



Republic of the Philippines
Sandiganbayan
Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on 20 June 2018.

Present:

Justice ZALDY V. TRESPESES ----- Acting Chairperson
Justice BAYANI H. JACINTO ----- Member¹
Justice KEVIN NARCE B. VIVERO ----- Member²

The following resolution was adopted:

Crim. Case No. SB-15-CRM-0092 & 0093 - People vs. MARIANO M. MALONES, et al.,

This resolves the following:

1. Accused Mariano M. Malones & Edna Madarico's "REQUEST OF LEAVE OF COURT TO FILE DEMURRER TO EVIDENCE" dated May 2018;³
2. The prosecution's "COMMENT/OPPOSITION (to Request of Leave of Court to File Demurrer to Evidence of accused Mariano M. Malones and Edna Madarico)" dated 5 June 2018.⁴

For the Court's resolution is accused Mariano M. Malones and Edna Madarico's (collectively referred to as "accused-movants") motion for leave of court to file demurrer to evidence.

ACCUSED'S MOTION

In their three-page motion, accused Malones and Madarico claim that the prosecution presented insufficient evidence to prove their guilt beyond reasonable doubt.

First, accused-movants claim that the complainant in these cases, Winifredo Maternal, testified on hearsay and that he did not have personal knowledge of the documents supporting his complaint.

¹ Per Administrative Order No. 284-2017 dated 18 August 2017.

² Per Administrative Order No. 301-2018 dated 31 May 2018.

³ *Rollo*, Vol. III, pp. 373-375.

⁴ *Id.* at 380-383.

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Second, they argue that Exhibits "A-4," "A-5," "A-6," "A-9," "A-10," "A-12," and "A-13, being merely certified machine copies from alleged certified machine copies, are inadmissible in evidence.

Third, they add that the Commission on Audit (COA) findings of Atty. Gileo Alojado and his team are not yet conclusive because to date, no order of disallowance has been issued by the COA.

Fourth, accused-movants further contend that the COA Audit Team had given more weight to the alleged Deed of Sale. However, the Land Transportation Office (LTO) representative and witness, Marcelino Reyes, had admitted that he could not attest to the authenticity and due execution thereof. In contrast, the contrary Deed of Donation has the approval of the Sangguniang Bayan of Maasin.

Finally, accused-movants reiterate that their constitutional right to speedy disposition had been violated when it took the Office of the Ombudsman more than ten years to resolve the preliminary investigation for the present cases.

PROSECUTION'S COMMENT/OPPOSITION

Meanwhile, in its Comment/Opposition, the prosecution argues that accused-movants failed to specify which portion of the witness's testimony was objectionable, considering that the Court admitted Winifredo Maternal's Complaint-Affidavit in its 21 May 2018 Resolution.

It adds that it does not matter that there were objections to the admissibility of Exhibits "A-4" to "A-6" and "A-9" to "A-13" because the exhibits, which were admitted prove accused's guilt beyond reasonable doubt.

The prosecution moreover argues that the absence of an order of disallowance does not affect the commission of the crime charged and does not rebut the pieces of evidence, which prove that accused-movants are guilty beyond reasonable doubt of the crimes charged.

As to the Deed of Absolute Sale produced in open court and testified to by prosecution witness Marcelino Reyes, accused-movants may refute its authenticity and due execution, but not by way of a demurrer to evidence. Instead, accused-movants should present controverting evidence.

As to the alleged violation of accused-movants' right to speedy disposition of their cases, the same is not a proper issue to raise in a motion for leave to file a demurrer to evidence.

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Finally, the prosecution avers that accused-movants failed to show in their motion the specific grounds relied upon in concluding that the evidence adduced by the prosecution is insufficient to sustain conviction. Hence, their motion for leave to file demurrer to evidence is merely *pro forma* and should be denied for lack of merit.

OUR RULING

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

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. 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.⁵

When a party seeks leave of court to file a demurrer to evidence, his motion must specifically state the grounds therefor, to wit:

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.

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⁵ *People v. Sandiganbayan (2nd Division)*, G.R. No. 197953, 5 August 2015.

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on hearsay and that he had no personal knowledge of the documents supporting his complaint.

We find no merit to this argument.

In our Resolution⁹ dated 21 May 2018, the Court has already admitted in evidence the Affidavit¹⁰ of prosecution witness, Winifredo Maternal, a former member of the *Sanggunian Bayan* of Maasin, as part of his testimony. Meanwhile, the attachments thereto have also been ruled upon by the Court. In particular, the implications for these cases of the said attachments to the Affidavit are discussed in the immediately succeeding section.

