

REPUBLIC OF THE PHILIPPINES  
SANDIGANBAYAN  
Quezon City

Fifth Division

**PEOPLE OF THE PHILIPPINES,**  
*Plaintiff,*

**SB-17-CRM-1183**

**FOR: Violation of Sec. 3 (e) of  
R.A. No. 3019**

**-and-**

**- versus -**

**SB-17-CRM-1184**

**FOR: Violation of Sec. 3(g) of  
R.A. No. 3019**

**CONSTANCIO CASINABE**  
**MAGHANOY, JR., ET AL.,**  
*Accused.*

*Present:*  
**LAGOS, J., Chairperson,**  
**MENDOZA-ARCEGA, and**  
**MAÑALAC, JJ.**

*Promulgated:*

August 29, 2018 *jal*

X-----X

**RESOLUTION**

***LAGOS, J.:***

For the Court's consideration are herein accused's joint *Motion of Leave of Court to File Demurrer to Evidence*<sup>1</sup> dated August 13, 2018, filed pursuant to Sec. 23, Rule 119 of the Rules of Court, and the prosecution's *Comment/Opposition*<sup>2</sup> thereto, dated August 16, 2018.

Sec. 23, Rule 119, provides:

---

<sup>1</sup> Records, Vol. 3, p. 43. The motion is deemed filed, through counsel, on behalf of all the accused herein. Counsel's *Entry of Appearance* for "ALL remaining accused" is found at Records, Vol. 1, p. 226, with a manifestation that accused Isagani Liwanag Basco is deceased.

<sup>2</sup> *Id.*, p. 51.

*M jal*

Sec. 23. Demurrer to evidence. – After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of the 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.

X X X

The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt. [underscoring/emphasis supplied]

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.

On July 24, 2018, the Court resolved to admit all the exhibits offered by the prosecution,<sup>3</sup> following the “formal offer”<sup>4</sup> thereof, and over the comments and/or objections<sup>5</sup> of the accused .

As summed up in the instant motion, “[t]he accused herein are basically charged, under paragraphs (e) and (f) [sic] of Section 3 of RA 3019, with having entered into a contract that is disadvantageous to the government and giving unwarranted benefits to a private party in relation to the purchase of 38 barrels of Benzalkonium chloride/Bensoxonium chloride to be used for the eradication of the fusarium wilt fungus.”<sup>6</sup> Specifically, the Information in SB-17-CRM-1184 is for alleged violation of **Sec. 3 (g)** of R.A. 3019, while SB-17-CRM-1183 involves **Sec. 3 (e)**.

The elements for violation of the aforesaid **Sec. 3 (e)** are as follows:<sup>7</sup>

1. The accused must be a public officer discharging administrative, judicial or official functions;
2. He/she must have acted with manifest partiality, evident premeditation or gross inexcusable negligence; and
3. That his/her action caused any undue injury to any party, including the government, **or** gave any private party

---

<sup>3</sup> Records, Vol. 3, p. 23, “Minutes of the proceedings held on July 24, 2018. See *Formal offer of Prosecution’s Documentary Exhibits* at Vol. 2, p. 360.

<sup>4</sup> *Id.*, Vol. 2, p. 360.

<sup>5</sup> *Id.*, Vol. 3, p. 9. “Comments on the Prosecution’s Formal Offer of Evidence.”

<sup>6</sup> *Id.*, p. 44, Motion for Leave, par. 4; underscoring supplied.

<sup>7</sup> See Noel G. Villaroman, *Laws and Jurisprudence on Graft and Corruption* (3<sup>rd</sup> ed.), p. 146; citations omitted.

**RESOLUTION**

**People vs. Maghanoy, Jr., et al..**

**SB-17-CRM-1183 and 1184**

**Page 3 of 6**

X-----X

unwarranted benefits, advantage or preference in the discharge of his/her functions.

As to **Sec. 3 (g)**, the elements are:<sup>8</sup>

1. The offender is a public official;
2. He/she entered into a contract or transaction in behalf of the government; and
3. The contract or transaction is manifestly and grossly disadvantageous to the government.

The movants aver, "It is most respectfully submitted that the evidence presented by the prosecution cannot be sufficient to justify the conviction of the accused herein. In fact, the evidence will even show that contrary to the basic allegations against them, the accused, in the transaction subject of these cases, actually chose the item that is of greater benefit to the government and the intended end-users of the purchased fungicide."<sup>9</sup> Among other things, they discussed what they considered as the "highlights" of the prosecution's evidence, particularly the salient points of the testimony of witness **Gloria Cañete**, auditor of the Commission on Audit (COA), and the results of cross-examination of witness **Enrique Choy**, viz.:

X X X

- a. The testimony of Mrs. Gloria Cañete, an auditor of the Commission on Audit, confirmed the following:
  - i. That the COA recognizes the fact that in deciding on which bid or offer to accept, in government procurement processes, other factors, such as quality, kind, efficacy of the items, and other considerations are taken into consideration by the experts;
  - ii. That the very reason for having a Technical Working Group in the government procurement process is the fact that this is composed of experts who would know best the determination of such considerations
  - iii. That in the transaction subject of these cases, the Technical Working Group, took the concentration of the active ingredients in the offered items (5% for Sanitation Concepts, Inc[.] and 40% for FKA Agri-Chemical Corporation) to determine that the price per percentage of active ingredient offered by FKA Agri-Chemical Corp. was actually much lower at P76,000.00 per 1%, that that of Sanitation Concepts, Inc. which was at P529,461.60 per 1%;
  - iv. That there was NO NOTICE OF DISALLOWANCE issued by COA in relation to the transaction subject of this case; and
  - v. That upon a special audit conducted by the witness of the subject transaction in view of the complaint, there was NO ADVERSE FINDINGS.

