



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-18-CRM-0552
For: Violation of Sec. 3(e) of
R.A. 3019

- versus -


FRANCISVIC S. VILLAMERO,
ET AL.,

Accused.

Present:

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

Promulgated

DEC 11 2020 

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JOINT RESOLUTION

VIVERO, J.

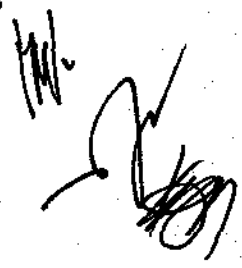
For the Court's consideration are the following:

- a) *Motion for Reconsideration (of the Resolution dated 23 September 2020) filed by accused Francisvic S. Villamero;*¹
- b) *Opposition (to the Motion for Reconsideration of accused Villamero) filed by the prosecution;*²
- c) *Motion for Reconsideration (of the Resolution dated 23 Septemeber) filed by accused Ricardo T. Solis and Jovito S. Ondiano;*³

¹ Dated October 16, 2020

² Dated October 21, 2020

³ Dated October 14, 2020



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d) *Opposition (to the Motion for Reconsideration of accused Solis and Ondiano) filed by the prosecution.*⁴

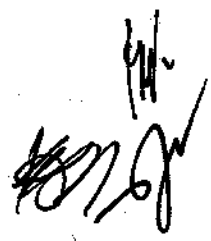
Accused Villamero, Solis and Ondiano appeal to this Court to review, reconsider and set aside its *Resolution* dated 23 September 2020 denying their *Motion for Leave of Court to File Demurrer to Evidence*.

Accused Villamero's Motion for Reconsideration

In support of his *Motion for Reconsideration*, accused Villamor raises the following:

- a. The grounds relied upon by the accused are specific in reference to the testimonies and of the documents submitted by the prosecution;
- b. His motion for leave had discussed the grounds and laid the basis of his demurrer that he intended to file;
- c. The prosecution has miserably failed to prove his guilt especially on its theory of conspiracy among the accused;
- d. All testimonial and documentary evidence presented and/or identified by the prosecution witnesses including those attached to the judicial affidavits of prosecution witnesses only proved that there was no conspiracy;
- e. Except for the baseless and wrongful conclusions made by Mr. Joel Moran from the NBI, all documents attached to his judicial affidavit only showed that the transaction was proceeded regularly without any showing of conspiracy among the accused to give undue favor to Ivan Carr over the other qualified supplier known as Eagle Equipment;
- f. The subject transaction was effected in good faith;
- g. The position of the prosecution that Ivan Carr was not qualified or eligible because of its failure to submit some credentials is negated by the very exhibits that the

⁴ Dated October 22, 2020



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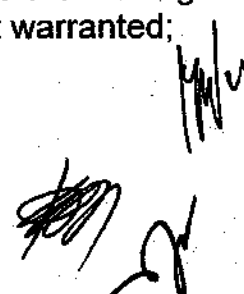
prosecution had offered as Exhibits "CC" (SEC Registration of Ivan Carr) and "DD-2" (PhilGEPS Registration of Ivan Carr);

- h. The failure of the BAC to publish the ITB with the PhilGEPS was of no moment and insignificant because LGU Tukuran was not yet registered with the Phil GEPS during the subject transaction;
- i. Ivan CARR had submitted all the required papers and credentials to the Technical Working Group who prepared the Preliminary Bid Evaluation Report;
- j. Ivan CARR had qualified as a bidder and had submitted all the required papers and credentials;
- k. As decided by the Court of Appeals in C.A. G.R. No. 08698 for Grave Misconduct, accused was absolved from any and all administrative liabilities;
- l. The Ombudsman absolved all of the accused on the charge of violation of the provisions of the Procurement Act;
- m. Conspiracy does not exist in the case and was not proved by the prosecution, the prosecution only proved some lapses which were not intentionally and maliciously done or consciously performed in light of the procurement law;
- n. Accused Villamero and the other accused acted in good faith.

Accused Solis and Ondiano's Motion for Reconsideration

In support of their *Motion for Reconsideration*, accused alleged the following:

- a. The grounds relied upon by the accused are specific in reference to the testimonies and the documents submitted by the prosecution;
- b. Accused Solis and Ondiano maintain that their being impleaded as co-accused in this case is not warranted;



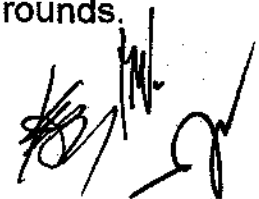
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- c. The prosecution had not established prima-facie case against accused Solis and Ondiano much less a prima-facie evidence of the existence of conspiracy among the accused;
- d. All testimonial and documentary evidence presented and/or identified by the prosecution witnesses including those attached to the judicial affidavits of prosecution witnesses only proved that there was no conspiracy;
- e. Except for the baseless and wrongful conclusions made by Mr. Joel Moran from the NBI, all documents attached to his judicial affidavit only showed that the transaction was proceeded regularly without any showing of conspiracy among the accused to give undue favor to Ivan Carr over the other qualified supplier known as Eagle Equipment
- f. As alternate members of the then BAC, accused Solis and Ondiano were merely present as observers as the regular members, for whom they were designated as alternates, were present in the BAC Proceedings relative to the questioned transaction;
- g. Conspiracy does not exist and was not proved by the prosecution beyond reasonable doubt;
- h. The guilt of accused Solis and Ondiano has not been proved beyond reasonable doubt as the prosecution also failed to prove the theory of conspiracy; and
- i. The mere presence of the accused were not enough to make them liable and they were just there in good faith and in compliance to the directive of their superior.

