



Republic of the Philippines
Sandiganbayan
Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on 16 May 2019.

Present:

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

The following resolution was adopted:

Crim. Case No. SB-17-CRM-0738 to 0739 - People vs. JOHNMARK C. BILLANES, et al.,

This resolves the following:

1. Accused Johnmark C. Billanes's "MOTION FOR LEAVE TO FILE DEMURRER TO EVIDENCE" dated 8 April 2019;¹ and
2. The prosecution's "COMMENT/OPPOSITION (to the Motion for Leave to file Demurrer to Evidence dated April 08, 2019 filed by accused Johnmark C. Billanes)" dated 22 April 2019.²

Submitted for the Court's resolution is accused Johnmark C. Billanes' ("accused-movant") motion for leave to file demurrer to evidence, as well as the prosecution's comment/opposition thereto.³

ACCUSED'S MOTION

In his motion, accused-movant alleges the following grounds for dismissing:

I. SB-17-CRM-0738

- 1.) *The prosecution, whether through its admission or through its evidence*

¹ Record, Vol. III, pp. 85-103.

² Id. at 110-117.

³ Id. at 51.

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Minute Resolution

People vs. Johnmark C. Billanes, et al.,

SB-17-CRM-0738 & 0739

Page 2 of 9

X-----X

(documentary or testimonial) effectively refuted the existence of manifest partiality, evident bad faith, inexcusable negligence, causing undue injury to the government or giving unwarranted benefits, advantage or preference to a private entity, by successfully establishing the fact that accused Johnmark actually divested himself from any form of participation regarding Mr. Romeo Billanes' offered land.

Accused-movant points out that the prosecution agreed to the stipulation that "(t)hat accused JOHNMARK CULLANTE BILLANES made a request through letter dated October 24, 2012 to the Provincial Appraisal Committee, Agusan del Sur to appraise the parcel of land owned by ROMEO COLLANTES BILLANES, JR., covered by TCT No. T-18715 located at Poblacion Trento, Agusan del Sur, as stated in Exhibit A-8 and 2 (J-0738)." By doing so, the prosecution thereby effectively admits that accused divested himself from any participation in the evaluation and selection processes of the land sought to be purchased by the local government unit ("LGU").

Accused-movant adds that even the prosecution's own documentary and testimonial evidence support this conclusion.

Accused-movant contends that, any rate, the evidence offered by the prosecution establish that accused movant divested himself of any authority or position to decide on accused Romeo's Offer to Sell. For instance, the prosecution's Exhibit "A-8" (Accused-movant's Letter-Request to Render the Right Appraisal Value), Exhibit "B" (Accused-movant's Letter-Request to Render the Right Appraisal Value) and Exhibit "C" (Agusan Del Sur Provincial Appraisal Committee Resolution No. 15-2012 dated 16 November 2012) support accused movant's assertion that it was entirely the PAC's decision to value accused Romeo's land at ₱1,000,000.00.

Accused-movant further notes that neither his name nor signature appears in the Provincial Appraisal Committee ("PAC") Resolution. In addition, prosecution witness Mr. Arizona Boiser ("Boiser") testified that it was the PAC, not accused-movant, who concluded that accused Romeo's land should be valued at ₱ 1,000,000.00.⁴

⁴ TSN, 25 September 2018, p. 23.

Minute Resolution

People vs. Johnmark C. Billanes, et al.,

SB-17-CRM-0738 & 0739

Page 3 of 9

X-----X

- 2.) *The prosecution's own witnesses (and documentary exhibits) refute the claim of manifest partiality and giving unwarranted benefits when they testified that it was not accused-movant who received their offers.*

Accused-movant asserts that the prosecution's theory is erroneous that he gave "unwarranted benefits, advantage or preference" when he referred only accused Romeo's offer to PAC, to the exclusion of all other offers.

Accused-movant then argues that while the prosecution presented documentary and testimonial evidence showing there were other offers to sell land, it was not able to show that these offers were received by accused-movant or his office. In fact, the other offerors testified/stipulated that their offers to sell were either served to the Municipal Planning and Development Office ("MPDO") or to some other person or division of the LGU.

