



Republic of the Philippines
Sandiganbayan
Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on 8 March 2019.

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-17-CRM-1567 - People vs. MANUEL P. MEJORADA, et al.

This resolves the following:

1. Accused Edgar Piansay and Danny Baldemor's "MOTION FOR LEAVE TO FILE DEMURRER TO EVIDENCE" dated 28 January 2019;¹
2. Accused Patricia Grace Trabado's "MOTION FOR LEAVE OF COURT TO FILE DEMURRER TO EVIDENCE" dated 29 January 2019;²
3. The prosecution's "COMMENT/OPPOSITION (re: MOTION FOR LEAVE TO FILE DEMURRER TO EVIDENCE DATED 28 JANUARY 2019)" dated 31 January 2019;³
4. Accused Ramie Salcedo's "MOTION FOR LEAVE OF COURT TO FILE DEMURRER TO EVIDENCE" dated 28 January 2019;⁴
5. The prosecution's "MANIFESTATION (re: MOTION FOR LEAVE TO FILE DEMURRER TO EVIDENCE DATED 29 JANUARY 2019) filed by accused Trabado" dated 6 February 2019;⁵ and
6. The prosecution's "COMMENT/OPPOSITION (Motion for Leave of Court to File Demurrer to Evidence of Accused Ramie Salcedo)" dated 13 February 2019.⁶

Submitted to the Court for resolution are the motions for leave of court to file demurrer to evidence filed by accused Edgar Piansay and Danny Baldemor ("Piansay and Baldemor"), Patricia Grace Trabado ("Trabado"),

¹ Record, Vol. III, pp. 56-60.

² Id. at 62-64.

³ Id. at 65-69.

⁴ Id. at 75-81.

⁵ Id. at 82-89.

⁶ Id. at 90-95.

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Ramie Salcedo (“Salcedo”), as well as Manuel Mejorada (“Mejorada”) who adopted the motions of his co-accused.

ACCUSED PIANSAY AND BALDEMOR’S MOTION

In their motion, accused Piansay and Baldemor allege that the evidence adduced by the prosecution is insufficient to convict the accused of the offense charged.

Accused Piansay and Baldemor claim that first, the prosecution failed to establish that the Provincial Government of Iloilo suffered damages resulting from the delivery of the subject laptop, considering that the money paid by the local government unit to Seven Seven Trading was returned to it.

Second, they claim that the prosecution was unable to establish that the subject laptop delivered by Seven Seven Trading to the local government unit had lower specification or is a substandard unit compared to that contracted.

Citing *Llorente, Jr. v. Sandiganbayan*,⁷ accused Piansay and Baldemor argue that “undue injury,” one of the elements of the offense charged, requires proof of actual injury or damage. Undue injury should be specified, quantified, and proven to the point of moral certainty. Hence, where complainant was actually paid all her claims, no “undue injury” was established.

Accused Piansay and Baldemor add that the same ruling was made by the Court in *Soriano v. Ombudsman*,⁸ where it was held that “undue injury” in the context of Section 3(e) of the Anti-Graft and Corrupt Practices Act is similar to the civil law concept of “actual damage.”

ACCUSED TRABADO’S MOTION

In accused Trabado’s motion, she likewise argues that the prosecution failed to establish one of the elements of the offense charged, particularly the damage suffered by the provincial government of Iloilo as a result of the delivery of the subject laptop. She additionally alleges that the prosecution was unable to establish that the laptop delivered by Seven Seven Trading to the provincial government of Iloilo was lower in specification than was specified in the contract.

⁷ 350 Phil. 820-845 (1998).

⁸ 597 Phil. 308-320 (2009).

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Further, accused Trabado asserts that the prosecution also failed to establish that she is one of the public officers who committed the acts which caused damage to the local government, considering that the prosecution admitted that accused Trabado is not a member of the Bids and Awards Committee of the Province of Iloilo when the offense was committed.

ACCUSED SALCEDO'S MOTION

In his motion, accused Salcedo maintains that the evidence adduced by the prosecution and admitted by the Court are insufficient to convict him beyond reasonable doubt of the crime charged.