---

<sup>8</sup> *Id.*, p. 165; citations omitted.

<sup>9</sup> *Id.*, par. 5.

**RESOLUTION**

**People vs. Maghanoy, Jr., et al.**

**SB-17-CRM-1183 and 1184**

**Page 4 of 6**

X-----X

- b. The Cross examination of Mr. Enrique Choy also yielded the following admissions during his cross-examination:
- i. Mr. Choy admitted that he complained about being required to produce a registration of his product with the Fertilizers and Pesticides Authority because it was, according to him, not required;
  - ii. Mr. Choy, however, admitted that he was not informed that fungicides are included in the definition of pesticides under Section 3 of PD 1144 or the law creating the Fertilizers and Pesticides Authority;
  - iii. He also admitted that he never registered with the Fertilizer and Pesticides Authority;
  - iv. He also admitted that the fungicide subject of the transaction would have to be transported to the end-users and was intended to be diluted when to be used by the end-user by adding water to it[.]<sup>10</sup>

x x x

The accused also mentioned, in relation to witness Choy's testimony, that "it should be noted that Section 9 of P.D. 1144 specifically requires licensing and registration for dealers and products classified as pesticides";<sup>11</sup> that "it should be also noted that in view of Mr. Choy's admission that the product would have to be transported to end-users and, thereafter, diluted with water, the concentration of the product also plays an important part because the government would be unnecessarily spending additional funds to transport low concentration products because what would be transported would be largely dilutants, mostly water, which would be added to dilute the product before being used anyway."<sup>12</sup>

Judicial action to grant prior leave to file demurrer to evidence is discretionary upon the trial court.<sup>13</sup> After due consideration of the arguments of the parties and a review of the records of these cases, the Court finds that based on the evidence of the prosecution – if they remain unrebutted – the same is sufficient to support a finding of guilt beyond reasonable doubt against the accused.

The Court is not persuaded that, as asserted by the accused, "[i]n view of the foregoing,...the defense has good ground to argue that the evidence presented by the prosecution cannot be enough to prove the guilt of the herein accused beyond reasonable doubt and warrant a conviction of the accused in this case."<sup>14</sup> Thusly, the accused's arguments and/or defense must rise or fall on the strength of the arguments they have so far offered, and as

---

<sup>10</sup> Records, Vol. 3, Motion for Leave, par. 6, pp. 44-45.

<sup>11</sup> *Id.*, par. 6 (c), p. 46.

<sup>12</sup> *Id.*, par. (d).

<sup>13</sup> Bernardo vs. CA, et al., G.R. No. 11910, September 5, 1997.

<sup>14</sup> Note 12, par. 7, p. 47.

**RESOLUTION**

*People vs. Maghanoy, Jr., et al.*

*SB-17-CRM-1183 and 1184*


Page 5 of 6

X-----X  
they claim, “as well as [on such] other matters that will be amplified in the intended demurrer to the prosecution’s evidence.”<sup>15</sup> Relatedly, Sec. 23, Rule 119, also provides in part that, “...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.”<sup>16</sup>

As contended by the prosecution in its *Comment/Opposition*, the arguments proffered by the accused “cannot cast even a scintilla of doubt to warrant the acquittal of all the accused in these cases considering that the accused did not assail any of the elements of the crime.” In particular, “... the grounds stated in their Motion are purely evidentiary in nature. Hence, it is the burden upon the accused to present their evidence to prove that the Technical Working Group [members], who are accused in these cases, are experts”;<sup>17</sup> that their being “experts should be proven by other evidence other than the opinion or assumption of the prosecution’s witness, Ms. Gloria Cañete”<sup>18</sup> and that, citing *Republic vs. Gimenez*, G.R. No. 174673 (January 11, 2016), “the court shall consider no evidence which has not been formally offered.”<sup>19</sup> Moreover, “the non-existence of NOTICE OF DISALLOWANCE and the absence of ADVERSE FINDINGS from COA does not *ipso facto* result in the termination of their criminal cases under RA 3019, because these COA findings is not a condition *sine qua non* to acquit accused.”<sup>20</sup> Furthermore, “the fact that there was no adverse finding from COA is because they did not audit the transaction which is the subject matter of these cases”<sup>21</sup> and that “the accused should not presume that there was no irregularity in this transaction in the absence of Notice of Disallowance, because as a matter of fact, COA did not audit this transaction.”<sup>22</sup>

**WHEREFORE**, in view of the foregoing, the accused’s *Motion for Leave to File Demurrer to Evidence* is **DENIED** for lack of merit.

**SO ORDERED.**

  
**RAFAEL R. LAGOS**  
Associate Justice  
Chairperson

---

<sup>15</sup> *Ibid.*

<sup>16</sup> Rule 119, Sec. 23, 2<sup>nd</sup> par.

<sup>17</sup> Records, Vol. 3, *Comment/Opposition*, par. 5, pp. 53-54.

<sup>18</sup> *Id.*, par. 8, p. 54

<sup>19</sup> *Id.*, par. 7.

<sup>20</sup> *Id.*, par. 9; emphasis in the original.

<sup>21</sup> *Id.*, par. 10, pp. 54-55.

<sup>22</sup> *Id.*, par. 12, p. 55.



**RESOLUTION**

**People vs. Maghanoy, Jr., et al..**

**SB-17-CRM-1183 and 1184**

**Page 6 of 6**

X

X

**WE CONCUR:**

  
**MARIA THERESA V. MENDOZA-ARCEGA**  
Associate Justice

  
**MARYANN E. CORPUS-MAÑALAC**  
Associate Justice