



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

Seventh Division

MINUTES of the proceedings held on March 22, 2019.

Present:

<i>Justice MA. THERESA DOLORES C. GOMEZ-ESTOESTA--</i>	<i>Chairperson</i>
<i>Justice ZALDY V. TRESPESES -----</i>	<i>Member</i>
<i>Justice GEORGINA D. HIDALGO-----</i>	<i>Member</i>

The following resolution was adopted:

Crim. Case No. SB-16-CRM-0777 – People of the Philippines vs. Reynaldo Salvador San Pedro

Crim. Case No. SB-16-CRM-0778 - People of the Philippines vs. Nolly Diaz Concepcion

This resolves the following:

1. Accused Reynaldo San Pedro's "Motion for Leave to File Demurrer to Evidence" dated February 07, 2019;¹
2. Accused Nolly Diaz Concepcion's " Very Urgent Motion for Leave to File Demurrer to Evidence" dated February 06, 2019;² and
3. The prosecution's "Consolidated Comment/Opposition" dated February 14, 2019.³

HIDALGO, J.:

Before this Court for resolution are separate Motions for Leave to File Demurrer to Evidence filed by accused Reynaldo San Pedro (accused San Pedro) and accused Nolly Diaz Concepcion, (accused Concepcion) as well as the Consolidated Comment/Opposition thereto filed by the Prosecution.

¹ Record Vol. 2, pp. 144-150

² Record Vol. 2, pp 155-159

³ Record Vol. 2, pp 173-189

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Accused San Pedro's Motion for Leave to File Demurrer to Evidence (Motion)

In gist, accused San Pedro in his Motion prays that the Court grants leave to file demurrer to evidence on the basis of the following grounds:

- (a) the prosecution has not presented the original copy of the alleged COMELEC Order dated September 8, 2009. It presented the photocopies without proving that the original exists, and that it was lost, and that there was earnest effort to look for it;
- (b) assuming, but only for the sake of argument, that such order indeed exists the order is erroneous because it is not correct to state that with the death of Roquero, there is no more real party in interest;
- (c) again assuming, but only for the sake of argument, that there was a valid COMELEC Order, there was no proper service of the order to accused San Pedro. There is no such thing as constructive service of COMELEC Orders.
- (d) COMELEC cannot adjudge to have the order implemented immediately because the Rules state that orders will become final and executory after thirty (30) days from its promulgation;
- (e) the alleged September 8, 2009 order is in the nature of a minute resolution which is not allowed under the rules, specifically, Section 2, Rule 18 thereof, which provides "*No minute resolution resolving a case shall be rendered if evidence has been adduced and received,*" thus null and void;
- (f) the evidence alleged to prove the acts of accused San Pedro in his capacity as Mayor were incompetent and admissible. The alleged documents do not exist in the files of the officer who have custody of the alleged documents;
- (g) the basis for the action of the DILG stating that there was proper service is erroneous because in truth and in fact, there was no proper service by COMELEC officer Leonardo;
- (h) the proceedings before the Sangguniang Panlungsod of San Jose del Monte instead of proving violation of Art. 177 of the Revised Penal Code, on the contrary proves that the continued stay of accused San Pedro as Mayor was valid because the body itself cannot arrive at a consensus with respect to the validity of the alleged COMELEC order.⁴

⁴ Record Vol. 6 pp 146-149

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These taken all together, in effect, accused San Pedro stood firm in saying that the prosecution was not able to prove the existence of all the elements of the crime of Usurpation of Official Functions penalized under Article 177 of the Revised Penal Code (RPC)

Accused Concepcion's Very Urgent Motion for Leave to File Demurrer to Evidence (Motion)

For his part, accused Concepcion likewise prayed for the Court to grant leave for the accused to file his demurrer to evidence offering the following reasons. That:

(1) the pieces of documentary evidence consisting of the Minutes of the regular sessions of the 92nd, 93rd and 94th exposed that the presiding officers thereof were respectively Thelma San Pedro, Glenn Villano and Reynaldo San Pedro, and therefore these discredit the allegation in the Information that Nolly Concepcion presided over the sessions of the Sangguniang Panlungsod.

