

REPUBLIC OF THE PHILIPPINES  
SANDIGANBAYAN  
Quezon City

Fifth Division

**PEOPLE OF THE PHILIPPINES,**

*Plaintiff,*

**SB-16-CRM-0737**

**- versus -**

**FOR: Violation of Sec. 3 (e),  
R.A. No. 3019, as amended**

**BENEDICTO H. ALCALA, ET AL.,**

*Accused.*

*Present:*

**LAGOS, J., Chairperson,  
MENDOZA-ARCEGA, and  
MAÑALAC, JJ.**

*Promulgated:*

June 05, 2018 *Jal*

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**RESOLUTION**

**LAGOS, J.:**

For the Court's consideration are accused **Catalino A. Sumaylo's** *Motion of Leave to File Demurrer to Evidence*<sup>1</sup> dated April 26, 2018, and the prosecution's *Comment/Opposition*<sup>2</sup> thereto, dated May 15, 2018.

The accused-movant avers that "the evidence of the plaintiff against the accused is insufficient to establish the guilt of the accused beyond reasonable doubt, thus, the accused prays for leave to file demurrer to evidence in accordance with Section 33, Rule 113 of the Rules of Criminal Procedure." Parenthetically, Rule 113 of the Rules of Criminal Procedure (or simply, the "Rules of Court") has no Section 33 and Rule 113 deals specifically with **Arrest**. It is either accused-movant is referring to a different Rules of Criminal Procedure unbeknownst to the Court or wishes to send the Court on a wild-goose chase. As discussed by the prosecution in its *Comment/Opposition*, Section 23, Rule 119 is the pertinent provision of the Rules, to wit:

<sup>1</sup> Records, Vol. 2, pp. 365-368. Attached thereto is accused-movant's *Demurrer to Evidence*, dated April 26, 2018.

<sup>2</sup> *Id.*, pp. 380-387

**RESOLUTION**

**People vs. Alcala, et al.**

**SB-16-CRM-0737**

**Page 2 of 4**

X-----X

Sec. 23. *Demurrer to evidence.* – After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of the 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. [underscoring/emphasis supplied]

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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) after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt. [underscoring supplied]

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.

Accused-movant avers that “the plaintiff failed to establish the guilt of the accused beyond reasonable doubt that there was undue injury caused to the Government, much more that herein accused gave a private party **unwarranted benefit, advantage or preference** through manifest partiality, evident bad faith or gross inexcusable negligence.”<sup>3</sup> He claims, “[f]or emphasis, no evidence was adduced by the plaintiff that the accused was in evident bad faith when the Bids and Awards Committee eventually ruled to procure the vehicle (Kia Sorento) which eventually came out as the cheapest among the vehicles, hence negating the allegation that accused caused undue injury to the Government or gave unwarranted benefit to a private party. Moreover, when this case was filed, there was yet no **Notice of Disallowance from the Commission on Audit**. Otherwise stated, the case was filed prematurely. Further discussion shall be made in the Demurrer to Evidence proper.”<sup>4</sup>

In its *Comment/Opposition*, the prosecution contends that “[a]ccused-demurrant’s motion barely complied with the requirements under the Rules of Criminal Procedures; rule requires that a Motion for Leave to File Demurrer to Evidence contain **SPECIFIC GROUNDS** relied upon by the accused as to why, in his opinion, the prosecution failed to prove his guilt beyond reasonable ground;”<sup>5</sup> that figuratively, “it failed to draw a sketch map upon which the demurrer is based.”<sup>6</sup> They argue that, “[i]n reasoning out that ‘evidence of the plaintiff against the accused is insufficient to

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<sup>3</sup> *Id.*, *Motion for Leave*, par. 3, p. 366; emphasis in the original.

<sup>4</sup> *Id.*, par. 4; emphasis in the original.

<sup>5</sup> Records, Vol. 2, p. 383; *Comment/Opposition*, par. 9, p. 4; emphasis in the original.

