

Republic of the Philippines
Sandiganbayan
Quezon City

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES, SB-18-CRM-0295
Plaintiff,
-versus-

TITO G. RAZALAN, ET AL.,
Accused. Present:

LAGOS, J., *Chairperson,*
MENDOZA-ARCEGA, and
CORPUS-MAÑALAC, JJ.

Promulgated:

May 04, 2023

x ----- x
Jose Q. de Guzman

RESOLUTION

CORPUS-MAÑALAC, J.:

Before the Court are three motions for leave of court to file demurrer to evidence filed separately by the accused, to wit: (1) accused Marilene S. Bedania, Florence B. Bueno, and Juan M. Bala's *Motion for Leave of Court to File Demurrer to Evidence*¹ dated April 4, 2023; (2) accused Nilda L. Salazar's *Motion for Leave of Court to File a Demurrer to Evidence*² dated April 5, 2023; and (3) accused Tito G. Razalan and Jose Q. de Guzman's *Joint Motion for Leave to File Demurrer to Evidence*³ dated April 12, 2023.

This case concerns the Mayantoc Memorial Park Project, which the Municipality of Mayantoc, Tarlac, had allegedly awarded to JQG Construction, a private company, in or about November 2009. At that time, it is also alleged, accused Razalan was the municipal mayor, while accused Salazar, Bedania, Bueno, and Bala were municipal officials/employees and members of the municipal Bids and Awards Committee (BAC). The Office of the Ombudsman indicted the accused for awarding the project to JQG Construction "despite irregularities and violations committed in the bidding," non-payment of P5,000.00 for bidding documents as well as underpayment of performance and warranty securities by JQG Construction, and for facilitating payment to JQG Construction despite lack of supporting documents and non-completion of the project. Accused de Guzman, Jr.,

¹ Records, Vol. 7, pp. 365-370.

² Id. at 371-391.

³ Id. at 400-403.

proprietor of JQG Construction, was also indicted as co-conspirator. During trial, the prosecution presented its evidence and in time rested its case. Claiming insufficiency of prosecution evidence, the accused now ask the Court for leave to file demurrer to evidence under Rule 119, Section 23 of the Revised Rules of Criminal Procedure.

Accused Benadia, Bueno, and Bala's Arguments

In their motion, accused Benadia, Bueno, and Bala admit that no invitation to bid for the project was posted on the PHILGEPS website. However, they insist that it was not mandatory at that time and "the Municipality of Mayantoc, Tarlac, was not yet internet ready."⁴ They claim that accused Bedania was required to attend a PHILGEPS seminar only years after the bidding in question.⁵ Further, they claim that the prosecution "failed to show ... that there were already previous posts made by the Municipality ... on the [PHILGEPS website] for similar projects."⁶

Additionally, while admitting the non-collection of P5,000.00 for bidding documents from JQG Construction, accused Benadia, Bueno, and Bala assert that "such non-collection alone does not signify even the slightest indicia that JQG Construction was given unwarranted benefit, advantage or preference."⁷ This is especially true, according to them, because it was not established that the other bidders were required to pay the said fee.

Anent the failure to conduct a pre-bid conference, they assert that there are documents indicating that a pre-bid conference was conducted in the presence of witnesses, who signed the pre-bid conference.⁸

On the allegation that the publication clipping submitted by the BAC was different from the one published on the Weekly Views, accused Benadia, Bueno, and Bala observe that "the person who executed the Affidavit of Publication or any representative from the Weekly Views, [was] not presented in court to explain" the discrepancy.⁹ Even if it were true, the accused further submit, they should not be held liable because, as far as they are concerned, there was a request to publish the invitation to bid and that an affidavit of publication was executed by the publisher's editor-in-chief.¹⁰

As to the failure of JQG Construction to deposit the percentage for the required bond, they assert that it was never brought to their attention.¹¹

⁴ Id. at p. 366.

⁵ Id.

⁶ Id.