(2) the pieces of documentary evidence consisting of the Minutes of the 89th, 90th and 91st regular and the 16th special session exhibited that Nolly Concepcion acted as presiding officer not only under color of title but he was also explicitly recognized and authorized to act as such by the Sangguniang Panlungsod, and without which the ordinances, resolutions and other official actions could not have been passed and approved.

(3) the pieces of documentary evidence consisting of the photocopies of the COMELEC Order dated 08 September 2009, DILG Memorandum dated 10 September 2009, Memorandum dated 12 September 2009 of Blesilda Leonardo, and Letter dated 18 September 2009 of Usec. Austere Panadero to Reynaldo San Pedro are inadmissible because Section 3 Rule 130 of the Rules of Court states that when the subject of inquiry is the contents of a document, no evidence shall be inadmissible other than the original document itself

(4) the Complaint-Affidavit with the Complaint Sheet dated 20 January 2010 of Mr. Dean Quijano is inadmissible in evidence for being hearsay because Mr. Dean Quijano did not take the witness stand to identify his complaint-affidavit.

(5) the pieces of documentary evidence consisting of the Personal Data Sheet of accused Concepcion and Certification dated 17 July 2017 issued by Mrs. Teresita Ramos are irrelevant, immaterial and impertinent because what is punished in usurpation of official function are the actions perpetrated by the criminal and not a mere claim in the personal data sheet.

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(6) *People vs de la Cruz* taught that admission is evidence of the highest order, and the prosecution witnesses made numerous admissions during the presentation of their respective testimonies that totally discredited the Information for usurpation of official functions against the accused.⁵

In sum and for reasons given, he maintains that the documentary and testimonial evidence presented by the prosecution are inherently weak and have failed to prove the existence of the elements of the crime charged.⁶

Prosecution's Consolidated Comment/Opposition (Opposition)

In its Consolidated Comment/Opposition, to counter the arguments of accused San Pedro, the prosecution alleged that:

(1) On the argument that prosecution did not present the original copy of the alleged COMELEC Order dated September 8, 2009 and presented photocopies without proving that the original exists and that it was lost, and that there was earnest effort to look for it. This argument has no leg to stand on. It added that the COMELEC Order dated September 8, 2009 has already been admitted by this Honorable Court in its Minute Resolution dated January 25, 2019 and that said COMELEC Order had already passed the stage of admissibility therefore rendering accused San Pedro's *first argument* moot and academic;⁷

(2) On the argument that assuming, but only for the sake of argument, that such order indeed exists, the order is erroneous because, with due respect to the COMELEC, it is not correct to state that with the death of Roquero, there is no more real party in interest. This argument is out of context. It argued that apparently, this argument assails the COMELEC Order dated September 8, 2009 and with all due respect, the Sandiganbayan is not the proper forum wherein a COMELEC Order is to be contested;

(3) On the argument that, assuming, but only for the sake of argument that there was a valid COMELEC order, there was no proper service to the accused San Pedro. It insists that the argument is baseless as again, accused San Pedro is attacking the service of the COMELEC Order dated September 8, 2009.⁸ It argued likewise that this cannot be done in this proceeding as the legality of the service of the COMELEC Order should have been contested, at the very first instance, before the COMELEC who has jurisdiction and power to interpret its rule of procedure;

⁵ Record Vol 6 pp 155-160

⁶ Ibid p 158

⁷ Record Vol. 2, pp122-128

⁸ Note: Underline ours for emphasis

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(4) On the argument that the COMELEC cannot adjudge to have the Order implemented immediately because the Rules states that orders will become final and executory after thirty (30) days from promulgation. This argument centers upon the issue or matter which are within the jurisdiction of the COMELEC for the Supreme Court.

