



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
QUEZON CITY

SEVENTH DIVISION

MINUTES of the proceedings held on September 28, 2018.

Present:

MA. THERESA DOLORES C. GOMEZ-ESTOESTA ----- Chairperson
ZALDY V. TRESPESES ----- Associate Justice
GEORGINA D. HIDALGO ----- Associate Justice

The following resolution was adopted:

Criminal Case No. SB-14-CRM-0325 -

**People v. BENJAMIN G. TAYABAS
PRISCILLA L. MIÑAS
ENRIQUE F. CONLU
ALEJANDRO L. DAGDAG, Jr.**

This resolves the following:

1. Accused Priscilla M. Miñas' "**URGENT MOTION FOR LEAVE OF COURT TO FILE DEMURRER TO EVIDENCE**" dated August 1, 2018;¹ and
2. The Prosecution's "**OPPOSITION**" dated August 31, 2018.²

GOMEZ-ESTOESTA, J.:

Accused Priscilla M. Miñas was the only one among the accused who filed an *Urgent Motion for Leave to File Demurrer to Evidence*³ predicated on the ground that there is "*absolutely no evidence on record*" to prove:

(i) that she was the PLM Dean of the College of Physical Education, Recreation and Sports (COPERS) on or about September 20, 2005 or sometime prior or subsequent thereto, and that as such, she committed an offense while in the performance of her official functions as PLM Dean of COPERS or that she took advantage of the same;

¹ Records, Volume 4, pp. 70-82

² Ibid., pp. 106-109

³ Records, Volume 2, pp. 247-248

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(ii) that she acted with evident bad faith, manifest partiality and/or through gross inexcusable negligence in conspiring with NCPE President Alejandro L. Dagdag, Jr. to give unwarranted benefit to NCPE;

(iii) that NCPE is a private non-stock and non-profit foundation which certificate of registration has been revoked by SEC on or about September 20, 2005 or sometime prior or subsequent thereto;

(iv) that NCPE was allowed to make use of the facilities and manpower of PLM for ₱20,000.00 per year or a total of ₱60,000.00 from 2005-2007; and

(v) that NCPE was allowed to collect tuition fees from students without the approval of the PLM Board of Regents.

THE MOTION FOR LEAVE

Accused Miñas harped that the evidence presented by the Prosecution failed to prove the elements of the offenses charged under Sections 3 (e) and (h) of R.A. 3019 since only the following testimonial and documentary evidence could be considered:

Testimonial Evidence consisting of:

(i) State Auditor Victoria Yumang who identified AOM No. 2006-012-022 dated February 28, 2007;

(ii) Rogelio Angco who supplied facts that accused Benjamin Tayabas and Alejandro Dagdag conspired with each other to cause the renewal of the Memorandum of Agreement between PLM and NCPE without the Approval of the Board of Regents of PLM in allowing the latter to utilize the facilities and manpower of PLM and collected tuition fees from the students without proper accounting, giving unwarranted benefit to NCPE from the transaction, thereby discovering in the process the lucrative financial benefit of having NCPE operate at the PLM; and

(iii) Oliver Felix whose testimony has been stipulated per Order dated February 21, 2018.

Documentary evidence which would only consist of those not excluded by this Court in its Resolution dated July 27, 2018; i.e., Exhibits "K," "S," "T," "U," "V," "W," "X," "X-1," "Y," "Z," "AAA," "M," "CC," "DD," "FF," "GG," "HH," and "II."

Acused Miñas thus adduces that prosecution evidence is insufficient which was not enough to establish a strong suspicion or probability of guilt against her as none of these evidence proved the following elements of the offenses charged, to wit:

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For violation of Section 3 (e) of R.A. 3019, the elements⁴ of which are:

- (a) the offender must be a public officer discharging administrative, judicial, or official functions;
- (b) who must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and
- (c) whose action caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.

On the other hand, the elements⁵ for violation of Section 3 (h) of R.A. 3019 are:

- (a) the accused is a public officer;
- (b) who has a direct or indirect financial or pecuniary interest in any business, contract or transaction; and
- (c) who is prohibited from having such interest by the Constitution or any law.

