



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Crim. Case No. SB-15-CRM-0100
For: Violation of Section 3(e),
R. A. No. 3019

-versus-

LEONARDO B. ROMAN, ET. AL.,
Accused.

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Present:

HERRERA, J., *Chairperson*
CALDONA, J. and
MALABAGUIO, J.

Promulgated:

November 3, 2022 ant

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RESOLUTION

CALDONA, J.:

After the prosecution rested its case with the admission of its documentary evidence that were formally offered,¹ accused-movant Leonardo B. Roman, through counsel, filed a Motion for Leave to File Demurrer to Evidence on September 15, 2022,² which elicited a Comment/Opposition from the prosecution dated September 19, 2022.³

¹ Resolution dated September 12, 2022, Records, Vol. IV, p. 260.

² *Id.*, pp. 268-279.

³ *Id.*, pp. 292-297.

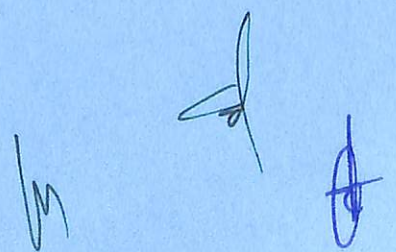
In his Motion for Leave to File Demurrer to Evidence, accused-movant Roman posits essentially that the prosecution failed to overturn the presumption of innocence accorded him by the Constitution. The prosecution failed to adduce any evidence which would prove beyond reasonable doubt that when accused-movant entered into a Contract⁴ with V.F. Construction on November 3, 2003 as the then Provincial Governor of Bataan for the construction of mini-theater at the Bataan State College in Abucay, Bataan, the same was done through manifest partiality, evident bad faith, or gross inexcusable negligence which had caused any undue injury to any party, including the government, or gave unwarranted benefits, advantage or preference.

Notably, none of the five (5) prosecution witnesses, namely: Luz R. Enriquez, Human Resource Management Officer; Enrico T. Yuzon, Provincial Engineer; Leonora O. Siasat, Provincial Accountant, all of the Province of Bataan; Clarita B. Tangol, Administrative Officer I, Records Section, Office of the Special Prosecutor, Office of the Ombudsman; and Marilou D.R. Pulido, Commission on Audit (COA) State Auditor IV, Audit Team Leader, Local Government Sector, were able to properly authenticate the documents offered by the prosecution as none of them was a party or signatory therein. Thus, they do not have any personal knowledge as to the facts and circumstances leading to the issuance of the said documents; much less as to the circumstances surrounding the allegations stated in the complaint filed by Enrique T. Garcia, Jr.⁵

According to accused-movant, an examination of the documents formally offered by the prosecution, specifically the Accomplishment

⁴ Exhibit "A".

⁵ Exhibit "J".



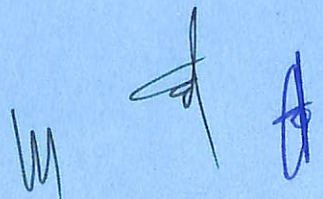
Report⁶, Certificate of Completion,⁷ both dated February 20, 2004, Disbursement Vouchers⁸ and even the contract executed between the accused-movant and V.F. Construction for the construction of the mini-theater, would show that there is nothing irregular or dubious in the project to constitute the crime charged. In fact, the Disbursement Vouchers bear the approval and conformity of the concerned officers of the province which on its face would negate any irregularity, thus: 1) Amelia Ruiz de Pano, Provincial Engineer, certified on the face of the vouchers that the expense was necessary, lawful and incurred under her direct provision; 2) Numeriano G. Medina, Provincial Accountant, certified on the fact of completeness and propriety of the supporting documents; and 3) Pastor Vichuaco, Provincial Treasurer, signed the vouchers allocating the funds needed for the payment. As to the Certificate of Completion, the same was merely based on the Accomplishment Report of the Office of the Provincial Engineer which categorically states that the mini-theater was one hundred percent (100%) completed as certified by Bernardo T. Capistrano, Architect III; Noel G. Jimenez, Engineer IV; Angelito Rodriguez, Assistant Provincial Engineer; and Noel Valdecañas, private contractor.

