



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
 Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff,

SB-16-CRM-0118 to 0119,
 For: Violation of Sec. 3(e) of
 R.A. 3019

- versus -

AMADO T. ESPINO, JR., ET AL.,
 Accused.

Present:

FERNANDEZ, SJ, J.
Chairperson
MIRANDA, J. and
VIVERO, J.

Promulgated:
SEP 05 2018

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RESOLUTION

VIVERO, J.

This resolves the following:

- a) *Motion for Leave to File Demurrer to Evidence*¹ filed by accused Cesar E. Detera, Lolita D. Bolayog, Cynthia D. Camara, Edwin T. Alcazar, Gina P. Alcazar, Ann Lyn P. Detera, Denise Ann P. Sia Kho Po and Glenn R. Subia (Detera, et al.) on 24 July 2018; and
- b) *Motion for Leave of Court to File Demurrer to Evidence*² filed by accused Amado T. Espino, Jr., Rafael F. Baraan, and Alvin L. Bigay (Espino, Jr., et al.) on 24 July 2018

together with the *Consolidated Comment/Opposition (to Accused Espino, Jr., Baraan and Bigay's Motion for Leave to File Demurrer to Evidence) and (Accused Cesar Detera, Ann Lyn P. Detera, Lolita D.*

¹ Dated 23 July 2018; Record, Vol. V, pp. 338-345.

² Dated 24 July 2018; Record, Vol. V, pp. 346-354.

[Handwritten signatures]

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*Bolayog, Cynthia D. Camara, Edwin T. Alcazar, Gina P. Alcazar, Denise Ann P. Sia Kho Po and Glenn R. Subia*³ (sic) filed by the prosecution on 30 July 2018.

Although in varying language and tenor, all of the accused similarly submit that the prosecution failed to prove beyond reasonable doubt the existence of all the acts/elements constituting the offense of violation of Section 3(e) of Republic Act (R.A.) No. 3019 or the Anti-Graft and Corrupt Practices Act.⁴

Accused Detera, et al.:

- a) No evidence was adduced to prove conspiracy except for the fact that accused were members of the Board of Directors of Alexandra Mining and Oil Ventures Inc. (AMОВI) and Xypher Builders, Inc. (XBI).⁵
- b) The prosecution failed to adduce evidence that the issuance of Small Scale Mining Permit (SSMP) gave unwarranted benefit, privilege or advantage to AMОВI and XBI let alone caused undue injury to the government.⁶
- c) The prosecution failed to prove that AMОВI conducted soil re-mediation and/or magnetite and mineral extraction activities in Barangay Sabangan in Lingayen Gulf, Pangasinan. Hence, there was no legal necessity to accredit or register itself with the Philippine Contractors Accreditation Board (PCAB) and to secure area clearance from the Mines and Geosciences Bureau (MGB). Also, its business permit issued in Quezon City, where its principal office is located, is valid in Lingayen, Pangasinan.⁷
- d) The Memorandum of Agreement (Exhibit "B"), the Application for Exclusive Sand and Gravel Permit/Government/Private Gratuitous Permit (Exhibit "C") and the Government Gratuitous Permit (GGP) No. 02-2011 all show that they were applied for and issued to "Xypher

³ Dated 30 July 2018; Record, Vol. V, pp. 355-378.

⁴ Accused Detera, et al.'s Motion for Leave to File Demurrer to Evidence dated 23 July 2018, p. 2; Accused Espino, Jr., et al.'s Motion for Leave of Court to File Demurrer to Evidence dated 23 July 2018, p. 3.

⁵ Accused's Detera, et al.'s Motion for Leave to File Demurrer to Evidence dated 23 July 2018, pp. 2 & 4.

⁶ Ibid.

⁷ Id., pp. 2-3.

