



**REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY**

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,

Plaintiff,

SB-16 -CRM-0589 to 0592

**For: Violation of
Article 217 of the
Revised Penal Code
(Malversation)**

-vs-

MELVIN L. CUEVAS

Accused.

Present:

**LAGOS, J., Chairperson
MENDOZA-ARCEGA, J.,
and CORPUS-MAÑALAC, J.**

Promulgated:

January 24, 2019 lcl

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RESOLUTION

MENDOZA-ARCEGA, J.:

For consideration of the Court are the Motion for Reconsideration (To the Resolution dated November 16, 2018)¹, filed by the accused, through counsel, on November 28, 2018 and the Comment/ Opposition (Re: Motion for Reconsideration to the Resolution dated 16 November 2018), filed by the prosecution, through the

¹ Record, Vol. 2, pp. 253-259.

Office of the Special Prosecutor (OSP), of the Office of the Ombudsman, on December 3, 2018.

The accused, in his motion seeks for the reconsideration of the Resolution of the Court dated November 16, 2018, denying the Motion for Leave to File Demurrer to Evidence filed on October 30, 2018. The accused argues that the prosecution failed to present sufficient evidence to establish the elements of the offense charged. Moreover, it reiterated that the best evidence rule was violated by the prosecution when it resorted to secondary evidence without satisfactory proof that the original documents were unavailable and that reasonable diligence and good faith were resorted to in search for or attempt to produce the same.

In response, the prosecutor, anchored its Comment/Opposition on the following grounds: 1. 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; 2. the accused's averments are a mere reiteration of its arguments which was already passed upon by the Court; and 3. the motion was filed out of time under the Revised Guidelines for Continuous Trial in Criminal Cases.

Hence, this resolution.

After a careful reexamination of the case, the Court affirm its findings that the evidence presented by the prosecution, both documentary and testimonial established the essential elements of the offense charged.

The accused essentially pleads for the reexamination of its November 16, 2018 Resolution on the same grounds raised in his Motion for Reconsideration (To the Resolution dated September 4, 2018). Thus the instant motion is a mere rehash of the arguments already passed upon by the Court in the assailed resolution and consequently deserves a scant consideration for being dilatory in character.

The Supreme Court in numerous cases explained that the presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits, and the validity and merits of a party's defense or accusation, as well as admissibility of testimonies and evidence, are better ventilated during trial proper. In the presentation of his case, the accused will have the opportunity to present his evidence and show the Court why he should not be made liable for the offense charged. Also, if the accused disagrees with the resolution of this Court, the proper remedy would have been to file a demurrer to evidence without leave of court or to proceed with the presentation of his defense, instead of filing a motion for reconsideration which basically contains arguments already been passed upon by the Court which only tend to delay rather than facilitate the resolution of this case.

In addition, the accused received a copy of the assailed resolution on November 22, 2018 and he had five (5) calendar days to file his motion for reconsideration, or until November 27, 2018, however, the Court received the present motion only on November 28, 2017, or six (6) days after receipt, thus the same, according to the Revised Rules on Continuous Trial of Criminal Cases, shall

be considered unmeritorious and should be denied outright, for being filed out of time.

WHEREFORE, in view of the foregoing, the Motion for Reconsideration of the accused is hereby **DENIED**.

Accordingly, as previously scheduled, the initial presentation of the defense evidence is set on February 14, 2019 at 1:30 in the afternoon. Should the accused decide to file his Demurrer to Evidence without prior leave of Court, the said schedule shall automatically be cancelled, upon receipt by the Court of the same.

SO ORDERED.


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

WE CONCUR:


RAFAEL R. LAGOS
Chairperson


MARYANN E. CORPUS-MAÑALAC
Associate Justice