



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-17-CRM-1385

For: Violation of Section 7, Par. (d),
R.A. No. 6713

- versus -

Present:

AILEEN CYNTHIA M. AMURAO,
ET AL.

Accused.

FERNANDEZ, SJ, J.
Chairperson
MIRANDA, J., and
VIVERO, J.

Promulgated:

APR 04 2019

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves the following:

1. *Most Respectful Motion for Reconsideration with Manifestation*¹ of accused Michie H. Meneses, Joyce C. Enriquez, and Michael Angelo L. Aquino, Jr.; and,
2. *Motion for Reconsideration with Manifestation*² of accused Aileen Cynthia M. Amurao;

together with the *Consolidated Comment/Opposition (Re: Motions for Reconsideration)*³ filed on March 6, 2019 by the prosecution.

¹ Dated March 1, 2019, filed on March 1, 2019; Record, Vol. II, pp. 211-217.

² Dated March 5, 2019, filed on March 4, 2019; Record, Vol. II, pp. 218-222.

³ Dated March 9, 2019 (*sic*); Record, Vol. II, pp. 224-227.

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Accused Meneses, et al. and accused Amurao similarly pray that the *Resolution* dated February 20, 2019, denying their respective *Motions for Leave to File Demurrer to Evidence*, be reconsidered and they be granted leave of court to file *Demurrer to Evidence*. Accused Amurao further prays that Exhibits BB and CC be denied admission for the purpose of proving accused' conspiracy in violating Section 7(d) of R.A. No. 6713.⁴

As they have argued in their *Motion for Leave*, accused Meneses, et al., claim that the evidence of the prosecution is not sufficient to support a guilty verdict against them.⁵ They argue:

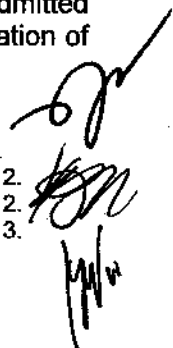
1. Prosecution witnesses Sheryll Lynn T. Lebante, Engelbert Alvarez, and Doris Suelo, private complainants in the instant case, do not have personal knowledge as to the preparation, distribution, and receipt of the solicitation letters presented to this Court.
2. Ms. Lebante admitted that the letters addressed to Sunlight Hotel and A&A Hotel were taken from the table of accused Enriquez, without the latter's consent. The unconsented taking of the letters constitutes a violation of accused Enriquez' constitutional right to privacy and communication, and, the letter's presentation in Court is against public policy.
3. While Ms. Suelo testified that she received the solicitation letter dated February 4, 2014 (Exhibit M) from Mr. Rey M. Rafols, the document does not contain a notation showing that it was so received.⁶
4. To remedy the absence of personal knowledge of private complainants, the prosecution presented Ms. Cyril Faith Negosa, Ms. Mary Mae Romelyn Serag-Arcegono, Ms. Shiela Ann M. Paclarin-Galivo, Mr. Ramil Gonzales, and Mr. Emman M. Montilla. However, the testimonies of said witnesses failed to establish conspiracy among the accused.⁷
 - a. Ms. Negosa testified that during the seminar, Daluyon Beach and Mountain Resorts offered free accommodation to the employees, including accused Meneses, of the City Tourism Office, for free. But, her co-employees who also benefitted from the free accommodation were not sued.
 - b. Ms. Arcegono testified that accused Amurao ordered her to prepare solicitation letters and to deliver the same to the addressee resort and hotel owners. Ms. Arcegono admitted that she has no personal knowledge as to the participation of

⁴ Accused Amurao's Motion for Reconsideration dated March 5, 2019, p. 4.

⁵ Accused Meneses, et al.'s Motion for Reconsideration dated March 1, 2019, p. 2.

⁶ Accused Meneses, et al.'s Motion for Reconsideration dated March 1, 2019, p. 2.

⁷ Accused Meneses, et al.'s Motion for Reconsideration dated March 1, 2019, p. 3.



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accused Aquino, Enriquez and Meneses in the preparation and distribution of the letters to the addressees.