<sup>6</sup> *Id.*

**RESOLUTION**

*People vs. Alcala, et al.*

**SB-16-CRM-0737**

Page 3 of 4

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establish the guilt of the accused beyond reasonable doubt', the accused only went back to the definition of demurrer to evidence. A restatement of the codal definition of a demurrer to evidence cannot be a 'SPECIFIC GROUND', as contemplated in the (above) rule, since it is a mere circuitousness of reasoning. Stating the meaning of a demurrer is not the same as laying down the basis for its filing;"<sup>7</sup> that further, "**a general statement** 'that no evidence was adduced by the prosecution that he acted with evident bad faith when the Bids and Awards Committee ruled to procure the vehicle (Kia Sorento) and that there was no Notice of Disallowance from COA when the case was filed', **do not meet the requirements.**"<sup>8</sup> Commenting on the fact that accused-movant attached to his motion his *Demurrer to Evidence*, the prosecution citing Section 23, Rule 119, chided the accused in that, "...it has to be underscored that the instant motion is technically flawed. The prosecution is now confronted with the '**Demurrer to Evidence**' without giving the Court an opportunity to rule on the Motion for Leave to file Demurrer to Evidence;"<sup>9</sup> that "[l]eave of Court in filing demurrer is required before the accused may be allowed to actually file his demurrer to evidence without consequence. The steps to be followed are clear under the rules, it is cumulative rather than simultaneous, since the accused opted to file it 'with leave of Court'"<sup>10</sup>.

The prosecution rested its case on March 1, 2018<sup>11</sup> and filed its *Formal Offer of Exhibits*<sup>12</sup> on March 5, 2018. On April 4, 2018, the Court resolved "to admit all the exhibits offered by the prosecution,"<sup>13</sup> and with respect to the exhibits pertaining to accused-movant, "over the objection of Catalino Sumaylo...."<sup>14</sup>

The Information in this case alleges that accused herein, "all public officers and members of the Members of the Bids and Awards Committee (BAC) of Panglao, while in the performance of their official functions, committing the offense in relation to office and taking advantage of their official position, did then and there willfully, unlawfully, and feloniously, through evident bad faith, manifest partiality and/or gross inexcusable negligence, conspiring and confederating and mutually helping one another, give unwarranted benefit, advantage or preference to Gateway Motors (Cebu) Inc., by causing the procurement of a motor vehicle with a specified brand name of "Kia Sorento" through direct contracting, without just and lawful basis, in blatant violation of the provisions of Republic Act No. 9184 and its Implementing Rules and Regulations, and causing undue injury to the

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<sup>7</sup> *Id.*, par. 11; emphasis in the original.

<sup>8</sup> *Id.*, par. 13, p. 384; emphasis in the original.

<sup>9</sup> *Id.*, par. 4, p. 381; emphasis in the original.

<sup>10</sup> *Id.*, par. 5, pp. 381-382

<sup>11</sup> Records, Vol. 2, p. 176. See Order dated March 1, 2018.

<sup>12</sup> *Id.*, p. 177

<sup>13</sup> *Id.*, p. 359


<sup>14</sup> *Id.*, pp. 360-361

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Municipality of Panglao in the amount of PhP 1,466,964.28 from its 20% Development Fund, since the procurement of a motor vehicle is not one of the allowable development project expense under the Fund as identified under the Department of Interior and Local Government (DILG) and Department of Budget and Management (DBM) Joint Memorandum Circular No. 1, series of 2005.”

