781 Phil. 375

EN BANC

[IPI No. 15-35-SB-J. February 23, 2016]

RE: VERIFIED COMPLAINT DATED JULY 13, 2015 OF ALFONSO V. UMALI, JR., COMPLAINANT, VS. HON. JOSE R. HERNANDEZ, ASSOCIATE JUSTICE, SANDIGANBAYAN, RESPONDENT.

D E C I S I O N

BRION, J.:

Before us is an administrative complaint filed by Alfonso V. Umali, Jr. against Sandiganbayan Associate Justice Jose R. Hernandez for grave misconduct and gross ignorance of the law.

Background Facts

Complainant Alfonso V. Umali, then the Provincial Administrator of Oriental Mindoro, was one of the accused in Criminal Case No. 23624 for violation of Sections 3(e) and (g) of Republic Act No. 3019 (the Anti-Graft and Corrupt Practices Act) before the Sandiganbayan.

In its decision[1] dated September 9, 2008, the Sandiganbayan (Fourth Division) denied the *motion to dismiss by way of a demurrer to evidence* filed by the accused Umali, Rodolfo Valencia, Pedrito Reyes, Jose Enriquez and Jose Leynes, and convicted them of the crime charged. Accordingly, it sentenced them to suffer the indeterminate penalty of six (6) years and one (1) month to ten (10) years, as well as perpetual disqualification from holding public office.

The Sandiganbayan eventually reconsidered this decision, and allowed the accused to present evidence.

In its decision dated April 20, 2015, the Sandiganbayan found Umali and two (2) others[2] guilty beyond reasonable doubt of violating "Section 3(e) in relation to 3(g)"[3] of R.A. No.

3019, and sentenced them to suffer the indeterminate penalty of six (6) years and one (1) month to ten (10) years.[4] This decision was penned by Justice Hernandez, and concurred in by Associate Justices Alex Quiroz and Maria Cristina Cornejo.

On May 4, 2015, Umali filed a motion for reconsideration assailing the Sandiganbayan's April 20, 2015 decision. He also filed a *motion for voluntary inhibition* of Justice Hernandez on May 28, 2015.

On June 2, 2015, Umali filed *a motion for leave to admit supplement to the motion for reconsideration*.[5]

Justice Hernandez denied, among others,[6] Umali's *motion for voluntary inhibition* in a resolution dated July 16, 2015.

The Complaint-Affidavit

In his *Complaint-Affidavit,* Umali alleged.that before the April 20, 2015 decision of the Sandiganbayan came out, Ruel Ricafort – who was the cousin of the wife of Justice Hernandez – approached his "camp." According to Umali, it was "relayed" to him that he needed to pay PI5 million if he wanted to be acquitted; and that it was a one-time, "take it or leave it" offer.

Umali also claimed that he caught the ire of Justice Hernandez when he refused to give in to the request of Justice Gregory Ong who wanted to seek the President's intervention in the administrative case he (Justice Ong) was facing in the Supreme Court. According to Umali, Justice Ong was Justice Hernandez's good friend, and that the former exercised ascendancy and influence over the latter.

Umali further alleged that Justice Hernandez showed manifest partiality in Criminal Case No. 26324 when he:

a. instructed the clerk of court not to allow the filing of a reply after the prosecution submitted its comment to the motion for reconsideration;
b. asked numerous loaded questions to the witnesses and 'lawyered' for the prosecution; and
c. declared, "You can always go to the Supreme Court" to Umali's counsels when they were explaining the motions they filed with the Sandiganbayan.

Finally, Umali maintained that the Sandiganbayan's judgment of conviction was an "unjust judgment motivated by ill will," and dictated by Justice Hernandez's partiality. Umali argued that his act of signing a voucher should not have been used as a basis to rule that he conspired with the other accused.

In the Court's resolution dated August 4, 2015, we required Justice Hernandez to file a Comment on the complaint.

