



REPUBLIC OF THE PHILIPPINES  
**SANDIGANBAYAN**

Quezon City

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**Seventh Division**

**PEOPLE OF THE PHILIPPINES,**  
Plaintiff,

Criminal Case No. 24337

-versus -

Present:

CLARA M. AMBRAY,  
LEONARDO S. CALO,  
ANECITO P. AMBRAY,  
LEYMINDA R. VIOLAN, and  
HIGINO C. LLAGUNO,  
Accused.

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

Promulgated:

November 8, 2017 *ij*

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**RESOLUTION**

**GOMEZ-ESTOESTA, J.:**

Accused **Leyminda R. Violan** has long been considered *at large* from the inception of the charge until promulgation of judgment was made for her co-accused on October 23, 2014, with its salient dispositive portion, as follows:

WHEREFORE, premises considered, the Court holds that:

In Criminal Case No. 24337 for violation of Section 3 (e) of R.A. 3019, accused CLARA M. AMBRAY, ANECITO P. AMBRAY, LEONARDO S. CALO and HIGINO C.LLAGUNO, are **ACQUITTED** for failure of the prosecution to prove their guilt beyond reasonable doubt. x x x.

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Insofar as LEYMINDA R. VIOLAN is concerned, since she is still at large up to the present, let the case be **ARCHIVED** and let an alias warrant of arrest issue against her.

It was accused Violan's voluntary surrender on April 20, 2015 before the Office of the Executive Judge of the Regional Trial Court of Davao City<sup>1</sup> which set in motion her trial for the present charges.

Two *Informations* were filed against accused Violan, which alleged:

Criminal Case No. 24337

That on or about February 22, 1994, and for sometime prior or subsequent thereto, in Tandag, Surigao del Sur, Philippines, and within the jurisdiction of this Honorable Court, pursuant to R.A. 7975, the above-named accused Leonardo S. Calo, Anecito P. Ambray, Clara M. Ambray, and Higino C. Llagono, all low ranking public officers then Executive Assistant III, Provincial General Services Officer, Provincial Administrator and Executive Assistant IV, and Leyminda R. Violan, a high ranking public officer being then the Provincial Treasurer, respectively, all of the Provincial Government of Surigao del Sur, while in the performance of their official functions, thus committing an offense in relation to office, with evident bad faith and manifest partiality, conspiring and confederating together, did then and there willfully, unlawfully and feloniously cause undue injury to Adelina Center and the Provincial Government of Surigao del Sur as well as give unwarranted benefits to new Datche Philippines Traders Corporation, at 269 Plaridel Extension, Cebu City, by awarding the contract for the procurement of ten (10) units Olympia typewriters to the latter through negotiated contract even if the public bidding was already conducted and Adelina Center was the lowest bidder, accused Leyminda R. Violan and Higino C. Llagono issuing Check No. ON49473296 dated 25 February 1994 in the amount of ₱199,409.00 to new Datche Traders Corporation in payment of ten (10) typewriters which accused Clara M. Ambray handcarried to New Datche Philippines in Cebu City, despite the fact that the items were not yet delivered to the damage and prejudice of said Adelina Center and the Province of Surigao del Sur.

CONTRARY TO LAW.

Criminal Case No. 24338

That on or about February 22, 1994, in Tandag, Surigao del Sur, Philippines, and within the jurisdiction of this Honorable Court, pursuant to R.A. 7975, the above-named accused Leyminda R. Violan, a high ranking public officer, being then the Provincial Treasurer, Leonardo S. Calo, Anecito P. Ambray, Ma. Naomi L. Herrera and Marlene B. Quiñones, all low ranking public officers being then the Executive Assistant III, General Services Officer, Management and Audit Analyst IV and Budget Officer IV, respectively, all of the Provincial Government of Surigao del Sur, Tandag, Surigao del Sur, while in the performance of their official functions, thus committing the offense in relation to their offices, with evident bad faith and

\* Per Administrative Order No. 284-2017 dated August 18, 2017

<sup>1</sup> Vide: Minute Resolution dated June 3, 2015 noting the Trasmittal made of her Cash Bond from the Office of the Clerk of Court of the Regional Trial Court of Davao City; Records, Volume 6, pp. 5-20

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manifest partiality, taking advantage of the [sic] position as members of the Committee on Awards, did then and there willfully, unlawfully and feloniously falsify Resolution No. 007 dated 22 February 1994 of the Committee on Awards of the Provincial Government of Surigao del Sur on the purchase of Olympia typewriters, by making it appear therein that new Datche Philippines Traders Corporation of Cebu City and Olympia Business Machines Co. (Phils.), Inc. of Manila were among the bidders when, in truth and in fact, as the accused very well knew that only Family Part Center, Sunlight Marketing and Adelina Center participated during the bidding at 10:00 o'clock in the morning on 31 January 1994 for seven (7) Olympia typewriters.

