



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
 Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-18-CRM-0351 to 0358
 For: Violation of Sec. 3 (e), R.A.
 No. 3019,

SB-18-CRM-0359 to 0366
 For: Malversation of Public Funds

- versus -


**REINERIO B. BELARMINO, ET
 AL.,**

Accused.

Present :

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

Promulgated:

NOV 04 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 Francisco Cabuloy Casil;¹
2. *Motion for Leave to File Demurrer to Evidence* filed by accused Lourdes V. Gonzales;² and,
3. *Consolidated Comment/Opposition (In re: Motion for Leave to File Demurrer to Evidence)* filed by the prosecution.³

¹ Dated September 18, 2019, filed on the same date, Record, Vol. 5, pp. 434-436.

² Dated September 19, 2019, filed on September 20, 2019, Record, Vol. 5, pp. 441-445.



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In his *Motion for Leave to File Demurrer to Evidence*,⁴ accused Casil argues that the prosecution's testimonial and documentary evidence are not enough to hold him criminally liable under the present *Informations* based on the elements of the crimes and the standards set by the Supreme Court.

Accused Gonzales, in her *Motion for Leave to File Demurrer to Evidence*,⁵ similarly argues that the prosecution's evidence is insufficient to convict her of the crimes charged. She claims:

1. The prosecution's evidence does not suffice to prove the existence and/or concurrence of the elements of the crimes charged and of her culpability in the transactions involved.⁶
2. The prosecution's evidence is basically hearsay. The witnesses presented had no personal knowledge, nor participation in the preparation/execution of the documents.⁷
3. The originals of some of the documentary exhibits of the prosecution were not presented. The prosecution admitted that the source documents of the exhibits were not originals.⁸
4. Given the hearsay nature of the evidence of the prosecution and its failure to establish her culpability, it would derogate the constitutional presumption of innocence if she will be compelled to present evidence in her defense.⁹

In its *Consolidated Comment/Opposition*,¹⁰ the prosecution argues that the prosecution was able to prove all the elements for Violation of Section 3 (e) of R.A. No. 3019.

1. The first element is not disputed considering that accused Casil and Gonzales admitted that they are

³ Dated September 25, 2019, filed on the same date.

⁴ Dated September 18, 2019, Record, Vol. 5, pp. 434-436.

⁵ Dated September 19, 2019, Record, Vol. 5, pp. 441-445.

⁶ Accused Gonzales' *Motion for Leave to File Demurrer to Evidence*, p. 1.

⁷ Accused Gonzales' *Motion for Leave to File Demurrer to Evidence*, p. 1.

⁸ Accused Gonzales' *Motion for Leave to File Demurrer to Evidence*, pp. 2-4.

⁹ Accused Gonzales' *Motion for Leave to File Demurrer to Evidence*, p. 4.

¹⁰ Dated September 25, 2019.

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government officials at the time material to the allegations in the *Informations*.

2. The 2nd and 3rd elements are likewise present.

- a. The DA-RFU I prematurely initiated the procurement by issuing PRs for the purchase of foliar fertilizers and vegetable seeds.

The prosecution established that there was no project proposal, report, or program of work from the proponent's office or the DA-RFU I explaining the objectives of the project, identifying the standards of goods to be procured in terms of function and performance, and describing its technical specifications.

There was no market survey of available products, industry developments, and product standards that would enable the procuring entity to identify the mode of procurement to be employed and the budget for the project. In short, the choice of foliar fertilizers and vegetable seeds as the goods to be procured and the prices indicated in the PRs issued were baseless.¹¹

- b. The DA-RFU I's resort to direct contracting in the procurement of foliar fertilizers was not justified.

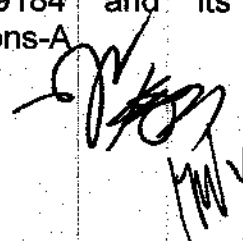
Nothing in the records show that Farmate International Technologies, Inc. (FITI), Central Luzon Farmers Aggro Center (CLFAC), and Lord Elgyn Merchandising (LEM) are exclusive distributors of Farmate HMZ-2000, Algazinc Plus Liquid, and various seeds during the period of posting of the Invitations to bid and before the opening of the bids.