Moreover, during the 25 September 2018 hearing, the prosecution even offered to stipulate that Mr. Robert Butcon's Offer to Sell was submitted to the LGU, and not to accused-movant or his office.⁵

- 3.) *Until the prosecution establishes that accused-movant should have been aware of the other offers to sell because these were given to him or to his office, accused-movant is not required to prove that he was unaware thereof.*

Accused-movant claims that the prosecution has the burden of proving that other offers were given to accused-movant or to his office. However, he argues that this was not discharged by the parties' stipulation that the offers were received by the LGU. This is because the LGU's receipt of the offers is not equivalent to accused-movant's receipt thereof.

Accused-movant concludes that the prosecution reneged on its burden to prove that there were other offers to sell, which passed through accused-movant's office. Hence, he is not required to prove that he was unaware of these other offers to sell.

- 4.) *The prosecution's own witnesses admit that accused-movant could not have been aware of the encumbrance over the property*

⁵ Record, Vol. II, p. 122.

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Minute Resolution

People vs. Johnmark C. Billanes, et al.,

SB-17-CRM-0738 & 0739

Page 4 of 9

X-----X

offered, because the title of the land was not attached to the offer to sell.

Accused-movant notes that the prosecution faults him for the LGU's purchase of accused Romeo's land, despite the encumbrance thereon. However, the prosecution's own witness, Mr. Boiser, basically admitted that he has no evidence that accused-movant knew that accused Romeo's land was encumbered at the time it was offered.⁶

5.) The CARP computation relied upon by the prosecution (which pegs the price of the 7,775 square meter property at only ₱11,000.00) applies only when the purchaser is a farmer-tenant. It does not apply to the LGU of Trento, which is not a farmer-tenant.

Accused-movant notes that the prosecution, through its witness Mr. Jacinto Ritardo, claims that the land purchased from accused Romeo was overvalued at ₱ 1,000,000.00, and that the correct value is ₱ 11,000.00 only, based on the formula used on real properties under the Comprehensive Agrarian Reform Program ("CARP").

Accused-movant counters this, arguing that the purpose of the modified formula for computation of the price of CARP lands is so that the tenant-farmers pay only a low amount for them. In other words, the formula applies only when tenant-farmers are the ones purchasing the property.

As the LGU is not a tenant-farmer, the normal computation of assessed value or fair market value should apply instead. Indeed, Mr. Ritardo admitted that he was not aware of any law which applies the modified computation when the property is being sold to the government.

6.) No less than the prosecution's own witnesses refute the existence of "undue injury, damage to the government and unwarranted benefits, advantage or preference," when they testified that the fair market value of their respective properties are comparatively higher than that offered by accused Romeo.

⁶ TSN, 25 September 2018, p. 24.

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Accused-movant moreover stresses that while accused Romeo offered his 7,775 square meter property for ₱ 1,000,000.00, Mr. Felimon Marte (prosecution witness) offered his 7,775 square meter property for ₱ 2,000,000.00. Meanwhile, Mr. Leonil Aludo offered his 400 square meter property for ₱ 1,500,000.00 and Mr. Ruben Butcon offered his 300 square meter property for ₱ 1,000,000.00. Hence, accused-movant concludes that there could have been no “undue injury, damage to the government, unwarranted benefits, advantage or preference” when the LGU purchased accused Romeo’s property.

II. SB-17-CRM-0739

1.) *The criminal case for technical malversation against accused-movant should be dismissed because, as the Municipal Mayor, accused-movant has the right to rely to a reasonable extent on the good faith of his subordinates and their representations that all the requirements needed to release the funds to purchase the 7,775 square meter lot were already existing before and/or when he signed the disbursement voucher.*

Accused-movant asserts that as municipal mayor, he was the last to sign the disbursement voucher.⁷ This much was admitted by the prosecution during pre-trial.

