



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
 Quezon City

SIXTH DIVISION

MARCIAL P. LICHAUCO, JR.,
 Petitioner,

SB-23-SCA-0003


- versus -

Present

**THE HON. MARIA THERESA
 SAN JUAN-LOQUILLANO** in
 her official capacity as
**Presiding Judge of Branch 10
 of the Regional Trial Court of
 Legazpi City and PEOPLE OF
 THE PHILIPPINES,**
 Respondents.

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

Promulgated:

July 21, 2023 

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DECISION

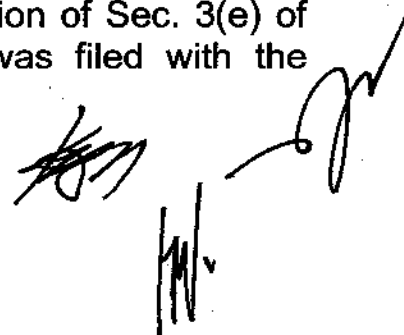
FERNANDEZ, SJ, J.

Petitioner Marcial P. Lichauco, Jr.'s *Petition*¹ under Rule 65 of the Rules of Court seeks the reversal of the Orders dated November 21, 2022² and March 10, 2023,³ denying his *Demurrer to Evidence*, and motion for reconsideration, respectively, issued by respondent Hon. Maria Theresa San Juan-Loquillano, in her official capacity as Presiding Judge of Branch 10 of the Regional Trial Court (RTC) in Legazpi City.

RELEVANT ANTECEDENTS

On January 26, 2018, an Information charging several accused, including the petitioner, with Violation of Sec. 3(e) of Republic Act No. 3019 (R.A. No. 3019) was filed with the

¹ Dated May 8, 2023; Record, pp. 1-32
² Record, pp. 39-45
³ Record, pp. 46-48



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Regional Trial Court in Legazpi City.⁴ The accusatory portion of the said Information in the case docketed as Crim. Case No. 14429 reads:

That on March 8, 2011 or for sometime prior or subsequent thereto, in Legazpi City, Philippines, and within the jurisdiction of this Honorable Court, accused members of the Bureau of Fire Protection, Regional Office 5, namely: FSSupt. Igmedio U. Bondoc, Jr., as Head of the Procuring Entity, FCInsp. Hyacinth N. Grageda, as Chairman of the Bids and Awards Committee (BAC), FCInsp. Joseph Reylito S. Espiritu, FInsp. Allan L. Magayanes, SFO2 Jannette A. Alcantara and SFO1 Maria Luisa R. Gongona, as members of the BAC, taking advantage of their respective official position and committing the offense in relation to their office, through manifest partiality, evident bad faith or gross inexcusable negligence, and acting in conspiracy with Marcial Lichauco, Jr., President and General Manager of 911 Alarm, Inc., did then and there willfully, unlawfully, and feloniously give 911 Alarm, Inc. unwarranted benefits, advantage or preference in the discharge of their official function by rigging the bidding process for the procurement of firefighting hoses to favor 911 Alarm, Inc., in that they did not post the bid supplement to prevent the other bidders from bidding competitively, thus, ensuring that the contracts for the subject procurement would go to 911 Alarm, and they declared 911 Alarm as the Lowest Calculated and Responsive Bidder despite the fact that its bid offer is different from that in the Invitation to Bid, to the damage and prejudice of the government and the public.

After arraignment and pre-trial, trial ensued and the prosecution presented as its witnesses Emily Doma, Walter Marcial and Vivian Balatay.⁵ The prosecution then formally offered its documentary evidence, and thereafter, rested its case upon admission of its exhibits.⁶

On April 28, 2022, petitioner filed his *Motion for Leave of Court to File Demurrer To Evidence*,⁷ which, according to the petitioner, the RTC granted in its Order dated June 27, 2022.⁸ However, in the *Order (re: Demurrer to Evidence)* dated November 21, 2022, the RTC denied the petitioner's *Demurrer to Evidence*.⁹ The dispositive portion of the said Order reads:¹⁰

⁴ *Petition* dated May 8, 2023, p. 9; Record, p. 9

⁵ *Petition* dated May 8, 2023, pp. 9-12; Record, pp. 9-12

⁶ *Comment* dated July 7, 2023, p. 3

⁷ Dated April 28, 2022; Record, pp. 49-50

⁸ Petitioner did not attach a copy of the RTC's Order dated June 27, 2022 to his *Petition*.

