



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
 Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff,

SB-20-CRM-0012
 For: Violation of Sec. 3(e)
 of R.A. No. 3019

SB-20-CRM-0013
 For: Malversation of Public Funds

Present

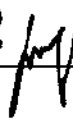
- versus -

ANTONIO Y. ORTIZ, ET AL.,

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

Accused.

Promulgated:

OCT 27 2022 

X-----X

RESOLUTION

FERNANDEZ, SJ, J.

This resolves the following:


1. Accused Maria Rosalinda M. Lacsamana's *Motion for Leave of Court to File Demurrer to Evidence*;¹
2. Accused Dennis L. Cunanan's *Motion for Leave to File Demurrer to Evidence*;²
3. Accused Francisco B. Figura's *Motion for Leave of Court to File Demurrer to Evidence*;³

* In view of the inhibition of J. Miranda (Per Administrative Order No. 049-2020 dated March 5, 2020)

¹ Dated October 7, 2022; Record, Vol. 5, pp. 50-58

² Dated October 11, 2022; Record, Vol. 5, pp. 60-122 (including the attached *Demurrer to Evidence [With Prior Leave]* dated October 11, 2022)

³ Dated October 10, 2022; Record, Vol. 5, pp. 124-127

 7

RESOLUTION

People vs. Ortiz, et al.
SB-20-CRM-0012 and 0013

Page 2 of 10

X-----X

4. Accused Marivic V. Jover's *Motion for Leave to File Demurrer to Evidence*,⁴ and,
5. Prosecution's *Consolidated Comment/Opposition (Re: Motions for Leave to File Demurrer to Evidence)*.⁵

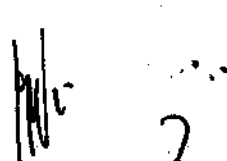
In their respective Motions, the said accused pray that the Court grant them leave to file their respective Demurrers to Evidence.

Accused Lacsamana avers:

1. The prosecution failed to prove her guilt beyond reasonable doubt.
2. Not a single witness testified that she committed a wrong, had done an illegal act, or that she pocketed the PDAF or a portion thereof.
3. Her participation in the subject transaction was limited to signing the Memorandum dated April 23, 2007 (Exhibit J), recommending the release of Rep. Danton Q. Bueser's PDAF.
 - a. The tenor of the said document is merely recommendatory. She only performed tasks which she was customarily doing. She did not take advantage of her public office, nor was she motivated by bad faith, manifest partiality, or a concerted effort or unified design to defraud the government.
 - b. The said Memorandum was supported by the SAROs, the indorsement letter from the legislator, the MOA entered into by the legislator, TLRC and the NGO, and the project proposal.
 - c. She was not in a position to contradict the endorsement of the legislator or the approval of TLRC Director General Ortiz. At the time, her issuance of the said document was already a practice at the office.
 - d. She was not involved in overseeing the processing of PDAF releases to the NGO; she had no participation in the preparation and review of the said MOA; and she had no participation in the implementation of the PDAF-funded project.

⁴ Dated October 11, 2022; Record, Vol. 5, pp. 128-134

⁵ Dated October 21, 2022; Record, Vol. 5, pp. 138-153



RESOLUTION

People vs. Ortiz, et al.
SB-20-CRM-0012 and 0013

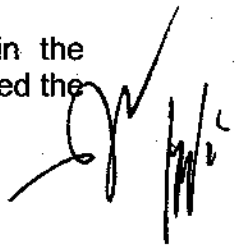
Page 3 of 10

X-----X

- e. She is not a lawyer, and she could not be expected to know the existence of all COA Circulars on the matter. She may not have known about the pertinent COA Circulars, but her inadequacy and ignorance were not motivated by bias, bad faith, dishonest intention, or consciousness to commit a wrong.
 - f. The prosecution failed to show that she knew the legislator, or that she received any commission, kickback or commission or anything of value in consideration of TLRC's implementation of PDAF projects. There is also no evidence to show that she appropriated, took, misappropriated or consented, or through abandonment or negligence, permitted another person to take the PDAF.
 - g. Her act of issuing the Memorandum was ministerial in nature.
4. Her act of issuing the Release Memorandum was not done in furtherance of the conspiracy. The prosecution did not present evidence to show that her act of signing the said document was done in concurrence with a criminal design.

