



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-16-CRM-0118 to 0119,
For: Violation of Sec. 3(e) of
R.A. 3019

- versus -

AMADO T. ESPINO, JR., ET AL.,
Accused.

Present:

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

Promulgated:
JAN 28 2019 *[Signature]*

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DECISION

VIVERO, J.

For the Court's consideration are the following:

- a) *Joint Demurrer to Evidence*¹ filed by accused Cesar E. Detera, Lolita D. Bolayog, Cynthia D. Camara, Edwin T. Alcazar, Gina P. Alcazar, Ann Lyn P. Detera, Denise Ann P. Sia Kho Po and Glenn R. Subia (Detera, *et al.*) on 21 September 2018;
- b) *Comment/Opposition (to Accused Cesar Detera, Lolita Bolayog, Cynthia Camara, Edwin Alcazar, Gina Alcazar, Ann Lyn Detera, Denise Ann Sia Kho Po and Glenn Subia Joint Demurrer to Evidence)*² filed by the prosecution on 01 October 2018;

¹ Dated 17 September 2018; *Rollo*, Vol. V, pp. 476-483.

² Dated 01 October 2018; *Rollo*, Vol. V, pp. 495-503.

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- c) *Manifestation*³ filed by accused Amado Espino, Jr., Rafael Baraan, and Alvin Bigay (Espino, Jr., et al.) on 04 October 2018;
- d) *Manifestation with attached Demurrer to the Prosecution's Evidence*⁴ filed by accused Alvin L. Bigay on 13 September 2018; and
- e) *Comment/Opposition (To Accused Alvin Bigay's Demurrer to Evidence)*⁵ filed by the prosecution on 22 October 2018.

The instant cases arise from two (2) Informations (Criminal Case Nos. SB-16-CRM-0118 and SB-16-CRM-0119) charging herein accused-movants, among others, for violation of Section 3(e) of Republic Act No. 3019 (R.A. No. 3019) or the Anti-Graft and Corrupt Practices Act, as amended.⁶

In SB-16-CRM-0118, accused-movants Cesar Detera, Lolita Bolayog, Cynthia Camara, Edwin Alcazar, Ann Lyn Detera, Denise Ann Sia Kho Po, and Glenn Subia, together with their co-accused private individual Emiliano F. Buenavista,⁷ were charged with having acted in conspiracy with their co-accused public officials Amado Espino, Jr. and Rafael Baraan in violating Section 3(e) of R.A. No. 3019 by securing and/or causing the issuance of a Small Scale Mining Permit (SSMP) for Alexandra Mining and Oil Ventures Inc. (AMOVI) that allowed the latter to conduct soil remediation and/or magnetite and mineral extraction activities within Barangay Sabangan in Lingayen Gulf, Pangasinan, despite the fact that: (1) AMOVI is not duly accredited by, or registered with the Philippine Contractors Accreditation Board (PCAB); (2) there was no area clearance from the Mines and Geosciences Bureau (MGB); and (3) AMOVI lacks business permit from the Municipality of Lingayen. The material allegation in the Information filed with this Court on 14 March 2016 is herein quoted:

³ Dated 23 July 2018; *Rollo*, Vol. 7, pp. 338-345.

⁴ Dated 10 September 2018.

⁵ Dated 19 October 2018.

⁶ Section 3. *Corrupt practices of public officers.* In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

⁷ Accused-movant Gina Alcazar is not one of the accused in Criminal Case No. SB-16-CRM-0118.

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“That on or about 29 June 2011, or sometime prior or subsequent thereto, in the Municipality of Lingayen, Province of Pangasinan, Philippines, and within the jurisdiction of the Honorable Court, the above named accused AMADO T. ESPINO JR., being then the Provincial Governor, RAFAEL F. BARAAN, being then the Provincial Administrator, both high-ranking public officers, committing the crime herein charged in relation to their office and taking advantage of their official and/or administrative functions, with abuse of confidence, acting with evident bad faith, manifest partiality or gross inexcusable negligence and conspiring and confederating with each other and with CESAR E. DETERA, EDWIN T. ALCAZAR, LOLITA D. BOLAYOG, DENISE ANN P. SIA KHO PO, ANNLYN P. DETERA, CYNTHIA D. CAMARA, GLENN R. SUBIA and EMILIANO F. BUENAVISTA, being then Members of the Board of Directors of Alexandra Mining and Oil Ventures Inc., with all the accused mutually helping one another, did then and there, wilfully, unlawfully and criminally give unwarranted benefit, privilege or advantage to Alexandra Mining and Oil Ventures Inc. and cause undue injury to the government, by authorizing or allowing the said company to conduct soil remediation and/or magnetite and mineral extraction activities within Barangay Sabangan in Lingayen Gulf, Pangasinan, with accused Baraan upon authority of accused Espino issuing Small Scale Mining Permit No. 011-2011 in favor of said mining company, thereby causing or permitting the latter to conduct mining activities within said area, despite the fact that Alexandra Mining and Oil Ventures Inc. was not lawfully entitled to conduct mining activities within said protected area considering that: (1) Alexandra Mining and Oil Ventures Inc. was not duly accredited by or registered with the Philippine Contractors Accreditation Board (PCAB); (2) the mining activities lacked the requisite area clearance from the Mines and Geosciences Bureau (MGB) of the Department of Environment and Natural Resources (DENR); and (3) Alexandra Mining and Oil Ventures Inc. did not possess any business permit from the Municipality of Lingayen.

