



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

Seventh Division

MINUTES of the proceedings held on April 23, 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-22- CRM- 0183 to 0185 – People of the Philippines vs. Antonio Y. Ortiz, et al.

This resolves the following:

1. MANIFESTATION AND MOTION filed by the prosecution dated March 14, 2024¹;
2. COMMENT / OPPOSITION filed by accused Maria Rosalinda Masongsong Lacsamana filed March 26, 2024²;
3. Prosecution's REPLY dated April 2, 2024.³

HIDALGO, J.

“The privilege against self-incrimination is one of the great landmarks in man's struggle to make himself civilized. We do not make even the most hardened criminal sign his own death warrant, or dig his own grave, or pull the lever that springs the trap on which he stands. We have through the course of history developed considerable feeling of the dignity and intrinsic importance of the individual man. Even the evil man is a human being.”⁴

This resolves the prosecution's Manifestation and Motion, the Comment / Opposition filed by accused Maria Rosalinda Masongsong Lacsama (accused Lacsamana) and the prosecution's Reply.

¹ Record, Vol. 4, pp. 295 to 301

² Record, Vol. 4, pp. 332 to 337

³ Record, Vol. 4, pp. 345 to 349

⁴ Roger Chavez vs. The Honorable Court of Appeals, et al., GR No. 29169, August 19, 1968

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THE MANIFESTATION AND MOTION

In its Manifestation and Motion, the prosecution enumerated the purposes of the testimony of Consuelo Lilian Reyes Espiritu (Espiritu), as follows:

1. To prove that during the time material in these cases, she was the Budget Officer IV under the Financial Planning and Monitoring Division (FPMD) of the Technology Resource Center;
2. To prove that the PDAF of Representative Villanueva was released to TRC and diverted / siphoned to NGO MAMFI;
3. To prove that the livelihood project was awarded to MAMFI without undergoing public bidding, selection and accreditation process;
4. To prove the process of releasing PDAF from TRC to MAMFI;
5. To prove the participation of accused Ortiz, Cunanan and Lacsamana in the release of PDAF from TRC to MAMFI;
6. To identify documents and records related to her testimony.

Because of these purposes and the unwillingness of Espiritu to testify in court as manifested by Atty. Roño during the hearing on March 7, 2024 and by manifestation of Espiritu herself, the prosecution prays that witness Espiritu be declared as a hostile witness. Further, the prosecution prays that her Counter-Affidavit which she executed on February 8, 2019, be admitted as her direct testimony.

THE COMMENT / OPPOSITION

By way of Comment / Opposition, accused Maria Rosalinda Masongsong Lacsamana (accused Lacsamana) vehemently objects to the motion to declare Espiritu as hostile witness primarily because, to do so will violate Espiritu's right against self-incrimination. Accused Lacsamana points out that Espiritu is currently an accused in two (2) other PDAF cases pending in this court, namely: (a) People vs. Rodolfo G. Valencia, et al, (SB-CRM-0173 to 0178) and (b) People vs. Rozzano Rufino B. Biazon, et al. (SB-CRM-0249 to 0251). Moreover, Espiritu was one of the respondents when these cases were still pending preliminary investigation. Thus, accused Lacsamana submits that Espiritu cannot be made as an ordinary witness for the prosecution.

Accused Lacsamana opines that the purposes of Espiritu's testimony [as presented by the prosecution], will require Espiritu to testify and admit the elements of a crime which she can still be prosecuted for. Accused Lacsamana also notes that the dismissal of the case against Espiritu during the preliminary investigation does not bar the prosecution from further

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prosecuting her considering that the rule on double jeopardy cannot apply and that no offer, much less grant, of immunity from suit was afforded to her.

Additionally, accused Lacsamana observes that Espiritu cannot be compelled to testify because the purposes of her testimony as mentioned by the prosecution are outside of her personal knowledge as a former Budget Officer of the TRC. To bolster her claim, she quoted the portion of the counter-affidavit of Espiritu as follows: “the decision to award the project without undergoing the public bidding, selection and accreditation process, the determination of the capability of the MAMFI to implement the project as well as the monitoring and verification of the NGOs and the documentary requirements are beyond the purview of a budget officer.” She even emphasizes that Espiritu was not the custodian of Office Circular Numbers 00P0100 and 00GE0098.

Lastly, the purpose of her testimony relating to “the identification of the records and documents” is too general and vague which amounts to a “fishing expedition.”

