

REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, CRIM. CASE NOS. SB-19-CRM-
 Plaintiff, 0171

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

- versus -

CRIM. CASE NOS. SB-19-CRM-
0172

*For: Malversation of Public Funds
(Art. 217 of the Revised Penal
Code)*

ANTONIO ORTIZ, ET AL.,
 Accused.

Present:
HERRERA, Jr., J., Chairperson
MUSNGI, J., Associate Justice
MALABAGUIO, J., Associate Justice

June 9, 2022 *unt*
Promulgated

RESOLUTION

MUSNGI, J.:

The Court resolves the following:


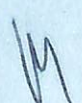
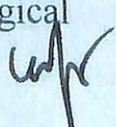
(1) *Motion for Leave to File Demurrer to Evidence* filed by accused Ike Suniel Canoy (“**Canoy**”), Vincent Jaudian (“**Jaudian**”), Mercy Cabig (“**Cabig**”), and Alfredo Soriano (“**Soriano**”) on 02 May 2022;

(2) *Motion for Leave to File Demurrer to Evidence* filed by accused Dennis L. Cunanan (“**Cunanan**”) on 02 May 2022;

(3) *Motion for Leave of Court to File Demurrer to Evidence* filed by accused Maria Rosalinda M. Lacsamana (“**Lacsamana**”) on 02 May 2022;
and

(4) *Motion for Leave of Court to File Demurrer to Evidence* filed by accused Francisco B. Figura (“**Figura**”) on 05 May 2022.

In their *Motion*, accused Canoy, Jaudian, Cabig, and Soriano allege that they are private individuals who were merely dragged in these cases as officers of the NGO named Philippine Environmental and Ecological

Development Association, Inc. (“PEEDAI”), which was the implementing NGO endorsed by the late Davao De Oro Representative Prospero Amatong for his PDAF-funded Development Project. They argue that there is insufficient evidence or no evidence at all to prove beyond reasonable doubt that they violated Section 3(e) of R.A. No. 3019. They claim that not a single witness was presented by the prosecution to back up its allegation that the livelihood program was not implemented. Lastly, they state that the allegation of conspiracy should likewise fail because they were not included in the malversation charge.

Accused Cunanan, on the other hand, also argues in his *Motion* that the evidence presented by the prosecution failed to prove his guilt beyond reasonable doubt for violation of Section 3(e) of R.A. No. 3019 for the following reasons: (1) that the elements of the crimes charged has not been established by the prosecution; (2) that his participation in the crimes charged were likewise not established; and (3) that conspiracy has not been proven. Accused Cunanan argues that no evidence was presented to show that he has any participation in the selection of the NGOs or that he knew the officers and directors of the same. He also claims that the prosecution failed to establish his participation in the said irregularities in the accreditation of the NGOs or that he consciously or fraudulently signed the subject disbursement voucher. He further contends that there was no proof that he benefited from the subject transactions.

With regard to the charge of malversation, accused Cunanan claims that the prosecution failed to prove that he is an accountable officer who has the capacity to approve and allow the release of funds by his signature alone. It was not allegedly proven that he performed his duty in an irregular manner when he signed the disbursement voucher. He also mentions that he did not sign the LBP check in question, hence, there is no basis in the allegation that he authorized and caused the release of the check.

In her *Motion*, accused Lacsamana asserts that the Release Memorandum issued by her, which recommended the release of the PDAF in the amount of PhP9,800,000.00 in accordance with the MOA between Technology and Livelihood Resource Center (“TLRC”) and PEEDAI, is merely recommendatory. Lacsamana claims that she was only performing tasks which she was customarily doing at that time and not because she took advantage of her public office or that she is motivated by bad faith, manifest partiality or a concerted effort or unified design to defraud the government. She claims that the Release Memorandum cannot be interpreted as a command to her superior, accused Ortiz, who has the final say in TLRC as to which NGO the project will be awarded. The Release Memorandum was also

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allegedly supported by documents such as SAROs, indorsement letter from the legislator, MOA entered into by the legislator, TLRC, and PEEDAI, and the project proposal. She also alleges that she did not receive any kickback, rebate, commission, or anything of value in consideration of her making and preparing the Release Memorandum. Moreover, accused Lacsamana claims that the act of making and writing the Release Memorandum does not amount to conspiracy as she has no conscious design to commit an offense.

Accused Figura also filed his own *Motion* where he argues that no evidence was presented to support the allegation that he was one of the accused who facilitated, processed, and released the PDAF disbursement to PEEDAI despite the latter's doubtful credentials and non-submission of periodic project reports and liquidation report. He claims that he was not a signatory to the tripartite MOA or the disbursement voucher, or that he participated in the actual implementation of the PDAF-funded projects. The only time that he was allegedly mentioned was when the witness from the COA, Joan Alfafaras, was presented where the latter stated that accused Figura was a counter-signatory to the check which released the fund to the PEEDAI and nothing more and that the said witness declared that there was no conspiracy found by their group and that the liability of the TLRC officers is only administrative, and not criminal. He also claims that conspiracy and criminal intent to commit the offenses were not established by the prosecution. There was likewise no showing that he received something in exchange for his counter-signature on the subject check.

