



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-18-CRM-0166 to 0187**

Plaintiff,

For: Violation of Sec. 3(e)
of R.A. No. 3019, as amended
in relation to R.A. No. 9184

**SB-18-CRM-0188 to 0200, 0202
to 0219, and 0221 to 0227**

For: Falsification of Public Document
(Art. 171 [4] of the Revised Penal Code)

SB-18-CRM-0228

For: Malversation of Public Funds
(Art. 217 of the Revised Penal Code)

- versus -

Present

FERNANDEZ, SJ, J.,

Chairperson

MIRANDA, J. and

VIVERO, J.

**JOHN ESTELITO G. DOLLOSA,
JR., ET AL.,**

Accused.

Promulgated:

January 11, 2023

X-----X

RESOLUTION

FERNANDEZ, SJ, J.

This resolves the following:

1. *Joint Motion for Leave of Court to File Demurrer to Evidence*¹ filed by accused Samsudin U. Sema and Omar B. Camsa;

¹ Dated November 21, 2022 and filed on November 22, 2022

RESOLUTION

People vs. Dollosa, et al.

SB-18-CRM-0166 to 0200, 0202 to 0219, and 0221 to 0228

Page 2 of 10

x ----- x

2. *Motion for Leave of Court to File Demurrer to Evidence*² filed by accused Datu Andal Uy Ampatuan, Jr.;
3. The prosecution's *Comment/Opposition (Re: Joint Motion for Leave of Court to File Demurrer to Evidence filed by accused Sema and Camsa)*;³ and,
4. The prosecution's *Comment/Opposition (Re: Motion for Leave to File Demurrer to Evidence)*.⁴

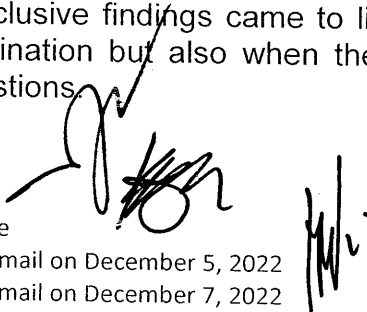
In their *Joint Motion*, accused Sema and Camsa pray that the Court grant their said *Motion for Leave of Court*, and that they be given a period of ten (10) days within which to file their *Demurrer to Evidence*. They aver:

1. The prosecution failed to prove the allegations in the various Informations for Falsification under Art. 171 (4) of the Revised Penal Code.
 - a. The projects involving the rehabilitation of the subject roads were implemented in accordance with the Program of Works. Thus, there were no untruthful statements in the Statements of Work Accomplished.
 - b. The COA Team conducted the inspection around October 2010 or almost two (2) years after the last road was finished. By then, the roads were severely damaged, if not totally destroyed.
 - c. There is a requirement for roads to be maintained every six (6) months from the time of construction, but the subject roads were never maintained.
 - d. The COA's findings and reports are inconclusive because of the lapse of a considerable length of time, and also because the COA used dubious methods such as using GPS, Maps and Google Earth, without physically measuring and inspecting the entire length of the road. Such inconclusive findings came to light not only upon cross-examination but also when the Court asked clarificatory questions.

² Dated November 24, 2022 and filed on even date

³ Dated December 2, 2022 and filed by electronic mail on December 5, 2022

⁴ Dated December 6, 2022 and filed by electronic mail on December 7, 2022



RESOLUTION

People vs. Dollosa, et al.

SB-18-CRM-0166 to 0200, 0202 to 0219, and 0221 to 0228

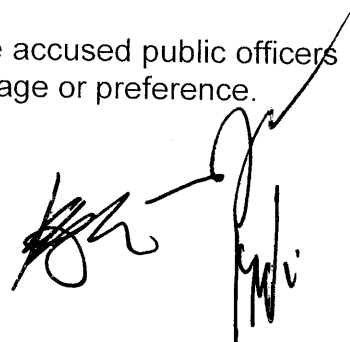
Page 3 of 10

x ----- x

2. The filing of a demurrer to evidence is warranted and deemed proper because of the insufficiency of the prosecution's evidence to convict the accused.

