REPUBLIC OF THE PHILIPPINES
Sandiganbayan
QUEZON CITY

SEVENTH DIVISION

MINUTES of the proceedings held on October 17, 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-18-CRM-0529

PEOPLE v. ROMEL P. YOGORE, ET AL.

Before the Court are the following:

1. Accused Romel P. Yogore's "MOTION FOR LEAVE OF COURT TO FILE DEMURRER TO EVIDENCE" dated September 24, 2018;

2. Accused Jonie B. Nieve's "MOTION FOR LEAVE OF COURT TO FILE DEMURRER TO EVIDENCE" dated September 21, 2018;

3. Accused Giovanni M. Robles, Ernesto S. Genobis, Daisy C. Galve, and Merlene E. Magbanua's "MOTION FOR LEAVE OF COURT TO FILE DEMURRER TO EVIDENCE" dated September 26, 2018; and

4. The prosecution's "CONSOLIDATED OPPOSITION" dated October 5, 2018.

GOMEZ-ESTOESTA, J.:

For resolution are the separate *Motions for Leave of Court to File Demurrer to Evidence* filed by accused Romel P. Yogore, Jonie B. Nieve, and Giovanni M. Robles, Ernesto S. Genobis, Daisy C. Galve and Merlene E. Magbanua.

In his *Motion,*[1] accused Yogore claims that the mere failure to conduct public bidding does not automatically amount to a violation of Sec. 3(e) of R.A. 3019, absent other irregularities. The procurement of the subject supplies was for the benefit of the constituents in Valladolid, and was not done

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[1] Records, Vol. 6, pp. 319-341

with evident bad faith. J.B. Nieve Hardware and Construction Supplies offered the lowest quotation for the subject supplies; hence, there was no manifest partiality in its favor. While the Purchase Order[2] was dated January 8, 2009, or later than the Inspection and Acceptance Report[3] dated December 18, 2008, this was a mere typographical error and does not demonstrate gross inexcusable negligence.

Moreover, undue injury was not proven in view of the exclusion of the COA Annual Audit Reports, and the prosecution's failure to prove the issuance of a Notice of Disallowance against the subject procurement. Neither was it proven that J.B. Nieve Hardware and Construction Supplies was given unwarranted benefit, advantage or preference, because it actually submitted the lowest quotation, and eventually fulfilled its obligation. Conspiracy among the accused was likewise not proven.

Accused Nieve, for his part,[4] claims that in view of the exclusion of the delivery receipts as evidence, there is no proof that he delivered materials for the project, and his participation in the crime charged was thus not established.

Finally, accused Robles, Genobis, Galve and Magbanua[5] make a general claim that the prosecution failed to prove their case against them, which should thus be dismissed.

In its *Consolidated Opposition,*[6] the prosecution countered:

As regards Yogore's Motion:

The subject procurement was done without conducting public bidding. Citing Sec. 52 of R.A. 9184, and Sec. 52.2 of its Revised Implementing Rules and Regulations, the prosecution contends that shopping, as an alternative mode of procurement, was unduly resorted to, and this was tantamount to acting with evident bad faith, manifest partiality or gross inexcusable negligence. There was no emergency that would justify shopping, and the mere request to immediately implement the project does not warrant dispensing with public bidding. Further, documents show that delivery and inspection preceded the sending out of quotations, which cannot be attributed to mere typographical error since the quotations clearly show that they were sent out and received by the BAC on the same day. J.B. Nieve Hardware and Construction Supplies did not offer the lowest quotation, but, as testified by prosecution witness Larry Concepcion, was only awarded the contract, though he could not remember who among the three suppliers gave the lowest quotation. Finally, the lack of public bidding likewise resulted in giving unwarranted benefits and advantage to J.B. Nieve Hardware and Construction

[2] Exhibit "A-8"
[3] Exhibit "A-6"
[4] Records, Vol. 6, pp. 352-357
[5] Id., pp. 364-368
[6] Id., pp. 387-395

Supplies, which was owned by accused Nieve, accused Yogore's brother-in-law.

As regards Nieve's Motion:

Notwithstanding the exclusion of the delivery receipts, the Inspection and Acceptance Report proved the delivery of the subject supplies, as otherwise, there would be nothing to inspect and accept. Further, the duplicate copy of the disbursement voucher proved accused Yogore's payment for the subject supplies purchased from accused Nieve, his brother-in-law.

