

Republic of the Philippines
SANDIGANBAYAN
Quezon City

FOURTH DIVISION

PEOPLE OF THE
PHILIPPINES,

THE
Plaintiff,

CRIM. CASE NO.
SB-17-CRM-0533 TO 0623

-versus-

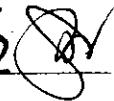
For: Malversation of Public
Funds under Article 217
of the RPC

EVELYN CATHARINE O.
SILAGON, ET. AL.,

Accused.

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

Promulgated:
JUN 09 2022



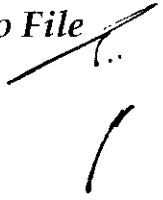
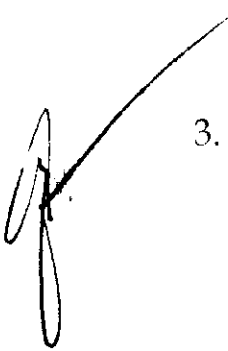
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RESOLUTION

PAHIMNA, J.:

Before this Court are the following:

1. *Motion for Leave to File Demurrer to Evidence*¹ dated April 8, 2022, filed by accused Joey Kim M. Villabert, through counsel, via electronic mail on even date² and fast courier service on April 18, 2022;³
2. *Motion for Leave of Court to File Demurrer to Evidence*⁴ dated April 21, 2022, filed by accused Arleen C. Adlaon and Rosalyn P. Policarpio, through counsel, on even date;
3. *Comment/Opposition (To accused Arleen Adlaon and Rosalyn Policarpio's Motion for Leave of Court to File*



¹ Records, Vol. 10, pp.51-54.

² *Id.*, p. 55.

³ *Id.*, pp. 59-61.

⁴ *Id.*, pp. 67-69A.

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Demurrer to Evidence)⁵ dated April 21, 2022, filed by the plaintiff on April 22, 2022;

4. *Comment/Opposition (To accused Joey Kim Villabert's Motion for Leave to File Demurrer to Evidence dated April 8, 2022)*⁶ dated May 18, 2022, filed by the plaintiff on even date; and
5. *Motion for Leave of Court to File Demurrer to Evidence*⁷ dated 13 May 2022, filed by accused Nelda Cabatingan, through counsel, via registered mail⁸ on 16 May 2022, received by this Court on 25 May 2022; and
6. *Comment/Opposition (To accused Nelda Cabatingan's Motion for Leave of Court to File Demurrer to Evidence dated May 13, 2022)*⁹ dated May 24, 2022, filed by the plaintiff on even date.

Motion of Accused Joey Kim Villabert

In his *Motion*, accused Villabert requested for leave of court to file demurrer to evidence on the ground that the prosecution failed to establish his guilt beyond reasonable doubt. He manifested that he will discuss the substantive grounds in the proper pleading.

In their *Comment/Opposition*, the plaintiff expressed their objection to the motion of accused Villabert for his failure to specifically state his grounds. The plaintiff pointed out that the motion did not give any sufficient basis for the Court to determine whether there is meritorious ground for the motion or if the same was merely filed to delay the proceedings. Plaintiff averred that the prosecution presented sufficient evidence, both documentary and testimonial, to prove the elements of the crime charged and the participation of all the accused including accused Villabert.

Motion of Accused Arleen Adlaon and Rosalyn Policarpio

Accused Adlaon and Policarpio, in their *Motion*, claimed that the evidence presented by the prosecution is not sufficient to warrant a

⁵ *Id.*, pp. 71-75.

⁶ *Id.*, pp. 94-97.

⁷ *Id.*, pp. 102-105.

⁸ *Id.*, p. 106.

⁹ *Id.*, pp. 98-101.



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finding of guilt beyond reasonable doubt. They further averred the following:

- a. The prosecution failed to show that they were accountable for the funds of Oroquieta City Water District (OCWD), as shown by Prosecution Exhibit B-6-h and B-3, the testimony of prosecution witness Canedo on November 26, 2019, and Prosecution Exhibit RRRR or the Audit Report for 2010;
- b. The prosecution failed to show that the certification in the disbursement vouchers involved the very function accused Adlaon and Policarpio had to discharge as mere customer service assistants. They pointed out that the Audit Observation Memorandum (Prosecution Exhibit PPPP-5) and the Audit Report for 2010 (Prosecution Exhibit RRRR) showed that the certifications in the disbursement vouchers were done by some personnel whose authority is doubtful;
- c. The prosecution did not present evidence that accused Adlaon and Policarpio appropriated, took or misappropriated OCWD funds. Prosecution Exhibits SSSS, SSSS-1 to SSSS-11, TTTT, TTTT-1 to TTTT-12 did not show accused Adlaon and Policarpio as payee of the disapproved disbursements. Additionally, Prosecution witnesses admitted that the COA did not have findings that OCWD funds were misappropriated for private gain; and
- d. The prosecution did not present evidence that accused Adlaon and Policarpio permitted someone else to take OCWD funds.

By way of its *Comment/Opposition*, the plaintiff manifested its objection and stated that accused Adlaon and Policarpio are charged with Malversation of Public Funds under Article 217 of the Revised Penal Code through conspiracy with accused Silagon and Ravacio. The plaintiff put forth that as finance officer, accused Adlaon signed Box B of the subject disbursement vouchers and certified that "documents complete, proper and funds available." On the other hand, accused Policarpio, as Administrative Division Manager, signed Box A of the subject disbursement vouchers to certify that "expenses/advances necessary, lawful and incurred under my direct supervision;" and did the same in the respective Budget Utilization Requests, subject of the cases against her. These actions of the accused, according to the plaintiff, were done despite knowledge that the disbursement of the OCWD funds in the subject transactions are illegal because there is no particular expense involved, and there are no supporting documents



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at all. The plaintiff claimed that the acts of accused Adlaon and Policarpio necessarily gave way to the acts of other accused.