In his *Motion*, accused Ampatuan also prays that he be granted leave of court to file his *Demurrer to Evidence* within ten (10) days. He avers:

1. The prosecution failed to overcome the presumption of innocence in favor of the accused.
2. A private individual acting in conspiracy with public officers may be indicted and, if found guilty, held liable for the offenses under Section 3 of R.A. No. 3019. The prosecution, however, failed to prove the conspiracy beyond reasonable doubt, and thus, he cannot be held liable for Violation of Section 3(e) of R.A. No. 3019.
 - a. Conspiracy must be shown to exist by direct or circumstantial evidence as clearly and convincingly as the crime itself.
 - b. The prosecution failed to present a single piece of evidence that would directly prove that he conspired with the public officers involved in the questioned transactions. His signature does not appear in any of the prosecution's documentary exhibits.
 - c. The prosecution's reliance on circumstantial evidence to prove conspiracy must likewise fail. There is nothing on record that would sufficiently prove that he figured into the common design with the public officers to maliciously enter into a transaction which tended to cause undue injury to the government.
 - d. The existing relationship between him, Datu Sajid Ampatuan and Andal Ampatuan, Sr. is also insufficient to prove conspiracy because conspiracy transcends companionship.
 - e. The prosecution failed to establish how he benefited from the alleged transaction. The prosecution's documentary exhibits do not show any overt act on his part, manifesting any sign of guilt of the crime charged.
3. The prosecution failed to prove that the accused public officers gave him unwarranted benefits, advantage or preference.

A handwritten signature in black ink, appearing to be a stylized name, possibly 'Sajid Ampatuan', written over the bottom right portion of the text.

RESOLUTION

People vs. Dollosa, et al.

SB-18-CRM-0166 to 0200, 0202 to 0219, and 0221 to 0228

Page 4 of 10

x ----- x

- a. During the trial, it was revealed that the only gasoline station within the vicinity of Shariff Aguak was his Petron Gasoline Station.
- b. It can even be argued that securing the diesoline products from the said gasoline station was beneficial for the government, considering the logistics involved in the transportation of the supplies.

In its *Comment/Opposition* to accused Sema and Camsa's *Joint Motion*, the prosecution counters:

1. Accused Sema and Camsa's *Joint Motion* failed to comply with the Rules.
 - a. Sec. 10, Rule 15 of the *2019 Amendments to the 1997 Rules of Civil Procedure*⁵ provides:

Sec. 10. Motion for leave. – A motion for leave to file a pleading or motion shall be accompanied by the pleading or motion sought to be admitted.
 - b. The aforequoted provision effectively amended Sec. 23, Rule 119 of the *2000 Rules of Criminal Procedure*. By not complying with Sec. 10, Rule 15 of the *2019 Amendments to the 1997 Rules of Civil Procedure*, the motion may be considered as merely dilatory in character and should be dismissed outright.
2. Accused Sema and Camsa are liable for Falsification of Public Documents under Art. 171 of the Revised Penal Code.
 - a. The Statements of Work Accomplished (SWA) are public documents issued by the Provincial Government of Maguindanao attesting to the completion of the farm to market road (FMR) projects allegedly implemented by the said local government.
 - b. In the SWAs pertaining to the FMR projects, accused Sema and Camsa certified "that the amount and work accomplished stated-above are correct and all labor and materials in connection with this project were already paid, thus payment is requested."
 - c. The members of the Inspectorate Team, however, found that the projects were deficient, as they were either not implemented or the validated accomplishments were far shorter than the reported accomplishments.

⁵ A.M. No. 19-10-20-SC



RESOLUTION

People vs. Dollosa, et al.

