



Republic of the Philippines
Sandiganbayan
Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on 29 November 2018.

Present:

Justice MA. THERESA DOLORES C. GOMEZ-ESTOESTA----- Chairperson
Justice ZALDY V. TRESPESES----- Member
Justice BAYANI H. JACINTO----- 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 RECONSIDERATION" dated November 9, 2018.¹

TRESPESES, J.

This resolves the Motion for Reconsideration filed by accused Dione Villaflor Bustonera of the Resolution dated 22 October 2018, denying his Motion for Leave to File Demurrer to Evidence for failure to specifically state the grounds for his intended demurrer to evidence.

ACCUSED'S MOTION

Accused alleges that in order to sustain a conviction for violation of Art. 208 of the Revised Penal Code (RPC),² the quantum of proof requires two things: a) the fact of crime, and b) the fact that accused is the perpetrator of the crime. Thus, the prosecution is required to adduce proof as to the identity of accused and the elements of the offense charged.

* Sitting as special member in lieu of Justice Georgina D. Hidalgo who is on wellness and vacation leave per A.O. No. 540-2018 dated November 9, 2018.

¹ *Rollo*, Vol. 3, pp. 63-70.

² Art. 208. *Prosecution of offenses; negligence and tolerance.* — The penalty of *prision correccional* in its minimum period and suspension shall be imposed upon any public officer, or officer of the law, who, in dereliction of the duties of his office, shall maliciously refrain from instituting prosecution for the punishment of violators of the law, or shall tolerate the commission of offenses. a

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Accused further alleges that based on the definition of Art. 208, the prosecution must establish the presence of the following essential elements:

1. That the offender is a public officer or officer of the law who has a duty to cause the prosecution of, or to prosecute, offenses;
2. That there is dereliction of the duties of his office; that is, knowing the commission of the crime, he does not cause the prosecution of the criminal, or knowing that a crime is about to be committed he tolerates its commission; and
3. The offender acts with malice and deliberate intent to favor the violator of the law.

However, accused avers that the element of refusal or the failure to cause the prosecution of the violator of the law, as well as the omission to perform his duty have not been sufficiently proved by the prosecution. The Order dated 25 July 2014,³ in relation to the Resolution issued by Regional State Prosecutor (RSP) Ernesto Mendoza dated February 4, 2013 is an exculpatory matter, which reads:

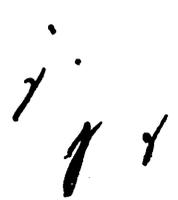
On record, there was nothing that would indicate that herein complainants made follow-ups as regards the said Resolution. The records bear that the instant Motion to Comply (dated June 23, 2014) was the only pleading filed by the complainants after the Resolution (dated February 4, 2013) of the Honorable Regional Prosecutor Mendoza. Hence, it is not correct for the complainants to say that the Office was defying the mandate of the said Resolution because if they filed earlier any pleading to get the attention of the Undersigned regarding the Resolution of RP Mendoza, the same could have been acted promptly and appropriately.

Accused further argues that it is premature to file a criminal Information for the crime of Reckless Imprudence Resulting in Homicide against the alleged violator, Jovencio Trinidad, because at that time, Trinidad has filed a petition for review before the Department of Justice. He claims that Trinidad's guilt was a prejudicial question which must be established first, and therefore he must wait for the resolution of the petition for review as part of the procedural process to complete the preliminary investigation.

Accused also points out that malice is an integral element of the offense. However, it was not shown that accused, with deliberate intent, refused to perform his duty as prosecutor to file the criminal Information against Trinidad. The prosecution failed to prove that accused personally received the Resolution⁴ of RSP Mendoza. Assuming that the filing of the Information was not acted upon with dispatch, such delay in the performance of duty cannot be

³ Exh. M (Order issued by 2nd Assistant Provincial Prosecutor Ma. Analyn C. Jabat-Mesa).

⁴ Exh. H.



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inferred as willful, malicious or it was with deliberate intent and does not constitute the offense punishable under Art. 208 of the RPC.

PROSECUTION'S COMMENT

On 16 November 2018, Prosecutor Gregorio Marco B. Dela Torre, orally argued the opposition in open court.

The prosecution maintains that it is improper to raise the grounds for the demurrer to evidence in the instant motion for reconsideration which, in the first place, should have been included in the original motion for leave of court to file demurrer to evidence.

Prosecutor Dela Torre argued that the motion for reconsideration pertains only to matters discussed in the resolution of the court. To allow accused to cure the defect in his motion for leave, the court will now rule to reconsider matters not discussed in the original resolution assailed by accused. Therefore, the defect in the original motion cannot be cured by the subsequent filing of the motion for reconsideration.

OUR RULING

We resolve to **deny** accused's motion for lack of merit.

I. PROCEDURAL MATTER

At the outset, the Court notes that the instant motion for reconsideration failed to comply with Sec. III, Paragraph 2 (c) of A.M. No. 15-06-10-SC or the Revised Guidelines for Continuous Trial of Criminal Cases, which provides:

1. Motions

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(c) Meritorious Motions - Motions that allege plausible grounds supported by relevant documents and/or competent evidence, except those that are already covered by the Revised Guidelines, are meritorious, such as:

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The motion for reconsideration of the resolution of a meritorious motion shall be filed within a non-extendible period of five (5) calendar days from receipt of such resolution, and the adverse party shall be given an

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equal period of five (5) calendar days from receipt of the motion for reconsideration within which to submit its comment. Thereafter, the motion for reconsideration shall be resolved by the court within a non-extendible period of five (5) calendar days from the expiration of the five (5)-day period to submit the comment.

