



Republic of the Philippines

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,

Plaintiff,

SB-10-CRM-0220

For: Violation of Section 3(e) of
Republic Act No. 3019, as amended

- versus -

Present

FERNANDEZ, SJ, J.

Chairperson

MIRANDA, J. and

VIVERO, J.

**GERRY JOVILLA MORALES,
ROSELLER NAZARENO
MACAYRA, EMERITOS
MORALES JOVILLA,
FRANCISCO SERRA JIMENEZ, JR.,
REYMUNDO MANDAWA ESCAMILLAN,
and DONALD BANIEL VILLADEMOSA.**

Accused.

Promulgated:

DEC 17 2020 *peyana*

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RESOLUTION

VIVERO, J.:

This resolves the *Motion for Reconsideration* dated September 7, 2020,¹ which was filed seasonably via e-mail on September 8, 2020 by accused Donald B. Villademosa.² Accused-movant

¹ Motion for Reconsideration dated September 7, 2020, of Donald B. Villademosa, pp. 1 – 17.

² *Ibid.*

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impugns the correctness of this Court's Decision.³ He assails this Court's judgment of conviction while alleging that:

" . . . [D]espite the epic failure of the prosecution to identify the person of the accused as well as to authenticate his purported signatures on the documentary exhibits, accused VILADEMOSA was found guilty and unfairly sentenced up to 10 long years in prison. His co-accused ESCAMILLAN, on the other hand, was acquitted."⁴

The grounds for reconsideration are the following:

"The Prosecution failed to positively identify his person. This is coupled with the failure to identify his alleged signatures on the pertinent bidding and procurement documents. These are serious grounds which render VILADEMOSA innocent of the charge x
x x.

x x x"⁵ (Emphasis Supplied.)

Contrariwise, the prosecution, thru its *Comment/Opposition*,⁶ seeks the outright denial of accused's motion, and avers that the assailed verdict is buttressed by cogent factual and legal basis.⁷

The Court now resolves.

Accused contends that dearth of evidence about accused's identity militates against the sufficiency of the evidence regarding his personal knowledge of the subject transactions of Villtrade Marketing

³ The Decision was promulgated on August 26, 2020 via video conference in the presence of accused D.B. Villademoso and his counsel *de parte*.

⁴ *Supra*, Note 1, at p. 4.

⁵ *Supra*, Note 1 at pp. 4 – 5.

⁶ *Comment/ Opposition (Re: Accused Donald B. Villademoso's Motion for Reconsideration of the 26 August 2020 Decision)* dated September 21, 2020, pp. 1 – 6.

⁷ *Loc. cit.*, p. 2.

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with the government.⁸ This, in turn, negates conspiracy with his co-accused.⁹

The contention of the accused is untenable. Notably, the Pre-Trial Order¹⁰ expressly states:

"3. That at the time of the alleged commission of the offense, accused Villademoso, a private individual, was the owner and proprietor of Villtrade Marketing –

"ADMITTED – by accused Villademoso

"X X X." ¹¹

The Revised Rules on Criminal Procedure¹² mandates that matters agreed upon during the pre-trial conference and stated in the pre-trial order binds the parties. Hence, accused is estopped to say otherwise. Suffice it to say that the person charged in the Information and the person referred to in the Pre-Trial Order are one and the same.

Further, accused alleged that:

". . . [W]itness PATALINGRAO failed to identify and prove that Accused VILLADEMOSA himself signed or actively participated as a signatory on (sic) the allegedly 'spurious,' 'irregular' or 'invalid' transaction which she has (sic) testified to.

"X X X

⁸ Supra, Note 1, p. 4.

⁹ Supra, Note 1, p. 5.

¹⁰ dated October 8, 2015.

¹¹ Decision dated August 26, 2020, p. 17.

¹² Rule 118, Section 4 provides:

Section 4. Pre-trial order. — After the pre-trial conference, the court shall issue an order reciting the actions taken, the facts stipulated, and evidence marked. Such order shall bind the parties, limit the trial to matters not disposed of, and control the course of the action during the trial, unless modified by the court to prevent manifest injustice.

