



Republic of the Philippines
Sandiganbayan
Quezon City

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-17-CRM-0253

**For: Violation of Sec. 1 (b) of
P.D. 1829 (Decree Penalizing
Obstruction of Apprehension and
Prosecution of Criminal
Offenders)**

- versus -

SOCRATES CABIGAS FERNANDEZ
Accused.

Present:

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

Promulgated:

January 16, 2019 Jcl

X-----X

RESOLUTION

CORPUS - MAÑALAC, J.:

This treats of accused Socrates Cabigas Fernandez's **Motion for Leave to File Demurrer to Evidence** filed on December 3, 2018 and the prosecution's Comment and/or Opposition thereto filed on December 11, 2018.

The prosecution's evidence consisting of Exhibits "A to "K" with sub-markings were admitted in evidence on November 15, 2018¹ and the accused was notified thereof on November 28, 2018. Thus, the motion filed on December 3, 2018 was well within the period of five (5) days prescribed by the rules for the filing of a Motion for Leave to File Demurrer to Evidence.

Thus far, the evidence for the prosecution consists of the formally offered Exhibits "A" to "K" with sub-markings, as well as the testimonies of the following witnesses: (1) SPO1 Ricardo M. Balbutin; (2) Mr. Vincent Joe Revilla Castrodes, Port Police Officer at CPA Cebu Domestic Port Pier 3; (3) PO2 Epifanio G. Comedido, Jr., PNP, CPPO, Tabogon Police Station, Daantabogon, Tabogon, Cebu City; (4) Rusty B. Pelayo, Police Officer III of the PNP Police Station 7, Pardo Police Station, Cebu City; (5) Isagani V. Abalo, Retired Police Senior Inspector of the Philippine National Police; (6) SPO1 Arnold Damasco, former Police Officer 3 assigned at Talisay Police Station; (7) PCINSP Rubin Alegado

¹ Minutes of the Proceedings dated November 15, 2018

Cuizon, Acting City Superintendent, Cebu City Internal Affairs Service; and (8) SPO1 Ciriaco Gica Luab, Jr., former Senior Police Officer 1 of the Philippine National Police.

The Arguments of the Motion

Accused avers that the evidence of the prosecution failed to meet the requirements of proof beyond reasonable doubt to establish his guilt for Violation of Sec. 1 (b) of P.D. 1829 (*Decree Penalizing Obstruction of Apprehension and Prosecution of Criminal Offenders*), and thus seeks dismissal of the present case by way of demurrer to evidence, setting forth the following ratiocinations:

One, the central theory of the prosecution rests on the testimonies of police officers Luab and Comedido, alleged eye witnesses, whose testimonies² however were contradicted by prosecution's own evidence.

Essentially, Luab testified that he was the arresting officer of Joavan Fernandez, the adopted son of the accused, at around 4:30 pm of June 4, 2010 at the Oikos Repair Shop. After the arrest, he stayed at the repair shop to secure the red SUV Isuzu Bighorn upon the instruction of Abalo. At around 5pm that day, he noticed the accused who was then Mayor of Talisay City, Cebu, arrived, opened the front door of the vehicle despite his protest, took the PC Lady's bag red shoulder bag and sped away. Comedido corroborated Luab's testimony, who claimed he was directed by Abalo to go to the said repair shop and serve as back up of Luab in securing the vehicle, where at around 5 pm he saw the accused arrived which he reported immediately to Abalo. That despite their protestations, the accused took the red bag from the vehicle, which he also allegedly reported to Abalo.

The accused alleged that these accounts of Luab and Comedido were contradicted by witness Castrodes, which is reliable as he is not a member of the police force. Castrodes testified in his Affidavit dated June 7, 2010³ that "*the police officers and I arrested Joavan Fernandez and brought him to Talisay City Police Station.*" Luab and Pelayo's Joint Affidavit dated June 7, 2010 also stated that all three (3) arresting officers (Luab, Comedido and Pelayo) left the repair shop after the arrest of Joavan Fernandez to bring him to the police station. Hence, Comedido's testimony that Luab was at the repair shop when he arrived is false. Luab and Comedido allegedly could not have possibly witnessed any incident involving the accused at the repair shop.