⁹ Dated July 20, 2022; Record, pp. 51-65

¹⁰ Record, p. 45

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Above premises considered, the motion for leave to file demurrer to evidence, as well as the demurrer itself, is hereby **DENIED**. This case is hereby scheduled for reception of defense evidence on March 14, 2023 at 8:30 o'clock in the morning.

Accused are advised to decide amongst themselves who will be the first to present their evidence on the said date. Failure to present evidence on March 14, 2023 will constrain the court to consider them to have waived presenting their evidence.

So Ordered.

Subsequently, in the *Order (re: Motion for Reconsideration)* dated March 10, 2023, the RTC denied petitioner's motion for reconsideration of the Order dated November 21, 2022 for being a mere *pro forma* motion.¹¹

In his present *Petition*, petitioner argues that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it denied his motion for leave of court to file demurrer to evidence¹² as well as his demurrer to evidence. Petitioner argues:

1. The prosecution failed to prove the existence of a conspiracy, as alleged in the Information.
2. Neither the government nor any party suffered undue injury.
3. He did not receive unwarranted benefits in the subject procurement.
4. The Supreme Court dismissed the administrative case filed against his co-accused public officers. The said administrative case involved the same facts and issues as in the criminal case before the RTC.

In the Resolution dated May 16, 2023,¹³ this Court directed the respondents to file their comment on the *Petition*. After two (2)

¹¹ Record, p. 48

¹² According to petitioner, the RTC granted his *Motion for Leave of Court to File Demurrer to Evidence* in the Order dated June 27, 2022 and gave him ten (10) days within which to file his demurrer to evidence (*Petition* dated May 8, 2023). Although petitioner did not attach a copy of the RTC's Order dated June 27, 2022 to his *Petition*, it appears that the RTC indeed granted him leave to file his demurrer to evidence because in the Orders dated November 21, 2022 and March 10, 2023, the accused were allowed to present their defense evidence.

¹³ Record, p. 268

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requests for extension of time to file its comment,¹⁴ respondent People of the Philippines, represented by the Office of the Ombudsman, through the Office of the Special Prosecutor (OSP), filed its *Comment (on the Petition for Certiorari dated 08 May 2023)*¹⁵ on July 17, 2023. It argues:

1. The RTC did not commit grave abuse of discretion amounting to lack and/or excess of jurisdiction in issuing the assailed Orders.
2. The prosecution duly established the elements of Violation of Sec. 3(e) of R.A. No. 3019.
3. Petitioner indispensably and actively participated in the conspiracy with his co-accused public officials to commit Violation of Sec. 3(e) of R.A. No. 3019.
4. The Supreme Court's Decision in the administrative case against the petitioner's co-accused should not be considered as a determining factor in the criminal case before the RTC. Generally, decisions in administrative cases are not binding on criminal proceedings.

THE COURT'S RULING

The Court resolves to dismiss the instant *Petition*.

Sec. 23, Rule 119 of the Rules of Court, on demurrer to evidence, expressly provides that 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. The said provision reads:

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.

