



Republic of the Philippines
Sandiganbayan
Quezon City

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-17-CRM-0762 to 0769
For: Violation of Sec. 3(e), R.A.
No. 3019, as amended

- versus -

SB-17-CRM-0770 to 0777
For: Falsification of Public
Documents (Art. 171 of RPC)

DATU SAJID ISLAM UY
AMPATUAN, et al.,
Accused.

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

Promulgated:

September 04, 2018 *jal*

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RESOLUTION

CORPUS - MAÑALAC, J.:

This treats of accused Datu Andal “Unsay” Ampatuan, Jr.’s **Motion for Leave of Court to File Demurrer to Evidence** filed on August 13, 2018 and the prosecution’s **Comment/Opposition** thereto filed on August 20, 2018.

In the Minutes of the Proceedings dated July 31, 2018 and August 2, 2018, the prosecution’s formally offered exhibits were admitted in evidence, consisting of Exhibits “A” to “A-5”, “B” to “B-6”, “C” to “C-162”, “D” to “D-12”, “E” to “E-32”, “F” to “F-11”, “I” to “I-79”, “J” to “J-19”, “K” to “K-19”, “L” to “L-17”, “M” to “M-19”, “N” to “N-19”, “O” to “O-19”, “P” to “P-19”, “Q” to “Q-16”, “R” to “R-2”, “S” to “S-1”, “T” to “T-1”, “U”, “V”, “W” to “W-1”, “X” to “X-1”, “Y” to “Y-1”, “CC” to “CC-1” and “FF” to “FF-12”. Thus, the prosecution was deemed to have rested its case.

Both Minutes of the Proceedings dated July 31, 2018 and August 2, 2018 were received by accused Datu Andal “Unsay” Ampatuan, Jr., thru counsel, on August 6, 2018, thus, the filing of the motion on August 13, 2018 is well within the five (5) day period prescribed considering the last day for its filing on August 11, 2018 is a Saturday.

Handwritten initials and signature

Thus far, the prosecution evidence comprises of the testimonies of (1) **Arnel Pascual**, State Auditor, Special Audits Office (SAO) of Commission on Audit (COA); (2) **Rommel Remulla**, Assistant Vice President for Reseller Trade, Petron Corporation; (3) **Evelyn Monter**, State Auditor, Special Audits Office, COA; (4) **Hernani Maravilla**, Supervising Technical Audit Specialist, COA Regional Office IV-B, COA; (5) **Elsielin Masangcay**, Director IV of Cluster IV, Corporate Government Sector, COA; (6) **Lina Macaraig**, State Auditor V, Office of the Commissioner I, COA; (7) **Floreffe Avila**, State Auditor V, COA; (8) **Abdulrakman Asim**, Provincial Administrator, Maguindanao. The testimony of **Lolita Soriano**, Supervising Administrative Officer, SAO-COA, was stipulated upon she being the custodian of the documents enumerated in her Judicial Affidavit and that she had no participation in the preparation of the said documents.¹

The Arguments of the Motion

Accused Datu Andal “Unsay” Ampatuan, Jr. alleges that the prosecution evidence “reeks of contradictions” and thus seeks leave of court to file his Demurrer “to fully illustrate how the prosecution miserably failed in meeting their burden of proof.” It argues that the prosecution failed to overcome the presumption of innocence of accused Datu Andal “Unsay” Ampatuan, Jr., a private individual charged of conspiracy with co-accused public officers, culled from the following alleged “indisputable realities,” viz:

One, there is no proof of conspiracy as it failed to establish with particularity the violation or prohibited acts which he may have committed under Section 3(e) of RA 3019. There is allegedly “*not a single piece of evidence*” or a “*single signature*” from him that would **directly prove** that he conspired with the co-accused public officials involved in the subject transaction. The prosecution’s reliance on circumstantial evidence must also fail since there is nothing from the record to show sufficiently that he “figured into a common design with the public official x x x to maliciously enter into a transaction which tended to cause undue injury to the government” or that he benefited from the subject transaction. He maintains that the subject transactions were properly documented to prove that he merely intended to “legitimately conduct his business.”

Two, “companionship transcends conspiracy,” and since conspiracy had not been proved, accused Datu Andal, Jr., a private individual, could not be charged for violating Section 3(e) of RA 3019.

Three, the prosecution failed to establish that the public officers charged in this case gave unwarranted benefits, advantage or preference to

¹ Order dated July 3, 2018, Records, Vol. 3, p. 416

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accused Datu Andal, Jr., as it was disclosed during trial that the only gasoline station within the vicinity of Shariff Aguak was the latter's Petron Gasoline Station. Securing gas from the said station may even be beneficial to the government in terms of logistics in the transportation of supplies.