Justice Hernandez's Comment

In his comment, Justice Hernandez countered that Umali's complaint contained "nothing more than bare allegations and surmises." He added that Umali's narration of the alleged extortion was lacking in details, such as the date, time, and place of the extortion try, as well as the circumstances surrounding Ricafort's supposed interaction with Umali's "camp." He additionally pointed out that Umali had no personal knowledge of the alleged attempted extortion.

Justice Hernandez also pointed out that Umali did not even attach Ricafort's affidavit in his complaint; he also did not name the person/s from his (Umali's) camp whom Ricafort allegedly approached.

Justice Hernandez also questioned why Umali did not immediately report the alleged extortion to the National Bureau of Investigation (*NBI*) or to the law enforcement agencies. He added that Umali waited for three months after the promulgation of his judgment of conviction to file a complaint.

Finally, Justice Hernandez maintained that the Sandiganbayan's judgment of conviction was a ruling of a collegial body. He added that the complaint was a collateral attack on the correctness of the Anti-Graft Court's decision.

THE COURT'S RULING

We **dismiss** the administrative complaint against Justice Hernandez for lack of merit.

We stress at the outset that in administrative proceedings, complainants have the burden of proving the allegations in their complaints by substantial evidence. While the Court will never tolerate or condone any conduct, act, or omission that would violate the norm of

public accountability or diminish the people's faith in the judiciary,[7] the quantum of proof necessary for a finding of guilt in administrative cases is substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[8]

As explained below, Umali failed to support by substantial proof any of the allegations in his complaint.

a. The alleged extortion attempt

Under Section 1, Rule 140 of the Rules of Court, as amended by A.M. 01-8-10-SC, proceedings for the discipline of Judges of regular and special courts and Justices of the Court of Appeals and the Sandiganbayan may be instituted *motu proprio* by the Supreme Court or upon a **verified complaint, supported by affidavits of persons who have personal knowledge of the facts alleged therein or by documents which may substantiate said allegations**, or upon an anonymous complaint, supported by public records of indubitable integrity.

The totality of Umali's accusation in his complaint-affidavit which claimed that Justice Hernandez tried to extort P15 million from him in exchange for his acquittal consisted of the following allegations:

> x x x x
>
> 5. Before the Decision dated 20 April 2015 came out convicting respondents in Criminal Case No. 23624, my camp was approached by a certain Mr. Ruel Ricafort, a person who was very close to Justice Hernandez and his wife. Indeed, it was clearly emphasized to me that Mr.
>
> Ricafort is a cousin of the wife of Justice Hernandez. It was further relayed that if I wanted to be acquitted, **all I needed to do was pay Php15,000,000.00 to Justice Hernandez.**
>
> x x x x
>
> 8. As mentioned, the most glaring misconduct of respondent Justice is his attempt to extort money from me which occurred sometime before the promulgation of the Decision dated 20 April 2015. Mr. Ricafort contacted

> someone from my camp and named their price of **FIFTEEN MILLION PESOS (P15M)** in exchange for my acquittal. He further stated (as it was relayed to me) that this is a "one-time offer", and that I should "take it or leave it." I was completely taken aback and immediately rejected it. I made sure that this (my rejection) was relayed to them. Sure enough, I was convicted thereafter. (Emphasis in the original)

These allegations showed that Umali did not have personal knowledge of the fact attested to, i.e., extortion attempt. As he himself alleged, the information was merely "relayed" to him. Simply put, Umali was relying in hearsay evidence to support his complaint. Not surprisingly, he did not provide any further details on the so-called extortion attempt in the complaint, such as the time and place of the incident; the identities of the persons from his camp who were approached by Ricarte; and the person who relayed to him the PI 5 million demand. Significantly, the complaint did not also include any affidavit from any person from Umali's 'camp' who witnessed the extortion try.

Clearly, Umali's complaint utterly lacked specifics for the Court to conclude – based on substantial evidence – that Justice Hernandez demanded PI5 million from Umali in exchange for the latter's acquittal.

