



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-13-CRM-0739 to 0771
For: Violations of Section 52(g) in
relation to Section 6(b) of R.A.
No. 8291

- versus -

ROMEO V. BORJA, ET AL.,
Accused.

Present:

FERNANDEZ, SJ, J.
Chairperson
MIRANDA, J. and
TRESPESES, J.*

Promulgated: **MAY 31 2018**

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves the *Motion for Leave of Court to File Motion to Dismiss by Way of Demurrer to Evidence*¹ filed by accused Rosita A. Yang and Jorja B. Palacio on April 30, 2018; together with the *Comment/Opposition*² filed by the prosecution on May 7, 2018.

Accused Yang and Palacio ask this Court to grant them leave of court to file motion to dismiss by way of demurrer to evidence on the ground that the prosecution failed to sufficiently establish beyond reasonable doubt that accused Yang and Palacio violated Section 52(g) in relation to Section 6(b) of Republic Act No. 8291.³

* Per Administrative Order No. 071-2018 dated February 1, 2018, Special Member in view of the vacancy in the Sixth Division. The *Motion* was submitted for resolution upon receipt by the Court of the prosecution's *Comment/Opposition* on May 7, 2018.

¹ Dated April 27, 2018

² Dated May 4, 2018

³ *The Government Service Insurance System Act of 1997; Motion for Leave of Court to File Motion to Dismiss by Way of Demurrer to Evidence* dated April 27, 2018, p. 5.

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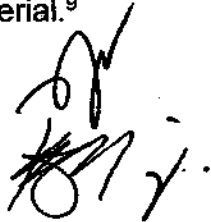
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Accused Yang and Palacio contend:

- a) The prosecution failed to prove the commission of the crime; and,
- b) The prosecution failed to establish beyond reasonable doubt that accused Yang and Palacio were in conspiracy with their other co-accused Borja, Sr., and Mangalili.⁴

On the other hand, the prosecution contends that accused Yang and Palacio's claims have no merit, and, hence, the instant *Motion* must be denied.⁵ The prosecution argued:

- a) The subsequent remittance of Private Complainant Sator's GSIS contributions does not exculpate accused Yang and Palacio from criminal liability considering such remittance was made long after they became due and demandable, most of which were effected after the filing of the Informations.⁶
- b) That the problem in the remittance of GSIS contributions was experienced by all Municipal employees and not by private complainant Sato alone confirms that accused Yang and Palacio committed the offense, or were remiss in their duties in remitting private complainant Sator's GSIS premium contributions.
- c) That the problem in the remittance of GSIS contributions was encountered by the previous administration and carried over to the administration of accused Borja also confirms that accused Yang and Palacio committed the offense.⁷
- d) The non-remittance of GSIS premium contributions is *malum prohibitum*, and as such, the presence or absence of actual damage suffered by private complainant Sator is immaterial.⁸
- e) The non-remittance of GSIS premium contributions is *malum prohibitum*, and as such, malice or criminal intent is completely immaterial.⁹



⁴ Motion for Leave of Court to File Motion to Dismiss by Way of Demurrer to Evidence dated April 27, 2018, p. 3.

⁵ Comment/Opposition dated May 4, 2018, p. 2.

⁶ Comment/Opposition dated May 4, 2018, p. 3.

⁷ Comment/Opposition dated May 4, 2018, p. 5.

⁸ Comment/Opposition dated May 4, 2018, p. 6.

⁹ Comment/Opposition dated May 4, 2018, p. 8.

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RULING

After a careful study of the documentary and testimonial evidence submitted by the prosecution, the Court finds that, if unrebutted, the same is sufficient to convict the accused. The Court hereby **DENIES** the *Motion for Leave of Court to File Motion to Dismiss by Way of Demurrer to Evidence* filed by accused Yang and Palacio.

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

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

The hearings for the accused to present their evidence tentatively set on July 25 and 26; and, August 1, 6 and 7, 2018, all at 1:30 in the afternoon, are maintained. The said scheduled dates will be considered automatically cancelled, as to accused Palacio and Yang, upon receipt by the Court of the *Demurrer to Evidence* of said accused.¹⁰

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

WE CONCUR:


KARL B. MIRANDA
Associate Justice


ZALDY V. TRESPESES
Associate Justice

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