



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-18-CRM-0003

For: Violation of Section 3(e)
of R.A. No. 3019

SB-18-CRM-0004

For: Violation of Section 3(g)
of R.A. No. 3019

- versus -

Present

FERNANDEZ, SJ, J.,

Chairperson

MIRANDA, J. and

VIVERO, J.

ARTHUR C. YAP, ET AL.,

Accused.

Promulgated:

NOV 23 2022

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves the following:

1. *Motion (for Leave of Court to File Demurrer to Evidence)*¹ filed by accused Johnifer G. Batara and Fe D. Laysa;
2. Accused Fe N. Lumawag's *Motion for Prior Leave of Court to File Demurrer to Evidence*;²
3. *Motion for Leave to File Demurrer to Evidence*³ filed by accused Senen C. Bacani and Rodolfo C. Undan;

¹ Dated October 17, 2022; Record, Vol. 24, pp. 248-259

² Dated October 13, 2022; Record, Vol. 24, pp. 260-274

³ Dated October 17, 2022; Record, Vol. 24, pp. 276-283

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4. Accused William G. Padolina's *Motion for Leave to File Demurrer to Evidence (to Prosecution's Exhibits "K-1, CC-52, DD-25, DD-26, DD-28, and DD-35)*;⁴ and,
5. The prosecution's *Consolidated Opposition (Re: Motions for Leave to File Demurrer to Evidence filed by accused Senen Bacani, Rodolfo Undan, Johnifer Batara, Fe Laysa, William Padolina, and Fe Lumawag)*.⁵

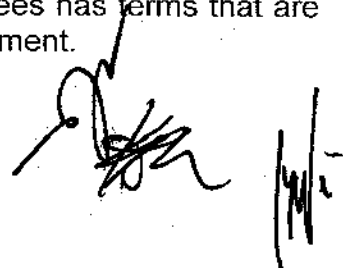
In their respective *Motions*, accused Batara and Laysa, accused Lumawag, accused Bacani and Undan, and accused Padolina all pray that the Court grant them leave to file their respective *Demurrers to Evidence*.

In their *Motion*, accused Batara and Laysa aver:

1. The prosecution's evidence failed to establish the third element of Violation of Sec. 3(e) of R.A. No. 3019.
2. The pieces of evidence offered by the prosecution relate mostly to the implementation of the Car Plan over which they had no participation.
3. They did not act with manifest partiality. There is nothing to link them to the designation of the beneficiaries of the Car Plan. Neither is there anything that would show that they were impelled by a corrupt motive. Finally, there is no evidence to show negligence on their part.
4. The prosecution's evidence failed to prove the material allegations in the Information in SB-18-CRM-0003.
 - a. The Information alleges that they established "said Car Plan that allowed the said beneficiary-employees to obtain personal loans from the Philippine National Bank (PNB) for the purchase of their private cars, secured by the PhilRice funds through Hold Out Agreements with PNB."
 - b. The evidence shows the Car Plan which was approved in principle by the Board of Trustees has terms that are most advantageous to the government.

⁴ Dated October 16, 2022; Record, Vol. 24, pp. 286-306

⁵ Dated October 26, 2022; Record, Vol. 24, pp. 310-325



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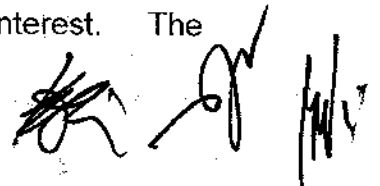
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- c. The Board of Trustees approved in principle the creation of a Car Plan, but the prosecution's evidence failed to show that the Car Plan that was implemented was the one the Board of Trustees wanted to institute.
 - d. They had no participation in the drafting of the guidelines that allowed the beneficiary-employees to obtain personal loans from the PNB which were secured by PhilRice funds.
5. The prosecution's evidence failed to establish the elements of Violation of Sec. 3(g) of R.A. No. 3019, and also failed to prove the material allegations of the Information in SB-18-CRM-0004.
- a. They did not enter into contracts/transactions in behalf of the government that were manifestly and grossly disadvantageous because they did not sign the Hold Out Agreements with the PNB. Neither did they sign any board resolution authorizing Ronilo Beronio and Fe Lumawag to sign the said agreements on behalf of PhilRice. They learned about the Hold Out Agreements only after the execution of the same.
 - b. They could not have conspired with Beronio in the issuance of the guidelines and the execution of the Hold Out Agreements. They learned about the guidelines and the execution of the Hold Out Agreements after they had already been carried out and executed, respectively. Furthermore, there is no concurrence of sentiment and there is a lack of common interest because they were not beneficiaries of the Car Plan, unlike Beronio.
6. The prosecution's evidence failed to show the injury caused to the government due to the execution of the Hold Out Agreements. It was not shown that the government was deprived of the use of the funds subject of the Hold Out Agreements during the validity of the said agreements.