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Builders” and not to XBI, which is not the same as the former.⁸

- e) The prosecution failed to prove that XBI conducted magnetite/black sand mining and small scale mining activity in the area.⁹

Accused Espino, Jr., et al.:

- a) The prosecution failed to prove that the issuance of SSMP gave unwarranted benefit, privilege or advantage to AMOVI or caused undue injury to the government. There was no magnetite/black sand mining (not even small scale mining) since it was established that the sand extraction was in connection with the golf course project and that the extracted sand has remained in the dumpsite. Neither was it shown that public funds were utilized in the extraction.¹⁰
- b) The prosecution failed to establish that accused acted in a manner attended by manifest partiality, evident bad faith, or gross inexcusable negligence. The prosecution failed to clearly detail the acts constituting the offense.¹¹
- c) The prosecution’s failure to prove the elements of the crime is emphasized by its failure or omission to present original copies of most of the documents.¹²

In its Consolidated *Comment/Opposition*¹³, the prosecution asked this Court to deny the respective *Motions for Leave of Court* filed by accused Espino, Jr., et al. and Detera, et al. It argued that:

- a) The prosecution was able to present sufficient evidence to prove the allegations in both Informations.¹⁴
- b) The issuance of SSMP to AMOVI and GGP to Xypher Builders is a prohibited act made in relation to official duty done with evident bad faith and designed to give manifest

⁸ Id., p. 4.

⁹ Id., p. 5.

¹⁰ Accused Espino, Jr., et al.'s Motion for Leave of Court to File Demurrer to Evidence dated 23 July 2018, pp. 3-4.

¹¹ Id., p. 5.

¹² Ibid.

¹³ Consolidated Comment/Opposition (to Accused Espino, Jr., Baraan and Bigay's Motion for Leave to File Demurrer to Evidence) and (Accused Cesar Detera, Ann lyn P. Detera, Lolita D. Bolayog, Cynthia D. Camara, Edwin T. Alcazar, Gina P. Alcazar, Denise Ann P. Sia Kho Po and Glenn R. Subia) dated 30 July 2018.

¹⁴ Id., p. 4.

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partiality to AMOVI and XBI. Accused Espino, Jr. and Baraan failed to comply with the requirements imposed by law for the valid issuance of SSMP (i.e. Area Clearance from MGB, endorsement and approval from appropriate government unit, and the Environmental Compliance Certificate from the Department of Environment and Natural Resources).¹⁵

- c) Because of the irregular issuance of SSMP to AMOVI, the latter was able to extract black/magnetite sand in the shorelines of Barangay Sabangan, Lingayen, Pangasinan in violation of the provisions of R.A. No. 7942 (New Mining Act) and Batas Pambansa 2665.¹⁶
- d) Through the issuance of GGP to XBI, the latter took over the illegal extraction of black/magnetite sand from AMOVI. Xypher Builders that was granted the GGP was the same Xypher Builders, Inc. registered with the Securities and Exchange Commission. Both have the same address and the directors and officials of both have interlocking interest.¹⁷
- e) The finding of MGB Region 1 and the testimony of witnesses show that there was an actual extraction black/magnetite sand in the area. Accused's argument that the extraction of sand was part of the soil remediation of the golf course to be put up in the area is but a mere cover up to the illegal mining activity.¹⁸
- f) Accused public officials' blatant disregard of the requirements of the mining law was made easy through the participation of the representatives of AMOVI and XBI, which is a clear indication that conspiracy indeed transpired. The interlocking interest of accused officials of both AMOVI and Xypher Builders make them co-conspirators by indispensable cooperation.¹⁹
- g) The alleged inadmissibility of the prosecution's documentary evidence was already laid to rest when the

¹⁵ Id., pp. 4-5.

¹⁶ Id., p. 5.

¹⁷ Id., pp. 10-13 & pp. 21-22

¹⁸ Id., pp. 13-19.

¹⁹ Id., pp. 19 & 22.

