



Republic of the Philippines

Sandiganbayan

Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on 11 September 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 Nos. SB-18-CRM-0253 to 0254 - People vs. MA. LUISA JUDAL LOOT, et al.

This resolves the following:

1. Accused Ma. Luisa J. Loot's "MOTION FOR NEW TRIAL" dated August 12, 2019;¹
2. Prosecution's "OPPOSITION [TO MOTION FOR NEW TRIAL DATED 12 AUGUST 2019]" dated August 23, 2019.²

TRESPESES, J.

This resolves the Motion for New Trial filed by accused Ma. Luisa Judal Loot and the Opposition thereto filed by the prosecution.

In the Decision promulgated on 2 August 2019, accused was convicted of Violation of Sec. 3(e) of Republic Act No. 3019 and of Malversation for granting financial assistance to RBA Quail Raisers Association (RBA), represented by accused Samuel P. Moralde, in the amount of ₱500,000.00. It was found that: (a) RBA was not an accredited people's organization qualified for loans under COA Circular No. 96-003; (b) accused Loot failed to monitor and/or evaluate RBA's capacity to repay the loan, and; (c) accused Loot failed to enforce the MOA with Moralde or demand for the payment of the loan.

¹ Records, Vol. 2, pp. 239-312.

² Id. at 347-356.

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ACCUSED LOOT'S MOTION

In her motion, accused narrated that after the promulgation of judgment, she visited the municipal hall of Daanbantayan, Cebu and met a few employees who were aware of her conviction. They asked how the Court supported its findings and she conveyed to them that she was unable to present documents proving RBA's entitlement to the loan, the monitoring conducted on the project and collection of RBA's loan payments.

A former staff of Municipal Agriculturist Lina Jugan, by the name of Henry Rondina, who was a point person in the monitoring of agricultural projects, including the RBA, volunteered to look into his personal files as he had seen some of those when he had his house repaired. Another employee, Engr. Marina Arcenal of the Municipal Engineer's Office, suggested her to submit proof that documents in the Mayor's Office for the years prior to Typhoon Yolanda in 2013 are no longer available. Thereafter, Rondina and Arcenal gave her copy of documents on RBA and anything that could support her claim of absence of complicity in the non-payment of Moralde of his loan and her lack of conspiracy with the latter for the misuse of public funds.

Hence, accused filed the instant motion for new trial under Sec. 2(b), Rule 121 of the Rules of Court³ on the ground that new material evidence has been discovered which could not with reasonable diligence have been discovered and produced at the trial and which, if introduced and admitted, would probably change the judgment. The motion was supported by her and Rondina's affidavits⁴ with attached supporting documents.

Accused argues that although the said documents were all in existence before and during the trial, their existence was not known to her as she was apprised thereof only after her promulgation of judgment. She thought that the documents no longer existed as all the records including RBA's papers stored in the filing cabinet inside her former office were drenched in water when the Municipal Hall's roof and ceiling were destroyed by Typhoon Yolanda. She points out that the attached reports showing the gravity of the destruction brought about by the typhoon explains why she was unable to produce documents which would have supported her plea of innocence.

³ Section 2. *Grounds for a new trial.* — The court shall grant a new trial on any of the following grounds:

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(b) The new and material evidence has been discovered which the accused could not with reasonable diligence have discovered and produced at the trial and which if introduced and admitted would probably change the judgment. (2a)

⁴ Annex 1 and 2.

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Accused implores the liberality of the Court to consider her testimony and that of Rondina's, and the documents proposed to be presented be deemed newly discovered in consonance with the principle that all doubt in a criminal suit must be resolved in favor of the accused. She argues that she could not have known the existence of the documents, and even with reasonable diligence, she never thought she could get the documents from either Rondina or Arcenal. Thus, the discovery is not the result of oversight, neglect or forgetfulness but of pure unawareness that someone else had possession of the documents that would show her innocence.

PROSECUTION'S OPPOSITION

In its Opposition, the prosecution argues that the documents and testimonies of the intended witnesses can never fall under the definition of "newly discovered evidence."

The prosecution contends that the documents accused wanted to present were allegedly found by Rondina in his residence. However, contrary to accused's allegation, the documents bear certifications as either "Certified Photocopy from the File of Municipal Agriculture Office" or "Certified True Copy from the Original." The prosecution argues that if the documents are available in the Municipal Agriculture Office, there could be no doubt that they are available during trial. Hence, they are not newly discovered evidence.

Accused also failed to show that she exerted reasonable diligence to produce the documents during trial. Accused never requested or attempted to request by way of subpoena for the production of the said documents. There was also no request for subpoena *ad testificandum* for the records custodian of the Municipal Agriculture Office to testify on any document pertaining to RBA.

