



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-18-CRM-0397

For: Violation of Section 3(e)
of Republic Act No. 3019

- versus -

ENRICO R. ECHIVERRI, ET AL.,
Accused.

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PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-18-CRM-0398

For: Falsification of Public Document

- versus -

Present

EDNA V. CENTENO, ET AL.,
Accused.

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

X-----X

Promulgated:

APR 16 2019

X-----X

RESOLUTION

FERNANDEZ, SJ, J.

The prosecution, in its *Motion to Withdraw Informations (For Criminal Case Nos. SB-18-CRM-0397 to 0398)*,¹ prays that the Information in the present cases be withdrawn. It avers:

1. The Ombudsman has approved the recommendation for the withdrawal of the charges against herein accused.

¹ Dated March 6, 2019; Record, pp. 340-348

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2. The factual antecedents and the legal issues involved in the present cases are substantially the same as those in SB-17-CRM-1389 and 1390, which were then pending before the First Division of the Sandiganbayan (henceforth referred to as First Division, for brevity).
3. In the Resolution dated October 1, 2018 in G.R. Nos. 241103-04, the Supreme Court affirmed the First Division's Decision in SB-17-CRM-1389 and 1390, granting the *Demurrer to Evidence* filed by accused Echiverri, et al.

In their *Comment*,² accused Enrico R. Echiverri, Edna V. Centeno and Jesusa C. Garcia aver:

1. The prosecution's evidence and the matters agreed upon in the Joint Stipulation of Facts (JSF) dated November 5, 2018 are insufficient to prove their guilt beyond reasonable doubt of violation of Sec. 3(e) of R.A. No. 3019 and of Falsification under Art. 171 (4) of the Revised Penal Code (RPC).
 - a. The Sangguniang Panlungsod passed Ordinance No. 0468 s. 2010, approving the Annual Budget of Caloocan City Government in the amount of ₱3.3 billion to finance specific programs, projects, services and activities, with the objective of promoting the general welfare of the city and its inhabitants. The 292-page Annual Executive Budget forms part of said ordinance.
 - b. Item 39 of Ordinance No. 0468 s. 2010 shows that the Sanggunian approved appropriations for "Statutory and Contractual Obligations" (SCO) in the amount of ₱760,597,778. Of said amount, ₱288,186,498 was earmarked for the mandatory allotment of 20% Internal Revenue Allotment for local development projects.
 - c. The Sanggunian subsequently approved Ordinance No. 0474 s. 2011, enacting Supplemental Budget No. 1 for FY 2011 in the amount of ₱53,112,030, to be funded from the increase in the IRA share from January to June 2011.
 - d. Said supplemental budget ordinance was reviewed by the Department of Budget and Management (DBM). Furthermore, there is no proof that the same was nullified for not including a list of specific projects.
 - e. The Sanggunian, through Resolution No. 1985 s. 2012, clarified, confirmed and ratified all contracts entered into

² Dated April 3, 2019; Record, pp. 362-372

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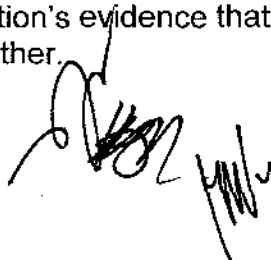
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by Caloocan City for projects sourced from the lump sum appropriations for SCOs, among others, of the 2011 Annual Budget embodied in Ordinance No. 0468 s. 2010 and under Supplemental Budget No. 1 embodied in Ordinance No. 474 s. 2011.

2. The prosecution's evidence actually proved the existence of both authority and specific authorization for the subject project.
3. There being authority and a specific appropriation, the certifications in the subject ALOBS cannot be proven to be absolutely false, and accused Centeno and Garcia should not have been indicted for Falsification under Art. 171, par. 4 of the RPC.
4. The evidence presented by the prosecution during the pre-trial shows that the three (3) accused performed their duties and official functions pursuant to their respective mandates under the law.
5. The award of the subject project to Lex-Mar General Merchandise and Contractor (Lex-Mar) was not an unwarranted benefit, advantage or preference in its favor.
 - a. The prosecution's evidence shows that the award of the subject contract to Lex-Mar was not unjustified, or done without adequate reason. After the conduct of a public bidding, Lex-Mar offered the lowest bid. Absent any irregularity, the contract would have been awarded to Lex-Mar.
 - b. The City Government of Caloocan was contractually bound to pay Lex-Mar for the work done in the subject project.
6. The prosecution's evidence failed to show how the award of the contract, and the payment, to Lex-Mar caused undue injury to the government.
 - a. The subject project was completed.
 - b. The City Government of Caloocan and its inhabitants benefited from the subject project.
7. The prosecution's evidence cannot prove bad faith or manifest partiality.
8. There is nothing in the prosecution's evidence that would prove that they conspired with each other.



