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REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

Seventh Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Crim. Case No. **SB-15-CRM-0111**

-versus-

Present:

GODOFREDO R. SADIUA,
MARCO RICHMOND C. LEYCO,
AND ALBERTO D. ROQUE,
Accused.

Gomez-Estoesta, J., *Chairperson*
Trespeses, J. and
Jacinto, J.*

Promulgated:

October 20, 2017 *Yp*

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RESOLUTION

GOMEZ-ESTOESTA, J.:

This resolves the *Demurrer to Evidence* filed by accused Alberto D. Roque [“accused Roque”] in Crim. Case No. SB-15-CRM-0111. This is one of the seven (7) cases jointly tried before this court¹ concerning various “ghost projects” in Torrijos, Marinduque, docketed as Crim. Case Nos. SB-15-CRM-0109 to 0115. The lone *Information* against accused Roque charges him with Falsification of Public Document under Art. 171(2) of the Revised Penal Code, committed as follows:

That in March 2005, or sometime prior or subsequent thereto, in Boac, Marinduque, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, **GODOFREDO R. SADIUA**, **MARCO RICHMOND C. LEYCO**, and **ALBERTO D. ROQUE**, all public officers, being then the Provincial Engineer, Construction and Maintenance General Foreman / Project Engineer, and Disbursing Officer/Cashier II, respectively, of the Provincial Government of Marinduque, committing the offense in relation to office, taking advantage of their respective official positions, conniving, conspiring and/or confederating with one another, did then and there, willfully, unlawfully and feloniously falsify the Daily Wage Payroll for the period 16 March to 12 April 2005, concerning the Improvement of Pakaskasan Road in Barangay Pakaskasan, Torrijos, Marinduque, by making or causing to appear in the said document, that the persons whose names appear and/or

* Per A.O. No. 284-2017 dated August 18, 2017

¹ Initially raffled to the Fifth Division of this Court

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listed therein had rendered services and received wages for the time stated, when in truth and in fact said persons did not, to the damage and prejudice of the Provincial Government of Marinduque, and/or public interest.

CONTRARY TO LAW.²

Accused Roque voluntarily surrendered on May 19, 2015 and posted cash bail for his provisional liberty.³ A Hold Departure Order was issued against accused Roque and his co-accused Sadiua and Leyco on May 21, 2015.⁴

Upon being arraigned, accused Roque pleaded *not guilty* to the offense charged.⁵ During pre-trial, the parties entered into the following stipulations of facts:

1. *That all the accused are the same persons who were arraigned, and that whenever mentioned, the accused are those same persons;*
2. *That all times material and relevant to these cases: GODOFREDO R. SADIUA was the Provincial Engineer; b. MARCO RICHMOND C. LEYCO was the Construction and Maintenance General Foreman/Project Engineer of Marinduque; c. ALBERTO D. ROQUE was a Cashier II/Disbursing Officer (concerning Pakaskasan Road); d. JOEL LABAY Y FERNANDEZ was the Disbursing Officer (concerning the Payanas Road); [and] e. VERONICA MARCIANO Y DEVEZA was a Disbursing Officer/Admin Officer III (concerning Kay Duke Road).⁶ (emphasis supplied)*

For SB-15-CRM-0111, the issue was [w]hether or not accused GODOFREDO SADIUA, MARCO RICHMOND C. LEYCO and ROQUE falsified the Daily Wage Payroll for the period 16 March to 12 April 2005 for the project concerning the improvement of Pakaskasan Road.⁷ Meanwhile, the consolidated cases were raffled to this division.⁸

Trial ensued.

EVIDENCE FOR THE PROSECUTION

The prosecution presented its lone witness, **Francisco Pergis** ["Pergis"], Barangay Chairman of Pakaskasan, Torrijos, Marinduque from 2002 to 2009,⁹ who testified on his *Sinumpaang Salaysay* dated February 2, 2006,¹⁰ as follows:

² Folder attached to *Records*, Vol. 1

³ *Records*, Vol. 1, pp. 311-316

⁴ *Id.*, p. 322

⁵ *Records*, Vol. 2, pp. 47-A, 54-55,

⁶ Pre-Trial Order dated April 20, 2016, *Id.*, p. 129

⁷ *Id.*, p. 131

⁸ Per Notice of Raffle dated March 18, 2016, pursuant to R.A. 10660, *Id.*, p. 100

