



Republic of the Philippines
Sandiganbayan
Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on 21 September 2018.

Present:

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

The following resolution was adopted:

Crim. Case No. SB-16-CRM-0770 - People vs. Mariano M. Malones, et al.

This resolves the following:

1. Accused Mariano Malones, Cecilio Montefrio and Jimmy M. Borra's "MOTION FOR LEAVE OF COURT TO FILE DEMURRER TO EVIDENCE" dated 16 July 2018;¹ and
2. The prosecution's "COMMENT/OPPOSITION TO ACCUSED MOTION FOR LEAVE OF COURT TO FILE DEMURRER TO EVIDENCE" dated 6 September 2018.²

TRESPESES, J.

Submitted for the Court's resolution is the motion for leave of court to file demurrer to evidence filed by accused Mariano Malones, Cecilio Montefrio and Jimmy Borra ("accused"), and the prosecution's comment thereon.

ACCUSED'S MOTION

In accused's three-page motion, they allege only five matters, namely: (1) that the prosecution has presented its witnesses and formally offered its evidence; (2) that this formal offer of evidence was received by counsel for the accused on 7 May 2018; (3) that accused's counsel received on 11 July 2018 the Court's Resolution dated 9 July 2018 admitting in evidence only Exhibits "A," "E," "F," "G," "H," "H-1," "I," "J," "J-1," "M," "P,"

¹ *Rollo*, Vol. IV, pp. 52-54.

² *Id.* at pp. 74-77.

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“Q,” “R,” “S,” “HH” and series, “II” and “II-1,” and denying the rest of the exhibits for failure to comply with the best evidence rule; (4) that accused seek leave of court to file demurrer to evidence on the ground that the evidence presented by the prosecution is not sufficient to warrant a conviction of the guilt of the accused beyond reasonable doubt; and (5) that accused’s motion is filed in good faith and not for the purpose of delaying the proceedings of the case.

PROSECUTION’S COMMENT

In its comment, the prosecution argues that accused’s motion should be denied for failure to comply with the mandate under Section 23, Rule 119 of the Rules of Court, to specifically state the grounds relied upon for claiming that the evidence adduced by the prosecution is insufficient to warrant accused’s conviction.

OUR RULING

We **deny** accused’s motion for leave to file demurrer to evidence for lack of merit.

Section 23, Rule 119 of the Rules of Court unequivocally mandates that “(t)he motion for leave of court to file demurrer to evidence shall specifically state its grounds xxx,” to wit:

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.

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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. (Underscoring supplied.)

On the other hand, the entirety of accused's allegation for seeking leave of court to file demurrer to evidence is that "the evidence presented by the prosecution is not sufficient to warrant a conviction of the guilt of the accused beyond reasonable doubt." Evidently, accused's averment is a mere echo of the purpose of a demurrer to evidence, which is the dismissal of the action on the ground of insufficiency of evidence. It fails to identify any particular reason why the evidence presented by the prosecution is insufficient to convict them.

Accused's motion fails to comply with the requirement of the Rules, and must, accordingly, be dismissed.

WHEREFORE, in view of the foregoing, the motion for leave of court to file demurrer to evidence filed by accused Mariano Malones, Cecilio Montefrio and Jimmy Borra is **DENIED** for lack of merit.

Nonetheless, accused are not precluded from filing their Demurrer to Evidence without leave of court, subject to the condition provided under the second paragraph of Section 23, Rule 119 of the Rules of Court.

Let the presentation of evidence for the defense proceed as previously 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.


ZALDY V. TRESPESSES
Associate Justice

WE CONCUR:


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


GEORGINA D. HIDALGO
Associate Justice