8"¹¹ and "9"¹² as appearing in his judicial affidavit, and that there was no authentication of said documents by the person who is in custody of the same. The parties subsequently agreed to just dispense with the presentation of Casibang with the prosecutor admitting the existence, due execution, and authenticity of

⁷ February 23, 2023, March 23, 2023, May 29, 2023 and May 30, 2023.

⁸ July 19, 2023, August 16, 2023, September 21, 2023, October 18, 2023, November 22, 2023.

⁹ *Municipality of Makati v. Municipality of Taguig*, G.R. No. 235316, 1 December 2021.

¹⁰ Organizational Development Project Phase 1

¹¹ Book 1 Final Report

¹² Book 2 Final Report

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Exhs. "7", "8" and "9" subject to the presentation of proper witness who will be identifying them.

Considering that there was no actual stipulation on Casibang's testimony therefore, there is nothing to adopt in these cases. Accordingly, the purported testimony of Casibang is denied admission.

B. Napeñas

It should be noted that there was no separate formal offer of the testimony of Napeñas in the present case. Thus, it can be safely assumed that the purpose for which her testimony was offered in SB-12-CRM-0151, etc. is likewise included in the request for adoption in these cases. It is basic that the purpose of offering a witness's testimony is for the court to expertly assess whether questions propounded are relevant and material, and if the witness is competent to answer. It is to aid the court in ruling over objections made by opposing counsel.¹³

The testimony of Napeñas in SB-12-CRM-0151, etc. was offered to show her innocence on the charges and disprove the allegations in the criminal informations therein. It was also offered to prove that "her duty as an evaluator was merely "checklisting" to determine the completeness of the documents submitted by *Circular Knitting Industries Corporation* in its application for tax credit claims, as per checklist of documents requirements, and "computing" the amount of the tax credit claim based on computation table for standard rate scheme." Based on the offer itself, her testimony was primarily about Circular Knitting.

Further, a cursory reading of her judicial affidavit and the TSNs reveals that her testimony centered on the procedure she followed in the preparation of the Evaluation Report in relation to Circular Knitting. Also, the documents she identified in her judicial affidavit were largely about Circular Knitting. On the other hand, the other documents she identified that are not specifically related to Circular Knitting such as Office Order No. 93-07-A, Office Order No. 93-13, and Office Order No. 93-17 had already been identified and testified to by Charmelle P. Recoter in these cases.

The court notes that although Napeñas was also assigned as evaluator at the Wearables Division and described the procedure she used to prepare the evaluation report for Circular Knitting, it cannot be assumed that the evaluator in the application for TCCs of Express Colour in these cases followed the same procedure. It bears to point out that Circular Knitting's claim for

¹³ *Amoguis v. Ballado*, G.R. No. 189626, 20 August 2018.

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incentives was based on its direct exports, while Express Colour's was for its constructive exports.

From the foregoing, the court finds that since Napeñas was not involved in the TCC issuance for Express Colour, her testimony in SB-12-CRM-0151, etc. is irrelevant to the present cases.

C. Bola

Accused Magdaet did not file her Comment to the Motion to Strike to contradict and at least show how Bola's testimony given at a former proceeding is relevant to the present case. It should be noted that Bola was one of the witnesses listed in the pre-trial order.¹⁴ Instead of executing a judicial affidavit to give statements related to the present case, accused Magdaet chose to adopt the testimony of Bola in SB-12-CRM-0151, etc. His testimony at a former proceeding was offered to prove, among others, that:

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2. He will testify as to the procedure being followed by the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center in processing tax credit applications during the time material in these consolidated criminal cases.

3. To prove that there is only one procedure being applied and followed by the assigned evaluators in all the industries being processed by One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center upon receipt of tax credit applications, during the time material in these consolidated cases.

4. To prove that the procedure being followed is only check listing and evaluation of the documents being submitted by the applicants to the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center in all the tax credit applications, during the time material in these consolidated criminal cases.

5. To prove that as early as 1993, the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center had a post-audit procedure to verify the correctness of the processed tax credit applications and to rectify improperly-issued tax credit certificates.

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At first glance, Bola's testimony does not pertain to any particular business or company but rather pertains to businesses applying for tax credit incentives in general. Notwithstanding, the court believes that the proposed testimony of Bola should be stricken off as too general and that the substance testified too have been covered by other witnesses already.

¹⁴ Record, Vol. 7, p. 250 (Pre-trial Order dated 13 December 2018).