⁹ TSN dated March 29, 2017, p. 15

¹⁰ Exhibit "D", *Id.*, pp. 16-17

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1. *Na noong taong 2005 nagpunta sa aming barangay sa Pakaskasan si Mr. MARCO RICHMOND LEYCO, Maintenance General Foreman ng Tanggapan ng Panlalawigang Inhenyero at nakatalaga sa mga proyekto sa bayan ng Torrijos, upang alamin ang problema at kalagayan ng aming kalsada alinsunod sa atas ni Gobernador CARMENCITA O. REYES;*
2. *Na sa kanyang pagdalaw sa aming barangay ay iminungkahi niya sa akin na magsumite ako ng resolusyon ng Sangguniang Barangay na hinihiling sa Tanggapan ng Gobernador na mabigyan ng pondo para sa pagpapagawa ng Pakaskasan Lined Canal at installation ng Pipe Culvert para maiwasan ang pagkasira ng aming kalsada sa panahon ng tag-ulan;*
3. *Na sa bisa ng naturang resolusyon ay pinagtibay ni Gobernador Reyes ang aming kahilingan at nilagdaan niya ang Program of Works para sa Lined Canal na may laang gugulin na ₱95,000.00 samantalang ang installation ng pipe culvert ay binigyan naman ng ₱81,000.00;*
4. *Na sa aking kasiyahan hinggil sa pabor na ibinigay ng Gobernador ay malimit kong unghatin sa Provincial Engineering Office ang mabisang pagsasagawa ng proyekto at sa pakikipag-ugnayan ko kay Mr. Leyco ay nabatid ko na malapit n[an]g i-deliver ang mga materyales ng proyekto;*
5. *Na sa pagdalaw kong muli sa kanyang tanggapan upang unghatin ang kanyang pangako ay tiniyak niya sa akin na maisasagawa na ang proyekto at upang mapabilis ito ay pinilit niya akong lagdaan ang isang dokumento upang di-umano ay mabilis na umusad ang mga papeles at kaagad na mai-deliver ng supplier ang mga materyales na gagamitin;*
6. *Na nagulat ako sa aking natuklasan nang ako ay dumalo sa project validation na isinagawa ng Sangguniang Panlalawigan na ang proyekto sa aming barangay ay matagal n[an]g naiulat na natapos at ang perang nakalaan para dito patungkol sa sahod ng manggagawa, mga kinakailangang materyales at iba pang kaugnay na kagastusan ay naipalabas na at nabayaran na ng pamahalaang panlalawigan sa supplier na Boac Plaza Aurora samantalang ang mga manggagawa naman na pinasahod ay mga resident di-umano ng Barangay Laylay, Boac, Marinduque;*
7. *Na tuwiran kong inihahayag at pinaninindigan na pawang kasinungalingan, panlilinlang, labag sa batas at walang batayan ang ulat na isinumite ng Mr. Leyco at wala ring dahilan upang ang pamahalaan ay magbayad para sa mga materyales ng proyekto o suweldo ng manggagawa sapagkat hindi pa nasisimulan hanggang sa ngayon ang naturang proyekto na Pakaskasan Lined Canal at Installation of Pipe Culvert dahil wala pang delivery ng kahit isang piraso ng materyales na pinanalunan ng Boac Plaza Aurora General Merchandise sa bidding na isinagawa ng pamahalaang panlalawigan;*
x x x

Pergis explained that based on accused Leyco's representations, the Lupong Barangay passed a Resolution to commence the construction of the lined canal and pipe culverts in Brgy. Torrijos, and expected that funds would be released for such project in due time. However, even after repeated follow-

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ups, no money was given, no workers were seen, and no deliveries were made. It thus came as a surprise that the funds for the project have reportedly been exhausted, in part to pay the workers, when the project was never accomplished or even commenced. Pergis acknowledged having signed a Certificate of Acceptance dated April 12, 2005 stating that the articles indicated therein have been delivered, but clarified that he signed it only based on Leyco's assurance that his signature was necessary to expedite the delivery of materials.¹¹ He took accused Leyco's word for it.¹²

On cross-examination, Pergis related that the Blue Ribbon Committee of Boac asked him to execute the *Sinumpaang Salaysay*, and also supplied him some information therefor. He understood Tagalog but found it difficult to understand English.¹³ He has signed Certificates of Acceptance before, but did not understand them until now.¹⁴

Despite several opportunities given the Prosecution, no other witness came to Court.

