



Republic of the Philippines
Sandiganbayan
Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on 8 August 2018.

Present:

Justice MA. THERESA DOLORES C. GOMEZ-ESTOESTA----- Chairperson
Justice ZALDY V. TRESPESES ----- Member
Justice GEORGINA D. HIDALGO ----- Member

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 "MOTION FOR RECONSIDERATION OF THE DENIAL FOR LEAVE OF COURT TO FILE DEMURRER TO EVIDENCE" dated 7 July 2018;¹
 2. Accused Maritess Delos Reyes's "REQUEST FOR LEAVE OF COURT TO FILE DEMURRER TO EVIDENCE (For accused Delos Reyes)" dated 6 July 2018;² and
 3. The Prosecution's "COMMENT/OPPOSITION" dated 25 July 2018.³
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TRESPESES, J.

For the Court's resolution are accused Mariano M. Malones and Edna Madarico's (collectively referred to as "accused Malones and Madarico") motion for reconsideration on the denial of their motion for leave of court to file demurrer to evidence, as well as accused Maritess Delos Reyes's ("accused Delos Reyes") motion for leave of court to file demurrer to evidence.

¹ *Rollo*, Vol. III, pp. 401-416.

² *Id.* at 417-419.

³ *Id.* at 427-430.

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**MALONES AND MADARICO'S
MOTION FOR RECONSIDERATION**

In their motion, accused Malones and Madarico once again raise the issue of inordinate delay. They claim that as to length of delay, the complaint in this case was filed on 31 May 2002 but it was only on 29 August 2013 that the Ombudsman recommended the filing of the case with the Sandiganbayan. They claim that under the standards set by *Remulla v. Sandiganbayan*,⁴ the 11 years it took for the Ombudsman to file the present case before the Sandiganbayan violates accused's right to speedy disposition of their case. Accused also argue that the Ombudsman in the present case failed to cite particular reasons for the delay in resolving the preliminary investigation, unlike the cases favorably cited in *Remulla*.

Moreover, accused emphasize that due to the delay, they have lost track of witnesses and documents to prove their defense. In addition, they claim that they did not incur delay in asserting their right to speedy disposition, having repeatedly invoked it. They also contend that they do not have the burden to prove that the delay prejudiced them, as held by the Supreme Court in *Corpuz v. Sandiganbayan*.⁵

Accused claim that the admission of Winifredo Maternal's ("Maternal") affidavit does not alter the fact that his testimony cannot be given weight. They argue that had they been given the chance to file a demurrer, they would have discussed that this affidavit would have been discarded under the hearsay rule because Maternal admitted that he had no personal knowledge of the documents he obtained and attached to his Complaint-Affidavit.

Accused also argue that had they been given the chance to file their demurrer, they would have pointed out that the documents from the Land Transportation Office (LTO) testified to by Marcelino Reyes ("Reyes") cannot be given so much weight. Reyes can only testify as to the existence of the records in his office, not their authenticity.

Accused further allege that the Commission on Audit (COA) audit team's finding is an important evidence in determining whether or not the prosecution has substantially established the guilt of the accused, including the lack of notice of disallowance, citing *Baylon v. Office of the Ombudsman*.⁶ If the COA Report was irrelevant, the complainant would not have used it as basis for his complaint and the Ombudsman would not have mentioned the COA Report in arriving at a finding of probable cause.

⁴ G.R. No. 218040, 17 April 2017.

⁵ 484 Phil. 899-927 (2004).

⁶ 423 Phil. 705-726 (2001).

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**DELOS REYES'S REQUEST
FOR LEAVE OF COURT TO FILE DEMURRER**

In her motion, accused Delos Reyes argues that Atty. Gileo Alojado, of COA Regional Office VI, expressly admitted that accused Delos Reyes's signatures in Exhibits "7," "A-8," "A-9" and "A-10" substantially differ from that in Exhibit "A-21-A" (Deed of Sale dated 5 September 2001). This casts doubt on whether accused Delos Reyes personally signed the Deed of Sale.

