



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

MARCIAL P. LICHAUCO, JR.,
Petitioner,

SB-23-SCA-0003

Present

- versus -

FERNANDEZ, SJ, J.,
Chairperson
MIRANDA, J. and
VIVERO, J.

**THE HON. MARIA THERESA
SAN JUAN-LOQUILLANO** in
her official capacity as
Presiding Judge of Branch 10
of the Regional Trial Court of
Legazpi City and **PEOPLE OF
THE PHILIPPINES,**

Promulgated:

Respondents.

October 17, 2023

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves petitioner Marcial P. Lichauco, Jr.'s *Motion for Reconsideration of the Decision Promulgated on July 21, 2023,*¹ and the *Opposition (to Motion for Reconsideration dated 07 August 2023)*² filed by respondent People of the Philippines, represented by the Office of the Ombudsman, through the Office of the Special Prosecutor (OSP).

In his *Motion for Reconsideration*, petitioner prays that the Court reconsider its Decision dated July 21, 2023,³ and render its judgment (a) reversing and setting aside the subject orders of respondent Judge, (b) granting his demurrer to evidence, and (c) dismissing the criminal case against him for lack of merit. He avers:

¹ Dated August 7, 2023; Record, pp. 316-326

² Dated October 11, 2023 and filed on October 12, 2023

³ Record, pp. 299-305

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1. Respondent Judge committed grave abuse of discretion, and not merely error in judgment, when she denied the *Motion for Leave of Court to File Demurrer to Evidence* and the *Demurrer to Evidence* itself.
2. An order denying a demurrer to evidence may be the subject of a certiorari proceeding, provided that the petitioner can show that it was issued with grave abuse of discretion; and that appeal in due course is not plain, adequate or speedy under the circumstances.⁴
3. The prosecution failed to present evidence, direct or indirect, to prove beyond reasonable doubt that he conspired with any or all of his co-accused.
 - a. Only 911 Alarm Inc. and Den Tronix participated in the subject transaction. Den Tronix's bid was considered non-responsive because its bond did not indicate the identification number of the project stated in the Bid Data Sheet. Thus, 911 Alarm Inc. was declared as the Lowest Calculated and Responsive Bidder.
 - b. When Den Tronix filed a motion for reconsideration, the only matter raised was the failure to specify the identification number. There was no mention of the issuance of Addendum No. 1 or the phrase "bidders have to maximize the quantity of item to be bid based on the approved budget of the contract in determining the lowest bid, the same shall be based on the price per unit or set."
 - c. The fact that 911 Alarm Inc. was declared as the Lowest Calculated and Responsive Bidder does not prove that he conspired with his co-accused and that he received unwarranted benefits, advantage or preference. The government received benefits or advantage because it received more hoses at a lesser price per unit.
4. In *Grageda v. Fact-Finding Investigation Bureau, Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices*,⁵ Supreme Court dismissed the administrative case against his co-accused public officers. The said administrative case stemmed from the same Affidavit-Complaint of Associate Graft Investigation Officer Gina Villamor-Humiwat of the Fact Finding Bureau, Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices.

⁴ *Choa v. Choa*, G.R. No. 143376, November 26, 2002

⁵ G.R. Nos. 244042, 244043 and 243644, March 18, 2021

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- a. The Supreme Court's Decision in the said administrative case was promulgated before he filed his *Motion for Leave of Court to File Demurrer to Evidence*. He even cited the Supreme Court's Decision in his Motion.
- b. The evidence of all parties in the administrative case and the criminal case are one and the same. Public respondent Judge should have given due course to his *Motion for Leave of Court to File Demurrer to Evidence*, as well as the *Demurrer to Evidence* itself.

In its *Opposition*, respondent People of the Philippines counters that the grounds raised by petitioner in his *Motion for Reconsideration* are a mere rehash of his arguments, which had been addressed by the Regional Trial Court (RTC) in its assailed issuances, and in this Court's assailed Decision. Moreover, petitioner's *Petition* is a mere dilatory ploy to prevent the case from being resolved in a full-blown trial.

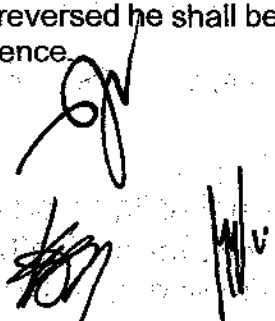
THE COURT'S RULING

The Court Resolves to deny petitioner's *Motion for Reconsideration*.

First, *Choa v. Choa*⁶ finds no application in the present case. Indeed, in the said Supreme Court's Decision, it was categorically held that an order denying a demurrer to evidence may be the subject of a certiorari proceeding, provided the other conditions are met. However, it must be noted that the demurrer to evidence being referred to in the said case is that under Sec. 1, Rule 33 of the 1997 Rules of Civil Procedure, which reads:

Sec. 1. Demurrer to evidence. — After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. If his motion is denied, he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence.

