EN BANC

G.R. No. 264029 — JOENAR VARGAS AGRAVANTE, *petitioner*, ***versus*** **COMMISSION ON ELECTIONS, MUNICIPAL TRIAL COURT OF GOA, CAMARINES SUR, and JOSEPH AMATA BLANCE,** *respondents*.

Promulgated:

August 8, 2023

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CONCURRING OPINION

CAGUIOA, *J.*:

I fully concur in the *ponencia*. I write simply to add to the discussion on the importance of formal offer of evidence in relation to the opposing party's right to due process.

Briefly, the facts are:

> Joseph Amata Blance (Blance) and Joenar Vargas Agravante (Agravante) were candidates for Punong Barangay of Matacla, Goa, Camarines Sur in the May 14, 2018 Barangay and Sangguniang Kabataan Elections (BSKE). Agravante won, with 789 votes against Blance's 786.
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> Blance filed an election protest with the Municipal Trial Court (MTC), which granted the same, after excluding from the official count several ballots which were not formally offered in evidence by Agravante. The exclusion was pursuant to Administrative Matter (A.M.) No. 07-4-15-SC[1] which mandates that no evidence shall be considered by the court unless the same has been formally offered. After revision of the ballots, the MTC held that Blance won by five votes over Agravante, the final count being 789 to 784 votes in Blance's favor.
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> Agravante appealed to the Commission on Elections (COMELEC) First Division, which dismissed the same outright on technical grounds.[2] The COMELEC *en banc* denied Agravante's motion for reconsideration.

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1 Rules of Procedure in Election Contests before the Courts involving Elective Municipal and Barangay Officials, dated May 3, 2007.

2 Agravante failed to submit, along with his *Brief*, an affidavit of mailing, the registry receipt as proof of service, and a written explanation as to why service by mail was resorted to in accordance with Sections 11 and 13, Rule 13 of the Rules of Court in relation to Section 3, Rule 12 of the COMELEC Rules of Procedure.

In the present Petition, Agravante argues that the MTC erred in excluding the ballots which he failed to formally offer in evidence.

I agree with the *ponencia*'s rejection of this submission.

In excluding these ballots, the MTC was merely applying the clear prohibition upon trial courts against considering evidence not formally offered under Rule 13, Section 2 of A.M. No. 07-4-15-SC, thus:

> **SECTION 2.** ***Offer of evidence.*** **— The court shall consider no evidence that has not been formally offered.** Offer of evidence shall be done on the last day of hearing allowed for each party after the presentation of the last witness. **The opposing party shall be required to immediately interpose objections thereto.** The court shall rule on the offer of evidence in open court. However, the court may, at its discretion, allow the party to make an offer of evidence in writing, which shall be submitted within three days. If the court rejects any evidence offered, the party may make a tender of the excluded evidence. (Emphasis supplied)

The formal offer of evidence is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Formal offer enables the trial judge to know the purpose or purposes for which the proponent is presenting the evidence and allows the opposing party to interpose his or her defenses.[3] In fact, the parties are *required* to interpose objections immediately after the offer of evidence so that the same can be considered by the court in ruling thereon.

Indeed, the rule on formal offer of evidence is not a trivial matter as it is said to be the very basis of due process.[4] To be sure, the respondent, or defendant, or accused, is called upon to craft his or her defense and present evidence **only against evidence that has been offered and admitted**. Therefore, evidence not formally offered has no probative value and must be excluded by the court.[5] **For courts to consider a party's evidence that was not formally offered during trial is to deprive the other party of his or her fundamental right to due process**, thus:

> **The rule on formal offer of evidence is intertwined with the constitutional guarantee of due process. Parties must be given the opportunity to review the evidence submitted against them and take the necessary actions to secure their case.** Hence, any document or object that was marked for identification is not evidence unless it was "formally offered and the opposing counsel [was] given an opportunity to object to it or cross-examine the witness called upon to prove or identify it."
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> This court explained further the reason for the rule:

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3 A.M. No. 07-4-15-SC, Rule 13, Sec. 2.

4 *GG & G Distributors, Inc. v. Calangi*, G.R. No. 239499, September 12, 2018 (Unsigned Resolution), citing *Heirs of Pedro Pasag v. Spouses Parocha*, 550 Phil. 571, 575 and 579 (2007).

5 *Republic v. Spouses Gimenez*, 776 Phil. 233, 257 (2016).

> The Rules of Court provides that "the court shall consider no evidence which has not been formally offered." **A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. *On the other hand, this allows opposing parties to examine the evidence and object to its admissibility.* Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court...**
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> **To consider a party's evidence which was not formally offered during trial would deprive the other party of due process. Evidence not formally offered has no probative value and must be excluded by the court.**[6] (Emphasis supplied).

The Rules on Evidence, which applies suppletorily in election cases pursuant to A.M. No. 07-4-15-SC,[7] further provide for the procedures in presenting documentary evidence, as follows: (1) the document should be authenticated and proved in the manner provided in the Rules of Court; *(2) the document should be identified and marked for identification; and (3) it should be formally offered in evidence to the court and shown to the opposing party so that the latter may have an opportunity to object thereon.*[8] A document is identified to ensure that the document being presented is the same one referred to by the witness in his or her testimony[9] and it is then marked to facilitate identification.[10]

Another key point to consider is that during trial proper, certain documents that are marked and identified are never offered in evidence. In *Interpacific Transit, Inc. v. Aviles*,[11] the Court correctly made a distinction between the identification of documentary evidence and its formal offer as an exhibit, *viz.*:

> It is instructive at this point to make a distinction between *identification* of documentary evidence and its *formal offer* as an exhibit. The first is done in the course of the trial and is accompanied by the marking of the evidence as an exhibit. The second is done only when the party rests its case and *not before*. **The mere fact that a particular document is identified and marked as an exhibit does not mean it will be or has been offered as part of the evidence of the party. The party may decide to formally offer it if it believes this will advance its cause, and then again it may decide not to do so at all. In the latter event,**

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6 *Id.* at 256–257.

7 SECTION 2. *Application of the Rules of Court.* — The Rules of Court shall apply by analogy or in a suppletory character, and whenever practicable and convenient.

8 *Chua v. Court of Appeals*, 283 Phil. 253, 260 (1992).

9 O.M. Herrera, REMEDIAL LAW VOL. VI: REVISED RULES ON EVIDENCE (1999 Edition), p. 315.

10 *Id.*

11 264 Phil. 753 (1990).

> **the trial court is, under Rule 132, Section 35, not authorized to consider it.**[12] (Emphasis and underscoring supplied)

Simply stated, the identification of documentary evidence is done in court during the trial and is accompanied by the marking of the evidence as an exhibit, whereas the formal offer (stating the purpose) is made only after a party rests his or her case, not before. Any evidence that a party desires to submit for the consideration of the court must be formally offered; otherwise, it is excluded and rejected. **This means that the opposing party need not meet such excluded evidence and can simply craft defenses on the basis of what was formally offered.**

Moreover, the requirement of formal offer of evidence facilitates review on appeal because the appellate court or tribunal will not be required to review evidence not previously scrutinized by the trial court.[13] Indeed, this Court has ruled in a catena of cases[14] that evidence not formally offered during the trial cannot be used for or against a party-litigant, nor may such evidence be taken into account on appeal.

On this note, it is well to point out that offer of evidence in election protest cases is made orally after the presentation of the last witness, at which time the opposing party is then required to immediately interpose objections. The trial court may, however, allow the parties to make a written formal offer of evidence.[15] In any case, whether the formal offer is made in writing or orally, the same will still be made part of the records that will be available for review on appeal.

Agravante invokes the 1958 case of *Reforma v. De Luna*[16] where the Court found the lower court to have erred in not examining certain ballots for the sole reason that they were not formally offered. As the *ponencia* succinctly rules, *Reforma* cannot apply as it was decided prior to A.M. No. 07-4-15-SC, and under the old election law which did not provide for specific procedures in disposing of election cases. In contrast, the present case is being decided under A.M. No. 07-4-15-SC which categorically proscribes the consideration of evidence not formally offered.

This proscription under the rules of procedure has been repeatedly affirmed in a long line of cases. In fact, less than a year after *Vda. de Oñate v. Court of Appeals*[17] (1995) was decided, the Court held in *Candido v.*

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12 *Id.* at 759.

13 *Heirs of Pasag v. Spouses Parocha*, *supra* note 4, at 579.

14 *Spouses De Guzman, Jr. v. Court of Appeals*, 782 Phil. 71, 89 (2016); *CIR v. United Salvage and Towage (Phils.) Inc.*, 738 Phil. 335, 343–346 (2014); *Aludos v. Suerte*, 688 Phil. 64, 76 (2012); *People v. Villanueva*, 644 Phil. 175, 188–192 (2010); *Heirs of Cruz-Zamora v. Multiwood International, Inc.*, 596 Phil. 150, 159 (2009); *Spouses Tan v. Republic*, 593 Phil. 493, 505 (2008); *Villaluz v. Ligon*, 505 Phil. 572, 588 (2005); *Spouses Gomez v. Duyan*, 493 Phil. 819, 830 (2005); *Spouses Ong v. Court of Appeals*, 361 Phil. 338, 343 (1999).

