



Republic of the Philippines

Sandiganbayan

Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on 16 October 2018.

Present:

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

The following resolution was adopted:

Crim. Case No. SB-16-CRM-0336 - People vs. NORBIDEIRI B. EDDING, ET AL.,

This resolves the following:

1. Accused Norbideiri B. Edding, Malik Mandi Tutuan, Absar Naing Caril and Abbas Sulaiman Samson's "MOTION FOR LEAVE TO FILE DEMURRER TO EVIDENCE" dated 3 October 2018;¹
2. Accused Nasser S. Mahamod and Jaapal C. Dodong's "MOTION FOR LEAVE TO FILE DEMURRER TO EVIDENCE" dated 3 October 2018;²
3. Accused Norbryan Edding's undated "MOTION FOR LEAVE OF COURT To File Demurrer to Evidence;"³ and
4. The prosecution's "CONSOLIDATED COMMENT/OPPOSITION" dated 06 October 2018.⁴

TRESPESES, J.

Submitted for the Court's resolution are the motions for leave of court to file demurrer to evidence filed by accused Norbideiri B. Edding, Malik Mandi Tutuan, Absar Naing Caril, Abbas Sulaiman Samson ("Norbideiri Edding, et al."), Nasser S. Mahamod, Jaapal C. Dodong ("Mahamod, et al.") and Norbryan Edding, and the prosecution's comment thereon.

¹ *Rollo*, Vol. 2, pp. 443 to 447.

² *Id.* at 449 to 483.

³ *Id.* at 454 to 456.

⁴ *Id.* at 468 to 484.

7
1
1

ACCUSED NORBIDEIRI, ET AL.'S MOTION

In their motion, accused Norbideiri Edding, et al. allege that the evidence presented by the prosecution is insufficient to establish accused's guilt beyond reasonable doubt. In particular, accused Norbideiri Edding, et al. claims that there was no evidence to prove that accused *Sangguniang Bayan* ("SB") members conspired and confederated to induce, persuade or influence accused Mayor Norbideiri Edding to sign all checks for expenditures in the operation and obligations of Sibuco, Zamboanga's SB.

In particular, accused Norbideiri Edding, et al. claim that there was no resolution passed or actions made prohibiting the vice mayor from signing disbursement vouchers and treasury warrants for his office or that of the SB. While there was a committee report, it is not binding outside of the deliberative assembly, which is the SB. Also, the approval of the said committee report is the legal duty and power of the SB, and hence, cannot be considered unlawful conspiracy. In addition, a committee report is not an enforceable act of the legislative. Even if the proposal by way of a committee report tends to violate a law, it did not ripen into a violation of law.

Accused Norbideiri Edding, et al. also argue that there is no proof that accused Mayor Norbideiri Edding allowed himself to be persuaded, induced and influenced by the said committee report. There was also no evidence that accused Mayor Norbideiri Edding was informed or furnished with a copy of the committee report for his action.

Accused Norbideiri Edding, et al. further aver that no evidence was adduced to show that the questioned disbursement for ₱134,900.00 was taken from the appropriation or allotment for the Office of the Vice Mayor ("OVM") or the SB. Accused Norbideiri Edding, et al. allege that, in fact, the disbursement was taken from the appropriation of the Office of the Municipal Mayor ("OMM"), and that this was why the check disbursement was signed by the latter.

In addition, accused Norbideiri Edding, et al. insist that there was no proof that the casual employees paid by the questioned disbursements were employees of the OVM or SB or were hired by them, to be paid out of the appropriations in their budget.

Accused Norbideiri Edding, et al. moreover point out that prosecution witnesses themselves testified in open court that the passage of the questioned SB Resolution (Exhibit "B") was at the initiative of Land Bank of the Philippines, and not by accused Mayor Norbideiri Edding. The Resolution had the concurrence of all SB members, and was even certified and approved by complainant Vice Mayor Munding.

2
1 8

Finally, accused Norbideiri, et al. contend that, in the first place, there was no proof that Vice Mayor Munding was authorized by the SB to draw checks for the OVM and SB from the depository bank of the local government of Sibuco, and that accused deprived him of such power.

