



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-15-CRM-0095**
Plaintiff, **For: Violation of Section 3(e) of**
R.A. 3019 as amended

- versus -

Present:

ROLANDO C. ALONZO, ET AL., **FERNANDEZ, SJ, J.,**
Accused. **Chairperson**
MIRANDA, J. and
VIVERO, J.

Promulgated:

APR 26 2019

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves the following:

1. *Motion for Leave to File and Admit Attached Demurrer to Evidence* filed on February 4, 2019 by accused Rolando C. Alonzo;
2. *Motion for Leave to File the attached Demurrer to Evidence* filed on February 4, 2019 by accused Alison A. Sy, Guillermo G. Sy and Renato C. Ang;
3. *Demurrer to Evidence with Entry of Appearance* filed on February 4, 2019 by accused Teresita Cometa;
4. *Motion with Leave of Court to File and Admit Attached Demurrer to Evidence* filed on February 8, 2019 by accused Teresita Cometa;
5. *Comment/Opposition (Re: Motions for Leave to File Demurrer to Evidence)* filed on February 18, 2019 by the prosecution;

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6. *Comment (To: Comment/Opposition to Motion for Leave to File Demurrer to Evidence dated 15 February 2019)* filed on February 26, 2019 by accused Teresita Cometa; and,
7. *Manifestation (Re: Accused' Motions for Leave to File Demurrer to Evidence)* filed on March 4, 2019 by the prosecution.

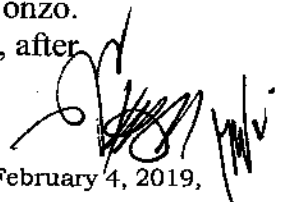
All the accused similarly contend that the evidence presented by the prosecution is insufficient to sustain a guilty verdict.

In his *Motion for Leave to File and Admit Attached Demurrer to Evidence*,¹ accused Alonzo admits the first element of the crime charged,² but asserts that the prosecution failed to prove his participation in the crime nor that he acted with manifest partiality, evident bad faith or gross inexcusable negligence. Accused Alonzo essentially argues:

- a. Private Complainant Francisco S. Magsajo, Jr. was not presented to identify his Complaint-Affidavit dated May 17, 2012. Thus, accused Alonzo was not given the opportunity to cross-examine him, in violation of Article III Section 14, par. (2), of the 1987 Constitution. Other than the Complaint-Affidavit, there is nothing in the evidence that explains accused Alonzo's participation in the alleged crime. The other witnesses are unreliable or have provided testimony contrary to the allegations in the Information.
- b. The testimony of Atty. Rosario T. Bernaldo reveals several inconsistencies. The Transactional Audit Report (TAR) prepared by Atty. Bernaldo was flawed but was still used as basis for the charge against accused Alonzo.
- c. Atty. Bernaldo admitted that the Marketing Group II, where accused Alonzo was the Executive Vice-President, did not have the power to approve a guarantee application.
- d. The immediate supervisor of accused Cometa was Clarissa Tuazon and not accused Alonzo. Moreover, the President of TIDCORP was the one supervising the entire Marketing Group II.
- e. The guarantee application of WGI went through a rigorous clearance process that was not dependent upon accused Alonzo. It went through a pre-clearance with the Credit Committee, after

¹ Dated February 4, 2019, Record, Volume 11, pp 35-43.

² Par 7, *Motion for Leave to File and Admit Attached Demurrer to Evidence* dated February 4, 2019, Record, Volume 11, p 36.



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which, it was endorsed to the Board of Directors. After pre-clearance, the application again went through the Credit Committee and was approved by the Board of Directors. The approval and endorsement is done by the majority of the group and not by a single person. It would be ridiculous to say that accused Alonzo was able to deceive the Board composed of the: a) Secretary of Finance (Chairman); b) President and Chief Executive Officer (CEO) of TIDCORP (Vice Chair); c) DTI Secretary or designate (Member); d) BSP Governor or designate (Member); e) NEDA Director General or designate (Member); f) Philippine Overseas Construction Board or designate (Member); and, g) three Private Sector Representatives.