In her *Motion*, accused Lumawag avers that she believes that the prosecution failed to establish her guilt beyond reasonable doubt. In the *Demurrer to Evidence* attached to her *Motion*, she argues:

1. Her participation was limited to signing the Hold Out Agreement (HOA) with the Philippine National Bank, in the performance of her ministerial duty.
2. The amount of ₱15,780,000.00 subject of the Hold Out Agreement was received by PhilRice with interest. The



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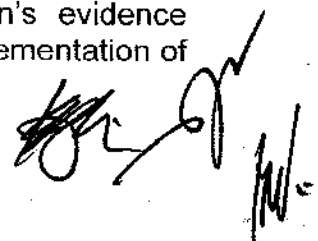
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transaction was not manifestly and grossly disadvantageous to the government.

3. The prosecution failed to prove conspiracy. She was not a member of the Board of Trustees nor a participant in any of the meetings pertaining to the subject car plan. She was also not a beneficiary of the car plan.

In their *Motion*, accused Bacani and Undan aver:

1. Violation of Sec. 3(e) of R.A. No. 3019
 - a. They cannot be held liable for the crime charged. The allegations in the Information pertain to the implementation of the PhilRice Car Plan, in which they had no participation whatsoever. The prosecution's evidence shows that the PhilRice Board of Trustees did not take part in the implementation of the said PhilRice Car Plan.
 - b. They had no participation in the selection of the beneficiaries of the PhilRice Car Plan. Memorandum No. 2009-66 dated February 11, 2009, which enumerates the PhilRice Car Plan beneficiaries, was issued and signed solely by accused Ronilo Beronio.
 - c. They were neither parties nor signatories to the documents executed by the beneficiaries in relation to the purchase of their vehicles. Furthermore, there was no Board Resolution that authorized accused Beronio and Fe Lumawag to act on behalf of PhilRice in the execution of the said documents.
 - d. The implementing guidelines/administrative orders issued to implement the PhilRice Car Plan were signed and issued solely by accused Beronio. They were never presented to, and approved by, the PhilRice Board of Trustees prior to the implementation of the PhilRice Car Plan.
 - e. The prosecution's evidence failed to prove that they acted with manifest partiality, evident bad faith and/or gross inexcusable negligence. It also failed to prove conspiracy among the accused.
2. Violation of Sec. 3(g) of R.A. No. 3019
 - a. As previously discussed, the prosecution's evidence shows their lack of participation in the implementation of



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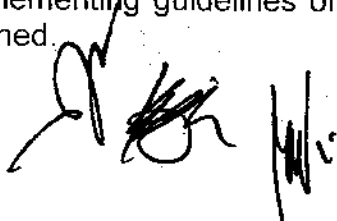
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the PhilRice Car Plan. Moreover, the guidelines/administrative orders issued for the implementation of the same were issued and signed solely by accused Beronio, and were never presented to the Board of Trustees for approval prior to implementation.

- b. They did not enter into contracts/transactions in behalf of the government that were manifestly and grossly disadvantageous to it. Accused Beronio and Lumawag were the ones who executed the HOAs with the PNB. There was no Board Resolution issued by the PhilRice Board of Trustees which conferred on accused Beronio and Lumawag the authority to execute the HOAs on behalf of PhilRice.
- c. The prosecution's evidence failed to establish conspiracy among the accused.