Citing the case of *Arce v. People of the Philippines*, the accused argues that "when the guilt of the accused has **not** been proven with moral certainty, xxx the presumption of innocence of the accused must be favored and his exoneration be granted as a matter of right." In order to prove his stand, he prays that he be given leave of court to demur to prosecution's evidence.

The Comment/Opposition

The prosecution maintains that it was able to establish all the elements of the crime charged and that the accused Datu Andal, Jr. conspired with his co-accused public officers. In its special audit on the subject transactions/projects of the Provincial Government of Maguindanao, the COA reported significant findings, viz: (1) the reported deliveries of fuel by Shariff Aguak Petron Station ranged from 70,000 liters to as high as 556,730 liters a day, which was beyond the capacity of the fuel station to supply; (2) upon inspection, the projects were either not implemented, or if implemented, were way below the reported accomplishment; (3) the transactions/projects were not subjected to public bidding in violation of RA 9184.

That in the Judicial Affidavit of COA Auditor Arnel Pascual,² he testified the Shariff Aguak Petron Station has only four (4) pumps/dispensers, thus "it is incapable of delivering the reported delivery of 556,730 liters in a single day." The evidence consisting of 2009 Purchase Requests and Purchase Orders of the Provincial Government of Maguindanao, the Charge Invoices and Official Receipts issued by Shariff Aguak Petron Station, show the fuel supplied, used and paid for the eight development projects involved in these cases was **614,650 liters of diesel**. Whereas, witness Rommel Remulla, *Assistant Vice President of Reseller Trade for Petron Corporation* testified that for the said period the said station purchased only a total of **456,000 liters of diesel** way below the amount it allegedly supplied the projects.

Actual inspection conducted on the eight projects also allegedly show the projects were not implemented in accordance with their program of work,³ thus, it was impossible for the projects to have consumed the reported 614,650 liters of diesel.

² Question No. 204, Judicial Affidavit of Arnel Pascual

³ Engr. Evelyn Monter, Judicial Affidavit; Engr. Hernani Maravilla, Judicial Affidavit

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And while “conspiracy transcends companionship,” the foregoing evidence show he was an indispensable part of the conspiracy with the accused public officials to defraud the Provincial Government of Maguindanao.

The prosecution argues also that the two modes of violation of Section 3(e) of RA 3019 consisting of causing undue injury to any party including the government or by giving any party unwarranted benefit, advantage or preference, are both present in the instant cases. The undue injury to the government is quantified from the Charge Invoices, Official Receipts, Disbursement Vouchers to the total amount of Php22,367,505.00 for the 614,650 liters of diesel allegedly purchased. The subject procurement of fuel from Shariff Aguak Petron Gas Station was in violation of Section 10, Article IV of RA 9184 as it was done without public bidding. Neither did it fall under any of the allowable exceptions provided in Article XVI thereof, hence, unwarranted benefit was given to the said gas station while the local government was deprived of the opportunity to secure the lowest obtainable price for the fuel. The allegation that the logistics of transportation of fuel from the subject gas station which is situated only around the vicinity may be beneficial to the government is “purely conjectural” in the absence of public bidding or canvass for the procurement.

Ruling

Rule 119, Section 23, Rules of Court, provides, *viz*:

Section 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.

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. (15a)

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.

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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. (n)

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 the issue."⁴ The party demurring challenges the sufficiency of the whole evidence to sustain a verdict.⁵ 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.⁶ 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."

For one to be successfully prosecuted under Section 3(e) of RA 3019, the following elements must be proven: [1] the accused is a public officer discharging administrative, judicial or official functions; [2] he must have acted with manifest partiality, evident bad faith or inexcusable negligence; and [3] his action has caused undue injury to any party, including the government, or has given any party any unwarranted benefit, advantage or preference in the discharge of his functions.

Although accused is a private individual, jurisprudence⁷ dictates that private persons, **when acting in conspiracy with public officers**, may be indicted and, if found guilty, held liable for violation of Section 3(e) of RA 3019 in consonance with the avowed policy of the anti-graft law to repress certain acts of public officers and private persons alike constituting graft or corrupt practices act.

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) in Criminal Cases

⁴ Gutib v. Court of Appeals, 371 Phil. 293, 300 (1999).

⁵ Ong v. People, G.R. No. 140904, 9 October 2000, 342 SCRA 372, 383, citing Gutib v. CA, *supra*.