CONTRARY TO LAW.”

In SB-16-CRM-0119, accused-movants Gina Alcazar, Cynthia Camara, and Lolita Bolayog, together with their co-accused private individuals Michael Ramirez and Avery Pujol, were charged of having acted in conspiracy with accused public officials Amado Espino, Jr., Rafael Baraan, and Alvin Bigay in violating Section 3(e) of R.A. No. 3019 by securing and/or issuing Government Gratuitous Permit (GGP) No. 02-02-2011 in favor of Xypher Builders, Inc. (XBI), despite the fact that: (1) XBI is not duly accredited by or registered with PCAB; and (2) there was no area clearance from MGB, thereby allowing the latter to conduct soil re-mediation and/or magnetite and mineral extraction activities within Barangay Sabangan in Lingayen Gulf, Pangasinan and unlawfully sell to DH-Kingstone Holdings, Co. Ltd. and/or export minerals to China worth PhP10,750,000.00. The

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Information in Criminal Case No. SB-16-CRM-0119 filed with this Court on 14 March 2016 reads:

"That on or about 08 August 2011, or sometime prior or subsequent thereto, in the Municipality of Lingayen, Province of Pangasinan, Philippines, and within the jurisdiction of the Honorable Court, the above named accused AMADO T. ESPINO JR., being then the Provincial Governor, RAFAEL F. BARAAN, being then the Provincial Administrator, both high-ranking public officers, and ALVIN L. BIGAY, being then the Provincial Housing and Homesite Regulation Officer, committing the crime herein charged in relation to their office and taking advantage of their official and/or administrative functions, with abuse of confidence, acting with evident bad faith, manifest partiality or gross inexcusable negligence and conspiring and confederating with each other and with MICHAEL P. RAMIREZ, GINA P. ALCAZAR, AVERY L. PUJOL, CYNTHIA D. CAMARA and LOLITA D. BOLAYOG, being then Members of the Board of Directors of Xypher Builders, Inc., with all the accused mutually helping one another, did then and there, wilfully, unlawfully and criminally give unwarranted benefit, privilege or advantage to Xypher Builders, Inc. and cause undue injury to the government in the amount of PHP10,750,00.00, by authorizing or allowing the said company to conduct soil remediation and/or magnetite and mineral extraction activities within Barangay Sabangan in Lingayen Gulf, Pangasinan, with accused Baraan upon authority of accused Espino issuing Gratuitous Permit No. 02-02-2011 and accused Espino issuing Mineral Ore Export Permit No. 003-2011 in favor of said mining company, thereby causing or permitting the latter to conduct mining activities within said area, despite the fact that Xypher Builders, Inc. was not lawfully entitled to conduct mining activities within said area considering that: (1) Xypher Builders, Inc. was not duly accredited by, or registered with, the Philippine Contractors Accreditation Board (PCAB); and (2) the mining activities lacked the requisite area clearance from the Mines and Geosciences Bureau (MGB) of the Department of Environment and Natural Resources (DENR), thereby allowing Xypher Builders, Inc. to unlawfully sell to DH-Kingstone Holdings, Co. Ltd. and/or export minerals to China worth P10,750,000.00, which is the amount of undue injury suffered by the government.

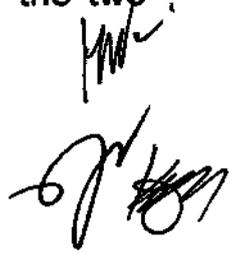
CONTRARY TO LAW."

Accused Detera, et al.'s Joint Demurrer

On the basis of the Court's Resolution dated 05 September 2018⁸ granting their *Motion for Leave to File Demurrer to Evidence* dated 23 July 2018,⁹ accused Detera, et al. filed the instant *Joint Demurrer to Evidence* seeking the point-blank dismissal of the two

⁸ Rollo, Vol. V, pp. 403-409.

⁹ Rollo, Vol. V, pp. 338-345.



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Informations for failure of the prosecution to prove beyond reasonable doubt the existence of all the acts and/or elements constituting the offense as charged.

