



Republic of the Philippines
SANDIGANBAYAN
Quezon City

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-17-CRM-0463
For: Violation of Section 3(e)
of R.A. No. 3019, as amended

- versus -

JERRY P. PASIGIAN,
Accused.

X ----- X

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-17-CRM-0464
For: Malversation of Public
Property (Article 217 of the
Revised Penal Code)

- versus -

JERRY P. PASIGIAN,
Accused.

Present:

LAGOS, J., Chairperson,
MENDOZA-ARCEGA, and
CORPUS-MAÑALAC, JJ.

Promulgated:

March 13, 2019 led

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RESOLUTION

CORPUS-MAÑALAC, J.:

Before this Court is the *Urgent Motion for New Trial (With Leave of Court)*¹ dated February 28, 2019 and the *Supplement to Motion for New Trial (With Leave of Court)*² dated March 4, 2019 filed by the accused, through counsel, on March 1, 2019 and March 4, 2019, respectively, seeking a new trial in these cases on the ground of newly discovered evidence and to

¹ Records, Vol. 2, pp. 249-253.

² *Id.* at 258-260.

x ----- x

set aside this Court's Decision dated December 6, 2018 finding him guilty beyond reasonable doubt of violation of Section 3(e) of Republic Act (R.A.) No. 3019 and Malversation of Public Property under Article 217 of the Revised Penal Code, as well as this Court's Resolution dated February 20, 2019 denying his motion for reconsideration.

As admitted by the accused, and reflected in the records, he received, through counsel, a copy of the Resolution dated February 20, 2019 denying his motion for reconsideration of the judgment of conviction on February 26, 2019.³

Together with the urgent motion for new trial, the accused submitted a copy of his purported letter⁴ dated March 2, 2009 requesting the *Sangguniang Bayan* of Alfonso Castañeda, Nueva Vizcaya "to appropriate certain amount for the purchase of four wheel [*sic*] drive vehicle" for this purpose:

x x x to be utilized by my office in the monitoring of situation of its constituents in the mountainous jurisdiction of the municipality specifically during occurrence of calamities and supervision in the progress of projects in those mountainous upper Barangays.

He likewise submitted an Affidavit⁵ dated February 28, 2019 of a certain Gabriel Marcelo, a member of the *Sangguniang Bayan* of Alfonso Castañeda in 2009, stating that the 2009 records of the *Sangguniang Bayan* were only discovered now because the same were transferred to the new municipal building between 2010 to 2011, particularly in a different area of the building.

On his supplement, the accused attached a copy of the *Sangguniang Bayan* Resolution No. 033⁶ dated March 16, 2009, entitled *A RESOLUTION AUTHORIZING THE HON. JERRY P. PASIGIAN, MUNICIPAL MAYOR [*sic*] TO PURCHASE ONE (1) UNIT VEHICLE WITHIN THE LIMITS IN THE APPROPRIATED AMOUNT IN THE CAPITAL OUTLAY OF THE OFFICE OF THE MAYOR AND WITHIN THE BOUNDS OF CONTROLLING LAWS*. He also submitted (1) the Affidavit⁷ dated March 4, 2019 of Domingo P. Bermudez, the Municipal Vice Mayor of Alfonso Castañeda in 2009, attesting to the same matters reflected in the affidavit of Marcelo; (2) a copy of minutes⁸ of the session on March 16, 2009 of the *Sangguniang Bayan*; and (3) a copy of the Commission on Audit (COA) Annual Audit Report⁹ on the Municipality of Alfonso Castañeda for the year ended December 31, 2009.

³ *Id.* at 246, 248-249.

⁴ *Id.* at 254.

⁵ *Id.* at 255-256.

⁶ *Id.* at 261, 275.

⁷ *Id.* at 262-263.

⁸ *Id.* at 274.

⁹ *Id.* at 276-353.

x ----- x

The accused argues that his letter-request would justify the immediate need for the purchased vehicle and that the authority given by the *Sangguniang Bayan* for such purchase contemplated a transaction for direct contracting or negotiated procurement in view of extreme necessity at the time, proving the regularity and legality thereof. He adds that the transaction was not disallowed by COA. He claims that the admission of the evidence will clearly exonerate him from criminal liability.

The prosecution verbally argued its comment on and opposition to the motion during the hearing on March 8, 2019.

The motion for new trial is denied for lack of merit.

