



Republic of the Philippines
SANDIGANBAYAN
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,

Plaintiff,

SB-12-CRM-0086

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

-versus-

**GEMMA FLORANTE ADANA
and ISABEL L. TABAMO,**

Accused,

PRESENT:

FERNANDEZ, SJ, *J. Chairperson*
MIRANDA, &
VIVERO, JJ.

Promulgated:

MAR 22 2019 *[Signature]*

X-----X

RESOLUTION

MIRANDA, J.:

This resolves the: 1) Motion for Reconsideration dated December 18, 2018 filed by accused Gemma F. Adana (Adana); and 2) Comment/Opposition dated January 29, 2019 filed by the Prosecution.

[Signatures]

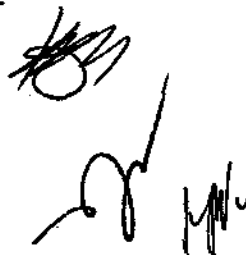
In her motion for reconsideration, Adana seeks the reconsideration of the Decision dated December 4, 2018 finding her guilty of violation of Section 3 (e) of R.A. No. 3019. In particular, Adana alleges that: 1) she should have been acquitted because there was no finding of conspiracy between her and co-accused Isabel L. Tabamo (Tabamo); 2) there must be proof of the preceding acts of conspiracy committed by Tabamo before she becomes effectively linked to the offense charged; 3) after Tabamo's death, the Prosecution abandoned its duty to prove the allegation of conspiracy when it focused on pinning the commission of the crime to Adana alone; 4) the Prosecution failed to present evidence that Tabamo acted with evident bad faith and manifest partiality in recommending the amounts of financial assistance given to the calamity victims; 5) her relationship with Edgar Adana and Emma Aranas was only incidental to the case and should not be the basis of her conviction for the offense charged; and 6) witnesses Rolando Loon (Loon) and Adelaida Decin (Decin) tainted their credibility when they committed material inconsistencies in their testimonies in court and affidavits executed in relation to this case.

In its comment/opposition, the Prosecution, through the Office of the Special Prosecutor (OSP), seeks the denial of the motion for reconsideration on the following grounds: 1) the evidence presented by the Prosecution, and the stipulations and admissions of both accused satisfactorily proved that Adana approved the distribution of the financial assistance to the calamity victims based on the recommendation of Tabamo; 2) Adana was not singled out in the prosecution of this case because Tabamo's death occurred only after the presentation of evidence by the Prosecution; 3) Adana's act of allowing the payment of financial assistance to her husband, Edgar Adana, and her sister, Emma Aranas, in amounts evidently higher than those received by other calamity victims, was sufficient to convict her of the offense charged; and 4) the alleged inconsistencies in the testimonies of Prosecution witnesses Loon and Decin did not destroy their credibility, but even enhanced the same as the said inconsistencies removed the suspicions of rehearsed testimony.

After a restudy, the Court **DENIES** the motion for reconsideration for lack of merit.

Tabamo's death extinguished her criminal liability.

Criminal liability is totally extinguished by the death of the accused. Article 89 (1) of the Revised Penal Code (R.P.C.) provides:

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I. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment.

In this case, Tabamo's death occurred prior to final judgment.¹ Her criminal liability for violation of Section 3 (e) of R.A. No. 3019 and the civil liability arising from the same (*ex delicto*) were extinguished as she could no longer stand as an accused in the said crime.²

Adana may still be held criminally liable for the crime charged despite Tabamo's death.

The death of one of two or more conspirators does not prevent the conviction of the surviving accused.³ In *Villa v. Sandiganbayan*,⁴ the Supreme Court ruled:

x x x [a] conspiracy is in its nature a joint offense. One person cannot conspire alone. The crime depends upon the joint act or intent of two or more persons. Yet, it does not follow that one person cannot be convicted of conspiracy. So long as the acquittal or death of a co-conspirator does not remove the bases of a charge for conspiracy, one defendant may be found guilty of the offense

Here, the documentary and testimonial evidence presented, offered and admitted by the Court have successfully established Adana's criminal liability for violation of Section 3 (e) of R.A. No. 3019. As discussed in the assailed Decision, it was Adana who approved the payment of financial assistance to her husband and sister that was evidently higher than the other calamity victims who were similarly or almost similarly situated. Said act constituted evident bad faith and manifest partiality that gave unwarranted preference to her husband and sister.

Even assuming that Tabamo participated in the entire proceedings of this case, Adana's conviction for the offense charged should not be disturbed. Records showed that Tabamo admitted during the pre-trial that: 1) she was the Municipal Social Welfare and Development Officer of the Municipality

¹ Records show that Tabamo died on July 13, 2015 and the assailed Decision was promulgated on December 4, 2018.

² As opined by Justice Regalado, the death of the accused prior to final judgment terminates his criminal liability and only the civil liability directly arising from and based solely on the offense committed, *i.e.*, civil liability *ex delicto* in *sensu strictiore* cited in *People v. Bayotas*, G.R. No. G.R. No. 102007, September 2, 1994.

³ §19 16 Am Jur 2d, pp. 137-138 cited in *People v. Go*, G.R. No. 168539, March 25, 2014.

