



REPUBLIC OF THE PHILIPPINES  
**Sandiganbayan**  
Quezon City

**FIFTH DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
*Plaintiff,*

**CRIM. CASE No. SB-16-  
CRM-1079**

*-versus-*

*For: Violation of Article 177 of  
the Revised Penal Code*

**NELSON GAMALIEL F. GARCIA,**  
**et al.,**

*Present:*

*Accused.*

**Lagos, J.,** Chairperson,  
**Mendoza-Arcega, J.,** and  
**Corpus-Mañalac, J.**

Promulgated:

*January 18, 2019 led*

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**RESOLUTION**

**MENDOZA-ARCEGA, J.:**

Before Us are the following:

1. *Motion for Leave of Court to File Demurrer to Evidence as to accused Nelson Gamaliel F. Garcia* dated November 5, 2018 filed by accused Nelson Gamaliel F. Garcia;<sup>1</sup>
2. *Motion for Leave of Court to File Demurrer to Evidence (For all accused, except Nelson Gamaliel F. Garcia)* dated November 3, 2018 filed by accused Ricardo A. Boquecosa, Ricardo C. Condes, Eliezar B.

<sup>1</sup> Records, Volume (Vol.) 3, pp. 28-34.

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Amadora, Meriam P. Llaño, Antonio L. Garcia and Emmylou Q. Cabonilas;<sup>2</sup> and

3. *Consolidated Comment and Opposition (Re: Motion for Leave of Court to File Demurrer to Evidence)* dated December 5, 2018 file by the prosecution.<sup>3</sup>

Anent the *Motion for Leave of Court to File Demurrer to Evidence as to accused Nelson Gamaliel F. Garcia* dated November 5, 2018 filed by accused Nelson Gamaliel F. Garcia (“Garcia”), the following averments were raised:

- a.) There is no evidence that accused Garcia conspired with the other accused in the present case since no one among the material witnesses for the prosecution was able to testify that he or she personally saw or heard him giving instruction to accused Emmylou Cabonilas to prepare and sign the subject budget ordinance;
- b.) As mayor, accused Garcia has no participation, whatsoever, in the passage of such ordinance except to certify its urgency, and to approve and sign the same. He did not participate in the deliberations and voting, nor did he attend the proceedings of the Sangguniang Bayan on December 26, 2013;
- c.) The Sangguniang Bayan members themselves, with quorum and presided by Vice Mayor Efren Gica, were the ones who deliberated and approved by a majority vote the subject budget ordinance; and
- d.) The other prosecution witnesses did not also have any personal knowledge of the facts or circumstances that will hold accused Garcia liable as co-conspirator.

With regard to *Motion for Leave of Court to File Demurrer to Evidence (For all accused, except Nelson Gamaliel F. Garcia)* dated November 3, 2018 filed by accused Ricardo A. Boquecosa, Ricardo C. Condes, Eliezar B. Amadora, Meriam P. Llaño, Antonio L. Garcia and Emmylou Q. Cabonilas, the said accused argued as follows:

- a.) The prosecution failed to establish the guilt of the accused beyond reasonable doubt; and

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<sup>2</sup> Ibid., pp. 54-56.

<sup>3</sup> Ibid., pp. 57-66.

- b.) No direct evidence, whether testimonial or documentary, was ever presented by the prosecution to prove the guilt of the accused beyond reasonable doubt. The prosecution presented various documents but these documents failed to establish that the accused conspired in committing the crime of usurpation.

To counter their allegations, the prosecution contended that it has presented a *prima facie* case against all the accused in conspiring to commit the crime of Usurpation of Official Functions under Article 177 of the Revised Penal Code. The prosecution stressed that Nerio Aquino (“Aquino”) is the duly appointed secretary to the Sangguniang Bayan (“SB”) of Dumanjug since he was appointed by then Vice Mayor Gica on September 5, 2013, but accused public officials refused to recognize him as SB Secretary. It was averred that Garcia, without any lawful authority, designated accused Emmylou Q. Cabonilas as SB Secretary. The power to appoint and/or designate an official to the said position solely belongs to the vice-mayor under Section 445(b) of the Local Government Code. The prosecution’s documentary and testimonial evidence show that all the accused illicitly carried out the functions of the secretary of the SB of Dumanjug when they prepared and signed the SB Resolution dated December 26, 2013 relative to the appropriation ordinance for fiscal year 2014, despite knowledge that Aquino, the duly appointed SB Secretary, was actually performing his functions, and has neither abandoned nor refused to perform his official functions.