Accused Casil did not attempt to conduct an open and competitive bidding prior to their resort to direct contracting.¹²

- c. Assuming that resort to direct contracting was valid, accused failed to conduct the same in accordance with R.A. No. 9184 and its Implementing Rules and Regulations-A

¹¹ Prosecution's Consolidated Comment/Opposition, p. 3.

¹² Prosecution's Consolidated Comment/Opposition, p. 3.



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The prosecution presented evidence to prove that the accused did not perform any of the following:

- 1) Justify and recommend resort to alternative mode of procurement before the posting of the *Invitations to Bid*;
 - 2) Post the *Invitations to Bid* in the PhilGEPS and DA-RFU I websites;
 - 3) Prepare the *Request for Quotation*; and,
 - 4) Post the *Request for Quotation* in the PhilGEPS and DA-RFU I websites and in any conspicuous place in the premises of the DA-RFU I.¹³
- d. DA-RFU I failed to conduct public bidding in accordance with R.A. No. 9184 and its IRR-A.

Under the *Manual of Procedures*, the BAC must:

- 1) Advertise and post the *Invitations to Bid* (the contents of which must comply with Section 21.1 n of the IRR-A) on the PhilGEPS and DA-RFU I websites and in any conspicuous place in the premises of the DA-RFU I;
- 2) Issue the bidding documents;
- 3) Call a *Pre-Bid Conference*;
- 4) Receive and open eligibility bids and envelopes;
- 5) Evaluate the bids;
- 6) Post-qualify bidders;
- 7) Award the contract; and,
- 8) Have the contract signed and approved.

The BAC did not substantially comply with the foregoing.¹⁴

¹³ Prosecution's *Consolidated Comment/Opposition*, pp. 3-4.

¹⁴ Prosecution's *Consolidated Comment/Opposition*, pp. 3-4.

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- e. The documents in support of the transactions are highly irregular.

The Purchase Request (PR) for the purchase of the liquid foliar fertilizers was issued for the following purpose "For the distribution of farmers in support to Agricultural projects in the province of Pangasinan through the initiative of Cong. De Venecia Priority Development Assistance Fund (PDAF)." While the PR for the vegetable seeds states: "For the 6th District of Pangasinan, through the initiative of Cong. De Venecia, Jr." The latter PR however did not contain an estimated cost.

The approved budget in the *Invitation to Bid* dated March 4, 2004 was P5,000,000.00 despite the corresponding PR for the purchase of liquid foliar fertilizers indicating an estimated cost of P3,249,000.00.

The *Invitations to Bid* did not comply with Section 21.1 of the IRR-A of R.A. No. 9184.

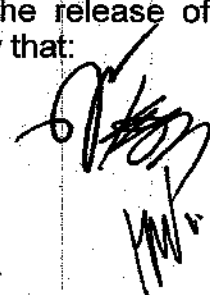
The canvass forms submitted by suppliers other than FITI and CLFAC, did not show their price offers. The forms submitted by the suppliers in relation to the procurement of liquid foliar fertilizers were undated.

The Disbursement Vouchers covering the transactions with FITI show that:

1) Payments for the purchase of Farmate HMZ-2000 liquid foliar fertilizers were made "through the initiative of Congressman De Venecia under Priority Development Assistance Funds (PDAF) xxx; and,

2) DA-RFU I made 1% deductions from the amounts indicated therein.

In contrast, the DVs authorizing the release of payments to CLFAC and LEM show that:



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1) Vegetable seeds were made through "the initiative of Cong. Jose C. De Venecia, Jr. xxx" and,

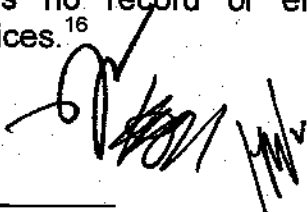
2) DA-RFU I made 3% and 1% deductions from the amounts indicated therein.