Also, Luab and Comedido's testimonies were allegedly contradicted by witnesses Damasco and Pelayo. Luab and Comedido testified⁴ that the accused "*sneakily opened the front door of the vehicle in the passenger's side extended his arm inside and got one PC Lady's shoulder bag colored red and closed the same,*" making it appear that the doors of the vehicle were not locked. Damasco and

² Affidavit dated June 3, 2011

³ Exhibit "B", "B-1" and "B-1'a" pa. 10

⁴ Joint Affidavit of Luab and Comedido, pa. 9, Exhibit "D-1"

Pelayo, however, claimed in their Joint Affidavit dated June 7, 2010⁵ that the key to the vehicle was handed by the representative of Joavan Fernandez to the OIC, TCPS and turned over to PO1 Pelayo, thus, allegedly proving that at the time of the incident, the vehicle was locked instead.

Two, the following engenders a reasonable doubt on the alleged commission of crime by the accused, viz:

- No arrest was made by Comedido⁶ when the accused allegedly was committing the crime of ‘obstruction of justice’ as would have otherwise been done by a police officer against the person committing it in plain sight. Comedido admitted on cross-examination that he did not see any crime committed at the repair shop.⁷
- As stipulated upon, there was no police blotter regarding the incident involving the accused,⁸ whereas it is a standard operating procedure to record in the police blotter criminal incidents reported to the police. Accused argues that absence of police blotter of an alleged incident is prima facie evidence that the alleged incident never took place.

Three, there is no competent evidence that the accused obstructed, impeded, frustrated or delayed the apprehension, investigation and prosecution of criminal case against Joavan Fernandez, to satisfy the elements of Violation of Section 1(b) of PD 1829. Joavan Fernandez was already arrested around 4 pm of June 4, 2010 prior to the alleged act of the accused. When the search warrant was implemented at 11 pm of June 5, 2010, a 45 caliber pistol and ammunitions were recovered by the police from the vehicle,⁹ Joavan Fernandez was charged for Grave Threats docketed as CC No. 13349 on June 7, 2010,¹⁰ and eventually convicted on November 27, 2013.¹¹

And lastly, assuming that the accused took the lady’s bag from the vehicle, there is no showing that it was intended to obstruct the investigation of Joavan Fernandez, or that the content of the bag was material to the latter’s prosecution. Luab and Comedido merely speculated that “*the bag might contain probable pieces of evidence against Joavan Fernandez.*” Moreover, accused was legally exercising his right to privacy to his property and the personal effects inside, being the owner of the vehicle. At the time the alleged act was committed, there was no search warrant issued against the vehicle or a yellow line to suggest that the vehicle was under police custody.

⁵ Paragraphs 4, 5 and 6 of Exhibit “E”

⁶ TSN Comedido, January 31, 2018, p. 20

⁷ Id., p. 21

⁸ Id., p. 19

⁹ Exhibit “G” “H” to “I”

¹⁰ Exhibit “K”

¹¹ Exhibit “K,” “K-1” to “K-7”

The Comment/Opposition

The prosecution maintains that the testimonial and documentary evidence presented sufficiently established the elements of the crime and accused's culpability thereof.

It argues that the act of the accused in taking the red lady's bag inside the SUV Isuzu Bighorn with Plate No. YEZ 460 despite being informed that the said vehicle was already placed under police custody constituted suppression or concealment of a possible piece of evidence in violation of Section 1 (b) of P.D. 1829. That it was apparent that the accused intended to conceal, suppress and impair possible evidence in the investigation of his son's criminal case when the accused refused to turn-over the red bag taken inside the vehicle.

