



REPUBLIC OF THE PHILIPPINES  
**Sandiganbayan**  
Quezon City

**SECOND DIVISION**

PEOPLE OF THE PHILIPPINES,  
*Plaintiff,*

-versus-

MAXILINDO EMILIO ALAVADO  
BABALO,

*Accused.*

CRIM CASE NO. SB-20-CRM-0076  
For: Violation of Section 3(e) of  
R.A. No. 3019 Anti-Graft and  
Corrupt Practices Act, as  
amended.

**Present:**

HERRERA, JR., J., Chairperson  
CALDONA, J., Associate Justice  
MALABAGUIO, J., Associate  
Justice

September 21, 2022

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**RESOLUTION**

**MALABAGUIO, J.:**

Before the Court is a *Motion for Leave of Court to File Demurrer to Evidence*<sup>1</sup> filed by accused Babalo on 08 August 2022.

In response, the plaintiff People of the Philippines, through the Office of the Special Prosecutor (OSP), Office of the Ombudsman (Prosecution), filed a *Comment/Opposition (Re: Motion for Leave of Court to File Demurrer to Evidence dated 8 August 2022)*<sup>2</sup> dated 17 August 2022.

In his motion, accused Babalo prays for leave to file demurrer to evidence on the ground that (1) the prosecution failed to establish the requisite element that the act should be done through "manifest, partiality, evident bad faith, or gross inexcusable negligence"; and that (2) the prosecution failed to establish the requisite element that the accused and his alleged act "caused undue injury to any party, including the government, or has given any party any unwarranted benefit, advantage or preference in the discharge of his functions."

<sup>1</sup> Records, Vol. III, pp. 58-69.

<sup>2</sup> *Id.*, pp. 76-83.

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RESOLUTION

People vs. Babalo

Crim Case No. SB-20-CRM-0076

Page 2 of 5

X- - - - - X

Accused Babalo avers that there were no indicia that the alleged lease to Quirino Gabotero, Jr. (Gabotero) was "spurred by corrupt motive" so as to constitute evident bad faith; that accused "had malicious and deliberate intent to bestow unwarranted partiality to Gabotero" as to constitute manifest partiality; or that accused's act constitutes a breach of duty "that is committed flagrantly, palpably, and with willful indifference" so as to constitute gross inexcusable negligence.

Hence, accused Babalo prays that this Court grant him leave of court to file a demurrer to evidence so he may show that the evidence presented by the prosecution do not and cannot show that he is guilty beyond reasonable doubt for the offense he was charged with.

In its *Comment/Opposition*, the Prosecution counters that it was able to prove all the elements of the crime charged against accused Babalo and has established the sufficiency of the evidence to sustain the indictment and to support a guilty verdict. Particularly, the Prosecution avers that the evidence shows (1) that accused Babalo was a public officer, former Mayor of Sabtang, Batanes, discharging official and administrative functions at the time material to the case; (2) that accused acted with manifest partiality, evident bad faith and gross inexcusable negligence when he intentionally did not turnover the Backhoe and its supporting documents to the proper office or property custodian despite demands from Jesus Hino Cielo, Municipal Treasurer, instead, he rented out the Backhoe to a private individual without knowledge of and authority from the Sangguniang Bayan; (3) that the act of the accused gave private party unwarranted benefits, advantage or preference in the discharge of his functions and caused undue injury to the government when accused allowed Gabotero to use the Backhoe for his own purpose contrary to the intended use of the said Backhoe.

*The Ruling of the Court*

After careful consideration, this Court resolves to DENY the instant motion for leave to file demurrer to evidence.

At the outset, a demurrer to evidence is a motion to dismiss on the ground of insufficiency of evidence. It is a remedy available to the defendant, to the effect that the evidence produced by the plaintiff is insufficient in point of law, whether true or not, to make out a case or sustain an issue.<sup>3</sup> The party demurring challenges the sufficiency of the whole evidence to sustain a verdict.<sup>4</sup>

<sup>3</sup> Republic v. De Borja, G.R. No. 187448, January 9, 2017.

<sup>4</sup> Soriquez vs. Sandiganbayan, G.R. No. 153526, 25 October 2005.

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2 | Page



RESOLUTION

People vs. Babalo

Crim Case No. SB-20-CRM-0076

Page 3 of 5

X- ----- X

In motions asking for leave of court to file a demurrer, the Supreme Court pronounced in the case of *People of the Philippines v. Crespo*,<sup>5</sup> 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. Unless there is grave abuse thereof amounting to lack or excess of jurisdiction, the order ruling on the motion for leave of court to file demurrer to evidence may not be disturbed."