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Court through its Resolution dated 26 June 2018 admitted the same as part of the prosecution's evidence.²⁰

- h) The illegal extraction of black/magnetite sand without complying with the requirement of the mining law gave unwarranted benefit to AMOVI and XBI. Accused Baraan and Espino, Jr. further gave unwarranted benefit to XBI when they issued a Mineral Ore Export Permit to the said company for minerals extracted in the amount of Php10,750,000.00 despite lack of Mineral Processing Permit granted by the DENR.²¹

RULING

With respect to the ***Motion for Leave to File Demurrer to Evidence***²² of accused **Cesar E. Detera, Lolita D. Bolayog, Cynthia D. Camara, Edwin T. Alcazar, Gina P. Alcazar, Ann Lyn P. Detera, Denise Ann P. Sia Kho Po and Glenn R. Subia**, we find the arguments relied upon by the accused to be impressed **WITH MERIT**. The contention that they were indicted in this case solely on the fact that they were members of the Board of Directors and/or incorporators of AMOVI and XBI deserves a hard look or full review by this court by allowing accused Detera, et al. to exhaustively show the insufficiency of the prosecution's evidence in a demurrer to evidence.

Settled is the rule that mere knowledge, acquiescence or agreement to cooperate is not enough to constitute one as a conspirator, absent any active participation in the commission of the crime, with a view to the furtherance of the common design and purpose.²³ In other words, to hold an accused guilty as a co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the plan to commit the felony.²⁴

On the other hand, we find the ***Motion for Leave of Court to File Demurrer to Evidence***²⁵ of accused **Amado T. Espino, Jr., Rafael F. Baraan, and Alvin L. Bigay** to be **WITHOUT MERIT**. Accused Espino, Jr., et al.'s arguments that there was no actual magnetite/black sand mining and that they did not act in a manner attended by manifest partiality, evident bad faith, or gross inexcusable negligence, among others, are evidentiary in nature and are matters of

²⁰ Id., p. 19.

²¹ Id., pp. 20-21.

²² See note 1.

²³ Fernando vs. People, G.R. No. 229701, 29 November 2017.

²⁴ People vs. Dizon, G.R. No. 130742, 18 July 2000.

²⁵ See note 2.

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defense, the truth of which can best be passed upon after a full-blown trial on the merits.

However, the denial of accused Espino, Jr., et al.'s *Motion for Leave* is without prejudice to the filing of a demurrer to evidence without prior leave of court, but subject to the legal consequence provided under *Section 23, Rule 119 of the Revised Rules of Criminal Procedure*, that is, they shall waive their right to present evidence and are submitting this case for judgment on the basis of the evidence adduced by the prosecution.

Accordingly, the Court hereby **GRANTS** the *Motion for Leave to File Demurrer to Evidence* dated 23 July 2018 filed by accused Cesar E. Detera, Lolita D. Bolayog, Cynthia D. Camara, Edwin T. Alcazar, Gina P. Alcazar, Ann Lyn P. Detera, Denise Ann P. Sia Kho Po and Glenn R. Subia, and **DENIES** the *Motion for Leave of Court to File Demurrer to Evidence* dated 24 July 2018 filed by accused Amado T. Espino, Jr., Rafael F. Baraan, and Alvin L. Bigay.

Accused Detera, et al. shall file their demurrer to evidence within a non-extendible period of ten (10) calendar days upon receipt of this Resolution. The prosecution may file its comment/opposition within a non-extendible period of ten (10) calendar days counted from date of receipt of the demurrer to evidence.²⁶

Accused Espino, Jr., et al. are given a period of five (5) calendar days from receipt of this Resolution within which to file their Manifestation to inform this Court whether they will file a demurrer to evidence without leave of court.

The hearing set for the **presentation of initial defense evidence on September 18 and 19, 2018 at 1:30 in the afternoon** is maintained with respect to accused Espino, Jr., et al. The said scheduled date will be considered automatically cancelled upon receipt by the Court of accused Espino, Jr., et al.'s demurrer to evidence without leave of court, if one is filed.²⁷

SO ORDERED.



²⁶ Pursuant to A.M. No. 15-06-10-SC or the Revised Guidelines for Continuous Trial of Criminal Cases.

²⁷ Ibid.

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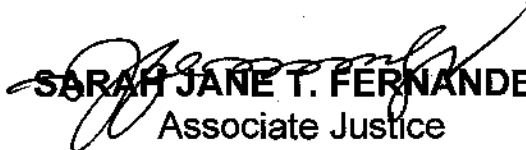
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KEVIN NARGE B. VIVERO
Associate Justice

WE CONCUR:



SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson



KARL B. MIRANDA
Associate Justice