



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

Fifth Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-18-CRM-0153 to 0159

For: Section 3 (e) of Republic Act No.
3019

- versus -

SB-18-CRM-0160 to 0165

For: Article 171 of the Revised Penal
Code or Falsification of Public
Documents

HON. JEJOMAR C. BINAY, SR.
ET AL.,

Present:

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

Accused.

Promulgated:

July 30, 2018 *Jal*

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RESOLUTION

LAGOS, J.:

For resolution of this Court is accused Marjorie De Veyra and Pio Kenneth Dasal's Motion for Reconsideration¹, and the prosecution's Comment/Opposition².

The accused assail this Court's June 18, 2018 Resolution denying their Motion to Quash Information claiming that resorting to negotiated procurement or limited source bidding does not amount to any criminal offense as the said mode of procurement is allowed under R.A. No. 9184 and its IRR. Nor, allegedly, does failure to strictly comply therewith amount to a crime.

¹ Records, Vol. ___ pp. -.

² Records, Vol. ___ pp. -.

Jal

People v. Binay Sr., et al.

Criminal Case SB-18-CRM-0153 to 0159

Criminal Case SB-18-CRM-0160 to 0165

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The accused also claim that they have been charged to have falsified the bid proposals for the contract to make it appear that Infiniti was the most qualified proponent but the Informations readily show that the same did not state as to how the subject bid proposals were supposedly falsified particularly since the bid proposals were prepared and submitted by the architectural firms and not accused.

As to allegedly processing and releasing payments to Infiniti despite the lack of required documents and non-compliance with the requirements under R.A. No. 9184 and its IRR, accused Dasal claims he had no participation in the processing and release of the payments made to Infiniti and accused De Veyra claims that she only signed the disbursement vouchers on the basis of certifications and warranties made by the accounting division.

Accused also allege that there is no injury because the building was made and now stands. Also, allegedly, the fact that other architectural and engineering firms were invited to submit their respective proposals only shows that there was no intention at all to give Infiniti any unwarranted benefits, advantage and preference over others.

The accused likewise take exception to the finding of this Court that if the facts in the Informations in SD-18-CRM-0160 to 0165 were to be hypothetically admitted then accused will be held liable for violation of Article 171 of the Revised Penal Code. As per the accused, it is not possible for them to falsify the publication of the IAETB in the official website of Makati City when, according to the Ombudsman, the said IAETB was, in the first place, not published in the said official website of Makati City. Moreover, allegedly, those tasks belong to the members of the BAC Secretariat and not the accused.

The accused also takes issue with the charge of preparing and signing the Abstract of Bids and Post-Qualification Report despite knowing the absence of public bidding and allegedly making it appear in the BAC Resolution and the Abstract of Bids that Hilmarc's became the bidder with the LCRB, as against JBros Construction and ITP Construction, despite knowing the absence of public bidding and processing and releasing of the payments to the said contractor despite deficiencies in the required supporting documents. The accused asks how they have made it appear that Hilmarc's became the bidder with the LCRB when the figures or amounts that were stated in the subject resolutions and abstract of bids were merely based on the bid tenders submitted by Hilmarc's, JBros and ITP.

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The accused finally allege that since the Court ruled in favor of co-accused Badillo in his Motion to Quash as far as the acts attributed to him under the above-quoted paragraphs (a) of the Informations are concerned, fairness dictates that it should do the same on their motion insofar as the said paragraph (a) is concerned considering that all of them had the same nature and extent of participation thereunder as BAC members.

On the other hand, the prosecution submits that, in filing a motion for reconsideration, the accused should afford the Court the opportunity to correct its own error but they failed to do so because accused failed to specifically point out how the Court erred in its ruling. Furthermore, the prosecution asserts that the Court did not commit any error in its resolution, the Informations are clear enough and do not suffer from any defect or infirmity. All the elements of the crime could be readily seen in the subject Informations.

Moreover, the prosecution states that the arguments of the accused as to failure to comply with certain requirements of R.A. No. 9184 does not amount to a criminal offense is misleading, presumptuous and speculative. According to the prosecution, if they believe that the Office of the Ombudsman has no case against them, they should present their evidence to disprove the accusations instead of filing dilatory pleadings such as this motion for reconsideration.

DISCUSSION AND RULING

The accused broach a number of grounds to support their motion for reconsideration, namely that:

- (a) The negotiated procurement or limited source bidding does not amount to any criminal offense as the said mode of procurement is allowed under R.A. No. 9184 and its IRR.
- (b) The Information did not state as to how the subject bid proposals were supposedly falsified particularly since the bid proposals were prepared and submitted by the architectural firms and not accused
- (c) Accused Dasal had no participation in the processing and release of the payments made to Infiniti while accused De Veyra only signed the disbursement vouchers on the basis of certifications and warranties made by the accounting division.
- (d) There is no injury because the building was made and now stands.
- (e) The fact that other architectural and engineering firms were invited to submit their respective proposals shows that there was no

People v. Binay Sr., et al.

Criminal Case SB-18-CRM-0153 to 0159

Criminal Case SB-18-CRM-0160 to 0165

X-----X

intention to give Infiniti any unwarranted benefits, advantage and preference over others

- (f) It is not possible for them to falsify the publication of the IAETB in the official website of Makati City when, according to the Ombudsman, the said IAETB was, in the first place, not published in the said official website of Makati City. Moreover, allegedly, those tasks belong to the members of the BAC Secretariat and not the accused.
- (g) The subject resolutions declaring Hilmarc's the bidder with the LCRB and abstract of bids were merely based on the bid tenders submitted by Hilmarc's, JBros and ITP.