She also alleges that Exhibits "A-4," "A-5," "A-6," "A-9," "A-10," "A-11," "A-12," and "A-13" are mere machine copies and their originals were not shown to exist. Neither did the prosecution explain why originals could not be presented in Court. Hence, they are inadmissible in evidence.

Accused Delos Reyes also claims that prosecution witness Maternal's testimony was hearsay as he has no personal knowledge of the facts and the documents he allegedly obtained.

Accused Delos Reyes adds that prosecution witness Reyes of the LTO admitted that he cannot attest to the authenticity and due execution of Exhibit "A-21-A." Thus, this document is inadmissible to prove her guilt.

PROSECUTION'S COMMENT/OPPOSITION

In its comment, the prosecution points out that accused Malones and Madarico's argument regarding the alleged violation of their right to speedy disposition basically question the prosecution's authority to file the Information. Hence, it is proper to raise it in a motion to quash, but not in a demurrer to evidence, or a motion for leave to file the same. Also, the issue of inordinate delay has already been resolved by the Court in its 7 June 2016 Resolution⁷ denying accused Malones and Madarico's motion to dismiss on this ground.

As to Maternal's testimony, his complaint-affidavit has already been admitted by the Court in its 21 May 2018 Resolution.⁸ Also, accused failed to pinpoint which specific portion of Maternal's testimony is objectionable. Such specification is required by the Rules in securing leave to file demurrer.

Regarding Reyes's testimony, the prosecution quotes the assailed Resolution stating that "if accused-movants wish to refute the authenticity and due execution of the Deed of Absolute Sale testified to by witness Reyes, they

⁷ *Rollo*, Vol. II, pp. 63-67.

⁸ *Rollo*, Vol. III, pp. 366-369.

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may do so by presenting their own controverting evidence, not by filing a demurrer to evidence.”⁹

With regard to accused’s reliance on jurisprudence pertaining to the importance of the COA findings in determining probable cause, the prosecution counters that this is inapplicable in the present case because the Court has already found probable cause when it issued warrants for the arrest of the accused. Meanwhile, a demurrer to evidence is not the proper manner to appeal the finding of probable cause by the Ombudsman. The fact that the cited case pertains to an administrative case while what is being tried herein is a criminal case is yet another difference between the cited jurisprudence and the instant case.

Finally, Delos Reyes’s Request/motion is anchored on her objections to Exhibits “A-4” A-4,” “A-5,” “A-6,” “A-9,” “A-10,” “A-11,” “A-12,” and “A-13.” However, these exhibits have already been excluded in evidence by the Court in its 23 May 2018 Resolution. Hence, these pieces of evidence cannot be the basis of a demurrer to evidence or a motion for leave to file the same.

OUR RULING

A. On Accused Malones and Madarico’s Motion for Reconsideration

We **DENY** accused Malones and Madarico’s motion for reconsideration for lack of merit.

Accused’s extended discussion of the alleged violation of his right to speedy disposition to support his motion for the Court to reconsider the denial of his motion for leave to file a demurrer is misguided.

Accused misunderstood the import of the penultimate paragraph in the body of the Court’s 20 June 2018 Resolution. The said paragraph only highlights the final defect in accused’s raising of the issue of inordinate delay in their motion for leave to file demurrer to evidence. It is neither the sole nor the most important reason why the Court found this ground untenable.

A plain reading of the preceding paragraphs in the assailed Resolution will readily show that the Court’s main reason for denying accused Malones and Madarico’s inordinate delay argument in their motion for leave to file demurrer is that this ground is improper in a demurrer to evidence. Moreover, the issue of inordinate delay has already been passed upon by the court in its previous resolution, to wit:

⁹ *Rollo*, Vol. III, p. 393.