SB-18-CRM-0166 to 0200, 0202 to 0219, and 0221 to 0228

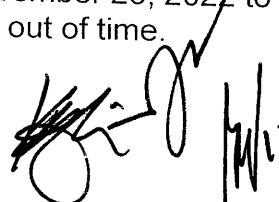
Page 5 of 10

x ----- x

- d. Accused Sema and Camsa, as project engineers, had the obligation to verify and certify to the correctness of the actual work accomplished. When they signed the SWAs, certifying the complete implementation of the various FMR projects subject of these cases, when in truth and in fact, they were not, the said accused made a mockery of their official position as well as their sworn duty.
- e. That the inspection was conducted only in 2010 is of no moment. The roads which were allegedly rehabilitated were either heavily vegetated or there were no traces that the projects were implemented.
- f. Moreover, on the average, a road surface should last around 10 to 25 years, or even more through rehabilitation and repair. Considering that the project was one of rehabilitation, it is highly unlikely that the subject roads would be severely damaged or totally destroyed in less than two (2) years due to constant exposure to the elements of nature.
- g. The absence or lack of road maintenance will not likely result in severe damage or total destruction of the existing roads in less than two (2) years.
- h. There is nothing dubious about the manner or method employed by the members of the Inspectorate Team in the inspection of the subject roads. Accused Sema and Camsa were present during the inspection. They even pinpointed the project site to the inspectorate team. The use of GPS, maps and Google Earth did not invalidate COA's findings. As testified by prosecution witnesses Engrs. Monter and Maravilla, the width of the road was measured by using a walking measuring wheel, while the length was measured by using GPS and the measurement was confirmed by using the military truck's odometer.

In its *Comment/Opposition* to accused Ampatuan's *Motion*, the prosecution counters:

1. Accused Ampatuan's *Motion* was filed only on November 24, 2022. During the hearing on November 21, 2022, his counsel confirmed the receipt of the Court's Resolution dated November 7, 2022 through electronic mail on November 18, 2022. Thus, accused Ampatuan had only until November 23, 2022 to file his *Motion*, and his said *Motion* was filed out of time.



RESOLUTION

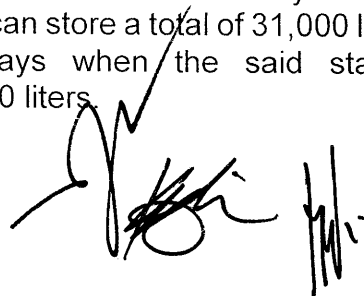
People vs. Dollosa, et al.

SB-18-CRM-0166 to 0200, 0202 to 0219, and 0221 to 0228

Page 6 of 10

X-----X

2. Furthermore, accused Ampatuan's *Motion* failed to comply with Sec. 10, Rule 15 of the *2019 Amendments to the 1997 Rules of Civil Procedure*, and hence, the same may be considered as merely dilatory in character and should be dismissed outright.
3. All the elements of Violation of Sec. 3(e) of R.A. No. 3019 are present in SB-18-CRM-0167 to 0187.
 - a. Accused Ampatuan was charged as a private individual together with the other accused public officers. His part in the conspiracy is shown by the accused public officers' purchase of fuels and lubricants without the conduct of public bidding.
 - b. Accused Ampatuan was accorded preference when the Provincial Government of Maguindanao resorted to negotiated procurement instead of public bidding in the purchase of fuel and lubricants from Petron Shariff Aguak Station.
 - c. The acts of accused public officers in connection with the signing of the documents for the expenses to be paid to accused Ampatuan, who owned Petron Shariff Aguak Station, were done in the discharge of their official functions, and were hastily done to facilitate the disbursement of public funds. Accused Ampatuan's issuance of the Charge Invoices and Official Receipts demonstrated his connivance with the accused public officers in depriving the government of its right to secure the most advantageous price.
 - d. The Purchase Requests, Purchase Orders, Disbursement Vouchers, Charge Invoices and Official Receipts would show that the Provincial Government of Maguindanao procured and paid for a total of 1,141,539 liters of diesel fuel from Shariff Aguak Petron Station. However, the *Table of Monthly Fuel Delivery made to Datu Andal Ampatuan for CY 2007, 2008 and 2009* (Exh. ZZ-2 to ZZ-2-a) issued by prosecution witness Julius Uy shows that in CY 2008, only a total of 618,000 liters of diesel fuel were delivered from January to December. Thus, there is a difference of 523,539 liters.
 - e. In his Judicial Affidavit, prosecution witness Uy declared that the Shariff Aguak Petron Station had only two (2) underground tanks which can store a total of 31,000 liters. However, there were days when the said station delivered more than 31,000 liters.