Hence, when accused-movant affixed his signature thereon, the disbursement voucher already had the signatures of MPDO Head Mr. Anastacio Burdeos, Jr., certifying that the fund therefor was already available; Municipal Accountant Ms. Virginia Laborada-Pulido, certifying that all documents and requirements for which the disbursement voucher is being issued were already complete and proper; and Municipal Treasurer Ms. Luzviminda Manipon-Lanuza, certifying the availability of the cash for which the disbursement voucher is being issued.

Thus, accused-movant argues that when he signed the disbursement voucher, he did so in good faith, per the prior certifications of the other LGU officers, citing *Joson III v. Commission on Audit*⁸ and *Arias v. Sandiganbayan*.⁹

⁷ Exhibit “A-16.”

⁸ G.R. No. 223762, 7 November 2017.

⁹ G.R. No. 81563, 19 December 1989.

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THE PROSECUTION'S COMMENT/OPPOSITION

In its comment/opposition, the prosecution alleges that accused-movant's motion should be denied for being misleading and for failure to comply with the mandatory procedural and substantial requisites in filing a motion for leave to file demurrer to evidence under Section 23 of Rule 119 of the Rules of Court.

The prosecution asserts that what accused-movant laid out in his motion are his affirmative defenses. This is premature because such defenses consist of factual assertions which require the presentation of defense evidence. Also, matters of interpretation of the laws are best left to the sound judgment of the Court during the final disposition of the case.

Regarding **SB-17-CRM-0738** on the charge for violation of Section 3(e) of R.A. No. 3019, the prosecution summarizes that it consists of the following elements: (a) the offender is a public officer; (b) the act was done in the discharge of the public officer's official, administrative or judicial functions; (c) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and (d) the public officer caused any undue injury to any party, including the Government or gave any unwarranted benefits, advantage or preference.

The prosecution claims that the *first element* was satisfied when accused-movant stipulated during pre-trial that he was municipal mayor of Trento, Agusan Del Sur at the material time. The *second element* was established when the parties stipulated that "the purchase of land covered by TCT No. T-18715 located in Trento, Agusan Del Sur owned by his brother, Romeo C. Billanes" was done by accused-movant in the discharge of his duties and functions as municipal mayor, pursuant to the Local Government Code.

The *third element* was also present because the prosecution was able to prove that accused-movant's act was done through manifest partiality, evident bad faith, or gross inexcusable negligence when it showed that the Formal Offer to Sell and Affidavit of Availability of Real Property of four other individuals were not included by accused-movant in the consideration/selection of the lot for the Rice Processing Center. Rather, he submitted to the PAC only the Offer to Sell made by his brother, accused Romeo. The *fourth element* was likewise proven because Mr. Ritardo testified that accused Romeo's lot had an outstanding lien encumbrance with Landbank such that, at the time of its sale and payment, it was not yet fully paid of its land amortization. The amortization was paid only after the LGU paid accused Romeo. Also, the Landbank's valuation of the said property

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was only ₱ 11,220.39. This is way below the ₱ 1,000,000.00 purchase price paid by the LGU.

As for **SB-17-CRM-0739** for the charge of violation of Article 220 of the RPC (Illegal Use of Public Funds or Property), the prosecution enumerates the elements thereof as: (a) the offender is an accountable public officer; (b) he applies public funds or property under his administration to some public use; and (c) the public use for which funds or property were applied is different from the purpose for which they were originally appropriated by law or ordinance.

The prosecution asserts that all these elements were proven during trial. Regarding the *first element*, this was satisfied as accused-movant was admittedly the municipal mayor of Trento, Agusan Del Sur during the pertinent period. As to the *second element*, this was shown by accused-movant's payment of ₱ 1,000,000.00 to his brother, accused Romeo, for the purchase of the latter's lot for the LGU's rice processing center. Anent the *third element*, this was established by the stipulations of the parties as to the intended testimony of the William Calvez. In particular, Calvez would have testified that the *Sangguniang Bayan* appropriated ₱ 1,167,500.00 for the Poblacion-Sitio Mahayahay Farm to Market Road Project, based on Appropriation Ordinance No. 0005-2011 (Executive Budget for CY 2012 of Trento, Agusan Del Sur). This amount was misappropriated by accused-movant when he applied it instead for the purchase of the subject lot, a purpose not in accordance with what it was originally appropriated for by law or ordinance.

