

Republic of the Philippines  
**SANDIGANBAYAN**  
Quezon City

FOURTH DIVISION

**PEOPLE OF THE PHILIPPINES,**  
*Plaintiff,*

**CRIM. CASE NO. SB-15-CRM-0137**  
For: Violation of Section 3(e), R.A.  
No. 3019, as amended

-versus-

**CRIM. CASE NO. SB-15-CRM-0138**  
For: Violation of Section 3(g), R.A.  
No. 3019, as amended

**ALEX D. KINDIPAN,  
HENRY N. GANO,  
MARIA NILDA S. DELOY,<sup>†</sup>  
DOLLY T. VILLAFLOR,  
LUCIA G. DIOLA, and  
SUZETTE O. RECTO,**

**CRIM. CASE NO. SB-15-CRM-0139**  
For: Violation of Section 65.2.4 of the  
Implementing Rules and  
Regulations of R.A. No. 3019

*Accused.*

Present:  
**QUIROZ, J.,** Chairperson,  
**PAHIMNA, J.,** and  
**JACINTO, J.**

Promulgated:

**APR 11 2022**



X-----X

**RESOLUTION**

**PAHIMNA, J.:**

Before this Court are the following:

1. *Manifestation and Motion for Leave of Court to File Demurrer to Evidence*,<sup>1</sup> dated 17 December 2021, filed via electronic mail<sup>2</sup> on even date by accused Lucia G. Diola, through counsel;
2. *Motion for Leave of Court to File Demurrer to Evidence*,<sup>3</sup> dated 22 December 2021, filed via electronic mail<sup>4</sup> on even date by accused Alex D. Kindipan, through counsel;

<sup>1</sup> Records, Vol. 4, pp. 379-381.

<sup>2</sup> *Id.*, p. 382.

<sup>3</sup> *Id.*, pp. 383-385.

<sup>4</sup> *Id.*, p. 386.



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3. *Motion for Leave of Court to File Demurrer to Evidence*,<sup>5</sup> dated 23 December 2021 filed via electronic mail<sup>6</sup> on even date by accused Henry N. Gano, through counsel; and
4. *Consolidated Comment and/or Opposition (to the respective Motions for Leave to File Demurrer to Evidence filed by accused Alex Kindipan and Henry Gano)*,<sup>7</sup> dated 16 February 2022, filed via electronic mail<sup>8</sup> on 20 February 2022.

In her *Motion*, accused Diola invoked her right to file the instant *Motion* pursuant to Rule 119, Section 23 of the Revised Rules on Criminal Procedure, as amended, in view of the alleged weakness of prosecution's evidence. She averred that the documentary evidence and testimonies of witnesses presented did not establish her guilt beyond reasonable doubt.

Similarly, accused Kindipan, in his *Motion*, averred that the prosecution has not proven his guilt beyond reasonable doubt, and the facts proven are not sufficient to sustain his conviction for the charges filed against him.

Accused Gano, for his part, alleged that the prosecution's testimonial and documentary evidence did not prove his guilt beyond reasonable doubt. He said that based on the facts establish by the prosecution, he did not have a hand in the preparation of the purchase request which indicated the supposed brand names and he had no participation in the bidding process.

The prosecution, through its *Comment and/or Opposition*, claimed that it has convincingly proven, based on testimonial and documentary evidence presented, the existence of sufficient and competent evidence to sustain the *Information* or to support a guilty verdict. It likewise alleged that accused Kindipan and Gano merely made a general statement without specifying how the prosecution evidence failed to demonstrate their criminal culpability. The prosecution stated that the general statement and the assurance to provide explanation when granted leave are not sufficient to satisfy the requirement of Rule 119 to specifically state the ground of the demurrer.

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<sup>5</sup> *Id.*, pp. 391-393.

<sup>6</sup> *Id.*, p. 394.

<sup>7</sup> *Id.*, pp. 403-408.

<sup>8</sup> *Id.*, p. 409.



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**THE COURT'S RULING**

The pertinent portion of Rule 119, Section 23 of the Rules of Court, on motion for leave of court to file demurrer to evidence, states that:

**Section 23. Demurrer to evidence. —**

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

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.