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9. The presumption of regularity in the performance of official functions has not been overturned.

THE COURT'S RULING

The Court resolves to partially grant the prosecution's Motion.

Once an Information is filed in court, any disposition of the case, whether it be dismissal, or the conviction or the acquittal of the accused, rests in the sound discretion of the court. The only qualification to this exercise of the judicial prerogative is that the substantial rights of the accused must not be impaired nor the People be deprived of the right to due process.³ This also applies to a motion to withdraw the Information or to dismiss the case before or after the arraignment of the accused.⁴

In *Fuentes v. Sandiganbayan*,⁵ the Supreme Court clarified that such exercise of judicial discretion involves the court's own assessment of the evidence in the possession of the prosecution. To wit:

We hold that the exercise of judicial discretion, with respect to a motion to withdraw the Information filed by the prosecution, is not limited to the mere approval or disapproval of the stand taken by the prosecution. The court must itself be convinced that there is indeed no sufficient evidence against the accused and this conclusion can only be reached after an assessment of the evidence in the possession of the prosecution. What is required is the court's own assessment of such evidence.

The prosecution's ground for seeking the withdrawal of the Information in the present cases is the Supreme Court's Resolution in *People v. Sandiganbayan (First Division)*,⁶ affirming the First Division's Decision dated April 16, 2018 in SB-17-CRM-1389 and 1390. Thus, this Court's examination of the available evidence must be done in the light of said ruling.

In said Resolution, the Supreme Court found that there was no grave abuse of discretion on the part of the First Division when it

³ *Fuentes v. Sandiganbayan*, G.R. No. 139618, July 11, 2006

⁴ *Lanier v. People*, G.R. No. 189176, March 19, 2014

⁵ *Supra*. Note 3

⁶ G.R. Nos. 241103-04, October 1, 2018

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granted the demurrer to evidence of therein private respondents—who are also the accused in the present cases. It was held that the grant of the demurrer was warranted because (a) the Sangguniang Panglungsod, in Ordinance No. 0464, series of 2010, authorized then Mayor Echiverri to enter into contracts for various city development projects, including the project subject of the cases before the First Division; and (b) the subject project strictly underwent the required procurement process, which eliminated the possibility that the contract was entered into with manifest partiality or gross inexcusable negligence on the part of therein respondents, and likewise, the possibility that the transaction resulted in undue injury or actual damage to Caloocan City. It was further held that considering the foregoing, the First Division correctly ruled that accused Centeno and Garcia did not commit any falsification in making their respective certifications in the subject Allotment and Obligation Slip.

Here, the evidence attached to the Ombudsman's Resolution dated September 2, 2016⁷ shows the following:

1. On November 30, 2010, the Sangguniang Panlungsod of Caloocan, in Ordinance No. 0468 s. 2010,⁸ appropriated the total amount of ₱3.3 billion for the 2011 Annual Budget of the City of Caloocan.
2. On August 9, 2011, the Sanggunian passed Ordinance No. 0474 s. 2011,⁹ enacting Supplemental Budget No. 1 for 2011 in the amount of ₱53,112,030.00, funded from the increase in Internal Revenue Allotment (IRA) share from January to June 2011.
3. In the Allotment and Obligation Slip (ALOBS) dated December 23, 2011,¹⁰ accused Garcia and Centeno made their respective certifications in connection with the subject project, *i.e.*, Renovation & Additional 2nd Floor of Multi-Purpose Hall, Bgy. 124, 8th St. cor. C-3 Road, Caloocan City.
4. The subject project underwent the required procurement process before accused Echiverri

⁷ Record, pp. 8-25

⁸ Record, pp. 48-57

⁹ Record, pp. 58-60

¹⁰ Record, p. 61

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entered into the contract with Lex-Mar General Merchandise and Contractor (Lex-Mar), the lowest bidder.¹¹ There is nothing in the documents which would support the conclusion that the contract price was unconscionable.

5. The subject project was completed¹² before the accused, through the Disbursement Voucher dated June 15, 2012,¹³ authorized payment in the amount of ₱ 2,251,528.50 to Lex-Mar.¹⁴

After examining the foregoing evidence, this Court concludes that there is insufficient evidence to establish the third element of violation of Sec. 3(e) of R.A. No. 3019.