Accused Cunanan avers:

1. The prosecution's evidence is not sufficient to prove his guilt beyond reasonable doubt of the charges filed against him because the prosecution's evidence has not established beyond reasonable doubt all the elements of the crimes charged, as well as his participation therein.
2. The prosecution failed to prove the second and third elements of Violation of Sec. 3(e) of R.A. No. 3019.
3. There is no evidence to show his participation in selecting the NGO subject of these cases. Furthermore, it was not shown that he knew the NGO's officers and/or directors for there to be partiality on his part.
 - a. His participation in the subject transaction is limited to allegedly signing the TLRC disbursement voucher.
 - b. The prosecution failed to overthrow the presumption of regularity in the performance of his functions.
4. The prosecution failed to establish his participation in the irregularities, or that he consciously and fraudulently signed the

9. 

RESOLUTION

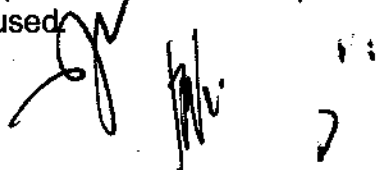
People vs. Ortiz, et al.
SB-20-CRM-0012 and 0013

Page 4 of 10

X-----X

subject disbursement voucher for his self-interest. There is no proof that he benefited from the subject transaction.

- a. There is nothing in the prosecution's evidence to show that he was involved in the preparation or execution of the *Memorandum of Agreement* (Exhibit P), *Project Proposal* (Exhibit Q), *Work and Financial Plan* (Exhibit R), and the LBP check (Exhibit L).
 - b. There is no proof that he had any participation in the recommendation or selection of AFPI as the NGO for Rep. Bueser's PDAF.
5. There was no undue injury because the prosecution failed to prove that Rep. Danton Bueser's PDAF-funded project was not implemented.
- a. With respect to the alleged non-implementation of the project, there is no law requiring that PDAF beneficiaries should be residents of specific municipalities. Furthermore, the certifications issued by local government officials are immaterial because they were issued after 2010, or years after the declared implementation of the project.
 - b. The prosecution heavily relied on the COA's reports and the Complaint filed by the Field Investigation Office (FIO) of the Ombudsman. The prosecution's witnesses did not have personal knowledge of the subject transaction.
6. As for Malversation, the first element is present. He was a public officer. However, the prosecution failed to present evidence showing that he had custody and control of the subject funds at any point.
7. There is no proof that he performed his duties in an irregular manner, and he did not sign the subject LBP check. Thus, there is no basis for the prosecution's speculation that he authorized and caused the release of the said check.
8. Finally, the prosecution failed to prove that he used the subject funds for his personal benefit, or that he consented to the taking thereof by another person. None of the prosecution's witnesses confirmed or even implied that he appropriated, misappropriated or consented to the taking of any part of Rep. Bueser's PDAF.
9. The prosecution failed to prove that he conspired with the other accused

Handwritten signatures and initials in black ink, appearing to be a signature and the initials 'M.' and 'S.'.

RESOLUTION

People vs. Ortiz, et al.
SB-20-CRM-0012 and 0013

Page 5 of 10

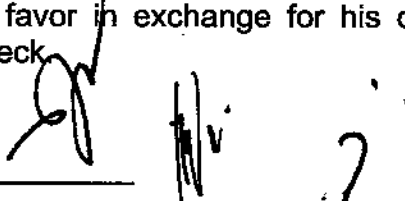
X-----X

Accused Jover avers:

1. The prosecution's evidence failed to prove her guilt beyond reasonable doubt.
2. In *Martel v. People*,⁶ it was held that to successfully prosecute the accused under Sec. 3(e) of R.A. No. 3019 based on the violation of procurement laws, the prosecution cannot solely rely on the fact that there was a violation of procurement laws. The prosecution must prove beyond reasonable doubt that (1) such violation of procurement laws caused undue injury to any party or gave any private party unwarranted benefits, advantage or preference, and (2) the accused acted with evident bad faith, manifest partiality, or gross inexcusable negligence.
3. The prosecution cannot rely solely on the allegation that there were purported violations of Commission on Audit Circular No. 95-003 to establish Violation of Sec. 3(e) of R.A. No. 3019 and Malversation.
4. The prosecution must overthrow the presumption of innocence with proof of guilt beyond reasonable doubt.

Accused Figura avers:

1. The Informations in these cases allege that he was among those who facilitated, processed, and approved the disbursement of the subject PDAF release by signing Disbursement Voucher (DV) No. 012007040793. However, a closer look at the said DV will show that his name and signature do not appear therein.
2. According to the prosecution, he is part of a conspiracy because he failed to examine and verify the legality of the transaction before he counter-signed the LBP check dated April 30, 2007. The prosecution's generalization is unfounded.
 - a. Conspiracy is not presumed.
 - b. Except for his counter signature on the said check, no other acts were imputed to him to prove that he was part of the conspiracy.
 - c. There is no evidence showing that he received any cash or favor in exchange for his counter-signature on the check.

Handwritten signatures and initials in black ink, appearing to be 'Jover' and 'Figura'.

⁶ G.R. No. 224720-23 and 224765-68, February 2, 2021

RESOLUTION

People vs. Ortiz, et al.
SB-20-CRM-0012 and 0013

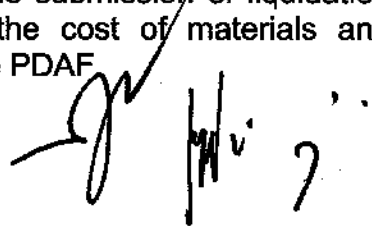
Page 6 of 10

X-----X

- d. It was not even established that he knew Rep. Bueser or any of the officers of AFPI.
- e. The prosecution failed to show his role in the non-implementation of the projects funded by Rep. Bueser's PDAF.
- f. The prosecution failed to prove that he actually received the Notice of Disallowance issued by the Special Audit Group of COA. Had he received the same, he could have appealed the said Notice of Disallowance, and it could have been reconsidered after hearing his explanation and justifications.
- g. The prosecution failed to prove criminal intent on his part when he co-signed the said check.
- h. The prosecution's evidence points to Rep. Bueser, who strongly recommended AFPI to implement the PDAF funded projects, as the principal in the alleged conspiracy. However, Rep. Bueser was dropped from the charges. The conspiracy could not have been proven because the principal was discharged from the indictment.

In its *Consolidated Comment/Opposition*, the prosecution counters:

- 1. The prosecution presented sufficient evidence to prove all the essential elements of Violation of Sec. 3(e) of R.A. No. 3019.
 - a. The first element is present. There is no dispute that at the time material to these cases, accused Cunanan, Figura, Jover, and Lacsamana were public officers discharging administrative and/or official functions. Accused Cunanan, Figura, Jover, and Lacsamana readily stipulated thereon during the pre-trial.
 - b. The prosecution's evidence sufficiently established that the accused acted with manifest partiality, evident bad faith, or gross inexcusable negligence when they facilitated the processing, approval and release of Rep. Bueser's PDAF to accused Alfredo A. Ronquillo, President of AFPI, without an appropriation law or ordinance authorizing the same, and in violation of Commission on Audit (COA) Circular No. 96-003, and when they failed to monitor the implementation of the project, require or ensure the submission of liquidation documents, and liquidate the cost of materials and service fee retained from the PDAF.

Handwritten signature and initials, possibly "J. M. V. 7", located at the bottom right of the page.

