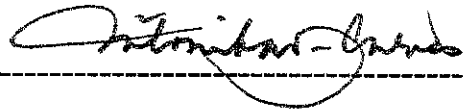


EN BANC

G.R. No. 236118 (*ACT Teachers Rep. Antonio Tinio, Bayan Muna Rep. Party-List Rep. Carlos Isagani Zarate, and Anakpawis Rep. Party-List Ariel "Ka Ayik" Casilao, petitioners vs. President Rodrigo Roa Duterte, House of Representatives Speaker Pantaleon Alvarez, Deputy Speaker Raneo Abu, Majority Leader Rodolfo Fariñas, and Deputy Majority Leader Rep. Arthur Defensor, Jr., respondents*).

G.R. No. 236295 (*Laban Konsyumer, Inc. and Atty. Victorio Mario A. Dimagiba, petitioners vs. Executive Secretary Salvador C. Medialdea, Department of Finance Secretary Carlos G. Dominguez III, Bureau of Internal Revenue Commissioner Caesar R. Dulay, House Speaker Pantaleon D. Alvarez in representation of the House of Representatives, and Senate President Aquilino D. Pimentel III in representation of the Senate, respondents*).

Promulgated: January 24, 2023



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SEPARATE CONCURRING OPINION

GESMUNDO, C.J.:

I concur with the well-written *ponencia* of Justice Japar B. Dimaampao in these consolidated petitions. I respectfully write to share my point of view on the evidentiary classification of the livestream video recording sanctioned by the Internal Rules of Procedure (*Internal Rules*) of the House of Representatives (*House*) in Sections 148 and 149, Rule XXII thereof.

During the deliberations on this case, a position was advanced that the House's livestream video recording is a public document under Sec. 19,¹ Rule 132 of the 2019 Revised Rules on Evidence. In particular, it was

¹ Section 19. *Classes of documents.* – For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

- (a) The written official acts, or records of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;
- (b) Documents acknowledged before a notary public except last wills and testaments;
- (c) Documents that are considered public documents under treaties and conventions which are in force between the Philippines and the country of source; and
- (d) Public records, kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private.



expressed that such livestream video recording, while being a public document, does not fall within the category of an entry into a public record and, thus, only carries the presumption of due execution and of its date of issuance.²

Preliminarily, it must be stated that the instant petitions may not be the appropriate case for the determination of the evidentiary classification of such livestream video recording of the House. At best, **such issue may be referred to the appropriate committee on rules for review and recommendation.** Further, to my mind, the *ponencia*'s discussion, quoted below, already effectively and sufficiently explains why the video recording submitted by petitioners cannot be considered by the Court:

Albeit sanctioned by the Internal Rules of Procedure of the House, the video recording described therein neither serves the same purpose as the Congressional Journals nor does it have a binding effect upon this Court, unlike the aforementioned Legislative Documents. At the risk of belaboring the point, the Journal is required to be kept as a record of Congress' proceedings by no less than Section 16(4), Article VI of the Constitution earlier quoted. This is precisely why such document is required to contain a detailed written account of the events that transpired on a particular session, *from the call to order initiated by the Speaker until the adjournment thereof.* Notably, the correctness of the entries in the Journal, such as the presence of a quorum and the ratification by the majority of a resolution, is required to be certified by none other than the Secretary General. The foregoing considerations thus explain why the Journal has been historically considered as binding on the Court with respect to the events chronicled therein.

All the same, even if the Court examines the probative value of petitioners' evidence independent of the Congressional Journal, the above conclusion would remain unchanged in view of the insufficiency and inherent limitations of the evidence presented by petitioners.

It does not escape the attention of the Court that the video recording merely shows a specific area of the session hall during the 13 December 2017 proceedings. Ostensibly absent from the frame captured by the video is the rest of the hall, and the activities being conducted therein. If at all, the video recording, unlike Journal No. 48, tends to prove only the specific acts and incidents which transpired during the proceedings that were captured thereby, such as the fact that a motion for ratification of the TRAIN BCC Report was indeed made or that someone from the floor made a remark regarding the existence of a quorum during such ratification. These limitations blow to smithereens petitioners' avowed accuracy of the video recording with respect to the actual events

² Section 23. *Public documents as evidence.* – Documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.

that transpired on the night of 13 December 2017. Under the Rules on Electronic Evidence, the Court may consider any factor which affects the accuracy or integrity of the electronic data message in determining its evidentiary weight.

In the same vein, the video recording brings to light the undeniable truth that there was no significant difference as to the number of participants as shown during the start of the proceedings, when the quorum was unquestioned, on one hand, and the portion of the proceedings where the quorum was supposedly lost, upon the other. In sooth, the video reveals a substantial number of unoccupied and empty seats in the session hall *not only at the end of the video, but also during the beginning of the proceedings*. In actual fact, one of the speakers at the start of the session is none other than petitioner Antonio Tinio himself. It therefore defies logic that petitioner Tinio seemed to recognize the House's quorum to tackle his business but reject the same with regard to the ratification of the TRAIN BCC Report.³

Accordingly, there is no need for the Court to go into the evidentiary classification of the livestream video recording of the House.

Nonetheless, for the sake of addressing the position that the House's livestream video recording is a public document under the 2019 Revised Rules on Evidence, I write this concurring opinion.

It is my humble view that resort to the general rules on evidence is not proper.

The Rules on Electronic Evidence⁴ provides for its scope in Sec. 1, Rule 1 thereof: “[u]nless otherwise provided herein, these Rules shall **apply whenever an electronic document or electronic data message, as defined in Rule 2 hereof, is offered or used in evidence.**”⁵

Sec. 1, Rule 2 of the Rules on Electronic Evidence defines both an “electronic message” and an “electronic document”:

x x x x

(g) “Electronic data message” refers to information generated, sent, received or stored by electronic, optical or similar means.

³ Ponencia, pp. 34-36.

⁴ A.M. No. 01-7-01-SC, August 1, 2001.

⁵ Emphasis supplied.

(h) “Electronic document” refers to information or the representation of information, data, figures, symbols or other modes of written expression, described or however represented, by which a right is established or an obligation extinguished, or by which a fact may be proved and affirmed, which is received, recorded, transmitted, stored, processed, retrieved or produced electronically. It includes digitally signed documents and any print-out or output, readable by sight or other means, which accurately reflects the electronic data message or electronic document. For purposes of these Rules, the term “electronic document” may be used interchangeably with “electronic data message”.

Plainly, a livestream video recording, whether taken by a private individual or the government itself, properly falls within the definition of an electronic document. A livestream video recording is a representation of information, data, figures, symbols, or other modes of written expression by which a fact may be proved and affirmed, and it is received, recorded, transmitted, stored, processed, retrieved, or produced electronically.

Since a livestream video recording falls within the definition of an electronic document, it is within the ambit of the Rules on Electronic Evidence. Resort to the general rules on evidence is improper since the special rules on electronic evidence covers the subject video recording within its scope. After all, it is only in “matters not specifically covered by these Rules [on Electronic Evidence that] the Rules of Court and pertinent provisions of statutes containing rules on evidence shall apply.”⁶ Further, “it is a canon of statutory construction that a special law prevails over a general law—regardless of their dates of passage—and the special is to be considered as remaining an exception to the general.”⁷

The fact that the livestream video recording subject of the instant consolidated petitions was documented by the House pursuant to its Internal Rules is of no matter since the Rules on Electronic Evidence makes no distinction between those taken by private individuals and those taken by the government itself. *Where the law does not distinguish, we must not distinguish.*

On this score, Sec. 1, Rule 11 of the Rules on Electronic Evidence provides as follows:

Section 1. *Audio, video and similar evidence.* — Audio, photographic and video evidence of events, acts or transactions shall be admissible provided it shall be shown, presented or displayed to the court and shall be identified, explained or authenticated by the person who made

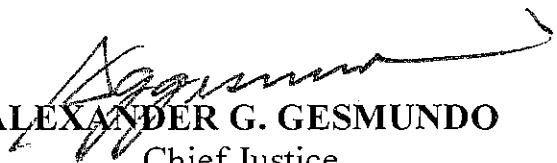
⁶ Rules on Electronic Evidence, Rule 1, Sec. 3.

⁷ *Lopez, Jr. v. Civil Service Commission*, 273 Phil. 147, 152 (1991).

the recording or by some other person competent to testify on the accuracy thereof.

In the instant case, the livestream video recording presented by petitioners has not been identified, explained, or authenticated by the person who made the recording or by any other person competent to testify on its accuracy. Thus, it is not admissible into evidence.

WHEREFORE, I vote to **DENY** the petitions.



ALEXANDER G. GESMUNDO
Chief Justice