

REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY

SPECIAL THIRD DIVISION

PEOPLE OF THE
PHILIPPINES,

Plaintiff,

Criminal Case No. SB-16-
CRM-0127

For: Grave Threats (Article 282
par. 2 of the Revised Penal Code)

- versus -

Present:


JUVENAL
AZURIN,

BLANQUERA

Accused.

CABOTAJE-TANG, P.J.,
Chairperson,
FERNANDEZ, J. and
ARCEGA,¹ J.

Promulgated:

DECEMBER 21, 2016 

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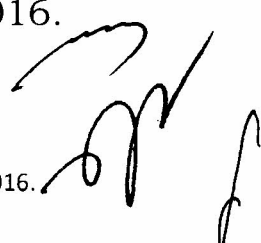
RESOLUTION

CABOTAJE-TANG, P.J.:

For resolution is accused Juvenal Blanquera Azurin's
*Motion to Dismiss*² dated October 20, 2016.

¹ As per Administrative Order No. 260-2016 dated September 1, 2016.

² pp. 120-123, Record



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In his *motion*, accused-movant Azurin prays that the case against him be dismissed with prejudice on the ground that the prosecution can no longer establish his guilt beyond reasonable doubt without the active participation of the private complainant. He avers that he and private complainant Jaime J. Clave have reconciled, as in fact, Clave had executed an *affidavit of desistance*³ on August 26, 2016 before Assistant City Prosecutor Esman C. Lara.

The prosecution filed its *Comment/Opposition*⁴ to the accused movant's *motion* on October 28, 2016. It contends that an affidavit of desistance is not a ground for the dismissal of a criminal action, once it has been instituted in court.⁵ Citing the case of ***People v. Dimaano***,⁶ the prosecution argues that the Supreme Court had ruled that a private complainant loses his right or absolute privilege to decide whether the criminal charge should proceed, since the case was already filed in court.

Also, the prosecution invokes the case of ***People v. Libon***⁷ wherein the Supreme Court held that courts still have the discretion to disregard an *affidavit of desistance* executed by the offended party after an *Information* has been filed, since such affidavit is not binding on the court.⁸ The prosecution further submits that the aforesaid *affidavit of desistance* does not mention any exculpatory ground that would negate the criminal liability of the accused.⁹

The Court finds the present *motion* of the accused unmeritorious.

Jurisprudence abounds holding that an *affidavit of desistance* is not a ground for the dismissal of an action after

³ p. 123, Record

⁴ pp. 125-128, Record

⁵ p. 125, Record

⁶ 469 SCRA 647 (2005)

⁷ 358 SCRA 152 (2001)

⁸ p. 126, Record

⁹ p. 126, Record

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such action has been instituted in court.¹⁰ Also, it is settled that once a complaint or information is filed in court, any disposition of the case, whether as to its dismissal or the conviction or the acquittal of the accused, rests on the sound discretion of the court.¹¹

Likewise, it has been ruled that courts must not attach persuasive value to a desistance especially when it was executed as an afterthought.¹² In ***People v. Estibal***,¹³ the Supreme Court enunciated:

As a rule, a recantation or an affidavit of desistance is viewed with suspicion and reservation. Jurisprudence has invariably regarded such affidavit as exceedingly unreliable, because it can easily be secured from a poor and ignorant witness, usually through intimidation or for monetary consideration. Moreover, there is always the probability that it would later on be repudiated, and criminal prosecution would thus be interminable.¹⁴

Here, the *affidavit of desistance* of Jaime J. Clave was executed after the *Information* against Juvenal Azurin was filed before the Court. Obviously, its execution is an afterthought; hence, it is devoid of any enervating impact to the present case.

Indeed, the High Tribunal had consistently ruled that after an action has been filed in court, the private complainant had lost the right or absolute privilege to decide whether the charge should proceed since the case had already reached the court and must therefore continue to be heard by it.¹⁵

Furthermore, the crime of *grave threats* is not considered as a *private crime* or one which cannot be prosecuted except

¹⁰ ***People v. Salazar*** 634 SCRA 307 (2010) See also ***Sta. Catalina v. People*** 571 SCRA 112 (2008) ***Spouses Cabico v. Judge Querijero***, 522 SCRA 300 (2007), ***People v. Dimaano***, 469 SCRA 647 (2005)

¹¹ ***Mendoza v. People & Juno Cars***, 722 SCRA 674 (2014)

¹² ***Sta. Catalina v. People***, 571 SCRA 112 (2008)

¹³ 743 SCRA 215 (2014)

¹⁴ p. 233, ***People v. Estibal***, 743 SCRA 215 (2014)

¹⁵ ***People v. Salazar***, 634 SCRA 307 (2010), See also ***People v. Dimaano***, 469 SCRA 647 (2005)

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upon a complaint filed by the aggrieved party. In fact, pardon in the so-called *private crimes*, is not a mode extinguishing criminal liability. It merely bars criminal prosecution.

Finally, as aptly pointed out by the prosecution, the private complainant's *affidavit of desistance* cannot equate to the dismissal of the criminal case against accused Azurin since an affidavit of desistance is not one of the modes of extinguishing criminal liability.¹⁶

WHEREFORE, accused-movant Juvenal Blaquera Azurin's *Motion to Dismiss* dated October 20, 2016 is DENIED for utter lack of merit.

SO ORDERED.


Quezon City, Metro Manila



AMPARO M. CABOTAJE-TANG

Presiding Justice
Chairperson

WE CONCUR:



SARAH JANE T. FERNANDEZ

Associate Justice



MA. THERESA V. MENDOZA-ARCEGA

Associate Justice

¹⁶ Amurao, M. (2013). *Commentaries on Criminal Law, Book One*, p. 1081