- f. It was the President of TIDCORP, Mr. Joel Valdez, who signed the Memorandum submitted to the Board by the Credit Committee and not accused Alonzo. Accused Alonzo is not even a member of the Board nor did he have authority or voting right to approve a guarantee.³

Accused Alonzo also argues that the third element was not established. He contends that there was no undue injury and there is no damage to speak of as the “damages” being claimed by the government can and will be covered by collaterals once the Rehabilitation Court lifts the Stay Order. He claims:

- a. WGI is just prevented by the Rehabilitation Court from settling the obligation pending the rehabilitation proceedings.
- b. The prosecution is mistaken in claiming that only the government has exposure in the Project as the stockholders of WGI also spent the amount of PhP1.45 Billion (equity portion) to complete the Grains Terminal Project.⁴

Accused Alison A. Sy, Guillermo G. Sy, and Renato C. Ang anchor their *Motion for Leave to File the attached Demurrer to Evidence*⁵ on the following grounds:

- a. The evidence of the Prosecution is insufficient to prove the commission of the offense punishable under Section 3(e) of R.A. 3019;
- b. The evidence of the Prosecution is insufficient to establish the guilt of the accused beyond reasonable doubt;

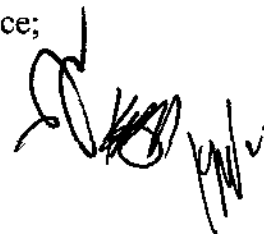
³ Motion for Leave to File and Admit Attached Demurrer to Evidence Dated February 4, 2019, Record, Volume 11, pp 36-37.

⁴ Motion for Leave to File and Admit Attached Demurrer to Evidence Dated February 4, 2019, Record, Volume 11, p 40.

⁵ dated February 4, 2019, Record, Volume 10, pp 491-519.

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- c. The evidence of the Prosecution failed to establish the existence of conspiracy beyond reasonable doubt;
- d. Exhibit L does not prove any of the modes of violating Section 3 (e) of R.A. 3019 considering that its conclusions are inaccurate, misleading, and without sufficient factual basis;
- e. Exhibits G and H are not proof of manifest partiality, evident bad faith or gross inexcusable negligence;
- f. Exhibits N, S, T, U, and, BB do not prove that the review and approval process of the application of WGI were attended by manifest partiality, evident bad faith or gross inexcusable negligence since the members of TIDCORP's Credit Committee and Board of Directors deliberated on such matters;
- g. Exhibits O and O-1 were not prepared and executed by any of the accused and thus any purported deficiency or irregularity therein cannot be attributed to them;
- h. Exhibit FFF does not prove bad faith on the part of accused Rolando C. Alonzo when he prepared the letter dated December 23, 2003 addressed to accused Alison Sy. There is nothing irregular with the Head of Marketing Group II-Large Accounts writing a letter to inform an applicant of the status of his application;
- i. Exhibit I is not proof that the accused conspired with one another. None of the accused participated in the preparation of such document;
- j. Exhibit M is not proof that WGI's guarantee application was attended with manifest partiality, evident bad faith, or gross inexcusable negligence. The authors of said document explicitly stated that they failed to validate all the statements therein;
- k. Exhibits K and SSS are insufficient to prove the non-existence of Belmont AgriCorp Ltd. The due execution and authenticity of said documents were not established in the course of the proceedings;
- l. Exhibits P, P-1, Q, R, S and ZZZ do not prove the commission of the offense. Accused Alonzo was not a signatory and was merely appointed as the authorized representative. In the absence of any corroborative proof that his appointment as such was in furtherance of the commission of a crime, there is nothing irregular in the said documentary evidence;