All the DVs are undated and show a splitting of payments and/or procedure to skirt the approval of the undersecretary of DA.

The various certifications issued by the DA-RFU I and the Commission on Audit (COA) shows that several necessary documents do not exist in the records of DA-RFU I and COA.¹⁵

3. The evidence of the prosecution is not hearsay and is sufficient to establish the guilt of the accused beyond reasonable doubt.

- a. All documents offered are public documents. The same are written acts or records of DA-RFU I and the COA or a private document required to be kept in the records of DA-RFU I and COA. Thus, the exhibits only need to be identified by a witness to be admissible.
- b. Assuming arguendo that there is a need for the originals to be produced, the prosecution was able to sufficiently lay the basis for the presentation of secondary evidence.
- c. Being public documents, the prosecution's documentary exhibits enjoy the presumption of regularity and constitute *prima facie* evidence of the facts stated therein and conclusive as to its existence and due execution.
- d. The negative certifications issued by the DA-RFU and COA are sufficient to prove that there was no record or entry in their respective offices.¹⁶



¹⁵ Prosecution's Consolidated Comment/Opposition, pp. 4-6.

¹⁶ Prosecution's Consolidated Comment/Opposition, pp. 6-7.

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THE COURT'S RULING

The *Motions for Leave of Court to File Demurrer to Evidence* filed by accused Francisco C. Casil and Lourdes V. Gonzales are **DENIED**.

Section 23, Rule 119 of *The Revised Rules of Criminal Procedure* provides:

Section 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.

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. (15a)

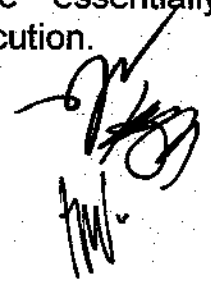
The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.

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. (n)
(Emphasis supplied)

Indeed, the rule requires that a *Motion for Leave of Court to File Demurrer to Evidence* shall specifically state its grounds. In this case, accused Casil, in his *Motion for Leave*, merely stated a general averment that the prosecution's evidence is not enough to hold him criminally liable, without specifying any ground or basis to support his contention.

Meanwhile, accused Gonzales' contentions are essentially objections to the admissibility of the evidence of the prosecution.



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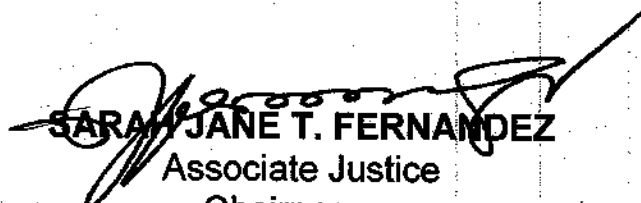
Nonetheless, after a careful study of the documentary and testimonial evidence presented by the prosecution, the Court finds that, if unrebutted, the same is *prima facie* sufficient to support a verdict of guilt against accused Casil and Gonzales for violation of Section 3(e) of Republic Act No. 3019 and *Malversation of Public Funds* under Article 217 of the Revised Penal Code.

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, they shall waive their right to present evidence and are submitting this case for judgment on the basis of the evidence adduced by the prosecution.

The accused are given a period of five (5) days from receipt of this *Resolution*, within which to file their *Manifestation* to inform this Court whether they will file a *Demurrer to Evidence*, without *Leave of Court*.

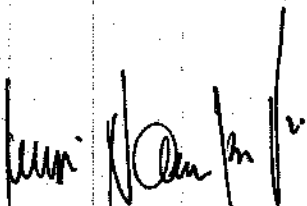
The hearings previously set are maintained. The same will be deemed automatically cancelled upon receipt by the Court of the *Demurrer to Evidence*, without *Leave of Court*, filed by both accused.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

WE CONCUR:


KARL B. MIRANDA
Associate Justice


KEVIN NARCEB. VIVERO
Associate Justice