ACCUSED MAHAMOD, ET AL.'S MOTION

Accused Mahamod, et al.'s motion is basically a reproduction of accused Norbideiri Edding, et al.'s motion.

ACCUSED NORBRYAN EDDING'S MOTION

Meanwhile, in his motion, accused Norbryan Edding argues that assuming that all of the prosecution's evidence are given full weight and credibility, it still failed to prove his guilt beyond reasonable doubt.

Accused Norbryan Edding alleges that the theory of the prosecution is that accused Mayor Norbideiri Edding persuaded, induced influenced, or conspired with the SB councilors to pass a resolution denying complainant the authority to create a separate bank account and sign for the same.

However, accused Norbryan Edding claims that none of the prosecution witnesses testified that they were so persuaded, induced or influenced to pass the questioned Resolution. On the contrary, the prosecution witnesses testified that what transpired was a series of regularly conducted SB sessions and meetings with clearly set agenda, chaired by complainant himself, which resulted in Resolutions to which no objections were raised, even by the complainant himself.

Accused Norbryan Edding adds that the municipal mayor has no control over the legislative branch, so it cannot be presumed that the SB members' actions were made at the former's behest.

Moreover, accused Norbryan Edding emphasizes that after failing to obtain the authorization requested, complainant neither pursued the several options available to him nor raised the issue again in subsequent SB proceedings.

Accused Norbryan Edding concludes that conspiracy cannot be presumed and must be proven beyond reasonable doubt. As there is no evidence of conspiracy, the demurrer which accused Norbryan Edding seeks to file has legal basis.

7.
11

PROSECUTION'S COMMENT

In its Consolidated Comment, the prosecution argues that the motions filed by all accused in this case must be denied for lack of merit because it failed to comply with the mandatory procedural and substantive requisites in the filing of a motion for leave to file demurrer to evidence.⁵

The prosecution points out that the motions of the accused failed to specifically state the grounds for filing the same as required under Section 23 of Rule 119 of the Rules on Criminal Procedure.⁶

Further, the prosecution alleges that at this stage of the proceedings, it was able to substantiate the existence of all the elements of Section 3 (a) of RA 3019.

As to the first element that the offender is a public officer, the same is undisputed because it was stipulated by the parties during pre-trial.⁷

With regard the second element, the prosecution believes that the testimony of private complainant and aggrieved party former Vice Mayor Mansur Sailama Munding substantiated this element. The testimonial evidence presented by former Vice Mayor Munding proved that *a)* all the accused conspired to deprive him the authority to sign all warrants drawn on the municipality during his term as Vice Mayor from June 2011 to June 2013, and *b)* that accused Mayor Norbiderri Edding allowed himself to be persuaded, induced and influenced by accused members of the *Sangguniang Bayan* in signing the check intended for the salaries of the casual employees of the *Sangguniang Bayan* of Municipality of Sibuco, Zamboanga del Norte.⁸ In addition, the prosecution pointed out several documentary evidence – *Exhibits "A" to "N" and its sub-markings* – to further prove that the second element of the crime charged was indeed substantiated.⁹

With regard the third element, the prosecution emphasized that the act of granting authority by all accused to Mayor Norbiderri Edding to sign the check for the salaries of the casual employees of the *Sangguniang Bayan* clearly violated the provisions of Sections 455 (a)(1) of 344 of Republic Act No. 7160 (The Local Government Code), and Sections 38, 39 and 43 of COA Circular No. 92-382 dated 03 July 1992. The mentioned provisions unequivocally vest the authority to the vice mayor of a local government unit

⁵ *Rollo*, Vol. 2, p. 468.

⁶ *Id.* at 469.

⁷ *Id.* at 470.

⁸ *Id.* at 471.

⁹ *Id.* at 477 to 481.

7.
1 ✓

X-----X

to draw all warrants on the municipal treasury for all expenditures appropriated necessary for its operations; not to the mayor, as in this case.¹⁰

OUR RULING

We **deny** accused's respective motions for leave to file demurrer to evidence for lack of merit.