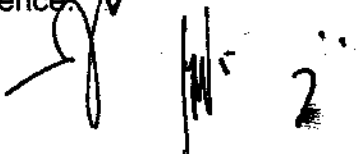
RESOLUTION

People vs. Ortiz, et al.
SB-20-CRM-0012 and 0013

Page 7 of 10

X-----X

- c. The Memorandum dated April 23, 2007 shows that accused Lacsamana recommended the release of Rep. Bueser's PDAF to AFPI and informed accused Ortiz that amounts were retained as service fee and cost of livelihood materials. Accused Cunanan and Jover then made their respective certifications in Disbursement Voucher No. 012007040793 (Exhibit K), and accused Ortiz approved the same, authorizing the disbursement of the amount of ₱9,800,000.00 to AFPI. Thereafter, accused Ortiz and Figura signed LBP Check No. 0000850490 dated April 30, 2007 (Exhibit L).
- d. The TLRC proceeded to collaborate with AFPI for the utilization of Rep. Bueser's PDAF without conducting the proper accreditation procedure, and despite the fact that AFPI was ineligible to implement the livelihood project.
- e. The MOA did not include systems and procedures for project implementation, project cost estimates and time schedules, reporting, monitoring and inspection requirements, and list of beneficiaries, as required by COA Circular No. 96-003. Moreover, the accused did not observe the proper schedule for the release of PDAF to AFPI under Item 3.8.1.2 of the said COA Circular.
- f. The amount of ₱9,800,000.00 disbursed to AFPI was unliquidated, and the ₱200,000.00 retained by TLRC as service fee and cost of materials remained unaccounted for.
- g. Officers of the local governments of Alaminos, Calauan, Liliw, Nagcarlan, Rizal, San Pablo and Victoria, Laguna certified that no trainings or livelihood projects were conducted by AFP or the TLRC in the said local government units (LGU) from 2007 up to the present. Neither did the said LGUs receive funds for trainings or livelihood projects from AFPI or TLRC. AFPI's financial statements for 2007 (Exhibits AA to AA-4) also do not show any social projects it implemented in the 3rd District of Laguna.
- h. The third element of Violation of Sec. 3(e) of R.A. No. 3019 is present. The prosecution's evidence would show that because of the accused's acts, public funds were disbursed and squandered, and the government suffered undue injury in the amount of ₱10 million. The accused's concerted actions and omissions also gave accused Ronquillo and AFPI unwarranted benefits, advantage, or preference.



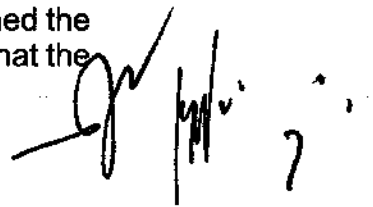
RESOLUTION

People vs. Ortiz, et al.
SB-20-CRM-0012 and 0013

Page 8 of 10

X-----X

2. The prosecution adduced sufficient evidence to prove all the essential elements of Malversation of Public Funds.
 - a. There is no dispute that the first element is present. At the time material to these cases, accused Ortiz, Cunanan, Figura, Jover, and Lacsamana were public officers at the TLRC.
 - b. As for the second element, accused Ortiz, Cunanan, Figura, and Jover were accountable officers because they had custody and control over the subject funds pursuant to their official duties. Their signatures were indispensable in the disbursement of the said funds. Accused Lacsamana was also an accountable officer because, as Group Manager of the TLIDS, she was responsible for the service fee and cost of materials in the total amount of ₱200,000.00 retained from the PDAF.
 - c. With respect to the third element, the subject PDAF released to the TLRC, and subsequently transferred to AFPI, belonged to the government. The accused, who were accountable for the said funds, had to act together to disburse the funds for their intended use.
 - d. For the fourth element, the accused public officers consented to the taking or misappropriation of the subject funds when they released the amount of ₱9,800,000.00 in full to AFPI, not in three (3) tranches as required under COA Circular No. 96-003, despite the absence of an appropriation law or ordinance, and in violation of COA Circular No. 96-003. They further failed to monitor the implementation of the project and to require or ensure the submission of liquidation documents thereafter.
3. The accused acted in conspiracy in the perpetration of Violation of Sec. 3(e) of R.A. No. 3019 and Malversation of Public Funds.
 - a. There is conspiracy when the accused, by their acts aimed at the same object, one performing one part, and another performing another, so as to complete it with a view to the attainment of the same object, and their acts although apparently independent, were, in fact, concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiment.
 - b. In these cases, accused Ortiz entered into the MOA with AFPI and Rep. Bueser, approved the DV, and signed the LBP check; accused Cunanan certified in the DV that the