Criminal Case No. SB-16-CRM-0118

In the first Information, accused Detera, *et al.* strongly belie the presence of conspiracy to commit the crime as charged. Accused contend that:

1. The prosecution failed to prove that they conspired with accused Espino and Baraan and/or that anyone of them (a) participated in the issuance of the SSMP, (b) accepted or received the SSMP; (c) conducted soil remediation and/or magnetite and mineral extraction activities; or (d) accepted or received unwarranted benefit, privilege or advantage, let alone caused undue injury to the government;¹⁰
2. The only evidence adduced by the prosecution to support the claim of conspiracy is the Articles of Incorporation of AMOVI indicating their membership in its Board of Directors.¹¹ This is insufficient to prove conspiracy absent any overt act in pursuance or in furtherance of the supposed conspiracy;¹²
3. Cesar Detera's presence at the site on 06 October 2011 as testified to by Engr. Ruben de Guzman Soriano of MGB, does not prove conspiracy.¹³ The Supreme Court in *Arroyo vs. People*¹⁴ ruled that mere presence at the scene of the crime does not itself amount to conspiracy;¹⁵
4. AMOVI did not conduct remediation and/or magnetite and mineral extraction activities in Barangay Sabangan in Lingayen Gulf based on the testimony of prosecution witnesses in the persons of the investigating officials of MGB who admitted in the stand that they found no mining activity whatsoever in the area when they conducted an ocular inspection;¹⁶



¹⁰ Joint Demurrer to Evidence dated 17 September 2018; *Rollo*, Vol. V, pp. 478.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ G.R. No. 220598, 19 July 2016.

¹⁵ Joint Demurrer to Evidence dated 17 September 2018; *Rollo*, Vol. V, pp. 478.

¹⁶ *Id* at p. 479.

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5. During his testimony, MGB Director Carlos Tayag (Director Tayag) stated that there was no magnetite/black sand mining;¹⁷
6. Given that AMOVI did not conduct mining activity, it follows that it is neither required to accredit or register itself with PCAB nor secure an area clearance from MGB;¹⁸ and
7. The business permit issued to AMOVI by the Quezon City Government is valid in Lingayen, Pangasinan or in any other localities in the Philippines.¹⁹

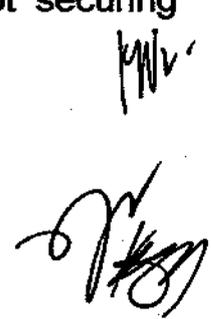
All told, accused Detera, *et al.* insist that no evidence was adduced to prove that the issuance of the SSMP gave unwarranted benefit, privilege or advantage to AMOVI.²⁰ Neither is there evidence that the government suffered injury as a result of the issuance of the SSMP nor evidence that AMOVI benefited therefrom.²¹

Criminal Case No. SB-16-CRM-0119

Accused-movants likewise call out the prosecution's failure to substantiate the allegation in the second Information.²² Accused submit that:

1. The case was filed against Alcazar, Camara and Bolayog solely on the basis of their being incorporators and/or directors of XBI, which is entirely different from Xypher Builders, the one that applied for the subject GGP;²³
2. The prosecution's theory that XBI continued the illegal extraction of magnetite sand in Barangay Sabangan, Lingayen, Pangasinan is nothing but speculation devoid of evidentiary basis;²⁴
3. No magnetite/black sand mining was conducted in the area, hence accused cannot be faulted for not securing

¹⁷ *Ibid.*
¹⁸ *Ibid.*
¹⁹ *Ibid.*
²⁰ *Ibid.*
²¹ *Ibid.*
²² *Id* at p. 480.
²³ *Ibid.*
²⁴ *Ibid.*



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accreditation or registration with PCAB and area clearance from MGB;²⁵ and

4. There is no evidence whatsoever that accused, either in their individual capacity or as officers of XBI, performed any overt act that can consider them to have continued the sand extraction.

Prosecution's Comment/Opposition

In its *Comment/Opposition* dated 01 October 2018,²⁶ the prosecution assails the foregoing arguments of the accused and counters that:

1. Sufficient evidence were adduced to prove that all the elements of violation of Section 3(e) of R.A. No. 3019 are present and that accused private individuals conspired with accused public officers in the commission of the offense charged;²⁷
2. Accused private individuals are not only incorporators but also members of the Board of Directors of AMOVI, and as such they are expected to know the transactions entered into by the said corporation;²⁸
3. In reaping the unwarranted benefits from the illegal extraction of magnetite/black sand, accused private individuals are deemed to have agreed in pursuing the common criminal design;²⁹
4. The illegality in the issuance of SSMP was supported by the 18 October 2011 Memorandum of MGB Region 1 wherein it categorically stated the violations committed by AMOVI and accused public officials in the issuance of the SSMP;³⁰
5. Accused Cesar Detera's direct participation is more apparent he being the president of AMOVI and the one in control of its day to day operation;³¹

²⁵ *Id* at p. 481.