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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 2016, accused-movants prayed that the instant case be dismissed because it violated their right to speedy disposition of their case. This Court, in a Resolution 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

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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 claim 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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xxxx (Footnotes omitted.)¹⁰

As to the objection to Maternal's testimony, we note that accused failed to pinpoint which specific portion/s of Maternal's testimony they believe to be objectionable or hearsay, considering that Maternal was a member of the *Sanggunian Bayan* of Maasin. Accused's blanket contention is contrary to the mandate of the rule to specify the grounds for the motion for leave to file the demurrer under Section 23, Rule 119 of the Rules of Criminal Procedure.¹¹

Moreover, some of the documents attached to Maternal's Complaint-Affidavit, which Maternal has no personal knowledge of, have already been excluded in the assailed Resolution. Nonetheless, the Court noted that some of these excluded documents were also offered as part of the records of the LTO, which the parties stipulated that witness Reyes could identify. The Court then concluded that overall, the exclusion of some exhibits does not significantly detract from the prosecution's allegation that accused acquired the subject garbage compactor truck without public bidding or that they made untruthful statements in the Deed of Donation and Deed of Acceptance.¹²

Regarding Reyes's testimony, it is true that he can only testify on the existence of the LTO documents in his legal custody, and not on their due execution and authenticity. Nonetheless, the said documents partake of the nature of public documents. As public documents, the LTO registration papers are *prima facie* evidence of the facts stated therein.¹³ Hence, it is necessary for accused to present evidence to substantiate their allegation that the impugned documents are not entitled to credence.

Finally, accused's reliance on *Baylon v. Office of the Ombudsman*¹⁴ is misplaced. In *Baylon*, the Ombudsman found probable cause to indict Baylon based on the COA's notice of disallowance. When COA lifted its notice of disallowance on reconsideration, the Supreme Court ordered the dismissal of the case on the ground of lack of probable cause.

¹⁰ *Rollo*, Vol. III, pp. 7-8.

¹¹ 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.

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.¹¹ (Underscoring supplied.)

¹² *Rollo*, Vol. III, pp. 5-6.

¹³ *Autozentrum Alabang, Inc. v. Spouses Bernardo*, G.R. No. 214122, 8 June 2016.

¹⁴ *Supra* at note 6.

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Therefore, what *Baylon* illustrated was the consideration given to the COA's findings in determining *probable cause*, and *not* the overriding importance of the COA's lack of notice of disallowance in finally determining the guilt of the accused beyond reasonable doubt.

B. On Accused Delos Reyes's Request for Leave of Court to file Demurrer to Evidence

Delos Reyes's objections to the testimonies of Maternal and Reyes, which merely echo that of accused Malones and Madarico, have already been discussed in the preceding section.

This leaves Delos Reyes's objections to Exhibits "A-4," "A-5," "A-6," "A-9," "A-10," "A-11," "A-12," and "A-13" as her final ground for requesting leave of court to file a demurrer to evidence.

Delos Reyes's ground and/or objection is untenable. A simple review of the Court's 23 May 2018 Resolution will show that the Court has already excluded the said exhibits in evidence.

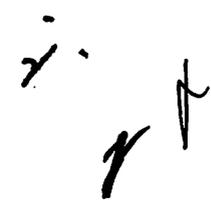
In sum, after evaluating the evidence presented by the prosecution and the arguments of the accused, the Court finds insufficient reason to grant accused's motion for reconsideration and motion for leave to file a demurrer. It maintains the necessity of further trial to give accused the opportunity to present controverting evidence.

WHEREFORE, in view of the foregoing, accused Mariano Malones and Edna Madarico's motion for reconsideration on the denial of their leave to file demurrer to evidence is **DENIED** for lack of merit.

Likewise, accused Maritess Delos Reyes's request for leave to file demurrer to evidence is **DENIED** for lack of merit.

Let the hearings proceed as scheduled on **5, 6, 7, and 8 November 2018** all at **8:30 in the morning and 1:30 in the afternoon** at the **Regional Trial Court of Iloilo City**.

SO ORDERED.



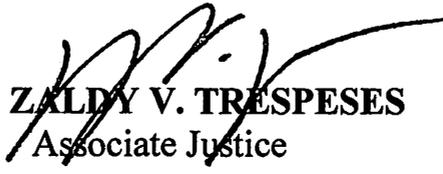
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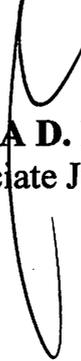


ZALDY V. TRESPESES
Associate Justice

WE CONCUR:



MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Associate Justice, Chairperson



GEORGINA D. HIDALGO
Associate Justice