



Republic of the Philippines

Sandiganbayan

Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on 15 August 2022.

Present:

Justice MA. THERESA DOLORES C. GOMEZ-ESTOESTA----- Chairperson

Justice ZALDY V. TRESPESES----- Member

Justice GEORGINA D. HIDALGO----- Member

The following resolution was adopted:

Crim. Case No. SB-17-CRM-2092 to 2093 - People vs. SIMEON AMPATUAN DATUMANONG, ET AL.

This resolves the following:

1. Accused Sales' "MOTION FOR LEAVE OF COURT TO FILE DEMURRER TO EVIDENCE (Hereto Attached)" dated and electronically filed on August 3, 2022;¹

2. The prosecution's "OPPOSITION" dated and filed on August 8, 2022.²

TRESPESES, J.

For resolution is the Motion for Leave of Court to File Demurrer to Evidence filed by accused Gracita Cecilia Mascenon-Sales, and the prosecution's Opposition thereto.

ACCUSED MASCENON-SALES'S MOTION FOR LEAVE

Accused prays for leave to file the Demurrer attached to her motion pursuant to Sec. 33, Rule 113 of the Rules of Criminal Procedure.

She avers that the prosecution failed to establish the element of violation of Sec. 3(e) of R.A. No. 3019, that accused acted in evident bad faith, manifest partiality and gross inexcusable negligence. She alleges that the Maharlikang Lipi Foundation, Incorporated (MLFI) went through a process

¹ Record, Vol. 4, pp. 332-351.

² Id. at 353-360.

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of accreditation with the NCMF although not totally compliant with COA Circular 2007-001. She argues that a violation of procurement laws does not automatically give rise to violation of R.A. 3019. Also, while the check in favor of MLFI dated 31 July 2012 was issued earlier than the execution of the MOA, she asserts that the Notice of Cash Allocation (NCA) was dated 6 July 2012 and by that time, the funds were already considered as released or beyond the control of the disbursing authority. Accused also claims that the element of undue injury or damage was not proven because the COA did not conduct any post-project audit.

Accused also asserts that the existence of conspiracy, which should be proven like any element of the crime charged, was not established by proof beyond reasonable doubt. Further, the fact that other accused pleaded guilty to a lesser offense could not automatically mean that she conspired with them in the present charge.

THE PROSECUTION'S OPPOSITION

The prosecution alleges that there is no need for the prosecution to present direct evidence of conspiracy considering that all the other accused have already pleaded guilty to a lesser offense. The prosecution points out that when accused Mascenon-Sales requested for stipulation on the fact that all the other accused pleaded to a lesser offense, she is deemed to have admitted that: 1) all other accused who pleaded guilty to a lesser offense, by the same act, recognized that they are pleading guilty to a criminal conduct and would be held liable for such; and 2) that they conspired with one another in committing said criminal conduct.

Notwithstanding, the following actions performed by accused indicates conspiracy as they point to a unified and common purpose to acquire funds from the coffers of the government and release the same, disregarding existing laws, rules and regulations, to wit:

- i. Congressman Simeon Ampatuan Datumanong [Congressman Datumanong] directly endorsed Maharlikang Lipi Foundation [MLFI] (sic) to National Commission on Muslim Filipinos [NCMF], in "executing" a livelihood project, instead of undergoing the usual process prescribed by the relevant laws and rules, and the Commission on Audit.
 - ii. Evidence revealed that the check covering the amount of the said project was already prepared even before the Memorandum of Agreement between Congressman Datumanong, NCMF and MFLI were executed.
 - iii. The COA then found out that the said transaction was swamped by violations after violations of laws, rules and regulations.
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- iv. COA cannot locate MLFI's (sic) accreditation nor do NCMF have a copy of the same.
- v. An in-depth investigation done by the COA revealed that MLFI has no business address as an NGO (and cannot be located), nor have they acquired a separate bank account for the transaction with NCMF (which required by existing regulations).
- vi. These COA observations were later translated to disallowance of the transaction, where refund of government funds have yet to be made – this is clearly injury to the government.

As to the other allegations of accused, the prosecution opines that accused should present evidence to substantiate her claim instead of questioning the evidence presented by the prosecution.

OUR RULING

We resolve to **grant** accused's motion.

A demurrer to evidence is basically a motion to dismiss on the ground of insufficiency of evidence. It is a remedy available to the defendant to test the sufficiency or insufficiency of the prosecution's evidence. The power to grant leave to accused to file a demurrer to evidence is addressed to the sound discretion of the court, and wide latitude is given to it in exercising such discretion.³

In *Macapagal-Arroyo v. People*,⁴ the Supreme Court declared:

"A demurrer to the evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. *The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt.* (Emphasis supplied)

Sufficient evidence for purposes of frustrating a demurrer thereto is such evidence in character, weight or amount as will legally justify the judicial or official action demanded according to the circumstances.⁵ To be considered

³ *Quinte v. Sandiganbayan, Seventh [7th] Division*, G.R. Nos. 240021-24 (Notice), 7 December 2020.

