



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
QUEZON CITY

SEVENTH DIVISION

MINUTES of the proceedings held on November 5, 2018 in Iloilo City.

Present:

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

The following resolution was adopted:

CRIMINAL CASE NO. SB-17-CRM-0119 –

PEOPLE v. EDGAR T. VILLANUEVA

Before the Court are the following:

1. Accused Edgar T. Villanueva's "MOTION FOR RECONSIDERATION" dated October 14, 2018; and
2. The prosecution's "COMMENT/OPPOSITION TO ACCUSED'S MOTION FOR RECONSIDERATION" dated October 29, 2018.

GOMEZ-ESTOESTA, J.:

Before this Court is accused Villanueva's *Motion for Reconsideration*¹ of this Court's *Order* dated October 5, 2018,² denying in open court his *Motion for Leave to File Demurrer to Evidence*.

In his *Motion*, accused Villanueva takes exception to this Court's ruling that the *onus probandi* of the issuance of a notice of assessment rests on him, as this is a matter within his knowledge, citing the exception in *People v. Cercado*.³ According to accused Villanueva, Sec. 195 of the Local Government Code, which provides that it is the duty of the Local Treasurer to issue notices of assessment after finding that correct taxes, fees or charges have not been paid, is not applicable, there being a more specific provision, *i.e.*, Sec. 254 of the Local Government Code on Real Property Taxation,

¹ *Records*, Vol. 3, pp. 389-401

² *Id.*, pp. 385-386

³ G.R. No. 144494, July 26, 2002

174

imposing the same duty on the Local Treasurer to issue a Notice of Delinquency, which he duly complied with. The assessment referred to under Sec. 195 differs from the assessment of real property. Accused Villanueva proceeds to reiterate that the prosecution failed to prove the non-issuance of a Notice of Assessment, and consequently, the commission of the offense charged.

Accused Villanueva further challenges the applicability of *People v. Cercado*, where a drug dealer caught *in flagrante delicto* put up the preposterous defense that the prosecution failed to prove that he was not authorized to sell drugs. The prosecution failed to prove, and there is no presumption that, he, as City Treasurer, has the duty of issuing a Notice of Assessment. Thus, he could not be reasonably expected to produce the Notice of Assessment.

In its *Comment/Opposition*,⁴ the prosecution counters that an assessment is crucial before real property taxes could be enforced, otherwise, such enforcement would be baseless. The testimony of prosecution witness Domingo Fregillana, Jr. clearly established that MSBFI did not receive any notice of assessment prior to tax enforcement conducted by accused Villanueva, and it now behooves him to prove the issuance of a notice of assessment as basis for enforcing real estate taxes against MSBFI, regardless of who issued the Notice of Assessment. He is thus in the proper position to disprove that no prior notice of assessment was served on MSBFI.

The *Motion* is bereft of merit.

The *Information* charges accused Villanueva with the enforcement of real property taxes against MSBFI “*without the required prior Notice of Assessment having been served upon MSBFI.*”

As internal counsel and corporate secretary of MSBFI since 1988,⁵ prosecution witness Domingo Fregillana had personal knowledge of the non-receipt by MSBFI of a Notice of Assessment over the real property subject of this case. A notice of assessment stands as the first instance the taxpayer is officially made aware of the pending tax liability.⁶ The duty of the local treasurer to collect the taxes commences from the time the taxpayer fails or refuses to pay the taxes due, following the latter's failure to question the assessment in the Local Board of Assessment Appeals and/or to the Central Board of Assessment Appeals.⁷

The Statements of Delinquency⁸ issued by accused Villanueva indicate an assessed value of MSBFI's property. As properly put by the prosecution,

⁴ *Records*, Vol. 3, pp. 406-409

⁵ Judicial Affidavit dated March 1, 2018, *Records*, Vol. 2, p. 44

⁶ *Meralco v. City Assessor*, G.R. No. 166102, August 5, 2015

⁷ *Meralco v. Barlis*, G.R. No. 114231, June 29, 2004

⁸ Exhibits “H” and “I”

proof of the basis of these statements of delinquency is well within the capability of accused Villanueva to produce. The doctrine in *People v. Cercado* clearly applies. If untrue, Fregillana's testimony on MSBFI's non-receipt of a Notice of Assessment could readily be disproved by accused Villanueva by the production of documents within his knowledge or control.

Whether it is Section 195 or Sections 197 to 283 of the Local Government Code which are applicable in the instant charge is actually not relevant for purposes of resolving accused's *Motion for Leave to File Demurrer to Evidence*. To reiterate the ruling made in *People v. Cercado*:

The general rule is that if a criminal charge is predicated on a negative allegation, or a negative averment is an essential element of a crime, the prosecution has the burden to prove the charge. However, this rule admits of exceptions. Where the negative of an issue does not permit of direct proof, or where the facts are more immediately within the knowledge of the accused, the *onus probandi* rests upon him. *Stated otherwise, it is not incumbent on the prosecution to adduce positive evidence to support a negative averment the truth of which is fairly indicated by established circumstances and which, if untrue, could readily be disproved by the production of documents or other evidence within the defendants knowledge or control.* x x x.

WHEREFORE, in view of the foregoing, accused Villanueva's *Motion for Reconsideration* is **DENIED** for lack of merit.

The parties are reminded of the setting for the presentation of defense evidence on **December 3, 2018 at 8:30 in the morning.**

SO ORDERED.


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

WE CONCUR:


ZALDY V. TRESPESSES
Associate Justice


GEORGINA D. HIDALGO
Associate Justice