The relaxation of the hearsay rule in disciplinary administrative proceedings against judges and justices where bribery proceedings are involved is not a novel thought in this Court; it has been advocated in the Separate Concurring Opinion of Justice Arturo D. Brion in the administrative case of Justice Ong before this Court. The Opinion essentially maintained that the Court could make a conclusion that bribery had taken place ***when the circumstances – including those derived from hearsay evidence – sufficiently prove its occurrence.*** It was emphasized that [t]o satisfy the substantial evidence requirement for administrative cases, hearsay evidence should necessarily be supplemented and corroborated by other evidence that are not hearsay.[9]

In the present case, however, **the hearsay allegations constituted the totality of Umali's evidence**. The records did not contain any other piece of evidence to supplement the hearsay evidence. As earlier stated, Umali did not even attach any affidavit to the complaint relating to or tending to support the alleged attempted extortion. Umali relied mainly on surmises and conjectures, and on the mere fact that the Sandiganbayan rulings penned by Justice Hernandez were adverse to him.

We additionally point out that the present administrative complaint was filed on July 13, 2015. Per Umali's allegation, the extortion attempt was made before April 20, 2015 – the date of the Sandiganbayan decision convicting him and two others of violating the provision of the Anti-Graft and Corrupt Practices Act. We are at a loss as to why Umali waited for the Sandiganbayan's conviction and the denial of his motions for reconsideration before he reported the attempted extortion; the time element suggests that Umali's filing depended on the outcome of the case. Surprisingly, Umali did not even mention the extortion attempt in his *Motion for Voluntary Inhibition and Reply (To Opposition to the Motion for Voluntary Inhibition of the Honorable Presiding Justice)* dated May 28, 2015 and June 8, 2015, respectively. Under these circumstances on record and in the absence of evidence to the contrary, the presumption that Justice Hernandez regularly performed his duties cannot but prevail.

b. No Manifest Partiality

Contrary to what Umali alleged, the records do not show that Justice Hernandez instructed the division clerk of court (DCC) not to give Umali a period of time to file a reply to the prosecution's comment on his (Umali's) motion for reconsideration. The records reveal that the DCC told Umali's lawyer that the court (Sandiganbayan) did not give him (DCC) instructions to allow the parties to file a reply, and that the counsel could just file a motion to admit the reply "for the Court to act." Umali, in fact, filed a reply to the prosecution's comment/opposition to his motion for reconsideration.

In any event, there was nothing in the Sandiganbayan Rules that gives Umali the right to file a reply to the prosecution's comment to his motion for reconsideration. The filing of a reply in order to comment on a motion for reconsideration is a matter subject to the Anti-Graft Court's sound discretion; its denial alone does not amount to bias or partiality.

We also find no sufficient basis to rule that Justice Hernandez exhibited manifest partiality when he stated, "*You can always go to the Supreme Court,*'" during the hearing of Umali's motions.

We point out that the exact utterance made by Justice Hernandez was, *"You still have the Supreme Court."* This remark was made in connection with Umali's motion for inhibition which was set for hearing on that day, and not on his motion for reconsideration. Umali's insinuation that the remark implied that he should no longer expect "any change of heart and mind" insofar as the judgment of conviction was concerned," was therefore misplaced.

There was nothing in this statement indicating that Justice Hernandez had already prejudged the case against Umali.

Similarly, we find unmeritorious Umali's allegation that Justice Hernandez lawyered for the prosecution when he "thoroughly confronted" defense witness Atty. Rafael Infantado, during cross-examination.

It is settled that [a] judge may properly intervene in the presentation of evidence to expedite and prevent unnecessary waste of time and clarify obscure and incomplete details in the course of the testimony of the witness or thereafter. Questions designed to clarify points and to elicit additional relevant evidence are not improper. Nonetheless, the judge should limit himself to clarificatory questions and this power should be sparingly and judiciously used. The rule is that the court should stay out of it as much as possible, neither interfering nor intervening in the conduct of the trial.[10]

In the present case, we initially point out that Umali's complaint did not faithfully reproduce the exchanges during the hearing on February 9, 2011, as reflected in the TSN. We find it reprehensible that while Umali was imputing bias on Justice Umali based on what transpired during the hearings, he did not accurately quote the TSN in his complaint.

