



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

QUEZON CITY

SEVENTH DIVISION

MINUTES of the proceedings held on February 27, 2023.

Present:

Justice MA. THERESA DOLORES C. GOMEZ-ESTOESTA ----- Chairperson

Justice ZALDY V. TRESPESES ----- Associate Justice

Justice GEORGINA D. HIDALGO ----- Associate Justice

The following resolution was adopted:

Criminal Case No. SB-19-CRM-0153 – People of the Philippines vs. Concepcion Ong-Lim, et al.

This resolves the following:

1. Accused Dionisio Dajalos Balite's ("Balite") Motion for Reconsideration (Re: Resolution dated 27 January 2023) dated February 1, 2023; and
2. Prosecution's "Opposition (To: Motion for Reconsideration dated 01 February 2023)" dated February 13, 2023.

HIDALGO, J.

This resolves the Motion for Reconsideration¹ dated February 1, 2023 of accused Dionisio D. Balite ("Balite"), assailing this court's Resolution² dated January 27, 2023, denying his Motion to File Demurrer to Evidence³ dated January 11, 2023; and the Prosecution's Opposition⁴ dated February 13, 2023.

In his motion, accused Balite continued to deny his participation in the commission of the offense charged, claiming that it was a legal impossibility for him to commit the said crime. He insisted that he was performing a ministerial legal mandate when he acted as the Presiding Officer at the time of the passage of the *Sangguniang Panlalawigan* Resolution No. 2006-387. He explained that as the Acting Presiding Officer, he was legally disqualified from voting on the said Resolution thus, he neither approved nor voted thereon. He alleged that this has been stipulated and shown in the *Journal of the Proceedings of the Regular Session of the Sangguniang Panlalawigan of Bohol* held on July 10, 2006, and in the voting sheet attached to the same

¹ Records, Vol. 6, pp. 348-366

² Records, Vol. 6, pp. 326-331

³ Records, Vol. 6, pp. 296-304

⁴ Records, Vol. 6, pp. 396-402

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Resolution. He asserted that there was a complete absence of documentary and testimonial evidence to establish his participation. He declared that the documentary evidence of the prosecution would even confirm that he had no hand in the matters stated therein, and that none of the testimonial evidence of the prosecution established the precise degree of his participation or that he performed any other act in the passage of the aforementioned Resolution. He also added that the allegations on conspiracy was never proven by the prosecution's presented evidence. Based on this, he averred that the court erred in denying his motion for leave to file demurrer to evidence.

The prosecution opposed accused Balite's motion,⁵ stating that the said motion is prohibited under the principles laid down in Section 23, Rule 119 of the Revised Rules on Criminal Procedure. Citing pertinent rules and jurisprudence, the prosecution emphasized that the denial of a Motion for Leave to File Demurrer to Evidence, being interlocutory, cannot be appealed; neither can it be reviewed through certiorari. The prosecution also noted and discussed the doctrine of the case of *Paz v. Court of Appeals*, urging the court to likewise treat the accused's motion as a demurrer filed without leave. The prosecution said that the motion served no real purpose but to delay the accused's presentation of his evidence. The prosecution further opined that the motion did not ascribe any error or abuse of discretion on the part of the court, clarifying that the accused's repetition of his rejected arguments is not the function of a motion for reconsideration. The prosecution reiterated that there is nothing on record that proves that accused Balite had no hand in the preparation of the documents and the *Sangguniang Panlalawigan* Resolution No. 2006-387 that led to the questioned transaction/procurement. The prosecution maintained that if the accused is of the firm belief that he did not participate in the passing of *Sangguniang Panlalawigan* Resolution No. 2006-387, he should be able to establish his claim through evidence.

The motion is without merit.

The pertinent provision of Section 23, Rule 119 of the Revised Rules of Criminal Procedure states:

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.

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

⁵ Records, Vol. 6, pp. 396-402

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present evidence and submits the case for judgment on the basis of the evidence for the prosecution. (15a)

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.

A perusal of the above-quoted provision provides no option for the accused to file a Motion for Reconsideration on the denial of his Motion for Leave to File Demurrer to Evidence. Instead, the same provision implies that the next step in case the court denies an accused's Motion for Leave of Court to file Demurrer to Evidence is to proceed with the trial by presenting his/her evidence. This ruling finds support in the case of *Paz T. Bernardo vs. Court of Appeals, et al.*,⁶ whereby the Supreme Court noted that:

The implications and consequences of obtaining prior leave before the accused files a demurrer to evidence were discussed by the Committee on the Revision of the Rules as reflected in its Minutes of 18 February 1997.

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xxx

Chief Justice Andres R. Narvasa, Chairman of the Committee, suggested that

x x x there may be instances where it is very plain that the evidence is insufficient, but there are also instances where the court is in doubt x x x it is the court that will now determine whether a demurrer should be filed or not after getting the opinion of both sides x x x If the accused asks for leave of court and the court supports it, it is good; but x x x if it finds the motion dilatory, then it denies it. But x x x there should be no waiver if the demurrer is with leave of court, because there may be a situation where the court itself may want to dismiss the case x x x If leave is denied, and the accused still files the demurrer, then there is waiver. xxx

The Committee finally approved the following propositions of the Chief Justice: (a) The court on its initiative can dismiss the case after giving prior notice to the prosecution; (b) The accused can file a demurrer only if he is granted prior leave of court; (c) **If the motion for leave or the demurrer is denied, the accused can present his evidence, and there is no waiver;**

⁶ G. R. No. 119010, September 5, 1997

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and, (d) If the accused files a demurrer without leave, his right to present evidence is waived. xxx” (*Emphasis ours*)

Hence, the remedy available to the accused in case of denial of his Motion for Leave to File Demurrer to Evidence is not a Motion for Reconsideration but to proceed with the trial by submitting his evidence in court.

As for the accused’s allegation that he had no participation in the commission of the offense, the court reiterates that the fact that he allegedly did not vote on the *Sangguniang Panlalawigan* Resolution does not automatically mean that he did not perform any act to facilitate the passage thereof. As already ruled by the court, his denial of his participation in the commission of the crime is evidentiary in nature and is a matter of defense, which would be best ventilated in a full-blown trial. At least, in the presentation of his evidence, he will be given the opportunity to explain and show why he should not be held liable for the offense charged, and this can only be resolved upon presentation of proof during trial.

Based on the foregoing, the court is convinced that the said motion failed to raise any substantial issue that would warrant a reconsideration, much less a reversal, of its assailed Resolution.

WHEREFORE, premises considered, the Motion for Reconsideration dated February 1, 2023 of accused Dionisio Dajalos Balite is hereby **DENIED** for lack of merit.

Let the initial presentation of defense evidence set on **February 27, 2023, at 8:30 in the morning** proceed as scheduled.

SO ORDERED.


GEORGINA D. HIDALGO
Associate Justice



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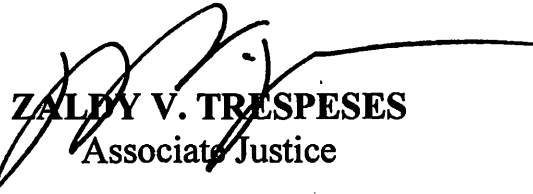
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WE CONCUR:


MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Associate Justice
Chairperson


ZALDY V. TRESPES
Associate Justice

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JUL 10 2019
CLERK OF COURT
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