Accused Miñas thus prays for leave to be able to file her demurrer to evidence.

THE COURT'S RULING

Accused Miñas' *Motion* is based on Section 23, Rule 119 of the 2000 Rules on Criminal Procedure which provides:

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. [Emphasis supplied]

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 a 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.

⁴ *Lim v. MOLEO*, G.R. No. 201320, September 14, 2016

⁵ *Teves v. COMELEC, et al.*, G.R. No. 180363, April 28, 2009

RESOLUTION

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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.

The above Rule authorizes the trial court to dismiss a criminal case *motu proprio* or upon motion of the accused provided that the prosecution has been given an opportunity to be heard. Judicial action on a motion to dismiss or demurrer to evidence is best left to the exercise of sound judicial discretion.⁶

Constricted to the backdrop of evidence presented in these charges, the Court's sound judicial discretion leans towards the grant of **LEAVE** to accused Miñas to demur to the evidence.

Not only that. The rule introduced under Section 23 as afore-quoted likewise gives the Court the authority to *motu proprio* dismiss the case on insufficiency of evidence, provided that before doing so, it should give the prosecution an opportunity to be heard and to oppose the motion (should one be filed).⁷

At this instance, since it is the same evidence introduced against accused Miñas that should also be weighed against other accused Benjamin G. Tayabas, Enrique F. Conlu and Alejandro L. Dagdag, Jr., the Court exercises its sound judicial discretion to likewise consider the evidence this early and weigh it, in the same manner as that made for accused Miñas, whether sufficient evidence has been introduced to sustain the charges against all the accused.

The lingering toll on the Prosecution is the exclusion of most of its material documentary exhibits. What remained are, to reiterate:

Exhibit "K" which only refers to the Audit Observation Report with Management Comment, which without its source documents cannot withstand the scrutiny of the Best Evidence Rule;

Exhibit "S" which consists only of a Certification dated November 25, 2014 issued by the Office of the Secretary of PLM stating that there is no documents showing that the Board of Regents of PLM was informed of any intention or proposal to renew the MOA between PLM and the NCPE or that the PLM Board of Regents approved or confirmed such MOA. This rather comes as vague considering that no documentary exhibit has been introduced by the Prosecution to prove that any of the accused entered into a Renewal of Memorandum of Agreement, as supposedly alleged in

⁶ *People v. Sandiganbayan (Fourth Division), et al.*, G.R. Nos. 137707-11, December 17, 2004

⁷ *Bernardo v. Court of Appeals, et al.*, G.R. No. 119010, September 5, 1997

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the Information under SB-14-CRM-0326, as the Renewal of Memorandum of Agreement was not even presented nor authenticated;

Exhibits "T," "U," and "V," being PLM Board Resolution No. 3343, PLM Board Resolution No. 3398 and the Memorandum dated June 28, 2011 of the Office of the University Legal Counsel on the formal investigation conducted by OIC-Office of the University Legal Counsel and its submission to the Board of Regents, which again, are not substantiated by its source documents;

Exhibit "W" or the Certification dated November 25, 2014 issued by the University Registrar (OUR) that it did not issue a diploma under the NCPE Program;

Exhibits "X," "X-1," "Y," and "Z," being the programs for the 38th and 39th commencement exercises of PLM, and for the 54th commencement exercises of PLM-NCPE;

Exhibits "AAA" and "M" which refer to the Complaint-Affidavit and Supplemental Complaint of private complainant Oliver B. Felix filed with the Office of the University Legal Counsel of PLM which was presented, and later stipulated on, *without* the annexes,⁸ and

Exhibits "CC," "DD," "FF," "GG," "HH," and "II" which are the indorsements from the Office of the Auditor of PLM, the Local Government Sector of COA and the Legal and Adjudication Sector, Legal and Adjudication Office of COA, which again were offered *without* their accompanying supposed attachments, and hence, remain as purely internal communications.

