



REPUBLIC OF THE PHILIPPINES  
**Sandiganbayan**  
 Quezon City

**SIXTH DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
**Plaintiff,**

**SB-17-CRM-0030**  
 For: Violation of Section 3(e),  
 Republic Act No. 3019

**- versus -**

*Present:*

**GERARDO PAAT VERZOSA,**  
**Accused.**

**FERNANDEZ, SJ, J.**  
*Chairperson*  
**VIVERO, J., and**  
**FERNANDEZ, B,\* J.**

*Promulgated:*

**OCT 18 2018**

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**RESOLUTION**

**FERNANDEZ, SJ, J.**

This resolves the *Motion for Leave to File Demurrer to Evidence*<sup>1</sup> filed on September 14, 2018 by accused Gerardo Paat Verzosa, together with the *Opposition*<sup>2</sup> filed on September 19, 2018 by the prosecution.

Accused Verzosa argues that the evidence presented by the prosecution is not only insufficient to prove the commission of the offense charged, but also contradicts the material allegations in the Information.<sup>3</sup> Accused Verzosa contends:

- a. There is no evidence that Mayor Kenneth Dale Mangaoang awarded the *Contract* to BENEKO.

\* Per Administrative Order No. 023-2017 dated January 31, 2017, Special Member in view of the inhibition of Justice Karl B. Miranda.  
 1 Dated September 14, 2018  
 2 (Re: *Accused's Motion for Leave to File Demurrer to Evidence*) dated September 19, 2018  
 3 *Motion for Leave to File Demurrer to Evidence* dated September 14, 2018, p. 3.

## RESOLUTION

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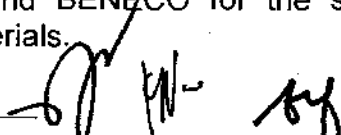
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- b. Contrary to the allegations in the Information, the materials were bidden out.
- c. The allegation that BENEKO is not authorized to engage in the business of supply and delivery of materials is legally unsound.
- d. Apart from the alleged award of the *Contract* without public bidding to BENEKO, no other fact was alleged and proved that Mayor Mangaoang gave unwarranted benefit, advantage or preference to BENEKO and/or that the accused acted with manifest partiality and/or evident bad faith.
- e. Assuming that the *Contract* was awarded in the manner alleged in the Information, evidence show that it was not in the performance of official or administrative functions. The procured materials pertain not to the Municipality but to KAELCO, the area electricity distributor mandated by law to build, own, maintain and operate the electric distribution lines in its area.
- f. Contrary to the allegations in the Information, the transaction did not cause any damage and/or prejudice to the government.
- g. There is no evidence that accused Verzosa acted in conspiracy with Mayor Mangaoang.<sup>4</sup>

On the other hand, the prosecution claims that it has presented sufficient and competent evidence to support a guilty verdict.<sup>5</sup> Thus:

- a. The contract for the supply and delivery of electrical materials was awarded to BENEKO. During the Pre-Trial, the parties stipulated that BENEKO submitted the lowest actual purchase cost from its suppliers, even lower than those of the National Electrification Administration and KAELCO. *Naturally*, the BAC recommended to award the contract to BENEKO and the same was approved by Mayor Mangaoang (Exhibit "M"). The testimonial and documentary evidence show that the electrical materials were delivered to Balbalan, Kalinga. BENEKO purchased the electrical materials and delivered them to the Municipality of Balbalan.
- b. The Purchase Orders (Exhibits "N", "EE", and "HHH") of the Municipality of Balbalan served as the contract between the Municipality and BENEKO for the supply and delivery of electrical materials.

  
<sup>4</sup> Motion for Leave to File Demurrer to Evidence dated September 14, 2018, pp. 4-11.

<sup>5</sup> Opposition dated September 19, 2018, p. 1.

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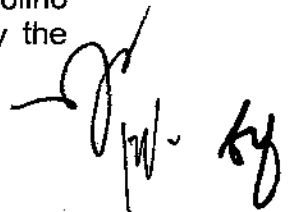
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- c. The Municipality of Balbalan disregarded the procedures of a "competitive bidding." The Municipality posted the Invitation to Bid and after one failed bidding, it resorted to shopping. The Municipality cannot properly resort to shopping because the cost of the materials is beyond the allowable amount under R.A. No. 9184. This is supported by Exhibits "I", "AAA", and "BBB" as well as the testimonies of Bernadette Pekas and Leonore Gunday.
- d. Accused' claim that BENEKO is engaged in the supply and delivery of electrical materials is untenable. The Articles of Incorporation of BENEKO (Exhibit "YY") states that BENEKO was formed primarily for the purpose of supplying, promoting, and encouraging the fullest use of electric service to its members on an area coverage basis pursuant to R.A. No. 6038. The supply of electric service is different from the supply/delivery of electric materials.
- e. Prosecution witness Randy Carolino, BENEKO's purchasing officer, testified that BENEKO is not engaged in the supply and delivery of electrical materials.
- f. Prosecution witness Brenda Carling, an employee of BENEKO for 29 years, did not mention that BENEKO is engaged in the business of supply and delivery of electrical materials. If BENEKO was engaged in the supply and delivery of electrical materials, it would not need to purchase the same from different suppliers.
- g. It was stipulated during the Pre-Trial that the electrical materials were not supplied by BENEKO but by several other entities and that BENEKO merely acted as a middleman in procuring the electrical materials. This allegation is further supported by Exhibits "DDD-3", "DDD-10", "DDD-10-A", "DDD-11", "DDD-11-A", "DDD-12", "DDD-13", "DDD-14", "DDD-15", "DDD-16", "DDD-17", "DDD-18", "DDD-19", "DDD-20", "DDD-21", "DDD-22", "DDD-25", "DDD-26", "DDD-27", "DDD-28", "DDD-29", "DDD-30", "DDD-31", "DDD-33", "DDD-34", and, "DDD-35"
- h. Accused Verzosa and Mayor Mangaoang conspired with one another to ensure that BENEKO will win the bidding.