Accused-movants' *second ground* is that due to the exclusion of the prosecution's Exhibits "A-4" to "A-6", "A-9" to "A-13," and "R," its evidence is insufficient to prove their guilt beyond reasonable doubt.

We disagree.

Reviewing the excluded exhibits, we note that a copy of the Special Power of Attorney dated 6 September 2001 issued by accused Malones in favor of accused Ma. Theresa Tan delos Reyes (accused delos Reyes) was offered as Exhibit "A-9." However, this was excluded by the Court for being a mere photocopy. Nonetheless, the same document was also marked and offered as Exhibit "N-2," which at this instance was admitted by the Court in evidence pursuant to the parties' stipulation that the original of the document forms part of the records of the Land Transportation Office (LTO), which prosecution witness, Marcelino T. Reyes, its Records Officer, could identify.¹¹

Likewise, a copy of the Special Power of Attorney dated 30 January 2001 issued by Hiroyuki Tsuchiya in favor of accused delos Reyes, which was offered as Exhibit "A-10," was excluded by the Court for being a mere photocopy. Still, the same document was also offered by the prosecution as Exhibit "N-5." In similar fashion, Exhibit "N-5" was admitted by the Court in evidence in view of the parties' stipulation that the original thereof forms part of the records of the LTO, which prosecution witness Reyes could identify.¹²

The subject garbage compactor vehicle's LTO Registration was also offered both as Exhibit "A-13" and "M-1." Although the Court excluded

⁹ *Rollo*, Vol. III, p. 366-369.

¹⁰ Exhibit "A-1" and "A-2."

¹¹ *Id.* at 369.

¹² *Id.*

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Exhibit "A-13," it admitted Exhibit "M-1" in evidence based on the same stipulation by the parties regarding prosecution witness Reyes.¹³

Meanwhile, the rest of the excluded prosecution exhibits are described as follows: Exhibit "A-4" pertains to Resolution No. 001-032 of the *Sangguniang Bayan* of Maasin requesting Mr. Tsuchiya to donate a used garbage compactor truck to the municipality; Exhibit "A-5" pertains to Resolution No. 001-040 of the *Sangguniang Bayan* of Maasin authorizing accused Malones to negotiate with Mr. Tsuchiya and sign on behalf of the municipality all documents relative to the acquisition of the subject vehicle, subject to review by the *Sangguniang Bayan* and *Sangguniang Panlalawigan*; Exhibit "A-6" pertains to Resolution No. 001-063 of the *Sangguniang Bayan* of Maasin enacting Appropriation Ordinance No. 01-001; Exhibit "A-11" pertains to the breakdown of the Php380,000.00 expense in acquiring the vehicle issued by accused delos Reyes; Exhibit "A-12" pertains to the GSIS insurance policy on the subject vehicle; and Exhibit "R" pertains to the Certification dated 30 August 2001 issued by the Office of the Municipal Treasurer of Maasin and signed by accused-movants.

We find that the rest of the excluded exhibits, including the *Sangguniang Bayan* of Maasin's Resolutions (which were excluded by the Court for being mere certified photocopies of certified photocopies), do not significantly detract from prosecution's allegation that accused-movants acquired the subject garbage compactor truck without public bidding¹⁴ or that they made untruthful statements in the Deed of Donation and Deed of Acceptance.¹⁵

Accused-movants' *third ground* is that the COA Audit Team's finding is not yet conclusive, considering that no notice of disallowance has yet been issued by the COA pertaining to the transaction.

Accused-movants' focus on the COA Audit Team's findings is misplaced. The COA Audit Team's findings, whether final or not, do not determine whether the former is guilty of the crimes charged. The task of determining the guilt of the accused of the charges filed before the Sandiganbayan belongs to this Court, which will undertake the same based

¹³ Id.

¹⁴ In *Consigna v. People* (G.R. No. 175750-51, 2 April 2014), the Court enumerated the elements for the charge of violation of Section 3 (e) of R.A. No. 3019 as follows:

1. The accused must be a public officer discharging administrative, judicial or official functions;
2. He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and
3. That his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.

¹⁵ In *Fullero v. People* [559 Phil. 524-548 (2007)], the Court cites the elements of the charge for violation of paragraph 4, Article 171 of the RPC as follows:

1. The offender makes in a public document untruthful statements in a narration of facts;
2. He has a legal obligation to disclose the truth of the facts narrated by him; and
3. The facts narrated by him are absolutely false.