CONTRARY TO LAW.

### ANTECEDENTS

By this time, accused Violan is 84 years old and suffering from "*loss of vision, syncopal attacks, and knee pain.*"<sup>2</sup> After having failed to appear twice<sup>3</sup> for arraignment, she later asked, through counsel, that she be arraigned in Davao City due to her feeble health. The same was initially denied by the Fifth Division since no out of town hearing was to be scheduled within a 3-month period.<sup>4</sup>

The charges were eventually unloaded from the Fifth Division to the Seventh Division pursuant to Republic Act No. 10660.<sup>5</sup> Per Minute Resolution dated June 28, 2016, accused Violan's request to hold her arraignment in Davao City was granted, to be set before the Fourth Division's hearing in Davao City on August 2, 2016.<sup>6</sup>

Upon arraignment, accused Violan entered a plea of *not guilty* to both charges.<sup>7</sup> Pre-trial was terminated on February 27, 2017, with the following facts stipulated:<sup>8</sup>

1. The identity of accused Leyminda R. Violan;
2. That at the time material to this case, accused Leyminda R. Violan was the Provincial Treasurer of the Province of Tandag, Surigao del Sur;
3. That on January 31, 1994, a competitive bidding was conducted for the procurement of goods subject matter of the information; and

<sup>2</sup> Vide: *Notice of Appearance with Urgent Motion for Reconsideration and for the Arraignment of the Accused in Davao City*; Records, Volume 5, pp. 137-143

<sup>3</sup> Vide: Order dated October 5, 2015 which resulted in the issuance of a bench warrant against the accused and Order dated January 25, 2016; Records, Volume 6, pp. 57, 110-111

<sup>4</sup> Order dated January 25, 2016 and Order dated March 8, 2016, Records, Volume 6, pp. 110-111, 149

<sup>5</sup> Records, Volume 6, pp. 168-172

<sup>6</sup> *Ibid.*, p. 180

<sup>7</sup> *Ibid.*, pp. 193-194; Order dated August 2, 2016,

<sup>8</sup> Vide: Pre-Trial Order dated February 28, 2017

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4. That Adelina Center was a participant of the said bidding.

During the presentation of prosecution evidence on April 3 to 7, 2017 in Davao City, the respective testimonies of the following witnesses were the subject of stipulation:

1. **Jaime B. Roxas**, State Auditor III, whose testimony was dispensed with in view of the following stipulation:<sup>9</sup>

(i) That Jaime B. Roxas is a State Auditor III of the Commission on Audit presently assigned as Audit Team Leader of PAGCOR COA Region IV-A from December 2006 up to the present;

(ii) That sometime in 1994, as State Auditor of COA, the witness was assigned as member of the Special Audit Team that conducted an audit of the Province of Surigao Del Sur covering the transaction for the Calendar Year 1992, 1993, and the first half of 1994;

(iii) That the Special Audit was pursuant to an Assignment Order No. 94-112 dated August 12, 1994 which was previously marked as Exhibit "R" with counter stipulation that the Special Audit is a certified copy on file of the Commission on Audit;

(iv) That after the audit, an audit report was submitted by his team which is the COA SAO Report No. 94-51 regarding the report on the audit of the Provincial Government of Surigao del Sur which was previously marked as Exhibit "P" by the prosecution; and

(v) That Mr. Jaime B. Roxas will be able to identify the report as well as his signature in the report which was previously marked as Exhibit "P" and the signature to be marked Exhibit "P-1."

2. **Pedrito M. Serra**, Provincial General Services Officer of Tandag, Surigao Del Sur, who intended testimony was likewise stipulated, viz:<sup>10</sup>

(i) That he is presently the Provincial General Services Officer of Tandag, Surigao Del Sur;

(ii) That he received a Subpoena dated March 1, 2017 directing him to submit the original copies of the Invitation to Bid addressed to Adelina Center already marked as Exhibit "A" for the prosecution and Invitation to Bid addressed to Sunlight Marketing already marked as Exhibit "A-1" to A-1-m" with the exception that Exhibit "A-h" and Exhibit "A-h-1" were not stipulated on by the defense;

(iii) That upon verification with his office, said documents are not available and that he, thereafter, issued a Certification stating that such were submitted to the Provincial Accountant of Surigao Del Sur in 1994 and said Certification was thereafter marked as Exhibit "U" and "U-1" and adopted by the defense as Exhibit "13."