(5) On the argument that the alleged September 8, 2009 order is in the nature of a minute resolution which is not allowed under the rules, specifically, Section 2 Rule 18, thereof. This argument is preposterous. It added that whether a Minute Resolution is allowed under the COMELEC rules is beside the point and it is irrelevant and immaterial to raise the same as accused San Pedro cannot now raise those issues because it pertains to matters which are again under the competence of the COMELEC itself or the Supreme Court.

(6) On the argument that the evidence alleged to prove the acts of accused San Pedro in his capacity as Mayor were incompetent and inadmissible, as the documents do not exist in the files of the officer who have custody of the alleged documents. This argument is illusory as prosecution witnesses specifically Atty. Paul Vega and Reynaldo Ceniza testified that indeed the documents against accused San Pedro originated from their office, the Business Permits and Licensing Office (BPLO) of San Jose del Monte, Bulacan and were in fact signed by Reynaldo Ceniza as the OIC, Licensing Officer of the BPLO;

(7) On the argument that the basis for the action of the DILG stating that there was a proper service is erroneous because in truth and in fact, there was no proper service by COMELEC officer Leonardo. This argument is flimsy as witness Panadero of the DILG in categorical terms testified that knowing that the COMELEC Order dated September 8, 2009 had been implemented by the COMELEC, the DILG, on their end implemented the COMELEC Order to once and for all clear the situation in the City as to who was recognized elected City Mayor, by issuing a DILG Memorandum recognizing Angelito Sarmiento as the duly elected City Mayor of San Jose Bulacan and directing accused San Pedro and all other members of the Sangguniang Panlungsod to revert to their previous post prior to succession.

(8) On the argument that the proceedings before the Sangguniang Panlungsod of San Jose del Monte, instead of proving violation of Art. 177 of the Revised Penal Code, on the contrary proves that the continued stay of accused San Pedro as Mayor was valid because the body itself cannot arrive at a consensus with respect to the validity of the alleged COMELEC order. The argument is a sweeping conclusion as it does not specifically point out how the proceedings before the Sangguniang Panlungsod made

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the acts of accused San Pedro valid despite knowledge of the subject order and the DILG Memorandum.⁹

Relative to the arguments of accused Concepcion, the prosecution avers:

(1) On the ground that the pieces of documentary evidence consisting of Minutes (Exhibits "L", "M" and "N"), of the regular sessions of the 92nd, 93rd and 94th exposed that the presiding officers thereof were respectively Thelma San Pedro, Glenn Villano and Reynaldo San Pedro and therefore discredit the allegation in the Information that Nolly Concepcion presided over the sessions of the Sangguniang Panlungsod. The argument is misleading as the Information precisely states that it was the 89th, 90th and 16 special session of the Sangguniang Panlungsod which was attended and presided by accused Concepcion as Vice Mayor and not on the 92nd, 93rd and 94th sessions, hence, the first argument is baseless;

(2) On the ground that the pieces of documentary evidence consisting of the Minutes (Exhibits "H", "I", "J", and "K") of the 89th, 90th and 91 regular sessions and the 16th special session exhibited that Nolly Concepcion acted as presiding officer not only under color of title but he was also recognized and authorized to act as such by the Sangguniang Panlungsod. The argument is erroneous, as accused Concepcion's presiding the 89th, 90th 91st regular sessions and 16th special session is not under a color of title but on wanton disregard/defiance of the COMELEC Order dated September 8, 2009 and the DILG Memorandum dated September 18, 2009;

