



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

FOURTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Crim. Case No. SB-16-CRM-0538

FOR: Violation of Section 3(e) of R. A. No. 3019,
as Amended.

-versus-

RICARDO SISON RIVERA,
Accused.

Present:

QUIROZ, J. Chairperson
CRUZ, J.
JACINTO, J.

Promulgated on:

APR 25 2019

X -----X

RESOLUTION

CRUZ, J.

This resolves the (1) Motion for leave to file Demurrer to Evidence dated 26 February 2019 of accused Ricardo Sison Rivera ("Rivera"); and (2) the Prosecution's Comment/Opposition dated 15 March 2019.

In his motion,¹ accused Rivera asks for leave to file demurrer to evidence, contending that the prosecution's evidence failed to establish his guilt beyond reasonable doubt. To support his claim, accused Rivera mainly cited the admissions of prosecution witness, Mayor Dante Torres, which could justify his failure to take any legal action to cancel the contract or sue the contractor for damages due to the delay and non-operation of the Guagua municipal slaughterhouse.

The prosecution opposed² accused Rivera's motion, stating that the same should be denied for being filed out of time. Furthermore, the prosecution asserts that there are overwhelming

¹ Records, Vol. II, pp. 15-18
² Records, Vol. II, pp. 21-27

7

X ----- X

proof to establish accused Rivera's guilt beyond reasonable doubt. Concomitantly, the prosecution enumerated some facts showing how the said accused acted with evident bad faith, manifest partiality, or gross inexcusable negligence, which not only caused undue injury to the Municipality of Guagau, Pampanga but also gave unwarranted benefits and advantage to NC General Construction.

Before going into the substance of the motion, the Court will first address the issue on the timeliness of the filing of the said motion. Section 23, Rule 119 of the Rules of Court explicitly states that the motion for leave of court to file demurrer to evidence should be filed within a non-extendible period of five (5) days after the prosecution rests its case. In jurisprudence, the prosecution is deemed to have rested its case after the court rules on its formal offer of evidence.³ Here, accused Rivera disclosed that he received this Court's order admitting the prosecution's Formal Offer of Exhibits on 19 February 2019.⁴ Reckoned from said date, accused Rivera had five (5) days or until 24 February 2019, within which to file his motion.⁵ However, the last day, 24 February 2019, fell on a Sunday, and the following day, 25 February 2019, was declared a holiday.⁶ Therefore, the last day of filing of the present motion should be on 26 February 2019.⁷ In this case, the records show that on even date⁸ accused Rivera timely filed his motion via registered mail.⁹

As to the merits of the motion, this Court notes that the Information¹⁰ filed herein charges accused Rivera for violation of Section 3 (e) of Republic Act (R. A.) No. 3019, the accusatory portion of which reads:

xxx That between the period of April 2009 and June 2013, or sometime prior or subsequent thereto, in Guagua, Pampanga, Philippines and within the jurisdiction of this Honorable Court, accused **RICARDO SISON RIVERA**, a public officer, being then the Municipal Mayor of Guagua, Pampanga, while in the performance of his official function and committing the offense in relation to his

³ Antonio Cabador vs. People of the Philippines (G. R. No. 186001, October 2, 2009)

⁴ Records, Vol. II, p. 15

⁵ Section 23, Rule 119 of the Rules of Court states that "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.

⁶ Section 1, Rule 22 of the Rules of Court states that if the last day of the period falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.

⁷ *Id.*

⁸ Records, Vol. II, p. 18 (Per Registry Receipt dated 26 February 2019, attached on the last page of the motion.)

⁹ In the case of Bank of the Philippine Island vs. Court of Appeals and TF KO Development Corporation (G. R. No. 170625, October 17, 2008), it was held that "when a pleading is filed through registered mail, the date of the mailing, as shown by the post office stamp on the envelope or the registry receipt, shall be considered as the date of its filing, payment or deposit in court."

¹⁰ Records, Vol. I, pp. 1-3

X-----X

office, acting with evident bad faith, manifest partiality or gross inexcusable negligence, did then and there willfully, unlawfully and criminally fail to take appropriate action to ensure the completion of the construction of the Guagua municipal slaughterhouse by NC's General Contractor within the period fixed in the contract, and to institute proper legal action against NC's General Contractor, such as to terminate the contract and enforce the payment of liquidated damages, despite said contractor's failure to complete and deliver the subject slaughterhouse on time, thereby causing undue injury to the Municipality of Guagua, Pampanga and giving unwarranted benefit, preference and advantage to NC's General Contractor. xxx

Accordingly, to sustain a conviction under the aforementioned provision, the following elements must be present: (1) The accused must be a public officer discharging administrative, judicial or official functions; (2) The accused must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (3) The accused caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.¹¹

To prove the said elements, the prosecution offered, among others, the following evidence:

1. **Exhibit "A"** – Accused Rivera's Service Contract – to prove that at the time material to this case, said accused was a public officer, being then the Municipal Mayor of Guagua, Pampanga.