A demurrer to evidence is 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 to make out a case or sustain the issue. The party filing the demurrer challenges the sufficiency of the prosecution's evidence. For this reason, the Court is tasked to ascertain if there is competent or sufficient evidence to establish a *prima facie* case to sustain the indictment or support a verdict of guilt.¹¹

Pursuant thereto, the accused, in his motion for leave of court to file a demurrer to evidence, is required by Section 23, Rule 119 of the Rules of Court "to specifically state (the) grounds" for claiming that there is insufficient evidence presented to warrant his conviction, to wit:

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.

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.

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. (Underscoring supplied.)

¹⁰ *Rollo*, Vol. 2, p. 481.

¹¹ *People v. Sandiganbayan (2nd Division)*, G.R. No. 197953, 5 August 2015.

7.
d
r

In their respective motions for leave of court to file demurrer to evidence, accused claim that the prosecution was unable to prove that they are guilty beyond reasonable doubt of the above crime.

However, when tested against the standard set by the aforecited Rule, accused's supposed grounds for seeking leave of court to file their demurrers lack the specificity necessary to substantiate their position – that the prosecution was not able to prove that he is guilty of the crime charged beyond reasonable doubt.

Accused Norbideiri Edding, et al. and accused Mahamod, et al.'s claim that there is no proof that accused Mayor Norbideiri Edding allowed himself to be persuaded, induced and influenced by accused SB members is a general assertion and legal conclusion.

Meanwhile, their allegation that the disbursement of ₱134,900.00 was signed by accused Mayor Norbideiri Edding because the disbursement was taken from the appropriation of the Office of the Municipal Mayor (“OMM”) is a matter of defense, rather than a specific allegation of the inadequacy of the prosecution's evidence. This only highlights the necessity of proceeding with the continuation of the trial for the reception of accused's evidence, where he may present countervailing evidence in his defense.

On the other hand, the motion filed by Norbryan Edding is premised on his understanding of the supposed theory of the prosecution that accused Mayor Norbideiri Edding persuaded, induced influenced, or conspired with the SB councilors to pass a resolution denying complainant the authority to create a separate bank account and sign for the same. However, Norbryan Edding's understanding of the prosecution's theory is contrary to that stated in the Information.¹²

The Information alleges that it is the accused SB members who were alleged to have persuaded, induced and influenced accused Mayor Norbideiri Edding to “sign all checks issued by the Municipality, including checks issued for the expenditures appropriated for the operation and obligations of the *Sangguniang Bayan* of Sibuco and the Vice Mayor's Office xxx” while accused Mayor Norbideiri Edding allowed himself to be so persuaded, induced or influenced by the accused SB members.

In fine, accused's supposed grounds for their motion are mere legal conclusions. They do not point out which elements of the crime have not been sufficiently established or were belied by particular pieces of evidence presented by the prosecution. For their failure to comply with the requirement of the Rules, the motions must be dismissed.

¹² Rollo, Vol. I, pp. 1-3.

7.
/ f

Minute Resolution

People vs. Norbideiri B. Edding, et al.

SB-16-CRM-0336

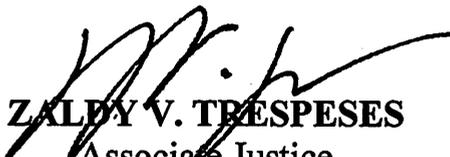
Page 7 of 7

X-----X

WHEREFORE, in view of the foregoing, the motions for leave of court to file demurrer to evidence filed by accused Norbideiri B. Edding, Malik Mandi Tutuan, Absar Naing Caril, Abbas Sulaiman Samson, Nasser S. Mahamod, Jaapal C. Dodong and Norbryan Edding are **DENIED** for lack of merit.

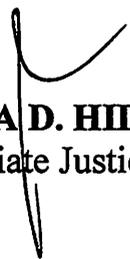
Let the initial presentation of evidence for the defense proceed on **October 23, 24, 25, and 29, 2018 at 8:30 in the morning**, as previously scheduled.

SO ORDERED.


ZALDY V. TRESPESES
Associate Justice

WE CONCUR:


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


GEORGINA D. HIDALGO
Associate Justice