



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,

SB-17-CRM-1496 to 1497

For: Violation of Section 3(e)
of R.A. No. 3019, as amended &
Malversation under Article 217 of
the RPC

- versus -

Present :

GREGORIO T. IPONG, ET AL.,
Accused.

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

Promulgated:

AUG 25 2020 

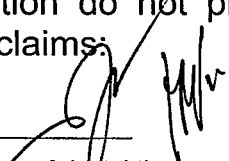
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RESOLUTION

FERNANDEZ, SJ, J.

For resolution is the *Motion for Leave (To File Demurrer to Evidence)*¹ of accused Gregorio T. Ipong.

In his *Motion*, accused Ipong asks the Court to grant him leave to file a *Demurrer to Evidence* on the ground that the evidence presented by the prosecution do not prove his guilt beyond reasonable doubt. Accused Ipong claims:



*Special Member, in view of the inhibition of J. Karl B. Miranda, per Administrative Order No. 276-A-2017 dated August 14, 2017.

¹ Dated March 9, 2020, filed on March 10, 2020.

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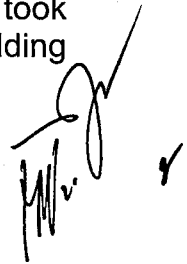
- a. The prosecution failed to adduce sufficient evidence to overthrow the presumption of innocence guaranteed by the constitution in his favor.
- b. The *Complaint* is defective because it did not contain a *Verification*. The *Complaint* should be considered as hearsay, which cannot be used against him.²
- c. The *Complaint* is premature. When the *Complaint* was filed, there was no *Notice of Disallowance* and the audit was incomplete. Until now, a *Notice of Disallowance* has not been issued. The *Special Audit Report* is not conclusive without a *Notice of Disallowance*.³
- d. The evidence of the prosecution is insufficient and failed to prove all the elements of violation of Section 3(e) of R.A. No. 3019.⁴
 - i. The prosecution failed to prove the capacity or function for which he is being charged.
 - ii. The prosecution failed to prove that he acted with manifest partiality, evident bad faith or gross inexcusable negligence when he appointed AFPI as the NGO conduit of his office for the implementation of the PDAF project. The letter he issued is merely recommendatory and suggestive.
- e. He did not violate the appropriation law and R.A. No. 9184. He cannot be held accountable for violating the appropriation law and R.A. No. 9184 because the duty to comply with said laws is conferred upon the implementing agencies. The appropriation law, in Article XLVIII of the GAA of 2007, provided that the amount appropriated shall be released directly to the implementing agencies. So, consistent with the GAA of 2007, the PDAF was directly released to TLRC, and, there was nothing left for his office to do in so far as the use and release of the PDAF is concerned.⁵
- f. The transaction was completed before COA Circular No. 2007-001 and GPPB Resolution No. 12-2007 took effect. Prior to the effectivity of both issuances, bidding

² p. 2, *Motion for Leave* of accused Ipong.

³ p. 2, *Motion for Leave* of accused Ipong.

⁴ p. 3, *Motion for Leave* of accused Ipong.

⁵ pp. 3-4, *Motion for Leave* of accused Ipong.



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is not yet required in the selection of NGOs. To penalize him for violating a requirement that was not existing at the time of the transaction would amount to a violation of his right against the overbreadth effect of an *ex post facto* law.⁶

g. The evidence for the prosecution is insufficient in proving all the elements of *Malversation of Public Funds*.⁷

- i. His office has neither custody nor control over the PDAF. The same was directly released to the implementing agency pursuant to the GAA of 2007.
- ii. The *Special Audit Report* states that the PDAF and VILP were not properly released by the DBM and not appropriately, efficiently, and effectively utilized by the IAs. Thus, it was not accused Ipong who improperly released the PDAF to DSWD.
- iii. The funds never came into his hands.
- iv. He cannot also be charged with abandonment or negligence because the prosecution did not present evidence to prove that he had the obligation to evaluate and accredit the NGO, and to monitor the implementation of projects in his Congressional District.
- v. He was merely tasked to earmark and/or allocate a portion of his PDAF and to recommend the same to the implementing government agencies of choice. The duty to monitor the implementation of the project lies with the executive department.

h. The evidence for the prosecution failed to sufficiently prove beyond reasonable doubt the conspiracy between and among the accused.⁸

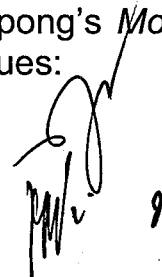
The prosecution filed an *Opposition*⁹ to accused Ipong's *Motion* by electronic filing on June 2, 2020. The prosecution argues:

⁶ pp.4-5, *Motion for Leave* of accused Ipong.

