



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

MINUTES of the proceedings held on April 3, 2019

PRESENT:

HON. SARAH JANE T. FERNANDEZ.....Associate Justice

HON. KARL B. MIRANDA.....Associate Justice

HON. KEVIN NARCE B. VIVERO.....Associate Justice

The following resolution was adopted:

SB-18-CRM-0515 and 0516 –

PEOPLE vs. ENRICO R. ECHIVERRI, ET AL.

In its *Motion to Withdraw Informations (For Criminal Case Nos. SB-18-CRM-0515 to 0516)*,¹ the prosecution averred that the Ombudsman approved its recommendation for the withdrawal of the charges for violation of Sec. 3(e) of R.A. No. 3019 and Falsification of Public Document against the accused. During the hearing on January 25, 2019, the prosecution further averred that the ratification of the contract subject of these cases by the Sangguniang Panlungsod extinguished the accused' criminal liability. The accused interposed no objection.²

The Court NOTES the prosecution's *Compliance*³ and the attachment thereto.⁴

At the outset, it bears stressing that ratification is not among the grounds⁵ for extinguishing the accused' criminal liability. The Court nonetheless resolves to grant the prosecution's Motion.

¹ Dated January 23, 2019, Record, pp. 274-276

² *Comment* dated February 5, 2019 and filed on February 6, 2019

³ Dated and filed on April 2, 2019

⁴ Memorandum dated December 11, 2018, approved by the Ombudsman on January 18, 2019

⁵ *Revised Penal Code. Art. 89. How criminal liability is totally extinguished.* – Criminal liability is totally extinguished:

1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment;
2. By service of the sentence;
3. By amnesty, which completely extinguishes the penalty and all its effects;
4. By absolute pardon;
5. By prescription of the crime;
6. By prescription of the penalty;
7. By the marriage of the offended woman, as provided in Article 344 of this Code.

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.⁶ This also applies to a motion to withdraw the Information or to dismiss the case before or after the arraignment of the accused.⁷

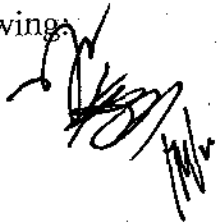
In *Fuentes v. Sandiganbayan*,⁸ the Supreme Court clarified that such exercise of judicial discretion involves the court's own assessment of the evidence in the possession of the prosecution. To wit:

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.

This Court's examination of the prosecution's evidence must be done in the light of the Supreme Court's Resolution in *People v. Sandiganbayan*,⁹

In said Resolution, the Supreme Court found that there was no grave abuse of discretion on the part of the Sandiganbayan (First Division) when it 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 various city development projects, including the project subject of the case before the Sandiganbayan (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 of the transaction resulting in undue injury or actual damage to Caloocan City. It was further held that considering the foregoing, the Sandiganbayan (First Division) correctly ruled that 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 March 23, 2017,¹⁰ shows the following:



⁶ *Fuentes v. Sandiganbayan*, G.R. No. 139618, July 11, 2006

⁷ *Lanier v. People*, G.R. No. 189176, March 19, 2014

⁸ *Supra*. Note 6

⁹ G.R. Nos. 241103-04, October 1, 2018

¹⁰ Record, pp. 9-28

1. The Sangguniang Panlungsod of Caloocan, in Ordinance No. 0464 s. 2010,¹¹ as amended by Ordinance No. 0465 s. 2010,¹² appropriated the amount of ₱1,420,000,000.00 for various infrastructure projects. Included in the enumeration under "Object of Expenditure" in said ordinance is "construction and/or improvement of roads, alleys, x x x." Thus, Ordinance No. 0464 s. 2010, as amended, constitutes the authorization required for accused Echiverri to enter into the subject contract.
2. The subject project underwent the required procurement process before accused Echiverri entered into the contract with C & F Construction, the lowest bidder.¹³ There is nothing in the documents which would support the conclusion that the contract price was unconscionable.
3. The subject project was completed¹⁴ before the accused, through the Disbursement Voucher dated November 21, 2011, authorized the payment of ₱2,100,293.18 to C & F Construction.¹⁵

Thus, after examining the evidence attached to the Office of the Ombudsman's Resolution, this Court concludes that there is no sufficient evidence to establish all the elements of the offenses charged.

The available evidence established only the element of the accused being public officers in the performance of their respective official functions.

There could have been no manifest partiality, evident bad faith or gross inexcusable negligence on the part of accused Centeno and Garcia when they made their respective certifications in the subject ALOBS because the subject Restoration of ITC Road project was included in the enumeration under "Object of Expenditure" in Ordinance No. 0464 s. 2010. The same can be said of accused Echiverri when he awarded the subject contract to, and entered into a contract with C & F Construction, as the Sangguniang Panlungsod of Caloocan authorized him, through Ordinance No. 0464 s. 2010, to enter into contracts for various city development projects, of which the subject project was one. Likewise, the three accused could not have acted with manifest partiality, evident bad faith or gross inexcusable negligence for disbursing the amount of ₱2,100,293.18 as payment to C & F Construction because the project appears to have been completed. The City of Caloocan was contractually obligated to pay C & F Construction for the work done on the project.¹⁶

¹¹ Record, pp. 55-57; It is the same Ordinance No. 0464 as that the Supreme Court referred to in its Resolution dated October 1, 2018

¹² Record, pp. 63-65

¹³ Record, pp. 67-72

¹⁴ Record, p. 93

¹⁵ Record, pp. 74-75

¹⁶ Record, p. 70

Aside from there being no manifest partiality, evident bad faith or gross inexcusable negligence on the part of the accused, their aforementioned acts could not have caused undue injury or the giving of unwarranted benefits, advantage or preference to C & F Construction, there being no apparent irregularity in the procurement process, and the subject project having been completed.

Finally, the fact that the subject project falls within the enumeration under "Object of Expenditure" in Ordinance No. 0464 s. 2010 negates the possibility that accused Centeno and Garcia falsified the subject ALOBS.

It appearing that there will be no prejudice to the rights of the parties, this Court hereby GRANTS the prosecution's Motion. As prayed for, the Information in these cases are hereby WITHDRAWN.

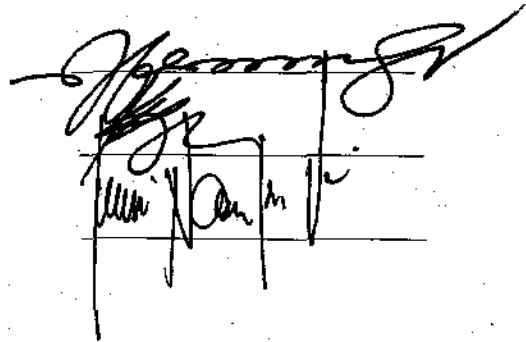
SO ORDERED.

APPROVED:

FERNANDEZ, SJ, J., *Chairperson*

MIRANDA, J.

VIVERO, J.

Handwritten signatures of the judges: Fernandez, SJ, J., Miranda, J., and Vivero, J. The signatures are written in black ink over three horizontal lines.