



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
QUEZON CITY

SEVENTH DIVISION

MINUTES of the proceedings held on March 4, 2019.

Present:

JUSTICE MA. THERESA DOLORES C. GOMEZ-ESTOESTA ----- Chairperson
JUSTICE ZALDY V. TRESPESES ----- Member
JUSTICE GINA D. HIDALGO ----- Member

The following resolution was adopted:

Criminal Case No. SB-16-CRM-0318 to 0321 -

**PEOPLE v. P/S SUPT. ELIZABETH ACEVEDO MILANES
P/S SUPT. DIGNA OLIVARES-AMBAS
EDGAR D. INDIONGCO**

This resolves the following:

1. Accused Elizabeth A. Milanés' "**MOTION FOR LEAVE TO FILE DEMURRER TO EVIDENCE**" dated January 28, 2019;¹
2. The Prosecution's "**COMMENT/OPPOSITION (Re: Accused Milanés' Motion for Leave to File Demurrer to Evidence)**" dated February 12, 2019;²
3. Accused Digna Olivares-Ambas' "**MOTION FOR LEAVE TO FILE DEMURRER TO EVIDENCE**" dated February 4, 2019;³
4. The Prosecution's "**COMMENT/OPPOSITION with MANIFESTATION**" dated February 19, 2019;⁴
5. Accused Edgar D. Indiongco's "**MOTION FOR LEAVE TO FILE DEMURRER TO EVIDENCE**" dated January 28, 2019;⁵ and

¹ Records, Volume 3 , pp. 350-354

² Id., pp. 360-365

³ As corrected per Manifestation dated February 14, 2019 and as granted per Resolution dated February 19, 2019; Records, Volume 3, pp. 366-371, 372-379, 380

⁴ Records, Volume 3, pp. 381-387

⁵ Id., pp. 328-336

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6. The Prosecution's "OPPOSITION TO THE MOTION FOR LEAVE TO FILE DEMURRER TO EVIDENCE FILED BY ACCUSED EDGAR D. INDIONGCO" dated January 31, 2019.⁶

GOMEZ-ESTOESTA, J.:

With the admission⁷ of the documentary exhibits offered by the Prosecution, all three accused now file their respective motion for leave to file demurrer to evidence.

Accused harp on the insufficiency of prosecution evidence on the following grounds:

1. For accused P/S Supt. Elizabeth A. Milanés ["Milanes"]:

1.a The testimony of prosecution witness Manuel Lukban revealed that while he may have instituted the complaint which led to the filing of the instant charges, he was not the one who personally conducted the investigation as he merely relied on the reports and sworn statements taken by his investigators; that he has not made verifications on whether the medical certificates submitted by the PNP applicants/recruits vis-à-vis the RHS3 findings were authentic or genuine; and that he has no personal knowledge of the alleged "illegal transaction" inside the Regional Health Service 3 (RHS3) or of the presence of OJTs and nursing students during the medical screening. His filing of the complaint appeared to have been the sole directive of Regional Director Alan L. Purísima who also had no personal knowledge of the same.

1.b The implication of said accused to the charges was by mere presumption and assumption, arising from her position as head or chief of RHS3. Her participation, if any, was limited to assisting the applicants what to do during the examination. Even the applicants themselves admitted that accused Milanés never gave them any instruction to collect payments. These alleged payments were not even given to her. Some of the applicants/recruits who came to Court could not even identify accused Milanés. No evidence was introduced that she manipulated the medical results of the applicants/recruits even if her name appeared in some of the handwritten complaints; neither was conspiracy proven.

1.c On the alleged non-issuance of receipts, accused Milanés averred that she has no participation therein as her position was merely supervisory.

⁶ Id., pp. 340-354

⁷ Except for Exhibit "C-20" which was excluded

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1.d As to the charge that Indiongco Laboratory was occupying a 10 square meter space inside RHS3 without paying rent, no evidence was presented on this fact as no ocular inspection was even made to verify this fact. The Certification on the non-payment of rental was presented by a mere custodian who has no personal knowledge of the same. There was no evidence from which to base that accused Indiongco was obligated to pay rent in the first place.

1.e As to the lack of public bidding, prosecution evidence was wanting on this point. No specific provision of the procurement law was cited to show a violation thereof; hence, this was only speculative.

2. For accused P/S Supt. Digna Olivares-Ambas:

2.a The testimonies of the witnesses for the prosecution, and the documentary evidence offered for the purpose, taken together, failed to prove that accused Ambas acted with manifest partiality, evident bad faith or gross inexcusable negligence. No proof was introduced that it was accused Ambas who allowed the stay and continuous operation of E. Indiongco Diagnostic Laboratory inside RHS3 or that she allowed the OJT Nursing students to conduct the medical examination on the PNP applicants.