⁶ G.R. No. 143376, November 26, 2002



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Notably, the 2019 Amendments to the 1997 Rules of Civil Procedure⁷ introduced Section 2 under Rule 33. To wit:

Sec. 2. Action on demurrer to evidence. – A demurrer to evidence shall be subject to the provisions of Rule 15.

The order denying the demurrer to evidence shall not be subject of an appeal or petition for certiorari, prohibition or mandamus before judgment.

(underscoring supplied)

The said amendment, expressly providing that an order denying the demurrer to evidence shall not be subject of an appeal or petition for *certiorari*, prohibition or *mandamus* before judgment, is similar to the last paragraph of Sec. 23 of Rule 119 of the Revised Rules of Criminal Procedure, which applies to the present case.

Petitioner’s other arguments are a mere reiteration or rehash of those in his *Petition*. This Court had already considered and found the same to be without merit in the assailed Decision. It is unnecessary to discuss them anew. In *Mendoza-Ong v. Sandiganbayan*,⁸ it was held:

Concerning the first ground abovesited, the Court notes that the motion contains merely a reiteration or rehash of arguments already submitted to the Court and found to be without merit. Petitioner fails to raise any new and substantial arguments, and no cogent reason exists to warrant a reconsideration of the Court’s Resolution. It would be a useless ritual for the Court to reiterate itself.

For convenience, the pertinent portions⁹ of the assailed Decision are hereunder quoted:

Sec. 23, Rule 119 of the Rules of Court, on demurrer to evidence, expressly provides that 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. The said provision reads:

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.

⁷ A.M. No. 19-10-20-SC

⁸ G.R. Nos. 146368-69, October 18, 2004

⁹ Decision dated July 21, 2023, pp. 4-6; Record, pp. 302-304

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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.

(underscoring supplied)

In *Espinosa v. Sandiganbayan*, the Supreme Court held that the errors made by the trial court in the appreciation of the prosecution's evidence cannot be reviewed in a special civil action for *certiorari* because the merits of the case cannot be decided in advance of trial. *Viz.:*

The special civil action for *certiorari* will not operate to review the sufficiency of the prosecution's evidence. This rule is echoed in *Joseph v. Villaluz*, where this Court dismissed a petition for *certiorari* assailing the denial of the accused's demurrer to evidence:

The Court cannot decide in this special civil action whether or not the evidence adduced by the prosecution has established beyond reasonable doubt the guilt of the petitioners. It is now petitioners' duty to neutralize the evidence of the State in order to maintain the presumption of their innocence of the crime of which they are charged.

In the absence of a clear showing that the respondent Judge has committed a grave abuse of discretion or acted in excess of jurisdiction, this Court will not annul an interlocutory order denying a motion to dismiss a criminal case. Appeal is the proper remedy of the petitioners in order to have the findings of fact of the respondent judge reviewed by a superior court. (Emphasis supplied, citation omitted)

Likewise, in *Cruz v. People*, this Court dismissed the petition for *certiorari*, holding that the sufficiency of the prosecution's evidence cannot be reviewed in such a petition because the merits of the case cannot be decided in advance of trial:

Regarding the denial of the demurrer to evidence, we have likewise ruled that the question of whether the evidence presented by the prosecution is sufficient to convince the court that the defendant is guilty beyond reasonable doubt rests entirely within the sound discretion of the trial court. The error, if any, in the denial of the demurrer to evidence may be corrected only by appeal. *The appellate court will not review in such special civil action the prosecution's evidence and decide in advance that such evidence has or has not established the guilt of the accused beyond reasonable doubt. The orderly procedure prescribed by the Revised Rules of Court is for the accused to present his evidence, after*

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which the trial court, on its own assessment of the evidence submitted, will then properly render its judgment of acquittal or conviction. If judgment is rendered adversely against the accused, he may appeal the judgment and raise the same defenses and objections for review by the appellate court. (Emphasis supplied, citations omitted).

(underscoring supplied)

In any event, petitioner has not alleged, much less, shown the acts of respondent Judge constituting grave abuse of discretion. The issues raised by petitioner all pertain to the RTC's appreciation of the facts, which, at most, may be errors in judgment, and which may be corrected in an appeal, not in a special civil action for *certiorari*, which is used to correct errors in jurisdiction. At this point in the proceedings before the RTC, petitioner's remedy is to adduce evidence in his defense. If, thereafter, the trial court renders judgment adverse to him, he may then appeal such judgment and raise the same errors he raises in his instant *Petition*.

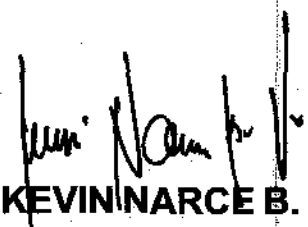
WHEREFORE, petitioner's *Motion for Reconsideration* is hereby **DENIED** for lack of merit.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
Associate Justice