

REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

Fifth Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

SB-16-CRM-0189
FOR: Malversation (Art. 217
of the Revised Penal Code)

JUSIE CABIGQUIEZ ROXAS,
Accused.

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

SB- 16-CRM-0190
FOR: Malversation (Art.217
of the Revised Penal Code)

ANTONIO P. CALINGIN and JUSIE
CABIGQUIEZ ROXAS,
Accused.

Present:
LAGOS, J., Chairperson,
MENDOZA-ARCEGA, and
MAÑALAC, JJ.

Promulgated:

November 08, 2018 *lal*

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RESOLUTION

LAGOS, J.:

For the Court's consideration is accused **JUSIE CABIGQUIEZ ROXAS's** *Motion of Leave to File Demurrer to Evidence*¹ dated October 4, 2018, and the prosecution's *Comment-Opposition*² thereto, dated October 29, 2018.

The records show that the prosecution presented its last witness on August 16, 2018³ and thereafter filed its *Formal Offer of Documentary*

¹ Records, Vol. 2, pp. 7-14

² *Id.*, pp. 24-27

³ *Id.*, Vol. 1, p. 455

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*Evidence with Motion to Remark*⁴ on August 22, 2018. On September 14, 2018, after due consideration of the arguments raised by the parties, the Court resolved “to **ADMIT** all the exhibits offered by the prosecution” and, together with the admission of the testimonies of its witnesses, the prosecution was deemed to have rested its case.⁵ The accused attests, per his Motion for Leave, that “[he] received on October 2, 2018 a copy of the September 14, 2018 Resolution, in both cases, resolving the Prosecution’s ‘Formal Offer of Documentary Exhibits with Motion to Remark’. Thus, this Motion is filed within the five (5) day period prescribed.”⁶ The accused did not cite any provision of the Rules of Court as basis for the filing his Motion. But in light of the “five (5)-day period” adverted to and the timing of his motion, it is considered that the same is filed within the purview of Rule 119, Section 23, of the Rules of Court, which provides in part:

Sec. 23. *Demurrer to evidence.* – **After the prosecution rests its case**, the court may dismiss the action on the ground of insufficiency of the 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.

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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. (Emphasis supplied.)

On his so-called “principal ground,” accused-movant asserts that “[t]here is no competent or sufficient evidence to sustain the indictment or to support a verdict of guilt.”⁷ Specifically, he claims –

The prosecution presented the following witnesses:

1. Marilou M. Rivera

She merely testified to the existence of the Subsidiary Ledger reflecting that Accused Roxas obtained cash advances of P30,000.00 on September 8, 2000 and P500,000.00 on June 19, 2002.

2. Jessica B. Galindo

She merely identified a printed copy of the computer-generated service records of Accused Roxas. She had no original copy of the document.

⁴ *Id.*, Vol. 1, p. 459

⁵ *Id.*, pp. 486-487

⁶ *Id.*, Vol. 2, p. 7

⁷ Motion for Leave, *supra*, Note 1, p. 7

RESOLUTION

People vs. Roxas, et al.

SB-16-CRM-0189 to 0190

Page 3 of 6

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3. Joyce Salgados

She identified merely a Certification dated January 12, 2018 that the certified true copy of DBP Check No. 11058842 for P500,000.00 was not available.

Thus, she merely presented a photocopy of the above check.

4. Ma. Glenna D. Digol-Bernal

She only testified that since DBP Check No. 11058842 could no longer be retrieved, she issued a Certification, which she identified, to that effect.

In a nutshell, none of the foregoing witnesses, the only ones presented by the prosecution, ever testified to the acts how Accused Roxas could have perpetrated the alleged offenses in these twin cases.⁸

Based on the two (2) separate **Informations** in these cases, accused-movant is charged with malversation for violation of Article 217 of the Revised Penal Code, committed as follows:

SB-16-CRM-0189

That on September 8, 2000, or shortly prior or subsequent thereto, in Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, accused high ranking public officer **JUSIE CABIGQUIEZ ROXAS** (SG-26), then a Provincial Government Department Head designated as Manager of Misamis Oriental Telephone System (MISORTEL), Cagayan de Oro City, while in the performance of his official duties, obtained a cash advance in the amount of Thirty Thousand Pesos (P30,000.00), such amount being public fund belonging to the aforementioned province and under his control for which he was accountable, committing the offense in relation to his office, did then and there, willfully, unlawfully and feloniously appropriate, take or misappropriate and convert for his personal use and benefit part of the cash advance in the amount of Six Hundred Fifty Four Pesos an Fifty Centavos (P654.50), by failing to account for the said amount despite repeated demands by MISORTEL.

CONTRARY TO LAW.