RESOLUTION

People vs. Dollosa, et al.

SB-18-CRM-0166 to 0200, 0202 to 0219, and 0221 to 0228

Page 7 of 10

x ----- x

- f. The dubious nature of the transactions is further shown by (1) the fact that at the time of the subject transactions, the volume of fuel allegedly stored at the Shariff Aguak Petron Station was beyond the capacity of its underground tanks for diesel fuel; and (2) the SAT-COA report stating that invoices were not sequentially issued, as invoices bearing higher numbers were issued ahead of those with lower numbers.
- 4. The prosecution has presented sufficient and competent evidence to sustain the Informations and to support a guilty verdict, and thus, there is no basis to grant accused Ampatuan's *Motion*.

THE COURT'S RULING

Sec. 23, Rule 119 of the Rules of Court provides:

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.

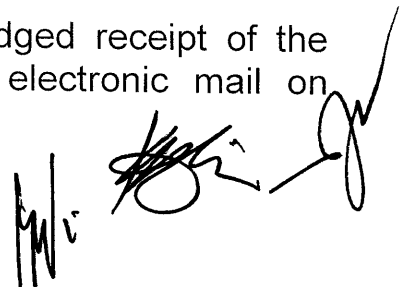
If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.

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.

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.

Counsel for accused Ampatuan acknowledged receipt of the Resolution dated November 7, 2022 through electronic mail on



RESOLUTION

People vs. Dollosa, et al.

SB-18-CRM-0166 to 0200, 0202 to 0219, and 0221 to 0228

Page 8 of 10

x ----- x

November 18, 2022.⁶ He only had until November 23, 2022 to file his *Motion*. Thus, accused Ampatuan's *Motion* must be denied for being filed beyond the reglementary period. At any rate, even on the merits, his *Motion*, as well as accused Sema and Camsa's *Joint Motion*, must be denied.

In *Bernardo v. Court of Appeals*,⁷ it was held that trial courts are given the power to grant leave to the accused to file a demurrer for the purpose of determining whether the accused, in filing a demurrer, is merely stalling the proceedings. *Viz.:*

In fine, under the new rule on demurrer to evidence the accused has the right to file a demurrer to evidence after the prosecution has rested its case. If the accused obtained prior leave of court before filing his [or her] demurrer, he [or she] can still present evidence if [the] demurrer is denied. However, if [the accused] demurs without prior leave of court, or after his [or her] motion for leave is denied, [the accused] waives his [or her] right to present evidence and submits the case for decision on the basis of the evidence for the prosecution. This 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 [a] demurrer is merely stalling the proceedings.

(underscoring supplied)

First, the Court must clarify that the demurrer to evidence is not required to be attached to the motion for leave to file the same.

Indeed, Sec. 10, Rule 15 of the *2019 Amendments to the 1997 Rules of Civil Procedure* provides that the motion sought to be admitted should already accompany the motion for leave. *Viz.:*

Sec. 10. Motion for leave. – A motion for leave to file a pleading or motion shall be accompanied by the pleading or motion sought to be admitted.

However, par. 4 of Sec. 23, Rule 119 of the Revised Rules of Criminal Procedure expressly provides for the period for filing a demurrer to evidence in case leave of court is granted. The pertinent portion of the said provision reads: “[i]f leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice.”

⁶ Order dated November 21, 2022

⁷ G.R. No. 119010, September 5, 1997

RESOLUTION

People vs. Dollosa, et al.