In its *Consolidated Comment/Opposition*, the prosecution counters that they sufficiently presented evidence which established the individual participation of the accused-movants, as well as the essential elements of the crimes charged, by citing the findings of the COA in its Special Audit Office ("SAO") Report No. 2012-03 entitled *Priority Development Assistance Fund (PDAF) and Various Infrastructures including Local Projects (VILP)*. The prosecution also asserts that the accused public officers of the TLRC violated COA Circular No. 96-003 relative to the accounting and auditing on the release of fund assistance to the NGOs when they accredited the PEEDAI to be the project implementor despite the existence of various irregularities.

The prosecution alleges that the accused conspired when they committed concerted acts to favor PEEDAI as project implementor of Representative Amatong's PDAF-funded project. The accused allegedly chose PEEDAI as project implementor despite gross irregularities and non-compliance in the accreditation process; submission of supporting documents by PEEDAI despite lacking in particulars about intended beneficiaries and

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project implementation; and non-liquidation after the alleged implementation of the project up to date.

In her *Reply*, accused Lacsamana argues that the prosecution's *Consolidated Comment/Opposition* merely relied on the SAO Report No. 2012-03 issued by the COA. She maintains that the alleged violation by TLRC in releasing the funds to PEEDAI despite the absence of an appropriation law or ordinance in supposed violation of procurement laws are matters not personal to her but to TLRC as an organization.

Accused Lacsamana also attributes fault to the COA alleging that the agency could have stopped the alleged illegal utilization of the PDAF had it acted at the earliest possible opportunity at the level of the House of Representatives. Moreover, she claims that there were no adverse findings from the COA insofar as TLRC's implementation of the PDAF projects with NGO partners in 2007, 2008, and 2009. She also asserts that the COA Auditor testified that they did not find any document that shows that she pocketed funds from the PDAF transactions. She also reiterates that the Release Memorandum signed by her is merely recommendatory and that the implementation of the PDAF projects passes through several processes and requires the participation of different public officers, each with different roles and duties.

RULING

On 09 March 2022, the prosecution filed its *Formal Offer of Documentary Evidence* and rested its case. The *Resolution*¹ of the Court dated 25 April 2022 states that:

"the Court resolves to admit Prosecution Exhibits "A" to "J", "K", "K-1" and "K-2", "L", "L-1" and "L-2", "M" and "M-1", "N" to "S", "S-1", "T", "T-1", "U", "V" to "V-472", "W" to "Z", and "AA" to "MM", inclusive of submarkings."

Records show that the prosecution presented the following witnesses: (1) Marissa Santos, Chief Administrative Officer of the Central Records Division of the Department of Budget and Management; (2) Rachel Abendanio, Director II of the Building and Facilities Maintenance Services, General Services Office of the Commission on Audit; (3) Shari Ann Harriet Cabuhat, Procurement Management Officer V and the Officer-in-Charge of the Secretariat Commission of the Government Procurement Policy Board, Technical Support Office; (4) Joan Agnas Alfaras, State Auditor IV of the

¹ *Ibid*, Vol. 2, p. 442.

Special Audits Office of the COA; (5) Danilo Calcaben, Municipal Accountant at Montevista, Davao De Oro; (6) Elyn Atienza, Municipal Accountant at Moncayo, Davao De Oro; (7) Atty. R.J. A. Bernal, Chief Counsel of the Company Registration and Monitoring Department of the Securities and Exchange Commission; (8) Atty. Ronald Allan Ramos, Graft Investigation Prosecution Officer, Field Investigation Office, Office of the Ombudsman; and (9) Jhoven Litana, Supervising Administrative Officer, General Services Division, Records Division, and Records Officer of the TLRC, DOST Transition Committee.

After a careful review of the records of the case and the evidence of the prosecution, the Court resolves to deny the separate *Motions* filed by accused Canoy, Jaudian, Cabig, Soriano, Cunanan, Lacsamana, and Figura. The accused failed to show that the prosecution's evidence are insufficient to establish a prima facie case against them. The grounds raised by the accused in their *Motions* are best appreciated in the course of trial during presentation of defense evidence.


WHEREFORE, premises considered, the *Motion for Leave to File Demurrer to Evidence* filed by accused Ike Suniel Canoy, Vincent Jaudian, Mercy Cabig, and Alfredo Soriano, *Motion for Leave to File Demurrer to Evidence* filed by accused Dennis L. Cunanan, *Motion for Leave of Court to File Demurrer to Evidence* filed by accused Maria Rosalinda M. Lacsamana, and *Motion for Leave of Court to File Demurrer to Evidence* filed by accused Francisco B. Figura are hereby **DENIED** for lack of merit

SO ORDERED.

Quezon City, Philippines.


MICHAEL FREDERICK L. MUSNGI
Associate Justice

We concur:


OSCAR C. HERRERA, JR.
Associate Justice
Chairperson


ARTHUR O. MALABAGUIO
Associate Justice