



Republic of the Philippines
 Sandiganbayan
 Quezon City

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

PROSPERO ARREZA PICHAY, JR.,
et al.,

Accused.

SB-16-CRM-0797
 For: Violation of Sec. 3(e)
 R.A. No. 3019¹

SB-16-CRM-0798
 For: Violation of Sec. 7(a)
 R.A. No. 6713²

Present:
 Lagos, *J.*, *Chairperson,*
 Mendoza-Arcega and
 Corpus-Mañalac, *JJ.*

Promulgated:
August 23, 2018 *lcl*

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RESOLUTION

CORPUS - MAÑALAC, J.:

For resolution is the **Motion for Leave of Court to File Demurrer to Evidence** filed on August 8, 2018 by accused Prospero A. Pichay, Wilfredo M. Feleo and Emmanuel B. Malicdem, through counsel, and the prosecution's **Comment/Opposition** thereto filed on August 15, 2018.

The motion was filed after the aforesaid movants received on August 6, 2018 the Court's Resolution dated July 30, 2018 admitting the prosecution's evidence.

To recall, the evidence for the prosecution consists of the testimonies of (1) **Atty. Donabel D. Atienza**, Associate Graft Investigation Officer II, Field Investigation Office (FIO), Office of the Ombudsman; (2) **Ms. Aileen Maqueda**, Administrative Officer, FIO; (3) **Rosalinda B. De Veyra**, Industrial Relation Management Officer A, Local Water Utilities

¹ Anti-Graft and Corrupt Practices Act

² Code of Conduct and Ethical Standards for Public Officials and Employees

Administration (LWUA); (4) **Ms. Emma D. Moises**, State Auditor V of the Commission on Audit assigned to LWUA; (5) **Priscilla De Guzman Cruz**, Supervising Auditor of LWUA; as well as the documentary exhibits identified by the aforesaid witnesses marked as Exhibits "A" to "A-16", "B" to "B-1", "C" to "C-2", "D" to "D-3", "E" to "E-3", "F" to "F-1", "G" to "G-8", "H" to "H-3", "I", "J" to "J-3", "M" to "M-3", "N", "O", "P", "Q" to "Q-2", "R" to "R-1", "S", "T", "U" to "U-1", "V" to "V-2", and "W" to "W-1".

The Arguments of the Motion

The movants aver that the evidence of the prosecution in its aggregate is insufficient to establish the guilt of the accused beyond reasonable doubt for violation of RA 3019 Section 3[e] and RA 6713 Section 7[a] with which they were respectively charged, thus, they pray for leave of court to file a demurrer in accordance with Rule 119, Section 23, Rules of Court.

They claim that the evidence as presented only proved the fact that:

- (1) the accused are public officers – **Pichay** as Acting Chairman of the Board of Trustee,³ **Landingin** as Deputy Administrator,⁴ **Feleo** as Acting Deputy Administrator for Investment and Financial Services,⁵ and **Malicdem** as Senior Deputy Administrator⁶ and Acting Administrator,⁷ all of LWUA;
- (2) Pichay is the Chairman of the National Chess Federation of the Philippines (NCFP) at the time material to this case;
- (3) The execution and authenticity of documentary exhibits anent the NCFP request to LWUA Chair Pichay for the Php 1.5M sponsorship to the *Chairman Prospero A. Pichay, Jr. Cup International Chess Championship* on August 20-27, 2010,⁸ the disbursement of the said amount from LWUA through DV No-I-2010-11-0251,⁹ NCFP Official Receipt No. 0257¹⁰ and Land Bank Check No. 431930¹¹ issued to NCFP for the amount of Php1.5M.

