



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-17-CRM-0483

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

- versus -

Present:

PABLO M. PAN, ET AL.
Accused.

FERNANDEZ, SJ, J.
Chairperson
MIRANDA, J., and
VIVERO, J.

Promulgated:

FEB 19 2019 *[Signature]*

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves the following:

1. *Motion for Leave to File Demurrer to the Evidence*¹ filed on December 5, 2018 by accused Cesar T. Melad;
2. *Motion for Leave of Court to File Demurrer to Evidence*² filed on December 6, 2018 by accused Rolando G. Gregorio, Gilbert R. Alvarez, Leomyr DC Toribio, Tito B. Espiritusanto, Efigenio E. Julian, Jr. and Noel T. Tarrazona;
3. *Motion for Leave of Court to File Demurrer to Evidence*³ filed on December 10, 2018 by accused Jovita K. Yeo;
and

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¹ Dated December 5, 2018; Record, Vol. V, p. 300.
² Dated December 5, 2018; Record, Vol. V, p. 317.
³ Dated December 6, 2018; Record, Vol. V, p. 334.

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4. *Motion for Leave of Court to File Demurrer to Evidence*⁴ filed on January 18, 2019 by accused Cesar T. Melad, Reinfredo R. Sevilla, Wilhelmino P. Bazan, and, Santiago G. Acuña;

together with the *Consolidated Opposition (Re: Motions for Leave of Court to File Demurrer to Evidence)*⁵ and the *Manifestation*,⁶ both filed by the prosecution on December 17, 2018 and January 29, 2019, respectively.

Accused-movants similarly contend that the evidence presented by the prosecution is insufficient to sustain a guilty verdict for violation Section 3(e) of Republic Act No. 3019.⁷

Accused Melad claims:

1. Accused Melad is not a public officer. He can only be convicted of violation of Section 3(e), R.A. No. 3019 if it is proven that he conspired with accused Pablo Pan III, who is the only public officer charged in the instant case.⁸
2. In order to hold accused Melad guilty as co-principal by reason of conspiracy, it must be established that he performed an overt act in furtherance of the conspiracy.⁹
3. Apart from the testimony of prosecution witness Expedito Marquez and the BAC letter-recommendation, no other evidence shows any overt act committed by accused Melad in furtherance of conspiracy.

Marquez's Affidavit is double hearsay and the BAC letter-recommendation have no probative value, since Marquez has no personal knowledge of the contents thereof; he implicated the members of the BAC and the Board on the basis of his own opinion and conclusion.¹⁰

4. The BAC letter dated April 10, 2007 (Annexes G-5 to G-6) is a mere photocopy, and was not formally offered by the prosecution.¹¹
5. Any overt act committed by accused Melad was not shown to have been done in furtherance of conspiracy. The Board had

⁴ Dated January 8, 2019; Record, Vol. V, p. 369.

⁵ Dated December 17, 2018; Record, Vol. V, p. 356.

⁶ Dated January 29, 2019.

⁷ Melad's Motion for Leave dated December 5, 2018, p. 1; Gregorio, et al.'s Motion for Leave dated December 5, 2018, p. 16; Yeo's Motion for Leave dated December 6, 2018, p. 1; Sevilla, et al.'s Motion for Leave dated January 8, 2019, p. 2.

⁸ Melad's Motion for Leave dated December 5, 2018, p. 2.

⁹ Melad's Motion for Leave dated December 5, 2018, p. 3.

¹⁰ Melad's Motion for Leave dated December 5, 2018, p. 4.

¹¹ Melad's Motion for Leave dated December 5, 2018, p. 5.

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resolved in favor of accused Yeo even before of the BAC letter-recommendation was issued. The BAC letter-recommendation is dated April 10, 2007, while the Board Resolution is dated April 3, 2007.¹²

6. The present case is similar to *Arias vs. Sandiganbayan*, where the Supreme Court reversed the Sandiganbayan's finding of guilt against the accused, and found the prosecution's evidence insufficient to prove conspiracy.¹³
7. The prosecution miserably failed to prove the other elements of violation of Section 3(e), R.A. No. 3019.
 - a. There is nothing wrong with the BAC's recommendation in favor of accused Yeo, since (i) the BAC was merely exercising its discretionary power, and (ii) its action was supported by adequate reasons and grounds.

The award by NEA of the contracts was not characterized by manifest partiality, evident bad faith and gross inexcusable negligence. Accused Yeo's bid was subjected to judicious evaluation using reasonable criteria for selection.¹⁴

- b. On the element of unwarranted benefit, that accused Yeo did not own the land at the time of the bidding did not make her an unqualified bidder. There is no law that requires a bidder to be the owner of the property at the time of the bidding. Ownership of the property is required at the time of the consummation of the contract of sale. By the time accused Pan approved the Board Resolution on June 26, 2017, accused Yeo was already the owner of the subject properties.¹⁵
 - c. The titles (Exhibits M and N) in the name of accused Yeo show that the government, through the Bureau of Internal Revenue, valued the subject lands at more than PhP44,000,000.00.¹⁶

Accused Gregorio, et al. contend:

1. It was not proven that the act complained of was done through manifest partiality, evident bad faith, or gross inexcusable negligence; the acts of accused Deputy Administrator Pan were not done through nor attended by manifest partiality, evident bad faith, or gross inexcusable negligence. The evidence shows that accused Pan exercised diligence in his review and approval of the purchase of the subject properties; thus, negating evident bad faith, gross inexcusable negligence or manifest partiality.¹⁷

¹² Melad's Motion for Leave dated December 5, 2018, p. 5.
¹³ Melad's Motion for Leave dated December 5, 2018, p. 6.
¹⁴ Melad's Motion for Leave dated December 5, 2018, p. 10.
¹⁵ Melad's Motion for Leave dated December 5, 2018, p. 12.
¹⁶ Melad's Motion for Leave dated December 5, 2018, p. 13.
¹⁷ Gregorio, et al.'s Motion for Leave dated December 5, 2018, pp. 2 & 4-5.

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2. It was not proven that the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference to any party; the evidence on record do not show that the officials involved caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference to any party. ZAMCELCO purchased the properties from accused Yeo at a price much lower than their appraised value and BIR valuation.¹⁸
3. The allegation of conspiracy between accused Pan, as NEA Deputy Administrator, and the other accused, as private persons and employees of a private entity, *i.e.*, ZAMCELCO, was not proven. The ZAMCELCO officials did not personally know nor did they have direct communication with the NEA officials.¹⁹
4. There is nothing irregular or illegal in the fact that at the time of the Bidding in April 2007, accused Yeo was not yet the owner of record of the lots offered for sale.²⁰

Accused Yeo similarly contends:

1. The prosecution failed to prove that the act complained of was done through manifest partiality, evident bad faith, or gross inexcusable negligence; the acts of accused Deputy Administrator Pan were not done through nor attended by manifest partiality, evident bad faith, or gross inexcusable negligence. The evidence shows that accused Pan exercised diligence in his review and approval of the purchase of the subject properties; thus, negating evident bad faith, gross inexcusable negligence or manifest partiality.²¹
2. The prosecution failed to prove that the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference to any party; the evidence on record do not show that the officials involved caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference to any party.

ZAMCELCO purchased the two (2) lots from accused Yeo at a price much lower than their appraised value and BIR valuation.²²

3. The prosecution failed to prove conspiracy between accused Pan, as a public officer, and the other accused, as private persons or employees of ZAMCELCO as a private entity.

¹⁸ Gregorio, et al.'s Motion for Leave dated December 5, 2018, pp. 2 & 10-12.

¹⁹ Gregorio, et al.'s Motion for Leave dated December 5, 2018, pp. 13 & 18.

²⁰ Gregorio, et al.'s Motion for Leave dated December 5, 2018, p. 14.

²¹ Yeo's Motion for Leave dated December 6, 2018, pp. 5-6 & 8-9.

²² Yeo's Motion for Leave dated December 6, 2018, pp. 6 & 14-16.

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The ZAMCELCO officials did not personally know nor did they have direct communication with the NEA officials.²³

4. The prosecution failed to prove that award by the Board Members of ZAMCELCO of the procurement of the lot in favor of accused Yeo, even when the latter was not yet the owner of the subject properties, constitutes an unlawful act; nor that irregularities attended the same.²⁴

Accused Sevilla, et al. argue:

1. The prosecution witnesses had no personal knowledge of the matters testified on by them.²⁵
2. No bad faith or negligence can be attributed to the actions of the ZAMCELCO BAC, its Board of Directors and the NEA officials, in relation to the acquisition of the lot for the Load Center. Said individuals observed "that degree of care, precaution and vigilance which the circumstance justly require" to prevent injury or any disadvantage to the electric cooperative or any party, including the government.
3. The allegation of the complainants before the Office of the Ombudsman that the ZAMCELCO consumers suffered undue injury in the amount of PhP24,003,416.00, *i.e.*, the difference between the acquisition cost (PhP4,744,800.00) of the property purchased by accused Yeo from the heirs of the Smoyers and her selling price of PhP28,748,216.00 to ZAMCELCO, are baseless and do not conform with the evidence on record. The statement of the price in the Deed of Absolute Sale cannot and should not be taken as true measure of the value of the lots sold.²⁶
4. The lots offered by accused Yeo were the lowest calculated responsive bid, and, consequently, the most beneficial to ZAMCELCO. The lots acquired by ZAMCELCO from accused Yeo were owned by the latter as the registered owner thereof and subsequently accepted by the Bank of Commerce as a security by way of Real Estate Mortgage for the Loan and Credit granted by Leval Marketing Corp. in the amount of PhP30,000,000.00.
5. Evidence shows that ZAMCELCO acquired the two subject lots at a price much lower than the conservative appraised value of PhP40,000,000.00 made by the Bank of Commerce, which granted the loan of PhP30,000,000.00, in accordance with banking laws and regulations, and, much lower than the valuation by the BIR.²⁷

²³ Yeo's Motion for Leave dated December 6, 2018, p. 17.

²⁴ Yeo's Motion for Leave dated December 6, 2018, p. 18.

²⁵ Sevilla, et al.'s Motion for Leave dated January 8, 2019, p. 4.