Controverting the arguments of accused-movant Roman, the prosecution interposed that, on the contrary, there is sufficient evidence to prove that the accused-movant acted with evident bad faith, manifest partially or at the very least, gross inexcusable negligence, when he gave unwarranted benefit, advantage or preference to V.F. Construction.

⁶ Exhibit "F".

⁷ Exhibit "G".

⁸ Exhibits "C" and "C-1".



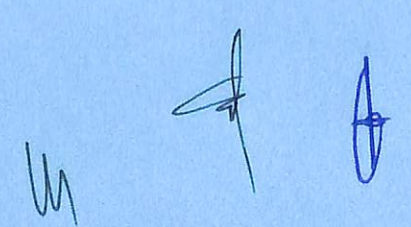
The evidence for the prosecution established that accused-movant Leonardo B. Roman, representing the Provincial Government of Bataan, and V.F. Construction, represented by Noel Valdecañas, executed a contract on labor and materials for the construction of a mini-theater at the Bataan State College in Abucay, Bataan. The contract is void and illegal, as found by the Commission on Audit in its Audit Observation Memorandum,⁹ for lack of valid appropriation. It is also not notarized and contains no stipulation on the period of performance or target completion date. While the contract provides that the Provincial Government of Bataan shall pay the contractor for the value of work completed on a 30% - 40% - 30% (Percentage of Completion) program billing until the completion of the contract, this was not followed, as payment was made on a 50% -50% basis as shown in the disbursement vouchers and the corresponding two (2) Landbank of the Philippines (LBP) checks.¹⁰

Even without a valid appropriation, accused-movant not only entered into an irregular contract but he also proceeded to sign questionable documents, particularly: (a) Certificate of Acceptance, b) Accomplishment Report and (c) Certificate of Completion wherein the dates of execution in all documents are clearly superimposed and mechanically typewritten. He also signed the two (2) disbursement vouchers, one of which is undated, and the two (2) LBP checks. The payments were all made to V.F. Construction as evidenced by receipts.¹¹ Consequently, a total amount of P3,310,636.36 was released by the Provincial Government of Bataan to V.F. Construction to pay for a government transaction that had no valid appropriation.

⁹ Exhibits "N" to "N-11".

¹⁰ Exhibits "D" and "D-1".

¹¹ Exhibits "H" and "H-1".



The COA however, issued COA Audit Observation Memorandum (AOM) No. 2005-003-100 (2004),¹² citing that as per Inspection Report¹³ of the COA Technical Audit Specialist on the project, the actual project completion for the construction of mini-theater at the Bataan State College in Abucay, Bataan was only 50.70% representing a cost difference amounting to P1,804,329.31. This COA verified finding is contrary to the alleged 100% completion of the project that accused-movant attested to. In fact, the COA recommended the refund of the full contract cost of P3,660,000.00 plus liquidated damages.

Rule 119, Section 23 of the Rules of Criminal Procedure on demurrer to evidence provides that:

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.

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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.¹⁴

¹² Exhibit "L".

¹³ Exhibits "M" to "M-3".

¹⁴ Rules on Criminal Procedure, Rule 119, § 23.

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In the case of *People v. Go*,¹⁵ and in the subsequent case of *People vs. Sandiganbayan*¹⁶ the Supreme Court expounded on the concept of a demurrer to evidence in the following wise:



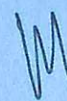
[It is] an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. 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. x x x 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. To be considered sufficient therefore, the evidence must prove: (a) the commission of the crime, and (b) the precise degree of participation therein by the accused.

After a circumspect consideration of the arguments presented by the parties, the Court is of the considered view that the instant motion for leave to file demurrer to evidence is bereft of merit.

The pieces of documentary evidence adduced show that accused-movant Leonardo B. Roman, who was the governor of Bataan during the period material to the instant criminal case, entered into a contract for the construction of a mini-theater at the Bataan State College in Abucay, Bataan for the sum of P3,360,000.00. The subject contract between the accused-movant and V.F. Construction was not notarized and did not contain stipulation on performance or target completion date. Thereafter, accused-movant executed a Certificate of Completion dated February 20, 2004 and a Certificate of Acceptance dated February 23, 2004 attesting that the mini-theater project was

¹⁵ *People v. Go*, G. R. No. 191015, August 6, 2014.