As regards Robles, et al.'s Motion:

The Motion did not specifically state a ground, contrary to Sec. 23 of Rule 119 of the Rules of Court.

In the same *Consolidated Opposition*,[7] the prosecution likewise pointed out that a mere two (2) days after the execution of the letter-request of Dr. De La Fuente[8] on December 16, 2008, the subject supplies were delivered, inspected and accepted from J.B. Nieve Hardware and Construction Supplies even without a quotation from the supplier. The quotation was submitted only on December 19, 2008. Conspiracy was patent in the BAC's recommendation of the adoption of alternative methods of procurement, and accused Yogore's approval of the same without justifiable reason.

THE COURT'S RULING

Section 23 of Rule 119 provides:

> ***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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> x x x
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> **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.
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> x x x

[7] Vide: paragraph 18; Records, Volume 6, p. 393
[8] Exhibit "A-1"

As properly raised by the Prosecution, the *Motion* filed by accused Robles, et al. lacks the specific grounds required by Sec. 23 or Rule 119. The vintage case of *Hermanos v. Yap Tico, et al.*[9] is here quoted in detail as it clearly and succinctly ruminated the sentiment of the Court tasked to resolve a *Demurrer,* albeit in a civil case, looming in its own scarcity, *viz:*

> To the complaint before us a demurrer was interposed, stating merely that the complaint did not allege facts sufficient to constitute a cause of action. **No particular ground was specified. No specific failure was asserted or named. No precise weakness was pointed out.** The order overruling the demurrer does not indicate that the court was informed as to the specific grounds upon which it was based. Certainly, so far as the records goes, the plaintiffs never knew until after the demurrer was decided precisely what the defendant was driving at when he presented it.
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> **Under such conditions, we do not feel that we should use our discretion to indulge presumptions in favor of the demurrant in determining whether or not the allegations of the complaint are sufficient. We do not feel like going out of the beaten path, even if we could, to search for defects in the complaint when neither the plaintiff nor the court was precisely informed of the alleged defects until it was too late to be use to either**. We do not feel like favoring a demurrer which is as full of defects as the court overruling the demurrer should be sustained if there is any legal ground upon which it can be, although such ground was not presented by the court below as one of the reasons for its decision. The fact that the demurrer was worthless as a pleading is one of the strongest reasons for overruling.
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> It has been urged that our decision requiring that in all demurrers the specific grounds of the particular objection should be set out distinctly, is against the weight of authority. We do not think so. But if it were, we should still be forced, in conscience, to stand upon the proposition as we have stated it, as it seems to us to be fundamentally right and to be fully supported by reason and logic.
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> xxx xxx xxx xxx.
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> It is claimed, following the old theory, that the general demurrer searches the whole record; but if it searches, it does not discover or disclose. It may search, but if it finds anything, it puts it carefully away in a dark place, cautiously concealing it from the eyes of the court and the knowledge of the adversary. The reason for this is that, if the court or the party knew the precise defect that had been "searched," there would be an immediate amendment. If the party against whom a demurrer is interposed can be kept from discovering the real defect in his pleading until he is deeply in the meshes of demurrant's net, then the case many times is substantially won. He cannot escape except by loss of so much time and at so great expense that, many times, it is not worth while to recommence or continue his action.

