



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
QUEZON CITY

SEVENTH DIVISION

MINUTES of the proceedings held on April 8, 2019

Present:

MA. THERESA DOLORES C. GOMEZ-ESTOESTA ----- Chairperson
ZALDY V. TRESPESES ----- Associate Justice
GEORGINA D. HIDALGO ----- Associate Justice

The following resolution was adopted:

CRIMINAL CASE NO. SB-17-CRM-1671

PEOPLE v. PETER PAUL JED C. FALCON, ET AL.

Before the Court are the following:

1. Accused Peter Paul Jed Falcon's "MOTION FOR LEAVE TO FILE (HEREIN ATTACHED) DEMURRER TO EVIDENCE" dated January 18, 2019;
2. Accused Ibrencio Indoyon, Jr.'s "MOTION FOR LEAVE OF COURT TO FILE DEMURRER TO EVIDENCE" dated March 12, 2019; and
3. The Prosecution's "CONSOLIDATED COMMENT/OPPOSITION (Re: Accused Falcon and Indoyon's Motion for Leave to File Demurrer to Evidence)" dated March 27, 2019.

GOMEZ-ESTOESTA, J.:

This resolves the separate *Motions for Leave of Court to File Demurrer to Evidence*¹ filed by accused Falcon and Indoyon.

In his *Motion for Leave to file Demurrer to Evidence*,² accused Falcon asserted that the Prosecution failed to prove that, as alleged in the *Information*, he received the items subject of this case, and that the funds for the purchase thereof were sourced from his PDAF. He explained that none of the witnesses testified having witnessed him receive the subject items; in fact, they were

¹ Falcon – Records, Vol. 4, pp. 269-293; Indoyon – Id., pp. 348-354

² With attached Demurrer to Evidence

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actually ghost purchases, which would render delivery impossible. The delivery receipt and sales invoice were undated and not properly identified by the person who “noted” them. While the MOA named the source of funds as accused Falcon’s PDAF, it was notarized after payment has already been received by the supplier, and it is inconsistent with the GAA, the SARO, the Sub-allotment Advice, and the testimony of DILG Director Ester Aldana, that the source of fund was DILG-OSEC.

For his part, accused Indoyon averred that he signed the disbursement vouchers certifying that funds were available as part of his ministerial duty, and only after the Municipal Accountant certified the completeness of the necessary documents. Moreover, it was not his duty to ascertain the delivery of the equipment subject of this case. It is presumed that he has regularly performed his duties, and the Prosecution failed to prove how he, in the discharge of his functions, violated Sec. 3(e) of R.A. 3019.

In its *Consolidated Comment/Opposition*,³ the Prosecution countered that accused Falcon “noted” the delivery receipt and sales invoice of Philflex Trading, and accused Luzviminda Lopez herself attested to having delivered the subject supplies to accused Falcon. Prosecution witness Rene Burdeos testified that accused Falcon advised him of his P20 Million CDF to be downloaded to DILG Region XIII, which is bolstered by the Memorandum of Agreement (Exhibit “D”) and accused Falcon’s letter to Burdeos (Exhibit “YY”) informing him on the matter. Meanwhile, accused Indoyon signed documents that enabled the payment to Philflex despite non-delivery of the subject equipment. Accused Indoyon signed disbursement documents despite glaring defects in the sales invoice, delivery receipt, inspection report, and receipt of equipment, which signifies evident bad faith and gross inexcusable negligence.

The *Motions* are bereft of merit.

The power to grant leave to the accused to file a demurrer is addressed to the sound discretion of the trial court. The purpose is to determine whether the accused in filing his demurrer is merely stalling the proceedings.⁴ A demurrer to the evidence, in turn, 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, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt.⁵

³ *Id.*, pp. 381-387

⁴ *People v. Crespo*, G.R. No. 180500, September 11, 2008

⁵ *Singian v. Sandiganbayan, et al.*, G.R. Nos.195011-19, September 30, 2013

Neither of the accused challenged the sufficiency of the prosecution evidence to establish the commission of violation of Sec. 3(e) of R.A. 3019, but only the sufficiency of evidence to establish their participation in the offense.

The Information alleges that the funds used for the purchase of the subject equipment were sourced from accused Falcon's Congressional Initiative Fund, and that accused Falcon received the subject equipment without turning them over to the municipality of Lingig, causing undue injury to the government. Under the Memorandum of Agreement (Exhibit "D"), accused Falcon requested the transfer of the Financial Assistance to the 2nd District of Surigao Del Sur, where he was the Representative, to the Municipality of Lingig, Surigao del Sur, to implement the Peace and Order Communications Project. During the hearing on September 6, 2018, when the testimony of Atty. Nelson Ng, who notarized accused Luzviminda Lopez's Counter-Affidavit was dispensed with, accused Lopez stipulated that the Counter-Affidavit supposedly subject of Ng's testimony (Exhibit "CC") was the same one that she executed.⁶ In said Counter-Affidavit, accused Lopez alleged that she delivered the supplies to accused Falcon, which he received, as shown by his signature on the attached Receipt of Property (Exhibit "T"). This was also admitted by accused Lopez during pre-trial.⁷ Thus, her statement remains to be so notwithstanding that accused Falcon did not stipulate on her Counter-Affidavit.

The irregularities in the MOA, as pointed out by accused Falcon, do not relate to the sufficiency of the prosecution's evidence, and are not in issue in resolving a *Motion for Leave to File Demurrer*. Precisely, accused Falcon will be given his turn to present evidence in his defense. While silent on Exhibit "T", accused Falcon raises objections to the admissibility of the delivery receipt (Exhibit "U") and the sales invoice (Exhibit "V"), which have already been admitted by this Court.

On the other hand, the Prosecution was able to establish that funds were disbursed despite the failure to deliver the subject equipment to the Municipality of Lingig. Accused Indoyon's signatures appear in the disbursement voucher (Exhibit "P") certifying the availability of funds, as well as the check issued to Philflex Trading & Gen. Merchandise (Exhibit "N"), showing his participation in the disbursement. That it was not his duty to ascertain the actual delivery of the equipment before disbursing funds therefor is a matter of defense, not a valid ground to be raised in a demurrer to evidence.

WHEREFORE, in view of the foregoing, the separate *Motions for Leave of Court to File Demurrer to Evidence* filed by accused Falcon and accused Indoyon are **DENIED** for lack of merit.

⁶ Order dated September 5, 2018, Records, Vol. 3, pp. 302-303, TSN dated September 5, 2018, p. 10

⁷ Pre-Trial Order dated June 19, 2018, Records, Vol. 2, p. 327

The parties are reminded of the setting for the presentation of defense evidence on April 30, 2019, at 8:30 in the morning.

SO ORDERED.


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

WE CONCUR:


ZALDY V. TRESPESES
Associate Justice


GEORGINA D. HIDALGO
Associate Justice