On the other hand, the gist of the testimonial evidence offered by three (3) witnesses for the prosecution only established the following:

1. Mr. **Rogelio S. Angco**, Assistant Professor III for Physical Education of the Pamantasan ng Lungsod ng Maynila, who would recall of conversations he had with Dr. Mikki or Mr. Dagdag during which time a growing number of students began to be admitted in the masteral program of physical education offered by NCPE using the gymnasium and classrooms of PLM as well as its utilities, as it later came to be known as PLM-NCPE.⁹ He would also allude to the fact that Mr. Dagdag referred to Mr. Enrique Conlu as being responsible in helping to increase the number of students at PLM-NCPE.¹⁰ Later, Mr.

⁸ TSN dated April 26, 2018, pp. 29-44, 47, 52-54

⁹ TSN dated October 25, 2016, pp. 3-36; TSN dated April 18, 2017, p. 19

¹⁰ TSN dated October 25, 2016, p. 25

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Angco would teach at NCPE and receive a measly honorarium ranging from ₱500 to ₱1000.¹¹

2. **Atty. Rholie C. Besona**, whose intended testimony was the subject of the following stipulations:

a. That he was the handling investigator in his capacity as an Associate Graft Investigation Officer of the Field Investigation Office of the Office of the Ombudsman;

b. That as part of his duties, he was assigned to conduct the Fact-Finding Investigation and to act as the nominal complainant in these cases; and

c. That in the course of his investigation, he gathered documents which were provisionally marked during pre-trial as Exhibits "A" to "W."

The stipulation was made on the premise that Atty. Besona is no longer the custodian of Exhibits "A" to "W," as he is no longer connected with the Office of the Ombudsman and that the originals still have to be produced by the Prosecution to complete the authentication process.¹² It was never able to do so until the filing of its formal offer.

3. **State Auditor IV Victoria R. Yumang**, Audit Team Leader of the Pamantasan ng Lungsod ng Maynila from September 18, 2006 to August 31, 2010, who was supposed to identify the Audit Observation Memorandum (AOM)¹³ prepared and submitted in the course of the audit team's validation in the legality of the Renewal of Memorandum of Agreement, but who later on could not produce the originals of the AOM and the Renewal of Memorandum of Agreement, as she was no longer connected with the Auditor's Office of PLM.¹⁴ No stipulation could likewise be made.¹⁵

Haplessly, there is a seeming handicap that did not augur well in the presentation of such testimonial evidence. Mainly, this could be faulted to the paucity in the production of the originals of the Audit Observation Memorandum itself and its source documents.

IN VIEW THEREOF, after the Prosecution has rested its case, the Court is exercising its judicial discretion to grant **LEAVE OF COURT** to accused Priscilla M. Miñas to file her demurrer to evidence within a non-extendible period of ten (10) days from notice of this Resolution.

Meantime, although no similar leave of court was sought by accused Benjamin G. Tayabas, Enrique F. Conlu and Alejandro L. Dagdag, Jr., the

¹¹ TSN dated April 18, 2017, p. 10-12

¹² TSN dated February 21, 2018, pp. 42-50

¹³ Exhibit "J," objection made on its identification as shown under TSN dated April 26, 2018, pp. 56-58

¹⁴ Id., pp. 61-68

¹⁵ TSN dated April 26, 2018, pp. 56-59

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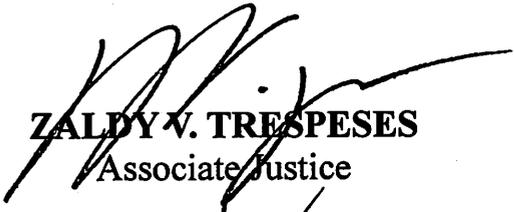
Prosecution is given an opportunity to be heard why the charges filed against said accused should not be dismissed for insufficiency of evidence.

For this purpose, set hearing on *October 11, 2018 at 8:30 in the morning* as previously scheduled.

SO ORDERED.


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

WE CONCUR:


ZALDY V. TRESPESES
Associate Justice


GEORGINA D. HIDALGO
Associate Justice