



REPUBLIC OF THE PHILIPPINES

**Sandiganbayan**

Quezon City

SPECIAL SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff,

SB-13-CRM-0792 to 0794  
For: Violation of Sec. 3(e)  
of R.A. No. 3019, as amended

*Present*

- versus -

LUIS RAYMUND F. VILLAFUERTE,  
JR., ET AL.,

Accused.

FERNANDEZ, SJ, J.,  
Chairperson  
MIRANDA, J.  
VIVERO, J.  
CRUZ, J.\* and  
JACINTO, J.\*

*Promulgated:*

**AUG 28 2018**

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**RESOLUTION**

**FERNANDEZ, SJ, J.**

This resolves the *Motion for Leave to File Demurrer*<sup>1</sup> filed by accused Jeffrey Lo, and the *Motion for Leave to File Demurrer to Evidence*<sup>2</sup> filed by accused Luis Raymund F. Villafuerte, Jr.

In his Motion, accused Lo prays that he be granted leave of court to file his demurrer to evidence on the ground that the prosecution's evidence failed to establish the allegation of conspiracy in the information in the present cases.

Accused Villafuerte, in his Motion, similarly prays that he be granted leave of court to file his demurrer to evidence. He avers:

\* Per Administrative Order No. 10-C-2018 dated August 6, 2018

<sup>1</sup> Dated June 7, 2018; Record, Vol. 7, pp. 406-407

<sup>2</sup> Dated June 13, 2018; Record, Vol. 7, pp. 408-433

## RESOLUTION

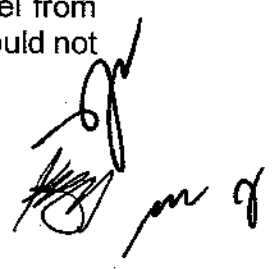
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1. The prosecution failed to prove beyond reasonable doubt the concurrence of all the elements of violation of Sec. 3(e) of Republic Act No. 3019 (R.A. No. 3019).
2. The Informations alleged that he gave unwarranted benefit, advantage or preference to accused Lo, and caused undue injury to the government by (1) approving the Disbursement Vouchers for the procurement of petroleum products without the conduct of public bidding; and (2) approving the advance payment for said petroleum products.
3. The lack of public bidding, by itself, does not automatically translate to a finding of manifest partiality, evident bad faith or gross inexcusable negligence.
4. The prosecution attempted to show that there was no justification for the purchase of petroleum products without public bidding. However, the prosecution's own evidence shows that there was no public bidding because the long-standing practice by the Provincial Government was to purchase fuel only from Petron without the conduct of a public bidding, in accordance with Department Order No. 19 dated May 1, 1974 and the Legislative Liaison System (LLS) Memo dated May 10, 1999, thus, negating the conclusion that he acted with manifest partiality, evident bad faith or gross inexcusable negligence.
5. Assuming that his reliance on Department Order No. 19 and the LLS memo was mistaken, there can still be no partiality, much less manifest partiality, on his part.
6. He could not have acted with bad faith or partiality when he was merely following the same practice followed by his predecessors.
7. The Commission on Audit (COA) never issued Notices of Disallowance or questioned the mode of procurement by the Provincial Government. He was misled into believing that such practice of procuring petroleum products without public bidding was proper.
8. Notice of Disallowance No. 2017-0007(10) dated October 18, 2017 was issued around six (6) years after the COA conducted its investigation, in violation of his rights to due process and to speedy disposition of cases. It was offered as evidence against him notwithstanding the fact that it was not yet final.
9. Even assuming that the approval of the purchase of fuel from Petron Naga was attended by partiality, such partiality would not

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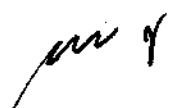
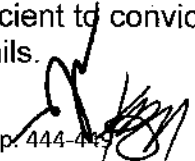
suffice for conviction because the law requires that such partiality be manifest.

