



Republic of the Philippines
Sandiganbayan
Quezon City

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,

Plaintiff,

- versus -

SB-16-CRM-0463

**For: Violation of Sec. 3(e) of
R.A. No. 3019 (Anti-Graft and
Corrupt Practices Act)**

JERRY P. PASIGIAN,

Accused.

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PEOPLE OF THE PHILIPPINES,

Plaintiff,

- versus -

SB-16-CRM-0464

**For: Malversation of Public
Funds or Property (Article 217
of the Revised Penal Code)**

JERRY P. PASIGIAN,

Accused.

Present:

**Lagos, J., Chairperson,
Mendoza-Arcega and
Corpus-Mañalac, JJ.**

Promulgated:

February 20, 2019 led

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RESOLUTION

CORPUS - MAÑALAC, J.:

This treats of accused's Motion for Reconsideration of the Decision in the above-captioned cases promulgated on December 6, 2018, which found the accused guilty of violation of RA 3019, Section (e) and Malversation of Public Property.

Accused alleges that the Court erred in finding him guilty as charged in both cases.

He posits that in **SB-16-CRM-0463**, there was no proof of actual damage or undue injury to the government, and/or unwarranted benefits given to Gilbert Arellano in the municipality's purchase of the subject 2003 Nissan Patrol. To support such contention, he cites the case of *Soriano v. Marcelo*¹ which requires that the undue injury be *specified, quantified and proven to the point of moral certainty*. Allegedly, the purchase price of P1,350,000.00 could not be the basis of "undue injury" nor "unwarranted benefits" in the absence of any price comparison to determine its fairness.

In **SB-16-CRM-0464**, the posits that the Court's basis in finding him guilty of Malversation is speculative. The vehicle was returned to the municipality, and that the delay in its turnover was because the vehicle was "unserviceable and undergoing repairs." He also argues that even if the vehicle was registered in his name, it was nonetheless included in the list of the properties of the municipality. Allegedly, it was not him who caused the registration of the vehicle in his name, and that he did not put the same to his personal use.

The prosecution filed its Comment/Opposition thereto stressing that the arguments of the accused are mere rehash of his Memorandum dated October 8, 2018 and should be denied for lack of merit.

The motion is unmeritorious.

As the prosecution aptly argues, the motion is simply a restatement of what accused has argued in his Memorandum, which has been considered and passed upon in the assailed Decision. His present ratiocinations are mere duplication, thus they fall short of what would warrant a reversal of this Court's verdict. To the point of satiety, it bears to quote the assailed Decision which ruled:

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The following are the essential elements of violation of Sec. 3(e) of RA 3019:

X x x

The **first element** is clearly extant in this case, accused being the Municipal Mayor and was discharging his official and administrative function as such during the time material to these cases. Xxx

The **second element** is likewise present. Xxx

Here, the purchase of the subject vehicle was attended by an apparent violation of the Procurement Law, notably *Section 10, Article IV of RA 9184, which states that "xxx All*

¹ Hilario P. Soriano v. Ombudsman Simeon V. Marcelo, et al., G.R. No. 163178, January 30, 2009

Procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act.” The purchase of the vehicle sans the requires public bidding is highly irregular. Having signed and approved the Purchase Request, Purchase Order, Disbursement Voucher, Check No. 20946894 and the Inspection and Acceptance Report, notwithstanding the glaring absence of public bidding is suggestive of accused’s bad faith in pursuing the transaction, more so as the Purchase Request/Purchase Order specified outright the details of the vehicle to be purchased xxx

The specification of the brand name plate number, engine number and chassis number is categorically a violation of Section 18 of RA 9184 xxx

True, as alleged by the accused, “direct contracting,” is an alternative mode of procurement allowed by the Procurement Law, which is otherwise known as Single Source Procurement. Xxx To avail of the same validly, however, Section 50, Article XVI requires the following conditions, xxx

The record is bereft of any showing that the purchase of the subject vehicle fell under any of the foregoing conditions. On the contrary, accused’s bad faith can be deduced not only from its purchase without bidding but from the fact that the vehicle was registered in his name after its purchase in the Deed of Sale between Gilbert Arellano as “vendor” and himself as “vendee” and accused signed said deed as such. His assertion and he had no hand in its registration as it was Mr. Enrico Cruz of the GSO who worked on it is incredible. Evidence negates such claim since it was himself who paid the fees for the transfer of the vehicle’s registration in his name. Even assuming so as he claims, he nonetheless came to know later that the vehicle was under his name but admittedly he did nothing to correct the same. Worse evidence shows that the accused attempted to sell the vehicle to Mr. Ben Polig who initially paid him Php250,000.00. In fact, when the accused was pressed for the surrender of the vehicle to the municipality, he was able to return the vehicle after retrieving the same from Mr. Polig with whom he exchanged his L-200 Pick-up. He cannot, therefore, claim to have clean hands in his dealings with the subject vehicle when glaringly it was otherwise.

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Accused tries to justify that it was upon the advice of Atty. Costales, the Provincial Legal Officer, that direct contracting was resorted to, considering the “death threats” he was then receiving. He takes refuge in Section 53(b) of RA 9184 referring to a Negotiated Procurement xxx

However, the “imminent danger to life” contemplated by RA 9184 to justify a negotiated procurement does not cover

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the alleged “death threats” personal to the accused, which rather additionally requires the predicate situation of a “state of calamity” to justify the availing of a negotiated procurement. There was no calamity to speak of, or any other situation in the municipality where immediate action for the purchase of the vehicle was necessary.

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Evident is accused’s partiality towards Gilbert Arellano, the owner of the vehicle purchased, since it was only him who could possibly supply the vehicle intended to be purchased to the exclusion of other prospective bidders who may have offered an equivalent item at terms more advantageous to the municipality. In the same case of People vs. Atienza, et al., it was held that there is manifest partiality when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another, which is the situation in this case.


As regards the third element, the Court explained in *Cabrera v. Sandiganbayan* that there are two ways by which a public official violates Sec. 3(e) of R.A. No. 3019 in the performance of his functions, namely: (a) by causing undue injury to any party, including the Government; or (b) by giving any private party any unwarranted benefits, advantage or preference. The accused may be charged under either mode or under both. In this case, petitioner was charged of violating Sec. 3(e) of R.A. No. 3019 under both instances. The unwarranted benefit to Gilbert Arellano is manifested by the fact that he was the favored vendor in the transaction which did not go through public bidding. The damage and prejudice to the municipality is measured by the amount of municipal funds used in the purchase thereof as the same was spent for a transaction without bidding that deprived the municipality of the opportunity to procure an alternative item at better terms.

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Finally, the fourth element is likewise satisfied. Appropriating public funds or property includes every attempt to dispose of the same without right. Here, the vehicle was irregularly registered in accused’s name, which he tried to sell to Mr. Polig, as in fact, he benefitted from such disposition by receiving some partial payments from such sale. He gained from it financially. It does not matter if later he was able to turn over to the municipality the custody of the vehicle, as the fact of misappropriation has already been committed. Jurisprudence is replete enunciating that the return of



misappropriated property does exempt the accused from criminal liability.

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No new matter having been alleged in the instant motion assailing the Decision of December 6, 2018, thus, the Court finds no persuasive reason to reconsider.

WHEREFORE, accused's Motion for Reconsideration is hereby DENIED for want of merit.

SO ORDERED.


MARYANN E. CORPUS – MAÑALAC
Associate Justice

WE CONCUR:


RAFAEL R. LAGOS
Associate Justice
Chairperson


MARIA THERESA V. MENDOZA – ARCEGA
Associate Justice