Allegedly, these evidence do not prove the elements of violation of Section 3[e] of RA 3019, to wit: bad faith, manifest partiality, or gross inexcusable negligence. The mere signatures of the accused appearing on the

³ Exhibit "A-16", Record, p. 233

⁴ Exhibits "C" to "C-2", Record, pp. 236-238

⁵ Exhibit "I", Record, p. 262

⁶ Exhibits "E" to "E-3", Record, pp. 243-246

⁷ Exhibits "F" to "F-1", Record, pp. 247-248

⁸ Exhibit "M-1"

⁹ Exhibit "N", Record, p. 271

¹⁰ Exhibit "T"

¹¹ Exhibit "S"

Disbursement Voucher and Check does not also establish conspiracy which, by jurisprudence, shall be established by the same degree of proof as the crime itself. Similarly, the evidence allegedly does not show accused Pichay committed a violation of RA 6713, Section 7(a) for having a conflict of interest in FPCP, he being the Chair of LWUA. He contends that "conflict of interest" refers to a business undertaking which a public officer is prohibited to engage in if such runs in conflict with his public office, which is not in this case, considering that the sponsorship to NCFP in which he does not have a proprietary interest, is not the prohibition contemplated by RA 6713.

The Comment/Opposition

The prosecution insists that the evidence presented established all the elements of the crime charged – that the accused conspired with each other in giving unwarranted benefit, favor, privilege, or advantage to NCFP via the sponsorship of LWUA to the subject chess tournament.

Citing jurisprudence on the nature of "conspiracy," which in essence refers to "a concert of design that may be inferred from the acts of the malefactors,"¹² and that "a direct proof is not required, being rarely found,"¹³ the prosecution argues that the following acts of the accused, while seemingly independent, were connected and indispensable towards the giving of unwarranted benefit to NCFP characterized by evident bad faith and manifest partiality, viz: (1) the Memorandum of accused Feleo on November 10, 2011 asking accused Malicdem for approval of NCFP request for sponsorship, which was immediately approved by the latter on November 11, 2010; (2) the disbursement voucher for the amount of Php1.5M on November 15, 2010; (3) Pichay ignored the request of Manolo Kagahastian on November 24, 2010 for a meeting to discuss the consequences of the proposed disbursement; and (4) Issuance of Land Bank check on December 2, 2010.

The aforesaid acts were allegedly in defiance of Administrative Order No. 103¹⁴ dated August 31, 2004 "Directing the Continued Adoption of Austerity Measures in the Government" and LWUA's Administrative Memorandum 047 Series of 2010¹⁵ on the "Suspension of Sports and Cultural Activities and Procurement of Capital Outlay" effective August 2, 2010.

Ruling

A demurrer to evidence is defined as "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

¹² People vs. Villaver, GR No. 133381, November 27, 2001

¹³ Angeles, Jr. vs. Court of Appeals, GR No. 101442, March 28, 2001

¹⁴ Exhibits "Q" to "Q-2", Record, pp. 274-276

¹⁵ Exhibit "P", Record, p. 273

the issue."¹⁶ The party demurring challenges the sufficiency of the whole evidence to sustain a verdict.¹⁷ In passing upon the sufficiency of the evidence raised in a demurrer, the court is merely required to ascertain whether there is competent or sufficient proof to sustain the indictment or to support a verdict of guilt.¹⁸ In the case of **Soriquez v. Sandiganbayan**,²⁹ the Supreme Court elucidated:

“The determination of the sufficiency or insufficiency of the evidence presented by the prosecution as to establish a *prima case* against an accused is left to the exercise of sound judicial discretion.”

Steered by the foregoing guideposts, and after a full consideration of the evidence presented by the prosecution, the Court finds that the same appear to be *prima facie* sufficient to warrant the conviction of the accused beyond reasonable doubt for violation of RA 3019, Section 3(e), unless effectively contradicted by evidence for the accused.

The prosecution successfully pointed to its evidence of conspiracy culled from the accused’s respective acts, which apparently were directed in unison towards giving NCFP the unwarranted advantage of sponsorship that costs LWUA an amount of Php1.5M. Attention is drawn to the badge of bad faith or partiality of the accused, considering that the sponsorship appears to be in contravention of Administrative Order No. 103 dated August 31, 2004 and LWUA’s own Memorandum 047 Series of 2010 dated August 9, 2010.

