



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-12-CRM-0163

For: Violation of Article 210 of the Revised Penal Code (Direct Bribery)

- versus -

ROCKY FLORES CAPONONG,
Accused.

SB-13-CRM-0129

For: Violation of Section 7(d) of R.A. No. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees)

Present:

FERNANDEZ, SJ, J.

Chairperson

FERNANDEZ, B, J.* and

CORPUS-MAÑALAC, J.**

Promulgated:

MAY 28 2018

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves the *Urgent Motion for Reconsideration to the Resolution of the Honorable Court dated April 11, 2018 and to Cite Arnel Tugade in Contempt of Court*¹ filed by accused Rocky F. Caponong on April 16, 2018; together with the *Comment/Opposition*² thereto filed by the prosecution on April 23, 2018.

* Per Administrative Order No. 330-2017 dated September 27, 2017, Special Member in view of the inhibition of J. Miranda (A.O. No. 222-2016 dated September 13, 2017). Justice Bernelito Fernandez participated in the Resolution dated April 11, 2018.

** Per Administrative Order No. 058-2018 dated January 29, 2018, Special Member in view of the vacancy in the Sixth Division. Justice Corpus-Mañalac participated in the Resolution dated April 11, 2018.

¹ Dated April 14, 2018; Record, Vol. II, pp. 215-218.

² Dated April 23, 2018.

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Accused Caponong asks that:

- a. The Resolution dated April 11, 2018,³ denying accused Caponong's *Motion for Leave of Court to File Demurrer to Evidence*, be set aside on the ground that there is a pending incident, *i.e.*, testimony of Arnel Tugade;
- b. Arnel Tugade be cited in contempt of court; and,
- c. Arnel Tugade be compelled to appear in Court, and, that a warrant for his arrest be issued, if necessary.⁴

Accused Caponong asserts that the testimony of Arnel Tugade as hostile witness is vital and necessary to the approval of the *Motion for Leave of Court to File Demurrer to Evidence*.⁵

On the other hand, the prosecution, in its *Comment/Opposition*, prays for the denial of the instant *Urgent Motion for Reconsideration*, on the following grounds:

- a. Under Section 23 of Rule 119, the determination as to whether the demurrer to evidence or the motion for leave to file demurrer to evidence will prosper is grounded on the insufficiency of evidence adduced by the prosecution on the indictments against the accused. As rightly ruled by the Honorable Court, the prosecution has discharged this burden at this point of the proceedings;
- b. The admission of the prosecution's documentary exhibits shows that indeed it has rested its case and no pending incident on these cases exist; and,
- c. The motion to cite in contempt Mr. Arnel Tugade has no legal basis as it has not been shown that he received the subpoena issued by the Honorable Court.⁶

RULING

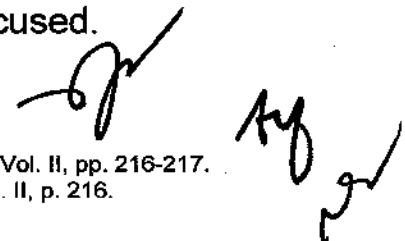
After a careful restudy of the testimonial and documentary evidence presented by the prosecution, this Court still finds that the same, if unrebutted, is sufficient to convict the accused.

³ Record, Vol. II, pp. 212-213.

⁴ Urgent Motion for Reconsideration dated April 14, 2018, pp. 2-3; Record, Vol. II, pp. 216-217.

⁵ Urgent Motion for Reconsideration dated April 14, 2018, p. 2; Record, Vol. II, p. 216.

⁶ Comment/Opposition dated April 23, 2018, p. 2.



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Accused Caponong's contention that the denial of his *Motion for Leave of Court to File Demurrer to Evidence* is premature in view of his intention to present Arnel Tugade as a witness, is bereft of merit. A demurrer to evidence tests the sufficiency or insufficiency of the prosecution's evidence.⁷ The intended presentation of Mr. Tugade as the accused' hostile witness relates to matters of defense.

The Court, thus, finds no basis to reconsider its April 11, 2018 Resolution.

Accused Caponong's *motion* to cite Tugade in contempt is likewise without merit. First, accused has not established that Mr. Tugade was duly notified of the scheduled hearings. Second, the presentation of defense evidence has not commenced in view of the pending *Motion for Leave of Court to File Demurrer to Evidence*. Accused Caponong may request the Court, through the Division Clerk of Court, to issue the necessary subpoena to direct Mr. Tugade to appear and testify.

WHEREFORE, the *Urgent Motion for Reconsideration to the Resolution of the Honorable Court dated April 11, 2018 and to Cite Arnel Tugade in Contempt of Court*, is **DENIED**.

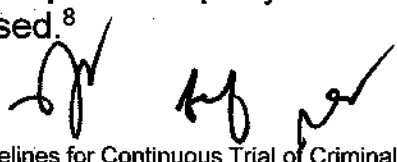
This is without prejudice to the filing by the accused of his *Demurrer to Evidence*, without leave of court, but subject to the legal consequence provided under *Section 23, Rule 119 of the Revised Rules of Criminal Procedure*, that is, he shall waive his right to present evidence and is submitting this case for judgment on the basis of the evidence adduced by the prosecution.

The accused is given a period of five (5) days from receipt of this Resolution within which to file his *Manifestation*, by personal filing and service or through courier, to inform this Court whether he will file a *Demurrer to Evidence*, without leave of court.

The hearings for the accused to present his evidence tentatively set on May 28 and 29, 2018, both at 1:30 in the afternoon, are maintained. The said scheduled dates will be considered automatically cancelled upon receipt by the Court of the *Demurrer to Evidence* of the accused.⁸

⁷ 473 SCRA 279, 288 [2005].

⁸ Pursuant to A.M. No. 15-06-10-SC, Revised Guidelines for Continuous Trial of Criminal Cases



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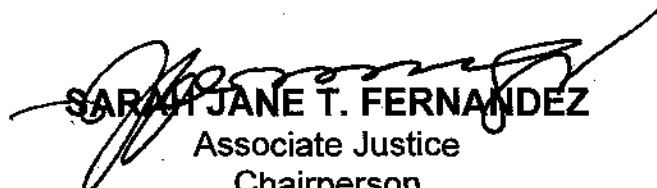
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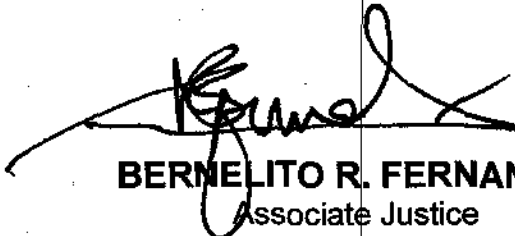
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SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

WE CONCUR:


BERNELITO R. FERNANDEZ
Associate Justice


MARYANN E. CORPUS-MAÑALAC
Associate Justice