On the alleged inconsistencies in the testimonies and/or affidavits of witnesses Luab and Comedido *viz-a-viz* that of Castrodes, the prosecution counters that it was clearly established that Luab was one of the arresting officers of Joavan Fernandez. When the latter was brought to the police station, and while a Search Warrant was being secured, Luab stayed behind at the repair shop to secure the vehicle. Comedido was then instructed by PSINP Abalo to proceed to the repair shop to serve as back up, to secure and preserve probable pieces of evidence inside the vehicle, thus, both witnessed the accused's taking of the red bag inside the vehicle parked at the repair shop.

Castrodes could not be expected to memorize and recall all the names of the police officers who assisted him in arresting Joavan and secured the area of the crime scene¹² as the incident happened several years ago until his eventual presentation in court on November 21, 2017.

On the other hand, Comedido's failure to arrest the accused immediately after the latter took the red lady's bag from the vehicle allegedly could not be considered as an "added infirmity" to the prosecution's case. The person committing the crime was then incumbent Mayor of Talisay City who declared that as such, no one can stop him. On the alleged lack of blotter, or the missing pages of Talisay City Police Station's blotter regarding the incident, the prosecution asserts that the testimonies of the witnesses, the stipulations entered into by the parties, and the documents submitted as evidence, are *prima facie* sufficient to convict the accused for the crime charged, such that the lack of blotter of the incident is of no moment.

Ruling

"A *demurrer to the 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, whether true or not, to make out a case or sustain the issue. The

¹² TSN, Castrodes, November 21, 2017

party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is **competent or sufficient evidence** to sustain the indictment or to support a verdict of guilt.”¹³ The determination of the sufficiency or insufficiency of the evidence presented by the prosecution as to establish a *prima case* against an accused is left to the exercise of sound judicial discretion.¹⁴ 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. To be considered sufficient thereto, the evidence must prove: (a) the commission of the crime, and (b) the precise degree of participation therein by the accused.¹⁵

The **Information** filed against the accused-movant charged him with Violation of Section 1(b) of Presidential Decree 1829, committed as follows:

That on 4 June 2010 at about 5:00 p.m., in Sitio Zombria, Brgy. Lawaan 2, City of Talisay, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, accused **Socrates Cabigas Fernandez (Socrates)**, public officer, being the City Mayor of the City of Talisay, Province of Cebu, in such capacity and committing the offense in relation to office and taking advantage of his official position, with deliberate intent, did then and there willfully, unlawfully, and criminally retrieve a red lady’s bag from a red Sport Utility Vehicle (SUV) Isuzu Bighorn with Plate No. YEZ 460, then under police custody and control in relation to the warrantless arrest of his adopted son, Joavan Fernandez, for Grave Threats, against the objection of police officer exercising custody and control on the said vehicle, with Socrates insisting that he could do anything with his vehicle being owned by him and being the City Mayor of Talisay, Cebu, and refusing to turn over the retrieved bag despite being asked to do so by the said police officers, thereby concealing and/or suppressing the same with intent to impair its availability as possible evidence in the investigation of the criminal case against Joavan Fernandez.

CONTRARY TO LAW.

Section 1 (b) of Presidential Decree 1829 otherwise known as Decree Penalizing Obstruction of Apprehension and Prosecution of Criminal Offenders provides as follows:

Section 1. The penalty of prison correctional in its maximum period, or a fine ranging from 1,000 to 6,000 pesos, or both, shall be imposed upon any person who knowingly or willfully obstructs, impedes, frustrates or delays the apprehension of suspects and the investigation and prosecution of criminal cases by committing any of the following acts:

xxx

(b) altering, destroying, suppressing or concealing any paper, record, document, or object, with intent to impair its verity, authenticity, legibility, availability, or admissibility as evidence in any investigation of or official proceedings in, criminal cases, or to be used in the investigation of, or official proceedings in criminal cases; xxx

¹³ Soriquez v. Sandiganbayan (Fifth Division), 510 Phil. 709, 706

¹⁴ Id.