(3) On the argument that the pieces of evidence (Exhibits "B", "C", "D" and "F") of the documentary evidence consisting of the photocopies of the COMELEC Order dated 08 September 2009, DILG Memorandum dated 12 September 2009 of Blesilda Leonardo, and Letter dated 18 September 2009 of Usec. Austere Panadero to Reynaldo San Pedro, are inadmissible because Section 3 Rule 130 of the Rules of Court states that when the subject inquiry is the contents of a document, no evidence shall be inadmissible (sic) other than the original document itself. The prosecution wants to invite the attention of the counsel of accused Concepcion that misquotation of the provision of the law or rule, for that matter, constitutes plagiarism. It added that accused Concepcion can no longer question the admissibility of these pieces of evidence as the Court has already been passed upon and ruled on their admissibility;

(4) On the ground that the Complaint-Affidavit (Exhibit "A") with the Complaint Sheet dated 20 January 2010 of Mr. Dean Quijano is inadmissible in evidence for being hearsay because Mr. Dean Quijano did not take

⁹ Record Vol 2, pp 174-181

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the witness stand to identify his complaint-affidavit. This argument is rendered moot and academic in view of the Honorable Court's reconsideration admitting Exhibit "A" of the prosecution;

(5) On the ground that the pieces (Exhibits "U" and "X") of documentary evidence consisting of the Personal Data Sheet of Nolly Concepcion and the Certification dated 17 July 2017 issued by Mrs. Teresita Ramos, are irrelevant, immaterial and impertinent because what is punished in usurpation of official function are the actions perpetrated by the criminal and not a mere claim in the Personal Data Sheet. The prosecution said the test of relevancy and materiality of these Exhibits were already passed and ruled upon by the Court, besides in the Personal Data Sheet of the accused Concepcion, he categorically wrote that he served as the City Vice Mayor of San Jose del Monte, Bulacan from August 25, 2009 to October 31, 2009, and that is an admission against his interest.¹⁰

Our Ruling

Weighing the arguments interposed by accused San Pedro and Concepcion in their respective Motions as against the Comment/Opposition filed by the prosecution, and taking into consideration the evidence thus far presented by the latter, this Court is inclined to DENY the Motions.

On Demurrer to Evidence, the Rules of Court provide:

Section 23, Rule 119 of the Rules of Court:

Demurrer to evidence. —

"x x x.

The motion for leave of court to file demurrer to evidence shall specifically state its ground 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."

Jurisprudence states that, 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. The party filing the demurrer challenges the sufficiency of the prosecution's evidence. For this reason, the Court is tasked to ascertain if there is competent or sufficient evidence to establish a *prima facie* case to sustain the indictment or support a verdict of guilt."¹¹

¹⁰ Ibid pp 181-185

¹¹ Pp vs Sandiganbayan, G.R. No. 197953, August 2015

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In the case of *People vs Laguio, Jr.*¹² the Supreme Court explained that after the prosecution rests its case and the accused files a Demurrer to Evidence, the trial court is required to evaluate whether the evidence presented by the prosecution is sufficient enough to warrant the conviction of the accused beyond reasonable doubt. If the trial court finds that the prosecution evidence is not sufficient and grants the accused's Demurrer to Evidence, the ruling is an adjudication on the merits of the case which is tantamount to an acquittal and may no longer be appealed. Any further prosecution of the accused after an acquittal would, thus, violate the constitutional proscription on double jeopardy.

For purposes of resolving the Motion of accused San Pedro, the Court notes that, among others, he anchored his prayer for the granting of the Motion on the following:

(1) The subject COMELEC Order presented to the Court is mere photocopy.

Indeed, as a general rule, "a photocopy, being a mere secondary evidence, is not admissible **unless it is shown that the original is unavailable.**¹³ (underscoring ours) **Sec. 5, Rule 130 of the Rules of Court** however provides:

"Sec. 5 When the original document is unavailable. When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated."

