



Republic of the Philippines

Sandiganbayan

Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on 19 November 2018.

Present:

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

Justice ZALDY V. TRESPESES ----- Associate Justice

Justice BAYANI H. JACINTO ----- Associate Justice¹

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 Misal Hawari's "MOTION FOR RECONSIDERATION" dated 26 October 2018;² and
2. The prosecution's "COMMENT/OPPOSITION" dated 12 November 2018.³

TRESPESES, J.

Submitted for the Court's resolution is the motion filed by accused Misal Hawari ("accused Hawari") seeking reconsideration of the Court's Resolution⁴ dated 16 October 2018, and the prosecution's comment thereon.

ACCUSED HAWARI'S MOTION FOR RECONSIDERATION

In his motion, accused Hawari alleges that the 16 October 2018 Resolution of the Court (which ruled on the motions for leave to file demurrer to evidence by several accused) failed to discuss the additional manifestation and arguments made by his counsel during the hearing conducted on 9 October 2018. At the said hearing, accused Hawari was allowed to join his co-accused in their Motion for Leave to file Demurrer to Evidence.

Accused Hawari reiterates that the evidence presented by the prosecution with respect to accused Hawari's participation in the offense

¹ Per Administrative Order No. 540-2018 dated 9 November 2018.

² *Rollo*, Vol. III, pp. 40-45.

³ *Id.* at 59-64.

⁴ *Rollo*, Vol. II, pp. 485-491.

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charged against him are insufficient in point of law to make out a case to sustain his indictment.

Accused Hawari stresses that the basis of the complaint filed by complainant Mansur Munding ("Munding") was the passage of Resolution No. 21, Series of 2010 on 9 August 2010. The resolution authorized the newly elected Municipal Mayor Edding and Municipal Treasurer Rabulan as official signatories of the local government unit of Sibuco, Zamboanga del Norte in its official transaction with Landbank of the Philippines, Main Branch, Zamboanga City. The resolution was approved during the 13 September 2010 Regular Session of the *Sangguniang Bayan* of Sibuco. The committee report was alleged to have been sponsored by councilor Norbryan Edding and seconded by Dodong, and concurred in by councilors Tutuan, Nasser Mahamod, Caril, Samson and Hawari.

However, accused Hawari argues that the prosecution's Exhibit "A" (certified photocopy from the original of the minutes of the 13 September 2010 Regular Session of the *Sangguniang Bayan* of Sibuco) does not show that accused Hawari was among those who approved the committee report. It simply stated that Mayor Edding's report was seconded by Jaapal and approved, and that it was prepared by the *Sanggunian* Secretary.

Accused Hawari avers that as an ex-officio member of the *Sangguniang Bayan* of Sibuco, Zamboanga del Norte (being the president of the Association of Barangay Chairmen), he is mandated to attend the regular sessions of the *Sanggunian*. Meanwhile, when he called for the adoption of the Previous Minutes during the 9 August 2010 Regular Session, it only meant that the minutes being read is accurate and that it was being adopted.

Accused Hawari also claims that in Mansur Munding's ("Munding") judicial affidavit, he stated that he was prevented from signing checks and disbursement vouchers for the *Sangguniang Bayan* because the latter passed a resolution authorizing only Mayor Edding and former treasurer Rabulan as exclusive signatories of all financial transactions for the entire local government unit. During his cross-examination, Munding also confirmed that he filed complaints against those who approved Resolution No. 21, Series of 2010. However, even when Hawari did not sign the Resolution, Munding included him in the complaint because the latter was present during the session when the resolution was passed.

Accused Hawari contends that his mere presence during a regular session during which a committee report was presented and approved by other members of the *Sanggunian* does not constitute a crime.

Accused Hawari notes the prosecution's contention that prior to the approval of the resolution, meetings of accused council members were held

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at Mayor Edding's house to discuss the scheme of not authorizing Munding to sign checks for the operation and obligations of the *Sangguniang Bayan* and the Office of the Vice Mayor.

Accused Hawari impugns the prosecution claim that this indicates accused Hawari's conspiracy with the rest of the accused. He argues that the prosecution's argument is based on Munding's claim that accused Hawari reported to him the said caucuses/meetings of the councilors. He reasons that, assuming the truth of Munding's claim, he could not be considered to be in conspiracy with the other accused because he would not have relayed such information to Munding if he intended to conspire with them in committing the crime charged.

Accused Hawari concludes that aside from the evidence discussed, no other prosecution evidence presented links him to the offense charged.

THE PROSECUTION'S COMMENT/OPPOSITION

In its comment/opposition, the prosecution begins with a recitation of the elements of Section 3(a) of Republic Act No. 3019 (R.A. No. 3019),⁵ which are as follows: (1) the offender is a public officer; (2) the offender persuades, induces, or influences another public officer to perform an act or the offender allows himself to be persuaded, induced, or influenced to commit an act; and (3) the act performed by the other public officer or committed by the offender constitutes a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duty of the latter. It points out that accused Hawari does not dispute the first and third elements in his motion.

