



Republic of the Philippines
Sandiganbayan
 Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on 08 October 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-0147 - People vs. REX FUSINGAN DAPITAN

This resolves the following:

1. Accused Rex F. Dapitan's "MOTION (for Leave of Court to File Demurrer to Evidence)" dated September 20, 2018;¹
2. The prosecution's "COMMENT/OPPOSITION (on accused' Motion for Leave to File Demurrer to Evidence)" dated October 3, 2018.²

TRESPESES, J.

For resolution is accused Rex Fusingan Dapitan's Motion (for Leave of Court to File Demurrer to Evidence), and the prosecution's Comment/Opposition thereto.

Accused prays for leave to file his Demurrer. He avers that the prosecution failed to prove all the necessary elements of the offense of Malversation of Public Funds charged against him resulting in the failure to prove his guilt beyond reasonable doubt.

Accused alleges that the instant case accuses him of orchestrating a fictitious *Lakbay Aral* and that the funds intended for the said purpose was used to cover his personal expenses in attending the wedding of a co-employee. However, the prosecution failed to submit clear and convincing evidence that the *Lakbay Aral* was never conducted and that the funds were

¹ *Rollo*, Vol. 2, pp. 26-39.
² *Id.* at 43-47.

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not actually used by accused in the conduct of the said activity. For this reason, accused asserts that there is no necessity to proceed with the trial for the presentation of the evidence for the accused.

The prosecution, in its Comment, posits that the evidence it presented sufficiently established all the elements of the offense charged to justify the guilt of accused.

It avers that evidence were adduced to prove that the funds for the *Lakbay Aral* were disbursed for food, accommodation and other incidental expenses, which is contrary to the terms of the Training Design.³ Also, the amount spent for the transportation expenses was not supported by a contract, official receipts and certificates of registration of the motor vehicles. Pieces of evidence were also adduced to prove that no *Lakbay Aral* was undertaken, and that the supposed tour was organized to facilitate the attendance of the Sultan Kudarat State University officials and employees at the wedding of Jessie Joy Paclibar.⁴

The pieces of evidence, which remained uncontroverted, are sufficient to sustain a conviction for Malversation of Public Funds.

OUR RULING

We resolve to **deny** the Motion for lack of merit.

In *Macapagal-Arroyo v. People*,⁵ the Supreme Court declared:

"A demurrer to the evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. *The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt.* (Emphasis supplied)

After passing upon the totality of the evidence, testimonial and documentary, presented by the prosecution in relation to the elements of the offense of Malversation of Public Funds charged in the Information, the Court finds the same sufficient to support a verdict of guilt. Accused, therefore has the evidentiary burden to controvert the prosecution's case which should properly be made during the presentation of accused's evidence in chief.

³ Exhs. A, H, I and J.

⁴ Exhs. A, G, and Y to Y-3.

⁵ G.R. No. 220598, 19 July 2016.

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WHEREFORE, premises considered, the Motion (for Leave of Court to File Demurrer to Evidence) filed by accused Rex Fusingan Dapitan is **DENIED**.

Accused Dapitan is nevertheless not precluded from filing his Demurrer to Evidence without leave of court subject to the condition provided under Sec. 23, Rule 119 of the Revised Rules of Criminal Procedure.

In the meantime, the initial presentation of defense evidence tentatively set on **November 22, 2018 at 8:30 in the morning at the Fourth Division Courtroom** is maintained.

SO ORDERED.

Quezon City, Philippines.


ZALDY N. TRESPESES
Associate Justice

WE CONCUR:


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


GEORGINA D. HIDALGO
Associate Justice