Finally, in his *Motion*, accused Padolina avers:

- 1. The prosecution's evidence failed to prove the precise degree of his participation in the alleged conspiracy to commit the offenses charged. The prosecution's evidence only proved the first element of the crimes charged, *i.e.* that he was a public officer, but failed to prove the other elements.
- 2. The only documents that would give hints as to his participation are the various Minutes of PhilRice Board meetings and his own counter-affidavit. The rest of the prosecution's documentary exhibits do not show his participation. He did not even sign Board Resolution No. 208-08-52, which did not state that the approval of the car plan was unanimous.
- 3. The Minutes of the PhilRice Meetings failed to prove his participation in the institution of the car plan.
 - a. Page 12 of the Minutes of the 52nd Meeting (Exhibit E) states that the car plan was approved by board resolution, but the board resolution itself only states that it was "approved in principle," and subject to such terms most advantageous to the government. Furthermore, it states that an internal committee shall be in charge of forming the guidelines for the implementation of the car plan.
 - b. The Minutes of the 53rd Meeting (Exhibit F) states that the implementing guidelines of the car plan have yet to be refined.



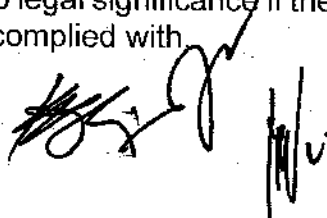
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- c. While the Minutes of the 54th Meeting (Exhibit G) indicate that he was the presiding officer of the meeting, it was also indicated that the meeting was just a caucus conducted as a regular meeting, and that all actions during the meeting were subject to the review and approval of the Board Chair, who was not present during the meeting.
- d. The Minutes of the 55th Meeting (Exhibit H) state that he was absent during the meeting.
4. The Administrative Orders (Exhibits I, J, and K) were executed solely by former PhilRice Executive Director Ronilo A. Beronio. There is no evidence that would show his participation therein.
5. He also had no participation in the Hold-Out Agreements. There is no evidence that would prove that the PhilRice Board of Trustees considered or approved the resort to hold-out agreements for the car plan. Former Executive Director Ronilo A. Beronio was responsible for the execution of the said hold-out agreements.
6. Prosecution witness Constante Briones, Board Secretary of PhilRice, testified:
 - a. The Board of Trustees never got the chance to approve the guidelines in Beronio's Administrative Orders.
 - b. The Board of Trustees merely noted Executive Director Beronio's administrative orders implementing the car plan without approving the same.
 - c. It was Beronio, not the Board of Trustees, who spearheaded the car plan.
 - d. The car plan was implemented even before the Board of Trustees could act on the guidelines.
 - e. The Board did not even discuss the hold-out agreements and the choice of beneficiaries.
 - f. "Approved in principle" means that the plan could be implemented only after going through modifications that were most advantageous to the government.
7. Prosecution witness Sophia T. Borja, one of the beneficiaries of the car plan, testified that "approved in principle" is merely an expression of intent, and has no legal significance if the required details or conditions were not complied with.



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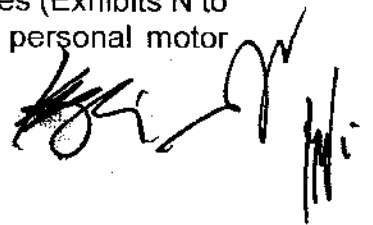
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8. The other witnesses of the prosecution were mere record custodians, and had no personal knowledge of the circumstances surrounding the controversy.