⁶ Choa v. Choa, 441 Phil. 175,183 (2002), citing Ong v. People, *supra*; and Gutib v. CA, *supra*

⁷ People v. Go, G.R. No. 168539, March 25, 2014, Gregorio Singian, Jr. v. Sandiganbayan, et al., G.R. Nos. 195011-19, September 30, 2013; Santillano v. People, G.R. Nos. 175045-46, March 3, 2010, 614 SCRA 164; Go v. Fifth Division, Sandiganbayan, *supra*; Singian, Jr. v. Sandiganbayan, 514 Phil. 536 (2005); Domingo v. Sandiganbayan, G.R. No. 149175, October 25, 2005, 474 SCRA 203; Luciano v. Estrella, G.R. No. L-31622, August 31, 1970, 34 SCRA 769.

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Nos. SB-17-CRM-0762 to 0769, **unless effectively contradicted by evidence for the accused.**

The procurement and payment for the 614,650 liters of diesel fuel amounting to Php22,367,505.00 by the Province of Maguindanao to Shariff Aguak Petron Gas Station, is proven by the documents presented by the prosecution consisting of the charge invoices, purchase orders, disbursement vouchers and official receipts issued. The prosecution evidence is not lacking in prima facie proof of the irregularity thereof, considering the COA findings and the respective testimonies of prosecution witnesses as Auditors/Engineers who audited and inspected the transactions/ projects, attesting to the “failed work accomplishments” supposedly covered by the purchased fuel and lubricants, and concluding that the procurement of fuel supplies is “fictitious.” A fraudulent procurement is sufficient indicia of evident bad faith on the part of the persons involved therein.

The only issue raised by accused Datu Andal “Unsay” Ampatuan, Jr. to justify leave of court for demurrer is allegedly the lack of proof of his conspiracy with his co-accused public officers.

Conspiracy refers to a concert of design which may be inferred from the acts of the malefactors.⁸ Given such nature, direct proof is not required, it being rarely found.⁹

As such, conspiracy may be proven by circumstantial evidence, which may be characterized as that evidence which proves a fact or series of facts from which the facts in issue may be established by inference. To sustain a conviction, Rule 133, Section 5 of the Rules of Court requires that: 1) there be more than one circumstance; 2) the facts from which the inferences are derived must be proven; and 3) the combination of all the circumstances is such that it will result in a conviction beyond reasonable doubt.¹⁰

Here, accused Datu Andal “Unsay” Ampatuan, Jr. is the brother of his co-accused Datu Sajid Islam Uy Ampatuan, the governor of Maguindanao who signed the Purchase Requests, Purchase Orders, and Disbursement Vouchers for the fuel supplied in favor of Shariff Petron Gas Station. In turn, Datu Andal “Unsay” Ampatuan, Jr. is the owner of the Shariff Petron Gas Station. The purchased fuel supplies were found by COA to be “fictitious.” Even if as alleged that there is no single signature of Datu Andal “Unsay” Ampatuan, Jr. that appears in the prosecution’s documentary evidence, he remains to have benefited from the payment of the reported fictitious procurement. Unless satisfactorily explained to the contrary, the logical inference from these circumstances point to the conspiracy of the accused

⁸ People vs. Villaver, GR No. 133381, November 27, 2001

⁹ Angeles, Jr. vs. Court of Appeals, GR No. 101442, March 28, 2001

¹⁰ People vs. Luz Carpio vda. de Quijano, et al, G.R. No. 102045. March 17, 1993.

public officers and private individual involved in the subject irregular procurement of supplies.

The element of undue injury to the government here is quantifiable corresponding to the amount of alleged fraudulent fuel supplies, and the unwarranted benefit given the private accused who received the said payments.

The contention that the government could have even logistically benefited from the fuel supplies of Datu Andal "Unsay" Ampatuan, Jr.'s gas station in view of its proximity to the projects, is speculative at this stage, as no evidence has yet been presented for the defense. Similarly, accused's allegation that that the subject transactions were properly documented which proves that he merely intended to "legitimately conduct his business" with the province of Maguindanao is a matter of defense evidence.


Given the sufficiency of the testimonial and documentary evidence against the accused, leave of court for the accused to file a demurrer to evidence would serve no clear purpose but will only delay the proceedings in these cases. Under the circumstances, consistent with the ruling of the Supreme Court in **Singian, Jr. v. Sandiganbayan**,¹¹ it is incumbent upon the accused to adduce evidence on his behalf to refute the evidence of the prosecution.