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" . . . [N]o other witness was ever presented to physically place the Accused VILADEMOSA as an active participant to (sic) the documented transaction in controversy . . . " ¹³

Accused asserts that sans irrefutable evidence that accused Villademosa, in his capacity as "representative" of Villtrade Marketing, was indeed the signatory on the documents¹⁴ germane to the procurement in question, attributing criminal responsibility to him is fallacious. On the other hand, the prosecution counters that such assertion is "preposterous".¹⁵

No reversible error is extant in the assailed Decision. If only to drive home this point, the Court reiterates its *dictum* in its prior and controlling Decision¹⁶ on this case, to wit:

" . . . [T]he Court's pronouncement in its Decision dated November 12, 2014, is critical. The ruling states:

"By allowing the disbursement of public funds in the amount of **P101,086.37** and paying the same to Villtrade Marketing despite the fact that no tires were delivered, accused caused **ACTUAL DAMAGE** to the Municipality of Baganga and conferred **UNWARRANTED BENEFIT** to Villtrade Marketing." ¹⁷
(Capitalization Supplied.)

"THE BOTTOM-LINE WAS THAT NO TIRES WERE ACTUALLY DELIVERED,¹⁸ THEREBY UNJUSTLY ENRICHING ACCUSED VILADEMOSA

¹³ Supra, Note 1, p. 6.

¹⁴ EXHIBITS "G", "H", "I", "J", "L", "N-2".

¹⁵ Supra, Note 6, p. 2.

¹⁶ Decision dated November 12, 2014, of the Sandiganbayan.

¹⁷ Decision dated November 12, 2014, p. 21 (Records, Vol. 2, p. 374).

¹⁸ TSN, February 7, 2017, pp. 50 – 54, 118 – 124.

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AT THE EXPENSE OF THE GOVERNMENT. The injury-in-fact herein to the pecuniary interests of the government was specified, quantified and proven to the point of moral certainty."¹⁹ (Capitalization Supplied.)

To recall, the Decision dated November 12, 2014,²⁰ is the law of the case.²¹ Thence, the Court's judgment is, for all intents and purposes, final and immutable. Considering that it is inextricably linked with this case, there is no gainsaying that accused Villahermosa is among the malefactors. Ultimately, the defalcation of public funds redounded to his benefit.

Further, the Court cites with approval the prosecution's averment, to wit:

"... [T]he prosecution's evidence shows that **Villtrade Marketing** [which is] owned **by accused Villademosa has no legal existence to transact with the Municipality of Bangaga in 2002, the time the supposed transaction took place.** This was evident from the Certification issued by the Business Bureau of Davao City²² and the Department of Trade and Industry (DTI).²³ Be it noted that accused Villademosa likewise admitted the genuineness, due execution and authenticity of the Certification issued by the Business Bureau of Davao City and the DTI as evidenced by the Pre-Trial Order issued in this case."²⁴ (Emphasis Supplied.)

¹⁹ Citing *M. A. Jimenez Enterprises, Inc. v. Ombudsman*, G.R. No. 155307, June 6, 2011 (650 SCRA 381, 398), citing *Buyagao v. Karon*, G.R. No. 162938, December 27, 2007 (541 SCRA 420, 431).

²⁰ *Supra*, Note 16.

²¹ Supreme Court's Entries of Judgment dated February 23, 2017, in *Gerry J. Morales v. People* (G.R. No. 218264), *Emeritos M. Jovilla and Francisco S. Jimenez, Jr. v. Sandiganbayan and People* (G.R. No. 218468), and *Engr. Roseller N. Macayra v. People* (G.R. No. 218469); Records, Vol. 5, pp. 423 - 436.

²² EXHIBIT "T".

²³ EXHIBIT "U".

²⁴ *Supra*, Note 6, p. 3.

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Lastly, accused contends that:

"[T]he Honorable Court could have 'presumed' Accused VILLADEMOSA . . . to have conspired with the other Co-accused who were previously found guilty [based] on the mere fact of his ownership over VILLTRADE MARKETING." ²⁵

This is plain sophistry.