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on all the evidence presented by the parties.¹⁶ The COA Audit Team's findings is just one of these pieces of evidence.

Accused-movants' *fourth ground* is that the prosecution witness from the LTO, Marcelino Reyes, admitted that he could not attest to the authenticity and due execution of the Deed of Sale. Accused-movants conclude that it was, therefore, unreasonable for the COA Audit Team to have given more weight to the Deed of Sale over the Deed of Donation which was approved by the *Sangguniang Bayan* of Maasin.

On this score, we reiterate that the guilt of the accused in the cases before the Sandiganbayan will be determined by this Court, and not by the COA Audit Team findings. Moreover, if accused-movants wish to refute the authenticity and due execution of the Deed of Absolute Sale testified to by prosecution witness Reyes, they may do so by presenting their own controverting evidence, not by filing a demurrer to evidence.

Accused-movants' *fifth ground* is that the Office of the Ombudsman took more than ten years from the time the complaint was initiated until the present Informations were filed with the Sandiganbayan, thus violating accused's constitutional right to speedy disposition of their cases.

Accused's final ground is untenable. As discussed beforehand, the purpose of a motion for leave to file a demurrer to evidence is to specify the grounds why the evidence presented by the prosecution are insufficient to convict accused of the crimes charged. Alleged violation of accused-movants' right to speedy disposition does not contribute to this discourse.

At any rate, we note that this is not the first time accused-movants invoked the ground of inordinate delay. In their *Opposition to Motion for the Suspension Pendente Lite of Accused Malones and Motion to Dismiss* dated 2 February 2016¹⁷, accused-movants prayed that the instant case be dismissed because it violated their right to speedy disposition of their case. This Court, in a Resolution¹⁸ through its Third Division, denied their motion to dismiss as follows:

In the present cases, accused Malones and Madarico merely point out that the Office of the Ombudsman took action on the case only ten (10) years after the filing of the initiatory complaint, without showing other circumstances that clearly demonstrate how the delay can be characterized as vexatious, capricious and oppressive. It bears repeating that the lapse of time, by itself, is not sufficient to arrive at the conclusion that there was inordinate delay. Likewise, their bare allegation that the filing of the present cases was politically motivated deserves scant consideration

¹⁶ *Diamante III v. Sandiganbayan*, 509 Phil. 673-684 (2005).

¹⁷ Referred to in *Rollo*, Vol. II, p. 63, as found in *Rollo*, Vol. I, pp. 342-353.

¹⁸ *Rollo*, Vol. II, pp. 63-67.

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Finally, accused Malones and Madarico's claim that they suffered prejudice because witnesses' recollections might no longer be accurate and evidence is not more difficult to obtain, does not persuade.

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However, prejudice does not always follow the mere fact of passage of time. Assuming that the criminal action against them had commenced near the end of the prescriptive period of the offenses, the effect would be the same – evidence would still be more difficult to obtain due to the lapse of time, but they will not be able to claims that they suffered prejudice.

Other than their assertion of difficulty in obtaining evidence, they failed to clearly show how they were prejudiced by reason of the delay in the termination of the preliminary investigation.

In fine, dismissal of the present cases is not warranted.

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In their present motion, accused-movants once again invoke inordinate delay as a ground to dismiss the case. Notably, they did not discuss nor substantiate the four-fold factors for determining whether there was a violation of the right to speedy disposition, as enunciated by the Supreme Court in *Remulla v. Sandiganbayan*,¹⁹ to wit: (1) length of the delay; (2) reason for the delay; (3) defendant's assertion or non-assertion of his right; and (4) prejudice to defendant resulting from the delay. Thus, accused-movants' bare allegation of delay does not warrant the consideration of any of the reliefs they pray for.

In sum, we find specious the grounds relied upon by the accused in seeking leave of court to file demurrer to evidence. Moreover, as accused-movants' own arguments show, it is necessary to conduct a full-blown trial to enable the them to present any defenses they may have against the charges filed against them.

WHEREFORE, in view of the foregoing, the motion for leave to file demurrer to evidence filed by accused Mariano M. Malones and Edna Madarico is **DENIED** for lack of merit.

SO ORDERED.

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¹⁹G.R. No. 218040, 17 April 2017.

Approved:

TRESPESES, J., Acting Chairperson

JACINTO, J.

VIVERO, J.



Handwritten signatures of Trespeses, Jacinto, and Vivero over horizontal lines.