- c. Ms. Paclarin-Galivo, representative of LTS Pinnacle Holding, Inc., testified that: (i) NCCC received a sponsorship letter from accused Amurao; (ii) she did not know who delivered the letter to NCCC; and, (iii) NCCC and accused Aquino executed a Memorandum of Agreement. The signature of accused Aquino on the copy of the MOA, provisionally marked by the prosecution, appears to be different from his signature on the original copy of the same document.
 - d. Mr. Gonzales, representative of Excite Touchpoint Solutions Team, Inc., testified that: (i) their client Smart Communications forwarded to their office a solicitation letter for the 10th Pangalipay sa Baybay; (ii) thereafter, they deposited the amount of Php30,000.00 into the bank account of accused Amurao; (iii) they requested accused Aquino, the representative of accused Amurao, to receive the same; (iv) Excite Touchpoint did not receive a Solicitation Letter from any of the accused; and, (v) it was just acting on behalf of Smart Communications. However, there was no proof of an agreement between Excite Touchpoint and Smart Communications, authorizing the former to act on behalf of the latter. The solicitation letter referred to Gonzales was unsigned by accused Amurao. Mr. Gonzales failed to produce the original copy of the acknowledgement receipt.⁸
 - e. Mr. Montilla, representative of Globe Telecommunication, testified that: (i) he received a forwarded email from *maquino@topservice.com* of a certain Michael Aquino, with an attached unsigned document entitled *10th Pangalipay sa Baybay* from accused Amurao; and, (ii) in response to this letter, Globe Telecom gave 48 pieces of t-shirt as sponsorship token to accused Aquino. The attached letter/document was unsigned, and, the acknowledgement receipt was a mere photocopy, with no indication that it came from Globe Telecom.
5. On the basis of the testimonies of the prosecution witnesses, the following conclusions can be made:
- a. The private complainants have no personal knowledge as to the facts of the case;
 - b. The testimony of Ms. Negosa that accused Meneses participated in the solicitation of free accommodation from several hotels and resorts are mere assumptions based only on the fact that accused Meneses benefitted from the free accommodation; the same privilege granted to her co-employees; and,
 - c. Ms. Arcegon did not testify on the participation of accused Aquino, Enriquez and Meneses in the distribution of the alleged solicitation letters; and, while Ms. Paclarin-Galivo, Mr. Gonzales, and Mr. Montilla identified accused Aquino as the person they transacted with, they have no personal knowledge of the participation of the other accused.

⁸ Accused Meneses, et al.'s Motion for Reconsideration dated March 1, 2019, p. 3.



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6. The prosecution failed to prove conspiracy among the accused because the testimonies of the witnesses do not show that accused had a unity of purpose in committing the offense charged.⁹
7. Republic Act No. 6713 does not apply to accused Aquino; he was neither a public official nor an employee of the City Tourism Office of Puerto Princesa. The contract shows that there is no employer-employee relationship between the City Government of Puerto Princesa and accused Aquino. The prosecution failed to prove that accused Aquino was duly authorized by accused Amurao to transact on her behalf.
8. The letters sent out are being confused as an act of solicitation, when they are just sponsorship letters and the addressees have no obligation to accede to the letter. Black Dictionary defines solicitation as asking, enticing, urgent request; while Merriam Webster Dictionary defines the same as the practice or act or an instance of soliciting, and a moving or drawing force, incitement or allurements.¹⁰

On the other hand, accused Amurao claims:

1. The letters sent to tourism stakeholders and clientele of LGU Puerto Princesa Tourism Office are mere photocopies.¹¹
2. Mr. Rafols should have been presented to prove the existence and authenticity of the letters. The photocopies should be treated as mere scraps of paper.¹²
3. The Program Appropriation and Obligation by Object for the Annual Event "Pangalipay sa Baybay" (Exhibit CC) should be denied admission to prove conspiracy in demanding solicitation. The amount allotted is just a *Budget Proposal 2014 (Estimate)*. It was not proved that the foregoing appropriation was disbursed; no evidence was presented to show that the same was given to accused Amurao in relation to Pangalipay sa Baybay.
4. These letters do not constitute solicitation, rather, sponsorship requests. To subject the term "sponsor" to creative interpretation to suit and conform to the elements of Section 7(d) of R.A. No. 6713 is not fair and is injudicious.

⁹ Accused Meneses, et al.'s Motion for Reconsideration dated March 1, 2019, p. 4.

¹⁰ Accused Meneses, et al.'s Motion for Reconsideration dated March 1, 2019, p. 5.

¹¹ Accused Amurao's Motion for Reconsideration dated March 5, 2019, p. 1.

¹² Accused Amurao's Motion for Reconsideration dated March 5, 2019, p. 2.

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Merriam Webster Dictionary defines sponsor and solicit as follows:

Sponsor - a person or an organization that pays for or plans and carries out a project or activity especially; one that pays the cost of a radio or television program usually in return for advertising time during its course.