Handwritten signature and initials in black ink, located at the bottom right of the page. The signature appears to be 'Ortiz' and the initials are 'ML'.

RESOLUTION

People vs. Ortiz, et al.
SB-20-CRM-0012 and 0013

Page 9 of 10

X -----X

expenses were necessary, lawful, and incurred under his direct supervision; accused Jover certified in the DV the availability of funds, that the expenditure was properly certified, and the completeness of the supporting documents; accused Figura signed the LBP check; accused Lacsamana recommended the release of the fund to AFPI and informed accused Ortiz that amounts were retained as service fee and cost of materials; and accused Ronquillo did not implement the project.

- c. The accused's acts, taken together, were so intimately connected and related towards the realization of the same unlawful object, *i.e.*, the misappropriation, misapplication, or embezzlement of public funds.

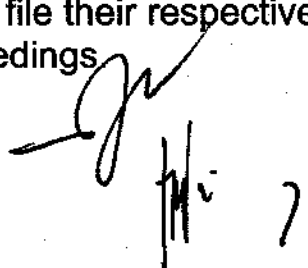
THE COURT'S RULING

In *Bernardo v. Court of Appeals*,⁷ it was held that trial courts are given the power to grant leave to the accused to file a demurrer for the purpose of determining whether the accused, in filing a demurrer, is merely stalling the proceedings. *Viz.:*

In fine, under the new rule on demurrer to evidence the accused has the right to file a demurrer to evidence after the prosecution has rested its case. If the accused obtained prior leave of court before filing his [or her] demurrer, he [or she] can still present evidence if [the] demurrer is denied. However, if [the accused] demurs without prior leave of court, or after his [or her] motion for leave is denied, [the accused] waives his [or her] right to present evidence and submits the case for decision on the basis of the evidence for the prosecution. This power to grant leave to the accused to file a demurrer is addressed to the sound discretion of the trial court. The purpose is to determine whether the accused in filing [a] demurrer is merely stalling the proceedings.

(underscoring supplied)

After examining the prosecution's evidence and the parties' arguments, this Court rules that granting accused Lacsamana, Cunanan, Figura, and Jover leave to file their respective demurrers to evidence will merely delay the proceedings



⁷ G.R. No. 119010, September 5, 1997

RESOLUTION

People vs. Ortiz, et al.
SB-20-CRM-0012 and 0013

Page 10 of 10

X-----X

WHEREFORE, the respective Motions of accused Lacsamana, Cunanan, Figura, and Jover are hereby **DENIED** for lack of merit.

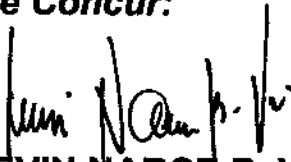
As provided in Sec. 23, Rule 119⁸ of the Rules of Court, they may adduce evidence in their defense, or in the alternative, they may file their respective demurrers to evidence without leave of court.

Accused Lacsamana, Cunanan, Figura, and Jover are given five (5) days from receipt of this Resolution to file their manifestation, by personal filing or registered mail, and electronically, to inform this Court whether they are submitting their respective demurrers to evidence without leave of court. The scheduled hearings for the presentation of their respective evidence will be considered cancelled upon receipt by this Court of their manifestation that they intend to submit their respective demurrers to evidence without leave of court.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KEVIN NARCE B. VIVERO
Associate Justice


ZALDY V. TRESPESSES
Associate Justice

⁸ **Sec. 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.

x x x