The Prosecution then proceeded to formally offer the following evidence, which this Court ruled on, as follows:¹⁵

Exhibit	Document	Ruling
"D"	Sinumpaang Salaysay of Francisco Pergis dated February 2, 2006	Admitted
"G"	Certificate of Acceptance dated April 12, 2005 signed by Francisco Pergis	Excluded, for lack of proper authentication
"G-2"	Accomplishment Report dated April 12, 2005	Excluded, for lack of proper authentication
"F"	Daily Wage Payroll for the period March 15 to April 15, 2005	Excluded, for lack of proper authentication

On motion of accused Leyco and Roque, leave was granted to them to file their respective Demurrers to Evidence.¹⁶

ACCUSED ROQUE'S DEMURRER

In accused Roque's *Demurrer to Evidence* dated September 22, 2017,¹⁷ he underscored that the Prosecution's lone witness, Francisco Pergis, and lone documentary evidence, Pergis' *Sinumpaang Salaysay*, were insufficient to prove his identity, the commission of the offense, and whether he conspired with his co-accused.

¹¹ *Id.*, pp. 18-24

¹² TSN dated August 22, 2017, p. 15

¹³ TSN dated March 30, 2017, pp. 12-13

¹⁴ *Id.*, p. 16

¹⁵ Order dated September 14, 2017, *Records*, Vol. 2, pp. 354-356

¹⁶ *Ibid.*

¹⁷ *Id.*, pp. 370-377

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Accused Roque expounded that no evidence was presented that he was a public officer, particularly a Disbursing Officer/Cashier II of the Provincial Government of Marinduque, at the time of the alleged commission of the offense. Pergis never even mentioned his name either in his testimony or *Simumpaang Salaysay*. Likewise, no evidence was presented that he falsified the Daily Wage Payroll for the period March 16 to April 12, 2005; in fact, the Daily Wage Payroll was not even presented. Even assuming that falsification was committed by his co-accused Sadiua and Leyco, there was no evidence to prove that he conspired with them. Finally, in all the thirteen times that the consolidated cases were set for hearing, which he attended, his identity was never established by the Prosecution.

In its *Comment/Opposition*,¹⁸ the Prosecution differed, asserting that through Pergis' testimony and his *Sinumpaang Salaysay*, it was able to sufficiently prove that accused Roque should be held liable for Falsification of Public Documents under Art. 171(2) of the Revised Penal Code. Pergis' testimony established that the acts of the accused, though seemingly independent, all tended towards making it appear in the Daily Wage Payroll for March 16 to April 12, 2005 that the persons listed therein rendered services when they actually did not. Further, the Prosecution also established that the materials for the improvement of the Pakaskasan Road were delivered to the barangay, where no work was done; thus, accused Roque should not have released payment to these non-existent workers. Finally, accused's defenses are evidentiary in nature best addressed at a full-blown trial.

On the other hand, accused Leyco failed to file his Demurrer to Evidence in Crim. Cases No. SB-15-CRM-0109, SB-15-CRM-0111, and SB-15-CRM-0112 within the time allowed under the Rules.

THE COURT'S RULING

Accused Roque, Disbursing Officer/Cashier II,¹⁹ has been charged with Falsification of Public Documents penalized under Art. 171(2) of the Revised Penal Code, which provides:

Art. 171. Falsification by public officer, employee or notary or ecclesiastic minister. — The penalty of prision mayor and a fine not to exceed P5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

x x x

2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;

¹⁸ Dated September 28, 2017, *Id.*, pp. 383-389

¹⁹ Pre-Trial Order, *Records*, Vol. 2, p. 129

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The elements of the crime of falsification of public documents, as above defined and penalized, are:

1. That the offender is a public officer, employee, or notary public.
2. That he takes advantage of his official position.
3. That he falsifies a document by causing it to appear that persons have participated in any act or proceeding.
4. That such person or persons did not in fact so participate in the proceeding.²⁰

That accused Roque was a public officer holding the position of Disbursing Officer/Cashier II at the time material to this case is subject of stipulation.²¹ This Court is left to determine the existence of the three (3) other elements of the crime, which shall be discussed jointly.

The allegedly falsified document was never presented in Court.

Pivotal in this case is the **Daily Wage Payroll for the period March 16, 2005 to April 12, 2005** allegedly falsified by accused Roque and his co-accused Sadiua and Leyco. Said Daily Wage Payroll purportedly bears the names and signatures of workers who never worked for nor received wages in connection with the improvement of Pakaskasan Road, contrary to what appears in said document.

