



Republic of the Philippines
Sandiganbayan
Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on 22 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-17-CRM-0129 - People vs. DIONE VILLAFLOR BUSTONERA

This resolves the following:

1. Accused Dione V. Bustonera's "MOTION FOR LEAVE OF COURT TO FILE DEMURRER TO EVIDENCE" dated October 8, 2018;¹

2. The prosecution's "COMMENT/OPPOSITION (to the Motion for Leave of Court to File Demurrer to Evidence dated October 08, 2018 filed by accused Dione Villafior Bustonera."²

TRESPESES, J.

For resolution is the Motion for Leave of Court to File Demurrer to Evidence filed by accused Dione Villafior Bustonera, and the prosecution's Comment/Opposition thereto.

Accused Bustonera prays for leave to file his Demurrer. He anchored his motion on the ground that the prosecution's evidence is insufficient to prove the guilt of accused *vis-a-vis* the essential elements of the crime of Violation of Art. 208 of the Revised Penal Code, charged in the Information.

The prosecution, in its Comment/Opposition countered that the motion should be denied for failure to comply with the mandatory procedural and substantial requisites for its filing. It asserts that accused Bustonera's motion for leave of court failed to specifically state the grounds relied upon.

¹ *Rollo*, Vol. 3, pp. 42-44.

² *Id.* at 49-53.

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OUR RULING

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

Sec. 23, Rule 119 of the Revised Rules on Criminal Procedure provides that:

Section 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. (**Emphasis added**)

Thus, as mandated by the above-quoted provision, accused is required to specifically state in his motion for leave of court to file a demurrer to evidence the grounds relied upon in claiming “insufficiency of evidence.”

As correctly observed by the prosecution, accused Bustonera’s motion for leave failed to specifically allege the grounds for the intended demurrer to evidence. Accused’s simply stated in his motion that:

2. As a corollary, accused BEGS leave and MOVES to file demurrer to evidence on the ground that, in its totality and admissibility for their specific purposes being offered, the prosecution’s evidence is INSUFFICIENT to prove the guilt of the accused vis-à-vis the essential elements of the crime charged for violation of Article 208 of the Revised Penal Code. Specifically, the element of *mens rea* which requires proof of criminal intent, or “malice” on the part of the accused, in the commission of the crime as alleged in the Information, thus:

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3. Evidently, the quantum of proof, both testimonial and documentary, is wanting to prove the fact of the crime, i.e., the presence of all the elements of the crime for which the accused stand charged in the foregoing Information. For, it is axiomatic that in every criminal prosecution, if the State fails to discharge the burden of proving the guilt of the accused beyond reasonable doubt, it falls utterly. Accordingly, when the guilt of the accused has not been proved with moral certainty, it is a policy of long standing that the presumption of innocence of the accused must be favored and his exoneration be granted as a matter of right.

It should be emphasized that in resolving the accused's demurrer to evidence, the court is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or support a verdict of guilt.³

Observably, accused did not specify in details the weakness of the prosecution's evidence or how the evidence failed to establish the elements of the offense charged. Accused's contention that the prosecution failed to show criminal intent was made without any elaboration that would support his ground. Thus, the supposed grounds relied upon are mere general averments, which fall short of the specificity required by law.

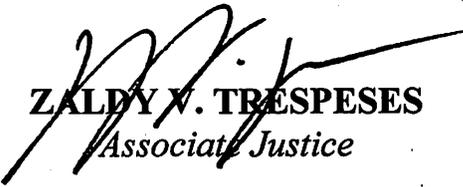
WHEREFORE, premises considered, the Motion for Leave of Court to File Demurrer to Evidence filed by accused Dione Villaflor Bustonera is **DENIED**.

Accused Bustonera 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 20, 2018 at 8:30 in the morning at the Fourth Division Courtroom** is maintained.

SO ORDERED.

Quezon City, Philippines.


ZALDY V. TRESPESES
Associate Justice

³ *People v. Sandiganbayan*, 426 Phil. 453-462 (2002).

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WE CONCUR:


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


GEORGINA D. HIDALGO
Associate Justice

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