### **THE COURT’S RULING**

A conscientious perusal of the records leads Us to the conclusion that the instant motions are devoid of merit.

In *Nicolas v. Sandiganbayan (Third Division), et al.*,<sup>4</sup> the High Tribunal discussed the nature of demurrer to evidence, *viz*:

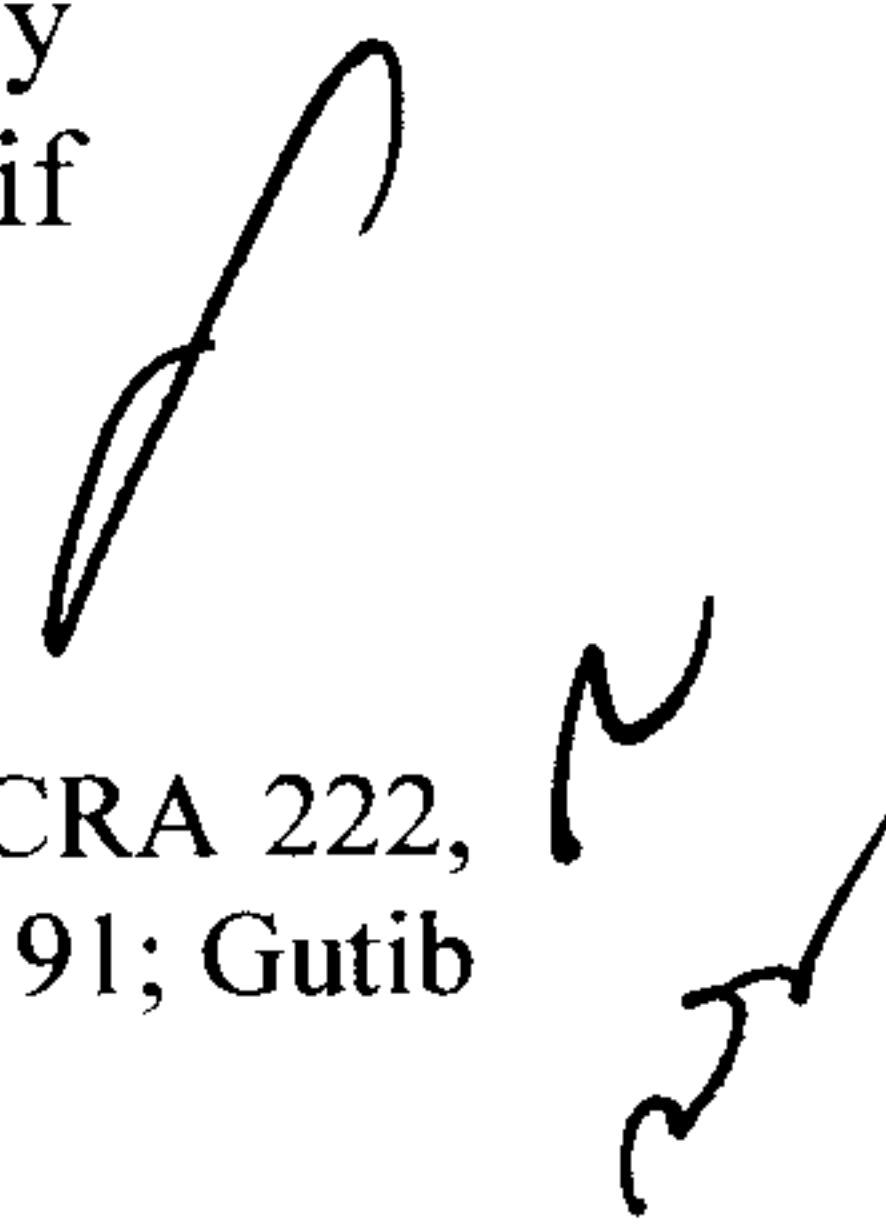
“A demurrer to evidence is an objection by one of the parties in an action to the effect that the evidence which his adversary produced is insufficient in point of law to make out a case or sustain the issue.<sup>5</sup>”

The party filing the demurrer in effect challenges the sufficiency of the prosecution's evidence.<sup>6</sup> The Court is thus tasked to ascertain if

<sup>4</sup> G.R. Nos. 175930-31, February 11, 2008.