2.b The prosecution likewise failed to prove that the accused caused undue injury to the government or to RHS3-PNP in particular. There was no proof that accused Ambas herself caused the disqualification of PNP applicants/recruits despite the fact that they were qualified or fit for training on the basis of the medical examinations taken from other government hospitals or private doctors.

2.c. The prosecution likewise failed to prove that accused Ambas had a hand in the alleged collection by Edgar Indiongco of fees for the medical tests or in the non-issuance of receipts for the same.

3. For accused Edgar D. Indiongco ["Indiongco"]:

3.a A stipulation has been made during pre-trial that "*E. Indiongco Diagnostic Laboratory is a clinical laboratory [that] also provides other additional services as indicated in the License to Operate a Clinical Laboratory issued by the Department of Health, thru Center for Health Development III, Regional Health Office III, City of San Fernando as shown in Exhibit 3 (License to Operate a Clinical Laboratory).*" The prosecution likewise admitted the existence of Exhibit "7" or the Memorandum of Agreement executed between RHS3, as signed by P/Supt. Roderic A. Suarez, and E. Indiongco Diagnostic Laboratory, as represented by accused Indiongco. In essence, this would show that E. Indiongco Diagnostic Laboratory was allowed and was legitimately operating laboratory services on RHS3 on the basis of such Memorandum of Agreement. This would extend to medical procedures on the screening of PNP applicants/recruits.



3.b Since E. Indiongco Diagnostic Laboratory duly performed the laboratory services provided during the medical screening of the applicants as well as the vaccines, any payment made by the applicants to E. Indiongco Diagnostic Laboratory was just right and proper since the latter had the right to collect therefrom.

3.c The non-issuance of receipts was belied by the temporary receipts issued by E. Indiongco Diagnostic Laboratory. No proof was nonetheless proven on this point on the prejudice caused to the government.

3.d The alleged manipulation of results of the medical screening was simply taken from the favorable results obtained by the disqualified PNP applicants/recruits from other hospitals. The discrepancy or difference of medical results did not *ipso facto* indicate manipulation. The evidence presented by the prosecution failed to prove that the medical tests conducted were tainted with irregularity.

While the Prosecution submitted its *Comment/Opposition* to each motion separately, in essence, it maintained the sufficiency of evidence by claiming:

1. In SB-16-CRM-0318, the evidence presented for this charge consisted of the testimonies of PO1 Ruby Ann C. Guinto, PO2 Joel G. Ladores, PO2 Zaldy L. Caraan, and PO2 Aris Alarcon Palioc who testified that accused Indiongco collected payments from them without issuing the corresponding official receipts. Also, prosecution witnesses PO2 Kenn Elmer Corpuz and PO2 Joemel M. Fernando testified that they were merely given an Acknowledgement Receipt, not an official receipt.

2. In SB-16-CRM-0319, it was prosecution witness P/S Supt. Manuel Lukban who testified that the laboratory owned by Indiongco did not undergo the normal bidding process as provided under procurement law. Witness Regional Director Alan Purisimia likewise testified that he was not made aware of any authorization for the operation of the laboratory.

3. In SB-16-CRM-0320, this charge was satisfied with the presentation of a Certification stating to the effect that no documents existed to show that E. Indiongco Diagnostic Laboratory paid any rental fee, which Certification was identified by Nelia Rhoda Ortega, its custodian.

4. In SB-16-CRM-0321, this charge was satisfied with the presentation of witness P/Insp. Elmer Arrogante who identified medical certificates to prove the unauthorized employ of OJTs/nursing students, including accused Indiongco himself, in conducting the medical examinations. He likewise identified the sworn statements of (a) Sheila Marie Cruz, Michael N. Culala, James B. Dancel, Michael Angelo L. Basa, Allen Lincoln C. Medrano, Jesse Carlos T. Malana, Wilfredo G. Castro, Christopher Tindugan, Joseph R.

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Cortez, Harry D. Victorio, Herminio F. Valencia, Edmar D. Cuntapay, and Jaime M. Labarinto, Jr.; (b) Bryan P. Raymundo, Francis Gil C. Navarro, Rafael S. Flores, Raymundo C. Gatbonton, Jeffrey T. Enrile, and John Paul M. Ramos; and (c) Jeffrey C. Jaen, Edwin E. Manzaon and Michelle E. Supe, to prove the disqualification of several PNP applicants.

The Prosecution then claimed that its presentation of LOI 11/10⁸ should have proven who were authorized to conduct medical and physical examinations of PNP applicants.

Further, the prosecution refuted that accused Milanes could not deny what was going on inside RHS3 considering her position as head of RHS3, coupled with her physical presence during the medical screening. In fact, witness John Michael Gabarda alleged that it was accused Milanes herself who inquired of the cash he collected as 01.