At any rate, piecemeal citations of the exchanges during the February 9, 2011 Sandiganbayan (Fourth Division) hearing in Criminal Case No. 23624 are glaringly insufficient to establish' that Justice Hernandez "lawyered" for the prosecution. On the contrary, Justice Hernandez's questions were merely designed to clarify points and elicit additional information, particularly on whether the request of authority of then Governor Valencia from the *Sangguniang Panlalawigan* of Oriental Mindoro to enter into an agreement was included in the agenda. Notably, the Division's Chairman also asked clarificatory questions on this matter.

We also find unmeritorious Umali's insinuation that Justice Hernandez "blindly followed the orders" of Justice Gregory Ong because the latter was his good friend. Umali tried to impress upon the Court that Justice Hernandez – upon orders of Ong – convicted him of the crime charged because he did not help Justice Ong to convince President Aquino intervene in the administrative case he was then facing in this Court. We point out, however, that aside from his bare claims, Umali did not present any evidence to support these allegations.

We also find Umali's reference to *Jamsani-Rodriguez v. Ong*[11] to establish Justice Ong's ascendancy over Justice Hernandez to be misplaced. In this case, the Court admonished

Justice Hernandez for, among others, violating the Sandiganbayan's Revised Internal Rules. The Court, however, ruled out malice of the part of Justices Hernandez, and held that:

> As mere members of the Fourth Division, Justice Hernandez and Justice Ponferrada had no direction and control of how the proceedings of the Division were conducted. Direction and control were vested in Justice Ong, as the Chairman. Justice Hernandez and Justice Ponferrada simply relied without malice on the soundness and wisdom of Justice Ong's discretion as their Chairman, which reliance without malice lulled them into traveling the path of reluctance to halt Justice Ong from his irregular leadership. We hold that their liabilities ought to be much diminished by their lack of malice.[12]

Extrinsic evidence is required to establish bias, bad faith, malice, or corrupt purpose, in addition to the palpable error that may be inferred from the decision or order itself. Mere suspicion of partiality is not enough. There must be sufficient evidence to prove the same, as well as a manifest showing of bias and partiality stemming from an extrajudicial source or some other basis. A judge's conduct must be clearly indicative of arbitrariness and prejudice before it can be stigmatized as biased and partial.[13]

c. Judicial remedies available

An administrative complaint is not the remedy for every act of a judge deemed aberrant or irregular where a judicial remedy exists and is available.[14]

In the present case, one basis of Umali's administrative complaint against Justice Hernandez was the Sandiganbayan's ruling that he (Umali) had conspired with the other co-accused. This alleged error – pertaining to the exercise of Justice Hernandez's adjudicative functions – cannot be corrected through administrative proceedings, but through judicial remedies.

At any rate, we find that the charge of gross ignorance of the law based on what Umali perceived to be an erroneous conclusion of law has no legal basis. To constitute gross ignorance of the law, it is not enough that the subject decision, order, or actuation of a judge in the performance of his official duties is contrary to existing law and jurisprudence but, most importantly, **he must be moved by bad faith, fraud, dishonesty, or corruption**.[15] As earlier discussed, Umali utterly failed to substantiate his claim that

Justice Hernandez tried to extort P15 million from him in exchange for his acquittal.

In addition, the Sandiganbayan ruling was a collegial decision, with Justice Hernandez as the *ponente*, and Associate Justices Quiroz and Cornejo as the concurring magistrates. It bears stressing that in a collegial court, the members act on the basis of consensus or majority rule. Umali cannot impute what he perceived to be an erroneous conclusion of law to one specific Justice only.

