



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:

October 17, 2018 *lal*

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RESOLUTION

CORPUS - MAÑALAC, J.:

For consideration is the **Motion for Leave to File Demurrer to Evidence** seasonably filed by accused Datu Sajid Islam Uy Ampatuan ("*Datu Sajid*," for brevity) on September 4, 2018 and the prosecution's Comment/Opposition thereto filed on September 12, 2018.

Antecedently, the prosecution presented the testimonies of the following witnesses:

- (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;
Floreffe Avila, State Auditor V, COA;
- (7) **Abdulrakman Asim**, Provincial Administrator, Maguindanao; and

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- (8) The stipulated testimony of **Lolita Soriano**, Supervising Administrative Officer, SAO-COA, that she can identify the documents enumerated in her Judicial Affidavit as the custodian thereof.¹

On July 9, 2018, the prosecution formally offered its documentary 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”, which were admitted in the *Minutes of the Proceedings* dated July 31, 2018 and August 2, 2018.

The Motion

Accused Datu Sajid avers that “the evidence adduced by the prosecution is insufficient to establish his guilt beyond reasonable doubt,” setting forth the following ratiocinations:

The prosecution failed to prove that he had any participation in the transactions covered by the *Disbursement Vouchers* and the supporting documents referred to as *Exhibits “I” to “I-47,”* considering that they do not bear his name and signature. On the other hand, the respective *Statements of Work Accomplished* (SWAs) for the projects (without reference to specific markings) only show his signature as approving authority but there is no evidence that he knew these SWAs were spurious. Invoking the “Arias doctrine,” he claims that heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies or enter into negotiations.

Datu Sajid likewise argues that he was not informed that Notices of Disallowance had been issued by the Commission on Audit (COA) relating to the subject transactions, nor was he given copies thereof, in violation of his constitutional right to be informed of the charges against him. His right to speedy disposition of cases was also violated by the Ombudsman in incurring a delay of almost eight (8) years in its investigation and resolution of the cases.

Discussing the elements of violation of Section 3(e) of RA No. 3019 charged in **SB-17-CRM-0762 to 0769**, he contends that the prosecution evidence failed to prove the same. *Firstly*, the prosecution’s Formal Offer of

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

Evidence does not include any proof that he was a public officer at the time material to these cases. *Secondly*, there is no proof that he acted with manifest partiality, evident bad faith or inexcusable negligence considering that the *Disbursement Vouchers* which bear his signatures were “certified complete with supporting documents” and “funds were available” prior to his approval thereof. *Thirdly*, there is no evidence of undue injury to the government or of unwarranted benefit to *Shariff Aguak Petron Station*, considering that it was more convenient and advantageous to the LGU of Maguindanao to utilize *Shariff Aguak Petron Station* which is the only gasoline station existing in the area.

As to the alleged lack of bidding, accused Datu Sajid argues he was not a member of the Bids and Awards Committee (BAC) nor was he the one who appointed the members thereof.

Citing the case of *Jaca v. People*² accused Datu Sajid holds that “the law requires that the intent or negligence attending the commission of the prohibited act should meet the gravity required by law.” He adds that the neglect or disregard of duty must be willful and intentional for a violation to exist, which the prosecution failed to prove.

As for the charge of *Falsification* in **SB-17-CRM-0770 to 0777**, accused Datu Sajid reiterates that there is no evidence to establish that he was involved in the preparation of the SWAs, which he merely signed as “approving authority” after the Project Engineer, Provincial Government Assistant Department Head, OIC-Provincial Engineer had affixed their respective signatures therein. The case of *Magcusi v. Sandiganbayan*³ allegedly applies, upholding the application of the “Arias doctrine” in the reliance by a head of office, *albeit* misplaced, on a subordinate upon whom the primary responsibility rests, absent a clear case of conspiracy. He further maintains the prosecution failed to prove that he had taken advantage of his official position in making the alleged falsification from his mere signature in the SWAs. The case of *Adaza v. Sandiganbayan*⁴ held that the offender is considered to have taken advantage of his official position when (1) he has the duty to make or prepare or otherwise to intervene in the preparation of a document; or (2) he has the official custody of the document which he falsifies.