¹⁶ G.R. No. 197953, August 05, 2015.



completed, thereby paving the way for the issuance of two (2) disbursement vouchers and the corresponding two (2) LBP checks in favor of V.F. Construction for the full payment of the project. These pieces of documentary evidence contain the signatures of the accused-movant which he does not deny affixing. However, COA Audit Observation Memorandum No. 2005-003-100, citing the Inspection Report of the COA Technical Audit Specialist on the mini-theater project signed by Fernando P. Fernando, the actual project completion was only 50.70%. In fact, as per the COA Inspection Report, the mini-theater project was still incomplete after more than five (5) months from the final and full payment made by the Provincial Government of Bataan to V.F. Construction thus, contradicting the claim that the mini-theater project was completed. In other words, contrary to accused-movant's representations, the mini-theater project remained yet to be completed.

Besides, it is significant to note, as correctly pointed out by the prosecution, that the accused-movant was totally mum regarding the charge in the Information that he went on to enter into a contract for a project which was not allocated with funds by the Sangguniang Panlalawigan of Bataan as found by the Commission on Audit in its Audit Observation Memorandum. It should be stressed that aside from the project that remained uncompleted, accused-movant is also being indicted for entering into a contract notwithstanding the absence of a valid allotment and/or appropriation therefor. Not being included among the items in the annual budget of the province for which funds were allocated, there appears no authority to disburse the amount of P3,660,000.00 for the construction of the mini-theater at the Bataan State College in Abucay, Bataan.

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As Provincial Governor, accused-movant should be charged with knowledge regarding the issuances by the Sangguniang Panlalawigan, more particularly with respect to the budget and their corresponding projects for which allocations may have been made. Given the fact that no allocation was made for the construction of mini-theater at the Bataan State College in Abucay, Bataan, accused-movant should not have gone on to enter into a contract with V.F. Construction over a project which, at least based on the evidence adduced by the prosecution at this stage of the proceedings, was not completed. Therefore, it behooves the accused-movant to present evidence for his defense to debunk the charge filed against him in the instant case.

From the foregoing disquisition, it may be apt to reiterate the sound counsel of the Supreme Court in the above case of *People vs. Go*¹⁷ in the resolution of demurrers to evidence, thus:

The power of courts to grant demurrer in criminal cases should be exercised with great caution, because not only the rights of the accused - but those of the offended party and the public interest as well - are involved. Once granted, the accused is acquitted and the offended party may be left with no recourse. Thus, in the resolution of demurrers, judges must act with utmost circumspection and must engage in intelligent deliberation and reflection, drawing on their experience, the law and jurisprudence, and delicately evaluating the evidence on hand.

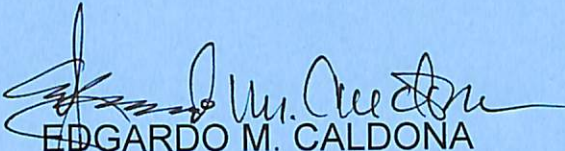
WHEREFORE, premises considered, the instant Motion for Leave to File Demurrer to Evidence is hereby DENIED for lack of merit.

¹⁷ *Supra*.

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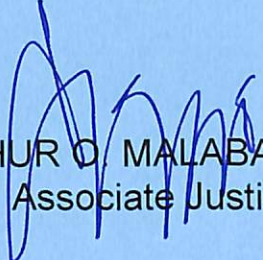
At any rate, this resolution is without prejudice to the accused-movant from availing of the recourse under Section 23, Rule 119 of the Rules of Court subject to the consequences stated therein.¹⁸

SO ORDERED.
Quezon City, Metro Manila, Philippines


EDGARDO M. CALDONA
Associate Justice

WE CONCUR:


OSCAR C. HERRERA, JR.
Associate Justice
Chairperson


ARTHUR D. MALABAGUIO
Associate Justice

¹⁸ Sec. 23. Demurrer to evidence. – x x x

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.** xxx (*Emphasis ours*)