



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-21-CRM-0007 to 0009**
Plaintiff, For: Violation of Section 3(e)
of Republic Act No. 3019

- versus -

ROBERT DEAN SMITH
BARBERS, ET AL.,

Accused.

Present

FERNANDEZ, SJ, J.,
Chairperson
MIRANDA, J. and
VIVERO, J.

Promulgated:

May 30, 2023 [Signature]

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves the following:

1. *Motion for Leave to File Demurrer to Evidence*¹ filed by accused Edgar T. Bocar;
2. *Motion for Leave of Court to File Demurrer to Evidence*² filed by accused Armando L. Miranda;
3. *Motion for Leave of Court to File Demurrer to Evidence*³ filed by accused Robert Dean S. Barbers;

and,

[Signatures]

¹ Dated May 8, 2023; Record, Vol. 4, pp. 467-472

² Dated May 8, 2023; Record, Vol. 4, pp. 473-479

³ Dated May 9, 2023; Record, Vol. 4, pp. 480-486

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4. The prosecution's *Consolidated Comment/Opposition (Re: Motions for Leave to File Demurrer to Evidence)*.⁴


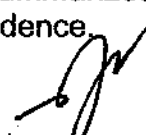

In their respective Motions, accused Bocar, Miranda and Barbers pray that they be granted leave of court to file their respective demurrers to evidence.

Accused Bocar avers:

1. The prosecution failed to sufficiently establish the existence of the essential elements of the crimes charged.
2. He intends to file a demurrer to evidence wherein he will raise the following arguments:
 - a. The prosecution failed to establish that he is the author of the crimes charged. No evidence was adduced to show that he took, appropriated, misappropriated, malversed or caused the malversation of public funds.
 - b. No evidence was presented to prove conspiracy.
 - c. The prosecution failed to prove deliberate intent to commit the crimes charged.
 - d. No witness was presented to prove that his actions amounted to the commission of the crimes charged.
 - e. The prosecution failed to prove that he caused undue injury to the government.

Accused Miranda avers:

1. The prosecution's evidence is insufficient to prove the offense charged. Moreover, its evidence is objectionable and should be excluded and stricken out because the presentation of some pieces of evidence violates the right of an accused.
2. He should be granted leave to file his demurrer to evidence so he can properly and extensively explain the basis for the insufficiency of the prosecution's evidence.
3. His *Comment/Opposition (To the Formal Offer of Exhibits for the Plaintiff Dated March 9, 2023)* summarizes the points that he will discuss in his demurrer to evidence.

  
⁴ Dated May 15, 2023 and filed by electronic mail on even date

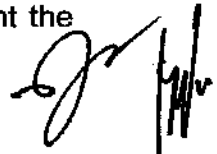
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- a. In Exhibit D, it is unclear whether IA Administrator Ferrer approved the IA Technical Committee's recommendation. The word "ok" is ambiguous, and the signature appearing beside it was never properly identified in court. Hence, the IA Administrator did not officially and/or categorically disapprove the proposed Sports Complex in Intramuros.
- b. Exhibit F does not categorically prove that the PTA Board of Directors did not approve the increase in budget for the Sports Complex, or that the plan and expenditure of the Sports Complex were not presented to, nor approved by, the PTA Board of Directors. Exhibit G actually states that the approved budget was in the total amount of ₱24,750,292.00, not merely ₱15,000,000.00.
- c. Exhibits G, H, I, J, and WW do not show that the IA Administrator disapproved the proposed Sports Complex in Intramuros.
- d. Exhibits Q, R, S, T, U, V, XX, and YY do not prove that the building or development permit, locational clearance, approval, inputs, and/or comments of the IA were not acquired.
- e. Exhibit CC was not presented and/or identified by any competent witness.
- f. He objected to Exhibits DD, EE, FF, GG, and HH because the PTA Sports Complex was not in itself an illegal structure the construction of which could not be remedied. In Exhibit DD, the PTA was not directed to remove or demolish the structure/materials, but was simply directed to stop the building activities and to secure the necessary permits for the deficiency. At that point, the construction could still be legalized.
- g. He objected to Exhibits DD-4, DD-5, DD-6, and DD-7 because (1) the originals were not presented in court for comparison; (2) the exhibits were not dated; (3) the location where the photos were taken is indeterminate; (4) the person who executed Exhibit DD-4 is unknown; and (5) the date of the execution of Exhibit DD-4 is unidentifiable.
- h. The witnesses who identified Exhibits EE, FF, GG, and HH had no personal knowledge over the execution of the said documents. Furthermore, it is unclear whether the correspondences were received by the General Manager of the PTA. The stamp "Office of the General Manager" is indeterminate as to which branch of government the



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correspondences were sent. Exhibits EE and HH do not even contain the said stamp of receipt.