Prosecution's Opposition on Villamero, Solis and Ondiano's Motions for Reconsideration

On 21 October 2020, the prosecution filed its Opposition to accused Villamero's *Motion for Reconsideration*. On the other hand, the prosecution filed its Opposition to accused Solis and Ondiano's *Motion for Reconsideration* on 26 October 2020.

In both Oppositions, the prosecution alleged that both *Motions for Reconsideration* are essentially based on similar grounds.



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The prosecution seeks the outright denial of accused' Villamero, Solis and Ondiano's *Motion for Reconsideration* on the ground that they were filed out of time. The prosecution notes that according to accused Villamero, he received the Honorable Court's Resolution dated 23 September 2020 on 1 October 2020. Thus, accused had only until 6 October 2020 to file his Motion for Reconsideration. However, accused filed his motion only on 16 October 2020 or 15 days from receipt of the Honorable Court's Resolution dated 23 September 2020.

On the part of accused Solis and Ondiano, they admitted having received the Honorable Court's Resolution dated 23 September 2020 also on 1 October 2020. Thus, accused had until 6 October 2020 to file their Motion for Reconsideration. However, accused filed their motion only on 14 October 2020 or 13 days from receipt of the Honorable Court's Resolution dated 23 September 2020.

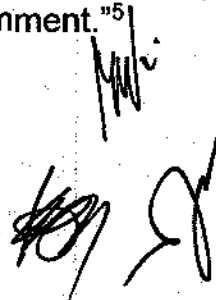
Hence, the prosecution argues that the two (2) *Motions for Reconsideration* were filed beyond the period for filing a motion for reconsideration. The prosecution further argued that even if the *Motions* were timely filed, the same should be denied as the arguments posited by the accused Villamero, Solis and Ondiano are essentially a rehash of their claims in their Motion for Leave to File Demurrer to Evidence, which had been judiciously addressed and passed upon by the Honorable Court in its Resolution dated 23 September 2020.

RULING

The Court deems it proper to resolve first the procedural issue raised by the prosecution. Under the Revised Guidelines for Continuous Trial of Criminal Cases:

"The motion for reconsideration of the resolution of a meritorious motions shall be filed within a non-extendible period of five (5) calendar days from receipt of such resolution, and the adverse party shall be given an equal period of five (5) calendar days from receipt of the motion for reconsideration within which to submit its comment. Thereafter, the motion for reconsideration shall be resolved by the court within a non-extendible period of five (5) calendar days from the expiration of the five (5)-day period to submit the comment."⁵

⁵ A.M. No. 15-06-10-SC



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Upon perusal of the records, it is apparent that accused Villamero's *Motion* was only filed on 16 October 2020, which is ten (10) days beyond the five (5)-day reglementary period. On the other hand, accused Solis and Ondiano's *Motion* was only filed on 14 October 2020, which is eight (8) days beyond the five (5)-day reglementary period. Evidently, as correctly pointed out by the prosecution, the *Motions* of the accused Villamero, Solis and Ondiano were all filed out of time.

Going into the merits of the *Motions*, The Court finds no compelling reason that would warrant the reversal of the assailed *Resolution*.

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

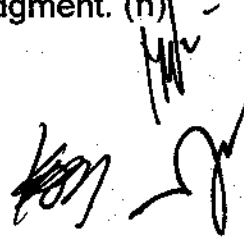
Section 23. *Demurrer to evidence.* — After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without 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)



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In *People v. Borja*, the Supreme Court explained the function of a demurrer to evidence, to wit:

A demurrer to evidence is a motion to dismiss on the ground of insufficiency of evidence. It is a remedy available to the defendant, to the effect that the evidence produced by the plaintiff is insufficient in point of law, whether true or not, to make out a case or sustain an issue. The question in a demurrer to evidence is whether the plaintiff, by his evidence in chief, had been able to establish a *prima facie* case.

x x x The office of a demurrer to evidence to expeditiously terminate the case *without the need* of the defendant's evidence. Hence, what is crucial is the determination as to whether the plaintiffs evidence entitles it to the relief sought.

Based on the foregoing, in resolving a demurrer, the Court has to determine whether the prosecution's evidence, *prima facie*, meets the elements of the crime charged without considering the defenses of the accused.

As already ruled and extensively discussed by the Court in its assailed Order of 23 September 2020, if unrebutted, the evidence presented by the prosecution is *prima facie* sufficient to support a verdict of conviction against the accused for violation of Section 3(e) of R.A. 3019.

Finally, even just a cursory perusal of the two (2) Motions for Reconsideration, it seems clear that accused Villamero, Solis and Ondiano failed to raise no new and substantial arguments and merely reiterated and rehashed those contained in their respective *Motion for Leave to File Demurrer to Evidence*, which were already squarely addressed by this Court in the assailed *Resolution*.

WHEREFORE, accused Villamero, Solis and Ondiano's *Motion for Reconsideration* are hereby **DENIED** for lack of merit.

SO ORDERED.


KEVIN NARCE B. VIVERO
Associate Justice

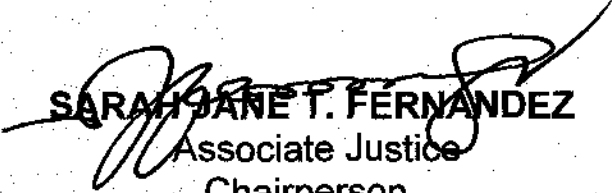
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WE CONCUR:


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson


KARL B. MIRANDA
Associate Justice

