



Republic of the Philippines
Sandiganbayan
Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on August 22, 2017.

Present:

MA. THERESA DOLORES C. GOMEZ-ESTOESTA ----- Chairperson
ZALDY V. TRESPESÉS ----- Associate Justice
BAYANI H. JACINTO¹ ----- Associate Justice

The following resolution was adopted:

Crim. Case No. SB-12-CRM-0173 – People vs. ELENO U. COLINARES, JR.

This resolves the following:

1. Accused Eleno U. Colinares, Jr.'s "MOTION FOR RECONSIDERATION AND TO ADMIT THE ATTACHED DEMURRER TO EVIDENCE" dated July 20, 2017; and
2. The Prosecution's "COMMENT/OPPOSITION TO THE MOTION FOR RECONSIDERATION AND TO ADMIT THE ATTACHED DEMURRER TO EVIDENCE" dated August 3, 2017; and
3. Accused Eleno U. Colinares, Jr.'s "REPLY/OPPOSITION [TO] THE MOTION" dated August 9, 2017.

Accused Eleno U. Colinares, Jr. seeks a reconsideration of Our Resolution dated June 21, 2017 which denied his *Motion with Leave of Court to File Demurrer to Evidence*. He claims that his failure to state a specific ground therein was only to comply with the 5-day reglementary period in anticipation of the filing of the demurrer itself where he could expound the grounds once leave is given. He then attached the *Demurrer to Evidence* for admission of the same "*in the interest of justice.*"

In its *Comment/Opposition*, the prosecution emphasized that the Revised Rules on Criminal Procedure are clear that the motion should have specified the grounds for the demurrer before leave can be granted. There is no room for interpretation. The admission of the attached *Demurrer to Evidence*, therefore, lacks legal basis.

¹ Per A.O. No. 284-2017 dated August 18, 2017

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In his *Reply*, the accused justified that the ground adduced in his motion for leave, i.e., “*Perusal of the evidence presented by the prosecution, accused humbly believed that the same were not substantial to overcome the presumption of innocence beyond reasonable doubt, thus the filing of this Motion,*” already satisfied the requirement because it is only in the subsequent filing of the demurrer where the legal basis for the insufficiency of evidence will be supported and discussed.

We deny the *Motion*.

Section 23 of Rule 119 provides:

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.

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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.

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A clear reading of Section 23 requires *specificity* of the grounds before leave of court could be granted. The short and non-extendible interval of five (5) days to file the motion for leave does not justify a short-cut to be able to use the catch-all phrase “*evidence x x x were not substantial*” or “*insufficiency of evidence.*”

Verily, all demurrers to evidence are grounded on insufficiency of evidence. What **specific** ground needs to be invoked by the accused has to be disclosed at the outset to warrant why he should be given leave of court in the first place. There is no window for liberality for the “*interest of justice*” to apply. In this case, We already resolved that we could not indulge presumptions in favor of the demurrant in determining whether or not the evidence is sufficient for leave to be granted.

Haplessly, the submission of a demurrer to evidence does not cure the flaw for it would only mean that accused filed it *without leave*, but with consequences. As underscored in *Bernardo v. Court of Appeals*:²

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² G.R. No. 119010, September 5, 1997

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In fine, under the new rule on demurrer to evidence the accused has the right to file a demurrer to evidence after the prosecution has rested its case. If the accused obtained prior leave of court before filing his demurrer, he can still present evidence if his demurrer is denied. **However, if he demurs without prior leave of court, or after his motion for leave is denied, he waives his right to present evidence and submits the case for decision on the basis of the evidence for the prosecution.**

The predicament is now for the accused to weigh.

WHEREFORE, the *Motion for Reconsideration* filed by accused Eleno U. Colinares, Jr. is **DENIED** for lack of merit.

With the submission of a *Demurrer to Evidence without leave*, accused is directed to file a written manifestation before this Court within five (5) days from notice on whether he intends to pursue the consideration of such *Demurrer to Evidence* filed without leave.

The tentative setting for the presentation of defense evidence shall proceed, as scheduled, on *September 25 and 26, 2017*, both at 8:30 in the morning at the Fourth Division Courtroom.

SO ORDERED.

GOMEZ-ESTOESTA, J., *Chairperson*

TRESPESES, J.

JACINTO, J.