The Prosecution’s Comment/Opposition

The prosecution counters that Datu Sajid’s indictments in **SB-17-CRM-0762 to 0769** were for awarding the supply of fuel and

² G.R. No. 169251, December 20, 2006.

³ 310 Phil. 14 (1995)

⁴ G.R. No. 154885, July 8, 2005, 464 SCRA 460, 478-479

lubricants to *Shariff Aguak Petron Station* in various amounts covered by the Purchase Requests marked as *Exhibits* "J-4", "K-4", "L-4", "M-4", "N-4", "O-4", "P-4", "Q-4," Purchase Orders marked as *Exhibits* "J-3", "K-3", "L-3", "M-3", "N-3", "O-3", "P-3", "Q-3" and Disbursement Vouchers marked as *Exhibits* "J", "K", "L", "M", "N", "O", "P" and "Q" which all bear his name and signature. On the other hand, his indictments in **SB-17-CRM-0770 to 0777** for unlawfully making untruthful narration of facts in the SWAs were based on *Exhibits* "J-19", "K-19", "L-17", "M-19", "N-19" "O-19", "P-19" and "Q-16" in relation to the Programs of Work marked as *Exhibits* "J-5", "K-5", "L-5" "M-5", "N-5", "O-5", "P-5" and "Q-5," which likewise bear his name and signature.

Too, the prosecution avers that Datu Sajid's reliance on the *Arias doctrine* is "misplaced," alleging that the circumstances in these cases were different from those of the *Arias case*.

Here, it contends that the circumstances of the subject transactions required "plenty of circumspection" from the accused, but he took no steps to correct the alleged irregularities indicative of conspiracy. **For One**, the Procurement Law mandates the conduct of bidding for the procurement of the subject fuel and lubricants, yet Datu Sajid approved the subject purchases even if bidding documents were "conspicuously absent." **Two**, he was aware that his brother owns the *Shariff Aguak Petron Station*, as the supplier's name was indicated in the Purchase Orders, Disbursement Orders, and other documents presented to him for approval. **Three**, he was in a position to know the limited capacity of his brother's gas station to supply the fuel and lubricants, as testified to by **Auditor Arnel Pascual**, as he could have inquired before signing the documents presented to him for signature. **Four**, the status of project implementation was not unknown to Datu Sajid when he signed the SWAs which reflected a 100% completion, whereas **Engr. Maravilla** of COA testified that for the rehabilitation of Poblacion Barangay Road, "*there was no project implementation because the road was not passable to ordinary vehicles due to heavy vegetation*" and that "*there was no point measuring the road because there was clearly no visible project accomplished in the site.*"

As to the allegation that Datu Sajid was not given copies of the Notices of Disallowance No. MAG-110130-101 (08 & 09) dated December 28, 2011, the prosecution attached a copy of Datu Sajid's **Memorandum of Appeal** to the COA corresponding to the said Notices of Disallowance, thus, proving he was given copies thereof. Anent the alleged inordinate delay, the prosecution argues that the issue was already threshed out and disposed of by the Court which denied his Motion to Dismiss.

partiality, evident bad faith, or gross inexcusable negligence. Proof thereof consists of his alleged awareness that *Shariff Aguak Petron Station* is owned and operated by his brother, which had limited capacity to supply fuel to the LGU, and that there was no competitive bidding in the procurement. These allegedly were “red flags” that should have impelled him to be of circumspect before awarding the contract. And that in the performance of his functions, he caused *undue injury* to the Government, as well as *gave any party unwarranted benefit*, advantage or preference in view of the following: (1) **COA Auditor Lina Macaraig** testified that the reported 614,650 liters of diesel purportedly used for the subject projects in 2009 (amounting to a total of Php22,367,505) was “overstated;” (2) **Rommel Remulla**, Assistant Vice-President for Reseller Trade of Petron testified that *Shariff Aguak Petron Station* purchased only a total of 456,000 liters of diesel in 2009; and (3) **Engr. Monter** of COA, who inspected the rehabilitation project of Talibarok Meta Road, testified that the approved Program of Work indicated a road length of nine (9) kilometers but the actual length measured was only one (1) kilometer. Likewise, the absence of public bidding for the fuel purchases deprived the Province of Maguindanao the benefit of the lowest obtainable price.