*Tejano, Jr. v. Sandiganbayan*¹⁰ provides the requisites for a new trial on the ground of newly discovered evidence:

x x x. For the Court to grant a new trial on the ground of newly discovered evidence under Section 2, Rule 121 of the Rules of Court, it must be shown that: (a) the evidence was discovered after the trial; (b) such evidence could not have been discovered and produced at the trial with reasonable diligence; and (c) that it is material, not merely cumulative, corroborative or impeaching, and is of such weight that, if admitted, will probably change the judgment.

The respective affidavits of Marcelo and Bermudez both claim that the 2009 records of the *Sangguniang Bayan* were only discovered now because the same were transferred to the new municipal building between 2010 to 2011, particularly in a different area of the building.

In short, the 2009 records of the *Sangguniang Bayan* have always been stored in the new municipal building since 2010 or 2011. There is no indication in the records that the transfer of said records to the new municipal building was unknown to the public officer responsible in the safekeeping thereof. Moreover, the accused did not even bother to explain in his motion the particular efforts he exerted, if any, to locate the whereabouts of the copies of his letter-request, the *Sangguniang Bayan* Resolution No. 033, s. 2009, and the minutes of the session of the *Sangguniang Bayan* on March 16, 2009. In other words, apart from the supposed transfer of records to the new municipal building in 2010 or 2011, he was not able to present sufficient proof that, indeed, these documents could not have been discovered and produced at the trial with reasonable diligence.

Further, contrary to the asseverations of the accused, these documents, particularly the *Sangguniang Bayan* Resolution No. 033, s. 2009, even if admitted, will not change the judgment of conviction against him. The relevant portions of *Sangguniang Bayan* Resolution No. 033, s. 2009 read:

¹⁰ G.R. No. 161778, 7 April 2009.

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A RESOLUTION **AUTHORIZING** THE HON. JERRY P. PASIGIAN, MUNICIPAL MAYOR [*sic*] **TO PURCHASE** ONE (1) UNIT VEHICLE WITHIN THE LIMITS IN THE APPROPRIATED AMOUNT IN THE CAPITAL OUTLAY OF THE OFFICE OF THE MAYOR AND **WITHIN THE BOUNDS OF CONTROLLING LAWS.**

X X X X

RESOLVED, as it is hereby resolved **to authorize the Hon. Jerry P. Pasigian, Municipal Mayor** [*sic*] **to purchase** one (1) unit vehicle within the limits in the appropriated amount in the Capital Outlay of the said office and **within the bounds of controlling laws.**

RESOLVED FURTHER, to forward this resolution to concerned offices for their information and appropriate action. (Emphasis and underscoring supplied)

Clearly, the use of the phrase “within the bounds of controlling laws” in *Sangguniang Bayan* Resolution No. 033, s. 2009 does not in any contemplate that such purchase was a transaction within the alternative methods of procurement under direct contracting or negotiated procurement. In other words, the *Sangguniang Bayan* did not negate the application of R.A. No. 9184, otherwise known as the *Government Procurement Reform Act*, particularly the statutory provisions that all procurement shall be done through competitive bidding,¹¹ except as provided for in the alternative methods of procurement provided that the requisites thereof have been complied with,¹² which the accused intentionally disregarded in the purchase of the subject vehicle.

Thus, the *Sangguniang Bayan* Resolution No. 033, s. 2009 is actually adverse to the cause of the accused, and further bolsters the judgment of conviction against him.

As to the COA Annual Audit Report, it does not constitute newly discovered evidence. Part of the accused’s submissions in support of the instant motion is the letter¹³ dated May 14, 2010 of Atty. Marciana F. Maniquiz, COA Supervising Auditor, furnishing the accused a copy of said Annual Audit Report. As early as 2010, therefore, the accused was already in possession of said document. Moreover, this document cannot prevail over the evidence presented by the prosecution showing proof beyond reasonable doubt that, indeed, the accused committed a violation of Section 3(e) of R.A. No. 3019 and Malversation of Public Property under Article 217 of the Revised Penal Code, as exhaustively discussed in the Court’s Decision dated December 6, 2018.

In sum, the accused’s motion for new trial is denied for failure to meet the requisites for a new trial on the ground of newly discovered evidence.

¹¹ R.A. No. 9184, Sec. 10.

¹² R.A. No. 9184, Secs. 48 to 54.

¹³ Records, Vol. 2, p. 276.


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WHEREFORE, the accused's *Urgent Motion for New Trial (With Leave of Court)* dated February 28, 2019 and *Supplement to Motion for New Trial (With Leave of Court)* dated March 4, 2019 are **DENIED** for lack 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