10. In any event, the absence of public bidding in the present cases is justified as the conditions for direct contracting as an alternative form of procurement have been complied with. At the time, Petron Naga was the only supplier with the financial capability and tank capacity to address the needs of the Provincial Government's fuel requirements.
11. The prosecution failed to establish that there was advance payment in the present cases. There was constructive delivery of the petroleum products procured.
12. The agreement between the Provincial Government and Petron Naga was in the nature of a deposit account arrangement. The Provincial Government had complete and free disposal of the fuel which was merely stored in Petron Naga. The Provincial Government could withdraw fuel from Petron Naga at any time upon the presentation of Fuel Withdrawal Slips.
13. The prosecution failed to prove that his act of approving the purchase of fuel caused undue injury to any party, including the Government, or the giving to any private party unwarranted benefits, advantage or preference.
14. The Provincial Government even benefited from the deposit arrangement with Petron Naga. No storage fees were charged and the unit price of fuel remained the same regardless of when it was actually withdrawn.
15. There could have been no unwarranted benefit, advantage or preference given to accused Lo because there was no advance payment to speak of.
16. The other matters proved by the prosecution are irrelevant to the allegations in the Information in the present cases, and cannot be the basis for his conviction.

The prosecution, in its *Consolidated Comment/Opposition to the Motion for Leave to File Demurrer to Evidence of Accused Jeffrey Lo and Luis Raymund Villafuerte, Jr.*,<sup>3</sup> counters:

1. In resolving a motion for leave to file demurrer to evidence, the main consideration is whether the prosecution's evidence, if unrebutted, is sufficient to convict the accused. If it is, then the accused' motion fails.

<sup>3</sup> Dated June 18, 2018; Record, Vol. 7, pp. 444-449



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2. The evidence it adduced established the guilt of accused Villafuerte and Lo beyond reasonable doubt.
  - a. Accused Villafuerte admitted to being the Provincial Governor of the Province of Camarines Sur at the time material to the present cases.
  - b. He caused the disbursement of public funds for the purchase of petroleum products from Naga Fuel Express Zone/Petron Naga Fuel Express, owned by accused Lo.
  - c. In some cases decided by the Supreme Court,<sup>4</sup> it was held that lack of public bidding may constitute gross inexcusable negligence.
  - d. The objective of a competitive public bidding is to protect public interest by giving the government the best possible advantage through open competition.
  - e. The disbursement of public funds in the absence of the requisite public bidding constitutes the giving of unwarranted benefits to accused Lo.
  - f. Depriving the Provincial Government of the opportunity to get the best possible advantage constitutes undue injury to the Province of Camarines Sur.
3. It was able to prove the allegation of conspiracy between accused Villafuerte and accused Lo, who benefited by receiving the amounts subject of the Disbursement Vouchers. The subject public funds could not have been disbursed if he did not issue receipts through Naga Fuel Express Zone/Petron Naga Fuel Express.

### THE COURT'S RULING

Rule 119, Sec. 23 of the Rules of Court provides for the filing of a demurrer to evidence. *Viz.:*

**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.

<sup>4</sup> *Plameras v. People*, G.R. No. 187268, September 3, 2013; *Ong v. People*, G.R. No. 176546, September 25, 2009

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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 the 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.

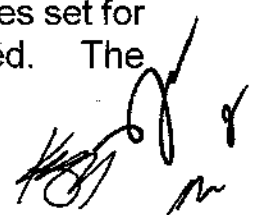
The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by *certiorari* before judgment.

After a careful review of the respective Motions of accused Villafuerte and Lo, and the evidence adduced by the prosecution, this Court finds that the evidence of the prosecution, if not rebutted, is sufficient to establish their culpability for three (3) counts of violation of Sec. 3(e) of R.A. No. 3019. Thus, their Motions for leave to file demurrer to evidence should be denied and they may adduce evidence in their defense. However, as provided in the first paragraph of Rule 119, Sec. 23 of the Rules of Court, they may file a demurrer to evidence without leave of court.

**WHEREFORE**, the Court rules as follows:

1. The *Motion for Leave to File Demurrer* of accused Lo is hereby DENIED.
2. The *Motion for Leave to File Demurrer to Evidence* of accused Villafuerte is hereby DENIED.

The accused are given five (5) days from receipt of this Resolution to file their respective manifestations, by personal service or through courier, to inform this Court whether they are filing their demurrer to evidence without leave of Court. The hearing dates set for the presentation of the accused' evidence are maintained. The



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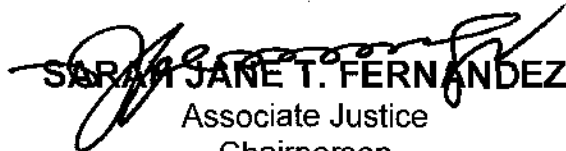
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scheduled hearings will be considered cancelled upon receipt by this Court of the accused' respective manifestations that they intend to file their demurrer to evidence without leave of court.

