



**REPUBLIC OF THE PHILIPPINES  
SANDIGANBAYAN  
QUEZON CITY**

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**FIFTH DIVISION**

**PEOPLE OF THE PHILIPPINES,**

**Plaintiff,**

**SB-14-CRM-0239**

**For: Plunder**

**-vs-**

**JOSE "JINGGOY" P. EJERCITO  
ESTRADA, ET AL.,**

**Accused.**

*Present:*

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

*Promulgated:*

*March 13, 2019 led*

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**RESOLUTION**

***PER CURIAM:***

Submitted for consideration of this Court are the Motion for Leave to File Demurrer to Evidence, filed by the accused, Jose "Jinggoy" Estrada (Estrada), through counsel, on February 22, 2019 and the Comment/Opposition, filed by the People, through the Panel of Prosecutors, on February 27, 2019.

The accused, in his motion, allege that the prosecution has not proved its case against him and that it has not substantiated the accusation of Plunder against him, thus, he prays for the dismissal of the indictment against him for failure of the prosecution to prove the charge in the Information with evidence showing guilt beyond reasonable doubt. He anchored his claim on the Constitutional guarantee of presumption of

innocence. In the same manner, he cited the case of *Okabe v. Hon. Gutierrez*<sup>1</sup>, wherein the Supreme Court elucidated that the constitutional duty of the Court in criminal litigation is not only to acquit the innocent after trial, but to insulate, from the start, the innocent from unfounded charges. Moreover, the accused asserts that the evaluation of the prosecution's evidence is warranted in view of the Court's determination that he is entitled to bail, given the weakness of the evidence presented and in the light of the judicial pronouncements on the crime of Plunder.<sup>2</sup> He prays for the indulgence of the Court to allow him to demonstrate further that not only is the evidence against him insufficient but also altogether unfounded. In fine, he based his present motion on the following grounds: 1. That the prosecution failed to prove the gravamen of the offense of plunder; 2. That the evidence adduced by the prosecution does not prove that accused is or was the "mastermind" or main plunderer in the instant case and; 3. The prosecution has presented no evidence to prove conspiracy as alleged in the Information.

In response and in opposition to the present motion, the prosecution countered that it has convincingly proven the existence of sufficient and competent evidence to sustain the Information or to support a guilty verdict. The prosecution raised the following arguments: 1. the prosecution was able to prove that accused Estrada accumulated ill-gotten wealth. It cited the Resolution of this Court dated January 17, 2016, wherein a mathematical computation of Fifty-Five Million Seven Hundred Ninety-Five Thousand Pesos (PhP55,795,000.00) representing accumulated wealth by Estrada in the scheme has been established, which was not disturbed by the Court when it allowed the accused to post bail; 2. Estrada is an active participant in the conspiracy to commit Plunder. The prosecution avows that the Court's determination<sup>3</sup> that the accused is the apex of the PDAF Scam still stands notwithstanding its later Resolution allowing the accused to post bail. The prosecution also capitalized on the fact that accused made and sent endorsement letters to an NGO. Under the law, particularly COA Circular No. 2001-001 and GPPB Resolution No. 12-2007, mandate that the NGO should be chosen in public bidding, hence the endorsement letters designating an NGO in the case of the accused only facilitated and expedited the payment of kickbacks and commissions and; 3. While the prosecution submits that it need not identify the so-called "main plunderer," still the prosecution's evidence show that accused Estrada is the main plunderer having sole and exclusive control over his PDAF allocation. Finally, even assuming that Napoles was the one who conceived the scheme, the fact is, it was Estrada who was in control of his PDAF and not accused Napoles.

Hence, this resolution.

Demurrer to evidence is<sup>4</sup> "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,

<sup>1</sup> G.R. No. 150185, May 27, 2004.

<sup>2</sup> Resolution dated September 15, 2017, Record, Vol. 27, pp. 240 to 261.

<sup>3</sup> Resolution, dated January 7, 2016, Record, Vol. 19, pp. 548 to 797.

<sup>4</sup> Under Section 23, Rule 119 of the Rules of Court:

SEC. 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.

If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.