Mr. Carolino testified that he received a Memorandum (Exhibits "DDD-3" to "DDD-5") directing him to provide Mayor Mangaoang with a list of BENEKO's latest cost of purchased materials vis-à-vis the cost estimate of KAELCO. Per verbal instruction of accused Verzosa, he wrote and attached thereto the tabulated comparative acquisition cost of BENEKO, cost estimate of KAELCO and NEA's price index (Exhibits "DDD-6" to "DDD-9"). Per Mayor Mangaoang's request, and as instructed by accused Verzosa, Mr. Carolino prepared Purchase Orders for the materials needed by the

Handwritten signature and initials, possibly "J. P. W." and "ky".

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Municipality of Balbalan and placed the order with the suppliers of BENEKO.

Mayor Mangaoang, not the BAC, directly transacted with accused Verzosa, and gave instructions on the procurement of the electrical supplies.

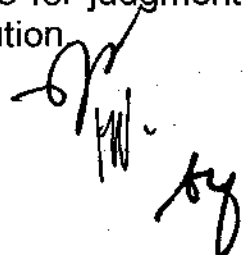
- j. The actual purchase and delivery of the electrical materials were rigged. Ms. Pekas testified that some specifications and quantities of materials as advertised in the Invitation to Bid do not tally with what was actually procured. Discrepancies in the quantity and unit prices of the items procured show that the project was bidden without a duly approved program of works and detailed estimate to determine the exact quantity and specifications of the project. The unit prices indicated in the Purchase Order are either higher or lower than the price indicated in the Abstract of Awards thereby showing that the result of the bidding was disregarded. Despite the discrepancies, the Municipality inspected the items delivered per Inspection and Acceptance Report. These are supported by Exhibits "E", "M", "N", "EE", "III", "GGG", "HHH", and, "JJJ".
- k. The procurement for the supply and delivery of electrical materials was conducted by the LGU Balbalan in the performance of its governmental functions. Mayor Mangaoang approved and signed the bidding documents, disbursement vouchers, checks, etc., in his capacity as the Municipal Mayor of Balbalan, Kalinga. Corollarily, the awarding of the contract to BENEKO was done in the official administrative function of Mayor Mangaoang.<sup>6</sup>

## RULING

After a careful study of the documentary and testimonial evidence presented by the prosecution, the Court finds that, if unrebutted, the same is sufficient to support a verdict of guilt for violation of Section 3(e), Republic Act No. 3019. The Court hereby **DENIES** the *Motion for Leave to File Demurrer to Evidence* filed by accused Gerardo Paat Verzosa.

This is without prejudice to the filing by the accused of a *Demurrer to Evidence* without prior leave of court, but subject to the legal consequence provided under *Section 23, Rule 119 of the Revised Rules of Criminal Procedure*, that is, he shall waive his right to present evidence and is submitting this case for judgment on the basis of the evidence adduced by the prosecution.

<sup>6</sup> Opposition dated September 19, 2018, pp. 2, 4-8.



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The accused is given a period of five (5) days from receipt of this Resolution within which to file, by personal filing and service, or through courier, his Manifestation to inform this Court whether he will file a *Demurrer to Evidence*, without leave of court.

The hearings set for the accused to present his evidence on November 5 and 6, 2018; January 10, 23, and, 24; February 6, 7, 13, 14, 19, and, 20, 2019, all at 1:30 in the afternoon, are maintained. The said scheduled dates will be considered automatically cancelled upon receipt by the Court of the *Demurrer to Evidence* of the accused.<sup>7</sup>

**SO ORDERED.**

  
**SARAH JANE T. FERNANDEZ**  
Associate Justice  
Chairperson

**WE CONCUR:**

  
**KEVIN NARCE B. VIVERO**  
Associate Justice

  
**BERNELITO R. FERNANDEZ**  
Associate Justice

<sup>7</sup> Pursuant to A.M. No. 15-06-10-SC, Revised Guidelines for Continuous Trial of Criminal Cases