



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

Fifth Division

PEOPLE OF THE PHILIPPINES, SB-16-CRM-0531 to 0536
Plaintiff,

– versus –

JUANITO A. RUBIO, ET AL.,
Accused.

For: Violations of section 3(e)
of Rep. Act No. 3019

Present:

LAGOS, J., Chairperson,
CRUZ*, and
MENDOZA-ARCEGA, JJ.

Promulgated:

June 15, 2017 *lee*

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RESOLUTION

LAGOS, J.:

This resolves accused Rojas's *Motion For Leave To File Demurrer To Evidence*.¹ The prosecution filed its opposition thereto.²

In her motion, the accused-movant argues that this Court does not have jurisdiction over these cases as the main accused with a salary grade over 27, Juanito A. Rubio, had already passed away when these cases were filed. She then claims that the prosecution witnesses were not able to identify the documentary exhibits and that the disbursement vouchers were not offered in evidence. She also avers that the evidence consisting of supporting documents to the disbursement voucher could not be the basis of her criminal liability.

* Designated as Special Member, per Administrative Order No. 025-2017 dated 1 February 2017.

¹ Dated 16 May 2017; Records, Vol. 3, p. 19.

² Dated 31 May 2017; Records, Vol. 3, p. 28.

The prosecution opposes the motion. Citing *People v. Go*,³ it argues that this Court did not lose its jurisdiction with the death of Rubio, as such jurisdiction extends to all alleged conspirators. It also argues that it has presented enough evidence to prove the elements of the offenses charged. It points out that the identification of the witnesses in their judicial affidavits is considered their testimony on direct examination, and that the accused-movant is charged as a conspirator.

Before ruling on the motion, the Court clarifies that the prosecution correctly pointed out that this Court has jurisdiction over these cases. As explained in *People v. Go*⁴:

"It is true that by reason of Secretary Enrile's death, there is no longer any public officer with whom respondent can be charged for violation of R.A. 3019. It does not mean, however, that the allegation of conspiracy between them can no longer be proved or that their alleged conspiracy is already expunged. **The only thing extinguished by the death of Secretary Enrile is his criminal liability. His death did not extinguish the crime nor did it remove the basis of the charge of conspiracy between him and private respondent.** Stated differently, the death of Secretary Enrile does not mean that there was no public officer who allegedly violated Section 3 (g) of R.A. 3019. In fact, the Office of the Deputy Ombudsman for Luzon found probable cause to indict Secretary Enrile for infringement of Sections 3 (e) and (g) of R.A. 3019. Were it not for his death, he should have been charged.

The requirement before a private person may be indicted for violation of Section 3(g) of R.A. 3019, among others, is that such private person must be alleged to have acted in conspiracy with a public officer. **The law, however, does not require that such person must, in all instances, be indicted together with the public officer. If circumstances exist where the public officer may no longer be charged in court, as in the present case where the public officer has already died, the private person may be indicted alone.**"⁵

It is settled that judicial action to grant prior leave to file demurrer to evidence is discretionary upon a trial court.⁶ After assessing the motion, the Court finds merit in the same. The filing of accused-movant's demurrer to evidence will help address the matter of sufficiency of the prosecution's evidence. Thus, the accused-movant is granted leave of court to file her demurrer to evidence, within the non-extendible period provided for in Rule 119, section 23, which reads:

³ G.R. No. 168539, 25 March 2014.

⁴ Id.

⁵ Footnotes omitted. Emphases supplied.

⁶ *Bernardo v. CA*, G.R. No. 119010, 5 September 1997.

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.

WHEREFORE, the motion is hereby **GRANTED**. Accused Rojas is granted leave of court to file her demurrer to evidence within a non-extendible period of ten (10) days from notice hereof. The prosecution is also given a non-extendible period of ten (10) days, from its receipt of a copy of the demurrer to evidence, within which to file its comment. Thereafter, accused Rojas's demurrer to evidence shall be considered submitted for resolution.

SO ORDERED.


RAFAEL R. LAGOS
Associate Justice
Chairperson

WE CONCUR:


REYNALDO P. CRUZ
Associate Justice


**MARIA THERESA V.
MENDOZA-ARCEGA**
Associate Justice