Thus, in a long line of cases, the Supreme Court ruled that: "Before a party is allowed to adduce secondary evidence to prove the contents of the original, the offeror must prove the following: (1) the existence or due execution of the original; (2) the loss and destruction of the original or the reason for its non-production in court; and (3) on the part of the offeror, the absence of bad faith to which the unavailability of the original can be attributed. The correct order of proof as follows: existence, execution, loss and contents.¹⁴ In this case, the existence, the non-production in court and the unavailability of the original copy of the subject Order were all proven and testified to by prosecution witnesses. Hence, there is no more question why the same should not

¹² G.R. No. 128587, March 16, 2007

¹³ *Lee vs Tambago*, A.C. No. 5281, 12 Feb. 2008, 544 SCRA 393, 404

¹⁴ *Citibank, N.A. Mastercard v. Teodor*, 458 Phil 480,489 (2003) citing *De Vera v. Aguilar*, G.R. No. 83377, 9 February 1993, 218 SCRA 602, 606

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(2) The COMELEC Order is erroneous or even if not erroneously issued, it was improperly served to the accused. To this, what the Court can say is and as correctly pointed out by the prosecution, it is not for this Court to rule whether the said Order is erroneously issued or not. As it is, the Order in question is valid on its face unless evidence is shown that it is not. Thus, this argument too must fail. More, even if the Order in question is improperly served, this allegation is not for this Court to appreciate for now. Fact is, prosecution witness Blesilda R. Leonardo testified why personal service was not made. And while this Court recognizes personal service, this is not without exception. The case of *Marcelino Domingo v. Court of Appeals*¹⁶, emphasized the provision of Sec. 11, Rule 13 of the Rules of Court:

Section 11, Rule 13 of the Rules of Court states:

Sec. 11. Priorities in modes of service and filing. Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed.

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We thus take this opportunity to clarify that under Section 11, Rule 13 of the 1997 Rules of Civil Procedure, personal service and filing is the general rule, and resort to other modes of service and filing, the exception. Henceforth, whenever personal service or filing is practicable, in light of the circumstances of time, place and person, personal service or filing is mandatory. Only when personal service or filing is not practicable may resort to other modes be had, which must then be accompanied by a written explanation as to why personal service or filing was not practicable to begin with. x x x.”

On the other hand, accused Concepcion’s challenge centered mainly on the admissibility of the documentary evidence adduced against him. We find this without merit. Clearly in its Resolution¹⁷ dated January 25, 2019, this Court admitted Exhibits “B” to “W” and series excepting only Exhibit “A”. Inadvertently, Exhibit “X” was omitted. Record shows that in its Order dated February 11, 2019, this Court, acting on a Motion for Reconsideration filed by the prosecution admitted Exhibits “A” and “X”:

The other grounds interposed by the accused already border on conclusions of law which is for the Court to assess and evaluate at the time the cases are submitted for judgment.

¹⁶ G.R. 169122, Feb 2, 2010, 611 SCRA 353, 364-365

¹⁷ Ibid pp 122-129

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Given our disquisitions above, this Court therefore finds the evidence thus far presented by the prosecution sufficiently strong to sustain the charge. On this score, there is therefore a need for accused San Pedro and Concepcion to present their respective evidence to convince the Court that the prosecution's case is weak, so that their acquittal becomes a matter of course.

WHEREFORE, in view of the foregoing, the Motions for Leave of Court to File Demurrer to Evidence filed by accused Reynaldo S. San Pedro and accused Nolly Diaz Concepcion's Very Urgent Motion for Leave to File Demurrer to Evidence both dated February 6, 2019 are **DENIED FOR LACK OF MERIT**.

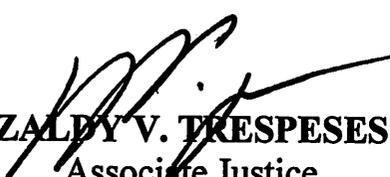
Accordingly, the setting on March 25, 2019 at 8:30 in the morning for initial presentation of defense evidence shall proceed.

SO ORDERED.


GEORGINA D. HIDALGO
Associate Justice

WE CONCUR:


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


ZALDY V. TRESPESES
Associate Justice