⁷ Id.

⁸ Id.

⁹ Id. at p. 366-367.

¹⁰ Id. at p. 367.

¹¹ Id.



Accused Salazar's Arguments

For her part, accused Salazar avers that the alleged non-payment of P5,000.00 for the bid documents and the underpayment of the performance and warranty securities by 20% resulted from an incomplete audit.¹² Citing a portion of Engr. Maria J. Dela Cruz's testimony, she argues that the audit findings were based on incomplete documents and that she "was never given a chance to provide the necessary documents for the audit."¹³ "[T]he results of the incomplete audit cannot be relied upon for any matter," she concludes, "as the outcome and conclusion thereof could change depending on the documents to be analyzed."¹⁴ At any rate, she argues that the prosecution "failed to show that such irregularities (if any) were connected to the performance of" her functions "as member of the BAC."¹⁵ According to her, under the *Manual of Procedures for the Procurement of Infrastructure Projects*, the "performance security should only be posted within ten (10) days after the receipt of a Notice of Award and upon the signing of the contract." At that point, she reasons, the jury duty of the BAC is deemed terminated. "Thus, the BAC or the members thereof," she concludes, "is no longer responsible for the submission of requirements" under the procurement law.¹⁶ Accused Salazar also avers that "[t]here's an absolute dearth of evidence to prove" the non-payment of P5,000.00 for bidding documents.¹⁷ The prosecution, she points out, relied merely on the two-page *Invitation To Apply For Eligibility And To Bid*, but, according to her, "[t]his document does not show or prove whether there was compliance or non-compliance with the requirements provided therein."¹⁸ Moreover, the Complaint-Affidavits (Exhibits "A-6," "B-5," and "B-6"), she adds, "do not prove that there was a failure to comply with the payment requirement" and that she was responsible for that failure.¹⁹ In any case, she states that "the Sangguniang Bayan recognized that the public bidding conducted was in order and was in accordance with the provisions of" the procurement law.²⁰

Accused Salazar also claims that the "bulk of testimonies" of the prosecution witnesses pertain to allegations against accused Razalan and not against her.²¹ She asserts that "there is no testimony which could be attributed directly to [her] culpability, partiality or bias."²² She further asserts that "hearsay testimony was raised to improperly identify documents used against" her.²³ To demonstrate, she quoted part of Atty. Abraham D. Basilio's testimony in which the prosecution witness supposedly testified

¹² Id. at 375.

¹³ Id. at 375-376; underscoring omitted.

¹⁴ Id. at 376.

¹⁵ Id. at 377.

¹⁶ Id. at 377-378.

¹⁷ Id. at 379.

¹⁸ Id.

¹⁹ Id. at 379.

²⁰ Id.

²¹ Id. at 380.

²² Id.; underscoring omitted.

²³ Id.

that he had no personal knowledge about the documents attached to his judicial affidavit and that he is only testifying that those documents were in his office.²⁴ Furthermore, accused Salazar asserts that the documentary evidence reveal that she merely performed her functions without intending to benefit any party.²⁵ If at all those documents, she claims, proved her innocence.²⁶ In support, she points out that ‘Exhibits “A-16” and “A-24” show that JQG Construction was in fact the highest bidder and was therefore entitled to the award.’²⁷

On the observation that accused Salazar signed Disbursement Voucher No. 1449 despite that the OIC-Municipal Accountant failed to certify as to the completeness of supporting documents, she avers that “the signature of the OIC-Municipal Accountant is not needed before [she] could sign the [disbursement voucher].”²⁸ “The two signatures,” according to her, “are independent of each other as they have different purposes.”²⁹ She further argued that the disbursement voucher was, contrary to the prosecution’s claim, pre-audited as indicated by the mark “PRE-AUDITED” stamped on the face of the disbursement voucher, executed by Romeo V. Mendoza of the Commission on Audit.³⁰