We emphasize that this Court will not shirk from its responsibility of imposing discipline upon erring employees and members of the bench. At the same time, however, the Court should not hesitate to shield them from unfounded suits that only serve to disrupt rather-than promote the orderly administration of justice. This Court will not be the instrument to destroy the reputation of any member of the bench or any of its employees by pronouncing guilt on mere speculation.[16]

WHEREFORE, premises considered, we **DISMISS** the administrative complaint against Sandiganbayan Associate Justice Jose R. Hernandez for lack of merit.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-De Castro, Peralta, Del Castillo, Perez, Reyes, Perlas-Bernabe, Leonen, Jardeleza, and *Caguioa, JJ.*, concur.
Bersamin, J., please see concurring & dissenting opinion.
Mendoza, J., on leave.

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on February 23, 2016 a Decision/Resolution, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on March 18, 2016 at 10:25 a.m.

Very truly yours,

(SGD)
FELIPA G. BORLONGAN-ANAMA
Clerk of Court

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[1] Penned by Associate Justice Jose R. Hernandez, and concurred in by Associate Justices Gregory S. Ong and Samuel Martires, *rollo*, Annex "6," unnumbered pages.

[2] Namely Governor Rodolfo Valencia and Provincial Board Member Romualdo Bawasanta.

[3] *Rollo*, Annex " 1," unnumbered pages.

[4] The Sandiganbayan also imposed on them the penalty of loss of all retirement and gratuity benefits and perpetual disqualification from holding public office. It likewise ordered them to pay, jointly and severally, P2.5 million to the Province of Oriental Mindoro.

[5] The records showed that Umali also filed a Reply (To Opposition to the Motion for Voluntary Inhibition) on June 8, 2015.

[6] Justice Hernandez also denied the *Joint Motion for the Disqualification/Recusal or Inhibition of the Hon. Chairman Jose R. Hernandez* filed by accused Valencia and Bawasanta.

[7] *Dr. Cruz v. Judge Iturralde*, 450 Phil. 77, 88 (2003), citing *Sarmiento v. Salamat*, 364 SCRA 301-302, September 4, 2001.

[8] See *Ocampo v. Arcaya-Chua,* A.M. OCA I.P.I No. 07-2630-RTJ, April 23, 2010, 619 SCRA 59, 92, citing *Espanol v. Mupas*, A.M. No. MTJ-01-1348, November 11, 2004, 442 SCRA 13, 37-38.

[9] See Justice Brion's Separate Concurring Opinion. *Re- Allegations Made Under Oathat the Senate Blue Ribbon Committee Hearinfg Held on September 26, 2013 Against Associate Justice Gregory S. Ong, Sandiganbayan*, A.M. No. SB-14-21-J [Formerly A.M No. 13-10-06-SB], September 23, 2014.

[10] See *Dela Cruz (Concerned Citizens of Legaspi City) v. Judge Carretas*, 559 Phil. 518 (2007).

[11] A.M. No. 08-19-SB-J, August 24, 2010, 628 SCRA 626.

[12] Id. at 655-656.

[13] See En Banc's Unsigned Resolution in *Edgardo M. Rico v. Justice Edgardo T. Lloren*, A.M. OCA I.P.I No. 11-194-CA-J, January 17, 2012.

[14] See En Banc's Unsigned Resolution in Isidro Antonio Mirasol, et al. v. Justice Vicente L Yap, A.M. OCA IPI No. 06-95-CA-J, July 18, 2006.

[15] See *Martinez v. De Vera,* A.M. No. MTJ-08-1718, March 16, 2011, 645 SCRA 377 389-390 (emphasis ours; citations omitted).

[16] *Rivera v. Judge Mendoza,* 529 Phil. 600, 607 (2006).

CONCURRING & DISSENTING OPINION

BERSAMIN, *J.*:

I wish so much not having to write this separate opinion because I am most willing to join the inexorable result so compellingly justified by Justice Brion. However, my attention has been seized by the following passage in the main opinion of Justice Brion, to wit:

> The relaxation of the hearsay rule in disciplinary administrative proceedings against judges and justices where bribery proceedings are involved is not a novel thought in this Court; it has been advocated in the Separate Concurring Opinion of Justice Arturo D. Brion in the administrative case of Justice Ong before this Court. The Opinion essentially maintained that the Court could make a conclusion that bribery had taken place ***when the circumstances – including those derived from hearsay evidence – sufficiently prove its occurrence.*** It was emphasized that [t]o satisfy the substantial evidence requirement for administrative cases, hearsay evidence should necessarily be supplemented and corroborated by other evidence that are not hearsay.
>
> In the present case, however, **the hearsay allegations constituted the totality of Umali's evidence**. The records did not contain any other piece of evidence to supplement the hearsay evidence. As earlier stated, Umali did not