Accused Salcedo cites *Galario v. Ombudsman*,⁹ where the Court enumerated the elements for establishing a violation of Section 3(e) of R.A. No. 3019. Among the elements is undue injury to any party, whether the government or a private party; that such injury was caused by giving unwarranted benefits, advantage or preference to such parties; and that the public officer has acted with manifest partiality, evident bad faith or gross inexcusable neglect.

Elaborating, accused Salcedo pointed out that at the time witness Haydee P. Pasuelo executed her Affidavit dated 19 March 2013 (which became the basis for the filing of the case with the Ombudsman), Seven Seven Trading had already faithfully complied with the Commission on Audit's (COA) demand in its Notice of Disallowance¹⁰ to return the amount which it received as consideration for the subject laptop. This return was evidenced by a Notice of Settlement dated 14 October 2011,¹¹ as also testified to by Pasuelo. COA had also issued a Notice of the Finality of the said disallowance.¹²

Accused Salcedo further argues that the prosecution also failed to prove which of the two computers is more expensive than the other, considering the lapse of time and the rapid depreciation in the price of electronic gadgets with the introduction of new models in the market and the phasing out of the old models. In this regard, the investigation allegedly conducted by COA was made several months after the incident.

Like accused Piansay and Baldemor, accused Salcedo refers to *Llorente v. Sandiganbayan*¹³ as authority in arguing that where complainant was actually paid all its claims, no undue injury is established.

⁹ 554 Phil. 86-111 (2007).

¹⁰ Exhibit "K."

¹¹ Exhibit "L."

¹² Exhibit "K."

¹³ *Supra* at note 7.

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Finally, accused Salcedo asserts that no prosecution evidence was presented indicating that he derailed the bidding process just to make sure that the contract will be awarded to Seven Seven Trading. The mere fact that only Seven Seven Trading participated in the bidding does not necessarily equate to unwarranted benefit, advantage or preference. The presence and posting/publication of an Invitation to Apply for Eligibility and to Bid¹⁴ negates the allegation that accused Salcedo gave unwarranted benefits, advantage or preference to Seven Seven Trading which resulted in “undue injury.”

THE PROSECUTION’S COMMENT/OPPOSITION

In its comment/opposition dated 31 January 2019, the prosecution contends that accused Piansay and Baldemor’s motion is procedurally infirm. It underscores that under Rule 15, Section 5, a motion must be set for hearing, specifying the time and date of the hearing, which must not be later than ten (10) days after the filing of the motion.

The prosecution emphasizes that, contrary thereto, accused set their Motion for hearing on 15 February 2019, or way beyond the ten-day period provided by the Rules. Citing *Valderrama v. People*,¹⁵ this requirement is mandatory, and that failure to comply therewith renders the motion fatally defective, equivalent to a useless scrap of paper.

In its manifestation dated 6 February 2019, the prosecution alleges that, like Piansay and Baldemor’s motion, accused Trabado’s motion was set for hearing beyond ten days from its filing. Hence, the prosecution maintains the same objection.

In its comment/opposition dated 13 February 2019, the prosecution asserts that there is no merit in accused Salcedo’s motion. It argues that, as discussed in *Rivera v. People*,¹⁶ there are two modes of violating Section 3(e) of R.A. No. 3019, i.e. – either by causing undue injury to any party, including the government, or by giving any private party any unwarranted benefit, advantage or preference.

The prosecution points out that the Information reveals that accused are charged under the second mode, which is for giving unwarranted benefits, advantage or preference to Seven Seven Trading.

Further, the prosecution stated that it presented Haydee Pasuelo, who testified that Seven Seven Trading was the only bidder considered. Pasuelo

¹⁴ Exhibit “S.”

¹⁵ G.R. No. 220054, 27 March 2017.

¹⁶ G.R. No. 156577, 3 December 2014.

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also testified that the actual unit delivered was different from the specifications in the Purchase Order, but the Inspection Team still signed and accepted the same. Pasuelo further testified that the unit delivered has a lower specification and that, as per price verification from its source, costs only P59,900.00, or an overprice of P39,100.00. Moreover, Pasuelo testified that Seven Seven Trading does not sell computers, but carries only supplies such as computer ink. She also testified that this supplier violated the conditions of the Invitation for Price Quotation by certifying that there are available stocks at the time delivery is needed. She adds that BAC could have conducted a re-bidding after being informed of the non-availability of the unit.

