



REPUBLIC OF THE PHILIPPINES  
**Sandiganbayan**  
Quezon City

**SIXTH DIVISION**

**PEOPLE OF THE PHILIPPINES,**      **SB-14-CRM-0107**  
For: Violation of Section 3(e)  
of R.A. 3019 as amended

- versus -

**VIRGILIO PONCIANO A. OCAYA,**      *Present :*  
*Accused.*

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

*Promulgated:*

**JUL 18 2019**

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**RESOLUTION**

**FERNANDEZ, SJ, J.**

For resolution are the following:

1. *Motion for Leave to File Demurrer to Evidence* filed by accused Virgilio Ponciano A. Ocaya on May 28, 2019;<sup>1</sup> and,
2. *Comment/Opposition (To Accused's Motion for Leave to File Demurrer to Evidence)* filed by the prosecution on June 3, 2019.<sup>2</sup>

Accused Ocaya, in his *Motion for Leave to File Demurrer to Evidence*, contends that the evidence presented by the prosecution are wantonly insufficient to prove beyond reasonable doubt the existence of all the elements of violation of Section 3(e) of R.A. 3019.

<sup>1</sup> Dated May 27, 2019, Record, Vol.6 pp. 360-523.

<sup>2</sup> Dated June 3, 2019, Record, Vol. 7 pp. 194-206.

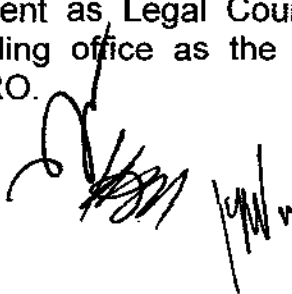
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Accused Ocaya asks this Court to grant him leave to file the *Demurrer to Evidence* attached to his *Motion for Leave*, considering the baselessness of the charges against him. He claims that:

1. The prosecution failed to present evidence to prove the first element of the crime charged. The prosecution did not present evidence that he is a public officer by virtue of his position as the Deputy Administrator for Administration and Legal Affairs of the Metropolitan Waterworks and Sewerage System-Regulatory Office (MWSS-RO);
2. The prosecution did not present any evidence to prove that his former position as the Deputy Administrator for Administration and Legal Affairs of the MWSS-RO is a public office created by law;
3. The prosecution failed to present any evidence to show that the salaries he received from MWSS, which supposedly constituted his "first compensation", were charged to government funds;
4. The prosecution failed to prove that he obtained additional employment from the Presidential Commission on Good Governance (PCGG) while he was still the Deputy Administrator of the MWSS-RO;
5. The prosecution failed to prove that the Government suffered damage or injury because of his alleged receipt of double compensation;
6. The prosecution did not present any evidence that he acted with manifest partiality, evident bad faith or gross inexcusable negligence.

The prosecution, on the other hand, contends that the evidence of the prosecution sufficiently established all the elements of violation of Section 3(e), Republic Act No. 3019. They argue that:

1. This case stemmed from accused' acceptance of employment as Legal Counsel at PCGG while he was holding office as the Deputy Administrator of MWSS-RO.

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RESOLUTION

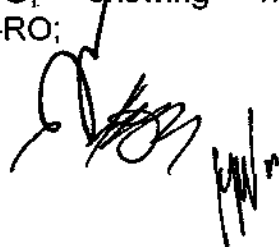
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2. The prosecution established the accused' concurrent employment at MWSS-RO and PCGG not only by means of their evidence but also through stipulations.
3. Accused' simultaneous receipt of salary from PCGG and MWSS-RO constitutes double compensation which is proscribed under the Constitution.
4. The prosecution proved that accused Ocaya was appointed as the Deputy Administrator of MWSS-RO for a five-year term starting August 11, 2000. BOT Resolution No. 285-2000 and true copies of his appointment papers, certified by the Civil Service Commission and the Commission on Audit, shows that he was the Deputy Administrator of MWSS-RO, with a salary grade of 28. Accused even agreed to stipulate on such fact.
5. MWSS was created as a government-owned and controlled corporation by virtue of Republic Act No. 6234 and such fact is a matter of judicial notice. Meanwhile, the DBM-approved organizational structure and staffing pattern of MWSS presented by the prosecution shows that the position of Deputy Administrator for Administration and Legal Affairs is a *plantilla* position.
6. Accused did not raise the issue of jurisdiction on the ground that he was not a public officer. In fact, he submitted himself to the jurisdiction of the Sandiganbayan.
7. The prosecution established accused' employment with and receipt of compensation from MWSS-RO through the following evidence:
  - a. Certified true copy of accused' appointment papers;
  - b. Minutes of BOT Resolution No. 285-2000;
  - c. Accused Personal Data Sheet and SALN dated September 20, 2002, which he submitted to PCGG, showing his employment at MWSS-RO;



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- d. MWSS-RO daily time records for the period of September 2002 to June 2003;
  - e. MWSS-RO board resolutions bearing his signature as the Deputy Administrator;
  - f. Certification issued by the Philippine National Bank (PNB) showing the salaries and benefits received by the accused from MWSS-RO for the period of January to June 2003;
  - g. Bank transmittals issued by MWSS-RO to PNB in relation to the salaries and allowances of accused for the period of January 8 to June 30, 2003;
  - h. MWSS-RO Disbursement Voucher No. 2981 showing payment of accused' salaries and allowances for the period of January 8-15, 2003; and,
  - i. MWSS-RO payrolls for the period of January 8, 2003 to June 30, 2003.
8. The prosecution established accused' employment with and receipt of compensation from PCGG through the following:
- a. PCGG engagement letters;
  - b. Various documents relative to accused' initial salary at PCGG for the period of September 2 and 3, 2002; and,
  - c. PCGG payrolls signed by the accused (signifying his receipt of salary) for the period of October 2002 to June 2003.
9. Accused, in his *Counter-Affidavit* dated June 3, 2004, admitted to have received double compensation.
10. Contrary to accused' claim, the prosecution was able to prove that accused acted with manifest partiality, evident bad faith, or gross inexcusable negligence when he willfully accepted additional employment and double compensation from PCGG while

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concurrently serving as MWSS-RO Deputy Administrator, to the prejudice of the government.

After a careful study of the documentary and testimonial evidence presented by the prosecution, the Court finds that, if unrebutted, the same is *prima facie* sufficient to support a verdict of guilt against accused Virgilio Ponciano A. Ocaya for violation of Section 3(e) of Republic Act No. 3019.

The Court hereby DENIES accused Ocaya's *Motion for Leave to File Demurrer to Evidence*.

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 consequences provided under Section 23, Rule 119 of the Revised Rules of Criminal Procedure, that is, he shall waive his right to present evidence and is submitting this case for judgment on the basis of the evidence adduced by the prosecution.

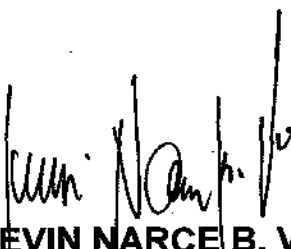
The accused is given a period of five (5) days from receipt of this Resolution within which to file, by personal filing and service, or through courier, his *Manifestation* to inform this Court whether he will file a *Demurrer to Evidence*, without leave of court.

**SO ORDERED.**

  
SARAH JANE T. FERNANDEZ  
Associate Justice  
Chairperson

**WE CONCUR:**

  
KARL E. MIRANDA  
Associate Justice

  
KEVIN NARCE B. VIVERO  
Associate Justice