²⁶ *Rollo*, Vol. V, pp. 495-503.

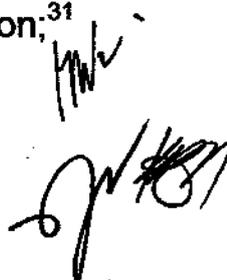
²⁷ *Id* at p. 497.

²⁸ *Ibid*.

²⁹ *Id* at p. 498

³⁰ *Ibid*.

³¹ *Ibid*.



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6. That the soil remediation activity is allegedly in preparation to the golf course to be constructed in the area is a mere convenient escape concocted by the accused to hide the true intent of AMOVI to extract black/magnetite sand through the SSMP;³²
7. The concerted effort to commit the illegal act of extracting black/magnetite sand is evident through the passive participation of accused private individuals who are incorporators of AMOVI;³³
8. Scrutiny of Xypher Builders' application documents *vis a vis* XBI's Articles of Incorporation show that the two are one and the same having the same business address and due to the fact that accused Bolayog is an incorporator and a member of the board of directors of both corporations;³⁴
9. XBI and AMOVI have interlocking interests.³⁵ Accused Edwin Alcazar, the one who applied for GGP in behalf of XBI, is listed as one of AMOVI's incorporators and also uses the same address as that of accused Gina Alcazar of AMOVI;³⁶ and
10. Apparently, after the issuance of SSMP to AMOVI was found illegal by MGB Region 1, XBI applied for the GGP as a deliberate attempt to take over from AMOVI the illegal extraction of black/magnetite sand.³⁷

Accused Bigay's Demurrer to the Prosecution's Evidence

Notwithstanding the Court's Resolution dated 05 September 2018³⁸ denying their *Motion for Leave of Court to File Demurrer to Evidence*,³⁹ accused Bigay filed the instant *Demurrer to the Prosecution's Evidence*⁴⁰ without leave of court. Accused Bigay similarly contends that the prosecution failed to adduce evidence of his guilt. He argues in this wise:

³² *Ibid.*

³³ *Id* at p. 499.

³⁴ *Id* at p. 500.

³⁵ *Ibid.*

³⁶ *Id* at pp. 500-501.

³⁷ *Id* at p. 501.

³⁸ *Rollo*, Vol. V, pp. 403-409.

³⁹ Dated 24 July 2018; *Rollo*, Vol. V, pp. 346-354.

⁴⁰ Dated 10 September 2018.



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1. The Information in SB-16-CRM-0119 failed to allege and the evidence presented was likewise futile in proving any criminal act attributable to accused Bigay;⁴¹
2. The subject area of the GGP was not classified as mineral land under the jurisdiction of MGB and no mining activities were conducted in the area, hence, an area clearance from MGB is not required;⁴²
3. AMOVI did not engage in mining, but merely performed soil remediation in a presidentially declared eco-tourism zone;⁴³
4. The testimony of Director Tayag shows that no black sand or magnetite mining took place;⁴⁴
5. What XBI only did was simple quarrying or extraction of sand and gravel, and not magnetite mining.⁴⁵ Since the activity was quarrying, what was needed was just a GGP from the provincial government;⁴⁶
6. The service rendered by AMOVI and Xypher Builders involved soil extraction and/or remediation that formed part of the ground preparation phase of the proposed golf course project, which was not yet in the construction stage, thus PCAB accreditation under R.A. No. 4566, otherwise known as the "Contractors' License Law" is not required;⁴⁷
7. The business permits issued by Quezon City Government, where AMOVI and XBI hold their principal offices, are sufficient for the two entities to operate in the Municipality of Lingayen;⁴⁸
8. The prosecution failed to prove that magnetite sand, which was the by-product of the quarrying activity, was actually exported and sold to DH Kingston Holdings Co. Ltd. and/or that minerals worth PhP10,750,00.00 were exported to China.⁴⁹ There is also no proof that public funds or

⁴¹ *Id* at p. 4.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Id* at p. 9.

⁴⁶ *Ibid.*

⁴⁷ *Id* at p. 6.

⁴⁸ *Ibid.*

⁴⁹ *Id* at p. 9.