<sup>9</sup> Vide: Order dated April 3, 2017; TSN dated April 3, 2017, pp. 7-9

<sup>10</sup> Vide: Order dated April 4, 2017; TSN dated April 4, 2017, pp. 5-7

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3. **Charles Tunera**, Provincial Accountant of Surigao Del Sur, whose intended testimony was likewise stipulated, viz:<sup>11</sup>

(i) That he is presently the Provincial Accountant of Surigao Del Sur;

(ii) That he received the subpoena directing him to submit Disbursement Voucher No. 10194043009 in the amount of Php215,250.00 marked as Exhibit "H" and Check No. 9473296 dated February 28, 1994 marked as Exhibit "I;"

(iii) That upon verification of said documents from his office, said documents are not available and, therefore, he issued a Certification stating that said documents have been forwarded to the Provincial Accountant and submitted to COA as a matter of procedure and said Certification was thereafter marked as Exhibit "V" also adopted as Exhibit "14" for the defense.

4. **Crispas Geli**, Provincial Treasurer of Surigao Del Sur, whose intended testimony was stipulated to be in the same tenor as that of the Provincial Accountant except for the Certification she issued which was marked as Exhibit "W" and adopted by the defense as Exhibit "15."<sup>12</sup>

5. **Marlon Monteclaro**, State Auditor IV, who testimony was likewise subjected to the following stipulation:<sup>13</sup>

(i) That he is presently the Audit Team Leader of the Provincial Auditor's Office of the Province of Tandag;

(ii) That among his duties and functions as Provincial Auditor are to conduct audit of the accounts of the province; keep records and documents submitted by the agency and perform other functions as ordered by the Regional Office;

(iii) That he received a subpoena dated March 17, 2017 from the Office of the Special Prosecutor directing him to produce and present before the Court the original copy of the Notice of Disallowance dated March 4, 1996 in connection with the Special Audit in the Provincial Government of Surigao Del Sur which was previously marked as Exhibit "Q;"

(iv) That upon verification in the records of his office, the said document is available;

(v) That in connection with these cases, he received a request from the Provincial Accounting Office of the Province of Tandag for him to locate the original copy of Disbursement Voucher No. 101-940-430098 in the amount of P215,250.00 which was marked as Exhibit "H;"

<sup>11</sup> Ibid.; *ibid.*, pp. 9-12

<sup>12</sup> Ibid., pp. 13-14

<sup>13</sup> Vide: Order dated April 4, 2017; TSN dated April 4, 2017, pp. 4-7

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(vi) That upon verification in the records of his office, he was able to locate the following documents:

- a. Purchase Order dated February 24, 1994
- b. Resolution No. 007 dated February 22, 1994
- c. Original copy of Disbursement Voucher No. 101-94043009 as well as the duplicate copy
- d. Carbon copy of Check No. 9473296 dated February 28, 1994 in the amount of ₱199,409.09;
- e. Original copy of the Official Receipt of New Datche Philippines Traders Corporation No. 4998;
- f. Inspection Report dated March 9, 1994;
- g. Inspection Report dated April 27, 1994;
- h. Original copy of Invoice issued by New Datche Philippines Traders Corp. dated April 25, 1994

Intended witness Arturo F. Garcia was never presented due to his failing health.<sup>14</sup> By Order dated August 22, 2017, the prosecution asked for a period of ten (10) days to file its formal offer of evidence.

### **THE MOTION TO WITHDRAW INFORMATION**

In the interim, the prosecution filed a *Manifestation and Motion* on August 24, 2017 in reference to accused Violan's request for the prosecution to withdraw the charge under Criminal Case No. 24337 and for her to plead guilty to a lesser offense (Simple Falsification) under Criminal Case No. 24338. The request was alleged to have met the approval of the Ombudsman. The death of private complainant, Jose Robertina E. Gelvosa, was likewise manifested by attaching a PSA copy of his Certificate of Death.<sup>15</sup>

In the Minute Resolution dated September 5, 2017 issued by this Court, the prosecution was required to provide the legal ground why the dismissal of Criminal Case No. 24337 should be made, and to submit the written approval of Ombudsman Conchita Carpio Morales on the withdrawal of the same charge, and the official approval on accused Violan's offer to plead guilty to the lesser offense of Simple Falsification or Use of Falsified Documents under Criminal Case No. 24338. Pending the same incidents, the resolution of Prosecution's *Motion for Time* to file its formal offer of evidence was deferred.

On September 26, 2017, the Prosecution filed a *Motion to Withdraw Information* in Criminal Case No. 24337. It alleged that since it was adopting the same documentary evidence already produced during the trial of the other accused, and has no additional evidence to present, it is anticipating the same verdict of acquittal from the Court for which reason it will no longer pursue the prosecution of the charge.

