



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-14-CRM-0107
For: Violation of Section 3(e)
of R.A. 3019 as amended

- versus -

VIRGILIO PONCIANO A. OCAYA,
Accused.

Present :

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

Promulgated:

OCT 04 2019

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RESOLUTION

FERNANDEZ, SJ, J:

For resolution are the following:

1. *Motion for Reconsideration* filed by accused Virgilio Ponciano A. Ocaya on August 9, 2019;¹ and,
2. *Comment/Opposition (To accused's Motion for Reconsideration dated August 2, 2019)* filed by the prosecution on August 14, 2019.²

Accused Ocaya, in his *Motion for Reconsideration*, asks the Court to reconsider and set aside the *Resolution* dated July 18, 2019, denying his *Motion for Leave to File Demurrer to Evidence*. Accused

¹ Dated August 2, 2019, Record, Vol.7, pp. 291-318.

² Dated August 14, 2019, Record, Vol. 7 pp. 322-324.

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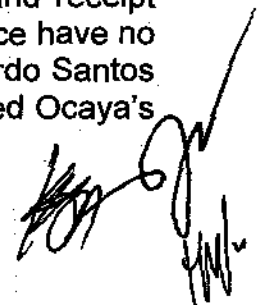
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Ocaya points out that the plaintiff failed to prove his guilt for violation of Section 3(e) of R.A. No. 3019, as amended, in relation to the prohibition against double compensation. Accused Ocaya claims:

1. The plaintiff failed to prove that the Office of the Deputy Administrator of the Manila Waterworks and Sewerage System (MWSS) - Regulatory Office (Regulatory Office) is a public office.
 - a. The position of Deputy Administrator of the Regulatory Office was created through a concession agreement between the government and the water concessionaries. Thus, such position is not a public office.
 - b. No evidence was specifically offered to prove that the position of Deputy Administrator is a public office. The evidence of the plaintiff that accused Ocaya was the Deputy Administrator of the Regulatory Office, to wit: (a) Civil Service Commission (CSC)- certified Appointment Paper; (b) COA-certified Appointment Paper, (c) Department of Budget and Management (DBM)- approved *plantilla* positions, were merely offered to prove that he was the Deputy Administrator of the Regulatory Office.
 - c. The evidence presented by the plaintiff have no probative value.
 - ii. The supposed certified true copy of the CSC Appointment Paper was neither identified nor authenticated by its official custodian.
 - iii. The COA-certified Appointment Paper and the DBM-approved *plantilla* positions are mere photocopies.
2. The plaintiff failed to present evidence that accused Ocaya received his "first compensation" from the Regulatory Office.
 - a. The documentary evidence presented by the plaintiff to prove accused' employment and receipt of compensation from the Regulatory Office have no probative value. The testimonies of Eduardo Santos and Virginia V. Octa, in relation to accused Ocaya's



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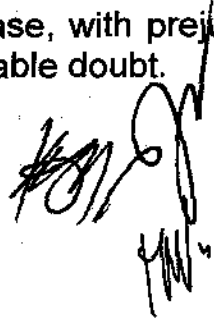
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receipt of salaries from the Regulatory Office, are hearsay.

3. The plaintiff failed to prove that accused Ocaya obtained additional employment and compensation from the PCGG while he was serving as the Deputy Administrator of the Regulatory Office.
 - a. At the time accused Ocaya was appointed to the PCGG, he was not the Deputy Administrator of the Regulatory Office. Eduardo Santos, Chief Regulator of the Regulatory Office, testified that accused Ocaya was terminated on November 2, 2001 and was reinstated only after the Regulatory Office received a copy of the *writ* of preliminary injunction enjoining the implementation of accused Ocaya's termination.
 - b. PCGG payrolls for the period October 2002 to June 2003 are mere photocopies and were not presented nor offered as secondary evidence.
 - c. Plaintiff's witnesses uniformly testified that they do not have personal knowledge of accused' receipt of compensation from PCGG. They did not participate in the preparation of accused' payrolls in PCGG and they did not have custody of the originals thereof.
 - d. Since the PCGG payrolls for the period October 2002 to June 2003 have no probative value and cannot prove accused' alleged receipt of compensation from PCGG, there is no "second compensation" to speak of that would have constituted "double compensation".
4. The plaintiff failed to prove that accused caused damage to the Government.
5. The plaintiff did not present any evidence that accused acted with manifest partiality, evident bad faith or gross inexcusable negligence.

Accused Ocaya further asks the Court to grant him leave to file *Demurer to Evidence* and thereafter dismiss the case, with prejudice, for plaintiff's failure to prove his guilt beyond reasonable doubt.



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After a careful reevaluation of the evidence presented by the prosecution, taking into account the arguments raised by the parties, the Court still finds that the evidence of the prosecution sufficiently established a *prima facie* case for violation of Section 3 (e) of R.A. No. 3019.

Accused contention that the Office of the Deputy Administrator of the Metropolitan Waterworks and Sewerage System (MWSS) - Regulatory Office (Regulatory Office) is not a public office as the position was created by a concession agreement between the government and the water concessionaries is a matter of defense. In *Gregorio Singian, Jr. vs. Sandiganbayan*,³ the Supreme Court held that the presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits. The validity and merits of a party's defense or accusation, as well as the admissibility of testimonies and evidence, are better ventilated during trial proper.

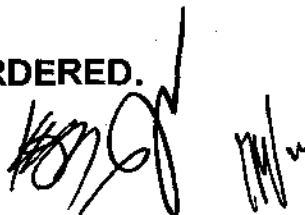
The other matters raised in accused Ocaya's *Motion for Reconsideration* are mere rehash of his previous arguments, which have been considered by the Court in its *Resolution* dated July 18, 2019. The instant *Motion for Reconsideration* did not raise any new or substantial ground for the Court to reverse said *Resolution*.

WHEREFORE, the *Motion for Reconsideration* filed by accused Ocaya is **DENIED** for lack of merit.

This is without prejudice to the right of the accused to file 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 his *Manifestation* to inform this Court whether he will file a *Demurrer to Evidence*, without leave of court.

SO ORDERED.

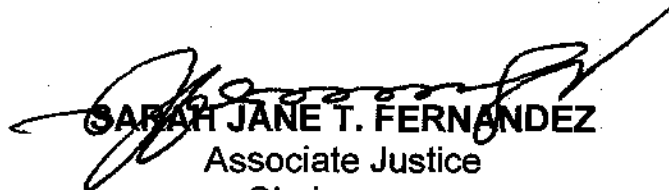


³ G.R. No. 195011-19, September 30, 2013.

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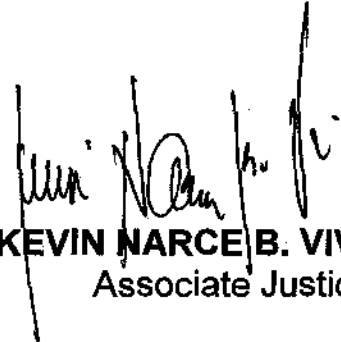
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SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

WE CONCUR:


KARL B. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
Associate Justice