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resources were spent for the soil extraction/remediation activities;⁵⁰

9. While the prosecution, concededly, was able to prove that separation of magnetite sand from the beach sand took place, which requires another kind of permit, the said illegal mineral processing, however, is not an issue in this case;⁵¹ and
10. The Court of Appeals' (CA) Decision dated 14 February 2017 in CA-G.R. SP No. 144333 entitled "Rafael F. Baraan, et al. vs. Vicente Oliquino, et al.," dismissing the administrative aspect of the Joint Resolution dated 08 February 2014 and the Joint Order dated 15 December 2015 rendered by the Office of the Ombudsman in the case entitled Vicente Oliquino, et al. vs. Amado Espino Jr., et al." docketed as OMB-C-C-12-0028-A, proves that he did nothing that can be characterized as illegal.⁵²

Prosecution's Comment/Opposition

In its *Comment/Opposition* dated 19 October 2018, the prosecution reiterates that the testimonial and documentary evidence presented sufficiently established all the elements of violation of Section 3(e) of R.A. No. 3019.⁵³ The prosecution adds:

1. Accused Bigay, in securing the GPP together with XBI, was a willing accomplice in the attempt to legalize the extraction of black/magnetite sand from Barangay Sabangan, after the SSMP issued to AMOVI was found illegal;⁵⁴
2. Accused Bigay cannot feign ignorance regarding AMOVI's extraction of black/magnetite sand in Barangay Sabangan considering his presence in the area during the inspection done by MGB Region 1, wherein the latter, in its findings, categorically confirmed the extraction of black/magnetite sand;⁵⁵



⁵⁰ *Ibid.*

⁵¹ *Id* at pp. 10-11.

⁵² *Id* at pp. 11-12.

⁵³ Prosecution's Comment/Opposition (To Accused Alvin Bigay's Demurrer to Evidence) dated 19 October 2018, at p. 2.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

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3. What was permitted to be extracted under the GPP was not just ordinary gravel and sand but rather the black/magnetite sand imbedded in the former. The portion in the GPP granted to XBI, which states "*An application for Government Gratuitous Permit to extract and utilize loose and unconsolidated materials and recover the associated magnetite sand situated in Barangay Sabangan, Municipality of Lingayen, Province of Pangasinan*" completely belies the claim that no mining activity was conducted;⁵⁶ and
4. There is nothing in the CA Decision dated 14 February 2017 that clears accused Bigay from any illegal act.⁵⁷ Instead, the administrative case was nullified and dismissed because of the violation of accused Bigay's right to due process when the complaint from which the administrative case arose failed to state the specific act attributed to the said accused.⁵⁸

On 25 October 2018, accused Bigay filed a Reply to the Comment/Opposition.⁵⁹ Per this Court's Agendum dated 26 October 2018, the Court did not allow the filing of Reply.

COURT'S RULING

The prosecution established a prima facie case of violation of Section 3(e) of R.A. No. 3019.

In *People vs. Go, et al.*,⁶⁰ the Supreme Court explained the nature of a demurrer to evidence, viz.:

"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

⁵⁶ *Id.* at pp. 2-3.

⁵⁷ *Id.* at p. 3.

⁵⁸ *Ibid.*

⁵⁹ Dated 25 October 2018.

⁶⁰ G.R. No. 191015, 06 August 2014.

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competent or sufficient evidence to sustain the indictment or to support a verdict of guilt.”⁶¹

As to what is considered sufficient evidence for frustrating a demurrer, the Supreme Court in *Bautista, et al. vs. Sarmiento*,⁶² declared that the prosecution needs only to establish a *prima facie* case against the accused. The Court explained what constitutes *prima facie* case, as follows:

“A *prima facie* case is that amount of evidence which would be sufficient to counter-balance the general presumption of innocence, and warrant a conviction, if not encountered and controlled by evidence tending to contradict it, and render it improbable, or to prove other facts inconsistent with it, and the establishment of a *prima facie* case does not take away the presumption of innocence which may in the opinion of the jury be such as to rebut and control it.”⁶³

An evaluation of the prosecution’s testimonial and documentary evidence in this case reveals a *prima facie* case of violation of Section 3(e) of R.A. No. 3019, warranting the accused to go forward with the defense evidence. Stated otherwise, the prosecution’s evidence is *prima facie* sufficient to prove the criminal charges, subject to the defense that may be presented in the course of a full-blown trial.

Based on the evidence so far on record, the prosecution had established the following:

1. Accused Baraan, being the Provincial Administrator of Pangasinan, upon the authority of accused Espino, being the Provincial Governor of the said province, issued SSMP to AMOVI allowing the latter to extract black/magnetite sand in Barangay Sabangan in Lingayen Gulf, Pangasinan, despite the fact that AMOVI is not duly accredited by or registered with PCAB and that it lacks some vital documents such as area clearance from MGB, Environmental Compliance Certificate (ECC), posting requirements, and LGU prior approval/endorsement;
2. Accused Espino, in behalf of the Province of Pangasinan,

⁶¹ *Ibid.*

⁶² G.R. No. L-45137, 23 September 1985.