Accused Salazar next asserts that the prosecution failed to prove that the project in question was not completed. She points out that the prosecution witness, Municipal Engineer Dennis Balanay, “could not state whether or not the projects was completed.”³¹ The prosecution witness, accused Salazar points out, “was not part of the municipal government when the crime was alleged to have occurred in 2009.”³² Therefore, the prosecution witness was, she concludes, “incompetent to testify on the matters asked of him on the witness stand.”³³ Accused Salazar also asserts that the allegation that the municipal accountant did not certify that the supporting documents are complete prior to the payment of the project is erroneous.³⁴ To this point, she claims that the disbursement voucher (Exhibits “A-9” and “AA”) was pre-audited by the COA and that she was never informed of any irregularities therein. Also, she reasons that the municipal accountant’s signature on the journal entry vouchers (Exhibits “BB,” “JJ,” and “NN”) “functions as an admission of the completeness of the documents required for payment.”³⁵

²⁴ Id. at 381.

²⁵ Id. at 381.

²⁶ Id.

²⁷ Id.; emphasis omitted.

²⁸ Id. at 382; underscoring omitted.

²⁹ Id.

³⁰ Id.

³¹ Id. at 384.

³² Id. at 385.

³³ Id.

³⁴ Id. at 386.

³⁵ Id. at 386-387.

Finally, accused Salazar claims that the prosecution evidence is insufficient to prove conspiracy. According to her, “the only proof that the Prosecution offered was that [she] signed certain documents.”³⁶

Accused Razalan and de Guzman, Jr.’s Arguments

For their part, accused Razalan and de Guzman, Jr. aver that “[a]ll the documentary evidence offered and admitted by the court are all favorable to the movants”³⁷ and that the purposes for which those documents were offered are not related to their acts.³⁸ Additionally, citing the Supreme Court ruling in *Razalan v. Commission on Audit*,³⁹ wherein the case was ordered remanded to the COA “for the computation of the amounts equivalent to the actual benefit derived by the Municipality of Mayantoc and its constituents from the Mayantoc Memorial Park Project,” accused Razalan and de Guzman, Jr. assert that one of the elements of violation of Section 3(e) of R.A. No. 3019 had been eliminated. In view of the ruling, they contend, “the filing of this case ... has become premature.”⁴⁰

Prosecution’s Comment/Opposition

On April 17, 2023, the prosecution filed its *Consolidated Comment/Opposition*.⁴¹ In its comment, the prosecution avers that accused “Razalan and de Guzman, Jr. simply made a sweeping claim regarding the purported insufficiency of evidence,” but “mere conjectures and vague generalizations,” the prosecution maintains, “would be grossly insufficient as the issue of the relevancy and materiality of the evidence of the prosecution are matters which are best left to the sound judgment of the Honorable Court.”⁴² Contrary to accused Razalan and de Guzman, Jr.’s asseveration, the prosecution counters, the decision of the Supreme Court in *Razalan v. Commission on Audit*⁴³ “actually lends credence to the prosecution’s case against all the accused.”⁴⁴

Regarding accused Salazar’s arguments, the prosecution asserts that the accused Salazar’s “claim about a supposed incomplete audit is utterly false and misleading.”⁴⁵ The prosecution points out that “Engr. Maria Dela Cruz testified that vital documents including the as-built plan [of the project in question] were not submitted during her conduct of the technical audit.”⁴⁶ According to the prosecution, “non-submission [of those documents] does not mean that the technical audit was incomplete,” rather, the prosecution

³⁶ Id. at 387.

³⁷ Id. at 400.

³⁸ Id.

³⁹ G.R. No. 255366 (Notice), November 9, 2021.

⁴⁰ Records, Vol. 7, p. 401.

⁴¹ Id. at 426-431.

⁴² Id. at 427.

⁴³ G.R. No. 255366 (Notice), November 9, 2021.

⁴⁴ Records, Vol. 7, p. 428.

⁴⁵ Id.

