



Republic of the Philippines
Sandiganbayan
Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on 14 June 2018.

Present:

Hon. ZALDY V. TRESPESES ----- Acting Chairperson
Hon. BAYANI H. JACINTO ----- Member*
*Hon. KEVIN NARCE B. VIVERO**----- Member*

The following resolution was adopted:

Crim. Case No. SB-16-CRM-0049 People vs. AVELINO JUDILLA GUNGOB, SR., ET AL.

This resolves the following:

1. Accused Avelino Gungob, Sr., Glicerio Galo, Leonardo Capao, Joeboy Dayon, Juanito Gerundio, Beda Comiso, Nicarter Yray & Dionito Mangilaya's "MOTION FOR LEAVE OF COURT TO FILE DEMURRER TO EVIDENCE" dated May 15, 2018;¹
2. The prosecution's "COMMENT/OPPOSITION (re: MOTION FOR LEAVE OF COURT TO FILE DEMURRER TO EVIDENCE DATED 15 MAY 2018]" dated May 29, 2018.²

For resolution is accused Avelino Gungob, Sr., Glicerio Galo, Leonardo C. Capao, Joeboy C. Dayon, Juanito T. Gerundio, Beda I. Comiso, Nicarter J. Yray and Dionito C. Mangilaya's Motion for Leave of Court to File Demurrer to Evidence, and the prosecution's Comment/Opposition thereto.

Accused movants' motion is anchored on the fact that no sufficient evidence was adduced by the prosecution to overcome the presumption of innocence and to warrant conviction. They claim that the prosecution failed to present convincing evidence to prove conspiracy since the "Joint Affidavit of Leonardo Capao, Joeboy Dayon, Juanito Gerundio, Beda Comiso, Nicarter Yray and Dionito Mangaya, dated 26 November 2009"³

*Sitting as Special Member per Administrative Order No. 284-2017 dated 18 August 2017.

** Per Administrative Order No. 301-2018 dated May 31, 2018 in lieu of Justice Ma. Theresa Dolores C. Gomez-Estoesta who is on official business leave.

¹ *Rollo*, Vol. 2, pp. 438-446.

² *Id.* at 460-476.

³ Exh. D.

2. 8
MW

which is the only evidence that would support the charge of conspiracy, was excluded by the Court for being hearsay. Considering that the prosecution's allegation of conspiracy has no leg to stand on, accused contends that they are responsible for their individual acts only, which however do not constitute "theft of minerals" as defined by law.

Accused movants further allege that the prosecution failed to prove beyond reasonable doubt that the materials subject of the case was indeed "diorite" and "limestone" and that the minerals belong to the government or have been taken from a mining claim owned by other persons. Thus, the charge of "theft of minerals" must necessarily fail.

The prosecution, in its Comment/Opposition, counters that during the hearing on 25 May 2018, the Court reconsidered its previous ruling excluding the joint affidavit, and that it presented evidence to prove that accused acted in conspiracy to commit the crime of theft of minerals. The prosecution further alleges that it has presented sufficient evidence that established all the elements of the offense charged to justify the guilt of accused.

We resolve to **deny** the motion for lack of merit.

As to accused movants' first ground, this Court notes that the Joint Affidavit marked as Exh. "D", which tends to prove conspiracy, was admitted by the Court⁴ since its due execution, existence and authenticity were already admitted per Joint Stipulation of Facts as reflected in the Pre-trial Order dated 3 August 2017.⁵

With respect to the second and third grounds raised by accused movants: that the prosecution failed to present convincing evidence that the materials extracted were indeed minerals; and that the alleged minerals belong to the government or were taken from a mining claim or claim leased held or owned by other persons, the same constitute the elements of the crime of theft of minerals⁶ charged in the Information.

However, after passing upon the entirety of the evidence, testimonial and documentary, presented by the prosecution *vis-à-vis* the elements of the

⁴ *Rollo*, Vol. 2, pp. 457-458 (Order dated 25 May 2018).

⁵ *Id.* at 174-183.

⁶ RA No. 7942. Sec. 103. Any person extracting minerals and disposing the same without a mining agreement, lease, permit, license, or steals minerals or ores or the products thereof from mines or mills or processing plants shall, upon conviction, be imprisoned from six (6) months to six (6) years or pay a fine from Ten thousand pesos (P10,000.00) to Twenty thousand pesos (P20,000.00) or both, at the discretion of the appropriate court. In addition, he shall be liable to pay damages and compensation for the minerals removed, extracted, and disposed of. In the case of associations, partnerships, or corporations, the president and each of the directors thereof shall be responsible for the acts committed by such association, corporation, or partnership.

offense charged in the Information, the Court finds that, if unrebutted, the same appear to be *prima facie* sufficient to convict accused movants.

In *Macapagal-Arroyo v. People*,⁷ the Supreme Court declared:

"A demurrer to the 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, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. *The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt.* (Emphasis supplied)

Thus, accused has the evidentiary burden to overcome the *prima facie* evidence of the prosecution. Since the arguments raised by accused are matters of defense and appears to be evidentiary in nature, accused need to adduce substantial and credible proof, which should properly be made during the presentation of accused's evidence in chief.

Accordingly, the Court is not inclined to grant leave to file Demurrer to Evidence.

WHEREFORE, premises considered, accused Avelino Gungob, Sr., Glicerio Galo, Leonardo Capao, Joeboy Dayon, Juanito Gerundio, Beda Comiso, Nicarter Yray and Dionito Mangilaya's Motion for Leave of Court to File Demurrer to Evidence is **DENIED**.

Accused movants are nevertheless not precluded from filing their Demurrer to Evidence without leave of court subject to the condition provided under paragraph 2, Sec. 23, Rule 119 of the Revised Rules of Criminal Procedure.

Accused movants are given five (5) days from receipt of this Resolution within which to file their Manifestation to inform the Court whether they will file a Demurrer to Evidence, without leave of court.

In the meantime, the scheduled presentation of defense evidence tentatively set on **July 18 and 19, 2018, at 8:30 in the morning and 1:30 in the afternoon before the Regional Trial Court in Cebu City**, are maintained. The said scheduled dates are considered automatically cancelled upon receipt by the Court of accused movants' Demurrer to Evidence.

SO ORDERED.



⁷ G.R. No. 220598, 19 July 2016.

Minute Resolution

People v. Avelino J. Gungob, Sr., et al.

SB-16-CRM-0049

Page 4 of 4

X-----X

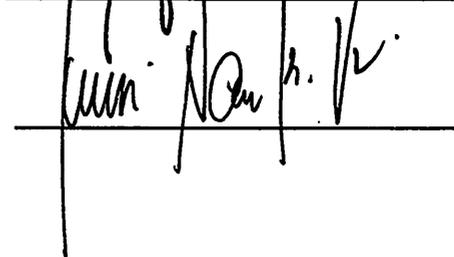
TRESPESES, Acting Chairperson

Handwritten signature of Trespeses in black ink, written over a horizontal line.

JACINTO, J.

Handwritten signature of Jacinto in black ink, written over a horizontal line.

VIVERO, J.

Handwritten signature of Vivero in black ink, written over a horizontal line.