⁶³ *Ibid.*



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and accused Bolayog, in behalf of Xypher Builders, entered into a Memorandum of Agreement allowing the latter to remove magnetite sand and other metals of the sandy soil in the coastal areas of Barangays Estanza, Sabangan, Malimpuec and Capandanan, all in Lingayen, Pangasinan;

3. Accused Bigay, being the Housing Development Officer of the Province of Pangasinan and in behalf of the Pangasinan Housing and Urban Development Coordinating Office (PHUDCO) and accused Alcazar, in behalf of Xypher Builders, applied for an Exclusive Sand and Gravel Permit/Government/Private Gratuitous Permit;
4. Accused Baraan, being the Provincial Administrator of Pangasinan, upon the authority of accused Espino, being the Provincial Governor of the said province, issued GGP No. 02-02-2011 in favor of XBI allowing the latter to extract and utilize magnetite/black sand in Barangay Sabangan, Lingayen, Pangasinan, despite the fact that XBI is: (1) not duly accredited by or registered with PCAB; and (2) lacks area clearance from MGB, thereby allowing the latter to conduct soil re-mediation and/or magnetite and mineral extraction activities within Barangay Sabangan in Lingayen Gulf, Pangasinan;
5. Accused Alcazar of XBI applied for Mineral Ore Export Permit from the Provincial Government of Pangasinan; and
6. Accused Espino, being the Provincial Governor of Pangasinan, granted the permit for XBI to export the mineral ore extracted from Barangay Sabangan, Lingayen, Pangasinan.

There appears to be prima facie showing of conspiracy with respect to accused Amado Espino, Rafael Baraan, Alvin Bigay, Cesar Detera, Lolita Bolayog, and Edwin Alcazar.

At the crux of the controversy is the alleged conspiracy between accused public officials and accused private individuals in committing the violation of Section 3(e) of R.A. No. 3019. Conspiracy is said to exist where two or more persons come to an agreement

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concerning the commission of a felony and decide to commit it.⁶⁴ Direct proof of conspiracy, however, is not imperative. The Supreme Court in *People vs. Jesalva*⁶⁵ had this to say:

“Direct proof is not essential to prove conspiracy for it may be deduced from the acts of the accused before, during and after the commission of the crime charged, from which it may be indicated that there is a common purpose to commit the crime. x x x

To be a conspirator, one need not participate in every detail of the execution; he need not even take part in every act. **Each conspirator may be assigned separate and different tasks which may appear unrelated to one another but, in fact, constitute a whole collective effort to achieve their common criminal objective.** Once conspiracy is shown, the act of one is the act of all the conspirators. The precise extent or modality of participation of each of them becomes secondary, since all the conspirators are principals.”⁶⁶
(Emphasis supplied)

In the instant case, the prosecution satisfactorily established, at least by prima facie evidence, conspiracy by and between accused public officials Amado Espino, Rafael Baraan and Alvin Bigay and accused private individuals Cesar Detera, Lolita Bolayog, and Edwin Alcazar. Conspiracy is, at the very least, inferred from the overt acts of the abovementioned accused, which tend to point to a joint purpose and design, concerted action and community of interest in conducting soil re-mediation and/or magnetite and mineral extraction activities within Barangay Sabangan in Lingayen Gulf, Pangasinan.

Firstly, Espino and Baraan, as Governor and Provincial Administrator, respectively, of the Province of Pangasinan were undeniably the ones responsible for the issuance of SSMP to AMOVI and the GGP to XBI despite the apparent lacking requirements, which paved the way for the illegal extraction of black/magnetite sand in the subject area. Were it not for the issuance of the said SSMP and GGP, there will be no illegal extraction of black/magnetite sand to speak of in the first place.

⁶⁴ Article 8 of the Revised Penal Code,

⁶⁵ G.R. No. 227306, 19 June 2017.

⁶⁶ *Ibid.*



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On the other hand, accused Cesar Detera's participation is shown in this case by the admitted fact that he is the president and the one who is in control of the day to day operation of AMOVI. This was bolstered by the testimony of Engr. Soriano of MGB confirming his presence at the site on 06 October 2011.

For her part, accused Bolayog of Xypher Builders was the one who entered into a Memorandum of Agreement with the Provincial Government of Pangasinan through accused Espino allowing Xypher Builders to remove magnetite sand and other metals of the sandy soil in the coastal areas of Barangays Estanza, Sabangan, Malimpuec and Capandanan, all in Lingayen, Pangasinan.

Lastly, accused Bigay, in behalf of PHUDCO, and accused Edwin Alcazar, in behalf of XBI, were the ones who applied for the Exclusive Sand and Gravel Permit/Government/Private Gratuitous Permit that led to illegal extraction of black/magnetite sand by XBI. We likewise find semblance of truth in the prosecution's theory that accused Bigay was a willing accomplice in the attempt to legalize the extraction of black/magnetite sand from Barangay Sabangan, after the SSMP issued to AMOVI was found illegal by MGB. The prosecution sounded persuasive when it argued that accused Bigay cannot feign ignorance of AMOVI's illegal extraction of black/magnetite since he was present during the inspection done by MGB Region 1, which confirmed the extraction of black/magnetite sand.

