



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

Seventh Division

MINUTES of the proceedings held on November 6, 2018 in Iloilo City.

Present:

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

Justice ZALDY V. TRESPESES -----Member

Justice GEORGINA D. HIDALGO-----Member

The following resolution was adopted:

Crim Case No. SB-12-CRM-0273 – People of the Philippines vs. Pedro B. Acharon, Jr., et al.

This resolves the following:

1. Accused Pedro B. Acharon, Jr.'s "MOTION FOR LEAVE TO FILE DEMURRER TO EVIDENCE" dated September 25, 2018¹;
2. Accused Chriselda I. Macion's "MOTION FOR LEAVE TO FILE DEMURRER TO EVIDENCE" dated September 28, 2018²; and
3. Prosecution's "CONSOLIDATED COMMENT/ OPPOSITION" dated October 9, 2018³ (to the (1) Motion for Leave of Court to File Demurrer to Evidence dated September 28, 2018 filed by accused Macion; (2) Motion for Leave of Court to File Demurrer to Evidence dated September 25, 2018 filed by accused Acharon, Jr.)

HIDALGO, J.

Submitted for resolution are separate Motions for Leave to File Demurrer to Evidence filed by accused Pedro B. Acharon, Jr. (accused Acharon, Jr.) and accused Chriselda I. Macion (accused Macion) as well as the Consolidated Comment / Opposition thereto filed by the Prosecution.

¹ Record, vol.5, pp. 135-141

² Id. pp. 146-149

³ Id. at 108-111.

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Accused Acharon Jr.'s Motion for Leave to File Demurrer to Evidence

In his Motion for Leave to File Demurrer to Evidence (Motion for Leave), accused Acharon, Jr. raised the following arguments:

1. The Information filed against him lacks evidence to prove the existence of manifest partiality, evident bad faith or gross inexcusable negligence;
2. The Prosecution failed to adduce proof that the issuance of two (2) checks as cash advances to GSC Tourism Association, Inc., was unlawful;
3. The Prosecution failed to adduce proof that accused Acharon, Jr., acted in conspiracy with his co-accused Macion;
4. The Prosecution insufficiently proved the allegation in the Information that accused Acharon, Jr. failed to liquidate the cash advances.

In particular, accused Acharon, Jr., argued that the Prosecution's witnesses namely, Herman Jumilla, Jose Mercado, Helen Lavilla, Federico Cabanit, John Quimosing, Virgilio Aspilla, Atty. Mary Ann Academia and Susan Bonalvo, made no indication in their respective testimonies that he committed acts constituting manifest partiality, evident bad faith and gross inexcusable negligence in disbursing the cash advances.

He added that the issuance of the two (2) checks and its corresponding Disbursement Vouchers were made pursuant to Appropriation Ordinance No. 03-2006 and Sanggunian Resolution Numbers 188 and 187, both of the City Council of General Santos City, will not amount to an unlawful act, punishable under RA 3019.

In trying to convince this Court to grant his Motion for Leave, accused Acharon, Jr. maintained that the prosecution failed to establish either by factual or physical evidence the existence of conspiracy or confederation. He insisted that while his name appeared on the subject documents by way of delegated authority, it did not in any way translate into an element of conspiracy.

Accused Acharon, Jr. even relied on the case of *Thomas and Joson vs. Commission on Audit, GR No. 223762, November 17, 2017* where the Supreme Court ruled that "every person who signs or initials documents in the course of transit through standard operating procedures does not automatically become a conspirator in a crime which transpired at a stage

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where he had no participation. His knowledge of the conspiracy and his active and knowing participation therein must be proved by positive evidence."

Lastly, accused Acharon, Jr. asserted that prosecution's witness Herman B. Jumilla, among others, conceded that there was partial liquidation in the amount of Six Hundred Thousand Pesos (₱ 600,000.00) more or less, thereby disproving the allegation in the Information that Macion failed to liquidate the total amount of cash advance. Whereas for his part, he timely sent a demand to liquidate through the Office of the City Accountant.

Accused Chriselda I. Macion's Motion for Leave of Court to file Demurrer to Evidence

For her part, accused Chriselda I. Macion (accused Macion), in essence, argued that, the prosecution has failed to present proof beyond reasonable doubt to establish her guilt. She added that, the prosecution failed many times to present evidence to validate the accusations against her. She recalled that this case was previously dismissed by this Court's Fifth Division and over her objection, the Office of the Ombudsman refiled this case.