¹⁵ Gutib v. Court of Appeals, 371 Phil. 293, 300, 305 (1999)

For one to be successfully prosecuted under Sec. 1 (b) of P.D. 1829, the following elements must be proven:

1. A person knowingly, willfully obstructs, impedes, frustrates, or delays the (i) apprehension of suspects and (ii) the investigation and (iii) prosecution of criminal cases;
2. By altering, destroying, suppressing, or concealing any paper, record, document, or object;
3. The person acts with intent to impair its verity, authenticity, legibility, availability or admissibility; and
4. The paper, record, document or object is material evidence in any investigation of or official proceedings in criminal cases or to be used in the investigation of, or official proceedings in criminal cases.

Apparently, one who knowingly and willfully impedes a lawfully conducted police investigation of a crime by secreting, suppressing or destroying evidence knowing it is being sought by the investigating officers may be prosecuted for the crime of obstruction of justice.

In this case, the prosecution convincingly pointed to its *prima facie* evidence of accused's obstruction of justice. Police officers Luab and Comedido's respective testimonies, being eye witnesses to the acts of the accused at the repair shop, are telling. They cannot be summarily disregarded by the cited testimony of Castrodes that "*the police officers and I arrested Joavan Fernandez and brought him to Talisay City Police Station.*" Never did Castrodes testify that nobody was left at the repair shop to negate Luab and Comedido's claim that they witnessed the accused arrived therein at around 5 pm of June 4, 2010. Castrodes testimony is not inconsistent with the narration of Luab that he was left behind, and that Comedido was instructed by Abalo to proceed to the repair shop to serve as back up in securing the vehicle.

Notably, Luab and Comedido are police officers. At this stage of the proceedings, nothing on record sufficiently suggests ill motive on their part to testify against the accused who was Mayor of Talisay City. When there is no evidence to indicate that the prosecution witnesses were actuated by improper motives, the presumption is that their testimonies are entitled to full faith and credit.¹⁶ The absence of a police blotter of the incident or the failure of the police officers to arrest the accused, does not effectively obliterate Luab and Comedido's testimonial accounts.

Accused's act of proceeding to take away the red bag from the vehicle notwithstanding the warning of police officers Luab and Comedido that the vehicle was then under police custody, is *prima facie evidence* of obstruction of justice. Apparently, the intention was to conceal, suppress or otherwise impair possible evidence in the investigation especially so as the case involved his son who was then already arrested for a criminal offense. The alleged lack of search warrant or the absence of a yellow line did not remove the vehicle from police custody regarding which the accused was informed and warned. The warning was unheeded which is *prima facie evidence* of an intention to meddle or impair any

¹⁶ People v. Suarez, G.R. No.224889, October 19, 2016

evidence from the vehicle that may be used in the investigation of the case of accused's son. This is heightened by the accused's refusal to turn-over the red bag taken from the vehicle.

For the successful prosecution under PD 1829, Section 1(b), the law requires only the act of "*x x x concealing any x x x object, with intent to impair its x x x availability, x x x as evidence in any investigation of or official proceedings in, criminal cases, or to be used in the investigation of, or official proceedings in criminal cases.*" This has been satisfied in this case.

Given the sufficiency of the testimonial and documentary evidence to sustain the indictments against the accused, to allow him leave of court to file a demurrer to evidence at this stage will only delay the proceedings in this case. In line with the ruling of the Supreme Court in **Singian, Jr. v. Sandiganbayan**,¹⁷ it is now incumbent upon the accused to adduce evidence on his behalf to refute the evidence of the prosecution.


WHEREFORE, in view of the foregoing, the instant motion is **DENIED** without, however, precluding the accused from filing his Demurrer to Evidence, without leave of court, within a non-extendible period of ten (10) days from receipt hereof, pursuant to Section 23, Rule 119 of the Rules of Court.

SO ORDERED.



MARYANN E. CORPUS – MAÑALAC
Associate Justice

WE CONCUR:



RAFAEL R. LAGOS
Associate Justice
Chairperson



MARIA THERESA V. MENDOZA – ARCEGA
Associate Justice

¹⁷ Gregorio, et al., G.R. Nos. 195011-19, September 30, 2013