The contention that the Information in SB-16-CRM-0119 failed to allege any criminal act on the part of accused Bigay holds no water. When conspiracy is imputed as a mode of committing the offense, it is enough to allege the same in either of the following manner: (1) by use of the word conspire, or its derivatives or synonyms, such as confederate, connive, collude, etc.; or (2) by allegations of basic facts constituting the conspiracy in a manner that a person of common understanding would know what is intended, and with such precision as would enable the accused to competently enter a plea to a subsequent indictment based on the same facts.⁶⁷ A statement of the evidence of actual cooperation and of acts indicative of an agreement, a common purpose or design, a concerted action or concurrence of sentiments to commit the felony and actually pursue it, is not necessary in the Information.⁶⁸ In this case, the use of the words "conspiring and confederating with each other" are sufficient to allege conspiracy.

⁶⁷ Estrada vs. Sandiganbayan, G.R. No. 148965, 26 February 2002.

⁶⁸ *Ibid.*

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Accused Bigay cannot also take refuge in the CA Decision dated 14 February 2017 dismissing the administrative aspect of the Office of the Ombudsman Resolution against him. For one, the administrative case was nullified and dismissed only because the complaint from which the administrative case arise failed to state the specific acts attributed to him. Second and most importantly, it is a fundamental principle of administrative law that administrative cases are independent from criminal actions for the same act or omission.⁶⁹ Thus, an absolution from a criminal charge is not a bar to an administrative prosecution, or *vice versa*.⁷⁰

Taken together, all these acts demonstrate that accused Amado Espino, Rafael Baraan, Alvin Bigay, Cesar Detera, Lolita Bolayog, and Edwin Alcazar were animated by the same criminal purpose and indicate a concurrence of sentiments, a joint purpose and a concerted action.

Lest it be misunderstood, the Court's denial of the demurrer to evidence with respect to the abovementioned accused is not an adjudication on the merits but merely an evaluation of the sufficiency of the prosecution's evidence. The Court's finding of *prima facie* case against them only meant that the prosecution had presented sufficient evidence to sustain its proposition that accused may have committed the offense charged, and if unrebutted, such would be the conclusion.⁷¹

The effect of a denial of demurrer to evidence was amply discussed by the Supreme Court in *Bautista*,⁷² to wit:

"There is no denying that in a criminal case, unless the guilt of the accused is established by proof beyond reasonable doubt, he is entitled to an acquittal. But when the trial court denies petitioners' motion to dismiss by way of demurrer to evidence on the ground that the prosecution had established a *prima facie* case against them, they assume a definite burden. It becomes incumbent upon petitioners to adduce evidence to meet and nullify, if not overthrow, the *prima facie* case against them. This is due to the shift in the burden of evidence,

⁶⁹ Paredes vs. CA, G.R. No. 169534, 30 July 2007.

⁷⁰ *Ibid.*

⁷¹ Te v. Court of Appeals, G.R. No. 126746, 29 November 2000.

⁷² G.R. No. L-45137, 23 September 1985.

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and not of the burden of proof as petitioners would seem to believe.

When a *prima facie* case is established by the prosecution in a criminal case, as in the case at bar, the burden of proof does not shift to the defense. It remains throughout the trial with the party upon whom it is imposed — the prosecution. It is the burden of evidence which shifts from party to party depending upon the exigencies of the case in the course of the trial. This burden of going forward with the evidence is met by evidence which balances that introduced by the prosecution. Then the burden shifts back.

A *prima facie* case need not be countered by a preponderance of evidence nor by evidence of greater weight. Defendant's evidence which equalizes the weight of plaintiff's evidence or puts the case in equipoise is sufficient. As a result, plaintiff will have to go forward with the proof. Should it happen that at the trial the weight of evidence is equally balanced or at equilibrium and presumptions operate against plaintiff who has the burden of proof, he cannot prevail.⁷³

Indeed, by denying the demurrers to evidence with respect to the said accused in view of the existence of a *prima facie* case against them, this Court is not yet making a pronouncement that they are liable for the offense charged. It was because of such finding that the Court denied the demurrer, in order that accused may present countervailing evidence in their defense and allow this Court to resolve the case based on the evidence adduced by both parties.

The other matters contained in accused Detera, *et al.*'s *Joint Demurrer to Evidence* and accused Bigay's *Demurrer to the Prosecution's Evidence* are evidentiary in nature, which should be best ventilated in a full-blown trial.

Lamentably, by filing his demurrer to evidence without leave of court, accused Bigay has waived his right to adduce his evidence and submitted the case for judgment solely on the basis of the prosecution's evidence. In fine, under the rule on demurrer to evidence, if the accused demurs without prior leave of court or after his motion for leave is denied, he is deemed to have waived his right to present evidence and submits the case for decision on the basis of

⁷³ *Ibid.*

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the evidence for the prosecution.⁷⁴ The Court, however, will defer final disposition of accused Bigay's Demurrer to Evidence until after the other accused have presented their evidence. In *De Carlos vs. Court of Appeals*,⁷⁵ the Supreme Court held that there is nothing procedurally improper in deferring disposition of the demurrer to evidence until after the presentation of evidence by the other accused who did not move to dismiss the case on the ground of insufficiency of evidence.