In the charge of Falsification, the prosecution argues the elements were shown to be present. Datu Sajid signed each and every SWAs containing the certifications of the officers-in-charge that the same were essentially regular, when in truth and fact, the projects were either not implemented or if implemented were way below the reported accomplishment. That while Datu Sajid was not expected to personally inspect the projects undertaken, the patent irregularities should have prodded him to go beyond the representations and certifications made by the provincial engineers, considering that the projects were just within the vicinity of Shariff Aguak.

The prosecution further points to **Time Book and Payroll** as *Exhibits* “J-15”, “J-18”, “K-18”, “L-13”, “M-15”, “M-18”, “L-13”, “M-15”, “M-18”, “N-15”, “N-18”, “O-15”, “O-18”, “P-15”, “P-18” and “Q-15” attached to the



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SWAs which revealed that only one (1) person signed for almost all of the names of purported foremen and laborers, considering the apparent similarity of the strokes of the signatures shown in the face thereof.

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.

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"A *demurrer to the 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, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is **competent or sufficient evidence** to sustain the indictment or to support a verdict of guilt."⁵

"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."⁶

"Sufficient evidence for purposes of frustrating a demurrer thereto is such evidence in character, weight or amount as will legally justify the judicial or official action demanded according to the circumstances. To be considered sufficient therefore, the evidence must prove: (a) the commission of the crime, and (b) the precise degree of participation therein by the accused."⁷

In the instant cases, accused Datu Sajid is charged of conspiracy with his co-accused with two offenses: (1) Violation of Section 3 paragraph (e) of RA 3019 in **SB-17-CRM-0762 to 0769**; and (2) Falsification of Public Documents in **SB-17-CRM-0770 to 0777**.

⁵ Soriquez v. Sandiganbayan (Fifth Division), 510 Phil. 709, 706

⁶ Id.

⁷ Gutib v. Court of Appeals, 371 Phil. 293, 300, 305 (1999)

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Section 3 paragraph (e) of RA 3019, reads:

SEC. 3. *Corrupt practices of public officers.* In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

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- (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

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.

The prosecution was able to establish the foregoing elements.

First, as correctly pointed out, Datu Sajid's stipulation as to his identity and position as the Provincial Governor of Maguindanao in the Pre-Trial Order dated February 12, 2018 settles the existence of the first requisite of him being a "public officer" during the time material to these cases. That he was discharging administrative or official function is clearly shown by his name and signature appearing on the Purchase Requests, Purchase Orders and SWAs - all official documents that he signed - which facilitated the disbursement of the total amount of Php22,367,505 for the 614,650 liters of diesel purportedly used for the projects in 2009 in favor of *Shariff Aguak Petron Station*.

Second, Datu Sajid's "bad faith, manifest partiality or gross inexcusable negligence" is circumstantially shown by his approval of the questioned transactions, notwithstanding a prima facie proof of the irregularities thereof. The COA findings and the respective testimonies of prosecution witnesses as Auditors or Engineers who audited and inspected the transactions or projects, attested to the "failed work accomplishments" covered by the purchased fuel and lubricants, concluding that the

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procurement of fuel supplies is “fictitious.” A fraudulent procurement is sufficient indicia of evident bad faith on the part of the persons involved therein, including Datu Sajid who signed the documents as approving authority. Thus, he is necessarily responsible for the anomalous disbursements, unless his participation therein is rebutted by sufficient evidence to the contrary.