⁷ pp.6-7 *Motion for Leave* of accused Ipong.

⁸ p.6 *Motion for Leave* of accused Ipong.

⁹ Dated May 27, 2020.

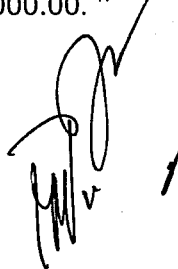
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RESOLUTION (*Motion for Leave to File Demurrer to Evidence*)
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- a. The absence of a Verification in the Complaint is not a fatal defect.¹⁰
- b. That there is no *Notice of Disallowance* is immaterial. The *Notice if Disallowance* is not the basis of the complaint against the accused.¹¹
- c. The prosecution established all the elements of violation of Sec. 3 (e) of R.A. No. 3019.¹²
 - i. The first element is not disputed. Accused admit that they were public officers at the time material to the allegations in the Information.¹³
 - ii. Accused Ipong acted with manifest partiality in favor of Aaron Foundation Philippines, Inc. (AFPI) and its president, accused Ronquillo. He directly selected AFPI to implement the project. He warranted that AFPI can implement the district's livelihood projects. However, the evidence on record shows that AFPI had no business permit and its business address cannot be found.¹⁴
 - iii. The projects supposedly funded by accused Ipong were inexistent.¹⁵
 - iv. The indiscriminate processing of accused Ipong's PDAF allocation, in wanton violation of the requirements provided for under R.A. No. 9184, its implementing Rules and Regulations, COA and TLRC circulars, constitutes bad faith on the part of accused TLRC officers.¹⁶
 - v. The transaction caused undue injury to the government and gave unwarranted benefits to accused Ronquillo and/or AFPI in the total amount of P4,900,000.00.¹⁷



¹⁰ p.2, *Opposition* of the prosecution.
¹¹ p.2, *Opposition* of the prosecution.
¹² p.2, *Opposition* of the prosecution.
¹³ p.3, *Opposition* of the prosecution.
¹⁴ p.3, *Opposition* of the prosecution.
¹⁵ p.4, *Opposition* of the prosecution.
¹⁶ pp.4-6, *Opposition* of the prosecution.
¹⁷ p.6, *Opposition* of the prosecution.

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- d. The prosecution established all the elements of *Malversation* under Article 217 of the Revised Penal Code.¹⁸
- i. Accused Ipong was a public officer at the time the appropriation was released.
 - ii. In the cases of *Belgica, et al. v. Executive Secretary Ochoa, et al*, *Alcantara v. Dylon, et al.*, and *Nepomuceno v. President Aquino, et al.*, the Supreme Court held that legislators have actual control and custody over the PDAF allocated to them by the appropriation statute. Thus, accused Ipong had control and accountability over the PhP5,000,000.00 PDAF allocation subject of these cases.
- e. Conspiracy was sufficiently established by the prosecution. Accused' combined acts indubitably point to a concerted action to divert public funds.¹⁹

THE COURT'S RULING

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 Gregorio T. Ipong for violation of Section 3(e) of Republic Act No. 3019 and *Malversation* under Article 217 of the *Revised Penal Code*.

The *Motion for Leave of Court to File Demurrer to Evidence* of accused Ipong is **DENIED**.

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 his *Manifestation* to inform this Court whether he will file a *Demurrer to Evidence*, without leave of court.

¹⁸ p.6, *Opposition* of the prosecution.

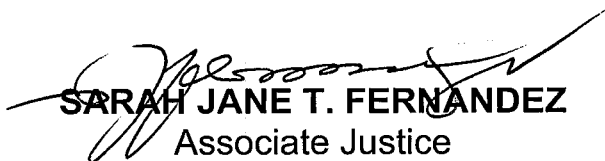
¹⁹ pp.7-8, *Opposition* of the prosecution.

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The presentation of defense evidence is set on October 5 and 7, 2020, and all Mondays and Wednesdays, thereafter, all at 1:30 in the afternoon. The scheduled hearing will be considered automatically cancelled upon receipt by the Court of the *Demurrer to Evidence* of the accused.


Furnish the other accused with a copy of this Resolution.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

WE CONCUR:


KEVIN NARCE B. VIVERO
Associate Justice


BAYANI H. JACINTO
Associate Justice