Francisco Pergis, Barangay Chairman of Pakaskasan, and the lone witness for the Prosecution, testified that no workers ever worked for the project in their barangay, since there was nothing to even work on.²² The Pakaskasan Road project was never commenced, much less accomplished. The names appearing in the Daily Wage Payroll were reportedly those of workers residing in Barangay Laylay, Boac, Marinduque, and not even from their barangay.²³

However, when the Prosecution offered the Daily Wage Payroll for the period March 15 to April 15, 2005, this Court **excluded** said document for not having been properly authenticated.²⁴ While the rule is that public documents, such as the Daily Wage Payroll, are admissible in evidence even without further proof of their **due execution and genuineness**,²⁵ the Daily Wage Payroll was offered not as an authentic but **falsified** public document.

²⁰ *Goma, et al. v. CA, et al.*, G.R. No. 168437, January 8, 2009

²¹ Pre-Trial Order, *Records*, Vol. 2, p. 129

²² TSN dated March 29, 2017, pp. 19-23

²³ Sinumpaang Salaysay dated February 2, 2006, Exhibit "D", pars. 6-7, TSN dated August 22, 2017, p. 16

²⁴ Order dated September 14, 2017, *Records*, Vol. 2, pp. 354-356

²⁵ *Salas v. Sta. Mesa Market Corp., et al.*, G.R. No. 157766, July 12, 2007

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It has been held that what is punished in falsification of public documents is principally the undermining of the public faith and the destruction of truth as solemnly proclaimed therein.²⁶ Rationally, the basis for dispensing with the authentication of public documents does not hold true for public documents assailed as falsified.

In his testimony, Pergis merely stated that nobody worked on the project in Brgy. Pakaskasan. However, he never identified the Daily Wage Payroll. During his testimony, Pergis never perused the said document to categorically declare it as the same falsified document subject of the case, or relate how it was executed, and why the entries therein were false. Moreover, the Prosecution failed to present any other witness to identify the purportedly falsified Daily Wage Payroll.

Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue.²⁷ Having failed the fundamental test of admissibility, there is no basis for this Court to even consider the Daily Wage Payroll at all, let alone ascertain if it has indeed been falsified.

The early case of *U.S. v. Gregorio*²⁸ is still apt:

In criminal proceedings for the falsification of a document, it is indispensable that the judges and courts have before them the document alleged to have been simulated, counterfeited, or falsified, in order that they may find, pursuant to the evidence produced in the cause, whether or not the crime of falsification was committed, and also, at the same time, to enable them to determine the degree of each defendant's liability in the falsification under prosecution. Through the lack of the original document containing the memorandum alleged to be false, it is improper to hold, with only a copy of the said original in view, that the crime prosecuted was committed; and although, judging from the testimony of the witnesses who were examined in the two consolidated causes, there is reason to entertain much doubt as to the defendants' innocence, yet, withal, this case does not furnish decisive and conclusive proof of their respective guilt as co-principals of the crime charged. Defendants in a criminal cause are always presumed to be innocent until their guilt be fully proven, and, in case of reasonable doubt and when their guilt is not satisfactorily shown, they are entitled to a judgment of acquittal. In view of the evidence produced in both of the aforesaid criminal causes, said causes can only be terminated by such a finding. (emphasis supplied)

Moreover, the Daily Wage Payroll is a mere **photocopy**.²⁹ Under the best evidence rule, when the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself.³⁰ The

²⁶ *Goma, et al. v. CA, et al.*, G.R. No. 168437, January 8, 2009

²⁷ *Lepanto Consolidated Mining Co. v. Dumapis, et al.*, G.R. No. 163210, August 13, 2008

²⁸ G.R. No. L-5791, December 17, 1910

²⁹ Order dated September 14, 2017, *Records*, Vol. 2, pp. 354-356

³⁰ Section 3, Rule 130, Rules of Evidence

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original falsified document is the best evidence of its contents.³¹ Since the contents of the Daily Wage Payroll are determinative of accused Roque's criminal liability, this case clearly fails without the original of the Daily Wage Payroll, or a properly introduced secondary evidence, having been presented to this Court.

The Prosecution's evidence is insufficient to establish accused Roque's liability for Falsification of Public Document under Art. 171(2) of the Revised Penal Code.

Even assuming that the purportedly falsified document were not indispensable in resolving this case, this Court finds the Prosecution's paltry evidence patently insufficient to establish accused Roque's liability for falsification of public documents under Art. 171(2) of the Revised Penal Code.

With only Francisco Pergis' *Sinumpaang Salaysay* and testimony to consider, both of which hardly touched upon the purportedly falsified Daily Wage Payroll, let alone accused Roque's participation therein, this Court finds accused Roque's *Demurrer to Evidence* well-taken.

