



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
QUEZON CITY

SEVENTH DIVISION

MINUTES of the proceedings held on November 14, 2023.

Present:

JUSTICE MA. THERESA DOLORES C. GOMEZ-ESTOESTA ----- Chairperson
JUSTICE ZALDY V. TRESPESES ----- Associate Justice
JUSTICE EDGARDO M. CALDONA ----- Associate Justice*

The following resolution was adopted:

CRIMINAL CASE NOS. SB-20-CRM-0019 to 0022

PEOPLE v. NARCISO B. NIETO, ET AL.

Before the Court are the following:

1. Accused Narciso Nieto's "MOTION FOR LEAVE TO FILE DEMURRER TO EVIDENCE" dated October 23, 2023; and
2. Prosecution's "COMMENT/OPPOSITION" dated October 31, 2023.

GOMEZ-ESTOESTA, J.:

This resolves accused Narciso B. Nieto's *Motion for Leave to File Demurrer to Evidence*.

In his *Motion*,¹ accused Nieto asserts that the prosecution failed to prove that there was conspiracy between him and Agbayani and/or Workphil. The mere allegation of conspiracy will not suffice, and there is no evidence showing accused Nieto's overt act in the offenses charged. He expounds that the only link to him was his signature appearing in the Memoranda of Agreement, Obligation Requests and Disbursement Vouchers. However, as held in *Arias v. Sandiganbayan*,² there should be more than just signing documents to prove the existence of conspiracy.

*per Administrative Order No. 287-2023 dated November 13, 2023 in lieu of Justice Georgina D. Hidalgo who is on vacation leave.

¹ *Records*, Vol. 3, pp. 473-492.

² G.R. No. 81563, December 19, 1989.

Accused Nieto then proceeds to discuss that it was then Sen. Gregorio Honasan who requested then DAR Secretary Virgilio delos Reyes for the allocation of ₱20 Million subject of these cases. He signed the MOAs as representative of Secretary delos Reyes. The documents signed by accused Nieto were endorsed by Usec. Jerry Pacturan, which indicates that these were sufficiently studied and reviewed, and he had thus enough reason to rely thereon, especially considering his vast duties as undersecretary, which he is presumed to have regularly performed. Moreover, the prosecution failed to prove that he affixed his signature through manifest partiality, evident bad faith, or gross inexcusable negligence.

Accused Nieto further argues that there is no evidence that he misappropriated, took, or consented to Workphil's taking of the ₱20 Million, or received any kickbacks. None of the witnesses alleged his receipt of funds belonging to the government. In fact, he served the government from 1979 to 2012 without being involved in any anomaly. In the Joint Sworn Statement of Ms. Bernadette Ricalde, alleged incorporator of Workphil Phils., Inc., she said nothing to suggest accused Nieto's involvement in dealings with PDAF projects, or with Workphil Foundation, Inc. Ricalde's testimony that no Vermi-composting project was ever implemented in Luna and Gamu, Isabela, during her tenure belies the prosecution's assertion that funds were misappropriated therefor. Similarly, the Sinumpaang Salaysay of Teresita Reyes, purported president of Workphil Foundation, Inc., says nothing of his connection therewith.

Manuel Tio, former Mayor of Luna, Isabela, testified that he recalled all municipal programs implemented from 2004 to 2013, which he listed. However, this list was never produced. Tio had no list detailing NGO projects, but he asserted that Workphil had no dealings with Luna, Isabela, and that his signature on the Memorandum of Agreement was a forgery. However, as he testified, he did nothing to challenge it.

Finally, accused Nieto adverted to purported lapses in the Ombudsman's investigation. He pointed out that witness Ryan Medrano, graft investigator, did not directly engage with him, had no proof of interactions with residents of Luna, Isabela, and was uninformed of whether he actually received the Notice of Disallowance.

In its *Comment/Opposition*,³ the prosecution points out that accused Nieto's only ground in his demurrer is the failure to prove conspiracy and/or his overt act therein, which ground is too general, and falls short of the required specificity under Rule 119, Section 3. In any event, the matter of conspiracy is now inconsequential, as his co-accused, Rowena Agbayani, has already passed away, and accused Nieto's liability is separate and individual.

The prosecution was able to prove the following:

- (a) Accused Nieto signed the Memoranda of Agreement (Exhibits "A-397-a to 401-a" and Exhibits "A-424-a to 428-a") without taking

³ *Records*, Vol. 3, pp. 498-505.

the necessary caution to protect the interest of the agency he represents. He failed to demand the necessary legal documents attached to the MOA, and the signatures of the municipal mayors turned out to be forged;

(b) Accused Nieto failed to require Workphil to submit progressive project implementation reports, and to monitor the status of the implementation of the program;

(c) Accused Nieto signed the disbursement vouchers (Exhibits "A-393-a" and "A-420-a") despite the irregularity of the MOA and the absence of proof that Workphil was accredited by the LGUs, which facilitated the release of funds to Workphil;

(d) Accused Nieto signed the Obligation Requests (Exhibits "A-394 to 394-a" and "A-421-a");

(e) No Vermi-Composting project was implemented in the municipalities of Luna and Gamu, Isabela, by Workphil Foundation (Certifications – Exhibit "A", pages 418 and 444; Exhibit "A", pages 446, 448, 450, 452; Joint Sworn Statements – Exhibits "A-223 to 275");

(f) Astley Bauí Balmaceda's Sworn Statement that she had no knowledge of Workphil Foundation and that she did not sign the disbursement vouchers (Exhibit "A-284 to 310");

(g) The COA's Notice of Disallowance (Exhibits "A-470 to 471"; "A-470-a to 471-a") and 2012 Audited Consolidated Annual Report (Exhibit "A-455 to 469") finding irregularities in the MOAs, the non-justification of selecting Luna, Isabela, in lieu of Malig, Isabela, and that no Vermi-Composting project was implemented in Gamu and Luna, Isabela. Accused Nieto's receipt of the Notice of Disallowance is evidenced by his Appeal dated September 15, 2014 (Exhibit "A-472 to 485"); and

(h) The DAR, through accused Nieto, failed to take into consideration the provisions of COA Circular No. 2007-001 dated October 25, 2007 (Exhibit "B") on the selection of NGO partners.

The prosecution also emphasized that the other grounds in accused Nieto's *Motion* summarize his defense, which are not properly raised in a *Motion for Leave to File Demurrer to Evidence*.

At the outset, it bears to set straight the disquieting flaw in the prosecution's argument that Agbayani's death has rendered the matter of conspiracy inconsequential. As explained in *Typoco, Jr. v. People*,⁴

A conspiracy is in its nature a joint offense. The crime depends upon the joint act or intent of two or more persons. Yet, it does not follow that one person cannot be convicted of conspiracy. **As long as the acquittal or death of a co-conspirator does not remove the basis of a charge of**

⁴ G.R. Nos. 221857 & 222020, August 16, 2017.

conspiracy, one defendant may be found guilty of the offense. (emphasis supplied)

Agbayani's demise did not remove the basis for the conspiracy charged. In fact, the prosecution's evidence shows that both Agbayani and accused Nieto signed the disbursement vouchers, which made possible the release of funds to Workphil.

A demurrer to evidence is defined as "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."⁵

Thus, the court needs only to resolve whether sufficient evidence was produced to sustain the charges against accused Nieto. As the prosecution correctly observed, accused Nieto has raised grounds in his *Motion* that delve on his defenses, which need not detain this court at this point.

Accused Nieto has been charged with Violation of Section 3(e) of R.A. 3019 and Malversation of Public Funds, the elements of which are:

Violation of Section 3(e) of R.A. 3019	Malversation of Public Funds
(1) the offender is a public officer;	(1) the offender is a public officer;
(2) the act was done in the discharge of the public officer's official, administrative or judicial functions;	(2) he has the custody or control of the funds or property by reason of the duties of his office;
(3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and	(3) the funds or property involved are public funds or property for which he is accountable; and
(4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference. ⁶	(4) he has appropriated, taken or misappropriated, or has consented to, or through abandonment or negligence, permitted the taking by another person of, such funds or property. ⁷

Gauged from the evidence presented, it appears that the prosecution has presented sufficient evidence to establish these elements, supposing none was presented by the defense to refute them, thus:

Violation of Section 3(e) of R.A. 3019	Malversation of Public Funds	Evidence Presented
(1) the offender is a public officer;	(1) the offender is a public officer;	Stipulated during pre-trial – Pre-trial Order

⁵ *Rivera v. People*, G.R. No. 163996, June 9, 2005.

⁶ *Sabaldan, Jr. v. Office of the Ombudsman for Mindanao*, G.R. No. 238014, June 15, 2020.

⁷ *Duero v. People*, G.R. No. 162212, January 30, 2007.

<p>(2) the act was done in the discharge of the public officer's administrative or judicial functions;</p>		<p>dated January 10, 2022⁸</p>
	<p>(2) he has the custody or control of the funds or property by reason of the duties of his office;</p> <p>(3) the funds or property involved are public funds or property for which he is accountable; and</p>	<p>Disbursement Vouchers – Exhibits “A-393-a”; “A-420-a”</p> <p>Obligation Requests – Exhibit “A-394-a”; “A-421-a”</p> <p>COA Circular No. 2007-001 – Exhibit “B”</p>
<p>(3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and</p> <p>(4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.</p>	<p>(4) he has appropriated, taken or misappropriated, or has consented to, or through abandonment or negligence, permitted the taking by another person of, such funds or property.</p>	<p>COA Circular No. 2007-001 – Exhibit “B”</p> <p>Workphil’s Incorporation Documents – Exhibit “A” (pages 74 to 222)</p> <p>Memoranda of Agreement – Exhibits “A” (pages 397 to 401); “A-424-a” to “A-428-a”</p> <p>Sworn Statements and Certifications – Exhibits “A” (pages 412 to 417; 418; 438 to 443; 444; 445 to 448; 449 to 450)</p> <p>Official Receipts – Exhibits “A-392-a”; “A-419-a”</p> <p>Notice of Disallowance – Exhibit “A-470-a” “A-472-a”</p>

Despite the delineation of the foregoing exhibits to sustain the charge, accused Nieto did not even attempt to discuss why, upon their admissibility, such evidence is not sufficient to prove the elements of the charges. Instead, accused Nieto was more concerned with debunking: (i) the theory of

⁸ Records, Vol. 2, pp. 492-500.

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conspiracy between him, Agbayani and/or Workphil when this could not be proven by his mere signature appearing in the Memoranda of Agreement, Obligation Requests and Disbursement Vouchers but by an overt act which was not proven; (ii) the fact that his signature in the MOAs was only to represent DAR Secretary Virgilio delos Reyes, having been endorsed by Usec. Jerry Pacturan, which indicates that these were sufficiently studied and reviewed; hence, did not cause undue injury to the government or give unwarranted benefit, advantage, or preference to Workphil; and (iii) the lack of evidence that he misappropriated, took, or consented to Workphil's taking of the ₱20 Million or received any kickbacks.

It appears that accused Nieto is already delving into the merits of the charges when only the admissibility of prosecution's evidence has been considered in the resolution of the formal offer. Verily, the probative value of prosecution's evidence cannot be discerned at this time. At this point, the sufficiency of prosecution evidence is only weighed from its own vantage point, disregarding the intended defense or refutation of the accused, to preliminarily settle the existence of the elements of the charges. From hereon, accused Nieto need only present his own defense evidence.

WHEREFORE, accused Narciso B. Nieto's *Motion for Leave to File Demurrer to Evidence* is **DENIED** for lack of merit.

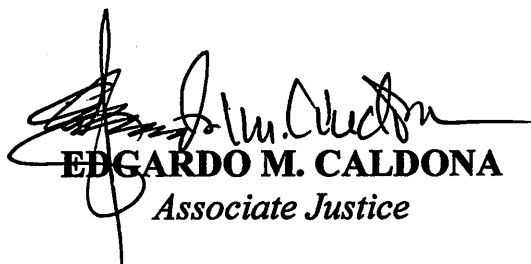
The parties are reminded of the setting for the presentation of defense evidence on November 28, 2023, at 8:30 in the morning.

SO ORDERED.


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

WE CONCUR:


ZALDY V. TRESPESES
Associate Justice


EDGARDO M. CALDONA
Associate Justice