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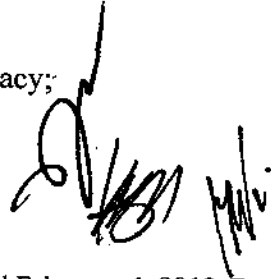
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- m. Exhibit V does not prove conspiracy amongst the accused. The letter was addressed to TIDCORP and only named, in the *attention line*, accused Alonzo and Cometa, who were then members of the Marketing Group II-Large Accounts;
- n. Exhibits J-6, Y, and Z do not prove manifest partiality, evident bad faith or gross inexcusable negligence. The *Risk Asset Management Manual* was circulated for implementation and enforcement in 2004 while WGI's guarantee application was approved in December 2003;
- o. No undue injury was suffered by the government or any private party since the purported injury by the government cannot be considered improper, more than necessary, or illegal.⁶

Accused Cometa, in her *Motion with Leave of Court to File and Admit Attached Demurrer to Evidence*⁷ and *Comment (To: Comment/Opposition to Motion for Leave to File Demurrer to Evidence)*,⁸ explained that she did not intend to file *Demurrer to Evidence* without Leave of Court and prayed that her previously filed *Demurrer to Evidence* be given due course in light of the prosecution's failure to prove her guilt beyond reasonable doubt. In support of her *Motion for Leave*, accused Cometa argues:

- a. The prosecution's pieces of evidence failed to prove her guilt beyond reasonable doubt:
 - i. There was no evidence proving that she acted with manifest partiality, evident bad faith or gross inexcusable negligence;
 - ii. The conditions imposed by the Credit Committee and the Board of Directors of TIDCORP, which she failed to relay to the Board of TIDCORP, were not identified;
 - iii. There was no evidence proving that the non-compliance of said conditions was the proximate cause of the undue injury;
 - iv. There was no evidence to show that TIDCORP paid the amount of Php4,222,391,731.60;
 - v. There was no evidence to prove conspiracy;



⁶ *Motion for Leave to File the attached Demurrer to Evidence* dated February 4, 2019, Record, Volume 10, pp 491-519.

⁷ dated February 7, 2019, Record, Volume 11, pp. 73-109.

⁸ dated February 26, 2019.

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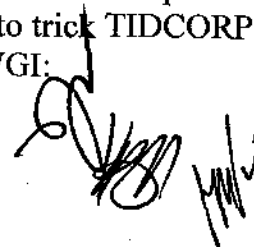
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vi. The non-presentation of TIDCORP's former President, Mr. Magsajo, underscores the lack of interest to pursue this case;

b. The present case would be a waste of precious government funds.

The prosecution maintains that it presented sufficient evidence to prove the guilt of all the accused beyond reasonable doubt. The prosecution claims that all the elements of Violation of Section 3(e), R.A. No. 3019 have been established. Thus:

- a. The first element is not disputed. Accused Alonzo and Cometa admitted their position at TIDCORP during the time material to the allegations in the Information. The other accused are private individuals charged in conspiracy with Alonzo and Cometa.
- b. The 2nd and 3rd elements were likewise present as established by the testimonial and documentary evidence.
- c. Accused Cometa was the Account Officer of TIDCORP at the time WGI applied for a guarantee facility. As such, she was primarily responsible for the evaluation, investigation and monitoring of the account and its proponents. It was also her duty to assess prospective borrowers, conduct credit checking, marshal resources during the credit evaluation process, coordinate with the borrower, prepare and endorse the necessary reports and documentations, verify the authenticity of signed documents and perform regular account management work. Cometa's position also entails checking and verifying the circumstances of the prospective borrower through investigation and interview. She was also tasked to monitor the performance of the borrowers who availed of the guarantee facilities and the activities of the financial institution's compliance with the conformed covenants in the Guarantee Agreement. (Exhibit B series).
- d. Accused Alonzo as the Executive Vice President of TIDCORP had supervision and control over Account Officer Cometa and the WGI account itself (Exhibit D). As the head of the Marketing Group-Large Accounts, it was his duty to study and review the evaluation made by Cometa on the WGI account before recommending the same to the CRECOM and to the Board for approval (Exhibit A series).
- e. From the start, accused private individuals conspired with accused Alonzo and Cometa (*Exhibit V*) to trick TIDCORP into approving the guarantee application of WGI:



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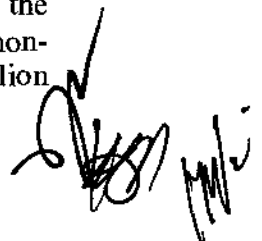
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- i. Accused Cometa and Alonzo showed preferential treatment of the WGI Account. They allowed TIDCORP to process the application of the accused individuals even if, at that time, they were not properly authorized by WGI. The authorization was secured only on January 8, 2004, almost a month after the approval of the guarantee facility.
- ii. Accused Cometa and Alonzo misrepresented to the Board that SGV validated WGI's business plan and conducted its own market study and analysis thereof (Exhibit U). The evidence shows that WGI engaged SGV to assist WGI in securing loans from various banks and in obtaining a loan guarantee from TIDCORP.
- iii. There was no document to prove that the engineering design, technical specifications, operational capabilities and required support structures on the proposed port and grains handling terminal were studied by accused Alonzo and Cometa before they recommended the approval of the WGI account to the CRECOM and eventually, to the Board. Accused Alonzo and Cometa also failed to request negative checking on affiliates and principals of WGI (Exhibit K⁴-K⁴-1).
- iv. WGI, controlled by accused private individuals, listed Belmont AgriCorp., Ltd. – Hongkong as the Supply Contractor for its machineries and equipment. During the Audit Investigation, it was discovered that this company was struck off by the Company Registry of the Government of Hong Kong Special Administrative Region and was dissolved as of June 16, 2000 (Exhibits L, M, SSS and K⁶). The fact that they were not able to discover that WGI was dealing with a dissolved corporation only proves accused Alonzo and Cometa's gross negligence and utter disregard of the consequences of their actions or that they conspired with accused private individuals to defraud and mislead TIDCORP.
- v. The terms and conditions presented to the Board of Directors are different from the ones approved by the CRECOM. The CRECOM imposed several terms and conditions in the application of WGI. Accused Alonzo and Cometa did not include such terms and conditions when they presented WGI's application to the Board.
- vi. Accused Alonzo and Cometa supplied the CRECOM and the Board with erroneous, fraudulent and incomplete information. If it were not for their misrepresentation and had they properly apprised the Board of the qualifications of WGI and its subsequent non-compliance with certain conditions, the multi-million



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Dollar guarantee would not have been approved by the Board.

- f. Accused Alonzo and Cometa wantonly disregarded the suspensive conditions to be complied with before the guarantee agreement can be executed.
- g. The misrepresentations and/or gross negligence committed by accused Alonzo and Cometa in the management and administration of the WGI account after it was executed show their evident bad faith and manifest partiality in favor of accused private individuals, to the damage and prejudice of TIDCORP. Accused Alonzo and Cometa intentionally or grossly failed to monitor the following lapses committed by WGI after the guarantee facility was approved:
 - i. Violation of the negative covenants enumerated in the Indemnity Agreement (Exhibit RRR);
 - ii. Non-compliance with the instructions given by the Credit Committee and the Board (Exhibits N, T, U, S and FFF).
 - iii. Non-disclosure to the Board of the change in major contractor (Exhibit X). The Supply Contract was awarded to Belmont AgriCorp. Ltd - Hongkong, instead of Belmont AgriCorp, Inc., without the consent and approval of the Board.
 - iv. Discrepancies in the cost of machineries and equipment (Exhibits L and M).
 - v. Discrepancies in the amount of foreign loan availments (Exhibits L and M).
 - vi. Non-compliance with the *Risk Asset Management Manual* on collateral inspection and appraisal, on account of which TIDCORP would not be able to monitor the market value of the collaterals (Exhibits L and M).
 - vii. Non-compliance with required submission of updated reports on credit checking, trade checking and court cases of WGI (Exhibits L and M).
 - viii. Gross misrepresentations on the status and compliance of WGI (Exhibit BB).
- h. The irregularities could not have been committed without the active participation of accused private individuals. As major stockholders and owners of WGI, it is improbable that accused

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private individuals have no knowledge that: (1) WGI does not possess the qualification and capability to undertake the project; (2) Representative of WGI and its affiliates have no authority to enter into any indemnity and/or surety agreement in favor of TIDCORP; (3) WGI has no authority to apply for guarantee facility with TIDCORP; (4) WGI did not know that Belmont-Hongkong is already a dissolved corporation; (5) WGI did not know that Belmont-Hongkong and Belmont-Philippines are two different entities; (6) WGI did not comply with its Rehabilitation Program; (7) WGI did not comply with the conditions precedent and negative covenants imposed by the Board; (8) WGI failed to account for the proceeds of the 33M Dollar loan; and (9) WGI committed major lapses in its application, and eventually in the implementation of its account.

