



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
 Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff,

SB-10-CRM-0220
 For: Violation of Section 3(e),
 R.A. No. 3019

- versus -

GERRY J. MORALES, ET AL.,
 Accused.

Present:

FERNANDEZ, SJ, J.
Chairperson
MIRANDA, J. and
VIVERO, J.

Promulgated:

JUN 22 2018

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves the *Demurrer to Evidence (For Accused Villademoso)*¹ filed by accused Donald B. Villademoso, received through mail by the Court on May 24, 2018; together with the *Comment/Opposition*² filed by the prosecution on June 7, 2018.

Accused Villademoso asks the Court to acquit him of the crime charged on the ground that his guilt has not been proven beyond reasonable doubt. Accused Villademoso contends that his personal identity has never been stipulated or admitted; and, that the prosecution failed to authenticate accused Villademoso's signature in the documents it presented.³

On the other hand, the prosecution claims that the pieces of evidence presented during the trial is sufficient to prove accused Villademoso's guilt. The prosecution argues:

¹ Dated May 8, 2018

² (To Accused Villademoso's *Demurrer to Evidence*) dated June 8, 2018

³ *Demurrer to Evidence* dated May 8, 2018, pp. 1-2

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- a) Direct evidence is not the only acceptable evidence recognized by law and jurisprudence.
- b) The identity of accused Villademosa as the same person charged in the Information as well as the owner and proprietor of Villtrade Marketing are matters that have been admitted by said accused as per the Pre-Trial Order issued by the Court on October 8, 2015.
- c) Prosecution witness COA State Auditor Angelina Patlingrao testified that a representative of Villtrade Marketing received Check No. 52903 as payment for the alleged purchase of 10 pieces of exterior tire with flap by the Municipality of Baganga.
- d) The evidence of the prosecution shows that Villtrade Marketing owned by accused Villademosa has no legal existence to transact with the Municipality of Baganga in 2002.⁴

RULING

Accused' Failure to File a Motion for Leave to File Demurrer to Evidence.

In its Resolution dated April 30, 2018, this Court denied accused Villademosa's *Motion for Leave to File Demurrer to Evidence*,⁵ received through mail by the Court on April 4, 2018, for being premature. The said *Motion* was filed prior to the issuance of the Court's April 5, 2018 Resolution admitting the exhibits formally offered by the prosecution.

It appears that accused Villademosa did not file another *Motion for Leave of Court to File Demurrer to Evidence* prior to the present *Demurrer to Evidence*.

Nonetheless, to ensure that the accused has been properly apprised of the legal consequence of filing a *Demurrer to Evidence* without prior leave of court, that is, waiver of accused' right to present evidence and submission of the case for judgment on the basis of the evidence adduced by the prosecution,⁶ and in view of the seriousness of said legal consequence, the Court will treat accused' *Demurrer to Evidence* as a *Motion for Leave of Court to File Demurrer to Evidence*.


⁴ Comment/Opposition dated June 8, 2018, p' 2

⁵ (with Prayer to Reset April 2018 Hearings) dated March 20, 2018

⁶ Section 23, Rule 119 of the Revised Rules of Criminal Procedure

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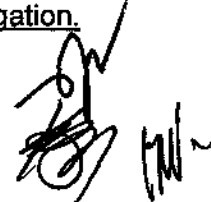
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In *People vs. Bodoso*,⁷ the trial court convicted the accused of rape solely on the basis of the evidence presented by the prosecution, after the counsel for the accused made a manifestation of his intention not to present evidence. The Supreme Court found that the alleged waiver of the accused of his right to present evidence and be heard has affected the adequate representation of facts in favor of accused during the trial. Hence, the Supreme Court identified the proper steps to be taken when a trial court comes face to face with an accused or his counsel who wants to waive his client's right to present evidence and to be heard. The Supreme Court said that trial courts may abide by the same procedure even when the waiver of the right to be present and to be heard is made in criminal cases involving *non-capital offenses, viz:*