⁴⁶ Id.

submits, the technical audit was conducted and completed without those documents.⁴⁷ The prosecution adds that Auditor Jean Daliva, former resident COA auditor of the Municipality of Mayantoc, Tarlac, also audited the project in question and the results thereof (Exhibits "A⁵" to "A⁵-16") were submitted in evidence.⁴⁸

As to the accused Benadia, Bueno, and Bala's motion, the prosecution contends that the accused "simply denied liability based on flimsy excuses." The prosecution points out that the accused admitted that there had been irregularities in the bidding while interposing the defense that those irregularities "were never intentional on their part to cause damage to the procuring entity, but merely the product of simple human error."⁴⁹ But the defense raised is, the prosecution reasons, "evidentiary matter which should be duly established during the presentation of defense evidence."⁵⁰

RULING

The Court denies all three motions for leave of court to file demurrer to evidence.

Under Rule 119, Section 23 of the Revised Rules of Criminal Procedure, an accused may file a motion for leave of court to file demurrer to evidence within a non-extendible period five (5) days after the prosecution rests its case. In *Bernardo v. Court of Appeals*,⁵¹ the Supreme Court held that the "power to grant leave to the accused to file a demurrer is addressed to the sound discretion of the trial court." "The purpose," the Supreme Court further explained in *Bernardo*, "is to determine whether the accused in filing his demurrer is merely stalling the proceedings."⁵²

Here, the grounds raised by the accused are unpersuasive. Notably, several of those grounds involve matters that are evidentiary in character and must therefore be established at trial. Demurrers therefore will only unnecessarily stall the proceedings in this case, as some matters must still be litigated and proved at trial. In other words, demurrers will unlikely result in the complete termination of the case. Too, accused Benadia, Bueno, and Bala's motion contains admissions that effectively removed some issues from the field of controversy. It is also worth pointing out that the motions contain contradictory assertions (i.e., while accused Salazar claims dearth of evidence to establish JQG Construction's non-payment of P5,000.00 for the bidding documents,⁵³ accused Benadia, Bueno, and Bala admitted that

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ Id. at 429; emphasis omitted.

⁵⁰ Id.

⁵¹ G.R. No. 119010, September 5, 1997.

⁵² Id., citing *People v. Mahinay*, G.R. No. 109613, July 17, 1995.

⁵³ Id. at 379.



fact⁵⁴). At any rate, a review of the records shows a *prima facie* case against the accused.

WHEREFORE, premises considered, (1) accused Marilene S. Bedania, Florence B. Bueno, and Juan M. Bala's *Motion for Leave of Court to File Demurrer to Evidence*⁵⁵ dated April 4, 2023; (2) accused Nilda L. Salazar's *Motion for Leave of Court to File a Demurrer to Evidence*⁵⁶ dated April 5, 2023; and (3) accused Tito G. Razalan and Jose Q. de Guzman, Jr.'s *Joint Motion for Leave to File Demurrer to Evidence*⁵⁷ dated April 12, 2023 are **DENIED**.

It bears emphasis that the denial here is without prejudice to the right of the accused to file demurrer to evidence without leave of court, **subject to the legal consequences provided for in Rule 119, Section 23 of the Revised Rules of Criminal Procedure.**


The accused are **DIRECTED** to immediately inform the Court should they opt to file a demurrer to evidence without leave of court.

The initial presentation of defense evidence shall proceed as previously scheduled on May 4, 2023, at 1:30 in the afternoon.⁵⁸

SO ORDERED.


MARYANN E. CORPUS-MAÑALAC
Associate Justice

WE CONCUR:


RAFAEL R. LAGOS
Associate Justice
Chairperson


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

⁵⁴ Id.

⁵⁵ Records, Vol. 7, pp. 365-370.

⁵⁶ Id. at 371-391.

⁵⁷ Id. at 400-403.

⁵⁸ Id. at 405 (Minutes of the Proceedings held on April 13, 2023).