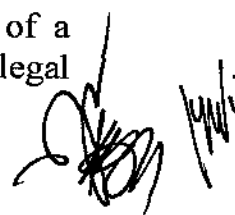
- i. Accused Alonzo, as the Executive Vice President and as the direct supervisor of Cometa, should have been vigilant in protecting the interests of the government. The magnitude of the amount involved should have cautioned Alonzo to verify the truthfulness and accuracy of the documents before endorsing the same to the Board for approval.
- j. At the very least, there is a conspiracy of silence and inaction. The fact that accused Alonzo immediately joined WGI as its President after his separation from TIDCORP, shows that he has a close and personal connection with the private accused individuals.
- k. The fact that Atty. Francisco S. Magsajo, Jr. was not presented as witness will not affect the outcome of the case. The documents referred to by Atty. Magsajo in his complaint-affidavit are the same documents admitted by this Court.

After a careful study of the documentary and testimonial evidence presented by the prosecution, the Court finds that, if unrebutted, the same is sufficient to support a verdict of guilt against accused Rolando C. Alonzo, Teresita Cometa, Alison A. Sy, Guillermo G. Sy, and Renato C. Ang, for violation of Section 3(e) of Republic Act 3019.

The Court hereby DENIES the separate *Motions for Leave to File Demurrer to Evidence* of accused Rolando C. Alonzo, Teresita Cometa, and Alison A. Sy, Guillermo G. Sy and Renato C. Ang.

The *Demurrer to Evidence* filed on February 4, 2019 by accused Cometa is merely noted, in view of the denial of her *Motion for Leave*.

This is without prejudice to the filing by any of the accused of a *Demurrer to Evidence* without prior leave of court, but subject to the legal



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consequences provided under Section 23, Rule 119 of the Revised Rules of Criminal Procedure, that is, they shall waive their right to present evidence and are submitting this case for judgment on the basis of the evidence adduced by the prosecution.

The accused, including accused Cometa, are given a period of five (5) days from receipt of this Resolution within which to file, by personal filing and service, or through courier, their respective *Manifestations* to inform this Court whether they will file a *Demurrer to Evidence*, without leave of court.

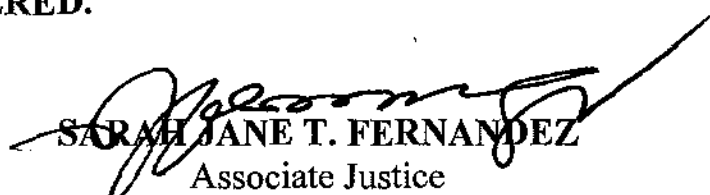
The Court notes the entry of appearance of the following:

J. L. ANASTACIO, CPA & ASSOCIATES
Counsel for accused Teresita Cometa
Unit B6 L22 Villa Felisa, Alabang-Zapote Road,
Pamplona II, Las Piñas City 1747

Henceforth, all notices, orders, resolutions and other court processes shall be served on the aforesaid counsel at the address indicated above.

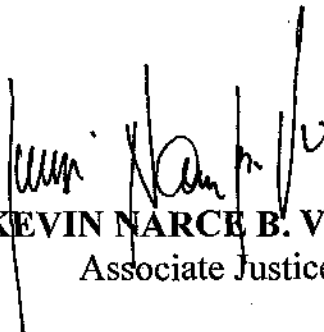
The hearings for the presentation of defense evidence set on June 3 and 4, 2019 are maintained.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

WE CONCUR:


KARL B. MIRANDA
Associate Justice


KEVIN NARCEB B. VIVERO
Associate Justice