⁴ G.R. No. 220598, 19 July 2016.

⁵ *People v. Sandiganbayan [Fifth Division]*, G.R. No. 214297 (Notice), 12 January 2021.

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sufficient therefore, the evidence must prove: (a) the commission of the crime, and (b) the precise degree of participation therein by the accused.⁶

In here, accused Mascenon was charged, in conspiracy with accused public officers, for violation of Sec. 3(e) of R.A. No. 3019. To establish the elements of the offense charged, the prosecution presented the following exhibits:

<i>Elements of Sec. 3(e) of R.A. No. 3019</i>	<i>Exhibits presented by the Prosecution</i>
1) the accused must be a public officer discharging administrative, judicial, or official functions	The defense stipulated on the public positions of accused public officers. Accused Mascenon-Sales is a private individual who allegedly conspired with accused public officers.
2) he must have acted with manifest partiality, or evident bad faith, or gross inexcusable negligence	The pieces of evidence presented to establish the second and third elements are following: Exh. A to A-6 Complaint filed by the Field Investigation Office by the Ombudsman;
3) his action caused undue injury to any party, including the Government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his functions.	Exh. A-65 B-80 C SARO of NCMF in the amount of P3,800,000.00 dated 29 May 2012; Exh. C-1 Notice of Cash Allocation (NCA) dated 6 July 2012; Exh. A-66 B-81 C-2 Advice of NCA issued on 6 July 2012; Exh. C-3 1 st Indorsement dated 8 May 2012; Exh. C-4 (1 st Tranche FY 2012); Exh. C-5 Letter of Datumanong dated 2 May 2012 to Hon. Feliciano Belmonte; Exh. A-67 B-82 letter of accused Datumanong addressed to Sec. Sadain dated 16 July 2012 requesting that the project to be funded by his allocation be implemented by the MLFI; Exh. A-68 B-83 to B-86 MOA between Cong. Datumanong, NCMF and MLFI dated 10 August 2012; Exh. A-73 B-88 NCMF DV in the amount of P3,800,000.00 showing that the payment was received by MLFI on 31 July 2012;

⁶ Id.; *Gutib v. Court of Appeals*, G.R. No. 131209 (Resolution), 371 Phil. 293-308 (1999).

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	<p>Exh. A-74, Landbank Check dated 31 July 2012 in the amount of P3,420,000.00;</p> <p>Exh. B-90 MLFI O.R. No. 0057 dated 8 August 2012 in the amount of P3,420,000.00;</p> <p>Exh. A-75 B-91 DV in the amount of P266,000.00;</p> <p>Exh. A-76, B-92 Landbank Check dated 14 February 2013 in the amount of P266,000.00;</p> <p>Exh. A-77, B-93 MLFI O.R. No. 1580 dated 14 February 2012;</p> <p>Exh. A-78 to 159- Annual Audit Report on NCMF for the year ended December 31, 2012 (Exh. A-122) on the Improper selection of NGOs/Pos implementing PDAF and DAP projects;</p> <p>Exh. B to B-79 Consolidated Annual Audit Report on the NCMF for the year ended December 31, 2012 (Exh. B-44);</p> <p>Exh. B-94 Audit Observation Memorandum dated 15 May 2015 addressed to Hon. Yasmin Busran-Lao, Secretary of NCMF noting the non-compliance with the provision of GPPB resolution and COA Circular on PDAF/DAP;</p> <p>Exh. B-95 letter of State Auditor Ruth P. Serdoncillo dated 12 October 2015 to Secretary Busran-Lao informing the latter of the disallowance of the transaction amounting to P3,686,000.00 as the transaction was considered illegal and irregular, and to direct accused to settle the disallowance;</p> <p>Exh. B-97 Annual Audit Report and Consolidated Annual Audit Report on the NCMF for the year ended December 31, 2013 (Exh. B-97 page 45);</p> <p>Exh. B-98 Annual Audit Report on the NCMF for the year ended December 31, 2014 (pages 62-67);</p>
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After carefully reviewing accused's motion for leave to file demurrer and the prosecution's evidence, and further finding the issues and arguments relied by accused to be substantial and not merely to delay the proceedings, the Court is inclined to **GRANT** the same.

Considering that accused has already submitted her Demurrer to the Court, the prosecution is given a **non-extendible period of ten (10) days** from

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receipt hereof within which to file comment to the Demurrer. Thereafter, accused's Demurrer shall be considered submitted for resolution.


In view of the pending incident, the hearing previously set on August 18, 2022 is cancelled.

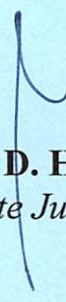
SO ORDERED.

Quezon City, Philippines.


ZALDY V. TRESPESSES
Associate Justice

WE CONCUR:


MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Associate Justice
Chairperson


GEORGINA D. HIDALGO
Associate Justice

RECEIVED
JUL 27 2022
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