15 A.M. No. 07-4-15-SC, Rule 13, Sec. 2.

16 104 Phil 278 (1958).

17 320 Phil. 344 (1995).

Court of Appeals[18] (1996) (*Candido*) that it is settled that courts will only consider as evidence that which has been formally offered.[19] Thus, in *Candido*, the trial court as well as the appellate court correctly disregarded the documents which were not formally offered as they cannot be considered as evidence. The Court discussed further that if a party-litigant neglected to offer the documents in evidence, however vital they may be, he or she only has himself or herself to blame, not the opponent who was not even given a chance to object as the documents were never offered in evidence.

The strict rule on formal offer of evidence was also applied in the subsequent cases of *Spouses Ong v. Court of Appeals*[20] (1999), *Ala-Martin v. Sultan*[21] (2001), *Spouses Gomez v. Duyan*[22] (2005), *Villaluz v. Ligon*[23] (2005), *Far East Bank & Trust Co. v. CIR*[24] (2006), *Heirs of Pasag v. Spouses Parocha*[25] (2007), *Spouses Tan v. Republic*[26] (2008), *Heirs of Cruz-Zamora v. Multiwood International, Inc.*[27] (2009), and *Aludos v. Suerte*[28] (2012).

Then, in the 2014 case of *CIR v. United Salvage and Towage (Phils.), Inc.*,[29] the Court discussed the necessity of the formal offer of evidence in a court of record (such as the Court of Tax Appeals). It held that the exceptions to the rule that only evidence formally offered may be considered should be applied with extreme caution, explaining the reason for the strict application of the rule on formal offer of evidence:

> ... A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. On the other hand, this allows opposing parties to examine the evidence and object to its admissibility. Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court.
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> Strict adherence to the said rule is not a trivial matter. The Court in *Constantino v. Court of Appeals* ruled that the formal offer of one's evidence is deemed waived after failing to submit it within a considerable

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18 323 Phil. 95 (1996).
19 *Id.* at 99.
20 *Supra* note 14.
21 418 Phil. 597 (2001).
22 *Supra* note 14.
23 *Supra* note 14.
24 533 Phil. 386 (2006).
25 *Supra note* 4.
26 *Supra* note 14.
27 *Supra* note 14.
28 *Supra* note 14.
29 *Supra* note 14. *See also People v. Gabatbat*, G.R. No. 246948, July 5, 2021, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67923>; *Heirs of Pasag v. Spouses Parocha, supra* note 4; *Far East Bank & Trust Company v. Commissioner of Internal Revenue, supra* note 24; *Ala-Martin v. Sultan, supra* note 21, citing *Sps. Ong v. Court of Appeals, supra* note 14, which further cited *Candido v. Court of Appeals, supra* note 18; *Republic v. Sandiganbayan*, 325 Phil. 762, 783–784 (1996); *People v. Peralta*, 307 Phil. 231, 237 (1994); *Vda. De Alvarez v. Court of Appeals*, 301 Phil. 316, 325 (1994); and *People v. Cariño, et al.*, 248 Phil. 105, 112 (1988).

> period of time. It explained that the court cannot admit an offer of evidence made after a lapse of three (3) months because to do so would "condone an inexcusable laxity if not non-compliance with a court order which, in effect, would encourage needless delays and derail the speedy administration of justice."
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> Applying the aforementioned principle in this case, we find that the trial court had reasonable ground to consider that petitioners had waived their right to make a formal offer of documentary or object evidence. Despite several extensions of time to make their formal offer, petitioners failed to comply with their commitment and allowed almost five months to lapse before finally submitting it. Petitioners' failure to comply with the rule on admissibility of evidence is anathema to the efficient, effective, and expeditious dispensation of justice.[30]

Still further, in *Spouses De Guzman, Jr. v. Court of Appeals*[31] (2016) and in the recent case of *People v. Gabatbat*[32] (2021), the Court also applied the rule that a document, or any article for that matter, is not evidence when it is not formally offered.

In light of the foregoing, I vote to dismiss the Petition.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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30 *Heirs of Pasag v. Spouses Parocha*, *supra* note 4, at 578–579, cited in *CIR v. United Salvage and Towage (Phils.), Inc.*, *supra* note 14, at 346.

31 *Supra* note 14.

32 *Supra* note 29.