As to the second element of Section 3(a) of R.A. No. 3019, the prosecution avers that Munding testified that *all* accused conspired with one another to deprive him of authority to sign all warrants drawn on the municipal treasury for all expenditures appropriated for the operation of the *Sangguniang Bayan* and the Office of the Vice Mayor during his entire term as Vice Mayor from June 2010 to June 2013. This is contrary to the mandate of Sections 344⁶ and 445⁷ of the Local Government Code and Section 39 of

⁵ Section 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:

(a) Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense.

⁶ SECTION 344. Certification on, and Approval of, Vouchers. - No money shall be disbursed unless the local budget officer certifies to the existence of appropriation that has been legally made for the purpose, the local accountant has obligated said appropriation, and the local treasurer certifies to the availability of funds for the purpose. Vouchers and payrolls shall be certified to and approved by the head of the department or office who has administrative control of the fund concerned, as to validity, propriety, and legality of the

the Government Accounting and Auditing Manual. Accused Mayor Edding allowed himself to be persuaded, induced and influenced by *all* the *Sangguniang Bayan* members, including accused Hawari, in signing a check for ₱134,900.00 (Exhibit "C") intended for the salaries of casual employees of the *Sangguniang Bayan*.

The prosecution claims that, contrary to accused Hawari's allegation, Munding's testimony during cross-examination does not absolve the former.

During pre-trial, the parties stipulated only the fact that Resolution No. 21, Series of 2010 contained eight signatures, even though eleven members of the *Sangguniang Bayan* were then present. The prosecution never admitted that Hawari did not sign the resolution. Hence, accused Hawari must still substantiate his defense that he did not sign the said document.

The prosecution underscores that when conspiracy is present, the act of one is the act of all. It concludes that the totality of the evidence it presented prove beyond reasonable doubt the guilt of all of the accused, including that of accused Hawari.

OUR RULING

We deny accused Hawari's motion 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.⁸

We find no merit in accused Hawari's argument that there is insufficient prosecution evidence to convict him of the offense charged because there is no indication that he signed Resolution No. 21.

claim involved. Except in cases of disbursements involving regularly recurring administrative expenses such as payrolls for regular or permanent employees, expenses for light, water, telephone and telegraph services, remittances to government creditor agencies such as the GSIS, SSS, LBP, DBP, National Printing Office, Procurement Service of the DBM and others, approval of the disbursement voucher by the local chief executive himself shall be required whenever local funds are disbursed. In cases of special or trust funds, disbursements shall be approved by the administrator of the fund. In case of temporary absence or incapacity of the department head or chief of office, the officer next-in-rank shall automatically perform his function and he shall be fully responsible therefor.

⁷ Sec. 445. Powers, Duties and Compensation. – (a) The vice mayor shall: (1) be the presiding officer of the *sangguniang bayan* and sign all warrants drawn on the municipal treasury for all expenditures appropriated for the operation of the *sangguniang bayan*;

⁸ *People v. Sandiganbayan (2nd Division)*, G.R. No. 197953, 5 August 2015.

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It cannot readily be concluded that accused Hawari did not sign the subject resolution.

First, as pointed out by the prosecution, it did not make a stipulation to this effect.

Second, a perusal of Resolution No. 21⁹ shows that, save for the signature of Anwar Edding (as *Sanggunian* Secretary) and that of Munding (as Vice Mayor/Presiding Officer), the rest of the signatures thereon were neither labeled nor identified.

Third, it is not disputed that accused Hawari was admittedly among those present during the session referred to. It is clear from a reading of the fourth "Whereas" clause of Resolution No. 21 that the motion leading to its passage was "**unanimously seconded** in session duly assembled." Moreover, the records do not reflect that accused Hawari opposed the said Resolution or showed any overt act that would substantiate his claim that he did not conspire with the rest of the accused.

Hence, accused Hawari's defenses still needs to be substantiated by evidence to be presented during trial.

Likewise, we find tenuous accused Hawari's argument that his act of informing Munding about the meetings of his co-accused to discuss Resolution No. 21 prior to its passage negates his participation in the conspiracy.

An essential ingredient of conspiracy is the alleged association of all the accused in the planning and commission of the crime.¹⁰ If Munding's testimony is to be believed, accused Hawari participated in the meeting among all the accused to plan the passage of Resolution No. 21. Relaying the plan to Munding is immaterial if accused Hawari still took part in putting the plan into motion. However, as discussed above, accused Hawari's alleged non-participation in the actual passage of Resolution No. 21 has yet to be established.

In sum, nothing in accused Hawari's motion compels this Court to reconsider its Resolution dated 16 October 2018. The best recourse is to continue the trial to enable the accused to present evidence in their defense and substantiate their own theory of the case.

WHEREFORE, in view of the foregoing, accused Misal Hawari's motion for reconsideration is **DENIED** for lack of merit.

⁹ Exhibit "B."

¹⁰ *People v. Genial*, G.R. No. 105692, 7 December 1993.

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Minute Resolution

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Let the hearing of the case proceed on **20 and 21 November 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


BAYANI H. JACINTO
Associate Justice