SB-18-CRM-0166 to 0200, 0202 to 0219, and 0221 to 0228

Page 9 of 10

x-----x

According to the prosecution, Sec. 10, Rule 15 effectively amended Sec. 23, Rule 119. The Court disagrees.

The ruling in *Vda. De Manguerra v. Risos*⁸ is instructive in determining which provision should apply. In the said case, therein petitioners insisted that Rule 23⁹ of the 1997 Rules of Civil Procedure applied to therein criminal case because the rules on civil procedure apply suppletorily to criminal cases. The Supreme Court disagreed and held that the applicable provision was Sec. 15 of Rule 119 of the Revised Rules of Criminal Procedure, which adequately and squarely covers the situation therein. *Viz.:*

Petitioners further insist that Rule 23 applies to the instant case, because the rules on civil procedure apply suppletorily to criminal cases.

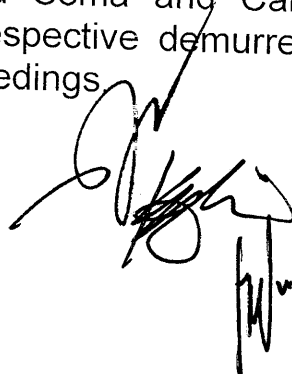
It is true that Section 3, Rule 1 of the Rules of Court provides that the rules of civil procedure apply to all actions, civil or criminal, and special proceedings. In effect, it says that the rules of civil procedure have suppletory application to criminal cases. However, it is likewise true that the criminal proceedings are primarily governed by the Revised Rules of Criminal Procedure. Considering that Rule 119 adequately and squarely covers the situation in the instant case, we find no cogent reason to apply Rule 23 suppletorily or otherwise.

Although the ruling in the aforesaid case specifically pertained to Rule 23, it still applies to the matter at hand, *i.e.* the applicability of Sec. 10, Rule 15, because the prosecution seeks to apply a provision under the *2019 Amendments to the 1997 Rules of Civil Procedure*, when there is a provision under the Revised Rules of Criminal Procedure that squarely covers the situation, *i.e.*, Sec. 23, Rule 119, on demurrer to evidence.

It is clear that Sec. 23, Rule 119 of the Revised Rules of Criminal Procedure applies. Hence, not attaching the demurrer to evidence to the motion for leave to file the same is not a sufficient basis for considering the motion for leave to be dilatory in character. The Court must nonetheless deny herein accused's respective *Motions*. After examining the prosecution's evidence and the parties' arguments, it appears that granting accused Sema and Camsa, and accused Ampatuan leave to file their respective demurrers to evidence will merely cause delay in the proceedings.

⁸ G.R. No. 152643, August 28, 2008

⁹ Depositions Pending Action



RESOLUTION

People vs. Dollosa, et al.

SB-18-CRM-0166 to 0200, 0202 to 0219, and 0221 to 0228

Page 10 of 10

X ----- X

WHEREFORE, the respective *Motions* of accused Sema and Camsa, and accused Ampatuan are hereby DENIED for lack of merit.

As provided in Sec. 23, Rule 119¹⁰ of the Rules of Court, they may adduce evidence in their defense, or in the alternative, they may file their respective demurrers to evidence without leave of court.

Accused Sema and Camsa, and accused Ampatuan are given five (5) days from receipt of this *Resolution* to file their manifestation, by personal filing or registered mail, and electronically, to inform the Court whether they are submitting their respective demurrers to evidence without leave of court. The scheduled hearings for the presentation of their respective evidence will be considered cancelled upon receipt by the Court of their manifestation that they intend to submit their respective demurrers to evidence without leave of court.

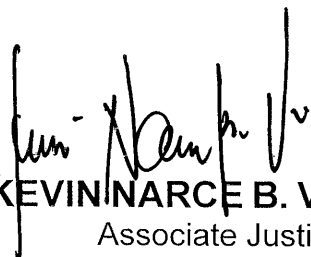
The hearing for the initial presentation of defense evidence set on January 23, 2023 is maintained.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
Associate Justice

¹⁰ 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.