



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
 Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff,

SB-17-CRM-0747
 For: Violation of Section 3(e),
 R.A. No. 3019

- versus -

WILFREDO A. SIASICO,
 Accused.

Present:

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

Promulgated:

JUN 19 2018

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves the *Demurrer to Evidence*¹ filed by accused Wilfredo A. Siasico on May 15, 2018; together with the *Comment/Opposition*² filed by the prosecution on May 25, 2018; and the *Reply*³ filed by accused Siasico on June 1, 2018.

Accused Siasico asks the Court to dismiss the instant case on the ground that the prosecution failed to establish his guilt beyond reasonable doubt, as it failed to prove the elements constituting the *corpus delicti* of the offense.⁴

Accused Siasico claims that:

a) There is no proof of undue injury to the government;⁵

¹ Dated May 15, 2018

² (Re: Accused's *Demurrer to Evidence*) dated May 23, 2018

³ (To *Comment/Opposition Re: Accused's Demurrer to Evidence*) dated May 15, 2018

⁴ *Demurrer to Evidence* dated May 15, 2018, p. 8.

⁵ *Demurrer to Evidence* dated May 15, 2018, p. 10.

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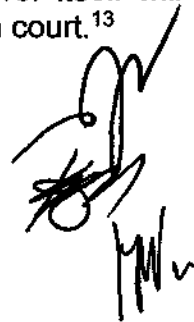
- b) There is no truth to the claim of the prosecution that "additional charges" were incurred;⁶
- c) There is no unwarranted preference to a private party;⁷ and,
- d) There is no proof of manifest partiality, evident bad faith or gross inexcusable neglect.⁸

On the other hand, the prosecution argues for the denial of accused Siasico's *Demurrer to Evidence*:

- a) The accused's *Demurrer to Evidence* without leave of court is filed out of time.⁹
- b) The accused's *Demurrer to Evidence* filed without leave of court suffers a fatal defect.¹⁰
- c) The Prosecution was able to prove the existence of all the elements of Section 3(e), R.A. No. 3019, in the instant case.¹¹

Ordinarily, the Court will not consider the *Reply (To Comment/Opposition Re: Accused's Demurrer to Evidence)*¹² filed by accused Siasico on June 1, 2018, considering that the Court did not require the filing thereof. However, in view of the allegations therein, the Court will consider the same in the resolution of the present incident. In its *Reply*, accused Siasico argues:

- a) During the May 2, 2018 hearing, the counsel for the accused orally moved for leave of court to file *Demurrer to Evidence*;
- b) Said motion was granted orally, in open court, by this Honorable Court; and,
- c) The Honorable Associate Justice Karl B. Miranda told the counsel for the accused that the demurrer itself will not be called anymore for actual hearing in open court.¹³



⁶ Demurrer to Evidence dated May 15, 2018, p. 12.

⁷ Demurrer to Evidence dated May 15, 2018, p. 16.

⁸ Demurrer to Evidence dated May 15, 2018, p. 17.

⁹ Comment/Opposition dated May 23, 2018, p. 1.

¹⁰ Comment/Opposition dated May 23, 2018, p. 3.

¹¹ Comment/Opposition dated May 23, 2018, p. 4.

¹² Dated May 15, 2018

¹³ Reply dated May 15, 2018, p. 2.

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RULING

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

Contrary to accused' contention in his *Reply*, the Court did not grant, in open court, his *Motion for Leave to File Demurrer to Evidence*.

In fact, counsel for the accused did not orally move for leave to file *Demurrer to Evidence*. He merely signified his intention to file *Motion for Leave to File Demurrer to Evidence*. In response, the Court granted him time to file his *Motion for Leave to File Demurrer to Evidence*, and the prosecution was also given time to file its *Comment or Opposition* thereto, both by personal filing and service, or through courier. These matters were clearly stated in the *Order* orally given during the hearing on May 2, 2018. Under the *Rules on Criminal Procedure*, the *Motion for Leave* is to be filed within five (5) days from notice of the resolution on the prosecution's *Formal Offer of 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,¹⁴ 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*.