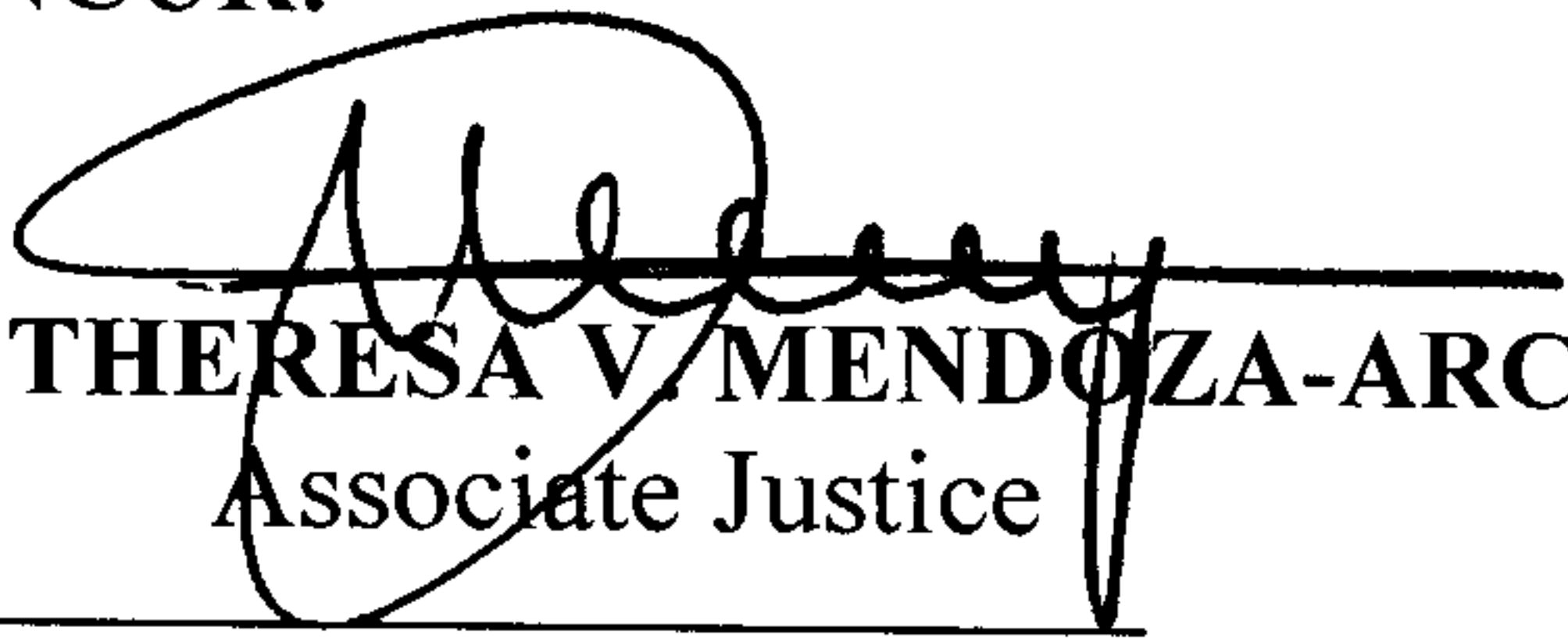
Judicial action to grant prior leave to file demurrer to evidence is discretionary upon the trial court.<sup>15</sup> Here, after due consideration of the arguments of the parties, and a review of the Information and the records of this case, the Court finds that based on the evidence offered by the prosecution – if they remain unrebutted by the accused-movant, the same is sufficient to support a finding of guilt beyond reasonable doubt against the accused. On the claim that this case was filed “prematurely” in that “when this case was filed, there was yet no **Notice of Disallowance from the Commission on Audit**,” suffice it to state that a notice of disallowance as adverted to by accused-movant is not a condition precedent or an essential prerequisite for the filing of cases for violation of the Anti-Graft and Corrupt Practices Act (R.A. 3019), such as for violation of Sec. 3 (e) herein, nor such an argument dwell on the sufficiency of the prosecution’s evidence. Also, there is nothing in the Rules that requires a movant to attach a proposed or intended *Demurrer to Evidence* in the event the motion for leave is granted. Such is unnecessary or serves no purpose at all. Under Sec. 23, Rule 119, accused-movant may now adduce evidence in his defense, or proceed instead with his demurrer to evidence, with the ramifications attendant thereto, as provided in the Rules.

**WHEREFORE**, in view of the foregoing, accused **Catalino A. Sumaylo’s Motion for Leave to File Demurrer to Evidence** is **DENIED** for lack of merit. The initial presentation of defense evidence shall proceed as scheduled on June 6, 2018.

**SO ORDERED.**

  
**RAFAEL R. LAGOS**  
Associate Justice  
Chairperson

**WE CONCUR:**

  
**MARIA THERESA V. MENDOZA-ARCEGA**  
Associate Justice

  
**MARYANN E. CORPUS-MAÑALAC**  
Associate Justice

<sup>15</sup> Bernardo vs. CA, et al., G.R. No. 11910, September 5, 1997.