SB-16-CRM-0190

That on June 19, 2002, or shortly prior or subsequent thereto, in Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, accused **JUSIE CABIGQUIEZ ROXAS** (SG-26), a high ranking public officer, then Provincial Government Department Head designated as Manager of Misamis Oriental Telephone System

⁸ Motion for Leave, supra, Note 1, p.8

RESOLUTION

People vs. Roxas, et al.

SB-16-CRM-0189 to 0190

Page 4 of 6

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(MISORTEL), Cagayan de Oro City, while in the performance of his official functions, committing the offense in relation to his office, taking advantage of his official position, conspiring and confederating with **ANTONIO P. CALINGIN**, also a high ranking public officer (SG30), then Governor of the Province of Misamis Oriental, did then and there, willfully, unlawfully and feloniously and or permit through abandonment or negligence accused **ANTONIO P. CALINGIN** to appropriate, take or misappropriate the amount of Five Hundred Thousand Pesos (P500,000.00) obtained by accused **JUSIE CABIGQUIEZ ROXAS** as cash advance from MISORTEL, such amount being a public fund belonging to the aforementioned province and under his control for which he was accountable, to the damage an prejudice of the government in the aforestated amount.

CONTRARY TO LAW.

Malversation is defined in Article 217 of the Revised Penal Code, viz.:

ART. 217. Malversation of public funds or property. – Presumption of malversation. – Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

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The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be prima facie evidence that he has put such missing funds or property to personal use. (As amended by Rep. Act No. 10951, approved August 29, 2017)

And the elements of malversation are:

- (a) That the offender be a public officer.
- (b) That he had the custody or control of funds or property by reason of the duties of his office.
- (c) That those funds or property were public funds or property for which he was accountable.
- (d) That he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.⁹

The accused-movant argues that “[t]he foregoing elements are [or must be] concurrent. The absence of any of them results in the acquittal of

⁹ Reyes, Luis B., *The Revised Penal Code*, Book II (2008 ed.), p. 426. The same elements, albeit slightly textually different, are given by both accused-movant and the prosecution.

RESOLUTION

People vs. Roxas, et al.

SB-16-CRM-0189 to 0190

Page 5 of 6

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Accused. To punctuate, the Prosecution has failed to adduce any evidence to prove items 2 and 4 [here (b) and (d)] above. Hence, all the elements have not been proven with the consequent acquittal of said Accused.”¹⁰ That, among other things, the “rule places upon the prosecution the task of establishing the guilt of an accused, relying on the strength of its own evidence, and not banking on the weakness of the defense of the accused;”¹¹ that the accused “has in his favor the presumption of innocence which the Bill of Rights guarantees”; that his guilt must be shown beyond reasonable doubt and “[t]he burden of proof is on the prosecution, and unless it discharges that burden[,] the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal.” (Emphasis omitted.) With Latin flair, the accused contends that, “In criminal cases, the prosecution has the *onus probandi* (italics supplied) of establishing the guilt of the accused. *El (sic) incumbit probation (sic) non qui negat.*¹² He who asserts – not he who denies – must prove.”¹³

The prosecution, in its *Comment-Opposition*, contends that it “has presented competent and sufficient evidence both documentary and testimonial, which would sustain, if not rebutted, *prima facie* finding of guilt of accused Roxas,” based, among others, on the following:

1. Original copy of **Subsidiary Ledger** (Exhibit A-3), which shows the account of accused Jusie C. Roxas with cash advances obtained on 8 September 2000, for Thirty Thousand Pesos, and on 19 June 2002, for Five Hundred Thousand Pesos (P500,000.00) xxx.
2. **Demand Letters** (Exhibits A-10, A-12, A-19)...which proves that despite several demands upon the accused, he failed to settle these unliquidated amounts with the province. xxx.
3. While the original **DBP Check No. 11058842** (Exhibit A-5 to A-6) was not produced, the photocopy thereof as **secondary evidence** was presented in accordance with Section 5, Rule 130 of the Rules of Court. xxx
4. ...[P]rosecution witness...testified on the existence of the DBP Check No. 11058842 and established that upon verification, the said check was encashed xxx.¹⁴

As summed up by the prosecution, based on the elements of malversation, “[t]here is no dispute on the existence of the first three elements; accused Roxas admitted having received the cash advances for which he is accountable. As to the element of misappropriation, accused Roxas has yet to adduce evidence to overthrow the *legal presumption* that he had misappropriated the said public funds to his personal use

¹⁰ Motion for Leave, supra, Note 1, p. 11.