In her motion, accused claims that what she acquired are newly discovered evidence and that she will testify that the typhoon struck down the municipal hall destroying documentary evidence she ought to present. Thus, accused raised two opposing factual circumstances: a) that she was aware of the documents but they were destroyed; in such case, she could just have presented secondary evidence, and; b) that these documentary pieces of evidence are newly discovered as such, she could have moved for subpoena *duces tecum* to inquire whether those documents are existing or not. The contrary claims of accused confirms non-justifiable circumstance why the documents were never presented despite their availability.

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RULING

We **deny** accused Loot's motions for lack of merit.

The proposed pieces of evidence are not newly discovered

A motion for new trial based on newly discovered evidence may be granted only if the following requisites are met:

- (a) the evidence had been discovered after trial;
- (b) the evidence could not have been discovered and produced during trial even with the exercise of reasonable diligence; and
- (c) the evidence is material and not merely corroborative, cumulative or impeaching, and is of such weight that, if admitted, would probably alter the result.⁵

In the instant case, the proposed pieces of evidence by accused cannot be considered as newly discovered. A perusal of the documents show that they were certified by Municipal Administrator I Cristina E. Corro as either "certified true copy from the original" or "certified photocopy" from the file of either the Municipal Agriculture Office or Engineering Office. Therefore, the documents were available before and during the trial considering that they were kept in the files of the said municipal offices.

*Tadeja v. People*⁶ is instructive on the important requisite for the evidence to be considered as newly discovered, thus:

Newly discovered evidence refers to that which (a) is discovered after trial; (b) could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (c) is material, not merely cumulative, corroborative or impeaching; and (d) is of such weight that it would probably change the judgment if admitted.

The most important requisite is that the evidence could not have been discovered and produced at the trial even with reasonable diligence; hence, the term "newly discovered."

Verily, had accused exercised reasonable diligence in locating them, she could have easily obtained the said documents and presented them during trial. It should be stressed that in order for a particular evidence to be

⁵ *Manangan v. People*, G.R. No. 218570, 22 November 2017.

⁶ 704 Phil. 260-277(2013).

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considered as “newly discovered,” it is essential that the offering party exercised reasonable diligence in seeking to locate the evidence before or during trial but nonetheless failed to secure it.⁷ Hence, in *Custodio v. Sandiganbayan*,⁸ the Supreme Court held:

The threshold question in resolving a motion for new trial based on newly discovered evidence is whether the [proffered] evidence is in fact a “newly discovered evidence which could not have been discovered by due diligence.” The question of whether evidence is newly discovered has two aspects: a temporal one, i.e., when was the evidence discovered, and a predictive one, i.e., when should or could it have been discovered. It is to the latter that the requirement of due diligence has relevance. *We have held that in order that a particular piece of evidence may be properly regarded as newly discovered to justify new trial, what is essential is not so much the time when the evidence offered first sprang into existence nor the time when it first came to the knowledge of the party now submitting it; what is essential is that the offering party had exercised reasonable diligence in seeking to locate such evidence before or during trial but had nonetheless failed to secure it.* (Emphasis supplied)

In *Mendoza v. Ozamiz*,⁹ the Supreme Court cited incidents that demonstrates lack of diligence, thus:

It has been held that a lack of diligence is exhibited where the newly discovered evidence was necessary or proper under the pleadings, and *its existence must have occurred to the party in the course of the preparation of the case, but no effort was made to secure it; there is a failure to make inquiry of persons who were likely to know the facts in question*, especially where information was not sought from co-parties; *there is a failure to seek evidence available through public records*; there is a failure to discover evidence that is within the control of the complaining party; there is a failure to follow leads contained in other evidence; and, there is a failure to utilize available discovery procedures.¹⁰ (Emphasis supplied)

In this case, accused failed to show that she exerted diligent efforts to locate the documents to support her claim of innocence. In fact, some of the documents are presumed to be known to accused i.e., the Project Proposal was signed by accused while the letter dated 15 May 2007 on the Subject: RBA Quail Farm Monitoring and Visitation was addressed to accused. But as correctly observed by the prosecution, accused did nothing to get hold of the documents.

⁷ *De Villa v. Director, New Bilibid Prisons*, 485 Phil. 368, 388-389 (2004).

⁸ 493 Phil. 194-217 (2005).

⁹ G.R. No. 143370, 6 February 2002.

¹⁰ 8 Am Jur 2d New Trial § 429 as cited in *Mendoza v. Ozamiz*.

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Also, nowhere from the records does it show that accused requested the Court for the issuance of a subpoena *duces tecum* to order the Municipal Agriculture Office to produce documents related to RBA. There was also no request for the issuance of a subpoena *ad testificandum* to Ms. Lina Jugan and/or Henry Rondina to compel them to testify on the documents pertaining to RBA.

Accused argues that the failure to produce the documents was because they were either lost or destroyed when the municipal hall where they were kept was extensively damaged during the onslaught of Typhoon Yolanda. However, this was contradicted by accused's own documents. The Court believes that the municipal administrator would not have issued certified copies if she does not have custody of the official files. The fact that the documents were certified by the municipal administrator only proves to show that, in truth and in fact, the documents were available all this time in the municipal's office.