²⁶ Sevilla, et al.'s Motion for Leave dated January 8, 2019, p. 6.

²⁷ Sevilla, et al.'s Motion for Leave dated January 8, 2019, p. 7.

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6. The fact that the accused are members of ZAMCELCO-BAC is not sufficient ground to conclude the existence of conspiracy among the accused.²⁸

The prosecution contends that it presented sufficient evidence to prove the guilt of the accused beyond reasonable doubt as all the elements of violation of violation of Section 3(e), R.A. No. 3019 have been established.²⁹ Thus:

1. The first element of the crime charged is not disputed. During the pre-trial, the parties stipulated that accused Pan is a high ranking public officer, being the Deputy Administrator of the Electric Distribution Utility Services of NEA.³⁰
2. The witnesses presented by the prosecution, particularly private complainant Expedito Marquez, Jr., testified that accused Pan acted with manifest partiality, evident bad faith or gross inexcusable negligence when he allowed the awarding of the subject contract to accused Yeo.
3. The following exhibits: (i) ZAMCELCO Resolution No. 095-07 (Exhibit I); (ii) Letter dated April 18, 2007 signed by accused Pan (Exhibit K); (iii) ZAMCELCO Resolution No. 155-07 (Exhibit P); and, (iv) Letter dated June 26, 2007 signed by accused Pan (Exhibit Q), are proofs of conspiracy among the accused; accused Pan allowed his co-accused to award the contract to accused Yeo even when the latter was not the owner of the properties at the time of the bidding.
4. The Deed of Absolute Sale between Elvin Smoyer, et al. and accused Yeo (Exhibit L to L-22) shows that accused Yeo purchased the subject lots for PhP4,744,800.00. Accused Yeo sold the same to ZAMCELCO for PhP23,739,816.00 (Exhibit KKK).
5. Awarding the contract to accused Yeo, who was not yet the owner of the subject lots, is an obvious display of manifest partiality, evident bad faith and gross inexcusable negligence on the part of accused Pan and shows conspiracy among all the accused. It also shows that accused Yeo enjoyed unwarranted benefits, advantage or preference over the other participating bidders.³¹
6. Direct proof of conspiracy is not essential. The same may be inferred from the acts of the conspirators in the commission of the offense. Here, the accused' coordinated scheme in

²⁸ Sevilla, et al.'s Motion for Leave dated January 8, 2019, p. 8.

²⁹ Consolidated Opposition dated December 17, 2018, p. 1.

³⁰ Consolidated Opposition dated December 17, 2018, p. 2.

³¹ Consolidated Opposition dated December 17, 2018, p. 3.

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awarding the subject contract to accused Yeo— recommending accused Yeo as a qualified bidder, and approving the same even when accused Yeo was not the owner of the lots, and at a price much higher than her acquisition cost, resulted to their ultimate aim of granting accused Yeo unwarranted benefits, advantage or preference.³²

RULING

On a procedural matter, for accused Melad, the Court will only consider the *Motion for Leave to File Demurrer to Evidence* filed by Atty. Carmelo S. Trinidad, as principal counsel for accused Melad.³³ The Court will disregard the *Motion for Leave of Court to File Demurrer to Evidence* filed by Atty. Quirino G. Esguerra, Jr. on behalf of accused Melad since he is only a collaborating counsel for said accused. The said *Motion for Leave* is treated only as one filed by accused Sevilla, Bazan, and Acuña.

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 against accused Cesar T. Melad, Rolando G. Gregorio, Gilbert R. Alvarez, Leomyr DC Toribio, Tito B. Espiritusanto, Efigenio E. Julain, Jr., Noel T. Tarrazona, Reinfredo R. Sevilla, Wilhelmino P. Bazan, Santiago G. Acuña, and, Jovita K. Yeo, for violation of Section 3(e) of Republic Act No. 3019. The Court hereby **DENIES** the *Motions for Leave to File Demurrer to Evidence* filed by the accused.

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, they shall waive their right to present evidence and are submitting this case for judgment on the basis of the evidence adduced by the prosecution.

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

³² Consolidated Opposition dated December 17, 2018, pp. 3-4.
³³ Resolution dated June 21, 2018; Record, Vol. III, p. 364-H.

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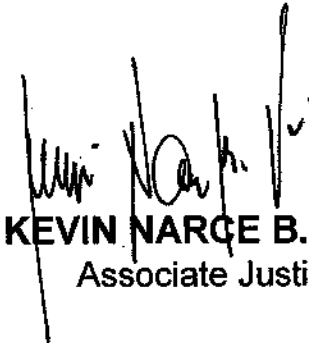
The hearings set for the accused to present their evidence on February 20 and 21, 2019, both at 1:30 in the afternoon, are maintained. The said scheduled dates will be considered automatically cancelled upon receipt by the Court of the *Demurrer to Evidence* of the accused.³⁴

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

WE CONCUR:


KARL B. MIRANDA
Associate Justice


KEVIN NARGE B. VIVERO
Associate Justice

³⁴ Pursuant to A.M. No. 15-06-10-SC, Revised Guidelines for Continuous Trial of Criminal Cases