In its *Consolidated Opposition*, the prosecution counters:

1. The prosecution presented sufficient and competent evidence to sustain the Informations and to support a guilty verdict.
2. The accused acted with evident bad faith, manifest partiality or gross inexcusable negligence in the implementation of the project.
3. During the 52nd meeting of PhilRice's Board of Trustees (BOT) on November 5, 2008, the BOT issued Board Resolution No. 208-08-52 (Exhibit D), piloting a Car Plan for its employees.
4. Pursuant to the said BOT Resolution, Executive Director Ronilo A. Beronio issued Administrative Order (A.O.) No. 2009-05 dated January 30, 2009 and A.O. No. 2009-05(A) dated February 9, 2009 (Exhibits I and J), prescribing the guidelines for the implementation of the car plan.
5. The vehicles subject of the car plan were privately-owned by the beneficiaries (Exhibit JJ and series). PhilRice leased the said vehicles for the official use of the beneficiaries, and shouldered the toll and parking fees during the official travel of the said employees. The employees also still received their RATA (Exhibits KK and series to TT and series).
6. The vehicles were subjected to a lease-agreement between the beneficiary-employee and PhilRice. PhilRice paid the monthly amortization to the PNB, upon meeting the minimum distance of official travel, as rental fee. If the minimum distance was not met, the beneficiary-employee had the following options:
 - a. Dispatch the vehicle for PhilRice's general official use, to be driven by a PhilRice driver;
 - b. Pay the difference between the use and the fixed monthly amortization; or
 - c. Extend PhilRice's official use of the vehicle from three years to four years or until the minimum kilometrage is attained.
7. PhilRice entered into Hold Out Agreements with PNB to guarantee the loans of the beneficiary-employees (Exhibits N to W), where PhilRice was the guarantor of the personal motor



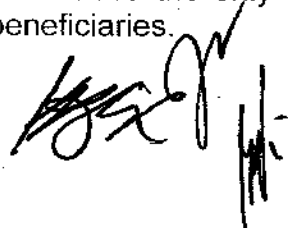
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- vehicle loans of the beneficiaries. PhilRice was prohibited from withdrawing its funds with the PNB until the loans were paid in full.
8. On May 14, 2009, Executive Director Beronio issued A.O. No. 2009-15 (Exhibit K), prescribing the guidelines to be observed in renting private vehicles. The beneficiaries were given the discretion in choosing the vehicles to be hired, and the rental was subject to open canvass.
 9. During the 54th BOT meeting on June 19, 2009, the BOT noted A.O. Nos. 2009-05 and 2009-05(A) (Exhibits I and J), and confirmed A.O. No. 2009-15 (Exhibit K). Among the matters discussed were the implementation of the car plan upon the BOT's advice during the 53rd meeting; the continuous negotiations of PhilRice and PNB regarding the reduction of the amount held-out as the amortizations were paid; the conditions of the HOA; and the need to protect the employees who acquired vehicles through ensured hiring of their vehicles (Exhibit G).
 10. The Commission on Audit (COA) audited the transactions pertaining to the implementation of the car plan, and observed that the practices were not in accordance with existing rules and regulations on the utilization of government funds and properties, resulting in the incurrence of irregular expenses. It also observed that government funds were used to guarantee the obligations of private individuals, contravening the doctrine that public funds shall be used for public purpose only (Exhibit UU).
 11. The BOT was fully aware of the terms set in the AOs and HOAs, as shown by the Minutes of the 54th Meeting. The members of the BOT neither disapproved nor asked for the recall of the AOs or guidelines. They also did not object to the HOAs entered into with the PNB, indicating that they ratified the same. They even stated in their respective counter-affidavits that the Board's actions provided the legal basis for the car rental scheme because the BOT is the highest policy-making body of PhilRice.
 12. PhilRice leased the vehicles subject of the car plan through canvass. The beneficiaries billed PhilRice for the monthly vehicle rental and PhilRice deposited the rental fees, which served as the monthly amortizations for the vehicles, to the beneficiaries' checking accounts. In effect, PhilRice paid the monthly amortizations of the vehicles through rental fees (Exhibits Z and series to II and series). PhilRice also ensured the hiring of the said vehicles because the only vehicles that were hired were those of the beneficiaries.