<sup>5</sup> *Ibid.*, citing *Soriquez v. Sandiganbayan*, G.R. No. 153526, October 25, 2005, 474 SCRA 222, 228; *Rivera v. People of the Philippines*, G.R. No. 163996, June 9, 2005, 460 SCRA 85, 91; *Gutib v. Court of Appeals*, 371 Phil. 293, 300 (1999).

<sup>6</sup> *Ibid.*, citing *Gutib v. Court of Appeals*, *supra* note 5.



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there is *competent* or *sufficient* evidence to establish a prima facie case to sustain the indictment or support a verdict of guilt.<sup>7</sup>”

Judicial action to grant prior leave to file demurrer to evidence is discretionary upon the trial court.<sup>8</sup> In this case, the records of the case are rife with the pieces of evidence adduced by the prosecution, both testimonial and documentary, which are sufficient to convict all the accused if not rebutted. The prosecution presented several witnesses and offered voluminous documents to support the charge of Usurpation of Authority or Official Functions penalized under Article 177<sup>9</sup> of the Revised Penal Code. Sufficient evidence for purposes of frustrating a demurrer thereto is such evidence in character, weight or amount as will legally justify the judicial or official action demanded according to the circumstances.<sup>10</sup> To be considered sufficient therefore, the evidence must prove: (a) the commission of the crime, and (b) the precise degree of participation therein by the accused.<sup>11</sup>

Verily, it is more apt to continue with the trial of the instant case with both parties presenting their respective witnesses and pieces of evidence to clearly establish the merits of the case.

**IN VIEW OF THE FOREGOING**, the Court hereby resolves as follows:

1. The *Motion for Leave of Court to File Demurrer to Evidence as to accused Nelson Gamaliel F. Garcia* dated November 5, 2018 filed by accused Nelson Gamaliel F. Garcia is **DENIED** for utter lack of merit; and
2. The *Motion for Leave of Court to File Demurrer to Evidence (For all accused, except Nelson Gamaliel F. Garcia)* dated November 3, 2018 filed by accused Ricardo A. Boquecosa, Ricardo C. Condes,

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<sup>7</sup> Ibid., citing *Katigbak v. Sandiganbayan*, 453 Phil. 515, 535-536 (2003).

<sup>8</sup> *Bernardo v. Court of Appeals, et al.*, G.R. No. 119010, September 5, 1997.

<sup>9</sup> Article 177 of the Revised Penal Code reads:

**Article 177.** Usurpation of authority or official functions. - Any person who shall knowingly and falsely represent himself to be an officer, agent or representative of any department or agency of the Philippine Government or of any foreign government, or who, under pretense of official position, shall perform any act pertaining to any person in authority or public officer of the Philippine Government or of any foreign government, or any agency thereof, without being lawfully entitled to do so, shall suffer the penalty of prison correccional in its minimum and medium periods.

