



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-18-CRM-0428 and 0429

For: Violation of Sec. 3(e)
of R.A. No. 3019

Present

- versus -

FERNANDEZ, SJ, J.,
Chairperson
MIRANDA, J. and
VIVERO, J.

MARCELINO C. LIBANAN,
ET AL.,

Accused.

Promulgated:

OCT 20 2020

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves the *Motion for Reconsideration (Re: 13 August 2020 Resolution)*¹ filed by accused Clotilde J. Salazar and Manuel B. Japzon; and the prosecution's *Comment/Opposition (To Accused Salazar and Japzon's Motion for Reconsideration dated 24 August 2020)*.²

Accused Salazar and Japzon pray that the Court (1) reconsider the Resolution dated August 13, 2020; (2) grant their *Motion for Reconsideration*; and (3) grant their Motion for Leave to File Demurrer to Evidence. They aver:

1. The filing of their Motion for Leave of Court to File Demurrer to Evidence is not dilatory in character.

¹ Dated August 24, 2020 and received by the Court, through registered mail on September 28, 2020.

² Dated and filed by electronic mail on October 8, 2020

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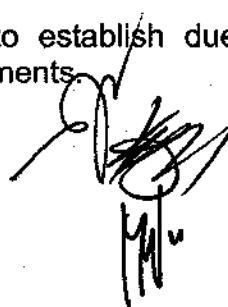
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- a. They honestly believe that the prosecution's evidence is weak.
 - b. Although the grant of leave to file demurrer to evidence is an exercise of judicial discretion, Sec. 23, Rule 119 of the Rules of Court allows the accused to file their demurrer to evidence with or without leave of court.
2. The Court failed to consider the testimony of one of the auditors or one of the witnesses presented by the prosecution who testified that other copies of the originals of certain documents were sent or furnished to other government offices.
 3. Such testimony proves that other copies of originals are still available, but the prosecution did not exert earnest efforts to retrieve them from the concerned offices, and instead, immediately presented secondary evidence.
 4. In *MCC Industrial Sales Corporation v. Ssangyong Corporation*,³ it was held that where the missing document is the foundation of the action, more strictness in proof is required than where the document is only collaterally involved.

In its *Comment/Opposition*, the prosecution counters:

1. Accused Salazar and Japzon were not deprived of the opportunity to argue against the alleged insufficiency of the prosecution's evidence. They may still file their demurrer without leave of court if they so insist.
2. Said accused failed to identify the prosecution witness who made the alleged testimony, *i.e.*, that government offices were supposedly furnished with "other copies of the originals."
3. The prosecution sufficiently laid down the basis for the introduction of secondary evidence.
4. The prosecution presented and offered certified true copies of the disbursement documents. The defense confirmed that the same are faithful reproductions of the original documents.
5. The prosecution presented secondary evidence in lieu of the original copies of the documents that are no longer available.
6. The prosecution was able to establish due execution and subsequent loss of said documents.

³ G.R. No. 170633, October 17, 2007



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- a. The prosecution presented certified copies of documents and sworn certifications issued by the respective records custodians of the concerned government offices.
 - b. Said records custodians attested that the documents they issued were part of the records in the custody of their respective offices, and the original copies thereof could no longer be found despite diligent search.
 - c. Some of the witnesses testified that they had seen the originals, and that they have personal knowledge of the execution of the concerned documents because they prepared the same.
 - d. The loss or destruction of the original copies of the documents in the custody of DA RFO No. 8 was established. Ms. Arsenia C. Canillas and State Auditor Pelotos testified that a fire gutted the entire DA RFO No. 8, including the Office of the Resident Auditor, and destroyed the records therein.
7. The assailed documents were already admitted in evidence. Thus, issues concerning their admissibility had already been settled.

THE COURT'S RULING

The Court resolves to deny accused Salazar and Japzon's *Motion for Reconsideration*.

Accused Salazar and Japzon's arguments are a mere reiteration or rehash of their arguments in their *Joint Motion for Leave of Court to File Demurrer to Evidence*,⁴ in particular, the first ground they relied upon.

In *Mendoza-Ong v. Sandiganbayan*,⁵ it was held:

Concerning the first ground abovesited, the Court notes that the motion contains merely a reiteration or rehash of arguments already submitted to the Court and found to be without merit. Petitioner fails to raise any new and substantial arguments, and no cogent reason exists to warrant a reconsideration of the Court's Resolution. It would be a useless ritual for the Court to reiterate itself.

This Court had already considered said accused' arguments, together with the prosecution's evidence, when it concluded that

⁴ Dated February 22, 2020

⁵ G.R. Nos. 146368-69, October 18, 2004

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granting them leave to file their demurrer will merely cause delay in the proceedings. The Court finds nothing in their *Motion for Reconsideration* that would warrant the reversal of the assailed Resolution.

WHEREFORE, the *Motion for Reconsideration* of accused Salazar and Japzon is hereby DENIED for lack of merit.

As provided in Sec. 23, Rule 119⁶ of the Rules of Court, they may adduce evidence in their defense, or in the alternative, they may file their demurrer to evidence without leave of court.

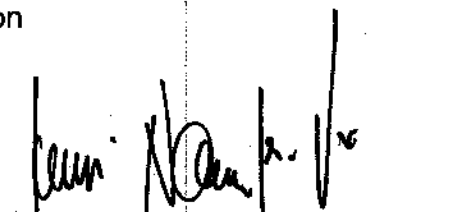
Said accused are given five (5) days from receipt of this Resolution to file their manifestation, by personal service or registered mail, and electronically, to inform this Court whether they are submitting their demurrer to evidence without leave of court. The hearings for the initial presentation of the defense evidence set on November 17 and 18, 2020 are maintained. Said hearings will be considered cancelled upon receipt by this Court of said accused' manifestation that they intend to submit their demurrer to evidence without leave of court.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA
Associate Justice


KEVIN MARCE B. VIVERO
Associate Justice

⁶ 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.