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The records show that Bola was a Supervising Tax Specialist at the OSS Center of the DOF tasked to evaluate and process tax credit applications for various agencies. Because there was no OSS Center Manual of Operations prior to 1996, they adopted the procedures and regulations applied to each type of tax credit incentive by the BOC, BIR and the BOI in processing and evaluating tax credit applications.¹⁵ Although he was trained to evaluate all various tax credit applications under BIR, BOC, and BOI, he admitted that he was only assigned then to evaluate tax credit applications for VAT Refund on exports in the Tax Code.¹⁶

It should be noted, however, that this is not the type of tax credit applied by Express Colour in these cases. During cross-examination, Bola never mentioned that he was involved in the processing of TCC in these cases, or the type of incentive claims applied by Express Colour. He maintained that he only processed BIR tax credits.¹⁷

Bola enumerated the general procedure in processing a tax credit application, to wit:

- filing of tax credit application and payment of application fee;
- the receiving division receives the whole docket in two sets, originals and photocopy;
- receiving clerk separates the application according to the tax credit applied for and afterwards, forwards it to the division assigned to handle specific tax credit applied for;
- said division would check the completeness of the supporting documents depending on the checklist according to the tax credit applied for;
- if complete, processing fee will be paid;
- the dockets would then be returned to the division and would be assigned to an evaluator for computation of allowable tax credit according to the specific tax credit applied for;
- it will be sent to an evaluator who would prepare an evaluation report and then forward it to the division chief for review;
- after review, returned to the evaluator to finalize;
- the evaluator would sign the evaluation report after;
- the evaluation report would be sent to the division chief for signature;

¹⁵ Page 4 of the Judicial Affidavit of Majidi John Rufo Bola dated 5 July 2021 in SB-12-CRM-0151 to 0162, (Record, Vol. 14, p. 63)

¹⁶ Page 5 of the Judicial Affidavit of Majidi John Rufo Bola dated 5 July 2021 in SB-12-CRM-0151 to 0162, (Record, Vol. 14, p. 64)

¹⁷ TSN in *PP v. Belicena, et al.*, SB-12-CRM-0151 to 0162, 18 September 2021, p. 19 (Record, Vol. 14, p. 177)

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- after this, evaluation report will be forwarded to the Deputy Executive Director¹⁸

To recall, these were already testified to by Carlo V. Baloloy and Charmelle P. Recoter in the present case.

Moreover, Bola stated that although they have the general procedure, there were specific regulations that were followed by a specific agency for a particular tax credit application.¹⁹ He also said that each tax credit incentive filed required different supporting documents and a different computation for the allowable tax credit depending on the kind of tax credit incentive applied for.²⁰ These are irrelevant since Bola did not specify or identify the alleged differences in the supporting documents and computation, as well as the specific regulation allegedly followed in relation to the type of tax credit applied by Express Colour.

Bola also testified that he was assigned as Head of the Monitoring and Verification Audit Division tasked to audit the processed and evaluated tax credit applications under the Tax Revenue Group under the BIR, applications for duty drawback under the Tariff and Customs Code, and applications under the Investment Incentive Group. He enumerated the procedures he observed in discharging his functions under the Monitoring and Verification Audit Division. However, he admitted that, at that time, they were in the process of drafting the manual of operations, thus, there was no clear-cut procedure on how the Monitoring and Verification Division would implement its function. He also confirmed that not all applications were post-audited because of lack of manpower.²¹ He did not mention whether the tax application of Express Colour was post-audited.

His allegations that the evaluator verifies the completeness of the supporting documents in the application, accuracy of the tax credit and validity of the tax credit application, and it was the Monitoring and Verification Division that is supposed to verify the authenticity and genuineness of the documents submitted by the applicant were also testified to by Baloloy in these cases.²²

¹⁸ Pages 5-6 of the Judicial Affidavit of Majidi John Rufo Bola dated 5 July 2021 in SB-12-CRM-0151 to 0162, (Record, Vol. 14, pp. 64-65)

¹⁹ Page 7 of the Judicial Affidavit of Majidi John Rufo Bola dated 5 July 2021 in SB-12-CRM-0151 to 0162, (Record, Vol. 14, p. 66)

²⁰ Page 7 of the Judicial Affidavit of Majidi John Rufo Bola dated 5 July 2021 in SB-12-CRM-0151 to 0162, (Record, Vol. 14, p. 66)

²¹ TSN in *PP v. Belicena, et al.*, SB-12-CRM-0151 to 0162, 18 September 2021, p. 38 (Record, Vol. 14, p. 196)

²² Pages 7-8 of the Judicial Affidavit of Carlo V. Baloloy dated 6 July 2023 (JA Folder, Vol. 2, pp. 306-307)

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It should be emphasized that there is no trial date remaining for accused Magdaet. Thus, opening the case for Bola's presentation simply to testify on matters already testified to by other witnesses and are irrelevant to these cases would inevitably delay the proceedings in these cases.

Accordingly, the adopted testimonies of Casibang, Napeñas and Bola should be stricken off the records.

WHEREFORE, premises considered, the Prosecution's Motion to Strike Off the Testimonies of Carmelo T. Casibang, Jr., Purita S. Napeñas and Majidi John Rufo Bolais is **GRANTED** and the testimonies of Carmelo T. Casibang, Jr., Purita S. Napeñas and Majidi John Rufo Bola as adopted, are ordered stricken off the records of these cases. Considering that the defense has already filed its Formal Offer of Evidence, the prosecution is directed to file its comment/objection thereto pursuant to the Order dated 22 November 2023. Upon receipt of the resolution of the formal offer, the prosecution is given ten (10) days to file its written manifestation on whether it will still present rebuttal evidence.

SO ORDERED.


ZALDY V. TRESPESES
Associate Justice

WE CONCUR:


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


GEORGINA D. HIDALGO
Associate Justice