> even attach any affidavit to the complaint relating to or tending to support the alleged attempted extortion. Umali relied mainly on surmises and conjectures, and on the mere fact that the Sandiganbayan rulings penned by Justice Hernandez were adverse to him.

Through this separate opinion, I simply wish to comment on the foregoing passage lest I be misperceived as departing from the standard on the admission and use as evidence of *extrajudicial declarations* whose verity and accuracy are not within the personal knowledge of the declarant. I distinctly remember that I emphatically discoursed on the standard in my Concurring and Dissenting Opinion in *Re: Allegations Made Under Oath at the Senate Blue Ribbon Committee Hearing Held on September 26, 2013 Against Associate Justice Gregory S. Ong, Sandiganbayan,*[1] as follows:

> The evidence required in administrative cases is concededly only substantial; that is, the requirement of substantial evidence is satisfied although the evidence is not overwhelming, for as long as there is reasonable ground to believe that the person charged is guilty of the act complained of. **However, the substantial evidence rule should not be invoked to sanction the use in administrative proceedings of clearly inadmissible evidence. Although strict adherence to technical rules is not required in administrative proceedings, this lenity should not be considered a license to disregard fundamental evidentiary rules. The evidence presented must at least have a modicum of admissibility in order for it to have probative value. Not only must there be some evidence to support a finding or conclusion, but the evidence must be substantial. Substantial evidence is more than a mere scintilla; it means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. In my opinion, administrative proceedings should not be treated differently under pain of being perceived as arbitrary in our administrative adjudications.**
>
> The statements of Luy and Sula being relied upon were based not on the declarants' personal knowledge, but on statements made to them by Napoles. I find it very odd that the Majority would accord credence to such statements by Luy and Sula if they themselves did not personally acquire knowledge of such matters. I insist that elementary evidentiary rules must be observed even in

administrative proceedings.

A most basic rule is that a witness can only testify on matters that he or she knows of her personal knowledge. **This rule does not change even if the required standard be substantial evidence, preponderance of evidence, proof beyond reasonable doubt, or clear and convincing evidence.** The observations that the statements of Luy and Sula were made amidst the "challenging and difficult setting" of the Senate hearings, and that the witnesses were "candid, straightforward and categorical" during the administrative investigation did not excise the defect from them. **The concern of the hearsay rule is not the credibility of the witness presently testifying, but the veracity and competence of the extra judicial source of the witness's information.**

To be clear, personal knowledge is a substantive prerequisite for accepting testimonial evidence to establish the truth of a disputed fact. The Court amply explained this in *Patula v. People*:

> To elucidate why x x x hearsay evidence was unreliable and untrustworthy, and thus devoid of probative value, reference is made to Section 36 of Rule 130, *Rules of Court*, a rule that states that a witness can testify only to those facts that she knows of her personal knowledge; that is, which are derived from her own perception, except as otherwise provided in the *Rules of Court*. **The personal knowledge of a witness is a substantive prerequisite for accepting testimonial evidence that establishes the truth of a disputed fact. A witness bereft of personal knowledge of the disputed fact cannot be called upon for that purpose because her testimony derives its value not from the credit accorded to her as a witness presently testifying but from the veracity and competency of the extrajudicial source of her information.**
>
> In case a witness is permitted to testify based on what she has heard another person say about the facts in dispute, the person from whom the witness derived the information on the facts in dispute is not *in court* and *under oath* to be examined and cross-examined. The weight

of such testimony then depends not upon the veracity of the witness but upon the veracity of the other person giving the information to the witness without oath. The information cannot be tested because the declarant is not standing in court as a witness and cannot, therefore, be cross-examined.