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

¹⁴ *Manifestation With Motion* dated June 1, 2023 and *Second Motion for Extension of Time to File Comment* dated July 4, 2023; Record, pp. 275-279

¹⁵ Dated July 7, 2023

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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)

In *Espinosa v. Sandiganbayan*,¹⁶ the Supreme Court held that the errors made by the trial court in the appreciation of the prosecution's evidence cannot be reviewed in a special civil action for *certiorari* because the merits of the case cannot be decided in advance of trial. *Viz.:*

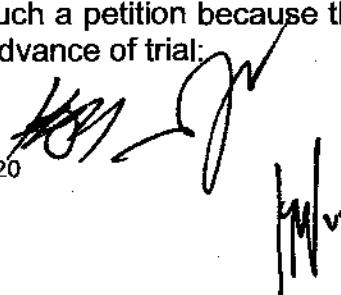
The special civil action for *certiorari* will not operate to review the sufficiency of the prosecution's evidence. This rule is echoed in *Joseph v. Villaluz*, where this Court dismissed a petition for *certiorari* assailing the denial of the accused's demurrer to evidence:

The Court cannot decide in this special civil action whether or not the evidence adduced by the prosecution has established beyond reasonable doubt the guilt of the petitioners. It is now petitioners' duty to neutralize the evidence of the State in order to maintain the presumption of their innocence of the crime of which they are charged.

In the absence of a clear showing that the respondent Judge has committed a grave abuse of discretion or acted in excess of jurisdiction, this Court will not annul an interlocutory order denying a motion to dismiss a criminal case. Appeal is the proper remedy of the petitioners in order to have the findings of fact of the respondent judge reviewed by a superior court. (Emphasis supplied, citation omitted)

Likewise, in *Cruz v. People*, this Court dismissed the petition for *certiorari*, holding that the sufficiency of the prosecution's evidence cannot be reviewed in such a petition because the merits of the case cannot be decided in advance of trial:

¹⁶ G.R. Nos. 191834, 191900 and 191951, March 4, 2020



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Regarding the denial of the demurrer to evidence, we have likewise ruled that *the question of whether the evidence presented by the prosecution is sufficient to convince the court that the defendant is guilty beyond reasonable doubt rests entirely within the sound discretion of the trial court.* The error, if any, in the denial of the demurrer to evidence may be corrected only by appeal. *The appellate court will not review in such special civil action the prosecution's evidence and decide in advance that such evidence has or has not established the guilt of the accused beyond reasonable doubt.* *The orderly procedure prescribed by the Revised Rules of Court is for the accused to present his evidence, after which the trial court, on its own assessment of the evidence submitted, will then properly render its judgment of acquittal or conviction.* *If judgment is rendered adversely against the accused, he may appeal the judgment and raise the same defenses and objections for review by the appellate court.* (Emphasis supplied, citations omitted)

(underscoring supplied)

In any event, petitioner has not alleged, much less, shown the acts of respondent Judge constituting grave abuse of discretion. The issues raised by petitioner all pertain to the RTC's appreciation of the facts, which, at most, may be errors in judgment, and which may be corrected in an appeal, not in a special civil action for *certiorari*, which is used to correct errors in jurisdiction.¹⁷ At this point in the proceedings before the RTC, petitioner's remedy is to adduce evidence in his defense. If, thereafter, the trial court renders judgment adverse to him, he may then appeal such judgment and raise the same errors he raises in his instant *Petition*.

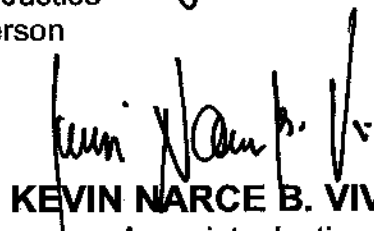
WHEREFORE, the instant *Petition* is hereby **DISMISSED**, there being no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
Associate Justice

¹⁷ Please see *G.V. Florida Transport, Inc. v. Tiara Commercial Corporation*, G.R. No. 201378, October 18, 2017

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ATTESTATION

I attest that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



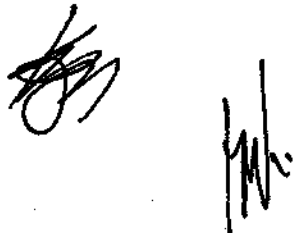
SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13, of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



EFREN N. DE LA CRUZ¹⁸
Acting Presiding Justice



¹⁸ Per Administrative Order No. 175-2023 dated July 19, 2023