Henceforth, to protect the constitutional right to due process of every accused in a capital offense and to avoid any confusion about the proper steps to be taken when a trial court comes face to face with an accused or his counsel who wants to waive his client's right to present evidence and be heard, it shall be the unequivocal duty of the trial court to observe, as a prerequisite to the validity of such waiver, a procedure akin to a "searching inquiry" as specified in *People v. Aranzado* when an accused pleads guilty, particularly –

1. The trial court shall hear both the prosecution and the accused with their respective counsel on the desire or manifestation of the accused to waive the right to present evidence and be heard.
2. The trial court shall ensure the attendance of the prosecution and especially the accused with their respective counsel in the hearing which must be recorded. Their presence must be duly entered in the minutes of the proceedings.
3. During the hearing, it shall be the task of the trial court to
 - a. Ask the defense counsel a series of questions to determine whether he had conferred with and completely explained to the accused that he had the right to present evidence and be heard as well as its meaning and consequences, together with the significance and outcome of the waiver of such right. If the lawyer for the accused has not done so, the trial court shall give the latter enough time to fulfill this professional obligation.

⁷ 398 SCRA 642 [2003]



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b. Inquire from the defense counsel with conformity of the accused whether he wants to present evidence or submit a memorandum elucidating on the contradictions and insufficiency of the prosecution evidence, if any, or in default thereof, file a demurrer to evidence with prior leave of court, if he so believes that the prosecution evidence is so weak that it need not even be rebutted. If there is a desire to do so, the trial court shall give the defense enough time for this purpose.

c. Elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed waiver.

d. All questions posed to the accused should be in a language known and understood by the latter, hence, the record must state the language used for this purpose as well as reflect the corresponding translation thereof in English.

In passing, trial courts may also abide by the foregoing procedure even when the waiver of the right to be present and be heard is made in criminal cases involving non-capital offenses. After all, in whatever action or forum the accused is situated, the waiver that he makes if it is to be binding and effective must still be exhibited in the case records to have been validly undertaken, that is, it was done voluntarily, knowingly and intelligently with sufficient awareness of the relevant circumstances and likely consequences. As a matter of good court practice, the trial court would have to rely upon the most convenient, if not primary, evidence of the validity of the waiver which would amount to the same thing as showing its adherence to the step-by-step process outlined above.⁸

In *Rivera vs. People*,⁹ the Supreme Court remanded the case for further proceedings after concluding that the counsel was not given the opportunity to discuss with the accused the consequences of filing a demurrer to evidence without leave of court. In said case, the counsel for the accused asked for leave of court to file a demurrer to evidence, but was ordered by the Court to file the same without leave of court. Citing *Bodoso*, the Supreme Court said that there was no clear showing that accused agreed to the waiver and intended to relinquish his right to be heard.¹⁰

⁸ At pp. 653-654. Emphasis and underscoring supplied; citations omitted.

⁹ 460 SCRA 85 [2005]

¹⁰ At pp. 93-98.

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On the merits.

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 Demurrer to Evidence* filed by accused Villademosa.

The accused is given 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 is adopting his *Demurrer to Evidence* dated May 8, 2018, and is submitting the same, without leave of court.

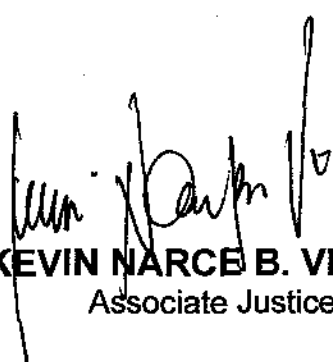
The hearings for the accused to present their evidence tentatively set on July 16 and 17, 2018, both at 1:30 in the afternoon, are maintained. The said scheduled dates will be considered automatically cancelled, as to accused Villademosa, upon receipt by the Court of accused' manifestation that he intends to pursue his *Demurrer to Evidence*, without leave of court.¹¹

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

WE CONCUR:


KARL B. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
Associate Justice

¹¹ Pursuant to A.M. No. 15-06-10-SC, Revised Guidelines for Continuous Trial of Criminal Cases