

REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

Crim. Case No. SB-17-CRM-0283
For: Violation of Sec. 3(e), R.A. 3019,
as amended

**MELQUIADES A. ROBLES,
FEDERICO J. CANAR, JR.,
MARILOU B. LISCANO,
ELMO STEPHEN P. TRISTE,
EDUARDO A. ABIVA,
NICOLAS G. OMBAO,
DENNIS L. FRANCISCO,
EVELYN L. MACALINO,
MAYNARD S. TOLOSA,
ROGER L. VAÑO,
JULIET U. LABISTO,
LILIA S. DIAZ and
DENNIS BN ACORDA,**

Accused.

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Present:

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

Promulgated on:

20 November 2019 *Jed*

RESOLUTION

LAGOS, J.:

This resolves the following: (1) Demurrer to Evidence filed by accused Marilou B. Liscano, through counsel, and dated 23 September 2019; (2) Demurrer to Evidence filed by accused Melquiades A. Robles, through counsel, and dated 20 September 2019; (3) Demurrer to Evidence (With Leave of Court) filed by accused Lilia Diaz, through counsel, and dated 20 September 2019; (4) Joint Demurrer to Evidence filed by accused Dennis Francisco, Federico Canar, and Evelyn Macalino, through counsel, and dated 20 September 2019; (5) Joint Demurrer to Evidence (With Leave of the Honorable Court) filed by accused Elmo Stephen P. Triste, Eduardo A. Abiva, Nicolas Ombao, Juliet Labisto, Roger Vaño, and Maynard Tolosa, through counsel, and dated 20 September 2019; (6) Demurrer to Evidence filed by accused Dennis BN Acorda, through counsel, and dated 23 September 2019; (7) Consolidated Comment/Opposition (on the Demurrer to Evidence of Accused) with Manifestation and Prayer Pursuant to the Provision of Section 40, Rule 132 of the Rules of Court filed by the prosecution and dated 14 October 2019.

The demurrers filed by all of the accused, with leave of court, all argue that the prosecution miserably failed to prove their guilt beyond reasonable doubt as there was insufficient testimonial and documentary evidence to prove the allegations in the Information.

2 for

The prosecution counters that had the Honorable Court admitted Exhibits "B" to "B-18" and "D" to "D-42" (also marked as "C" to "C-42") the same would support the indictment of accused under Section 3, paragraph 3, RA 3019, together with the testimony of its witnesses. In its opposition, the prosecution made a proffer of proof or tender of excluded evidence asking that the said exhibits be considered in the resolution of these demurrers.

The Amended Information in this case reads:

That between 05 January 2009 and 17 February 2009, or thereabout, in Pasay City, Philippines, and within this Honorable Court's jurisdiction, public officers Melquiades A. Robles, then Administrator of the Light Rail Transit Authority (LRTA); Federico J. Canar Jr., Department Manager, LRTA Line 1, Operations and Engineering Department; LRTA Special Bids and Awards Committee (SBAC) members, namely: Marilou B. Liscano, Elmo Stephen P. Triste and Eduardo A. Abiva; the LRTA SBAC-Technical Working Group (TWG) members, namely Dennis L. Francisco, Evelyn L. Macalino, Nicholas G. Ombao, Roger L. Vaño, Maynard S. Tolosa and Juliet U. Labisto; while in the performance of their official functions, conspiring with one another and with private individuals from Joint Venture of COMM Builders and Technology Philippines Corp., PMP Incorporated, and Gradski Saobračaj GRAS (Joint Venture), namely: Lilia S. Diaz and Dennis BN Acorda, with evident bad faith, manifest partiality or gross inexcusable negligence, did then and there willfully, unlawfully and criminally give unwarranted benefit, advantage or preference to the Joint Venture, by paying it PHP 3,373,808.51 per month for the deployment of 321 janitors while allowing and/or causing the reduction of the required number of janitors to be deployed by Joint Venture from a minimum of 321 to 219, thus, modifying the terms of the Contract with the Joint Venture for the Maintenance of the LRT Line 1 System, causing undue injury to LRTA in the amount of PHP 1,072,051.30 per month or PHP 12,864,615.63 alone.

After being arraigned, all the accused entered pleas of not guilty. At the preliminary conference, the prosecution provisionally marked its exhibits as the originals were allegedly not available. Trial ensued and the prosecution presented four witnesses, namely: Lolita Soriano (whose testimony was however not finished), Sonia Bermillo, Atty. Hernando Cabrera and Philip Daniel Mathews. After the prosecution formally offered its documentary evidence, the Court denied most of the prosecution's exhibits as these were in violation of the Best Evidence Rule. Only the complaint filed by the Field Investigation Office (FIO) and its annexes were admitted¹.

Leave of Court to file demurrers was issued by the Court on September 9, 2019. After the filing of the respective demurrers by all of the accused, and the opposition of the prosecution, the Court now resolves these matters, hence this Resolution.

¹ See Exhibits "A" to "A-11"

ANTECEDENT FACTS

On 5 January 2009, COMM Builders & Technology Inc. – PMP, Inc. – Gras Saobracaj Joint Venture (the “Joint Venture”), as the winning bidder in the procurement for goods and services conducted by the LRTA in accordance with Republic Act No. 9184, otherwise known as the Government Procurement Reform Law, executed a Contract for Maintenance of LRT Line 1 System, of even date with the said authority for the delivery of maintenance, goods and services over the Manila LRT Line 1 System. This Contract took effect on January 16, 2009.

The prosecution alleges that the Joint Venture caused the under-delivery of maintenance and/or janitorial personnel required by the Contract as only 219 janitors out of the required 321 janitorial crew were provided. Moreover, the Joint Venture was allegedly the recipient of regular disbursements for services rendered under the Contract, despite the supposed “under-delivery” of the requisite number of personnel and despite supposed failure to submit the required documents, including staff payrolls, to support and/or justify such disbursements. The prosecution thus contends that no proportionate reduction of payments (due to the decreased number of janitors) was made by the accused to the Joint Venture.

The FIO Ombudsman anchored and started its investigation based on a letter from Engr. Julito Z. Bernales addressed to the LRTA Legal Department, which partly alleged that “based on available records of LRTA, it would appear that Joint Venture applied for gate passes for more or less two hundred nine (209) personnel only. This number is short of the required number of personnel pursuant to the contract wherein Joint Venture is bound to hire and deploy Seven Hundred Ninety Three (793) personnel [Maintenance-personnel]. Aside from this data, LRTA did not have any documents showing the Joint Venture’s compliance with regard to the deployment of personnel”².

Engr. Bernales then issued a sworn statement dated March 18, 2013, wherein he stated that:

4. In this office letter, you mentioned of the 209 personnel of the COMM Builders, PMP Inc., and GRAS Joint Venture (CPG-JV for brevity) who had applied for the gate passes to the areas of the LRT Line 1. In a *Subpoena Duces Tecum* dated 15 June 2011, this Office directed you to submit the gate passes you were referring to in the letter, and you submitted to us a list of personnel of the CPG-JV with duly signed applications forms for 2011 duty pass (Annex B). Is this list the basis of your conclusion that only 209 personnel of the CPG-JV had applied for the gate passes?

Answer: Yes, that list is the basis of my conclusion. The IDs/duty passes issued to the personnel of the CPG-JV had a six-month validity. So we’d receive the same request for renewal of

² Records, Volume 1, p. 278.

the IDs/passes, and the same attached list every six months. The number of personnel had not changed substantially; 95% of the personnel in the list were the same personnel who had previously applied for the gate passes³.

These revelations of Engr. Bernales prompted the FIO to investigate the matter, resulting in the FIO Complaint signed and filed by Corrine Garillo. This Complaint was then resolved by the Ombudsman, after preliminary investigation, leading to the filing of the Information and Amended Information in this case.

Evidence for the Prosecution:

Prosecution witness Atty. Hernando Cabrera

After Atty. Cabrera, the witness was sworn in, the prosecution adopted his Judicial Affidavit as his testimony with emphasis on his position and functions as Corporate Board Secretary of Light Rail Transit Authority since 2010 until the present and that he was a consultant of the LRTA from 2004 to 2010.

As the Corporate Secretary, he was tasked to set the meeting of the Board, prepare and collate documents for the Board's agenda, keep minutes and records of the meetings and all actions and decisions of the Board, provide immediate advice to the Board on matters under consideration, and participate as the Chairman/member of the BAC-Technical Working Group.

Sometime in 2008, he received from the management of LRTA copies of the bid documents for the maintenance of the LRTA Line 1, which he collated and transmitted to the Board. Included in the documents he forwarded to the Board were draft contracts and the Terms of Reference, which the Board approved in their July 2, 2008 meeting. On December 19, 2008 the Board awarded the contract to Comm Builders & Technology Inc. Sometime after the approval of the award of contract, the witness was furnished an official copy of the approved and notarized contract.

The Office of the Ombudsman requested a certified true copy of the approved contract and the TOR which is now marked as Exhibit "B" to "B-18" and Exhibit "D" to "D-42".

After the perusal of the Judicial Affidavit, the defense manifested that the attached documents in the Judicial Affidavit marked as Exhibit "B"- series and "D" - series were only photocopies. The Court asked if the prosecution had the original certified copies. Pros. Quintela said that they did have the original certified copies and they will request for the transfer of markings from the photocopies to the original certified copies.

The defense objected to the fact that none of the original documents were presented and only the certified true copy was available.

³ Records, Volume 1, p. 271.

After the witness identified the certified true copies of the documents he submitted to the Ombudsman, the Prosecution asked that the transfer of markings from the photocopies to the certified true copies be made, the Contract as Exhibit "B" and series and the TOR as "D" and series.

The Court asked when the witness certified the copies but the witness could not remember. The witness was also asked if he saw the original copy of the documents, Atty. Cabrera said he did not. The Court then asked how could he have certified the photocopied documents if he did not see the original documents and Cabrera only answered that the documents contained in the agenda folder were the same documents.

The cross-examination was rescheduled to January 17, 2019 and the prosecution was also asked to present their witness Ms. Lolita Soriano.

During Atty. Evangelista's cross examination, the witness was asked about the two documents stated in his judicial affidavit and the purpose of the transmittal of said documents to his office. The witness replied that the purpose of such transmittal was for the Board to act on it, whether it be for approval, notation, or for further instruction. When asked if he would agree that those transmitted documents were not yet signed because the Board still needed to deliberate on the terms and conditions of the contract and TOR, the witness answered yes. The witness confirmed that he was usually appointed as the Chairman of the BAC or the TWG in the LRTA and that they only had recommendatory powers. The defense counsel also clarified that the BAC becomes *functus officio* after the contract has been awarded and that the terms of reference becomes part of the contract.

During Atty. Liwanag's cross examination, the witness was asked if he examined the validity, legality, and propriety of the bid documents, consisting of the Instruction to Bidders, Terms of Reference, and the draft of the contract for the maintenance of the Manila LRT Line 1 system that he prepared and collated according to his judicial affidavit, the witness answered in the negative and that he had no knowledge of what was written in the documents. When asked if he found any irregularity in the procurement award and execution of the contract for maintenance awarded to the joint venture of COMM Builders and Technology Inc., the witness said that as Corporate Secretary, was not within his competence and office to make any review or recommendation. The Chairperson asked if he was a member of the BAC and he replied no. When asked to clarify his statement in his judicial affidavit that one of his duties was to give immediate legal advice against transactions entered by the LRTA, he answered that the Board did not ask him to make any review or recommendation. Asked if during the implementation of the contract, is contract variation or modification legally allowed, he answered that it was outside the purview of his office or position.

The other defense counsels adopted the cross examinations of their colleagues for their respective clients.



Prosecution witness Philip Daniel B. Mathews

The direct testimony of prosecution witness Philip Daniel B. Mathews is covered by his Judicial Affidavit dated April 5, 2019.⁴

During the cross-examination, the witness confirmed that he is employed as Associate Graft Investigation Officer II of the General Investigation Bureau of the Field Investigation Office, Office of the Ombudsman. He also said that in the present case, he conducted the evaluation of the complaint, issuance of the subpoena, and preparation of the investigation report. In the anonymous letter complaint that their office received, the witness narrated that the essence of the complaint is the Contractors COMM Builders Technology Philippines Corp., under the labor input for the maintenance of the LRT Line 1 System. When the witness inquired about the maintenance contract, he found out that the contractor has reduced the number of deployed personnel to LRTA Line 1 from the minimum requirement.

Mathews also confirmed that the Ombudsman found no sufficient evidence to prove that there was non-compliance with the minimum requirement with regard to the delivery of the technical personnel and the monthly maintenance cost of the LRT Line 1 System. According to the witness, he based this finding not only from a certain Engineer Bernales but also from the Minutes of the Meeting from SBAC and the computer generated list from the Money Source Division of the LRTA. The witness also explained that there are two types of personnel required by the contractor who facilitated in the maintenance contract – the delivery of more than 400 personnel aside from the preventive and corrective maintenance of LRDs and the other were the deployment of janitors. Mathews also confirmed that the documents in the case were submitted by COA. He also confirmed that he has undergone training in state auditing.

As narrated by the witness, he mentioned in his Judicial Affidavit that there was no proportionate reduction of monthly claims by the contractor. He based such finding from public documents. Mathews stated there was a 2015 COA audit that inquired into the matter. As confirmed by the witness, his opinion is not supported by the said COA audit. The witness also averred that they did not interview the people from LRTA but the former did issue subpoenas, requiring them to submit their payrolls and several documents showing their salaries and the number of deployed personnel. According to the witness, none complied with the directive.

As stated in his Judicial Affidavit, Mathews confirmed that the LRTA had effected the release of an average of Php34,800,000.00 monthly, more or less, from February 2009 to December 2009. He further narrated that the actual amount released was Php34,798,396.01, but the indicated amount in the Official Receipt was Php32,000,000.00. He testified that he was tasked to prepare an investigation report but he

⁴ Records, Vol. 7, pp. 97-117.

did not bring a copy of said report. He admitted that there was no computation about any overpayments in the investigation. The witness also confirmed that he only did the computation contained in his Judicial Affidavit after he saw the Information. As averred by the witness, the computation in his Judicial Affidavit amounted to Php5,275,568.76. He also stated that his computation is different from the computations of the lawyers in the Office of the Ombudsman handling the preliminary investigation.

In the continuation of the cross-examination, Mathews confirmed that aside from the two Minutes of the Meeting from SBAC, he has no other evidence to show that the number of janitors were reduced. The witness also narrated that the participation of a certain Lilia Diaz was only to receive the amount of the payment. He then confirmed that there was no excess payment in the maintenance contract of Php35,662,480.00. He also affirmed that the amount paid by the LRTA to the Joint Venture was less than the monthly consideration as contained in the contract.

Prosecution witness Sonia B. Bermillo

The witness, Sonia B. Bermillo, confirmed that she was the assistant auditor of the audit team of the Light Rail Transit Authority (LRTA) from 2005 to 2012. As per witness, she was involved in the planning, supervision and monitoring of all audit activities of the said team. She stated that her immediate superior reviews her output.

The witness stated that she conducts post-audit of transactions, journal vouchers, disbursement vouchers and review contracts. She averred that it is a part of their custodial functions to regularly check the records. As per witness, they are required to submit monitoring reports on the custody of the documents but they do not maintain an inventory logbook.

The witness confirmed that the subject matter of the current case pertains to the 2009 contract for the maintenance of LRT Line 1 System of the LRTA since this was covered by the disbursement vouchers that were requested from them. She stated that in the conduct of the post audit of the maintenance contract, billings, disbursements, journal entries and vouchers, they focus more on the financial aspect on the recording of the transaction. The witness confirmed that they evaluated the disbursements, checks, official receipts and vouchers, and did not find any irregularity on the transactions.

The witness confirmed that they keep the records transmitted to them for post audit. She stated that they have an inventory and transmittal of the documents transmitted to the Commission on Audit Special Audit Office (COA-SAO). As narrated by the witness, there is no written request from the COA-SAO that the original copies of the documents be transmitted to them.

The witness confirmed that they have an inventory of the documents transmitted to the Special Audit Team and the documents were received by a certain Joy Corteza of the Special Audit Team. She also stated that it is she and Joy Corteza who can attest that the documents attached to the inventory were actually transmitted to the Special Audit Team.

The witness confirmed that in the conduct of the post-audit, they are already in possession of the said documents that came from the LRTA. She explained that every time there is a team going to audit, it is already specified in the office order that they are going to coordinate with the team and provide all needed documents for the audit. She also confirmed that the documents were forwarded upon request of the Special Audit Team and a post-audit has already been conducted before the transmittal of the documents.

The witness averred that the document marked as "Exhibit A5" is part of the disbursement mentioned in the inventory but the said document is not listed in the inventory. She confirmed that the contract is not included in the documents identified during the interview for her Judicial Affidavit and that not all pertinent documents were submitted to the Office of the Ombudsman. As narrated by the witness, only copies of the disbursement vouchers were requested by the Office of the Ombudsman.

The witness confirmed that all the documents in their custody are originals, and these original documents were given to the Special Audit Office. She also confirmed that all the documents that she submitted to the Office of the Ombudsman were attached to her Judicial Affidavit.

In her re-direct examination, the witness explained that in the annual audit report, they focus on the financial aspects, i.e., the fairness of presentation of the accounts and more on the recording of the transaction. The witness further clarified that in the auditing of the financial transactions, the documents being evaluated are the disbursement vouchers and journal entry vouchers. She also said that in their conduct of the financial audit, they usually look into the journal entry vouchers and its supporting documents. The witness then referred to rows 1 to 10 under the heading CPG Billings of page 4 of 5 in the inventory in question.

The witness stated that the required documents for payment of claims are attached in the billings to the COA-SAO report. As per witness, the attachments include the accomplishment report, the official receipt and the invoice. She also explained that when they furnish copies of the disbursement voucher to the Special Audit Office, it is already understood that the supporting documents are intact with it.

The witness further explained that before they can process the claim, all supporting documents will be attached to the disbursement voucher and the person who received the inventory can attest to the

completeness of the submissions. She confirmed that it is standard practice that before the disbursement voucher can be processed, all required documents should be attached to the said voucher.

In her re-cross examination, the witness confirmed that there is no finding that the accused gave unwarranted benefit, advantage or preference to the Joint Venture by paying a Three Million Three Hundred Seventy-Three Thousand Eight Hundred Eight Pesos and 51 centavos (P3,373,808.51) per month for 321 janitors when audited but 219 only were deployed. She also affirmed that there is no finding that the contract caused undue injury to the LRTA in the amount of One Million Seventy-Two Thousand Fifty-One Pesos and 30 centavos (P1,072,051.30) per month or Twelve Million Eight Hundred Sixty-Four Thousand Six Hundred Fifteen Pesos and 63 centavos (P12,864,615.63) in 2009.

The witness confirmed that the transmittals were submitted to the COA-SAO and not to the Office of the Ombudsman. She averred that they did not enumerate the list of documents actually transmitted to the Special Audit Team. She also stated that there is no separate listing other than the inventory in question and that the actual transmittal of the documents to COA relies on her testimony and Ms. Corteza's receipt of said documents.

FACTS TO BE PROVEN

Breaking down the Amended Information, the following are the allegations that the prosecution needed to prove to obtain a conviction.

- a) That between **05 January 2009 and 17 February 2009**, Accused Robles, then LRTA Administrator, and other public officers, Federico J. Canar, Jr., Dennis L. Francisco, Evelyn L. Macalino, Marilou B. Liscano, Elmo Stephen P. Triste, and Eduardo A. Abiva, LRTA Special Bids and Awards Committee (SBAC) members; Nicholas G. Ombao, Roger L. Vaño, Maynard S. Tolosa, and Juliet U. Labisto, LRTA SBAC-Technical Working Group (TWG) members, conspired with one another and other private individuals from Joint Venture of COMM Builders and Technology Philippines Corp., PMP Incorporated, and Gradski Saobracaj GRAS (Joint Venture), namely: Lilia S. Diaz and Dennis BN Acorda and willfully, unlawfully and criminally committed the following acts:
 - 1) Giving unwarranted benefit, advantage or preference to the Joint Venture **by paying Php3,373,808.51 per month** for the deployment of 321 janitors;
 - 2) Allowing and/or causing the reduction of the required number of janitors to be deployed by Joint Venture **from a minimum of 321 to 219**;
- b) That the acts of the accused:

x-----x

- 1) Resulted to the modification of the terms of the Contract with Joint Venture for the Maintenance of the LRT Line 1 System;
 - 2) **Caused undue injury to the LRTA in the amount of PhP1,072,051.30 per month or PhP12,864,615.63 in 2009 alone; and,**
- c) That the accused committed the acts while in the performance of their official functions and with evident bad faith, manifest partiality or gross inexcusable negligence.

In the case of *People of the Philippines vs. Pablo Arposeple y Sanchez and Jhunrel Sulogaol y Datu (G.R. No. 205787, November 22, 2017)*, the Supreme Court in reversing the conviction of the accused and eventually acquitting them of the crime, said that:

In all criminal cases, the presumption of innocence of an accused is a fundamental constitutional right that should be upheld at all times, viz:

xxx xxx xxx

In consonance with this constitutional provision, the burden of proof rests upon the prosecution and the accused must then be acquitted and set free should the prosecution not overcome the presumption of innocence in his favor. Conversely, in convicting the accused all the elements of the crime charged must be proven beyond reasonable doubt.

Evidence on the required number of janitors

To prove that the LRTA and the Joint Venture entered into a contract for the Maintenance of the LRT Line 1 System, the prosecution marked Exhibits B to B-18 and D to D-42. Exhibit D-28 and D-29 were marked to prove the number of janitors agreed upon under the TOR of the contract, as it stated:

Human Resource Plan – the Human Resource Plan shall include a general description and outline of the bidder’s program regarding hiring and management of employees of the maintenance organization. The plan shall include an outline of an the projected manpower compliment necessary to fulfill all maintenance requirements **and must not be less than 472 personnel.** xxx

7.13.2 The total manpower deployment shall not be less than **321** and shall be sufficient to effectively perform all **janitorial** works for Rolling Stocks and Line Stations xxx⁵

Exhibits III and J⁶ to J⁶-3 were marked to establish that the SBAC and the Joint Venture agreed to exclude the depot area, thus a total of 102 janitors had to be deducted from the total of 321 janitorial crew to be

⁵See Exhibits D-28 and D-29.

supplied by the Joint Venture. This should have resulted in a reduction of the maintenance fee payable to the Joint Venture, according to the prosecution.

Unfortunately, the prosecution failed to produce the originals of these exhibits during the trial. While prosecution witness Cabrera identified Exhibits B to B-18 and D to D-42, through certified true copies of the same, Cabrera admitted in open court that he did not see the originals of these documents when he certified the same as true copies. He admitted that:

PROS. QUINTELA

Your Honors, the witness identified the certified true copies of the documents he submitted to the Office of the Ombudsman and in view of that, Your Honor, may we request for the transfer of the marking from the photocopies to the certified true copies as Exhibit -

JUSTICE LAGOS

Give it to the Assistant Clerk of Court.

PROS. QUINTELA

The Contract as Exhibit "B" and series, and the TOR as "D" and series, Your Honor.

xxx xxx xxx

JUSTICE LAGOS

Q Mr. Cabrera, when did you certify these copies, what date?

A May I be allowed to look into the contract, Your Honor.

JUSTICE LAGOS

There is no date.

WITNESS

A Yes, Your Honor. There is no date.

(Transcript of Stenographic Notes dated November 28, 2018, pages 18-19)

xxx xxx xxx

JUSTICE LAGOS

Q Did you certify these documents right after these documents were furnished you by the BAC?

WITNESS

A No, Your Honor, definitely not.

Q So, when did you certify. You try to recall?

A Usually, Your Honor, after a year, it depends, Your Honor, on the situation because on several occasions

I was asked by different offices from the LRTA as well as from the Office of the Ombudsman to issue a certified true copies of this particular document, of this particular transaction.

Q So who gave you the originals of these documents which you based your certification on?

A Your Honors, for purposes of the terms of reference the draft contract and the bidding documents **what I received in my office for board approval are mere Xerox copies**, but during the meeting the persons from whom did these documents emanate were present during the meeting and they somehow made a representation on those particular documents.

JUSTICE LAGOS

Q So, you did not see the originals?

A No, Your Honor. Under or(sic) practice then –

Q So how can you certify if you did not see the originals?

A Your Honors, because the documents that I have or contained in the agenda folder are exactly the same documents.

Q But were not originals?

A They are not originals, Your Honors. But I can say that the exact documents passed upon by the board are exactly the same documents.

xxx xxx xxx
(Transcript of Stenographic Notes dated November 28, 2018, pages 20-21. Emphasis and underscoring ours.)

A certified copy of a document is defined as “a copy of a document or record, signed and certified as a true copy by the officer to whose custody the original as entrusted.” (Black’s Law Dictionary, Sixth Edition). Not having seen the originals nor stating that he was the custodian of the same, his certification is absolutely valueless for the prosecution and thus these were denied admission. Therefore, the requirement of 321 janitors which was supposed to be proven by Exhibit D-28, was never established.

As for Exhibits IIII and J⁶ to J⁶-3⁶, these were also not admitted as no prosecution witness was able to produce the originals of the same. These Minutes of the Meeting of the SBAC were originally certified to be true copies by SBAC Secretariat Eduardo Abiva and Ma. Jinky Ferrer, State Auditor III. Both these persons were not presented by the

⁶ These were two SBAC Minutes of the Meetings which purportedly excluded the depot area to be manned by the Joint Venture’s janitors.

prosecution to identify the same. The prosecution tried to have Lolita Soriano identify the same alleging that the latter had custody of the originals but her testimony was cut-short because of the numerous objections of the defense counsels, resulting to the prosecution's not insisting that she finish her testimony.

Witness Matthews testified that apart from these two exhibits (Exhibits III and J⁶ to J⁶-3), he had no other evidence to establish that the accused, conspiring with each other, decreased the number of janitors from 321 to 219, in violation of the TOR of the contract. Considering the exclusion of the exhibits, there is therefore a total absence of documentary and testimonial evidence to prove the allegation that the number of janitors was pegged at 321 but reduced to 219 by the accused, specifically the members of the SBAC.

Evidence to prove a monthly payment of P3,373,808.51 for deployment of 321 janitors.

Considering that there is no conclusive evidence to establish that 321 janitors were agreed upon, the monthly payment of P3,373,808.51 alleged in the Information to have been paid to the Joint Venture for their services also has no leg to stand on. Moreover, a review of the prosecution's evidence, which include those which were not admitted by the Court, shows that there is no basis or computation on how this amount was arrived at. The journal entry vouchers, the budget utilization slips, disbursement vouchers, sales invoices marked by the prosecution (but excluded) do not indicate this amount as that paid for 321 janitors. Even witness Mathews' own computation which he admitted to have done only after the Information was filed, does not reflect said amount. So, where did the prosecution get this figure when it framed the Information?

Evidence to prove undue injury to LRTA in the amount of P1,072,051.30 per month or P12,864,615.61 for 2009 alone.

Witness Mathews stated in his judicial affidavit⁷ that:

18. What finding/s did you come up with as a result of your investigation?

Answer: The result of my investigation establishes that the number of janitors deployed by the contractor Joint Venture was reduced from a minimum requirement of 321 to 219 in violation of the maintenance contract. Despite the reduced number, however, there was no proportionate reduction of monthly claims by the contractor. Accused LRTA officials still effected the release of an average of PhP34,800,000.00 monthly to the contractor, resulting in overpayment.

⁷ Records, Volume 7, p. 97.

19. Based on your investigation, what prompted the reduction of deployment of janitors?

Answer: Based on the investigation, the scope of maintenance work area by the contractor Joint Venture was reduced to exclude depot area of LRT Line that was supposed to be manned by 102 janitors.

20. When was the reduction of deployment of janitors effected?

Answer: Based on the documents gathered during the investigation, the reduction of deployment of janitors was agreed upon by LRTA officials and the contractor Joint Venture during the meeting held on February 17, 2019.

21. What is your proof?

Answer: The minutes of the Special Bids and Awards Committee (SBAC) (Exhibit J⁶) held on February 17, 2019.

22. What is the basis of your findings that there was an overpayment to the contractor Joint Venture?

Answer: Because the monthly ceiling price was not adjusted despite the reduction of manpower deployed. The monthly claims should have been adjusted proportionately to deduct the 102 janitors. Based on the adjusted monthly ceiling price, the contractor could not collect more than PhP34,328,410.67.

He said that he prepared an investigation report to support the indictment of the accused but when asked if he had a copy of the same, he could not produce it. No investigation report was marked by the prosecution nor was one attached to the FIO complaint (Exhibit A-1). Mathews even said that no computation was done initially by the FIO but he later backtracked and said there was a computation done by the Ombudsman PACO lawyers (who never testified). However, such alleged computation was never produced in court. Worse, Mathews' own computation which was cited in his judicial affidavit only showed an overpayment of P5,275,568.76 for year 2009 and an overpayment between P469,985.33 up to P522,206.13 per month. These figures are too far off the figures alleged in the Information i.e. P12,864,615.61 for 2009 and P1,072,051.30 per month. The prosecution's own evidence conflicts with the allegations in the Information and is therefore not to be given any credence.



x-----x

Exhibit "R" marked by the prosecution is reproduced below:

COMB BUILDERS & TECHNOLOGY PHILS., CORP.

March 06, 2009

32,625,496.25

Countersigned:

MELQUIADES A. ROBLES
Administrator

MARILOU B. LISCANO
Manager, Finance Department

Payment for 2nd Billing-Claim payment No. 002 for the Line 3 Maintenance for the period February 1-28, 2009

0002-00-00-000

Handwritten notes and calculations, including a table with columns for dates and amounts.

Exh. 1

Date: 2/28/09

OFFICE OF THE CLERK OF THE COURT

CERTIFIED TRUE COPY
OF DOCUMENT ON FILE

AILENE MAQUEDA
Administrative Officer, 2009-12-18

CERTIFIED TRUE COPY
SONIA B. BERMILLO
STATE JUDICIAL III

0239

0093

Handwritten signature or initials at the bottom right of the page.

In Exhibit "R" there appears a deduction of P864,084.00 as an item for janitorial cost covering the LRTA depot. This together with BIR taxes reduced the monthly payment to the Joint Venture to P32,623,496.25. All the disbursement vouchers which the prosecution marked indicate almost the same figure for each month in year 2009. The receipts issued to the Joint Venture also evidence this amount. The theory of the prosecution that no corresponding reduction of monthly payments for the reduced number of janitors was therefore debunked because of the reduction by P864,084.00 on each monthly payment made to the Joint Venture as shown in the prosecution's own Exhibit "R", which was one of the exhibits it marked, but was not admitted.

Evidence to prove conspiracy.

It is the theory of the prosecution that the conspiracy among all of the accused are borne out by the documentary evidence it marked, a majority of which were not admitted. The main complainant Corrine Joie M. Garillo was never presented nor was the "whistleblower", Engr. Bernales. These two could have possibly supplied testimony about the alleged conspiracy among the accused. But alas, they were not called to the stand. No witness testified to establish conspiracy, not even that of Mathews, whose testimony had even diluted the prosecution's theory. In *People v. De la Cruz*⁸, the High Court ruled that:

It presupposes the existence of a pre-conceived plan or agreement; there must be a logical relationship between the commission of the crime and the supposed conspirators, evidencing a clear and more intimate connection between and among the latter, such as by their overt acts committed in pursuance of a common design.

To establish conspiracy, there must be evidence of intentional participation in the transaction with a view to the furtherance of the common design or purpose. His knowledge of the conspiracy and his active and knowing participation therein must be proved by positive evidence. (*Medija v. Sandiganbayan*, 218 SCRA 219 [1993]).

Here, the prosecution was unable to present any testimonial or documentary evidence to establish conspiracy by and among all of the accused.

Summarizing, the prosecution utterly failed to prove beyond reasonable doubt that:

- a.) accused, through evident bad faith, gross inexcusable negligence and/or manifest partiality, reduced the number of janitors from 321 to 219;
- b.) accused gave unwarranted benefit to the Joint Venture by paying the latter P3,373,808.51 for the deployment of 321 janitors;

⁸ 200 SCRA 379 (1991).

- c.) accused caused undue injury to the LRTA to the tune of P1,072,051.30 per month or P12,864,615.63 in 2009; and
- d.) there was conspiracy among the accused.

The Court, thus, has no recourse but to grant the demurrers filed by the accused as there is no sufficient evidence to prove their guilt beyond reasonable doubt.

WHEREFORE, premises considered, the respective Demurrers filed by all of the accused namely: **MELQUIADES A. ROBLES, FEDERICO J. CANAR, JR., DENNIS L. FRANCISCO, EVELYN L. MACALINO, MARILOU B. LISCANO, ELMO STEPHEN P. TRISTE, EDUARDO A. ABIVA, NIC OLAS G. OMBAO, ROGER L. VAÑO, MAYNARD S. TOLOSA, JULIET U. LABISTO, LILIA S. DIAZ** and **DENNIS BN ACORDA**, are **GRANTED** for insufficiency of evidence. All of the accused are, therefore, ordered **ACQUITTED**, and the Hold Departure Orders issued against them are **LIFTED** and **SET ASIDE**.

SO ORDERED.

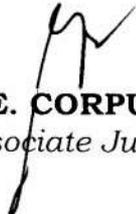


RAFAEL R. LAGOS
Associate Justice/Chairperson

WE CONCUR:



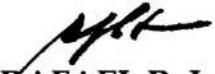
MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice



MARYANN E. CORPUS-MAÑALAC
Associate Justice

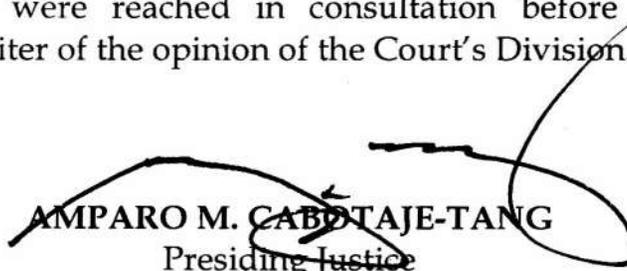
ATTESTATION

I attest that the conclusions in the above Resolution were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


KAFael R. LAGOS
Chairperson, Fifth Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is certified that the conclusions in the above resolution were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


AMPARO M. CABDTAJE-TANG
Presiding Justice

