



Republic of the Philippines  
*Sandiganbayan*  
Quezon City  
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**SEVENTH DIVISION**

*MINUTES of the proceedings held on 22 June 2017.*

*Present:*

*Hon. ALEXANDER G. GESMUNDO ----- Chairperson*  
*Hon. MA. THERESA DOLORES C. GOMEZ-ESTOESTA --- Member*  
*Hon. ZALDY V. TRESPESES----- Member*

*The following resolution was adopted:*

***Crim. Case No. SB-11-CRM-0205 to 0208 - People vs. TOMAS N. JOSON III, ET AL.,***

This resolves the following:

1. Accused Tomas N. Joson III's "MOTION FOR LEAVE TO FILE DEMURRER TO EVIDENCE" dated June 6, 2017;<sup>1</sup>
2. Accused Amelia Gamilla's "MOTION FOR LEAVE TO FILE DEMURRER TO EVIDENCE" dated June 9, 2017;<sup>2</sup>
3. Accused Eduardo Basilio Joson's "MOTION FOR LEAVE TO FILE DEMURRER TO EVIDENCE" dated June 13, 2017;<sup>3</sup> and
4. The prosecution's "CONSOLIDATED COMMENT and/or OPPOSITION (Motion for Leave to File Demurrer to Evidence filed by all accused)" dated June 19, 2017.<sup>4</sup>

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For resolution are the Motions for Leave to File Demurrer to Evidence separately filed by accused Tomas N. Joson III (Joson), Amelia Gamilla (Gamilla), and Eduardo Basilio Joson (Eduardo Joson), as well as the prosecution's Consolidated Comment/Opposition.

As to the timeliness of the filing of the Motions for Leave, accused Gamilla and Eduardo Joson admitted that they received, through their respective counsels, the Resolution of the Court on the prosecution's formal offer of evidence on 30 May 2017.<sup>5</sup> However, they filed their respective

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<sup>1</sup> *Rollo*, Vol. 4, pp. 45-54.

<sup>2</sup> *Id.* at pp. 55-59.

<sup>3</sup> *Id.* at pp. 60-67.

<sup>4</sup> *Id.* at pp. 81-85.

<sup>5</sup> *Id.* at pp. 55, 60.

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motions for leave only on 13 June 2017 or 14 days thereafter.<sup>6</sup> The counsel for accused Gamilla reasoned that he was in another province, which was why he was unable to immediately file said motion.<sup>7</sup> As for accused Joson, his counsel admitted that despite receiving the Resolution on the prosecution's Consolidated Formal Offer of Evidence on 30 May 2017, it was through sheer inadvertence that the files were turned over him to for proper action only on 9 June 2017.<sup>8</sup>

Sec. 23, Rule 119 of the Revised Rules on Criminal Procedure provides that:

Section 23. Demurrer to evidence. — After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.

If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.

*The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case.* The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.

If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.

The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by *certiorari* before judgment. (**Emphasis added**)

Clearly, the motions for leave of accused Gamilla and Eduardo Joson were filed beyond the reglementary period provided under the Rules of Court.

With regard to accused Joson, he anchored his motion for leave<sup>9</sup> on the ground that the pieces of evidence presented by the prosecution are

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<sup>6</sup> *Rollo*, Vol. 4, pp. 55, 60.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at pp. 45-54.

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insufficient to establish the elements of Sec. 3 (e) and (g) of Republic Act No. 3019.

In its Consolidated Comment/Opposition,<sup>10</sup> the prosecution counters that the accused in these cases were public officers at the time material to the Information. The prosecution further asserts that the rest of the elements of the offenses charged were satisfied by the pieces of evidence they presented which, if uncontroverted, are sufficient to establish the guilt of all the accused beyond reasonable doubt.

However, after passing upon the entirety of the evidence, testimonial and documentary, presented by the prosecution *vis-à-vis* the elements of the offenses charged in the Informations, the Court is not inclined to grant leave to file Demurrer to Evidence.

**WHEREFORE**, premises considered, the Motions for Leave to File Demurrer to Evidence filed by accused Tomas N. Joson III, Amelia Gamilla, and Eduardo Basilio Joson are **DENIED**.

The accused-movants, however, are not precluded from filing their Demurrer to Evidence without leave of court within a non-extendible period of ten (10) days from receipt hereof, pursuant to Sec. 23, Rule 119 of the Revised Rules of Criminal Procedure and subject to the condition provided under paragraph 2 thereof.

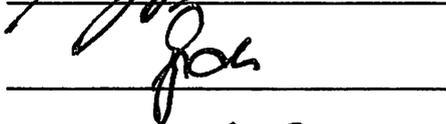
**SO ORDERED.**

*Approved:*

**GESMUNDO, Chairperson**



**GOMEZ-ESTOESTA, J.**



**TRESPESES, J.**



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<sup>10</sup> *Rollo*, Vol. 4, pp. 81-85.