THE REPLY

Though the filing of a Reply is a prohibited pleading under the Revised Guidelines for Continuous Trial Rule of Criminal Cases⁵, the prosecution opted to file a Reply because in the Comment / Opposition the issue of the right against self-incrimination was raised which was not raised in the Manifestation and Motion.

The prosecution questions the propriety of the Comment / Opposition filed by accused Lacsamana. It argues that the invocation of the right against self-incrimination is a personal right that can be claimed only by Espiritu herself or through her counsel and not by anybody else like Atty. Roño who is counsel on record of accused Lacsamana. It adds that the invocation of the said right is premature because the right can be raised only at the proper time *i.e.* at the time the incriminating questions will be asked.

The prosecution likewise insists that the perceived threat of another criminal case is purely speculative as the same may or may not happen. According to the prosecution, the right of the State to prosecute criminal cases and present evidence cannot be restrained by speculation.

Also, the prosecution adds that Espiritu will not be presented to authenticate documents since she will only identify records and documents which are attached to her Counter-Affidavit. As to the threat of Espiritu being arrested, the prosecution maintains that the same was made “as a

⁵ A.M. No. 15-06-10-SC

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friendly legal advice” as provided under Rule 21, Section 8, of the Revised Rules of Court and under Rule 21, Section 9 on contempt proceedings.

After the court has heard all the arguments of the parties, the Manifestation and Motion as well as the Comment / Opposition thereto were submitted for resolution.

Hence, this resolution.

THE RULING OF THE COURT

After both sides extensively argued their respective sides and considering all points raised, it is the considered view of the court, that the arguments raised by accused Lacsamana are meritorious.

The prosecution cannot utilize Espiritu as its witness.

To set the record straight, the prosecution listed Espiritu as one of its witnesses as per Pre-Trial Order dated May 12, 2003.⁶ Thus, during the hearing on March 7, 2024, the prosecution manifested that it will present Espiritu on the next scheduled hearing. During the said hearing, the court directed the prosecution to file a manifestation as to the purposes of her intended testimony. Be that as it may, it must be noted that, previously, Atty. Roño and Espiritu manifested that the latter is unwilling to testify as witness for the prosecution. Thus, on March 22, 2024, the prosecution, instead of filing only a manifestation, filed a Manifestation and Motion praying among others that Espiritu be declared as a hostile witness and that her Counter-Affidavit which she executed during the Preliminary Investigation be considered as her direct testimony, prompting accused Lacsamana to file her opposition.

After a careful perusal and judicious comparison of the purposes of testimony of Espiritu as contained in the Manifestation and Motion and the statements / defenses of Espiritu contained in her Counter-Affidavit, the court is convinced that Espiritu cannot be utilized as an ordinary witness, much more, as hostile witness, primarily because the purposes of her supposed testimony are not germane to the statements / defenses as stated in her Counter-Affidavit.

In essence, what the prosecution seeks from Espiritu is basically to elicit from her facts and circumstances which are within her knowledge specifically on (a) the fact that the PDAF of Representative Villanueva was released to TRC and diverted / siphoned to MAMFI on the basis of the

⁶ Record, Vol. 3, pp. 301 to 319

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purposes of testimony, (b) that the livelihood project was awarded to MAMFI without undergoing public bidding, selection and accreditation.

But as far as her Counter-Affidavit is concerned, the bulk of her statements / defenses can be summarized as follows:

- a. The decision to award the project without undergoing public bidding, selection and accreditation process, the determination of the capability of the MAMFI to implement the project as well as the monitoring and verification of the NGOs and the documentary requirements are beyond the purview of a budget officer but that of the Legislative Liaison Officer designated by the head of agency.⁷
- b. The coordination with the DBM and Representative Villanueva as to the amount earmarked for the PDAF allocation belong to the Director General, Deputy Director General and the designated Legislative Liaison Officers.⁸
- c. The duty to ensure selection and accreditation of NGOs, to ensure proper submission of documents and to determine the capability of MAMFI to implement the project and the verification and monitoring of the implementation of the projects are not her duties but the duties of the Deputy Director General, the Internal Auditor and the Legislative Liaison Officer.⁹
- d. The Financial Planning and Monitoring (Budget Division) is classified under the Corporate Support Services which deals with the administrative aspect of the TRC and not the determination and conduct of projects through the agency.¹⁰

By doing a simple cross-reference between the purposes in the Manifestation and Motion and the statements / defenses as mentioned above, there seems to be no logical and causal connection with what the prosecution wants to elicit from Espiritu from her earlier statements / defenses made. The statements / defenses in her Counter-Affidavit are categorical and definite: (a) that she had no hand in the alleged illegal acts complained of relating to the case and (b) she had no knowledge of the acts complained of. In fact, Espiritu's narration of facts in her Counter-Affidavit are replete with details which are inconsistent with what the prosecution wants to prove.