The Court, in its Decision dated November 12, 2014, adjudged that accused Morales, Macayra, Jovilla and Jimenez "*contributed in defrauding the government*" ²⁶ through an unlawful abridgement of the procurement process. The chain of circumstances clearly manifested that their acts, though apparently independent, were in fact concerted and cooperative. These public officers facilitated the consummation of a spurious transaction between the municipality of Baganga, Davao Oriental and Villtrade Marketing. *Cui bono?*²⁷ Accused Villademosa, the latter's owner and sole proprietor, profited, albeit unlawfully, from their perfidy. *Cui prodest sceius es fecit (He who profits from crime is guilty of it).*²⁸

Concededly, no actual delivery of ten (10) pieces of exterior tire with flap transpired.²⁹ Yet, Villtrade Marketing, a dealer of farming animals³⁰ and general merchandise,³¹ was fully paid.³² Villtrade Marketing was not even licensed to do business, to begin with.³³

²⁵ Supra, Note 1, p. 13.

²⁶ Decision dated November 12, 2014, p. 22 (Records, Vol. 2, p. 375).

²⁷ For whose benefit?

²⁸ ARTICLE 19, paragraph 1, Act No. 3815 (The Revised Penal Code); *People v. Delmoro*, CA – G.R. No. 16483, August 31, 1995, cited in HANDBOOK OF LEGAL MAXIMS, Justice German G. Lee, 1998, Second Revised Edition.

²⁹ No signature on Inspection and Acceptance Report (EXHIBIT "J"); no delivery receipt and official receipt issued by Villtrade Marketing; no record at Engineer's Office and General Services Office of the municipality of the purchases in question.

³⁰ TSN, February 7, 2017, p. 94; EXHIBIT "U-3".

³¹ Id. at p. 97, Pre-trial Order dated October 8, 2015, p. 1 - 7 (Records, Vol. 5, pp. 80 – 86).

³² EXHIBIT "H", "H-3"; Direct testimony of Angelina Patlingrao.

³³ EXHIBIT "T (Certification issued by the Business Bureau of Davao Oriental; EXHIBIT "U" (Certification issued by the Department of Trade and Industry).

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Needless to say, the transaction was grossly disadvantageous to the government.³⁴

Accused posits that his ownership of Villtrade Marketing impacted on the Court's credulity to "presume" conspiracy between him and the convicted local officials.³⁵ This is premised on the following postulation, to wit:

"The mere fact that Accused VILLADEMOSA is the owner of VILLTRADE MARKETING does not *ipso facto* make him a principal by direct cooperation, by inducement or by indispensable cooperation."

This is nothing but an empty assertion and a red herring. In ***Mangila v. Court of Appeals and Guina***,³⁶ the Supreme Court ruled, *viz*:

"A sole proprietorship does not possess a juridical personality separate and distinct from the personality of the owner of the enterprise. The law merely recognizes the existence of a sole proprietorship as a form of business organization conducted for profit by a single individual, and requires the proprietor or owner thereof to secure licenses and permits, register the business name, and pay taxes to the national government. It does not vest juridical or legal personality upon the sole proprietorship nor empower it to file or defend an action in court."³⁷

Since sole proprietorships, unlike corporations, have no separate legal personality from their proprietors, they cannot claim the inability to do physical acts as a justifiable circumstance to

³⁴ See *Florencia Garcia-Diaz v. Sandiganbayan, et. al.*, G.R. Nos. 193236, 193248-49, September 17, 2018.

³⁵ *Supra*, Note 1, pp. 12 -13.

³⁶ G.R. No. 125027, August 12, 2002 (387 SCRA 162, 435 Phil. 870).

³⁷ Citing *Juasing Hardware v. Hon. Rafael T. Mendoza*, G.R. No. L-55687, July 30, 1982 (115 SCRA 783; 201 Phil. 369); SEE *Yao Ka Sin Trading, owned and operated by Yao Ka Sin v. Court of Appeals and Prime White Cement Corporation*, G.R. No. L-53820 June 15, 1992 (209 SCRA 763), *Navarro v. Hon. Jose L. Escobido*, G.R. No. 153788, November 27, 2009 (606 SCRA 1).

