



Republic of the Philippines  
*Sandiganbayan*  
Quezon City  
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SEVENTH DIVISION

*MINUTES of the proceedings held on 25 June 2018.*

*Present:*

*Justice ZALDY V. TRESPESES -----Acting Chairperson*  
*Justice BAYANI H. JACINTO----- Member<sup>1</sup>*  
*Justice KEVIN NARCE B. VIVERO----- Member<sup>2</sup>*

*The following resolution was adopted:*

***Crim. Case No. SB-10-CRM-0256 - People vs. BERNARDITO A. ABAPO,***

This resolves the following:

1. Accused Bernardito A. Abapo's "MOTION FOR LEAVE OF COURT TO FILE DEMURRER TO EVIDENCE" dated 4 June 2018;<sup>3</sup> and
2. The prosecution's "OPPOSITION TO THE MOTION FOR LEAVE OF COURT TO FILE DEMURRER TO EVIDENCE" dated 8 June 2018.<sup>4</sup>

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Submitted for the Court's resolution is accused Bernardito A. Abapo's (accused) motion for leave of court to file demurrer to evidence and the prosecution's opposition thereto.

**ACCUSED'S MOTION**

In his four-page motion, accused avers that the prosecution presented insufficient evidence to prove the charge against him.

In support of this claim, accused argues that Exhibits "D," "D-1," "E," "E-1-a," and "F" and series, with its supporting documents Exhibits "G," "G-1-a" and "H" and series (Office Order No. 2003-35 and Memorandum No. 2004-014 dated 24 February 2004), were not properly identified by State Auditor Evelyn Arevalo (Arevalo), who executed the said documents. She

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<sup>1</sup> Per Administrative Order No. 284-2017 dated 18 August 2017.

<sup>2</sup> Per Administrative Order No. 302-2018 dated 31 May 2018.

<sup>3</sup> *Rollo*, Vol. III, pp. 394-397.

<sup>4</sup> *Id.* at 403-405.

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was never presented in court to testify thereon and was not confronted over the documents she executed.

Accused claims that he has a right to confront the witnesses against him, based on Section 14 (2), Article III of the Constitution.<sup>5</sup> For this reason, the prosecution cannot be excused from presenting Arevalo based on a mere declaration that she has already retired. There are other remedies to compel Arevalo's attendance or secure her testimony.

Accused then concludes that without the said documents executed by Arevalo, the charge against him cannot be sufficiently proven.

### PROSECUTION'S OPPOSITION

In its opposition, the prosecution underscored that accused is apparently questioning the admission of prosecution's documentary evidence. However, the Court has already admitted Exhibits "D," "D-1," "E," "E-1-a," and "F" and series, in its Resolution dated 9 May 2018. It held therein that witness Emma del Prado (del Prado) sufficiently explained her competence to identify and testify thereon. The Court moreover also clearly explained why Exhibits "G," "G-1-a," and "H" and series were admitted in evidence.

The prosecution also emphasized that accused's motion failed to state his grounds for the motion for leave to file demurrer to evidence, as mandated by Section 23, Rule 119 of the Rules of Court.<sup>6</sup>

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<sup>5</sup> Section 14.

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2. In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused: Provided, that he has been duly notified and his failure to appear is unjustifiable.

<sup>6</sup> Sec. 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.

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Finally, the prosecution contends that when State Auditor Emma del Prado was presented in court, she testified and proved the material allegations in the Information.

### OUR RULING

We **deny** accused's motion for leave to file demurrer to evidence for lack of merit.

Accused bases his motion on the argument that there is insufficient evidence to convict him because Exhibits "D," "D-1," "E," "E-1-a," and "F" and series, as well as Exhibits "G," "G-1-a" and "H" and series, are inadmissible in evidence.

Accused's reasoning is fatally flawed as the assumption behind it is patently wrong.

Contrary to accused's assumption, the subject exhibits have already been admitted in evidence by the Court in its Resolution dated 9 May 2018.<sup>7</sup>

Accused's current motion is a mere rehash of his objections to the subject exhibits, as laid out in his Comment/Opposition (to the Formal Offer of Documentary Evidence with Motion to re-mark and mark documents) dated 2 May 2018.<sup>8</sup> These objections have already been addressed at length in our 9 May 2018 Resolution.

Contrary to accused's claim, his constitutional right to confront the witnesses against him was not violated. The witness against him, State Auditor del Prado, was presented in court and subjected to cross examination by accused's counsel. As discussed in our resolution, del Prado was able to sufficiently explain her competence to identify and testify on the various documents accused objected to:

Commission on Audit (COA) Office Order No. 2003-35 shows del Prado's designation as Team Member of the two-member Team III led by Team Leader Arevalo, assigned to conduct audit of the Municipalities of San Pascual, Balud, Milagros, Claveria and their Barangays. Meanwhile, del Prado testified that she worked hand in hand with her team leader, Arevalo, in preparing the Narrative Report with supporting documents marked Exhibit "F" and series. However, del Prado's signature does not appear in the said report because COA Memorandum 2004-014 mandates that the audit team leader be the one to sign the report. Witness del Prado further explained that Arevalo did not testify because she already retired from service last 12 September 2012.<sup>9</sup>

<sup>7</sup> *Rollo*, Vol. III, pp. 389-391.

<sup>8</sup> *Id.* at 379-386.

<sup>9</sup> *Id.* at 390.

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It must be stressed that a demurrer to evidence is an objection by one of the parties in an action to the effect that the evidence which his adversary produced is insufficient in point of law to make out a case or sustain the issue. The party filing the demurrer challenges the sufficiency of the prosecution's evidence. For this reason, the Court is tasked to ascertain if there is competent or sufficient evidence to establish a *prima facie* case to sustain the indictment or support a verdict of guilt.<sup>10</sup>

An examination of the evidence on record at this stage shows that there is sufficient evidence to convict the accused. Accused's motion has not persuaded the Court otherwise. It is therefore preferable to proceed with the continuation of trial for the reception of accused's evidence, where he may present countervailing evidence in his defense.

**WHEREFORE**, premises considered, accused Bernardito A. Abapo's motion for leave to file demurrer to evidence is **DENIED** for lack of merit.

Let the initial presentation of defense evidence set on **2 August 2018 at 8:30 in the morning** proceed as previously scheduled.

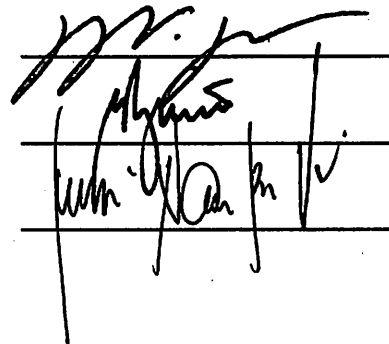
SO ORDERED.

*Approved:*

**TRESPESES, Acting Chairperson**

**JACINTO, J.**

**VIVERO, J.**



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<sup>10</sup> *People v. Sandiganbayan (2nd Division)*, G.R. No. 197953, 5 August 2015.