The Court's sound discretion, however, is not unlimited and is bound to the Rules of Court, particularly Section 23, Rule 119 thereof, as amended, which states thus:

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.

XXX XXX XXX

**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.

XXX XXX XXX

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. (Emphasis supplied)

In *Jalandoni v. Office of the Ombudsman*,<sup>6</sup> the Supreme Court explained the function of a demurrer to evidence, viz.:

When a demurrer to evidence is filed, the trial court ascertains whether there is competent or sufficient evidence to issue a judgment. Thus, a demurrer's resolution belongs to the court's sound discretion. In *People v. Sandiganbayan*:

<sup>5</sup> G.R. No. 180500, 11 September 2008.

<sup>6</sup> G.R. Nos. 211751, 217212-80, 244467-535 & 245546-614, May 10, 2021 (Citations Omitted).



RESOLUTION

People vs. Babalo

Crim Case No. SB-20-CRM-0076

Page 4 of 5

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Under Section 23, Rule 119 of the Revised Rules of Criminal Procedure, as amended, the trial court may dismiss the action on the ground of insufficiency of evidence upon a demurrer to evidence filed by the accused with or without leave of court. **Thus, in resolving the accused's demurrer to evidence, the court is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or support a verdict of guilt. The grant or denial of a demurrer to evidence is left to the sound discretion of the trial court, and its ruling on the matter shall not be disturbed in the absence of a grave abuse of discretion.** (*Emphasis Supplied*)

In the instant case, in order to prove the charges against the accused, the Prosecution presented testimonial evidence and submitted various documents as evidence marked as Exhibits "A" to "E", "F" to "F-5", "G" to "Y", "Y-1", "Z", and "AA" to "HH" inclusive of sub-markings.

Guided by the foregoing rule and jurisprudence, followed by a meticulous review of the records and the entirety of the evidence presented by the prosecution as against the elements of the crime charged in the *Information*, the Court finds no cogent reason to grant leave to file Demurrer to Evidence. It must be emphasized that at this point, the Court is not yet passing upon the merits of the case. The incident before Us is merely a determination of whether the evidence on record is sufficient to sustain the indictment or support a verdict of guilt and does not lead to a conclusion of the guilt or innocence of accused.

Furthermore, it is significant to note that the other grounds raised in the instant motion were mere general allegations that the prosecution's pieces of evidence are insufficient to prove beyond reasonable doubt the elements of violation of *Sec. 3(e) of RA No. 3019*. An examination of the accused's motion shows that he has not provided any reason or explanation on how he arrived at such conclusion to warrant the dismissal of the case. Instead, he repeatedly alleged that his acts were not attended by manifest partiality, evident bad faith, or gross inexcusable negligence by stating that the testimonies of the prosecution's witnesses and the pieces of evidence presented by the prosecution failed to establish the elements of the crime charged against him. Such general statements run counter to the requirements under Section 23 of Rule 119 of the Rules of Court which instructs that the motion for leave shall specifically state its ground.

Accordingly, at this point of the trial, there being sufficient evidence to sustain the indictment for the crime charged, the accused now bears the evidentiary burden to controvert the evidence of the prosecution which



RESOLUTION

People vs. Babalo

Crim Case No. SB-20-CRM-0076

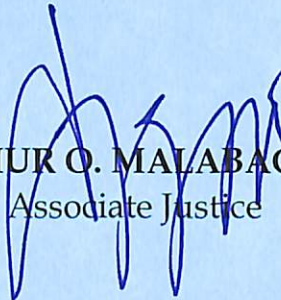
Page 5 of 5

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should properly be made during the presentation of accused's evidence in chief. Accused's assertions in his Motion for Leave of Court to File Demurrer to Evidence are matters of defense which should be ventilated during the trial on the merits of the case.

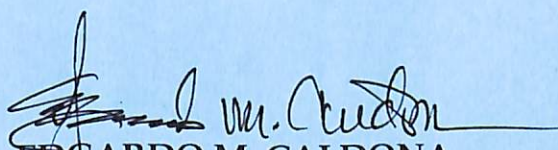
**WHEREFORE**, the premises considered, the Court hereby resolves to the deny the *Motion for Leave of Court to File Demurrer to Evidence* dated 08 August 2022 filed by accused Maxilindo Emilio Babalo.

**SO ORDERED.**

  
**ARTHUR O. MALABAGUIO**  
Associate Justice

We Concur:

  
**OSCAR C. HERRERA, JR.**  
Chairperson/ Associate Justice

  
**EDGARDO M. CALDONA**  
Associate Justice