Solicit - to approach with a request or plea; to try to obtain by usually urgent requests or pleas.

Accused Amurao has consistently denied knowledge of the letters subject of this case. She was unaware of its distribution until the same was brought to her attention.

The activity is a yearly event participated in by tourism stakeholders and clientele. It is an opportunity for them to showcase and advertise their products. The proceeds are used for promotion.

The certification (Exhibit BB) of non-receipt of the proceeds in cash or in kind does not mean that the same were in the possession or was turned over to accused Amurao. Hence, the Certification should not be admitted as evidence.¹³

The prosecution contends that the *Motions for Reconsideration* failed to raise matters that would warrant the grant of leave of court to file Demurrer to Evidence.¹⁴ The prosecution argues:

1. There is a *prima facie* case against the accused-movants for violation of Section 7(d) of R.A. No. 6713. This point was thoroughly discussed in the prosecution's separate *Comment/Opposition* dated January 28, 2019 and January 29, 2019. Accused' arguments are mere reiterations of their previous positions which have already been passed upon and ruled on by this Court.
2. There is no doubt from the solicitation letters that the accused intended to solicit funds or goods from the various stakeholders of the City Tourism's Office in Puerto Princesa City, Palawan, in the guise of sponsoring the Office's activities.

There is no need to differentiate between the words "solicitation" and "sponsorship", considering that both terms were used in the letters although the more subtle synonym *request*, was used instead of *solicit*.

¹³ Accused Amurao's Motion for Reconsideration dated March 5, 2019, pp. 3-4.

¹⁴ Consolidated Comment/Opposition dated March 9, 2019, p. 1.

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3. The failure of the prosecution to present Mr. Rafols will not disturb the finding of a *prima facie* case against the accused.
4. The solicitation letter pertaining to Mr. Rafols was not offered in evidence by the prosecution. As Ms. Suelo declared, the only letter in the possession of Mr. Rafols is the one addressed to him. There is nothing in the records nor in the testimonies of the prosecution witnesses that will establish that all of the solicitation letters are in the custody of Mr. Rafols.
5. The alleged lack of knowledge and/or participation of the accused in the illegal solicitations are matters of evidence for the defense.¹⁵

RULING

After a careful restudy of the testimonial and documentary evidence presented by the prosecution, this Court still finds that the same, if unrebutted, is sufficient to support a verdict of guilt against accused Michie H. Meneses, Joyce C. Enriquez, Michael Angelo L. Aquino, Jr., and, Aileen Cynthia M. Amurao, for violation of Section 7, Par. (d) of Republic Act No. 6713. The Court hereby **DENIES** the *Motions for Reconsideration* filed by the accused.

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

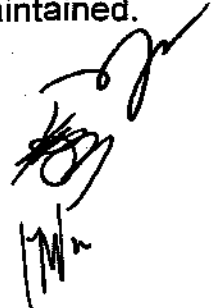
The Court **NOTES** the manifestation of accused Meneses, et al. that in the event that the instant *Motion for Reconsideration* is denied, the accused will present their witnesses.¹⁶

Nonetheless, all the accused 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 *Manifestation* to inform this Court whether they will file a *Demurrer to Evidence*, without leave of court.

The hearings set for the accused to present their evidence on May 2 and 3, 2019, both at 1:30 in the afternoon, are maintained.

¹⁵ Consolidated Comment/Opposition dated March 9, 2019, pp. 2-3.

¹⁶ Accused Meneses, et al.'s Motion for Reconsideration dated March 1, 2019, p. 5.

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The said scheduled dates will be considered automatically cancelled upon receipt by the Court of the *Demurrer to Evidence* of the accused.¹⁷

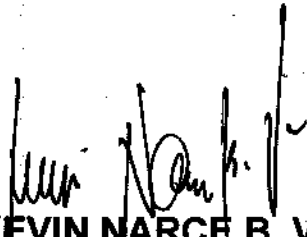
Accused Amurao's prayer to deny the admission of Exhibits BB and CC is **DENIED** for being filed out of time. The foregoing documentary exhibits were admitted in the December 14, 2018 *Resolution* of this Court and the period to move for the reconsideration of said Resolution had lapsed.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

WE CONCUR:


KARL B. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
Associate Justice

¹⁷ Pursuant to A.M. No. 15-06-10-SC, Revised Guidelines for Continuous Trial of Criminal Cases