In *People vs. Bodoso*,¹⁵ 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

¹⁴ Section 23, Rule 119 of the Revised Rules of Criminal Procedure

¹⁵ 398 SCRA 642 [2003]

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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 –

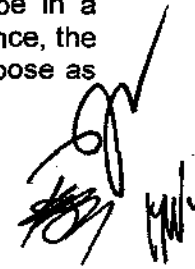
1. The trial court shall hear both the prosecution and the accused with their respective counsel on the desire or manifestation of the accused to waive the right to present evidence and be heard.
2. The trial court shall ensure the attendance of the prosecution and especially the accused with their respective 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.

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



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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.¹⁶

In *Rivera vs. People*,¹⁷ 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.¹⁸

The Notice of Hearing.

It is true that the *Demurrer to Evidence* did not set a specific date in its Request for Hearing. But none is required for a *Demurrer to Evidence*. One is required for a *Motion for Leave to File Demurrer to Evidence*. Here, the prosecution was sufficiently apprised of the subject *Demurrer/Motion*, as it a) received a copy of the *Demurrer/Motion*; and, b) filed its *Comment/Opposition* to the *Demurrer to Evidence*. Further, the parties agreed that the *Motion for Leave* to be filed by the accused will no longer be heard.

Since the prosecution was afforded an opportunity to be heard, it will not be prejudiced if the Court acts on the instant *Demurrer/Motion*.

¹⁶ At pp. 653-654. Emphasis and underscoring supplied; citations omitted.

¹⁷ 460 SCRA 85 [2005]

¹⁸ At pp. 93-98.

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In *Jehan Shipping Corp. vs. National Food Authority*,¹⁹ the Supreme Court said that despite the lack of notice of hearing in a Motion for Reconsideration, there was substantial compliance with the requirements of due process where the adverse party actually had the opportunity to be heard and filed pleadings in opposition to the motion, viz:

This Court has indeed held time and again, that under Sections 4 and 5 of Rule 15 of the Rules of Court, mandatory is the requirement in a motion, which is rendered defective by failure to comply with the requirement. As a rule, a motion without a notice of hearing is considered *pro forma* and does not affect the reglementary period for the appeal or the filing of the requisite pleading.

As an integral component of the procedural due process, the three-day notice required by the Rules is not intended for the benefit of the movant. Rather, the requirement is for the purpose of avoiding surprises that may be sprung upon the adverse party, who must be given time to study and meet the arguments in the motion before a resolution of the court. Principles of natural justice demand that the right of a party should not be affected without giving it an opportunity to be heard.

The test is the presence of opportunity to be heard, as well as to have time to study the motion and meaningfully oppose or controvert the grounds upon which it is based. Considering the circumstances of the present case, we believe that the requirements of procedural due process were substantially complied with, and that the compliance justified a departure from a literal application of the rule on notice of hearing.²⁰

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 Siasico.

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 15, 2018, and is submitting the same, without leave of court.

¹⁹ 477 SCRA 781 [2005].

²⁰ At pp. 788-789. Underscoring supplied.

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The hearings for the accused to present his evidence tentatively set on July 5, 9, and 12, 2018, all at 1:30 in the afternoon, are maintained. The said scheduled dates will be considered automatically cancelled upon receipt by the Court of accused' manifestation that he intends to pursue his *Demurrer to Evidence*, without leave of court.²¹

SO ORDERED.



SARAH JANE T. FERNANDEZ

Associate Justice
Chairperson

WE CONCUR:



KARL B. MIRANDA

Associate Justice



KEVIN NARCE B. VIVERO

Associate Justice

²¹ Pursuant to A.M. No. 15-06-10-SC, Revised Guidelines for Continuous Trial of Criminal Cases