¹¹ *Ibid.*

¹² The complete Latin phrase, as appears in Ballentine’s Law Dictionary, is “*Ei incumbit probatio qui dicit, non qui negat*” or “*Ei incumbit probation, qui dicit, non qui negat,*” with the given meaning that “[t]he burden of proof is upon him who alleges, not upon him who denies” (cite omitted) and “[t]he proof is incumbent upon him who asserts, not on him who denies,” respectively.

¹³ *Id.*, p. 12

¹⁴ *Comment-Opposition*, Vol. 2, pp. 24-25; emphasis in the original.

RESOLUTION

People vs. Roxas, et al.

SB-16-CRM-0189 to 0190

Page 6 of 6


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notwithstanding his claim that he already liquidated the amount, which undeniably, is a matter of evidence.”¹⁵

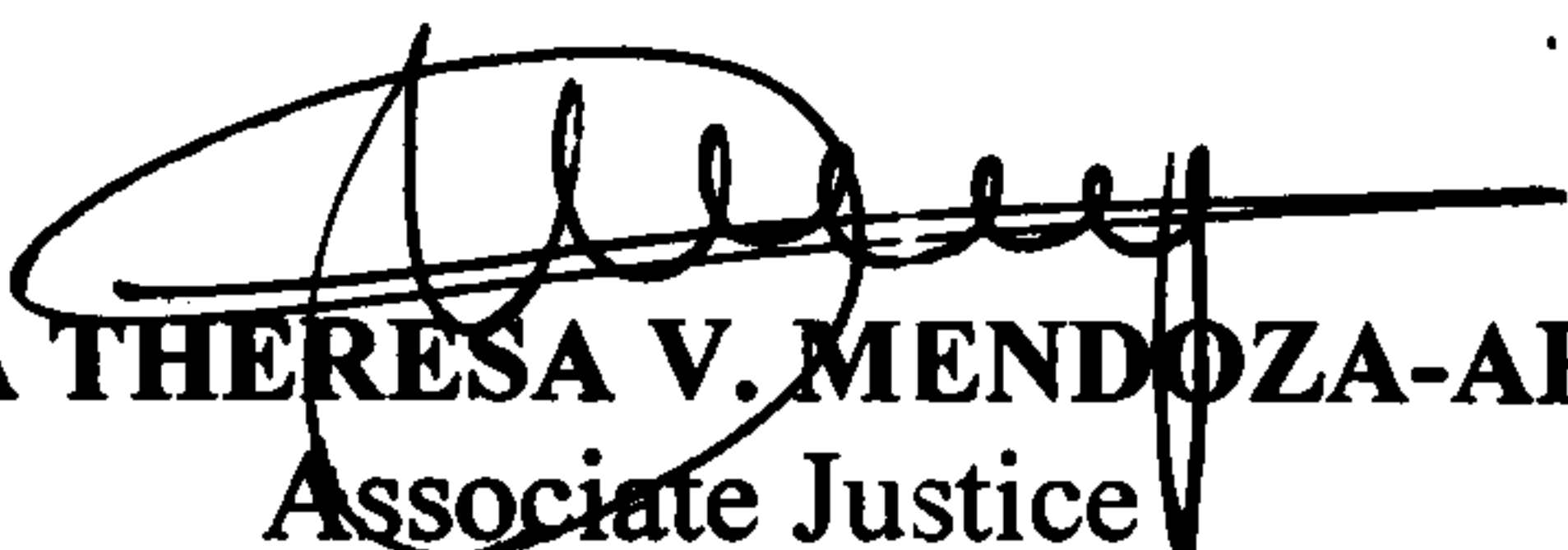
Judicial action to grant prior leave to file demurrer to evidence is discretionary upon the trial court.¹⁶ Here, after due consideration of the arguments of the parties, and a review of the Information and the records of this case, the Court finds that based on the evidence offered by the prosecution, if unrebutted by the accused-movant, the same is sufficient to support a finding of guilt beyond reasonable doubt against the accused. Under Section 23, Rule 119 of the Rules of Court, accused-movant may now adduce evidence in his defense, or proceed instead with his demurrer to evidence, with the ramifications attendant thereto, as provided in the Rules.

WHEREFORE, in view of the foregoing, accused **JUSIE CABIGQUIEZ ROXAS**'s *Motion of Leave to File Demurrer to Evidence* is **DENIED** for lack of merit. The initial presentation of defense evidence shall proceed as scheduled on November 28, 2018.

SO ORDERED.


RAFAEL R. LAGOS
Associate Justice
Chairperson

WE CONCUR:


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice


MARYANN E. CORPUS-MAÑALAC
Associate Justice

¹⁵ *Id.*, p. 26; emphasis in the original.

¹⁶ *Bernardo vs. CA, et al.*, G.R. No. 119010, September 5, 1997