



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
QUEZON CITY

SEVENTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Crim. Case No. SB-17-CRM-0219

-versus-

ALEX B. WANGKAY AND
ROBERTO S. SEMILLA,
Accused.

Present:

Gomez-Estoesta, J., *Chairperson*
Trespeses, J., and
Hidalgo, J.

Promulgated:

March 25, 2019 *jr*

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RESOLUTION

GOMEZ-ESTOESTA, J.:

This resolves the separate *Motions for Reconsideration* filed by accused Wangkay and Semilla, assailing this Court's Decision promulgated on February 22, 2019 convicting them of violation of Sec. 3(e) of R.A. 3019.

Accused Wangkay premises his *Motion*¹ by remarking that the *Information* against him merely asserts that the Small Water Impounding Project (SWIP) was awarded to accused Semilla without a public bidding, to the damage of the government. He then argues that none of the prosecution witnesses convincingly testified that no public bidding was conducted for the SWIP on March 27, 2009. The BAC members who testified were part of the BAC that was constituted only on July 1, 2009, and the rest have no personal knowledge of the lack of public bidding. In fact, Roy Dalit, who testified for the prosecution, affirmed that he was a member of the BAC that actually conducted public bidding for the SWIP.

¹ Records, Vol. 2, pp. 504-515

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Accused Semilla, for his part,² assails the finding of conspiracy. He asserts that not only did the prosecution fail to prove the lack of public bidding, it also failed to prove his participation in the crime charged. According to Semilla, he was charged as conspirator only because he was one of the bidders for the SWIP, but nobody testified regarding his actual participation in the award of said project to his company. He underscores the testimony of prosecution witness Primo Foronda absolving him of the charges. The fact that he received payment did not prove conspiracy, as in fact, after the subcontractor abandoned the SWIP, he took over it and finished it. And although not admitted in evidence, a letter by the BSWM's Director Tejada expressed that he was "very much glad" that the SWIP has been reported complete.

In its *Consolidated Comment/Opposition*,³ the Prosecution counters that Avelino Bernardo, who was named BAC member on July 1, 2009, was already named BAC chairman in the procurement documents for the SWIP executed in March 2009, which actually shows that the procurement documents were fabricated. Dalit's testimony that public bidding was conducted was an unsupported allegation. For their part, the accused never proved that public bidding was conducted for the SWIP. Accused Semilla's participation was proven by the prosecution's documentary evidence; hence, the lack of testimony as to his actual participation does not diminish the evidence presented against him. Finally, the letter of Dir. Tejada, not having been admitted in evidence, could not have been considered by this Court.

The *Motions* are bereft of merit.

What is striking about the arguments of both accused is that they attack only the prosecution's testimonial evidence, and are silent about how the prosecution's documentary evidence, when considered with these testimonies, could have been insufficient to convict them. This Court has studied and discussed in depth the evidence of both the prosecution and the accused in rendering the assailed Decision.

This Court is convinced that no public bidding was conducted for the SWIP. Roy Dalit's testimony that a public bidding was indeed conducted is an empty, if not untrue, allegation in the face of the documents showing the contrary. On the other hand, Primo Foronda's testimony was never the basis of this Court in concluding that no public bidding was conducted. In fact, this Court, in its Decision, acknowledged his utter lack of personal knowledge of the circumstances surrounding the charge. The same is true with his personal knowledge of accused Semilla's supposed lack of participation in the offense.

A categorical testimony that an accused participated in the commission of an offense is not necessary to establish conspiracy. A conspiracy is proved by evidence of actual cooperation; of acts indicative of an agreement, a common purpose or design, a concerted action or concurrence of sentiments

² Semilla's *Motion for Reconsideration*, *Id.*, pp. 492-503

³ *Id.*, pp. 526-537

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to commit the felony and actually pursue it.⁴ How the accused conspired to commit the offense charged has been discussed exhaustively, and this Court finds no reason to reverse its findings.

All told, to reconsider the Decision on the grounds cited by the accused would yield the very same findings assailed.

WHEREFORE, in view of the foregoing, the accused's separate *Motions for Reconsideration* are **DENIED** for lack of merit.

SO ORDERED.


MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Associate Justice, Chairperson

WE CONCUR:


ZALDY Y. TRESPESSES
Associate Justice


GEORGINA D. HIDALGO
Associate Justice

⁴ *Posadas v. Sandiganbayan*, G.R. Nos. 168951 & 169000, July 17, 2013