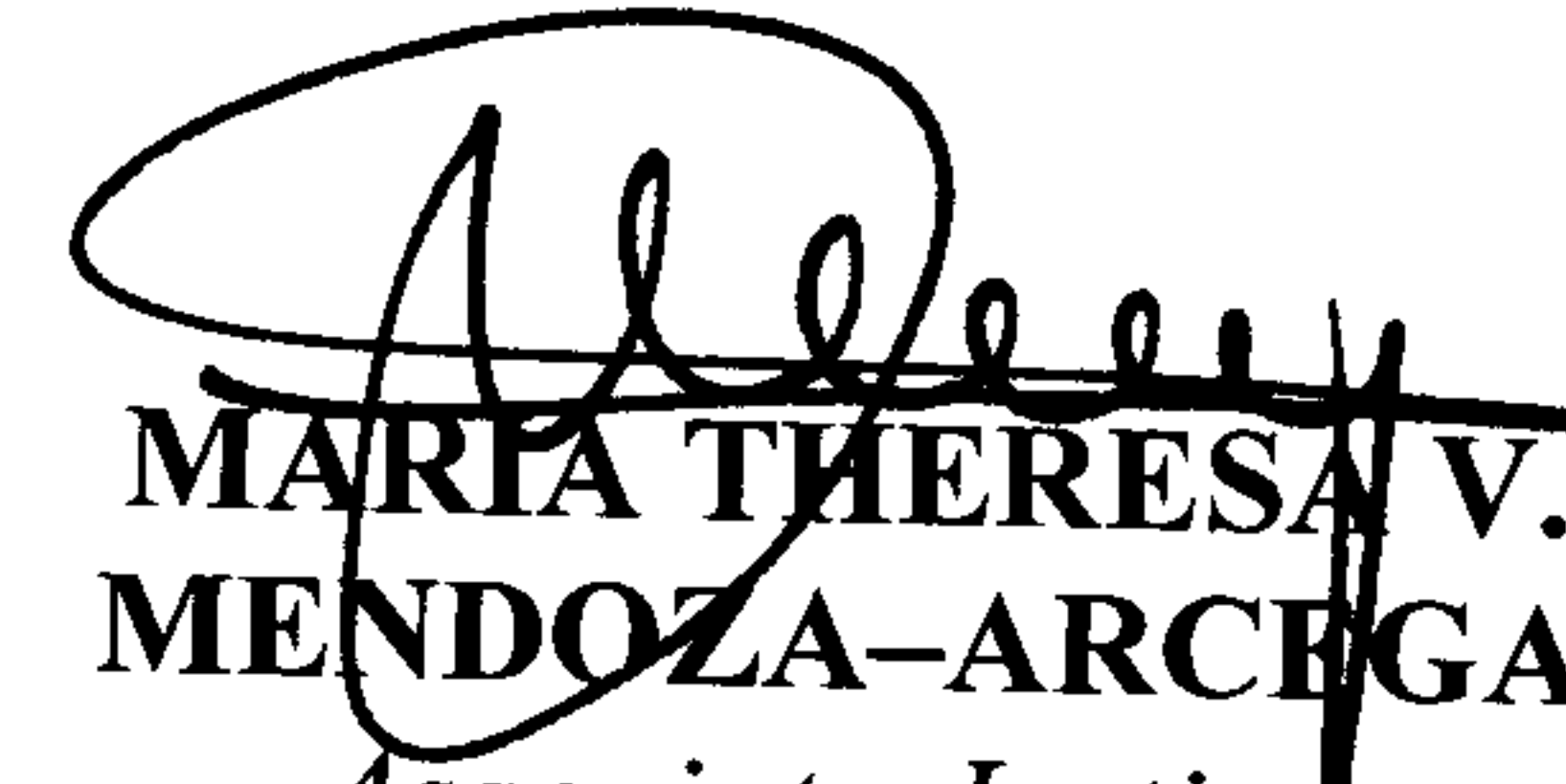
WHEREFORE, in the light of foregoing, the instant motion is **DENIED** for want of merit, without however precluding the accused Datu Andal "Unsay" Ampatuan, Jr. from filing his Demurrer to Evidence, **without leave of court**, within a non-extendible period of ten (10) days from receipt hereof, pursuant to Section 23, Rule 119 of the Rules of Court.

SO ORDERED.


MARYANN E. CORPUS-MANALAC
Associate Justice

WE CONCUR:


RAFAEL R. LAGOS
Chairperson
Associate Justice


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

¹¹ Gregorio, et al., G.R. Nos. 195011-19, September 30, 2013