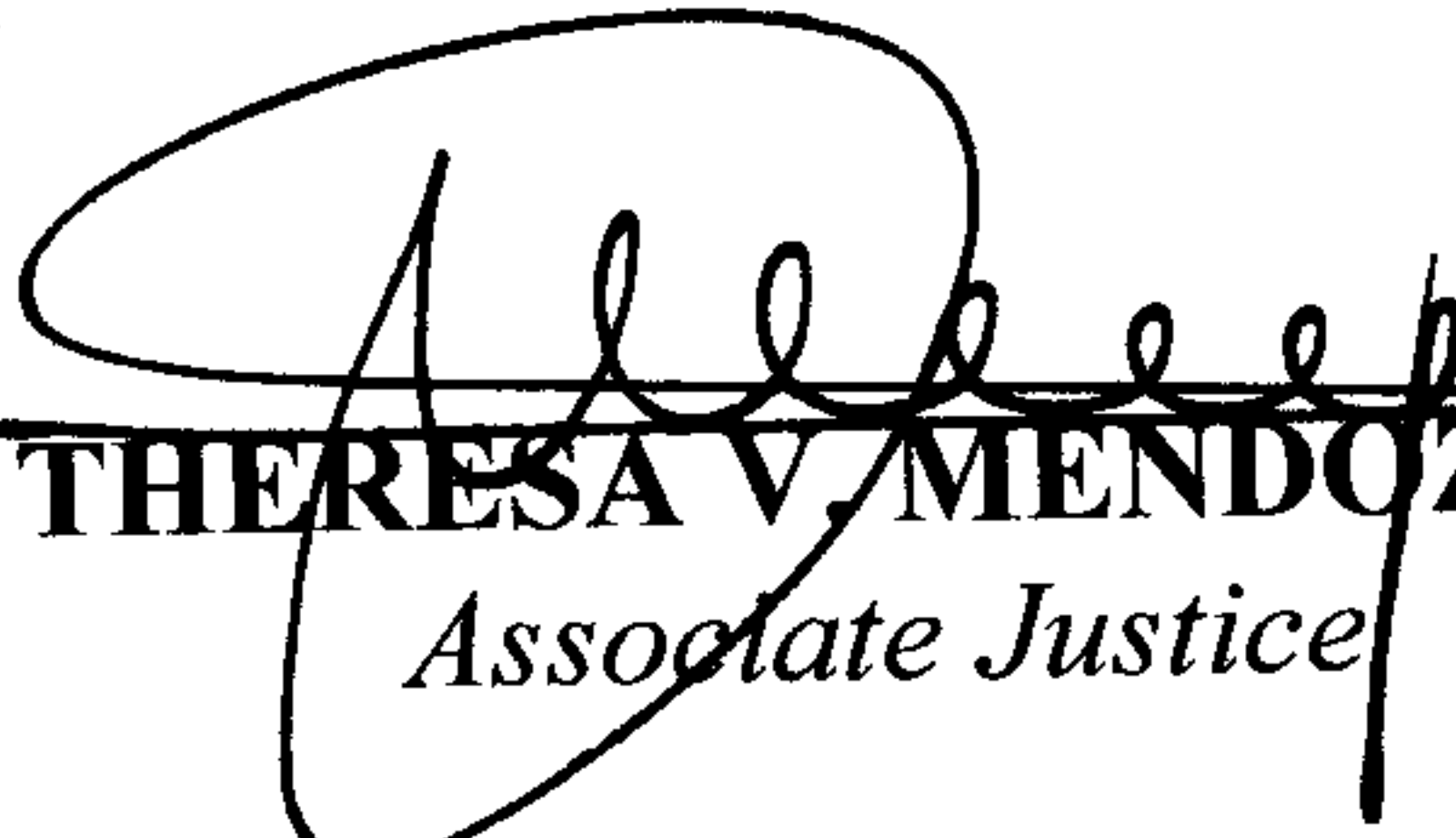
<sup>10</sup> *Singian, Jr. v. Sandiganbayan (3<sup>rd</sup> Division), et al.*, G.R. Nos.195011-19, September 30, 2013.

<sup>11</sup> Ibid., citing *Gutib v. Court of Appeals*, supra note 5.

Eliezar B. Amadora, Meriam P. Llaño, Antonio L. Garcia and Emmylou Q. Cabonilas is **DENIED** for utter lack of merit.


Accordingly, the settings on January 29 and 30, 2019, both at 8:30 in the morning at the Regional Trial Court of Tacloban, Leyte, are maintained.

**SO ORDERED.**

  
**MARIA THERESA V. MENDOZA-ARCEGA**  
*Associate Justice*

**WE CONCUR:**

  
**RAFAEL R. LAGOS**  
*Associate Justice*  
*Chairperson*

  
**MARYANNE E. CORPUS-MAÑALAC**  
*Associate Justice*