The abovementioned arguments of accused De Veyra and Dasal essentially delve on evidentiary matters that are best passed upon in a full-blown trial. The matters they bring up pertain to factual matters that cannot be threshed out conclusively during the preliminary stage of the case. The accused, through their motion to quash and their motion for reconsideration, effectively argue the presence or absence of the elements of the crime of Section 3 (e) and falsification which makes it evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits. Precisely, this is the purpose of a trial for the presentation of prosecution's evidence in support of the charge.

The accused likewise allege that since the Court ruled in favor of co-accused Badillo in his Motion to Quash, as far as the acts attributed to him under the above-quoted paragraphs (a) of the Informations are concerned, fairness dictates that it should do the same on their motion insofar as the said paragraph (a) is concerned considering that all of them had the same nature and extent of participation thereunder as BAC members.

In quashing the Information against Badillo, the Court stated that:

Accused-movant's participation is alleged only in paragraph (a) and (b) of the Information. The acts alleged in paragraph (a) can be broken down into two (2) parts, namely:

- (1) Matters relating to the posting and contents of the IAETB;
- and
- (2) Preparing and signing the Abstract of Bids and Post Qualification Report.

On the other hand, paragraph (b) of the Information reads:

People v. Binay Sr., et al.

Criminal Case SB-18-CRM-0153 to 0159

Criminal Case SB-18-CRM-0160 to 0165

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(b) De Veyra, San Gabriel, Dasal, Amores, Uyaco, Nayve and Liberato collectively making it appear in the BAC Resolution and the Abstract of Bids that Hilmarcs, through Canlas, was the Bidder with the Lowest Calculated and Responsive Bid, which documents were signed and approved by Binay, Jr. despite knowing the absence of public bidding; "

It is apparent that matters relating to the contents of the IAETB are within the functions of the BAC Secretariat. Accused-movant is not alleged to be a member of the BAC Secretariat. Therefore, he could not have participated in these matters.

Under paragraph (b), the accused San Gabriel, Dasal, Amores, Uyaco, Nayve and Liberato are charged with collectively making it appear in the BAC Resolution and the Abstract of Bids that Hilmarc's, through Canlas, was the Bidder with the Lowest Calculated and Responsive Bid, despite the absence of a public bidding.

Accused San Gabriel was the BAC Vice-Chairman; Dasal and Amores were BAC Members; Uyaco was the BAC Secretariat Head; Nayve was the BAC TWG Head; and Liberato was a BAC Secretariat Member. Evidently, these named accused have been charged under paragraph (b) of the Information in relation to their work as part of the BAC.

Notably, the name of accused-movant Badillo does not appear in paragraph (b), notwithstanding the fact that he was a BAC Member. Furthermore, under paragraph (a) of the Information, accused-movant is only charged with having prepared and signed the Abstract of Bids and the Post Qualification Report. He is not alleged to have signed any BAC Resolution concerning Phase VI of the questioned contract. The accused in paragraph (b) are also charged in relation to the preparation and signing of the Abstract of Bids, yet the accused-movant was not included among the accused therein. This only means that the prosecution admits that accused-movant herein was not part of any conspiracy.

The Joint Resolution of the Ombudsman also did not include accused-movant as one of those BAC members who issued and signed the BAC Resolution declaring LCRB and Recommending Approval for Phase VI of the questioned contract.

Firstly, this Court, in its previous resolution, already ordered the prosecution to amend the Information in SB-18-CRM-0159 to appropriately

People v. Binay Sr., et al.

Criminal Case SB-18-CRM-0153 to 0159

Criminal Case SB-18-CRM-0160 to 0165

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reflect accused De Veyra's participation or non-participation in the crime. Thus, the only question remaining in this motion for reconsideration is that of accused Dasal's role in the case and this is simply not the same as accused Badillo's.

Accused Dasal was accused of conspiring with Binay Sr. et al. through the acts described in paragraphs (a) and (b) of the Information, namely, (a) circumventing the provisions of R.A. No. 9184 and the (b) collectively making it appear in the BAC Resolution and the Abstract of Bids that Hilmarc's was the bidder with the Lowest Calculated and Responsive Bid despite knowing the absence of public bidding. On the other hand, as quoted above, accused Badillo was only accused of the acts described in paragraph (a), which severely limits the latter's involvement as opposed to accused Dasal, and, in turn, consequently means that accused Dasal's case is not on all fours with Badillo's. Therefore, the pronouncement of this Court in the case of Badillo cannot be applied to Dasal and must apply to Badillo alone.

Lastly, in assessing the sufficiency of the Informations at bar, this Court must look at the entirety of the Information, particularly considering the allegation of conspiracy. A piecemeal ruling such as the one the accused seeks in this case is untenable.

WHEREFORE, premises considered, accused Marjorie De Veyra and Pio Kenneth Dasal's Motion for Reconsideration is DENIED for lack of merit.

SO ORDERED.


RAFAEL R. LAGOS
Chairperson
Associate Justice

WE CONCUR:


**MARIA THERESA Y.
MENDOZA-ARCEGA**
Associate Justice


**MARYANN E.
CORPUS-MAÑALAC**
Associate Justice