[9] G.R. No. 6791, March 27, 1913

> It has been the policy of modern legislation to do away with these objectionable features, as well as others, and to that end the general demurrer has been, effect, abolished in a number of States. Our own statute requires that "the demurrer must distinctly specify the grounds upon which any of the objections to the complaint, or to any of the causes of action therein stated, are taken."
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> A pleading is not an instrument of deception. It is not something to get parties into trouble. It is not to be used to dig pitfalls or to lay traps or snares. It is not to be used to deceive but to inform; not to befog but to clarify; not to cause trouble but to obviate it; not to make expense but to same it. **A demurrer, for example, should not leave the court and the party against whose pleading it is aimed as ignorant of the defect in the offending pleading as before the demurrer is filed.** Many times the objection that the complaint does not state facts sufficient to constitute a cause of action means very little. There are occasions, of course, when it is sufficient. But is certain that no injury can ever result from naming the precise reason why the complaint does not state facts sufficient to constitute a cause of action; and , in the great majority of cases, great good will come of it. Take this very case. **Much of the real difficulty and uncertainty would have been avoided if the demurrer had pointed out the precise defect which it was claimed was found in the complaint.** If the demurrer had specified and stated that the complaint was defective, if it were really so defective, in that it alleged that the defendant had levied simply upon the interest of Mendezona in the premises known as the right to repurchase, something which he had a right to do and upon which no cause of action could be predicated, then the plaintiff would have been given a fair opportunity to meet the objection, either by amending his complaint and alleging a levy by the defendant upon the corpus of the property, or by standing upon the complaint and submitting to the court the question of law whether the defendant had a right to levy upon the right of repurchase. If the plaintiff had amended by alleging a levy upon the corpus, then the demurrer and all the questions relating thereto, now vexing the parties, would have been out of the case. If the plaintiff really intended to allege just what the demurrant now claims that he did allege, then the question of law above referred to would have been clearly presented and the case entirely resolved by the decision of that question. Indeed, it is more than probable that the plaintiff, if his complaint was really defective, would have withdrawn it after full consideration of the objection urged against it. [Emphasis supplied]

This infirmity renders leave of court unwarranted for accused Robles, et al. to file a demurrer to evidence.

Neither can leave of court be granted to accused Yogore and Nieve.

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.[10] That is all. This, despite accused's own assessment on the probative weight of the evidence presented.

The accused have been charged with violation of Sec. 3(e) of R.A. 3019, the elements of which are:

> (1) the offender is a public officer;
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> (2) the act was done in the discharge of the public officer's official, administrative or judicial functions;
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> (3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and
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> (4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.[11]

Both the Local Government Code[12] and R.A. 9184, or the Government Procurement Reform Act[13] require that all procurement be done through competitive public bidding. The prosecution presented sufficient evidence of the accused's deviation from this requirement, and raised doubts on the propriety of the accused's resort to alternative modes of procurement.

The elements of violation of Sec. 3(e) of R.A. 3019 appears to have been sufficiently established by the following prosecution evidence, among others:

Elements	Evidence Presented
(1) the offender is a public officer;	That accused Yogore, Robles, Manayon, Genobis, Galve, and Magbanua were all public officers at the time material to the case is subject of stipulation.[14] Accused Nieve has been charged for having conspired with the accused public officers.
(2) the act was done in the discharge of the public officer's official, administrative or judicial functions;	
(3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and	Exhibit "A-3" (BAC Resolution No. 02, Series of 2008) Exhibits "A-4" (Purchase Request dated December 18, 2008), "A-6" (Inspection and Acceptance Report), dated December 18, 2008), "A-7" (Quotation of JB Nieve Hardware and Construction Supplies dated December 19, 2008), and "A-8" (Purchase Order dated January 8, 2009) Exhibit "A-12-d" (Disbursement Voucher)
(4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.	

[10] *Singian v. Sandiganbayan, et al.*, G.R. Nos.195011-19, September 30, 2013
[11] *Sison v. People*, G.R. Nos. 170339, 170398-403, March 9, 2010.
[12] Sec. 356, Local Government Code
[13] Sec. 10, R.A. 9184
[14] Pre-Trial Order dated March 20, 2018, Records, Vol. 6, p. 80

	Exhibit "F" (DTI Certification dated April 10, 2008) Exhibits "G", "G-1", and "G-2" (Certificates of Live Birth of Romel Yogore and Ma. Theresa Yogore, and Marriage Contract of Jonie Nieve and Ma. Theresa Yogore)

All told, this Court finds that the prosecution presented sufficient evidence to sustain the indictment against the accused, and it is now up to the accused to establish their defense.

WHEREFORE, in view of the foregoing, accused Yogore, Nieve, Robles, Genobis, Galve and Magbanua's respective *Motions for Leave of Court to File Demurrer to Evidence* are **DENIED** for lack of merit.

The parties are reminded of the setting for the presentation of defense evidence on ***November 5 to 8, 2018, morning and afternoon***, during the Court's provincial hearing in the **Regional Trial Court of Iloilo City**.

SO ORDERED.

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

WE CONCUR:

ZALDY V. TRESPESES
Associate Justice

GEORGINA D. HIDALGO
Associate Justice