



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

QUEZON CITY

SEVENTH DIVISION

MINUTES of the proceedings held on February 22, 2023.

Present:

Justice MA. THERESA DOLORES C. GOMEZ-ESTOESTA - - - - - Chairperson
Justice ZALDY V. TRESPESES - - - - - Associate Justice
Justice GEORGINA D. HIDALGO - - - - - Associate Justice

The following resolution was adopted:

Criminal Case No. SB-19-CRM-0153 – People of the Philippines vs. Concepcion Ong-Lim, et al.

This resolves the following:

1. Accused Frances Bobbith Cajés-Auza’s (“Cajés-Auza”) “Motion for Leave to File Demurrer to Evidence (For Insufficiency of Evidence)” dated January 30, 2023
2. Accused Handel Tumalak Lagunay, Edwin Tutor Vallejos, Abraham Doria Clarin, Greta Aya-ay Mende, Laura Saramosing Boloyos and Felix Mascarinas Mejorada’s (“Lagunay, et al.”) “Motion for Leave to File Demurrer to Evidence” dated February 1, 2022;
3. Prosecution’s “Opposition (To: Motion for Leave of Court to File Demurrer to Evidence dated 01 January 2023¹)” dated February 13, 2023; and
4. Prosecution’s “Manifestation” dated February 14, 2023.

HIDALGO, J.

For resolution are the respective Motions for Leave to File Demurrer to Evidence of accused Lagunay, et al., and Cajés-Auza questioning the sufficiency of the Prosecution’s evidence to prove their guilt beyond reasonable doubt for Violation of Section 3 (e) of Republic Act (R. A.) No. 3019, as amended, and the Prosecution’s Opposition thereto.

¹ The Court notes that accused Lagunay, et al.’s motion is dated February 1, 2023 and not January 1, 2023

7 1 f

Resolution

People vs. Concepcion Ong Lim, et al.

Case No. SB-19-CRM-0153

Page 2 of 6

x-----x

In their motion,² accused Lagunay, et al., averred that the prosecution failed to discharge its burden of proving their guilt beyond reasonable doubt because the presented evidence was unable to establish the material allegations in the Information as well as the elements of the crime. Here, they are charged for Violation of Section 3 (e) of R. A. No. 3019 as members of the Bids and Awards Committee (“BAC”) of the Province of Bohol, who allegedly allowed the use of a Letter of Credit (“LOC”) as a mode of payment for the purchase of one (1) unit of Hydraulic Excavator (Backhoe) with Breaker sometime in 2006, despite the express prohibition under Section 42.5 of the Implementing Rules and Regulations (“IRR”) – Part A of R. A. No. 9184 as implemented by Memorandum Order No. 119, Series of 2003. Mainly, they argued that the prosecution witnesses have no personal knowledge of what transpired in the procurement process. They pointed out that none of the said witnesses were from Civic Merchandising Inc. (“CMI”) or the provincial government, thus these witnesses could neither authenticate nor testify on the relevant exhibits involved in the questioned procurement. Furthermore, they claimed that as members of the BAC, they have no participation on the passage and approval of *Sangguniang Panlalawigan* Resolution No. 2006-387 dated July 10, 2006, which authorized the Provincial Governor to open an LOC with the Philippine National Bank (“PNB”) and allowed the amount of Php74,498.15 to be debited from the account of the provincial government. Citing jurisprudence, they explained that for the prosecution to successfully prosecute them under Section 3 (e) of R. A. 3019 based on a violation of the procurement law, the prosecution must show beyond reasonable doubt that such transgression of the procurement law had caused undue injury to any party, including the government, or gave any party unwarranted benefits, advantage or preference, and that they acted with evident bad faith, manifest partiality or gross inexcusable negligence. They insisted that these matters, which are essential to the prosecution’s burden to establish their guilt beyond reasonable doubt, were not proven by the presented evidence.

On the other hand, accused Cajes-Auza also alleged in her motion³ that the prosecution failed to discharge its burden of proving her guilt beyond reasonable doubt, claiming that the elements of the offense charged were not proven. She is charged in the Information as a member of the *Sangguniang Panlalawigan* for passing and approving *Sangguniang Panlalawigan* Resolution No. 2006-387, which authorized the then Provincial Governor to open an LOC with the PNB for the purchase of one Backhoe with Breaker from CMI, and for the PNB to debit from the

² Records, Vol. 6, pp. 368-377

³ Records, Vol. 6, pp. 338-347

1
2
3

Resolution

People vs. Concepcion Ong Lim, et al.

Case No. SB-19-CRM-0153

Page 3 of 6

x-----x

provincial government's account all charges incidental to the opening and negotiation of the LOC in the amount of Php74,498.81. The passage of the said resolution allegedly enabled CMI to receive payment on the LOC before the delivery of the Backhoe with Breaker to the said Province, and caused undue injury to the latter when it shouldered all the incidental expenses for the opening and negotiation of the LOC, in violation of Section 42.5 of the IRR – Part A of R. A. No. 9184. She asserted that the prosecution's testimonial and documentary evidence failed to prove the material allegations in the Information and the existence of all the elements of the offense because the prosecution witnesses lacked personal knowledge of the vital, material, and relevant incidents of the questioned transaction. Moreover, she said that the evidence presented not only failed to establish her participation in the offense, but it also did not show the existence of conspiracy. She concluded that mere violation of the procurement law is not enough because in prosecuting a charge for violation of Section 3 (e) of R. A. No. 3019 based on a breach of applicable procurement law, the prosecution still has to prove that she acted with evident bad faith, manifest partiality or gross inexcusable negligence, and that the violation of the said procurement law caused undue injury to any party, including the government, or gave any party unwarranted benefits, advantage or preference.