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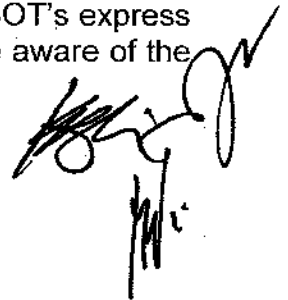
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13. The COA issued Notices of Disallowance (ND) disallowing all expenses related to the implementation of the PhilRice car plan in the total amount of ₱10,449,557.45 (Exhibits VV to VV-25) because of various irregularities.
14. The COA Proper affirmed the said NDs (Exhibits VV-26 to VV-28), and declared the monthly amortizations or car rentals paid by PhilRice as irregular expenses. The COA also considered the PhilRice car plan and car rental scheme as an indirect procurement of vehicles, which circumvented the provisions on competitive bidding in R.A. No. 9184.
15. The scheme the accused used to implement the PhilRice car plan gave unwarranted benefits and advantage to the beneficiary-employees by allowing them to purchase and privately own the vehicles secured by public funds, with PhilRice acting as guarantor and subjecting its funds to HOAs. Moreover, PhilRice paid for the beneficiaries' amortization fees through the car rental scheme.
16. Furthermore, the guidelines allowed the beneficiary-employees to still claim their transportation allowance despite the fact that PhilRice leased their vehicles for their official use. In *Domingo v. Commission on Audit*,⁶ it was held that a government official who is assigned a vehicle is no longer entitled to receive transportation allowance.
17. The HOAs caused undue injury to PhilRice. The said HOAs prevented PhilRice from using its funds deposited with PNB for the purpose for which they were allocated because they were used to secure the personal loan obligations of its selected employees. Government funds were used to guarantee settlement of obligations of private individuals, in contravention of the policy that government funds or property shall be used solely for public purposes.
18. The HOAs are grossly and manifestly inimical to the interests of the government. PhilRice was not able to fully utilize its deposits with PNB because they were used to guarantee or secure the personal obligations contracted by PhilRice employees.
19. Executive Director Beronio and accused Fe Lumawag entered into the said HOAs with the PNB, on behalf of PhilRice, with approval from the accused members of the BOT.
20. While only Executive Beronio and accused Lumawag signed the HOAs, they could not have done so without the BOT's express or tacit approval. The members of the BOT were aware of the

⁶ G.R. No. 112371, October 7, 1998



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HOAs. During the 54th meeting, they even discussed the repercussions of the same, and remarked that PhilRice continued to negotiate with the PNB for more advantageous setups, such as reducing the holdouts as amortizations are being paid.

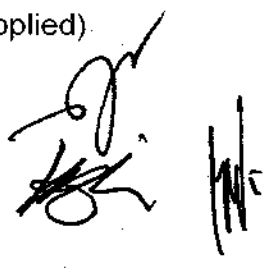
21. In their counter-affidavits, Executive Director Beronio and accused Lumawag declared that the execution of the HOAs and the issuance of the Administrative Orders were done to implement the PhilRice car plan, a policy decision of the BOT of PhilRice, which is the highest policy-making body of PhilRice.
22. The acts of the accused show the conspiracy among them. While separate and distinct from each other, their acts were indispensable to the attainment of a common purpose that, without any of them, the same would have failed.
23. The accused cannot just conveniently deny their participation in the commission of the crimes charged. The prosecution's evidence must be rebutted by clear, convincing and positive evidence. The accused must present their evidence to show that their acts were in accordance with law.

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)



⁷ G.R. No. 119010, September 5, 1997

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After examining the prosecution's evidence and the parties' arguments, this Court rules that granting accused Batara, Laysa, Lumawag, Bacani, Undan, and Padolina leave to file their respective demurrers to evidence will merely cause delay in the proceedings.

WHEREFORE, the respective *Motions* of accused Batara and Laysa, accused Lumawag, accused Bacani and Undan, and accused Padolina 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 Batara and Laysa, accused Lumawag, accused Bacani and Undan, and accused Padolina 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.

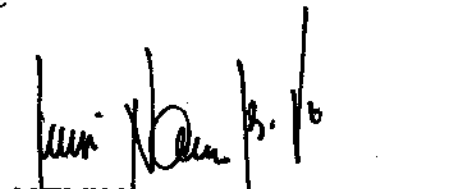
The hearing for the initial presentation of defense evidence set on November 22, 2022 is maintained.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
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.

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