The prosecution additionally avers that it also presented witness Franco Janagap, who testified that upon ocular inspection, he found out that Seven Seven Trading does not sell computer units, but only computer parts, accessories and general merchandise such as dry goods, school supplies and grocery items. He also testified that there were other computer companies/stores operating during the date of procurement.

Moreover, it presented Jose Maria Danilo C. Lujan, who testified that upon inspection of the unit delivered, he found that the unit delivered is different from that specified in the Purchase Order.

The prosecution stresses that, furthermore, it presented the following exhibits to substantiate the charge:

1. Exhibits "C," "D," and "I" to prove that the local government intended to purchase one (1) unit Laptop Computer Acer Aspire 5920G-302G16N;
2. Exhibit "E" to prove that accused accepted, inspected, noted, verified and found "ok" as to quantity and specifications the delivered Acer Travel Mate 6292-101616MI, although it does not conform to specifications in the Purchase Order; and that accused gave unwarranted benefits, preference or undue advantage to Seven Seven Trading when they accepted and found "ok" the delivered Acer Travel Mate 6292-101616MI under the circumstances;
3. Exhibits "G" and "H" to prove that Seven Seven Trading is a mere middleman, being dependent only on the stocks of Electroworld Inc., which was the source of the unit;
4. Exhibits "P," "Q" and "R" to prove that accused paid Seven Seven Trading, although what it delivered did not conform with the specifications described in the Purchase Order;
5. Exhibit "T" to prove that after Technical Inspection, the delivered unit was found to be non-compliant with the specification in the Purchase Order;

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6. Exhibits "Y" to "Y-8" to prove that Seven Seven Trading only sells inks and not computers; and
7. Exhibit "J" and "LL" to prove that what was delivered cost less compared to what was described in the Purchase Order.

OUR RULING

We resolve to **DENY** all motions of accused for lack of merit.

I. Procedural Aspect

Section 23, Rule 119 of the Rules of Court¹⁷ provides the guidelines in filing a demurrer to evidence. In order not to waive his right to present evidence, it states that it is necessary for the accused to file a prior motion for leave of court to file the demurrer, as accused herein have done.

However, every motion must be set for hearing, specifying the time and date of the hearing, which must not be later than ten (10) days after the filing of the motion, as mandated under Rule 15, Section 5 of the Rules of Court.¹⁸

The prosecution argues that contrary to Rule 15, Section 5 of the Rules of Court, the motion of accused Piansay and Baldemor, as well as that of accused Trabado, were both filed beyond this ten-day period.

A review of the records confirms the prosecution's observation. Accused Piansay and Baldemor's motion for leave to file demurrer was filed on 28 January 2019 and set for hearing on 15 February 2019.¹⁹ Similarly,

¹⁷ Sec. 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.

If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.

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.

If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.

The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by certiorari before judgment.

¹⁸ Section 5. Notice of hearing. — The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

¹⁹ Record, Vol. III, p. 59.

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accused Trabado's motion was filed on 29 January 2019 and set for hearing on 15 February 2019.²⁰

A motion that does not comply with the requirements of Sections 4 and 5 of Rule 15 of the Rules of Court is a worthless piece of paper which the clerk of court has no right to receive and which the court has no authority to act upon.²¹ Accordingly, the motions filed by accused Piansay and Baldemor and by accused Trabado may be considered as mere scraps of paper.

Even if we set aside the technical issue, we are still constrained to deny the motions for lack of merit.

II. Substantive Aspect

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. Thus, in a demurrer to evidence, the Court is asked to determine whether there is competent or sufficient evidence to establish a *prima facie* case to sustain the indictment or support a verdict of guilt.²²

In a motion for leave of court to file demurrer, the accused specifically states the grounds for his demurrer.

Accused Salcedo's motion for leave of court to file demurrer (which basically posits the same claims contained in accused Trabado, Piansay and Baldemor's motions) is anchored on the argument that the prosecution failed to prove the element of injury, considering that (1) the COA has already issued a Notice of Settlement following the return of the amount received as payment for the subject laptop computer; and (2) the prosecution was not able to establish that the subject laptop, which was delivered was inferior to that described in the Purchase Order.