Motion of Accused Nelda Cabatingan

Accused Cabatingan, in her *Motion*, claimed that the pieces of evidence submitted by the prosecution are insufficient to prove her guilt. She alleged that the prosecution failed to prove that she allegedly conspired with the other accused in order to misappropriate the funds and that she profited or benefitted personally from the funds involved in the instant case.

Opposing to the said *Motion*, the plaintiff, through its *Comment/Opposition*, stated that the instant case is for Malversation of Public Funds under Article 217 of the Revised Penal Code; thus, it will be logical for the prosecution not to present evidence for violation of R.A. No. 3019 and R.A. No. 6713. Plaintiff also alleged that accused Cabatingan is charged with Malversation of Public Funds through conspiracy with accused Silagon, Ravacio and Policarpio. Based on the evidence presented by the prosecution, she, as a finance officer, signed Box B of the disbursement vouchers, subject of the cases against her, and certified that "documents complete, proper and funds available" despite personal knowledge that the disbursement of the OCWD funds are unlawful, because there is no particular expense involved, and there are no supporting documents at all. Plaintiff claimed that the acts of accused Cabatingan gave way to the acts of the other accused. Her active participation in the commission of the crime allowed her co-accused Silagon and Ravacio to complete the criminal intent of malversing public funds from OCWD.

THE COURT'S RULING

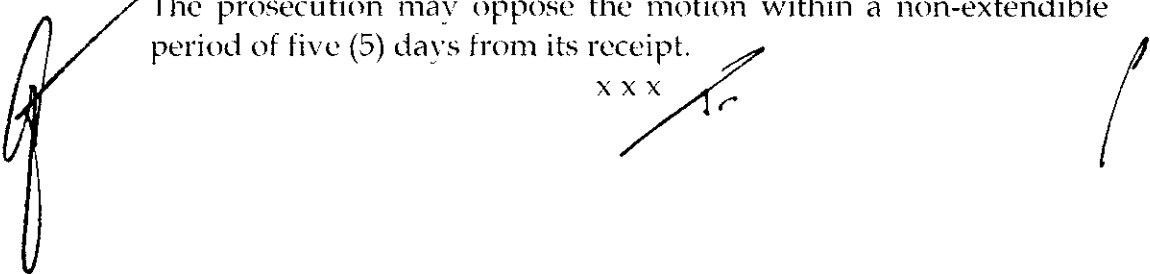
Pertinent portion of Section 23, Rule 119 of the Rules of Court, states that:

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

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In *Bernardo v. Court of Appeals, et. al.*,¹⁰ 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 *Motion* of accused Villabert, the Court finds that he merely set forth a general statement that the prosecution failed to establish his guilt beyond reasonable doubt. Accused Villabert failed to proffer any explanation as to how he arrived at his conclusion. Such general statement does not adhere to the requirement of Rule 119, Section 23 of the Rules of Court, which instructs that the motion for leave of court to file demurrer to evidence shall specifically state its grounds. In *Quinte, et. al. v. Sandiganbayan*,¹¹ the Supreme Court 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. (Underscoring supplied)

Anent the *Motion* of accused Adlaon and Policarpio, they alleged that they received a copy of the Court's *Order* dated April 1, 2022, through counsel, via registered mail on April 19, 2022. However, records show that a copy of the said *Order* was sent to accused's counsel via electronic mail (“e-mail”) on April 5, 2022. Rule V, Section 7 of the Revised Internal Rules of the Sandiganbayan states that: “without prejudice to the provisions of Rule 13 and 21 of the 1997 Rules of Civil Procedure, the subpoenas and notices shall first be electronically served through e-mail or SMS.”

Considering the valid service of the *Order* to the accused's counsel via the e-mail address she submitted to this Court, the five-day reglementary period under Rule 119, Section 23 of the Rules of Court should be reckoned from the date of service via e-mail or on April 5, 2022. Accused Adlaon and Policarpio had until April 10, 2022 within which to file their motion. Since accused Adlaon and Policarpio filed their *Motion* only on April 21, 2022, the same is considered late

¹⁰ G.R. No. 119010, September 5, 1997.

¹¹ G.R. Nos. 240021-24, 07 December 2020.

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and must be denied outright. The ruling of the Supreme Court in *BDO Unibank, Inc. v. Choa*¹² is instructive: the trial court should have denied outright the motion for leave and the demurrer to evidence since the same were filed beyond the five (5)-day period under Rule 119, Section 23 of the Rules of Court.

Lastly, as to the *Motion* of accused Cabatingan, the Court finds the same to lack merit. Records show that the pieces of evidence presented by the prosecution, both documentary and testimonial, appear to be prima facie sufficient to sustain the *Informations*, unless rebutted by defense evidence.

WHEREFORE, the *Motion for Leave to File Demurrer to Evidence* filed by accused Villabert on April 8, 2022 and the *Motion for Leave of Court to File Demurrer to Evidence* filed by accused Adlaon and Policarpio on April 21, 2022 are hereby **DENIED** for failure to comply with the requirements of Rule 119, Section 23 of the Rules of Court.


The *Motion for Leave of Court to File Demurrer to Evidence* filed by accused Cabatingan on 16 May 2022 is **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 this 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