The prosecution stressed that accused-movant did not even explain the facts proven in the case. Instead, accused pleaded for the application of *Arias v. Sandiganbayan* to escape criminal liability. However, the prosecution counters that the present case involves only a single transaction, in contradistinction to the voluminous records contemplated in *Arias*. Finally, the prosecution insists that the invocation of the *Arias* doctrine is a matter of defense.

OUR RULING

We **DENY** accused-movant's motion for leave to file demurrer to evidence for lack of merit.

A demurrer to evidence 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 to make out a case or sustain the issue. The party filing the demurrer challenges the sufficiency of the prosecution's evidence. For this reason, the Court is tasked to ascertain if there is competent or

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Minute Resolution

People vs. Johnmark C. Billanes, et al.,

SB-17-CRM-0738 & 0739

Page 8 of 9

X-----X

sufficient evidence to establish a *prima facie* case to sustain the indictment or support a verdict of guilt.¹⁰

In a motion for leave of court to file a demurrer to evidence, the accused is required by Section 23, Rule 119 of the Rules of Court “to specifically state (the) grounds” for claiming that there is insufficient evidence presented to warrant his conviction.

We find that accused-movant was able to comply with the procedural aspect of filing a motion for leave of court to file demurrer to evidence.

However, an evaluation of the points raised by accused-movant vis-à-vis the current evidence on record leads the Court to the conclusion that all the elements of the crime under Section 3(e) of R.A. No. 3019 (for SB-17-CRM-0738) and under Article 220 of the RPC (for SB-17-CRM-0739) were adequately established by the prosecution.

Contrary to accused-movant’s assertion, the evidence at hand does not support his claim that he “actually divested himself from any form of participation regarding Mr. Romeo Billanes’ offered land.” Accused-movant’s endorsement of accused Romeo’s offer to PAC actually negates this claim.

Regarding the charge under Article 220 of the RPC (for SB-17-CRM-0739), the prosecution’s evidence amply showed that in purchasing accused Romeo’s land, accused-movant used public funds or property which had previously been appropriated for another purpose.

Considering that an examination of the evidence on record at this stage shows that there is sufficient evidence to support the indictment against accused-movant, and his motion has not persuaded the Court otherwise, it is preferable to proceed with the continuation of trial for the reception of accused-movant’s evidence, where he may present countervailing evidence in his defense.

WHEREFORE, premises considered, accused-movant Johnmark Billanes’s motion for leave to file demurrer to evidence is **DENIED** for lack of merit.

Nonetheless, accused-movant is not precluded from filing his Demurrer to Evidence without leave of court, subject to the condition laid out in the second paragraph of Section 23, Rule 119 of the Rules of Court.¹¹

¹⁰ *People v. Sandiganbayan (2nd Division)*, G.R. No. 197953, 5 August 2015.

¹¹ Sec. 23. Demurrer to evidence. – After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.

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Minute Resolution

People vs. Johnmark C. Billanes, et al.,

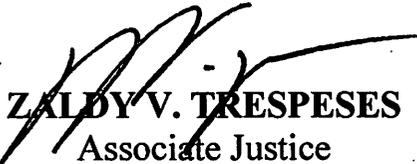
SB-17-CRM-0738 & 0739

Page 9 of 9

X-----X

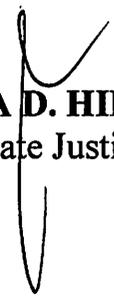
Let the initial presentation of evidence by the defense proceed as previously scheduled on **27 June 2019 at 8:30 in the morning.**

SO ORDERED.


ZALDY V. TRESPESES
Associate Justice

WE CONCUR:


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


GEORGINA D. HIDALGO
Associate Justice

If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.

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. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.

If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.

The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by certiorari before judgment. (Underscoring supplied.)