It should be stressed that accused had ample time to secure the documents she wishes to present. She was likewise given all opportunity to present evidence but as borne by the records, accused did not even take the witness stand to personally refute the accusations against her. There was no legal or physical impediment that prevented her from presenting evidence on her behalf.

In *People v. Francisco*,¹¹ the Supreme Court ruled that an accused is only accorded an opportunity to present evidence and failure to avail of such amounts to a waiver, thus:

We also take note that under Sec. 3, Rule 116, **the accused may present evidence in his behalf** — it is, therefore, not mandatory for the defense to present evidence but is only accorded an opportunity to do so, which, in the instant case, was waived by the defense.

(Emphasis on the original.)

In the instant case, accused made a conscious decision not to present evidence despite being given such opportunity. Clearly, such action on her part was an express waiver to present any evidence for herself as an accused in this case.

It was only when a judgment of conviction was duly promulgated by this Court that she now claims to have found what she believed are newly discovered evidence. The accused cannot be allowed at this time to introduce evidence which were, in the first place available during trial. Otherwise, it would amount to a piece-meal presentation of evidence resulting in delay in

¹¹ 649 Phil. 729-754 (2010).

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the delivery of justice, contrary to the orderly conduct of court proceedings and if allowed would not put an end to litigation.

The proposed evidence, if admitted, will not change the Court's decision

One of the requisites for the grant of new trial is that the evidence must be material and not merely corroborative, cumulative or impeaching, and is of such weight that, if admitted, would probably alter the result. An evidence is material when it is directed to prove a fact in issue as determined by the rules of substantive law and pleadings.¹²

Assuming for the sake of argument that such pieces of evidence will be allowed by the Court to be presented for accused Loot, the said documents appended to the affidavit of Rondina would still be not sufficient to alter the Court's decision based on the following:

- 1.) *Certification dated 11 January 2007* issued by Lina Jugan, *Profile of RBA Quail Farm, Articles of Association and Minutes, Financial Reports of RBA Quail Farm for 2007* and the *Project Proposal of RBA* approved by accused – the documents do not prove that RBA was an accredited people's organization at the time of the release of financial assistance from the local government unit;
- 2.) *The Accomplishment Report (June to December 2007)* – as it is a one-sided report prepared by Liza Rodrigo of RBA. It was not supported by any documentary evidence to show truthfulness thereof;
- 3.) *Application Form for Accreditation* – it does not prove that RBA was given accreditation prior to the release of the financial assistance;
- 4.) *Rondina's letter* addressed to accused on the alleged monitoring and visitation of RBA Quail Farm – as it falls short of the monitoring required by the COA Circular. Besides, the charges against accused do not merely revolves on the supposed monitoring but also on the fact that RBA was granted financial assistance despite non-accreditation.

¹² Remedial Law Reviewer, Albano Albano, Jr., Albano-Pua, Albano III, 2010 ed., p. 1192.

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Moreover, the following documents appended to the affidavit of accused Loot explains why no documents could reasonably have been produced during trial:

- a.) Certification dated 9 August 2019 issued by Municipal Engineer Marina Y. Arcenal that the entire roof and ceiling of the Municipal Hall of Daanbantayan, Cebu was damaged by Typhoon Yolanda;¹³
- b.) Summary of Damages to the Buildings;¹⁴
- c.) Program of Work for the Repair/Rehabilitation/Roofing of the Municipal Hall;¹⁵
- d.) Letter from the Office of the Secretary of the Department of Interior and Local Government addressed to Municipal Mayor Augusto Corro;¹⁶
- e.) O.R. No. 5737351;¹⁷
- f.) Checklist on the Status of Project Procurement,¹⁸ and
- g.) Memorandum of Agreement (MOA) for the Recovery Assistance on Yolanda (RAY)-DILG Fund.¹⁹

However, the foregoing documents no longer have bearing considering that the documents attached to the affidavit of Rondina pertaining to RBA were all certified copies.

In sum, the Court finds that the documents sought to be presented cannot qualify as newly discovered evidence to justify the holding of a new trial.

WHEREFORE, premises considered, the Motion for New Trial filed by accused Ma. Luisa J. Loot is hereby **DENIED** for lack of merit.

SO ORDERED.

Quezon City, Philippines.

¹³ Records, Vol. 2, p. 288.

¹⁴ Id at 289.

¹⁵ Id. at 290-294.

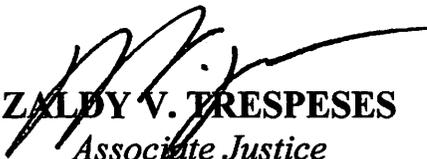
¹⁶ Id. at 295-296.

¹⁷ Id. at 297.

¹⁸ Id. at 298.

¹⁹ Id. at 299-311.

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ZALBY V. TRESPESES
Associate Justice

WE CONCUR:



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



GEORGINA D. HIDALGO
Associate Justice