<sup>14</sup> Vide: Orders dated June 13, 2017 and August 22, 2017; Records, Volume 7, pp. 25, 34

<sup>15</sup> Records, Volume 7, pp. 36-42

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Whether the *Information* in Criminal Case No. 24337 can be withdrawn, however, should be based on a complete and independent assessment to be made by this Court. As held in *Yambot v. Armovit*:<sup>16</sup>

*Crespo v. Mogul* instructs in a very clear manner that once a complaint or information is filed in court, any disposition of the case as to its dismissal, or the conviction or acquittal of the accused, rests on the sound discretion of the said court, as it is the best and sole judge of what to do with the case before it. While the resolution of the prosecutorial arm is persuasive, it is not binding on the court. **It may therefore grant or deny at its option a motion to dismiss or to withdraw the information based on its own assessment of the records of the preliminary investigation submitted to it, in the faithful exercise of judicial discretion and prerogative, and not out of subservience to the prosecutor.** While it is imperative on the part of a trial judge to state his/her assessment and reasons in resolving the motion before him/her, he/she need not state with specificity or make a lengthy exposition of the factual and legal foundation relied upon to arrive at the decision. [Emphasis supplied]

### THE COURT'S RULING

We resolve to grant the withdrawal of the *Information* under Criminal Case No. 24337.

The essential elements<sup>17</sup> for the commission of graft and corrupt practices under Section 3 (e) of RA 3019, are:

- (1) The accused must be a public officer discharging administrative, judicial or official functions;
- (2) He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and
- (3) That his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.

The probative worth that may be given to Purchase Order No. 129 dated February 24, 1994 (Exhibit "D"), Resolution No. 007 dated February 22, 1994 (Exhibit "F"), original copy of Disbursement Voucher No. 101-94043009 (Exhibit "H"), carbon copy of Check No. 9473296 dated February 28, 1994 in the amount of ₱199,409.09 (Exhibit "I"), original copy of the Official Receipt No. 4998 of New Datche Philippines Traders Corporation (Exhibit "I-1"), Inspection Report dated March 9, 1994 (Exhibit "L"), Inspection Report dated April 27, 1994 (Exhibit "M"), and the original copy of Invoice No. 5135 dated April 25, 1994 issued by New Datche Philippines Traders Corp. (Exhibit "N") may be material in assessing the existence of the

<sup>16</sup> G.R. No. 172677, September 12, 2008

<sup>17</sup> *Enrile v. People*, G.R. No. 213455, August 11, 2015

second element, as afore-quoted, but may fail to adduce proof on the existence of the third element, as already elucidated in the Decision dated October 23, 2014 of this Court. If it is the same documentary evidence which will be considered in ultimately determining the liability of accused Violan, the evaluation made by this Court in its Decision promulgated on October 23, 2014 cannot be far from being similarly adopted.

On the other hand, the testimonial evidence offered by the prosecution, most of which were stipulated by the defense, would only show that prosecution witnesses Jaime B. Roxas, Pedrito M. Serra, Charles Tunera, Crispa Geli, and Marlon Monteclaro testified in their capacity as public officials who could identify the existence, or non-existence, of the afore-mentioned documentary exhibits. Their intended testimonies did not disclose or uncover any material fact or personal knowledge to supply the dearth in proving the third element.

At this stage, therefore, a withdrawal of the *Information* would not harm public interest considering the seeming paucity in the prosecution's evidence.

On the other hand, in proving the elements<sup>18</sup> of Section 3 (g) which are: 1) the accused is a public officer; 2) the public officer entered into a contract or transaction on behalf of the government; and 3) the contract or transaction was grossly and manifestly disadvantageous to the government," the Prosecution itself is candid to admit that no conviction can prosper in this regard due to the defective nature of the *Information* which failed to allege the second and third elements.

Since the *Information* has never been amended to cure such defect after all this time, its withdrawal may as well be granted.

Clearly, this Court cannot compel the Prosecution to continue prosecuting the case in face of the evidence that is gravely insufficient to arrive at a judgment of conviction.<sup>19</sup>

WHEREFORE, the *Motion to Withdraw Information* filed by the Prosecution in Criminal Case No. 24337 is **GRANTED**.

Accordingly, let the *Information* for Violation of Section 3 (e) and Section 3 (h) of R.A. No. 3019 filed in Criminal Case No. 24337 be ordered **WITHDRAWN**, and the charge against Leyminda R. Violan **DISMISSED**.

SO ORDERED.

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<sup>18</sup> *Singian, Jr. v. Sandiganbayan, et al.*, G.R. Nos. 195011-19, September 30, 2013

<sup>19</sup> *Bernardo v. Tan*, G.R. No. 185491, July 11, 2012

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SO ORDERED.

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

WE CONCUR:

  
**ZAEDY V. TRESPESES**  
*Associate Justice*

  
**BAYANI H. JACINTO**  
*Associate Justice*