She also insisted that, the filing of this present Motion for Leave of Court to File Demurrer to Evidence (Motion for Leave) will serve the best interest of justice and will not prejudice the rights of the government. The Motion is consonant with her constitutional right to be presumed innocent until proven guilty.

Lastly, her counsel begs the indulgence of this Court that he be given a period of twenty (20) days to file her Demurrer to Evidence because he has been going back and forth to her province for the wake and burial of her brother who died on September 16, 2018.

In its ***Consolidated Comment / Opposition***, the Prosecution prays, among others, that accused's respective Motions for Leave of Court to File Demurrer be denied for lack of merit.

The prosecution argued that accused Macion's motion for leave did not specifically state the grounds she relied upon. Thus, it amounts to a blatant violation of the provision of ***Section 3, Rule 119 of the Rules on Criminal Procedure***.

Anent the Motion for leave of accused Acharon, Jr., the prosecution theorizes that, contrary to the claim of accused Acharon, Jr. that his acts do

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not constitute manifest partiality, evident bad faith and gross inexcusable negligence in disbursing the cash advances, the prosecution insisted that when accused Acharon, Jr. authorizes accused Dospueblos to sign the Disbursement Vouchers causing the release of the questioned amount notwithstanding that not all delegates were able to obtain a United States Visa, this amounts to manifest partiality, evident bad faith and gross inexcusable negligence. Simply stated, there is no justifiable reason for accused Acharon, Jr. to authorize accused Dospueblos to sign the Disbursement Vouchers and this amounts to evident bad faith, evident partiality and gross inexcusable negligence.

More, the prosecution reasoned out that while accused Acharon, Jr. and other co-accused may be armed with Appropriation Ordinance No. 03-2006 and Sanggunian Resolution Numbers 188 and 187, both of the City Council of General Santos City, the grant of the financial assistance must be implemented only within the territorial jurisdiction of the City of General Santos City, as required by the Local Government Code and not the project which was implemented in Los Angeles California.

The prosecution also pointed out that the amount released to the GSC Tourism Association, Inc., has no proper documentation such as SEC registration, Financial Statements for the last three (3) years and the list of Projects in violation of Commission on Audit Circular No. 96-003. In short, the prosecution maintains that the act of accused in discursing the questioned amount is clearly unlawful.

The prosecution also explained that, the involvement of accused Acharon, Jr., as a co-conspirator has been established because it was accused Acharon, Jr. who gave accused Dospueblos, the City Finance Administrator the authority to release the questioned amount.

Lastly, as to the claim of accused Acharon, Jr. that he has no obligation to liquidate the amount released to GSC Tourism Association, Inc., the prosecution insisted that under Commission on Audit Circular No. 96-003, it is incumbent upon him to see to it that his subordinates faithfully execute and perform their official functions and that to date, GSC Tourism Association, Inc. and General Santos City still failed to liquidate the entire amount which was released to it in the amount of Two Million Five Hundred Thousand Pesos (₱ 2,500,000.00). While it may be true that there was a partial liquidation made, albeit late, that is not the liquidation required by law.

After all the arguments of all parties were heard, the Motions for Leave to File Demurrer to Evidence and the Comment / Opposition thereto were submitted for resolution.

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Hence, this resolution.

After a thorough examination of the allegations in the two Motion for Leave to File Demurrer to Evidence, the Comment / Opposition thereto, as well as the evidence offered by the prosecution in support of establishing its case against herein accused, to the mind of the Court, the contentions advanced by the accused in their respective Motions for Leave deserve scant consideration.

Allow this Court to discuss.

Under *Section 23, Rule 119 of the Rules of Court*, after the prosecution terminates the presentation of evidence and rests its case, the trial court may dismiss the case on the ground of insufficiency of evidence upon the filing of a Demurrer to Evidence by the accused with or without leave of court. If the accused files a Demurrer to Evidence with prior leave of court and the same is denied, he may adduce evidence in his defense. However, if the Demurrer to Evidence is filed by the accused without prior leave of court and the same is denied, he waives his right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.

Corollarily, in the case of *People v. Laguio, Jr.*⁴, the Supreme Court explained that after the prosecution rests its case, and the accused files a Demurrer to Evidence, the trial court is required to evaluate whether the evidence presented by the prosecution is sufficient enough to warrant the conviction of the accused beyond reasonable doubt. If the trial court finds that the prosecution evidence is not sufficient and grants the accused's Demurrer to Evidence, the ruling is an adjudication on the merits of the case which is tantamount to an acquittal and may no longer be appealed. Any further prosecution of the accused after an acquittal would, thus, violate the constitutional proscription on double jeopardy.