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 competent or sufficient evidence to sustain the indictment or to support a verdict of guilt. x x x Sufficient evidence for purposes of frustrating a demurrer thereto is such evidence in character, weight or amount as will legally justify the judicial or official action demanded according to the circumstances. To be considered sufficient therefore, the evidence must prove: (a) the commission of the crime, and (b) the precise degree of participation therein by the accused." Thus, when the accused files a demurrer, the court must evaluate whether the prosecution evidence is sufficient enough to warrant the conviction of the accused beyond reasonable doubt.³²

This Court has nothing but Pergis' bare allegation that the Pakaskasan project was never commenced nor accomplished. Allegations, without proof, deserve scant consideration.³³

The Prosecution dismally failed to discharge the burden of proving that the Daily Wage Payroll was falsified. No proof was presented that the accused caused it to appear that the workers listed in the Daily Wage Payroll never rendered services nor received wages. Pergis' bare allegation that the project

³¹ *Fullero v. People*, G.R. No. 170583, September 12, 2007

³² *People v. Go, et al.*, G.R. No. 191015, August 6, 2014

³³ *Republic v. Marcos, et al.*, G.R. Nos. 130371 & 130855, August 4, 2009

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never materialized is not proof that no work was rendered on said project from March 16 to April 12, 2005 by the persons listed in the Daily Work Payroll. There are no photographs, certifications, or inspection reports to fortify Pergis' claim. Further, not one of the persons listed in the Daily Wage Payroll testified for the Prosecution to belie it. Clearly, the third and fourth elements of the crime have not been established.

Accused Roque's precise degree of participation was likewise not established. To be held liable for falsification under Art. 171(2) of the Revised Penal Code, accused Roque should be proven to have taken advantage of his official position in falsifying the Daily Wage Payroll.

In falsification of public document, the offender is considered to have taken advantage of his official position when (1) he/she had the duty to make or prepare or otherwise intervene in the preparation of the document; or (2) he/she had official custody of the document which he falsified.³⁴ In this case, aside from the stipulation that accused Roque held the position Cashier II/Disbursing Officer at the material time, no evidence was presented as to his functions as such in order to give rise to the conclusion that he either prepared the Daily Wage Payroll or intervened in its preparation, or that he had official custody of the same. Thus, the Prosecution likewise failed in establishing the second element of the crime.

The prosecution has the burden of proving beyond reasonable doubt each element of the crime as its case will rise or fall on the strength of its own evidence, never on the weakness or even absence of that of the defense.³⁵ Unless it discharges that burden, the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal.³⁶

WHEREFORE, accused Alberto D. Roque's Demurrer to Evidence is hereby GRANTED. Accordingly, he is ACQUITTED in Crim. Case No. SB-15-CRM-0111.

The cash bond posted by accused Roque is ordered released subject to the usual accounting procedures. The Hold Departure Order issued by this Court against accused Roque on May 21, 2015 is set aside and the Order issued by the Bureau of Immigration incorporating accused Roque's name in the Hold Departure List is ordered recalled and cancelled.

Meantime, for failure of accused Marco Richmond C. Leyco to file his Demurrer to Evidence in Crim. Cases No. SB-15-CRM-0109, SB-15-CRM-0111, and SB-15-CRM-0112, he is deemed to have waived the filing of the same. He is thus directed to present his evidence for these cases on November 29, 2017 at 8:30 a.m..

SO ORDERED.

³⁴ *Pacasum v. People*, G.R. No. 180314, April 16, 2009

³⁵ *Alferez v. People, et al.*, G.R. No. 182301, January 31, 2011

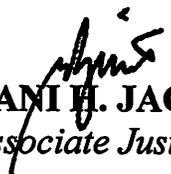
³⁶ *Macayan v. People*, G.R. No. 175842, March 18, 2015

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

WE CONCUR:


ZALDY V. TRESPESES
Associate Justice


BAYANI H. JACINTO
Associate Justice

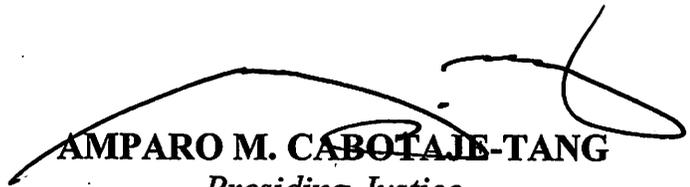
ATTESTATION

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.


MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Chairperson, Seventh Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman'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