The case records show that accused's counsel received the assailed Resolution on 26 October 2018. Thus, following the above cited rules, accused had only until 31 October within which to file a motion for reconsideration. However, the instant motion was filed only on 09 November 2018, which obviously, was filed out of time.

At any rate, even if the court would accord accused the liberal application of the rules, the motion for reconsideration still lacks merit.

II. SUBSTANTIVE MATTER

It must be emphasized that the records show that accused's motion for leave to file demurrer to evidence was denied because it lacks the specific grounds required by the rules. Accused now attempts to cure the said defect in the instant motion for reconsideration by raising the specific grounds for his intended demurrer.

As properly argued by the prosecution, it is improper to raise in a motion for reconsideration the specific grounds for the demurrer to evidence, which should have been initially included in the motion for leave to file demurrer to evidence.

The Court maintains that the grounds for the demurrer *must be specifically alleged in the motion for leave of court*. Sec. 23, Rule 119 of the Revised Rules of Criminal Procedure is explicit in this requirement, viz:

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.

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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

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may oppose the motion within a non-extendible period of five (5) days from its receipt.

x x x (emphasis supplied)

The rationale for this rule was explained in *Lizarraga Hermanos v. Yap Tico*:⁵

The reason for this is plain. It is not fair to the plaintiff to interpose to a complaint the simple objection that it does not state facts sufficient to constitute a cause of action. Neither is it fair to the court. Neither the plaintiff nor the court should be left to make, possibly, a long and tiresome examination and investigation and then, perhaps, finally be compelled to guess. The grounds of the objection should be pointed out so that all may see. A demurrer was not invented to make useless work for a court, or to deceive or delude a plaintiff. Its purpose was to clarify all ambiguities; to make certain all indefinite assertions; to bring the plaintiff to a clear and clean expression of the precise grievance which he has against the defendant; to aid in arriving at a real issue between the parties; to promote understanding and prevent surprise. To that end, a demurrer should specify, for the benefit of the plaintiff and the court as well, the very weakness which the demurrant believes he sees in the complaint. It should be so presented and handled as to bring to a quick determination the question whether the plaintiff has, at bottom, a legal claim against the defendant. To attain this object, the demurrer should be clear, specific, definite, and certain as to the precise weakness of the complaint. Being an instrument to cure imperfections, it should not itself be imperfect.

Thus, if the motion for leave is denied, accused's remedy is to either present his evidence or file the demurrer subject to the consequences stated in Sec. 23, Rule 119 of the Rules on Criminal Procedure.

While accused is not precluded from filing a motion for reconsideration, it should be noted that the function of a motion for reconsideration is to convince the court that its ruling is erroneous and improper and contrary to law and evidence.⁶ Thus, in resolving motions for reconsideration, the courts are often confronted with the same issues already passed upon. In *Malayan Insurance Co., Inc. v. St. Francis Square Realty Corp.*,⁷ the Supreme Court held:

To be sure, the very purpose of a motion for reconsideration is to point out the findings and conclusions of the decision which in the movant's view, are not supported by law or the evidence. "The movant, therefore, is very often confined to the amplification on further discussion of the same issues already

⁵ 24 Phil. 504 (1913).

⁶ *Teodulo M. Coquilla v. The Hon. Commission on Elections, et al.*, G.R. No. 151914, 31 July 2002.

⁷ G.R. Nos. 198916-17 & 198920-21, 23 July 2018.

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passed upon by the court. Otherwise, his remedy would not be a reconsideration of the decision but a new trial or some other remedy."

In the instant case, accused did not raise any error in the assailed resolution that would warrant a re-examination of its findings and conclusion. Instead, he attempts to remedy the defect in his motion for leave of court to file demurrer of evidence by supplying the specific grounds for his intended demurrer. Such is not in accordance with the very purpose of a motion for reconsideration.

Clearly, the motion for reconsideration of accused presented new matters not raised in the original motion for leave (subject of said motion). It is not proper to raise these new matters for the first time in a motion for reconsideration. To the Court, the instant motion, praying for leave and raising the grounds he failed to state in his original motion, is in effect accused's second motion for leave of court couched as motion for reconsideration, which is not permitted by the rules.

Thus, the prosecution was correct in arguing that the defect in the motion for leave of court to file demurrer to evidence cannot be cured by the subsequent filing of a motion for reconsideration. Inevitably, the Court denies motion for reconsideration of accused.

WHEREFORE, premises considered, the Motion for Reconsideration filed by accused Dione Villaflor Bustonera is **DENIED**.

Accused Bustonera may still file his Demurrer to Evidence without leave of court, subject to the conditions 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 **January 31, 2019 at 8:30 in the morning at the Fourth Division Courtroom** is maintained.

SO ORDERED.

Quezon City, Philippines.


ZALDY V. TRESPESES
Associate Justice

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WE CONCUR: :


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


BAYANI H. JACINTO
Associate Justice

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