⁴ *Villa v. Sandiganbayan*, G.R. Nos. 87186, 87281, 87466 and 87524, April 24, 1992.



of Naga, Zamboanga Sibugay at the time material to this case; 2) she prepared the master list of the calamity victims of Typhoon Bebing for Barangay Taytay Manubo; and 3) Adana approved the payment of financial assistance to the said calamity victims.⁵ For her part, Adana admitted that: 1) she was the Municipal Mayor of the Municipality of Naga, Zamboanga Sibugay at the time material to this case; and 2) she approved the payment of financial assistance to the calamity victims of Typhoon Bebing including her husband, Edgar Adana, and sister, Emma Aranas, who received the amount of P45,000.00 and P40,000.00, respectively.⁶

The testimonies of the witnesses for the Prosecution were clear that: 1) Edgar Adana's fish dryers (JAMBO 1) were not actually destroyed by Typhoon Bebing; and 2) Emma Aranas was not the owner of the fish dryers located in JAMBO 2. The master list of the calamity victims of Typhoon Bebing in Barangay Taytay Manubo⁷ indicated that there were other calamity victims who suffered the same or almost the same amount of economic damage. Despite knowledge of the same and her relationship to Edgar Adana and Emma Aranas, Adana approved the payment of P45,000.00 and P40,000.00 to her husband and sister, respectively. Evidently, Disbursement Voucher Nos. 100-07-10 -1172⁸ and 100-07-10-1173⁹, and Landbank of the Philippines Check Nos. 0000411451¹⁰ and 0000411450¹¹ proved that Adana, as the Mayor of the Municipality of Naga, Zamboanga Sibugay, approved the payment of the said amounts to her husband and sister. Clearly, Adana's criminal liability did not depend solely on Tabamo being found guilty for the offense charged. Neither was it extinguished by Tabamo's death as the precise degree of Adana's participation in the offense charged was sufficiently proven by the Prosecution.

As discussed above, it is no longer necessary for the Court to discuss and rule upon the criminal liability of Tabamo considering that her death occurred pending the trial of the case and before final judgment. The issue of whether or not Tabamo was guilty of violation of Section 3 (e) of R.A. No. 3019 had become irrelevant because even assuming that Tabamo did incur criminal liability and civil liability *ex delicto*, these were totally extinguished by her death following Article 89 (1) of the R.P.C.

⁵ Pre-trial Order dated September 5, 2013.

⁶ *Id.*

⁷ Exhibit "F-3".

⁸ Exhibits "J to J-2".

⁹ Exhibits "N to N-2".

¹⁰ Exhibits "K to K-1".

¹¹ Exhibits "O to O-1".

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Minor inconsistencies in the testimonies of witnesses Loon and Decin did not destroy their credibility.

Adana claims that Loon and Decin made inconsistent and improbable statements in court which supposedly impair their credibility, such as whether or not: 1) Loon saw Emma Aranas attending to the fish dryers in JAMBO 2; 2) among the fish dryers in their barangay, it was Adana's fish dryers that were first destroyed by Typhoon Bebing; 3) there were inconsistencies between the joint complaint-affidavit and her testimony in court; 4) Decin's fish dryers were located beside the alleged fish dryers of Emma Aranas; and 5) JAMBO 2 contained three fish dryers.

Said inconsistencies and contradictions, however, pertained only to details of immaterial nature that do not diminish the probative value of the testimonies at issue. After a review of the relevant portions of the transcripts pointed out by Adana, it was found that said inconsistencies had no substantial effect on the nature of the offense charged. Taking their individual testimonies as a whole, Loon and Decin were certain that JAMBO 1 was already non-existent before Typhoon Bebing and JAMBO 2 did not belong to Emma Aranas. In fact, Decin admitted the error that she committed in identifying JAMBO 2 instead of JAMBO 1 in her joint complaint-affidavit.¹² She, however, immediately corrected herself during her testimony in court.¹³

In *Avelino v. People*¹⁴, the Supreme Court said:

Given the natural frailties of the human mind and its capacity to assimilate all material details of a given incident, slight inconsistencies and variances in the declarations of a witness hardly weaken their probative value. It is well-settled that immaterial and insignificant details do not discredit a testimony on the very material and significant point bearing on the very act of accused-appellants. As long as the testimonies of the witnesses corroborate one another on material points, minor inconsistencies therein cannot destroy their credibility. Inconsistencies on minor details do not undermine the integrity of a prosecution witness.

There being no new matters or issues raised to warrant a reversal thereof, the Court is not inclined to grant Adana's motion for reconsideration.

¹² TSN dated April 11, 2014, p. 28.

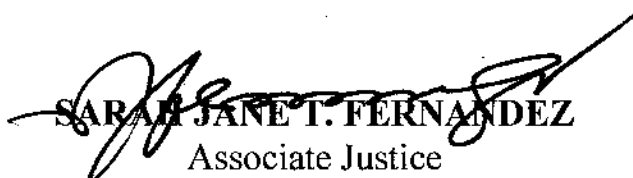
¹³ *Id.*

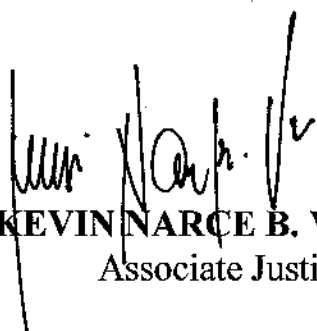
¹⁴ G.R. No. 181444, July 17, 2013, citing *Madali v. People*, G.R. No. 180380, August 4, 2009.

WHEREFORE, the Motion for Reconsideration dated December 18, 2018 of accused Gemma F. Adana is **DENIED** for lack of merit. The Decision of the Court promulgated on December 4, 2018 is **AFFIRMED**.

SO ORDERED.


KARL B. MIRANDA
Associate Justice


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson


KEVIN NARCE B. VIVERO
Associate Justice