The prosecution failed to prove conspiracy with respect to accused Cynthia Camara, Gina Alcazar, Ann Lyn Detera, Denise Ann Sia Kho Po and Glenn Subia.

Unlike their co-accused, this Court is not inclined to similarly rule on the presence of conspiracy among accused-movants Cynthia Camara, Gina Alcazar, Ann Lyn Detera, Denise Ann Sia Kho Po and Glenn Subia, who are charged solely on the basis of their being incorporators and/or members of the board of directors of either AMOVI or XBI. Settled is the rule that mere knowledge, acquiescence or agreement to cooperate is not enough to constitute one as a conspirator, absent any active participation in the commission of the crime, with a view to the furtherance of the common design and purpose.⁷⁶ In other words, to hold an accused guilty as a co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the plan to commit the felony.⁷⁷ The prosecution miserably failed in this wise.

There is no evidence on record to show that the aforementioned incorporators/members of the board of directors had any agreement or understanding with their co-accused for them to conduct illegal black/magnetite sand mining. No allegation was made, much less proof adduced, showing that they performed overt acts aimed at the same criminal design.

To our mind, the fact that they are incorporators and/or members of the board of directors of AMOVI and XBI are not sufficient to prove their participation in the illegal black/magnetite sand extraction. Mere presence of an accused in the crime scene or at the discussion of a conspiracy, even approval of it, without any active participation in the same, is not enough for purposes of

⁷⁴ Bernardo vs. Court of Appeals, G.R. No. 119010, 05 September 1997.

⁷⁵ G.R. No. 103065, 16 August 1999.

⁷⁶ Fernando vs. People, G.R. No. 229701, 29 November 2017.

⁷⁷ People vs. Dizon, G.R. No. 130742, 18 July 2000.



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conviction.⁷⁸ Here, the interest of accused incorporators in subject corporations does not render them privy to the illegal mining.

In fine, the Court concludes that the prosecution failed to adduce sufficient evidence to support a verdict of guilt against accused-movants Cynthia Camara, Gina Alcazar, Ann Lyn Detera, Denise Ann Sia Kho Po and Glenn Subia. The prosecution failed to allege and prove the precise degree of participation of the said accused in the offense charged.

WHEREFORE, in light of all the foregoing, the following judgement is hereby rendered:

1. The *Joint Demurrer to Evidence* dated 17 September 2018 is hereby partially **GRANTED** with respect to accused **CYNTHIA D. CAMARA, GINA P. ALCAZAR, ANN LYN P. DETERA, DENISE ANN P. SIA KHO PO, and GLENN R. SUBIA**. Accordingly, the criminal charges against said accused are hereby **DISMISSED** for insufficiency of evidence;

2. The *Joint Demurrer to Evidence* is hereby partially **DENIED** with respect to accused **CESAR E. DETERA, LOLITA D. BOLAYOG, and EDWIN T. ALCAZAR** for lack of merit;

3. The final disposition of the *Demurrer to the Prosecution's Evidence* dated 10 September 2018 filed by accused **ALVIN L. BIGAY** is hereby **DEFERRED** until after the other accused who did not file a demurrer have rested their case. Having filed the same without leave of court, accused Bigay is deemed to have waived his right to present his defense evidence;

4. The continuation of the presentation of defense evidence on **07 and 11 February 2019, both at 1:30 in the afternoon**, are maintained; and

5. The *Manifestation* dated 23 July 2018 filed by accused Amado Espino, Jr., Rafael Baraan, and Alvin Bigay is hereby **NOTED**.

SO ORDERED.

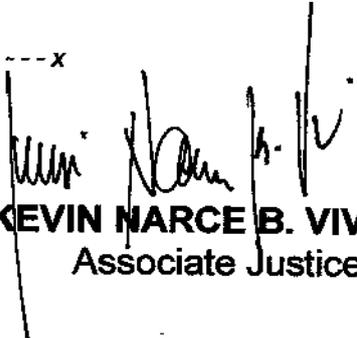
⁷⁸ Bahilidad v. People, G.R. No. 185195, 17 March 2010.

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KEVIN NARCE B. VIVERO
Associate Justice

WE CONCUR:



SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson



KARL B. MIRANDA
Associate Justice

ATTESTATION

I attest that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



SARAH JANE T. FERNANDEZ
Chairperson, 6th Division

CERTIFICATION

Pursuant to Article VIII, Section 13, of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



AMPARO M. CABOTAJE-TANG
Presiding Justice