

Republic of the Philippines
SANDIGANBAYAN
Quezon City

FOURTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

RAUL DESEMBRANA y
YAZON,
Accused.

CRIM. CASE NO.
SB-14-CRM-0427 & 0428
For: Violation of Article 210 of the
Revised Penal Code

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

Promulgated:

AUG 10 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 18 July 2022, filed via electronic mail² on even date by accused; and
2. *Comment/Opposition (on Motion for Leave to File Demurrer to Evidence dated 18 July 2022)*,³ dated 25 July 2022, filed via electronic mail⁴ on even date by the plaintiff.

In his *Motion*, the accused alleged that the prosecution's evidence is insufficient to prove his guilt beyond reasonable doubt. He points out that while the first element is admitted – that the accused is a public officer – the second, third and fourth elements of Direct Bribery under Article 210 of the Revised Penal Code were not established beyond reasonable doubt. The accused put forth the following grounds:

¹ Records, Vol. 2, pp. 567-572.

² *Id.*, p. 573.

³ *Id.*, pp. 584-589.

⁴ *Id.*, p. 590.

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- a. The testimony of Atty. Gregorio Fabros as to the "indecent proposal" of the accused had substantial inconsistencies;
- b. The testimonies of Dr. Alexis Montes and Dr. Connor Jan Montes regarding the "indecent proposal" are speculative and hearsay as the same came to them as "third-hand knowledge";
- c. The alleged phone calls to Drs. Alexis and Connor Montes are "suspect" since (1) they do not know the number of the person calling, (2) they relied on the identification of the caller, (3) they cannot verify the face of the caller, and (4) they relied on their "familiarity" of the voice of the accused;
- d. The testimony of Atty. Ephraim Cortez on the "indecent proposal" is hearsay as the information was relayed to him by Atty. Fabros;
- e. The Four Thousand Pesos (PhP4,000.00) allegedly received by the accused were not established beyond reasonable doubt since (1) the source of the money was not shown, and (2) the actual four (4) pieces of 1,000-peso bills used during the entrapment operation were not presented;
- f. The "boodle money" and the white envelope were likewise not presented;
- g. Atty. Cortez and Atty. Fabros testified that the accused did not open the white envelope, thus *ex gratia argumenti*, there was no way for the accused to know that the envelope handed to him contained money;
- h. The yellow fluorescent smudges on the hands of the accused does not convincingly show that the accused actually held the money since the NBI Forensic Chemist, Ms. Juliet Mahilum, testified that the yellow fluorescent powder she put on the marked money could have been transferred to the white envelope and could also be transferred by simple act of shaking hands;
- i. The "draft resolution" was not included in the Referral Letter of the NBI, the Supplemental Sworn Statement of Atty. Cortez and the Joint Affidavit of Arrest of the NBI. It was likewise not mentioned in the Information;
- j. The "draft resolution" has no distinguishing mark, was unsigned and undated that it could have been printed yesterday; and

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- k. Atty. Cortez testified that the "draft resolution" was never returned to him and the NBI Team Leader, Atty. Peter Chan Lugay testified that he did not see the "draft resolution" and the white envelop being handed to the accused.

The prosecution, through its *Comment/Opposition*, claimed that it has established all elements required for Direct Bribery under Article 210 of the Revised Penal Code. The prosecution's evidence shows that the accused who at the time was an Assistant City Prosecutor II of the Department of Justice, demanded the amount of Eighty Thousand Pesos (PhP 80,000.00), as standard operating procedure in consideration of the dismissal of the case assigned to him, in favor of Dr. Alexis Montes and Dr. Connor Montes. The prosecution also showed that the accused demanded the "S.O.P." money from Drs. Montes and Atty. Cortez through a series of calls and text (short message system) exchanges, which led to the lunch meeting at Serye Restaurant in Quezon City on November 14, 2014, wherein the accused was arrested by the operatives of the NBI after he pocketed the money. The prosecution enumerated the documentary and testimonial evidence it presented. The prosecution also alleged that contrary to the argument of the accused, the non-presentation of the marked money is not fatal for the cause of the prosecution. The marked money were presented solely for the purpose of establishing its existence and not its contents. The marked money can be identified through its serial numbers, which were duly records in the memorandum prepared by Atty. Chan Lugay in connection with the entrapment operation, and the same were also reflected in the request for dusting and laboratory examination before and after the conduct of the entrapment operation.

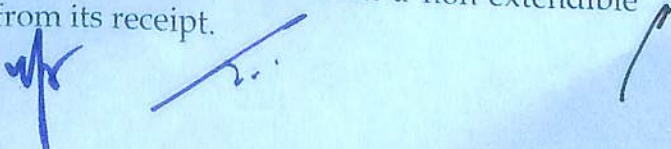
THE COURT'S RULING

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.



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If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.


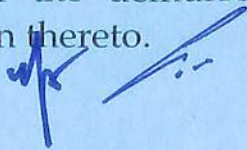
The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by certiorari before judgment.

In *Bernardo v. Court of Appeals, et. al.*,⁵ 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."

In explaining demurrer to evidence the Supreme Court, in *Singian, Jr. v. Sandiganbayan, et. al.*,⁶ stated that "a demurrer to the 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, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt."

Upon examination of the *Motion* of the accused, the Court finds the same compliant with the requirements of Rule 119, Section 23 of the Rules of Court. The Court likewise finds it reasonable, at this point in the proceedings, to grant the *Motion* and let the accused expound his allegations for full determination of the sufficiency or insufficiency of the prosecution's evidence.

WHEREFORE, the *Motion for Leave to File Demurrer to Evidence* filed by the accused is hereby **GRANTED**. The accused is hereby given ten (10) days from receipt of this *Resolution* to submit his demurrer to evidence. The prosecution is given the same period from receipt of the demurrer to evidence to submit its comment or opposition thereto.



⁵ G.R. No. 119010, 05 September 1997.

⁶ G.R. Nos. 195011-19, 30 September 2013.

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SO ORDERED.



LORIFEL LACAP PAHIMNA

Associate Justice

We concur:



MICHAEL FREDERICK L. MUSNGI

Chairperson

Associate Justice



BAYANI H. JACINTO

Associate Justice