- i. The witnesses who identified Exhibits II, JJ, NN, OO, PP, QQ, RR, AAA-1, EEE, EEE-1 EEE-2, EEE-3, EEE-4, FFF and GGG also had no personal knowledge of the execution of the said documents. Exhibit JJ did not even contain any of the approving signatures of the Board of the PTA.
4. Presidential Decree No. 1763 granted PTA (now TIEZA) absolute possession, administration and control over the subject parcels of land.
5. The Memorandum of Agreement dated September 8, 1981 between the IA and PTA is merely a contract between the IA and PTA. It cannot and should not undermine P.D. No. 1763, and hence, it is void and produces no legal effect.
6. The intended PTA project is outside the IA's jurisdiction because the PTA Sports Complex was intended to be constructed outside the walls of Intramuros.

Accused Barbers also avers that the prosecution's evidence is not sufficient to establish or prove the presence of all the elements of the offense charged.

The Court did not receive a similar Motion from accused Jose Dion Diaz.

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.
2. Accused Barbers, Bocar, Diaz, and Miranda are public officers discharging administrative and official functions.
 - a. During the pre-trial, the accused stipulated that at the times material to the allegations in the Amended Informations, they were public officials discharging administrative and/or official functions.
 - b. Accused Barbers and Diaz stipulated that they were the General Manager, and Deputy General Manager for Engineering Services and Infrastructure of Philippine Tourism Authority (PTA), respectively. On the other hand,



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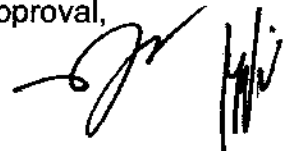
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accused Bocar stipulated that he was the Chairperson of the Bids and Awards Committee (BAC) of PTA.

- c. The prosecution's evidence established that accused Bocar was a Deputy General Manger of the PTA, and that he acted as Officer-in-Charge of PTA on several occasions, while accused Miranda held the position of Department Manager at PTA.
 - d. The accused performed official and administrative functions in connection with the procurement, implementation of, and disbursement of funds for, the subject Sports Complex in the amount of ₱24,732,348.77.
3. The accused acted with manifest partiality, evident bad faith or gross inexcusable negligence in the procurement and implementation of the Sports Complex project of PTA in Intramuros, Manila.
- a. Accused Bocar awarded the subject contract to I.A. Bosque Construction Corp. (I.A. Bosque), issued the Notice to Proceed dated November 22, 2005, signed the Memorandum of Agreement dated November 24, 2005 between PTA and I.A. Bosque for the Project in the amount of ₱24,732,348.77, despite the following:
 - i. He was the BAC Chairperson;
 - ii. The project lacked the approval, inputs, and/or comments from the Intramuros Administration (IA); and,
 - iii. The plan and expenditure for the project were neither presented to nor approved by the PTA Board.
 - b. Accused Diaz issued the Memorandum dated September 5, 2005, requesting for additional funding for the subject project in the amount of ₱9,750,292.00, which accused Barbers approved, thereby increasing the allocation for the project in the amount of ₱24,732,348.77, despite the fact that the PTA Board approved only the amount of ₱15,000,000.00 for the project.
 - c. Accused Diaz and Barbers signed Disbursement Voucher No. SF-2005-11-6010 in the amount of ₱3,709,852.32, and paid the same to I.A. Bosque, despite lack of legal basis therefor, and despite the construction not having the necessary building and development permits, locational clearance, approval,



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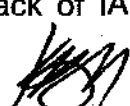
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inputs and/or comments of IA, in violation of the 1981 MOA between PTA and IA, P.D. No. 1616, as amended, and its IRR.

- d. Accused Bocar signed another MOA dated September 27, 2006 between PTA and I.A. Bosque, transferring the construction site of the subject project from Victoria Street, Revellin de Recoletos, Intramuros, Manila, to Club Intramuros Golf Course Driving Range, a site not subject of the procurement.
- e. Accused Miranda prepared and signed the Memoranda dated November 9, 2006 and March 29, 2007, recommending the release of the 1st and 2nd partial payments, which were approved by accused Bocar, despite the fact that prior to the 2nd partial payment, IA issued notices of violation to PTA and there was a direct order for work stoppage from then Tourism Secretary Joseph H. Durano on March 5, 2007.
- f. Accused Miranda and Bocar signed Disbursement Vouchers for the 1st and 2nd partial payments to I.A. Bosque despite lack of legal basis therefor, and despite the construction of the project not having the necessary building and development permits, locational clearance, approval, inputs, and/or comments of IA, in violation of the 1981 MOA between PTA and IA, P.D. No. 1616, as amended, and its IRR.
- g. The accused PTA officials were fully aware of the required approval of IA and the necessary building permit before PTA could proceed with the construction of the Sports Complex.
- h. Accused Barbers, in the letter dated December 1, 2004 to IA Administrator Dominador C. Ferrer, Jr., sought the comments and approval of the IA for the construction of a sports complex adjacent to the walls of Intramuros. However, the IA disapproved PTA's proposed Sports Complex and did not issue a construction or development permit or clearance therefor.
- i. The accused implemented the project and released funds therefor, in total disregard of the 1981 MOA and the provisions of P.D. No. 1616 requiring the approval of the IA and the issuance of the necessary permits.
- j. Realizing that the construction of the Sports Complex could not be continued at Victoria Street, Revellin de Recoletos for lack of IA approval and building permit,