In the present case, in our Resolution dated September 17, 2018⁵, we ruled that Disbursement Voucher No. 10-06-05-4194 dated May 29, 2006 and Disbursement Voucher No. 10-06-06-5375 dated September 5, 2006, the primary documents from which the prosecution anchors its allegations, are admitted as evidence for being public documents notwithstanding that they are merely photocopies, after the prosecution was able to comply with the requirements of *Sections 5 and 6, Rule 130 of the Revised Rules on Evidence*. As a public document, they had in their favor the presumption of regularity, and to contradict the same, there must be evidence that is clear, convincing and more than merely preponderant; otherwise the document

⁴ G.R. No. 128587, March 16, 2007

⁵ Record, vol. 5, pp. 118- 121

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should be upheld.⁶

More, the arguments raised by accused Acharon, *i.e.*, the Information filed against him lacks evidence to prove the existence of manifest partiality, evident bad faith or gross inexcusable negligence; the Prosecution failed to adduce proof that the issuance of two (2) checks as cash advances to GSC Tourism Association, Inc., was unlawful; the Prosecution failed to adduce proof that accused Acharon, Jr., acted in conspiracy with his co-accused Macion; the Prosecution insufficiently proved the allegation in the Information that accused Acharon, Jr. failed to liquidate the cash advances, **are issues which are evidentiary in nature which accused need to refute in a full blown trial.**

To be precise, in order for this Court to determination whether or not accused Acharon, Jr. acted with manifest partiality, evident bad faith or gross inexcusable negligence, this Court has to look into the facts and circumstances surrounding the issuance of the two (2) cash advances for the "Pagana Dinner Show" and "Tambayoyong Festival In Los Angeles, USA."

Additionally, when accused Acharon, Jr. argued that since the prosecution failed to show proof that the issuance of the two (2) checks as cash advances are unlawful, likewise requires the evaluation of the circumstances surrounding the case.

More, accused Acharon, Jr. must be reminded that the existence of conspiracy must be proven by positive evidence. In fact, this was his line of argument when he cited the case of *Thomas and Joson vs. Commission on Audit*.⁷ That this Court believes that the requirement of presenting positive proof is evidentiary in nature which could be resolved in a full blown trial.

With respect to the argument offered by accused Macion, her mere invocation that the prosecution failed to present proof beyond reasonable doubt to establish her guilt and that the prosecution failed many times to present evidence to validate the accusations against her without any logical explanation of the statement of facts showing how the prosecution failed to prove her guilt beyond reasonable doubt, are mere conclusions of law which the Court alone should evaluate at the time the case is submitted for decision.

Besides, 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

⁶ Dionisio C. Ladignon vs. Court of Appeals, GR No. 122973, July 18, 2000

⁷ *supra*

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support a verdict of guilt. 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.⁸ **Section 23, Rule 119 of the Rules of Court** requires the accused to specifically state the grounds showing insufficiency of evidence to warrant his conviction which, to the mind of the Court, accused Macion failed to do.

Therefore, gauging from the evidence thus far presented, the Court is of the mind that, for now, the pieces of evidence presented by the prosecution are strong enough to support conviction. Hence, there is a need for the accused to present their respective evidence because it is only in doing so that there can be a full appreciation and evaluation of the case.

WHEREFORE, and considering our disquisitions above, the Motions for Leave to File Demurrer to Evidence filed by accused Pedro B. Acharon, Jr. and accused Chriselda I. Macion are both **DENIED FOR LACK OF MERIT**.

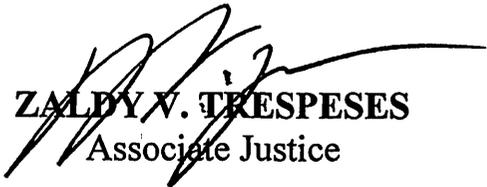
Consequently, the setting on November 27 and 28, 2018 at 8:30 in the morning for the reception of the defense's evidence, shall push through.

SO ORDERED.


GEORGINA D. HIDALGO
Associate Justice

WE CONCUR:


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


ZALDY V. TRESPESSES
Associate Justice

⁸ *People of the Philippines vs. Jose C. Go, et al.*, GR No. 191015, August 6, 2014