2. **Exhibit "G"** – Contract and Agreement for the Construction of Slaughterhouse "AA" & Facility, executed on 15 April 2009 between accused Rivera and NC's General Contractor – to prove that the construction of the Slaughterhouse "AA" & Facility was contracted to be completed within Two Hundred Forty (240) calendar days; to prove that part of the contract was for NC's General Contractor to pay liquidated damages to the Municipality of Guagua in the event it fails to satisfactorily complete the construction of the slaughterhouse within 240 days; to prove that NC's General Contractor's liability for liquidated damages subsists until the work is completed and accepted or taken over by the Municipality of Guagua.

3. **Exhibit "Q"** – Progress Report of the Construction of the Slaughterhouse – to prove that there was no completion of the construction project of the slaughterhouse despite the lapse of the contracted period of 240 days; to prove that there was delay in the construction of the slaughterhouse project; to prove that despite delay, accused River failed to require and demand from NC's General Contractor the payment of liquidated damages for the delay in the completion of the slaughterhouse project.

¹¹ People of the Philippines vs. Aristeo E. Atienza, 673 SCRA 470, (2012), pp. 479-480.

X-----X

4. **Exhibit "O"** – Letter dated 20 October 2016 issued by Municipal Engineer Raul G. Naguit – to prove that there was no completion of the construction of the slaughterhouse project; to prove that there was a delay in the construction of the slaughterhouse; to prove that the Office of the Municipal Engineer did not receive any letter of extension from NC's General Contractor for the completion of the project.

5. **Exhibit "DD"** – Letter issued by Municipal Mayor Dante D. Torres dated 20 October 2016, that the Mayor's Office did not have in its possession a request from NC's General Contractor asking for extension to complete the construction of the slaughterhouse project – to prove that there was no record of any letter request from NC's General Contractor for the extension to complete the slaughterhouse project.

6. **Exhibit "FF"** – Certification dated 20 October 2016, issued by Municipal Mayor Dante D. Torres certifying the fact that the construction of the slaughterhouse is not yet completed – to prove that in 2016, which is beyond the 240-day period provided under the contract, the construction of the slaughterhouse project was not yet complete.

7. **Exhibit "K"** – Certification on the checks issued to NC's General Contractor dated 22 October 2016 by Veneranda N. Laud, Municipal Accountant of the Municipality of Guagua, Pampanga – to prove that the Municipality of Guagua, Pampanga issued checks as payment to NC's General Contractor in the total net amount of Twenty-Three Million Six Hundred Fifty-Five Thousand Two Hundred Ninety-Nine Pesos and Fifteen Centavos (Php23,655,299.15) for the construction of the slaughter house project; to prove that NC's General Contractor's retention money has not yet been returned, indicative of the fact that the construction of the slaughterhouse was not yet finish, much less accepted, and turned-over to the Municipality, despite the lapse of the 240-day period of construction.

8. **Exhibits "V" and "W"** – Annual Audit Reports on the Municipality of Guagua, Pampanga for the years 2011 and 2012 – to prove that the Commission on Audit (COA) found the existence of delay in the construction/completion of the slaughterhouse project; to prove that the delay in the completion of the slaughterhouse resulted in a monetary loss for the Municipality of Guagua, Pampanga in the form of monthly rentals in the amount of Php66,825.10.

From the foregoing, it appears that the prosecution's adduced evidence is *prima facie* sufficient to sustain a conviction. In effect, such evidence offered, if unrebutted, is enough to support a finding of guilt beyond reasonable doubt. The remedy of the accused, thus, is to present his evidence in order to counter the charge against him.

Y

x-----x

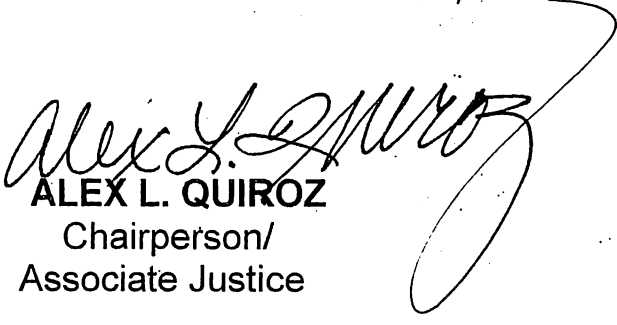
WHEREFORE, premises considered, the Motion for leave to file Demurrer to Evidence of accused Ricardo Sison Rivera is hereby **DENIED** for lack of merit.

Let the reception of defense evidence set on April 22 and 23, 2019,¹² at 1:30 in the afternoon proceed as scheduled, unless the aforementioned accused manifests an intention to file a demurrer to evidence even without prior leave of court, in which case an order shall be issued affording said accused a period of time within which to file the same.

SO ORDERED.


REYNALDO P. CRUZ
Associate Justice

We Concur:


ALEX L. QUIROZ
Chairperson/
Associate Justice


BAYANI H. JACINTO
Associate Justice

¹² Records, Vol. II, p. 12 (Per Order dated 20 February 2019)