Third, the undue injury caused to the Province of Maguindanao is recapped and quantified by the payment of the amount of Php22,367,505 for the 614,650 liter of diesel and lubricants purportedly used for the projects, which were prima facie shown to have not been completely implemented. Besides, the projects were procured without the conduct of public bidding that deprived the local government of the opportunity to obtain the lowest possible costs. Resultantly, these circumstances point to corresponding unwarranted preference and benefit to *Shariff Aguak Petron Station*, owned by Datu Sajid’s brother, considering the prima facie proof of the limited capacity of the said gas station to supply the reported fuel purchases.

As to the charge for violation of Article 171, paragraph (4) of the Revised Penal Code, the same provides:

ART. 171. *Falsification by public officer, employee or notary or ecclesiastic minister.* The penalty of *prision mayor* and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

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4. Making untruthful statements in a narration of facts.

The elements of falsification in the above provision are as follows: (a) the offender makes in a public document untruthful statements in a narration of facts; (b) he has a legal obligation to disclose the truth of the facts narrated by him; and (c) the facts narrated by him are absolutely false.⁸

In *Fullero v. People*,⁹ the Supreme court held that “it must also be proven that the public officer or employee had taken advantage of his official position in making the falsification. The offender is considered to have taken advantage of his official position when (1) he has the duty to make or prepare or otherwise to intervene in the preparation of a document; or (2) he has the official custody of the document which he falsifies.”

These elements were sufficiently established.

⁸ Fullero v. People, G.R. NO. 170583, September 12, 2007

⁹ Id.

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First, petitioner was a public officer, then being the Governor of the Province of Maguindanao, when he signed and approved the SWAs, which are public documents, respecting the eight (8) questioned projects. The untruthful statements contained therein reads, viz: “*certify that the amount of work accomplished stated above are correct and all labor materials in connection with this project were already paid,*” and that “*all work items were verified by the undersigned and were accomplished in accordance with the approved plans program of works and specification, and that the materials used in this project have been tested and passed all requirements.*” Having signed the SWAs, Datu Sajid adopted and approved of the foregoing statements, a circumstantial evidence of conspiracy with his co-signatories to the SWAs.

Second, being the Provincial Governor who was the final approving authority, he had the duty to disclose the truth in the said certifications and to ascertain the veracity of the representations therein before affixing his signature thereto.

Third, the facts or statements appearing in the SWAs were untruthful based on the investigation conducted by the COA and testified to by the prosecution witnesses who conducted the respective inspections of the projects and examinations of the documents. Prima facie evidence show that the projects were either not implemented or if implemented were way beyond the reported accomplishment.

Finally, as a public officer then being the Governor of the Province of Maguindanao, Datu Sajid’s intervention in the preparation of the SWAs was required, as in fact, he was the final approving officer.

Datu Sajid’s invocation of the “*Arias doctrine*” that he may allegedly rely in good faith on the works of his subordinates as the head of the local government of the Province of Maguindanao, is negated by the prima facie evidence of the prosecution showing his complicity in the anomalous procurement subject of these cases. Datu Sajid needs to present proofs to rebut or contradict the same.

It is likewise too late for Datu Sajid to re-argue the alleged inordinate delay in the investigation of the cases, an issue which has been earlier disposed of by the Court.

Given the sufficiency of the testimonial and documentary evidence to sustain the indictments against the accused, consistent with the ruling of the Supreme Court in *Singian, Jr. v. Sandiganbayan*,¹⁰ it is incumbent upon the accused to adduce evidence on his behalf to refute the allegations of the

¹⁰ Gregorio, et al., G.R. Nos. 195011-19, September 30, 2013

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prosecution. To allow him Leave of Court at this stage will only delay the proceedings in these cases.

WHEREFORE, the foregoing considered, the instant motion is **DENIED** for want of merit without however precluding the accused Datu Sajid Islam Uy Ampatuan 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
Associate Justice
Chairperson


MARIA THERESA V. MENDOZA - ARCEGA
Associate Justice