Insofar as accused Indiongco's asseveration of the legitimate operation and use of laboratory service of E. Indiongco Diagnostic Laboratory inside RHS3 on the basis of a Memorandum of Agreement, the Prosecution contended that such Memorandum of Agreement has not yet been presented as defense documentary evidence and that its stipulation as to the existence thereof was not enough for the Court to consider it at this time.

The *Motions* fail. No leave can be granted for the accused to demur to the evidence.

The grounds alleged in the *Motions* are best considered when the cases are submitted for judgment. They already call for an appreciation of the probative worth of the testimonial and documentary evidence presented by the Prosecution.

For now, this Court cannot yet be obscured by such task.

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, 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 then ascertains whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt.⁹

The intended demurrer by the accused fail to show how prosecution evidence is insufficient. Rather, the accused centered more on assessing the value and weight of the testimonies of the prosecution witnesses or on what has not been allegedly proven. Accused Milanes particularly strike at the worth of the testimony given by Manuel Lukban and proceed to infer why no

⁸ Exhibit "C-2-b"

⁹ *Macapagal-Arroyo v. People and Sandiganbayan*, G. R. No. 220598, July 19, 2016

D. J. V.

evidence was presented against her. Among others, she cavils that the evidence could not support the charges on whether she allowed E. Indiongco Laboratory to occupy the 10 square meter space inside RHS3 and collect payments, or allowed it to occupy the same without public bidding, or allowed it to occupy the same without rent, or manipulated the medical results to the prejudice of the PNP applicants/recruits. Accused Ambás, for her part, proceed with a discussion on what the Prosecution has “*failed to prove.*” On the other hand, accused Indiongco allude to a Memorandum of Agreement that was pre-marked as Exhibit “7” to justify his operation inside RHS3 which ironically has not yet been presented as evidence. As correctly observed by the Prosecution, its stipulation on the existence of the same does not obviate its presentation as evidence. Plainly, the significance placed on Exhibit “7” is patent to the line of defense to be adopted by accused Indiongco.

Without assessing the weight of the evidence, therefore, the Court need only evaluate the sufficiency of the evidence presented by the Prosecution.

After a circumspect examination thereof, sufficient evidence is found, *if un rebutted*, to sustain the charge against all three (3) accused for violation of Section 3 (e) of R.A. 3019, as follows:

Elements	Evidence Presented by the Prosecution as applicable to all charges
1. The accused must be a public officer discharging administrative, judicial or official functions;	That accused Ambás and Milanés are public officers at the time material to the cases is a fact stipulated per Pre-Trial Order. Accused Indiongco may be a private person but he is charged as having conspired with accused Ambás and Milanés in committing the offenses subject of the Informations ¹⁰
2. Accused must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and	Exhibits “A,” “B,” “C” and its attachments, and “C-20” “C-2” and “C-3” “C-4,” “C-6-e,” “C-12,” “C-16,” “C-16-a,” “C-16-b,” “C-16-c,” “C-16-d,” “C-16-e,” “C-16-f,” “C-16-g,” and “C-16-h”
3. Accused’s action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.	“C-4 to C-4-n,” “C-5,” “C-6 to C-6-d,” “C-6-e” and “C-7 to C-11-b,” “C-12” and “C-13” to “C-15-a,” “E,” “F,” and “H”

¹⁰ Go v. Sandiganbayan, G.R. No. 172602, April 13, 2007

It is this evidence which the accused should now refute through the presentation of their own evidence.

WHEREFORE, the (i) *Motion for Leave to File Demurrer to Evidence* filed by accused P/S Supt. Elizabeth A. Milanés; (ii) *Motion for Leave to File Demurrer to Evidence* filed by accused P/Supt. Digna Olivares-Ambas; and (iii) *Motion for Leave to File Demurrer to Evidence* filed by accused Edgar D. Indiongco are all **DENIED**.

Let the presentation of defense evidence **PROCEED**, as scheduled, on **March 6, 2019 at 8:30 in the morning** before the Fourth Division Courtroom.

Without prejudice to the submission of the sequential order in the presentation of defense evidence, the following accused are directed to present evidence in the order as they appear in the Information:

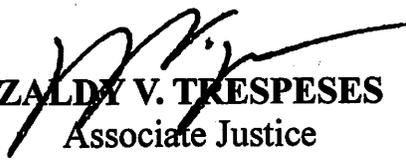
1. P/S Supt. Elizabeth A. Milanés;
2. P/Supt. Digna Olivares-Ambas; and
3. Edgar D. Indiongco.

Accused P/S Supt. Elizabeth A. Milanés is thus directed to present her evidence first on March 6, 2019 at 8:30 a.m.

SO ORDERED.


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

WE CONCUR:


ZALDY V. TRESPESES
Associate Justice


GEORGINA D. HIDALGO
Associate Justice