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authorize their "representative" to sign on their behalf.³⁸ That said, it follows that Villtrade Marketing must be held directly liable for his acts and involvement in the fraudulent and simulated transaction herein. Moreover, if it be assumed (though *arguendo* only) that Villtrade Marketing possessed separate juridical personality, criminal responsibility must still be borne by the officers actually managing or operating the enterprise, in this case accused Villademosa.³⁹ An artificial and juristic person can neither act with the *mens rea* which is essential for criminal liability nor be confined in a jail.⁴⁰ Given these considerations, accused Villademosa and Villtrade Marketing should be treated as one and the same person for purposes of liability.

Further, accused-movant maintains that absent direct evidence positively identifying him as the signatory of the documents⁴¹ and showing that he is a co-conspirator,⁴² he should be absolved.

The contention is unmeritorious.

Jurisprudential precedents⁴³ bear out that trustworthy circumstantial evidence can equally confirm the offender's identity and overcome the constitutionally presumed innocence of the accused. In the same vein, conspiracy may be deduced from the mode and manner in which the offense was perpetrated.⁴⁴ In the instant case, proof beyond reasonable doubt has established convincingly that the totality of the facts and circumstances indicates furtherance of a common design between accused Villademosa and the previously convicted public officers.⁴⁵ He cannot dodge liability

³⁸ *Hubilla, et. al. v. HSY Marketing Ltd., Co., et. al.*, G.R. No. 207354, January 10, 2018 (850 SCRA 372).

³⁹ *West Coast Life Insurance, Co. v. Hurd*, G.R. No. L-8527, March 30, 1914 (27 Phil. 401).

⁴⁰ *Jariol, Jr. v. Sandiganbayan and People*, G.R. Nos. L-52095-52116, August 13, 1990 (188 SCRA 475)

⁴¹ EXHIBITS "H", "N".

⁴² *Supra*, Note 1, pp. 13 – 14.

⁴³ *People v. Villarico, Sr.*, G.R. No. 158362, April 4, 2011 (647 SCRA 43, 46); *People v. Gallarde*, G.R. No. 133025, February 17, 2000 (325 SCRA 835, 849-850).

⁴⁴ *People v. Caranzo, et. al.*, G.R. No. 76743, May 22, 1992 (209 SCRA 232); *People v. Gabatin*, G.R. No. 84730, October 28, 1991.

⁴⁵ *Napoles v. Sandiganbayan, Third Division*, G.R. No. 224162, November 2, 2017, *Cedeño v. People and Sandiganbayan, Fifth Division*, G.R. Nos. 193020, 193040 – 193042/ 193349 – 54, November 8, 2017.

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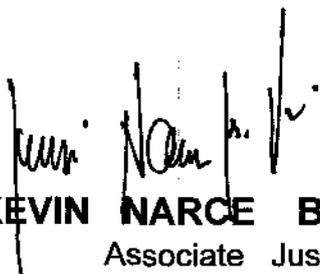
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by hiding behind Villtrade Marketing, a sole proprietorship. It bears stressing the axiom: *Dolo malo pactumse non servaturum.*⁴⁶

All told, after a second hard look at the issue raised by the accused-movant, this Court sees no substantial and compelling reason to warrant the reversal of the assailed Decision.

WHEREFORE, the motion for reconsideration filed by accused DONALD B. VILLADEMOSA is ***DENIED for*** lack of merit. Accordingly, this Court's Decision dated August 26, 2020, is hereby ***AFFIRMED IN TOTO.***

SO ORDERED.


KEVIN NARCE B. VIVERO
Associate Justice

We concur:


SARAH JANE T. FERNANDEZ
Chairperson
Associate Justice


KARL B. MIRANDA
Associate Justice

⁴⁶ An agreement founded upon fraud will not be upheld.