SO ORDERED.

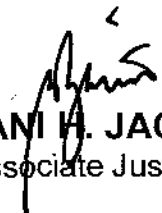
  
**SARAH JANE T. FERNANDEZ**  
Associate Justice  
Chairperson

**We Concur:**

  
**KARL B. MIRANDA**  
Associate Justice

*Pl. full  
dissenting opinion*  
**KEVIN NARCE B. VIVERO**  
Associate Justice

  
**REYNALDO P. CRUZ**  
Associate Justice

  
**BAYANI H. JACINTO**  
Associate Justice



REPUBLIC OF THE PHILIPPINES  
**Sandiganbayan**  
Quezon City

**SIXTH DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
Plaintiff,

**SB-16-CRM-0792 to 0794,**  
For: Violation of Sec. 3(e) of  
R.A. 3019, as amended

- versus -

**LUIS RAYMUND F. VILLAFUERTE,**  
JR., ET AL.

Accused.

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**DISSENTING OPINION**

**VIVERO, J.**

With all due respect, I dissent from the majority's Resolution denying the *Motion for Leave to File Demurrer*<sup>1</sup> filed by accused Jeffrey Lo and the *Motion for Leave to File Demurrer to Evidence*<sup>2</sup> filed by accused Luis Raymund F. Villafuerte, Jr.

The Supreme Court in *People vs. Go*<sup>3</sup> explained the nature and purpose of demurrer to evidence as follows:

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

<sup>1</sup> Dated 07 June 2018; Record, Vol. 7, pp. 406-407.

<sup>2</sup> Dated 13 June 2018; Record, Vol. 7, pp. 408-433.

<sup>3</sup> G.R. No. 191015, 06 August 2014.

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.

In fine, under the new rule<sup>4</sup> on demurrer to evidence, the accused has the right to file a demurrer to evidence after the prosecution has rested its case. If the accused obtained prior leave of court before filing his demurrer, he can still present evidence if his demurrer is denied. However, if he demurs without prior leave of court, or after his motion for leave is denied, he waives his right to present evidence and submits the case for decision on the basis of the evidence for the prosecution.

While it is true that the judicial action on the motion for leave of court to file demurrer to evidence is left to the exercise of the court's sound judicial discretion,<sup>5</sup> the Supreme Court, in *Bernardo vs. Court of Appeals*<sup>6</sup>, however, explained that the purpose of leaving it to the sound discretion of the court is to determine whether the accused is merely stalling the proceedings. Put differently, the trial court, in exercising its discretion on whether or not it should allow the accused to file a demurrer to evidence, should determine if the motion is dilatory. If the accused has shown merit in its motion and that the same is not dilatory, the leave should be granted.

To my mind, the motions for leave to file demurrer in this case are not dilatory and should be granted. Both accused Lo and Villafuerte have presented sound and compelling arguments with an indication of merit that deserve a hard look or full review by this court. The accused precisely pointed out the supposed defects in the prosecution's evidence in accordance with the requirement under paragraph 3 of Section 23 of Rule 119, 2000 Rules of Criminal Procedure to specifically state the grounds of a motion for leave to file demurrer. Thus, it is my view that the motions were filed not for the purpose of delaying the proceedings but on account of accused's sincere belief that the prosecution's evidence failed to prove beyond

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<sup>4</sup> Section 23 of Rule 119, 2000 Rules of Criminal Procedure.

<sup>5</sup> People vs. Zapata, G.R. No. 145915, 24 April 2003.

<sup>6</sup> G.R. No. 119010, 05 September 1997.



reasonable doubt that they are guilty of violating Section 3(e) of Republic Act No. 3019.

Thus, I submit that this court should grant the instant motions for leave and give the accused a chance to fully and exhaustively show the insufficiency in the prosecution's evidence and also for this court to properly appreciate the evidence adduced by the prosecution and its sufficiency to warrant conviction beyond reasonable doubt. After all, the grant of the motion for leave to file demurrer does not necessarily equate to a finding that the evidence of the prosecution is wanting much less automatically result to the acquittal of the accused.

**ACCORDINGLY**, I vote to **GRANT** accused Lo's *Motion for Leave to File Demurrer* and accused Villafuerte's *Motion for Leave to File Demurrer to Evidence*.

  
**KEVIN NARCE B. VIVERO**  
Associate Justice