We are not persuaded.

The Information herein alleges:

That on December 19, 2007, or sometime prior or subsequent thereto, in the City of Iloilo, Philippines, and within the jurisdiction of this Honorable Court. Accused Provincial Administrator and Bids and Awards Committee (BAC) Member, MANUEL PICHAY MEJORADA (Salary Grade 27), General Services Office Head and BAC Chairperson RAMIE

²⁰ Record, Vol. III, p. 74.

²¹ *Cabrera v. Ng*, 729 Phil. 544-552 (2014).

²² *People v. Sandiganbayan (2nd Division)*, G.R. No. 197953, 5 August 2015.

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SILLA SALCEDO (Salary Grade 26), Provincial Health Officer PATRICIA GRACE SIONOSA TRABADO (Salary Grade 26), Administrative Officer III, General Services Officer/Inspection Officer DANNY DEOCAMPO BALDEMOR (Salary Grade 14), and Administrative Officer III/ Inspection Officer EDGAR PAGHARI-ON PIANSAY, SR. (Salary Grade 18), all public officers of the Iloilo Provincial Government, Iloilo Provincial Capitol, Iloilo City, in the performance of their official functions as such, committing the offense in relation to office, with manifest partiality, evident bad faith or gross inexcusable negligence, and conspiring and confederating with each other, did then and there, willfully, criminally give unwarranted benefits, preference and undue advantage to Seven Seven Trading when they considered it as a lone bidder in the purchase of a specific laptop computer unit Acer Aspire 5920-G-302G16N in the amount of P99,000.00 but inspected and accepted one (1) unit of ACER Travelmate 6292-101G16MI, with specifications different from those indicated in the purchase request and costing only P59,900.00, in violation of RA 9184 (Government Procurement Reform Act) to the detriment and prejudice of the Iloilo Provincial Government and of the public service.

CONTRARY TO LAW.²³

As indicated above, the basis for charging accused with committing an offense under Section 3(e) of R.A. No. 3019 is their failure to act in accordance with the mandate of R.A. 9184.

The charge did not arise simply due to overpayment of the subject laptop computer. If that were the case, the existence of the Notice of Settlement issued by COA would have weighed heavier in the Court's reckoning.

Neither did the charge stem merely from accused's acceptance of the delivery of a laptop computer, which is inferior to that indicated in the Purchase Order, as implied by the accused.

What the Information actually alleges is that the accused accepted delivery of the subject laptop computer, which has "specifications different" from those stated in the procurement papers. The prosecution was able to prove this allegation. It is not required to further prove that what was delivered was of a superior quality than what was contracted for. That burden falls on the accused, as a matter of defense. Hence, the need for the continuation of trial.

Moreover, we find no merit in accused's insistence that the case should be dismissed because the prosecution was unable to prove "undue injury" as an element of the offense.

It is well-established that there are two ways by which a public official violates Section 3 (e) of R.A. No. 3019, as amended, namely: 1) by causing

²³ Record, Vol. III, p. 2.

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undue injury to any party, including the government, or 2) by granting any private party any unwarranted benefit, advantage or preference.²⁴ Meanwhile, a simple reading of the Information reveals that the element alleged therein is accused's giving of "unwarranted benefits, preference and undue advantage to Seven Seven Trading," and not "undue injury" to the province.

In summary, the records of the case at this stage of the proceedings contain sufficient evidence to convict the accused. Accused's motion has not persuaded the Court otherwise. Accordingly, the Court deems it appropriate to proceed with the continuation of trial for the reception of accused's evidence, where each of them may present evidence in their defense.

WHEREFORE, in view of the foregoing, the motions for leave to file demurrer to evidence by accused Edgar Piansay and Danny Baldemor, Patricia Grace Trabado, Ramie Salcedo, as well as Manuel Mejorada, who adopted the motions of his co-accused, are **DENIED** for lack of merit.

Let the presentation of evidence for the defense proceed on 29 April 2019 at 8:30 in the morning as previously scheduled.

SO ORDERED.


ZALBY V. TRESPESES
Associate Justice

WE CONCUR:


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


GEORGINA D. HIDALGO
Associate Justice

²⁴ *Giangan v. People*, G.R. No. 169385, 26 August 2015.