



REPUBLIC OF THE PHILIPPINES

**Sandiganbayan**

Quezon City

SIXTH DIVISION

**PEOPLE OF THE PHILIPPINES,** **SB-18-CRM-0123**  
Plaintiff, For: Violation of Sec. 3(e)  
of R.A. No. 3019, as amended

*Present*

- versus -

**VALDEMAR M. CHIONG,**  
Accused.

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

*Promulgated:*

**JUN 27 2018** *jud*

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**RESOLUTION**

**FERNANDEZ, SJ, J.**

This resolves the *Motion to Dismiss*<sup>1</sup> filed by accused Valdemar M. Chiong.

In his Motion, the accused prays that this Court dismiss the present case on the ground of lack of legal and factual basis. He avers:

1. Among the prosecution's intended witnesses is Darwin G. Sarraga, who filed the complaint against him before the Office of the Ombudsman.
2. Recently, a representative of Sarraga personally served upon him a copy of Sarraga's *Affidavit of Desistance* dated March 23, 2018, wherein Sarraga acknowledged the existence of the Fire Safety Inspection Certificate (FSIC) dated November 4, 2013, valid for one (1) year from issuance, covering Mayor's Permit No. RC1-484-2014 issued on April 7, 2014. Thus, he lost interest and opted not to pursue the complaints he filed against the accused.

<sup>1</sup> Dated May 21, 2018; Record, pp. 105-116

*[Handwritten signatures]*

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3. Sarraga's *Affidavit of Desistance* does not only manifest Sarraga's lack of interest in pursuing his complaint, but also belies the material points alleged in the Information.
4. The documentary evidence he intends to present will also prove the existence of the aforementioned FSIC.
5. Without Sarraga's active participation in the prosecution of the present case, the prosecution may not be able to prove his guilt beyond reasonable doubt. Proceeding with the trial will be an exercise in futility and be nothing but a waste of the Court's time.

In its *Comment/Opposition (Re: Accused Chiong's Motion To Dismiss)*,<sup>2</sup> the prosecution counters:

1. Sarraga's *Affidavit of Desistance* will not hinder it from proving the material allegations in the Information.
2. In *People v. Salazar*,<sup>3</sup> it was held that an affidavit of desistance or pardon is not a ground for the dismissal of an action, once it has been instituted in court.
3. As a rule, a recantation or an affidavit of desistance is viewed with suspicion and reservation.
4. The accused' Motion to Dismiss is nothing more than a dilatory procedural tactic.

THE COURT'S RULING

The Court resolves to deny the Motion of the accused.

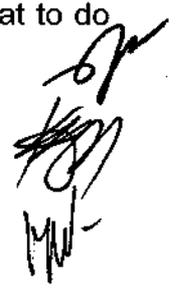
In *Crespo v. Mogul*,<sup>4</sup> it was held that once the Information is filed in Court, any disposition of the case rests in its sound discretion. Viz.:

The rule therefore in this jurisdiction is that once a complaint or information is filed in Court, any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of the criminal cases even while the case is already in Court, he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do

<sup>2</sup> Dated May 25, 2018; Record, pp. 119-122

<sup>3</sup> G.R. No. 181900, October 20, 2010

<sup>4</sup> G.R. No. L-53373, June 30, 1987



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with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation.

(underscoring supplied)

However, in *Republic v. Sunga*,<sup>5</sup> where the trial court dismissed the case upon an affidavit of desistance executed by the offended party, without a motion to dismiss filed by the prosecution, it was held that while the doctrine enunciated in *Crespo v. Mogul* stands, *i.e.*, that it is still the Court that determines whether a case should be dismissed, the matter should first be referred to the prosecutor, who is in control of the prosecution of the case. To wit:

To avoid similar situations, the Court takes the view that, while the *Crespo* doctrine has settled that the trial court is the sole judge on whether a criminal case should be dismissed (after the complaint or information has been filed in court), still, any move on the part of the complainant or offended party to dismiss the criminal case, even if without objection of the accused, should first be referred to the prosecuting fiscal for his own view on the matter. He is, after all, in control of the prosecution of the case and he may have his own reasons why the case should not be dismissed. It is only after hearing the prosecuting fiscal's view that the Court should exercise its exclusive authority to continue or dismiss the case.

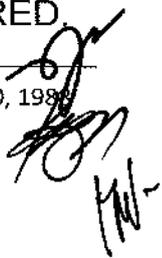
Here, the prosecution opposed the accused' Motion and maintained that it can discharge its burden of proving the accused' guilt, notwithstanding Sarraga's *Affidavit of Desistance*.

It bears stressing that the prosecution, which has the burden of establishing the guilt of the accused beyond reasonable doubt, and not the accused, is in a better position to determine if it can proceed. This Court finds no reason to warrant the dismissal of the present case.

**WHEREFORE**, the motion of the accused is hereby DENIED for lack of merit.

SO ORDERED

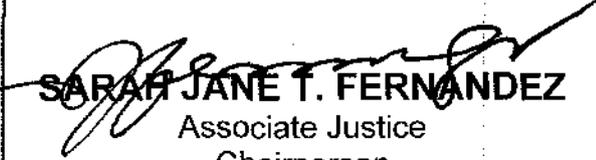
<sup>5</sup> G.R. No. L-38634, June 20, 1988



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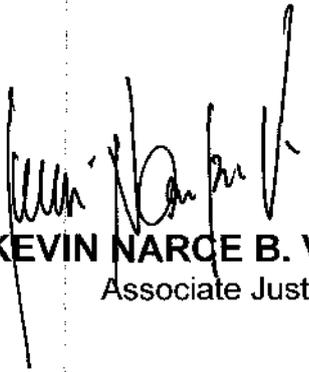


**SARAH JANE T. FERNANDEZ**  
Associate Justice  
Chairperson

**We Concur:**



**KARL B. MIRANDA**  
Associate Justice



**KEVIN NARCE B. VIVERO**  
Associate Justice