The factual antecedents and the legal issues involved in these cases are not on all fours with those in SB-17-CRM-1389 and 1390. There, the Supreme Court agreed with the First Division's finding that the project involved therein was included in Ordinance No. 0464 s. 2010, which appropriated the amount of ₱1.42 billion funded from the proceeds of the Omnibus Term Loan availed of from the Land Bank of the Philippines. Here, an examination of the ordinances attached to the Office of the Ombudsman's Resolution would show that the appropriations are in lump-sum. There is nothing in said ordinances which detail the projects that could be funded by the appropriations therein. Because the appropriations in said ordinances are in generic terms, a separate authorization is required before the local chief executive may enter into a contract. There is nothing in the available evidence that would show that there was a separate authorization for accused Echiverri to enter into the subject contract with Lex-Mar. Thus, it cannot be said that there is no sufficient evidence to prove that accused Echiverri acted with manifest partiality, evident bad faith or gross inexcusable negligence when he entered into the subject contract with Lex-Mar without the requisite prior authorization from the Sangguniang Panlungsod.

However, this Court finds that there is there is no sufficient evidence to prove that the three accused acted with manifest partiality, evident bad faith or gross inexcusable negligence when accused

¹¹ Record, pp. 62-63, 67-70

¹² Record, p. 76

¹³ Record, p. 72

¹⁴ Record, pp. 72-73

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Echiverri awarded the subject contract to Lex-Mar and when they caused the disbursement in the amount of ₱2,251,528.50 as payment to Lex-Mar for the work it performed in connection with the subject project. As in *People v. Sandiganbayan (First Division)*, there are no apparent irregularities in the procurement process. In fact, there is no issue raised as to the regularity of said procurement process. Consequently, the award of the subject contract to Lex-Mar could not have been done with manifest partiality, evident bad faith or gross inexcusable negligence. Likewise, absent any apparent irregularities in the accused' payment of the amount of ₱2,251,528.50 to Lex-Mar, the accused could not have done the same with manifest partiality, evident bad faith or gross inexcusable negligence, considering that the City of Calocan was contractually bound to pay Lex-Mar.

At any rate, the accused' acts could not have caused undue injury or the giving of unwarranted benefits, advantage or preference to Lex-Mar. As held in *People v. Sandiganbayan (First Division)*, the absence of any irregularity in the procurement process, as well as the completion of the subject project, eliminated the possibility that the accused' acts caused undue injury. And as previously discussed, the award of the subject contract and the payment of the amount of ₱2,251,528.50 were not unjustified, and cannot be considered as unwarranted benefits, advantage or preference given to Lex-Mar.

On the other hand, the Court disagrees with the prosecution's position that the Supreme Court's ruling in *People v. Sandiganbayan (First Division)* applies in SB-18-CRM-0398. In said Resolution, therein subject project was included in Ordinance No. 0464. Here, there is nothing in the ALOBS subject of SB-18-CRM-0398 that would indicate the ordinance which contains the appropriation for the subject project. The accused' claim that the subject project was included in the 20% IRA for Development Projects (20% IRA) finds no support in the evidence attached to the Office of the Ombudsman's Resolution. It is noted that the account code for the 20% IRA is "665,"¹⁵ while the account code indicated in the subject ALOBS is "260." The latter is nowhere to be seen in the Program Appropriation and Obligation by Object.¹⁶

In fine, the insufficiency of the available evidence to establish the third element of violation of Sec. 3(e) of R.A. No. 3019 and the absence

¹⁵ Record, p. 47

¹⁶ *Ibid.*

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of anything to show that the rights of the parties will be prejudiced justifies the withdrawal of the Information in the SB-18-CRM-0397. But insofar as SB-18-CRM-0398 is concerned, the Court is not convinced that there is insufficient evidence against accused Centeno and Garcia.

It bears stressing that the foregoing preliminary findings are not a pre-judgment of accused Centeno and Garcia's guilt in SB-18-CRM-0398, but were made only for the purpose of determining if the withdrawal of the Information is warranted.

WHEREFORE, the Court rules as follows:

1. The prosecution's *Compliance*¹⁷ and the attachment¹⁸ thereto are hereby NOTED.
2. The prosecution's *Motion to Withdraw Informations* is hereby GRANTED insofar as SB-18-CRM-0397 is concerned. As prayed for, the Information in SB-18-CRM-0397 is hereby WITHDRAWN.
3. The prosecution's *Motion to Withdraw Informations* is DENIED insofar as SB-18-CRM-0398 is concerned. The hearing set on June 5, 2019 for the presentation of the prosecution's evidence is maintained.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

WE CONCUR:


KARL B. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
Associate Justice

¹⁷ Dated March 26, 2019; Record, pp. 354-359

¹⁸ Portions of the Memorandum dated January 30, 2019 recommending the withdrawal of the Informations in the present cases, approved by the Ombudsman on February 27, 2019