The prosecution opposed⁴ the motion, stating that accused Lagunay, et al., failed to discuss why the evidence against them was insufficient to sustain the present charge. The prosecution pointed out that the commission of a crime is rarely overt thus, the commission thereof may be logically deduced and concluded from the concerted actions of the participants. The prosecution said that it is not always required that direct evidence be presented to establish the commission of the crime as such evidence is not always available. The prosecution also averred that its witnesses were able to authenticate the documents pertaining to the purchase of the Backhoe with Breaker in 2006 using the LOC, and that, it was proven at the time of the said purchase that the use of the LOC was not allowed. The prosecution continued to argue against the piecemeal evaluation of the presented evidence, asserting that the same should be examined in its entirety to determine whether it was able to establish a *prima facie* case against the accused. The prosecution further added that herein accused cannot escape liability by denying their participation in the commission of the offense, maintaining that the absence of participation or involvement is a positive claim which they can only prove through the presentation of their evidence. The prosecution reiterated its position that the focal questions in the present

⁴ Records, Vol. 6, pp. 410-415

Handwritten marks at the bottom of the page, including a vertical line and some scribbles.

Resolution

People vs. Concepcion Ong Lim, et al.

Case No. SB-19-CRM-0153

Page 4 of 6

x-----x

case are: (1) whether the purchase of the Backhoe with Breaker using the LOC was allowed when there existed a regulation prohibiting it, and (2) whether the incidental expenses incurred by the provincial government in the opening of the LOC was justified when it violated Section 42.5 of the IRR of R. A. No. 9184. The prosecution alleged that the participation of the herein accused in the purchase and/or the passage of the *Sangguniang Panlalawigan* Resolution would all be revealed when the said questions of law are resolved.

Meanwhile, the prosecution manifested⁵ that it was adopting its Oppositions (filed for accused Balite and Lagunay, et al.) dated January 20, 2023⁶ and February 13, 2023,⁷ to address the motion of accused Cajes-Auza since the grounds presented therein are similar in nature to those presented by accused Balite and Lagunay, et al., in their respective motions.

The motions are unmeritorious.

Section 23, Rule 119 of the Revised Rules on Criminal Procedure governs the filing of a motion for leave to file demurrer to evidence, to wit:

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.

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. (15a)

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.

⁵ Records, Vol. 6, pp. 422-423

⁶ Records, Vol. 6, pp. 296-304

⁷ Records, Vol. 6, pp. 368-377

8 7- |

Resolution

People vs. Concepcion Ong Lim, et al.

Case No. SB-19-CRM-0153

Page 5 of 6

x-----x

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.

However, it is jurisprudentially settled that the grant of prior leave to file demurrer to evidence is discretionary upon the trial courts.⁸ At the outset, the Court observes that the arguments raised by the accused, such as the absence of the elements of the crime, and the non-existence of conspiracy, are matters of defense which would be better addressed during the trial proper of the case.⁹ Furthermore, a perusal of the offered evidence, consisting of but not limited to, the Complaint, Bids and Awards Committee Resolution, Notice of Award, *Sangguniang Panlalawigan* Resolution, PNB Certification, CMI Pro Forma Invoice, Letter of the Assistant Manager of the PNB, Application and Agreement for Irrevocable Letter of Credit, Syndex Invoice, and other attached documents together with the testimonies of the prosecution witnesses identifying said documents and substantiating the contents thereof, at this point, sufficiently demonstrated the commission of the crime charged and the participation of each accused in the perpetration thereof.¹⁰ Otherwise stated, the evidence presented by the prosecution, if they remain un rebutted, would be enough to justify the conviction of the herein accused. Therefore, herein accused are directed to present evidence on their behalf. Nonetheless, if they insist on filing their respective demurrer to evidence without prior leave of court, their action will be subject to the repercussion imposed under Section 23 of Rule 119,

⁸ Paz T. Bernardo vs. Court of Appeals, et al. (G. R. No. 119010, September 5, 1997)

⁹ In the case of Leonardo M. Andres, et al., vs. Justice Secretary Serafin R. Cuevas, et al., (G. R. No. 150869, June 9, 2005), the Supreme Court said that, "the presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits."

¹⁰ In *People of the Philippines vs. Jose C. Go, et al.* (G. R. No. 191015, August 6, 2014), the Supreme Court discussed what constitutes sufficient evidence, viz.:

"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. 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." Thus, when the accused files a demurrer, the court must evaluate whether the prosecution evidence is sufficient enough to warrant the conviction of the accused beyond reasonable doubt."

7 7 1

Resolution

People vs. Concepcion Ong Lim, et al.

Case No. SB-19-CRM-0153

Page 6 of 6

x-----x

resulting in the waiver of their presentation of evidence, and the submission of the case for judgment on the basis of the prosecution's evidence.


WHEREFORE, premises considered, the respective Motions for Leave to File Demurrer to Evidence of accused Handel Tumalak Lagunay, Edwin Tutor Vallejos, Abraham Doria Clarin, Greta Aya-ay Mende, Laura Saramosing Boloyos and Felix Mascarinas Mejorada, and Frances Bobbith D. Cajés-Auza are **DENIED** for lack of merit.

Let the initial presentation of defense evidence set on **February 27, 2023, at 8:30 in the morning** proceed as scheduled.

SO ORDERED.


GEORGINA D. HIDALGO
Associate Justice

WE CONCUR:


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


ZALDY V. TRESPESES
Associate Justice

Received
7th Division
Date: 2.22.23
Time: 10:35 AM
By: Raquel G.