It is apparent, too, that a person who relates a hearsay is not obliged to enter into any particular, to answer any question, to solve any difficulties, to reconcile any contradictions, to explain any obscurities, to remove any ambiguities; and that she entrenches herself in the simple assertion that she was told so, and leaves the burden entirely upon the dead or absent author. Thus, the rule against hearsay testimony rests mainly on the ground that there was no opportunity to cross-examine the declarant. The testimony may have been given under oath and before a court of justice, but if it is offered against a party who is afforded no opportunity to cross-examine the witness, it is hearsay just the same.

Moreover, the theory of the hearsay rule is that when a human utterance is offered as evidence of the truth of the fact asserted, the credit of the assertor becomes the basis of inference, and, therefore, the assertion can be received as evidence only when made on the witness stand, subject to the test of cross-examination. However, if an extrajudicial utterance is offered, not as an assertion to prove the matter asserted but without reference to the truth of the matter asserted, the hearsay rule does not apply. For example, in a slander case, if a prosecution witness testifies that he heard the accused say that the complainant was a thief, this testimony is admissible not to prove that the complainant was really a thief, but merely to show that the accused uttered those words. This kind of utterance is hearsay in character but is not legal hearsay. The distinction is, therefore, between (*a*) the fact that the statement was made, to which the hearsay rule does not apply, and (*b*) the truth of the facts asserted in the statement, to which the hearsay rule applies.

Section 36, Rule 130 of the *Rules of Court* is understandably not the only rule that explains why testimony that is hearsay should be

excluded from consideration. Excluding hearsay also aims to preserve the right of the opposing party to cross-examine the original declarant claiming to have a direct knowledge of the transaction or occurrence. If hearsay is allowed, the right stands to be denied because the declarant is not in court. It is then to be stressed that the right to cross-examine the adverse party's witness, being the only means of testing the credibility of witnesses and their testimonies, is essential to the administration of justice.

To address the problem of controlling inadmissible hearsay as evidence to establish the truth in a dispute while also safeguarding a party's right to cross-examine her adversary's witness, the *Rules of Court* offers two solutions. The first solution is to require that all the witnesses in a judicial trial or hearing be examined only in court *under oath or affirmation*. Section 1, Rule 132 of the *Rules of Court* formalizes this solution, *viz*:

> Section 1. *Examination to be done in open court.* -The 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, (1a)

The second solution is to require that *all* witnesses be *subject to the cross-examination by the adverse party*. Section 6, Rule 132 of the Rules of Court ensures this solution thusly:

> Section 6. *Cross-examination; its purpose and extent.* – Upon the termination of the direct examination, the witness may be cross-examined by the adverse party as to any matters stated in the direct examination, or connected therewith, with sufficient fullness and freedom to test his accuracy and truthfulness and freedom from interest or bias, or the reverse, and to elicit all important facts bearing

upon the issue. (8a)

> Although the second solution traces its existence to a Constitutional precept relevant to criminal cases, *i.e.*, Section 14, (2), Article III, of the 1987 Constitution, which guarantees that: "*all criminal prosecutions, the accused shall xxx enjoy the right xxx to meet the witnesses face to face xxx,*" the rule requiring the cross-examination by the adverse party equally applies to non-criminal proceedings.
>
> **We thus stress that the rule excluding hearsay as evidence is based upon serious concerns about the trustworthiness and reliability of hearsay evidence due to its not being given under oath or solemn affirmation and due to its not being subjected to cross-examination by the opposing counsel to test the perception, memory, veracity and articulateness of the out-of-court declarant or actor upon whose reliability the worth of the out-of-court statement depends**.[2]

In my humble view, the standard should stand to guide the courts in the admission and use of extrajudicial declarations of witnesses who are bereft of the personal competence to know the truth of the facts declared.

NONETHELESS, I concur in the result.

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[1] A.M. No. SB-14-21-J, September 23, 2014, 736 SCRA 12, (*per curiam*).

[2] Id. at 144-149 (bold underscoring is part of the original text).

Date created: November 09, 2017