



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
QUEZON CITY

SEVENTH DIVISION

MINUTES of the proceedings held on October 15, 2019.

Present:

JUSTICE MA. THERESA DOLORES C. GOMEZ-ESTOESTA ----- Chairperson
JUSTICE ZALDY V. TRESPESES ----- Associate Justice
JUSTICE GEORGINA D. HIDALGO ----- Associate Justice

The following resolution was adopted:

CRIMINAL CASE NOS. SB-12-CRM-0164 to 0167

PEOPLE v. JESUS A. VERZOSA, ET AL.

Before the Court are the following:

1. Accused Jesus A. Verzosa's "MOTION FOR LEAVE TO FILE DEMURRER TO EVIDENCE (Ad Cautelam)" dated September 13, 2019;
2. Accused Jesus A. Verzosa's "MEMORANDUM OF AUTHORITIES (In Support of Accused Verzosa's Motion for Leave to File Demurrer to Evidence Ad Cautelam)" dated September 27, 2019; and
3. The Prosecution's "COMMENT/OPPOSITION [On the Timeliness of Motion for Leave to File Demurrer to Evidence (Ad Cautelam) of Accused Verzosa] dated October 1, 2019.

GOMEZ-ESTOESTA, J.:

This resolves the timeliness of accused Jesus A. Verzosa's *Motion for Leave to File Demurrer to Evidence*.¹

On July 24, 2018, this Court issued its *Resolution* on the Prosecution's Formal Offer of Evidence. Several of the accused filed their respective *Motions for Leave to File Demurrer to Evidence* following receipt of this resolution. Accused Verzosa, on the other hand, filed his *Motion for Leave* on September 16, 2019, following receipt of this Court's *Resolution* dated

¹ Records, Vol. 26, pp. 397-407

7.
1.
f

September 3, 2019 denying his *Motion for Reconsideration*, which he received on September 10, 2019.

Meanwhile, on September 13, 2019, this Court issued its *Resolution* denying the Prosecution's *Motion for Reconsideration* of its earlier resolution on its Formal Offer of Evidence.

The Prosecution contends that accused Verzosa's *Motion for Leave* was filed out of time – it should have been filed five days (5) from receipt of this Court's resolution on its Formal Offer of Evidence - *i.e.*, the *July 24, 2019 Resolution*.² Accused Verzosa, on the other hand, maintains that he had five (5) days from receipt of the *final* resolution on the Prosecution's Formal Offer of Evidence, *i.e.*, the *September 13, 2019 Resolution on the Prosecution's Motion for Reconsideration*, within which to file his *Motion for Leave*.³

Accused Verzosa's *Motion for Leave* was filed on time.

Rule 119 of the Rules of Criminal Procedure provides:

Section 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.

X X X

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.

X X X

As properly cited by accused Verzosa, in *Cabador v. People*,⁴ the Supreme Court explained when the prosecution is deemed to have rested its case, thus:

Here, after the prosecution filed its formal offer of exhibits on August 1, 2006, the same day Cabador filed his motion to dismiss, the trial court still needed to give him an opportunity to object to the admission of those exhibits. **It also needed to rule on the formal offer. And only after such a ruling could the prosecution be deemed to have rested its case.** Since Cabador filed his motion to dismiss before he could object to the prosecution's formal offer, before the trial court could act on the offer, and before the prosecution could rest its case, it could not be said that he had intended his motion to dismiss to serve as a demurrer to evidence. (emphasis supplied)

² Comment/Opposition, *Id.*, pp. 479-183

³ Memorandum of Authorities, *Id.*, pp. 439-444

⁴ G.R. No. 186001, October 2, 2009

17
|

Also cited by accused Verzosa was *Reyes v. Sandiganbayan*,⁵ where the Supreme Court found error in the denial of a Motion for Leave to File Demurrer to Evidence on the sole ground that it should have been filed five (5) days from receipt of the resolution of a Formal Offer of Evidence which was subsequently assailed in a Motion for Reconsideration. It explained:

Section 23, Rule 119 of the Rules of Criminal Procedure provides that a "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." This period runs, according to *Cabador v. People*, only after the court shall have ruled on the prosecution's formal offer for that is when it can be deemed to have rested its case.

Here, Reyes filed a timely motion for reconsideration of the Sandiganbayan's ruling on the prosecution's formal offer, which is allowed, thus preventing the prosecution from resting its case. When the Sandiganbayan denied Reyes' motion for reconsideration, she filed with it, within the required five days of her receipt of the order of denial, her motion for leave to file demurrer to evidence.

Still, the Sandiganbayan's error in not allowing Reyes to ask for leave to file a demurrer to the evidence cannot be regarded as capricious and whimsical as to constitute grave abuse of discretion. Courts have wide latitude for denying the filing of demurrers to evidence. Indeed, an order denying a motion for leave of court to file demurrer to evidence or the demurrer itself is not subject to appeal or certiorari action before judgment. The remedy is to assign the order of denial as an error on appeal after judgment.

In filing its *Motion for Reconsideration*, the Prosecution sought the admission of documents excluded in the *Resolution* dated July 24, 2019, which, if granted, would have changed the entirety of evidence to be considered by the accused in the filing of a *Motion for Leave*. The same was thus resolved in the *Resolution* dated September 13, 2019. Following *Cabador v. People* and *Reyes v. Sandiganbayan*, it was only then that the Prosecution could be said to rest its case; and for the accused to timely challenge the sufficiency of evidence presented through the filing of a Motion for Leave to demur to the evidence.

Accused Verzosa filed his *Motion for Leave to File Demurrer to Evidence* on September 16, 2019, only three (3) days after this Court's *Resolution* dated September 13, 2019, hence, well within the period provided under Sec. 23 of Rule 119. The same is thus admitted for this Court's consideration.

WHEREFORE, the *Motion for Leave to File Demurrer to Evidence (Ad Cautelam)* filed by accused Jesus A. Verzosa is ADMITTED. The Prosecution is given five (5) days from receipt of this Resolution to

⁵ G.R. Nos. 148607, 167202, 167223 & 167271, September 5, 2012

7, 1

COMMENT thereto. The resolution of Verzosa's Motion is to be consolidated with the motions of the other accused.

SO ORDERED.


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

WE CONCUR:


ZALDY V. TRESPES
Associate Justice


GEORGINA D. HIDALGO
Associate Justice