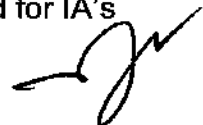
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- PTA transferred the construction site to CIGCDR, in Lot 4, Block 8, in Intramuros.
- k. The construction of the Sports Complex in CIGCDR without the necessary IA approval, and without the necessary permits and clearance, shows the accused's indifference to the authority of IA to regulate the development of properties within Intramuros. The PTA received notices of violation, and Tourism Secretary Joseph H. Durano eventually had to intervene by directing the PTA to stop the construction of the Sports Complex in Intramuros.
 - l. Accused Diaz and Barbers caused and approved the increase of the budget for the project from ₱15,000,000.00 to ₱24,732,348.77 without securing the required approval of the PTA Board. Accused Bocar did not refer the MOA for the construction of the Sports Complex to the PTA Board before signing it as the PTA OIC, in violation of the PTA's rule requiring all contracts in the amount of more than ₱1,000,000.00 and the terms of reference be first referred to the Board before their approval by the General Manager.
 - m. Accused Bocar, while being the BAC Chairperson who recommended the award of the contract to I.A. Bosque, approved his own recommendation when he was designated as PTA Officer-in-Charge, and awarded the contract to the said contractor, thereby giving the said contractor unwarranted benefits and preference.
 - n. The accused's complete disregard for the laws, rules and regulations, agreement and policies affecting PTA, resulting in the disbursement of substantial amounts of public funds, constitute manifest partiality, evident bad faith, or gross inexcusable negligence.
4. The accused's actions caused undue injury to the government.
- a. From the start, IA declared that PTA's proposed Sports Complex was not in accordance with the Intramuros Development Plan provided for in P.D. No. 1616 and its IRR. The IA disapproved the proposed project in the Memorandum dated June 6, 2005, and reiterated its disapproval of the project in the Memorandum dated December 12, 2005.
 - b. The PTA is required to secure IA's approval of the subject project. Hence, the accused should have waited for IA's



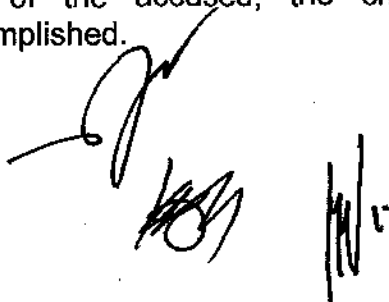
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- approval before the construction of the subject Sports Complex began.
- c. Instead of securing the required approval, the accused transferred the construction site from Victoria Street, Revellin de Recoletos to CIGCDR, which is owned by PTA but is still located in Intramuros, hence the construction still required IA's approval.
 - d. The accused proceeded with the construction at CIGCDR without conferring with IA. The unauthorized excavation for the foundation of the subject project near the walls of Fort Santiago and the construction of the structure prompted IA to issue notices of violation and demand letter to PTA. The said notices and letter were all disregarded by the PTA.
 - e. Because of the accused's continued disregard of the notices of violation, demand letter, and the Tourism Secretary's directive, the Government was constrained to file a Petition for Prohibition with Prayer for Temporary Restraining Order and Writ of Preliminary Injunction against accused Barbers and I.A. Bosque with the Regional Trial Court (RTC) in Manila.
 - f. The RTC found the construction illegal and ordered its demolition. Subsequently, the Commission on Audit (COA) disallowed the payments made to I.A. Bosque in the amount of ₱8,815,357.38.
 - g. The project was not completed and government resources were wasted. In addition to the amount of ₱8,815,357.38 paid to the private contractor, the Government also spent ₱419,727.74 for the demolition of the unfinished Sports Complex in Intramuros.
 - h. The unnecessary disbursement of public funds could have been avoided if the accused complied with the provisions of P.D. No. 1616, its IRR, and the 1981 MOA.
5. The accused conspired in the perpetration of Violation of Sec. 3(e) of R.A. No. 3019. Without the individual and indispensable acts of the accused, the crime would not have been accomplished.



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THE COURT'S RULING

In *Bernardo v. Court of Appeals*,⁵ 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 Bocar, Miranda and Barbers leave to file their respective demurrers to evidence will merely delay the proceedings.

WHEREFORE, the respective Motions filed by accused Bocar, Miranda, and Barbers are hereby DENIED for lack of merit.

As provided in Sec. 23, Rule 119⁶ 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.

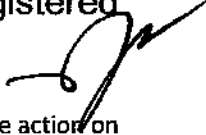
The said accused are given five (5) days from receipt of this Resolution to file their manifestations, by personal filing or registered

⁵ G.R. No. 119010, September 5, 1997

⁶ **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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mail, and electronically, to inform this Court whether they are submitting their demurrers to evidence without leave of court.

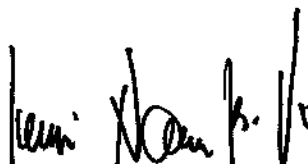
The trial dates previously set are maintained. The scheduled hearings will be considered cancelled upon receipt by this Court of the manifestations of the accused that they intend to submit their demurrers to evidence without leave of court.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA
Associate Justice


KEVIN NARCEB. VIVERO
Associate Justice