It was established that as Acting Chair of LWUA’s Board of Trustees, Pichay voted for the approval of LWUA’s 2010 Operating Budget with a noticeably substantial allocation of Php1.5M for chess events,¹⁹ Feleo recommended the approval on November 10, 2010 of NCFP’s request for sponsorship,²⁰ which Malicdem affirmed the following day on November 11, 2010.²¹ The disbursement voucher was immediately accomplished by Feleo and Landingin only four days thereafter on November 15, 2010,²² until the eventual check payment to NCFP on December 2, 2010. Notably, a *Brief*²³ dated November 24, 2010 was addressed to the Administrator by witness Manolo Kagahastian, then Acting Deputy Administrator for Administrative Services, LWUA, recommending a meeting with the Chairman “to present the consequences of the proposed disbursement” in light of Administrative Order No. 103 and LWUA’s Administrative Memorandum 047 Series of

¹⁶ Gutib v. Court of Appeals, 371 Phil. 293, 300 (1999).

¹⁷ Ong v. People, G.R. No. 140904, 9 October 2000, 342 SCRA 372, 383, citing Gutib v. CA, *supra*.

¹⁸ Choa v. Choa, 441 Phil. 175,183 (2002), citing Ong v. People, *supra*; and Gutib v. CA, *supra*

¹⁹ Exhibit “M-3”

²⁰ Exhibit “M”

²¹ Id.

²² Exhibit “N”

²³ Exhibit “O”

2010, but he testified that “no further discussions were made after his Brief.”²⁴ These circumstances were logically linked to suggest accused’s concerted efforts to favour NCFP to the government’s prejudice.

As admitted, accused Pichay is the President of NCFP,²⁵ while at the same time the Acting Chair of LWUA during the time material to these cases. Also, the sponsored tournament was billeted “*Chairman Prospero A. Pichay, Jr. Cup International Chess Championship*” held on August 20-27, 2010.

However, there is reason for accused Pichay to be given leave of court to demur to evidence anent the charge of violation of Section 7(a) of RA 6713.

While it was proven that accused Pichay is both Acting Chair of LWUA and President of NCFP during the subject sponsorship, the allegation that he “*possessed financial or material interest in a transaction requiring the approval of his office*” in reference to the NCFP’s request for LWUA’s financial sponsorship of the chess tournament, may have a doubtful basis in evidence. Leave of court, thus, is necessary for Pichay to sustain his disquisition on this point as he argues that the conflict of interest rule refers to “*a business undertaking which a public officer is prohibited to engage in if such runs in conflict with his public office.*” Essentially, it has to be “a financial and material interest,”²⁶ whereas, the sponsorship granted to NCFP is not deemed a “financial or material interest” within the contemplation of RA 6713, Section 7(a).

Verily, the prosecution in its Comment/Opposition fails to offer any counter-argument on this score indicating that it concedes to the alleged insufficiency of evidence to prove accused Pichay’s pecuniary or proprietary interest in the subject transaction.

The long-time principle of law on evidence is that the burden lies on the prosecution to overcome the presumption of innocence by presenting the quantum of evidence required.²⁷ This far, the Court is convinced that as far as the charge of violation of Section 3(e) of RA 3019, the prosecution had adduced competent evidence to prove the accused’s guilt beyond doubt, unless rebutted. However, the argument of accused Pichay opposed to his alleged violation of Section 7(a) of RA 6713 seemingly rests on meritorious ground, hence, leave of court is granted to him to file a demurrer to evidence on this charge.

WHEREFORE, the Court resolves to:

1. **DENY** the Motion for Leave of Court to File Demurrer to Evidence in SB-16-CRM-0797 for violation of Section 3(e) of RA

²⁴ Sworn Statement, Exhibit “R”

²⁵ Admitted in the Pre-trial Order, Record, p. 114; Exhibits “B” to “B-1”, Record, pp. 234-235

²⁶ Rule IX, Sections 1, 2 of the IRR of RA 6713

²⁷ People vs. Dacuma, GR No. 205889, February 4, 2015


3019, without however precluding the accused from filing their Demurrer to Evidence, without leave of court, within a non-extendible period of ten (10) days from receipt hereof, pursuant to Section 23, Rule 119 of the Rules of Court;

2. **GRANT** accused Pichay's Leave of Court to demur to evidence in SB-16-CRM-0798 for violation of RA 6713 Section 7(a), which shall be filed within a non-extendible period of ten (10) days from receipt hereof, pursuant to Section 23, Rule 119 of the Rules of Court.

SO ORDERED.


MARYANN E. CORPUS-MANALAC
Associate Justice

WE CONCUR:


RAFAEL R. LAGOS
Associate Justice
Chairperson


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice