REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SPECIAL THIRD DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	Criminal Case No. 25819 For: Violation of Section 3(e) of Republic Act No. 3019 *Present:*
- versus -	CABOTAJE-TANG, PJ., *Chairperson* MARTIRES, J. QUIROZ, J.
FERNANDO Q. MIGUEL and GASPAR E. NEPOMUCENO, *Accused.*	*Promulgated on:* NOVEMBER 24, 2016

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RESOLUTION

Martires, J.:

For resolution is accused Fernando Q. Miguel's MOTION FOR RECONSIDERATION of the Court's Decision[1] finding him guilty of the crime of violation of Section 3(e) of Republic Act No. 3019, otherwise known as the "Anti-Graft and Corrupt Practices Act". The dispositive portion of the said Decision states:

> "**WHEREFORE**, finding accused Fernando Q. Miguel guilty beyond reasonable doubt of the offense of violation of Section 3(e) of Republic Act No. 3019 (R.A. No. 3019), judgment is hereby rendered sentencing the said accused to an indeterminate prison term of SIX (6) years and ONE (1) month, as minimum, to TEN (10) years, as maximum, and to suffer perpetual disqualification from public office.
>
> The case against the other accused, Gaspar E. Nepomuceno, who remains at large is ordered

[1] Promulgated on 29 February 2016, Records, Vol. 6, pages 4-25.

archived and let an *alias* warrant of arrest be issued against him.

SO ORDERED."

Accused Miguel set forth the following arguments in his Motion for Reconsideration as grounds for the reversal of the court's Decision and his acquittal in this case:

1. There is no evidence showing:

   a. that accused is the author of the non-publication of the Invitation to Bid;

   b. that accused was aware of the supposed falsification of the affidavit of publication;

   c. that accused singlehandedly performed each and every act of the supposed grand scheme to favor Nepomuceno;

   d. that accused was in conspiracy with another in perpetrating the offense;

   e. any special circumstance, relationship or financial interest of accused Miguel to favor accused INDEX or Nepomuceno;

2. Invoking the Arias Doctrine, the accused, in good faith, merely relied on his subordinates;

3. The award of the contract to INDEX or Nepomuceno is ministerial; and

4. The accused is just a victim of machination.

The Court's Ruling

To warrant a reversal of the court's decision, the motion for reconsideration must specify the findings and conclusions that are alleged to be contrary to law or not supported by the evidence AND substantiate such errors. The motion must likewise present new matters or substantial arguments that have not been presented in the

previous pleadings and which have not been taken up in the assailed decision.

A cursory look at the accused's motion readily discloses that there are no new or substantial matters so compelling as to convince Us to reverse or modify Our ruling. Rather, the arguments presented in the motion have been more than sufficiently passed upon in Our Decision.

Nonetheless, We shall here tackle the arguments in the present motion.

To recall, the conviction of the accused in this case for violation of Sec. 3(e) of R.A. No. 3019 hinged on the finding that there was no publication of the invitation to bid for the subject contract for consultancy in an attempt to favor INDEX or Nepomuceno, the other accused and who supposedly won the bidding. The non-publication of the invitation to bid was purposely sought in order to prevent consultants, except Nepomuceno, from participating in the bidding. As it turned out, the bidding was rigged to ensure that Nepomuceno will secure the contract for consultancy. The perpetrators of the scheme went as far as fabricating pre-qualification bid documents and supposed copies of tabloids or newspapers purportedly showing the publication of the invitation to bid. The totality of the evidence unmistakably demonstrate the giving of unwarranted benefits or advantage to INDEX or Nepomuceno.

Contrary to the contention of the accused, there is ample evidence to link him, who was then the Mayor of the Municipality of Koronadal, South Cotabato, as the very author of the scheme to unduly favor Nepomuceno.

To begin with, it was the accused, as Mayor, who sent out a letter of invitation to qualified consultants to prepare a detailed architectural and engineering design. After the supposed publication of the invitation to bid in newspapers of general circulation, his office submitted to the Pre-qualification, Evaluation and Awards Committee (PEAC) the pre-qualification bid documents of five consultancy firms and what turned out to be fake copies of *Taliba* and an affidavit of publication. Except for Nepomuceno, the consultants later denied having submitted the purported pre-qualification bid documents that the Mayor's office had produced. In the end, the accused awarded the contract to Nepomuceno.