While this court adheres to the rule that the prosecution has the prerogative to choose the evidence or the witnesses it wishes to present in

⁷ Par. 13, Counter-Affidavit

⁸ *id*

⁹ Par. 15, Counter-Affidavit

¹⁰ Par. 18, Counter-Affidavit

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the course of the trial¹¹, it should be remembered that if the testimony sought to be elicited has no relevance to the issue sought to be established, the testimony will serve no purpose.

Espiritu cannot be declared as a hostile witness

Section 13, Rule 132 of the Revised Rules on Evidence reads:

A witness may be considered as unwilling or hostile only if so declared by the court upon adequate showing of his or her adverse interest, unjustified reluctance to testify, or his or her having misled the party into calling him or her to the witness stand.

From the above-mentioned, a witness is unwilling or hostile if so declared by the court upon adequate showing of his:

1. Adverse interest
2. Unjustified reluctance to testify
3. Misleading party to call him as witness

As can be gleaned from the arguments raised in the Manifestation and Motion, the prosecution heavily relied on Espiritu's mere "unwillingness to testify" to convince this court to declare her as a hostile witness. It offered no other convincing argument why Espiritu has to be declared as such.

A plain reading of *Section 13, Rule 132 of the Revised Rules on Evidence* readily demonstrates that a witness can be declared as an unwilling or hostile witness if the reluctance is "unjustified." A mere reluctance does not suffice.

It must be noted that the reluctance of Espiritu is based on the premise that her unwillingness to testify, as she claimed, will violate her right against self-incrimination. The invocation that her right against self-incrimination will be violated if she will testify, to the opinion of the court, is a legal and valid excuse. As far as the court is concerned, its hands are tied on the provision of the law or the rules. The court is not given the liberty to expand the plain meaning of the law and the rules. Thus, since Espiritu raised a valid reason not to be utilized as prosecution witness, her unwillingness cannot be treated as an "unjustified reluctance."

Even if the court will use "adverse interest" as a litmus to test if she can be utilized as a prosecution's witness, still, the prosecution's claim has

¹¹ Lanuzo v. People, GR No. 205950, January 12, 2021

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no basis.

Under the pain of being repetitive, the statements / defenses contained in Espiritu's Counter-Affidavit do not touch, even the slightest, on the purposes of the testimony offered by the prosecution. The only logical conclusion that can be made is - even if the prosecution will present Espiritu, it cannot elicit facts or information useful to the prosecution. Couched differently, the calling of Espiritu will not boost the prosecution's case, if not irrelevant.

To require Espiritu to be placed on the witness stand as a witness for the prosecution, runs counter to the constitutional guarantee against self-incrimination.

A person's right against self-incrimination is enshrined in *Section 17, Article III of the 1987 Constitution* which reads:

No person shall be compelled to be a witness against himself.

In *People v. Olvis*¹², the Supreme Court defined the right against self-incrimination and explained the purpose of the said right:

"This constitutional privilege has been defined as a protection against testimonial compulsion, but this has since been extended to any evidence "communicative in nature" acquired under circumstances of duress.

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The right is meant to avoid and prohibit positively the repetition and recurrence of the certainly inhuman procedure of compelling a person, in a criminal or any other case, to furnish the missing evidence necessary for his conviction. This was the lesson learned from the ancient days of the inquisition in which accusation was equivalent to guilt. Thus, an act, whether testimonial or passive, that would amount to disclosure of incriminatory facts is covered by the inhibition of the Constitution."

Parenthetically, in *Rosete v. Lim*¹³, the Supreme Court further explained:

The right against self-incrimination is accorded to every person who gives evidence, whether voluntary or under compulsion of subpoena, in any civil, criminal or administrative

¹² GR No. 71092, September 30, 1987

¹³ GR No. 136051, June 8, 2006

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proceeding. The right is not to be compelled to be a witness against himself. It secures to a witness, whether he be a party or not, the right to refuse to answer any particular incriminatory question, *i.e.*, one the answer to which has a tendency to incriminate him for some crime.