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

If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.

whether true or not, to make out a case or sustain the issue. The 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. x x x 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 therefore, the evidence must prove: (a) the commission of the crime, and (b) the precise degree of participation therein by the accused.”<sup>5</sup> Thus, when the accused files a demurrer, the court must evaluate whether the prosecution evidence is sufficient enough to warrant the conviction of the accused beyond reasonable doubt.<sup>6</sup>

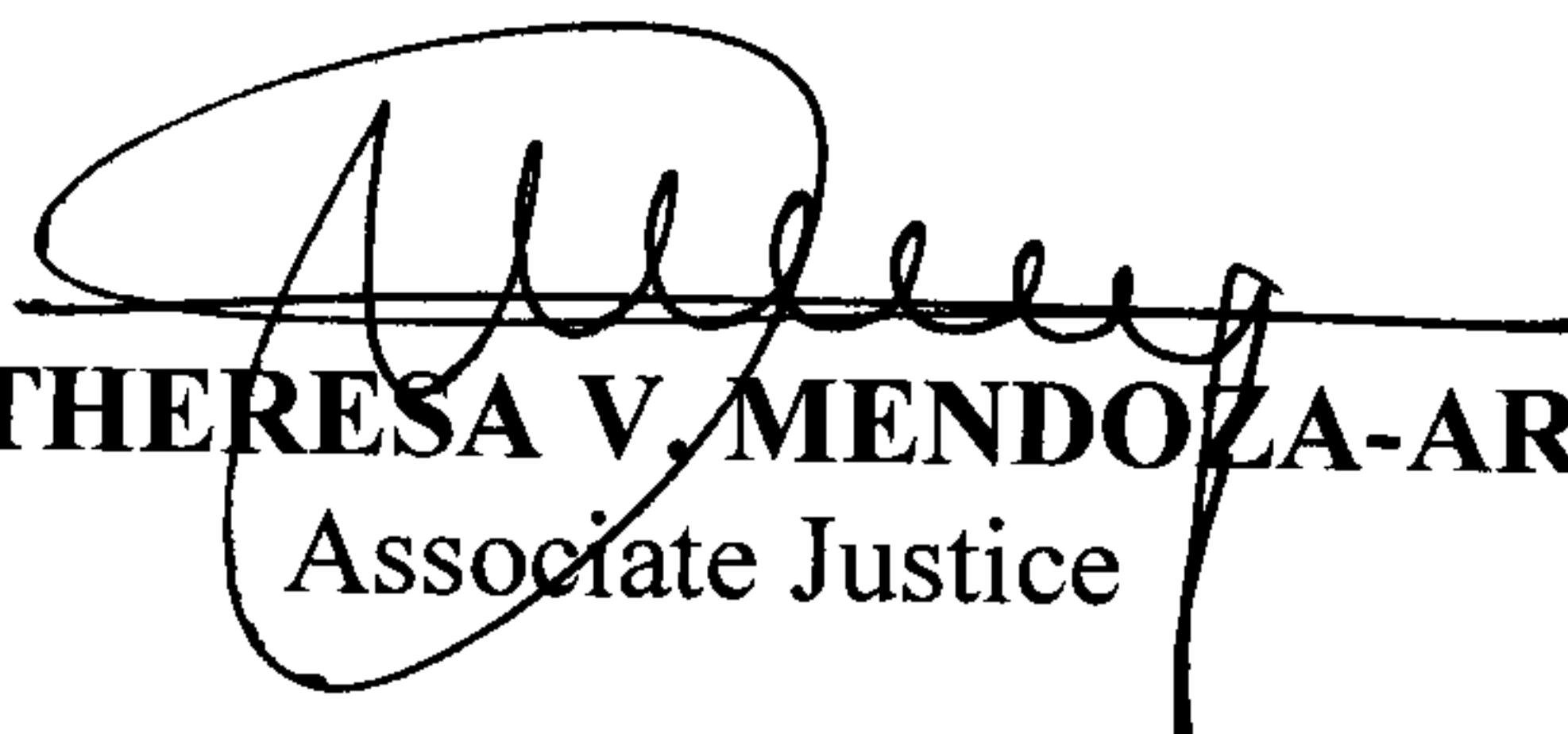
After a meticulous examination of the totality of the evidence presented by the prosecution, both testimonial and documentary, the Court resolves to grant the present motion of the accused, to sufficiently provide him an opportunity to challenge the sufficiency of the prosecution’s evidence establishing the material elements of the offense charged to support a judgment of guilt.


**WHEREFORE**, in view of the foregoing, the Motion for Leave of Court to File Demurrer to evidence is hereby **GRANTED**.

Accordingly, the accused is given a non-extendible period of ten (10) calendar days from receipt of this Resolution within which to file his Demurrer to Evidence, while the prosecution is given the same period from receipt of the Demurrer to Evidence within which to file its Comment thereto. Thereafter, the incident shall be deemed submitted for resolution.

**SO ORDERED.**

  
**RAFAEL R. LAGOS**  
Chairperson

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

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

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The order denying 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

<sup>5</sup> Gutib v. Court of Appeals, 371 Phil. 293, 300, 305 (1999).

<sup>6</sup> See Bautista v. Cuneta-Pangilinan, G.R. No. 189754, October 24, 2012, 684 SCRA 521, 538.