In *Bernardo v. Court of Appeals, et. al.*,<sup>9</sup> the Supreme Court explained that the "power to grant leave to the accused to file a demurrer is addressed to the sound discretion of the trial court. The purpose is to determine whether the accused in filing his demurrer is merely stalling the proceedings."

Upon perusal of the *Motions*, this Court notes that all of the accused asked for leave of court to file demurrer to evidence based solely on their claim that the prosecution evidence did not prove their guilt beyond reasonable doubt. Such general statement does not comply with Rule 119, Section 23 of the Rules of Court, which requires that the motion for leave of court to file demurrer to evidence shall specifically state its ground.

The Supreme Court, in *Quinte, et. al. v. Sandiganbayan*,<sup>10</sup> explained this requirement, to wit:

Upon review of petitioners' Motion for Leave to Admit Demurrer to Evidence and applying the pertinent provisions of the Rules of Court, the Court finds that the general allegations contained in petitioners' Motion do not comply with the requirement of Section 23, Rule 119 of the Rules of Court in that the said Motion for Leave to Admit Demurrer to Evidence should specifically state the specific portions/parts of the prosecution's body of evidence.

<sup>9</sup> G.R. No. 119010, 05 September 1997.

<sup>10</sup> G.R. Nos. 240021-24, 07 December 2020.



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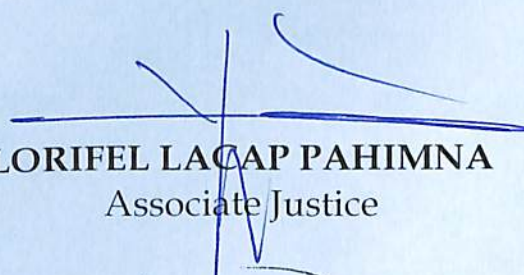
Furthermore, after review of the records of the case, the Court finds that there is no cogent reason to grant the *Motions*. The evidence adduced by the prosecution, both testimonial and documentary, appear to be prima facie sufficient to sustain a conviction, unless successfully rebutted by defense evidence in a full-blown trial.

This Court also notes the manifestation of accused Diola, through counsel, that she has filed her *Comment and Objections (to the Formal Offer of Documentary Exhibit for the Prosecution)*<sup>11</sup> to the *Formal Offer of Documentary Exhibits of the Prosecution*<sup>12</sup>.

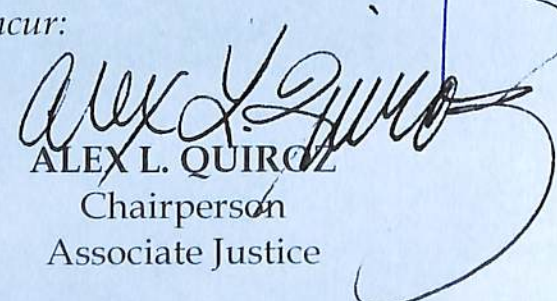
**WHEREFORE**, the *Motions for Leave of Court to File Demurrer to Evidence* filed by accused Diola, Kindipan and Gano are hereby **DENIED** for lack of merit.

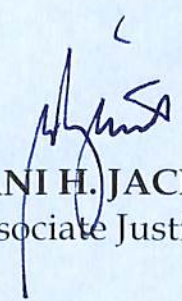
This, however, does not prejudice the accused's right to file demurrer to evidence without prior leave of court, but subject to the legal consequences provided under Rule 119, Section 23 of the Rules of Court, as amended, that they shall waive the right to present evidence and submit their case for judgment on the basis of the evidence adduced by the prosecution.

**SO ORDERED.**

  
**LORIFEL LACAP PAHIMNA**  
Associate Justice

We concur:

  
**ALEX L. QUIROZ**  
Chairperson  
Associate Justice

  
**BAYANI H. JACINTO**  
Associate Justice

<sup>11</sup> Records, Vol. 4, pp. 321-327.

<sup>12</sup> *Id.*, pp. 277-312.