There is no denying that the accused had signed on or approved the letter of invitation as well as the award of the consultancy agreement to Nepomuceno. He himself admitted such facts. He also does not deny that the fabricated pre-qualification bid documents, fake copies of the newspapers and affidavit of publication had originated from his office. These are crucial as they tend to validate the linkage to the accused Mayor of the scheme to make it appear that the invitation to bid was in fact published.

The accused instead invokes the *Arias* doctrine in order to stave off culpability. He pointed to other persons who took charge in the publication of the invitation to bid and who prepared all the necessary documents for the award of the consultancy agreement to INDEX or Nepomuceno.

The accused is gravely mistaken.

The *Arias* doctrine refers to the ruling of the Supreme Court in *Arias v. Sandiganbayan*, 180 SCRA 309, to the effect that "all heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations." This doctrine, however, is not without exception.

In the case of *Cruz v. Sandiganbayan*[2], the Supreme Court stated that:

> Unlike in Arias, however, there exists in the present case an exceptional circumstance which should have prodded petitioner, if he were out to protect the interest of the municipality he swore to serve, to be curious and go beyond what his subordinates prepared or recommended. In fine, the added reason contemplated in Arias which would have put petitioner on his guard and examine the check/s and vouchers with some degree of circumspection before signing the same was obtaining in this case.

In the case at bar, the accused should have placed himself on guard when the documents that passed into his office for his personal scrutiny utterly showed tell tale signs of dubious character or origin.

[2] 504 Phil. 321, 334-335 (2005).

In particular, the copy of *Taliba* purportedly showing the publication of the invitation to bid should right away put a person on notice of its defect. The *Affidavit of Publication* executed by Mr. Roger Banta aside, there was every reason to doubt the veracity of the *Taliba* issue that the accused must have examined. As We had exhaustively discussed in the main Decision, the copy of *Taliba* relied upon by the defense conspicuously contains a superimposition on the portion of the tabloid purportedly showing the publication of the invitation. If indeed such copy in the hands of the accused at the time was original, then the fabrication would be more noticeable. If it was a mere photocopy, the accused ought to have demanded an original issue to verify the fact of publication. Even so, a simple inspection of the portion of the newspaper with the invitation to bid ought to have excited the suspicion of the accused on its integrity as the bottom part of the left column next to the column where the invitation is shown contains a truncated part of a notice, the continuation of which ought to have appeared on the very same section of the column where the invitation appeared. This observation had been thoroughly discussed in Our decision.

What is more, the *Sanggunian Bayan* resolution authorizing the Mayor to enter into a consultancy agreement came only after the supposed publication of the notice to bid and the award of the contract to INDEX. The accused should have known that he could not sign yet the approval and grant of the contract to INDEX without the authority coming from the *Sanggunian*. It seemed that the accused kept mum and still proceeded with the contract despite the clear deficiencies of the documents that he had personally scrutinized.

Contrary to the protestations of the accused, the award of the contract is not a ministerial duty. He cannot simply close his eyes to the manifest defects in the papers before him for his review. If he truly set out to protect the interests of the Municipality of Koronadal, he should not have blindly proceeded with the contract with Nepomuceno given the extant deficiencies. No other conclusion can be inferred other than his clear manifest partiality towards Nepomuceno, his co-accused and the co-conspirator by participation. In fact, the conviction would hold even without any showing of special circumstance, relationship or financial interest of the accused to favor Nepomuceno, as what the accused would like to impress. The crime is complete by giving unwarranted benefit or advantage to

a private person and it is not required that any money or property should eventually find its way into the hands of the public officer.

The accused laments that he is a mere victim of another's machinations. Sadly, he is unable to pinpoint who could have wronged him in implicating him to the irregularity surrounding the consultancy contract with INDEX or Nepomuceno. Such is, to Our mind, a weak defense that pales in comparison to the overwhelming evidence that the prosecution had presented to discharge its burden.

In sum, We find no cogent reason to justify the reconsideration of the herein stated Decision.

WHEREFORE, finding no merit in the Motion for Reconsideration of the accused Fernando Q. Miguel, the same is hereby DENIED.

SO ORDERED.

SAMUEL R. MARTIRES
Associate Justice

We concur:

AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson, Third Division

ALEX L. QUIROZ
Associate Justice