It should be stressed that the basic purposes of the right against self-incrimination are (1) humanity or humanitarian reasons to prevent a witness or accused from being coerced, whether physically, morally, and/or psychologically, into incriminating himself, and (2) to protect the witness or accused from committing perjury, because the first law of nature is self-preservation.¹⁴

Accused Lacsama argues that placing Espiritu on the witness stand as an ordinary witness violates her fundamental right against self-incrimination since the purposes of her testimony will require her to testify and admit the elements of the crime which she can still be prosecuted for. Accused Lacsama argues that as long as the suit is criminal in nature, the party thereto can altogether decline to take the witness stand.

The prosecution, on the other hand, in its *Reply* contends that, the right against self-incrimination is a personal privilege which can be claimed only by Espiritu herself or by her counsel on record and not by accused Lacsamana.

The foregoing argument of the prosecution applies only if Espiritu agreed to testify with full knowledge of her rights and the consequences of her acts. This, the prosecution failed to prove.

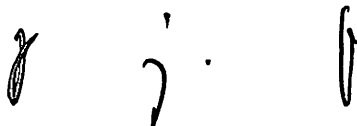
Nothing in the Manifestation and Motion states that Espiritu freely, voluntarily and intelligently expressed her consent to testify as prosecution witness, nor was she informed of her rights and the consequences of the intended testimony. In fact, it was the prosecution that declared that as early as February 29, 2024, Espiritu already manifested her unwillingness to testify.

Without her express consent, her utilization as prosecution witness collides with *Section 1, Section 14 (1) and Section 17, Article 3, 1987 Constitution*, which read:

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

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¹⁴ People v. Sandiganbayan, GR No. 71208 to 71209, August 30, 1985, *see Separate Opinion J.Makasiar*



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Sec. 14 (1) No person shall be held to answer for a criminal offense without due process of law.

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Section 17. No person shall be compelled to be a witness against himself.

More, the rule that only an accused in a criminal case can refuse to take the witness stand is not without any exception. One notable exception is when a party who is not an accused in a criminal case is allowed not to take the witness stand – in administrative cases/proceedings **that partook of the nature of a criminal proceeding or analogous to a criminal proceeding**. As long as the suit is criminal in nature, the party thereto can altogether decline to take the witness stand. It is not the character of the suit involved but the nature of the proceedings that controls.¹⁵ (emphasis supplied)

While technically, Espiritu is not an accused in these cases, but considering the nature of these cases which are being resolved by the court, they are evidently criminal cases. More so, that the real purpose of the prosecution in presenting her is to provide a necessary link and a chain of evidence to prove the acts complained of.

On another point, the prosecution adds that it is premature to claim such right at this point of the proceeding since the proper time to claim such right is when during the incriminating questions are asked.

The court does not subscribe.

It is settled that the right can be claimed only when the specific question, incriminatory in character, is actually put to the witness. It cannot be claimed at any other time.¹⁶ Basic also is the rule that it may also be waived in various ways such as by voluntarily taking the witness stand¹⁷ or by failure to claim it at the appropriate time.¹⁸

It is clear from the undisputed facts of this case that Espiritu, as early as February 29, 2004 or during the conference with the prosecutors, was already adamant to be utilized as witness for the prosecution. To the mind of this court, when Espiritu manifested during the conference with the prosecutors that she does not want to testify, she was already invoking her

¹⁵ Rosete v. Lim, GR No. 136051, June 8, 2006

¹⁶ People v. Ayson, GR No. 85215, July 7, 1989

¹⁷ People vs. Ventura, GR No. 148145, 148146, July 5, 2004

¹⁸ *supra* at note 16

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constitutional right. As early as then, she already exhibited her unwillingness to testify and thus claiming her right against self-incrimination. The court finds Espiritu timely invoked her right.


WHEREFORE, and considering the foregoing, the Manifestation and Motion dated March 14, 2024 is denied for lack of merit.

The continuation of the trial of these cases on June 6, June 20, July 4, and July 18, 2024, as previously scheduled shall proceed. The prosecution is directed to submit to the court, copy furnished the defense, the Judicial Affidavit of the witness within the prescribed time.

SO ORDERED.


GEORGINA D. HIDALGO
Associate Justice

WE CONCUR:


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


ZALBY V. TRESPESES
Associate Justice