



REPUBLIC OF THE PHILIPPINES  
Sandiganbayan  
Quezon City

**SIXTH DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
Plaintiff,

**SB-17-CRM-1670**

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


- versus -

*Present:*

**ROGER CABALES CHIO, ET AL.**  
Accused.

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

*Promulgated:*

**APR 08 2019** 

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**RESOLUTION**

**FERNANDEZ, SJ, J.**

This resolves the following:

1. *Motion for Leave to File Demurrer to Evidence*<sup>1</sup> of accused Roger Cabaes Chio; and,
2. *Motion for Leave of Court to File Demurrer*<sup>2</sup> of accused Romulo S. Palcon, Alma B. Mahinay, and Godofredo A. Ramos;<sup>3</sup>

together with the prosecution's separate but similarly worded *Comment/Opposition* filed on January 30, 2019<sup>4</sup> and January 31, 2019.<sup>5</sup>



<sup>1</sup> Dated January 28, 2019, filed on January 28, 2019; Record, Vol. II, pp. 82-110.

<sup>2</sup> Dated January 21, 2019, received by this Court through courier on February 19, 2019; Record, Vol. II, pp. 146-151.

<sup>3</sup> Upon agreement, the pleadings were filed by personal filing and service, or through courier.

<sup>4</sup> (*Re: Motion for Leave of Court to File Demurrer*) dated January 28, 2019; Record, Vol. II, pp. 111-114.

<sup>5</sup> (*Re: Motion for Leave of Court to File Demurrer*) dated January 29, 2019; Record, Vol. II, pp. 115-119.

**RESOLUTION**

*People vs. Chio, et al.*  
*Criminal Case No. SB-17-CRM-1670*

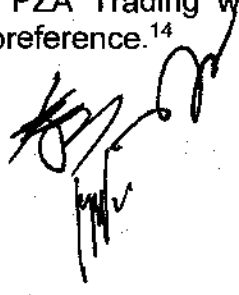
Page 2 of 6

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Accused Chio claims that the prosecution failed to establish the elements of violation of Section 3(e) of Republic Act No. 3019.<sup>6</sup> Accused Chio contends:

1. The testimonial and documentary evidence presented by the prosecution are immaterial to establish violation of Section 3(e) of R.A. No. 3019 and to establish that accused Chio committed the same.<sup>7</sup>
2. The prosecution failed to prove beyond reasonable doubt that there were irregularities in the bidding process, including the absence of a pre-procurement or pre-bid conference.<sup>8</sup>
3. The prosecution failed to prove beyond reasonable doubt that accused Chio acted with manifest partiality, evident bad faith or gross inexcusable negligence.<sup>9</sup>
4. The signing of Purchase Request No. 2006-3114, Notice of Award dated November 13, 2006, Disbursement Voucher No. 06-11-15165 dated November 22, 2006 and Philippine Veterans Bank Check No. 183444 dated November 22, 2006, was not shown to be tantamount to manifest partiality, evident bad faith or gross inexcusable negligence.<sup>10</sup>
5. Even if the prosecution's evidence can establish the elements of Section 3(e), R.A. No. 3019, in relation to the award and/or causing the award of the contract for the supply of water system materials to PZA Trading, the prosecution still failed to prove accused Chio's guilt beyond reasonable doubt.<sup>11</sup> The ABC of PhP2,591,435.40 is consistent throughout the bidding process. The 40 centavo difference is merely a typographical error.
6. The prosecution failed to prove any act of accused Chio which caused undue injury to any party, including the Government, or which gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.<sup>12</sup>
7. No COA Notice of Disallowance or Suspension was presented by the prosecution.<sup>13</sup>
8. There is no allegation as to how PZA Trading was given unwarranted benefit, advantage or preference.<sup>14</sup>

<sup>6</sup> Motion for Leave dated January 28, 2019, p. 5.  
<sup>7</sup> Motion for Leave dated January 28, 2019, p. 7.  
<sup>8</sup> Motion for Leave dated January 28, 2019, p. 9.  
<sup>9</sup> Motion for Leave dated January 28, 2019, p. 15.  
<sup>10</sup> Motion for Leave dated January 28, 2019, p. 16.  
<sup>11</sup> Motion for Leave dated January 28, 2019, p. 20.  
<sup>12</sup> Motion for Leave dated January 28, 2019, p. 17.  
<sup>13</sup> Motion for Leave dated January 28, 2019, p. 19.  
<sup>14</sup> Motion for Leave dated January 28, 2019, p. 20.



**RESOLUTION**

People vs. Chio, et al.  
Criminal Case No. SB-17-CRM-1670

Page 3 of 6

X-----X

9. The duty and responsibility of taking custody of the procurement documents and of making arrangements for the pre-procurement and pre-bid conferences is reposed on the Bids and Awards Committee Secretariat and not on accused Chio.<sup>15</sup>
10. Any act ascribed by the prosecution to accused Chio were done in the regular performance of his duties.<sup>16</sup>

On the other hand, accused Palcon, Mahinay and Ramos argue:

1. The witnesses have no personal knowledge of the assailed transaction. The subject transaction happened sometime in November 22, 2006, and is covered by Disbursement Voucher No. 06-11-15165 (Exhibit P). Prosecution witnesses Seroy, Racho, and Grupo have no personal knowledge of the subject transaction, despite being employees of the Department of Agriculture during the time relevant to this case. Witness Seroy's knowledge of the transaction is limited to the recording of the transaction in the books of accounts, in her capacity as Accountant I at the Department of Agriculture in 2006.
2. Auditor Verdad clarified that the seven (7) listed documents in the *Certification* dated July 20, 2018 (Exhibit JJ) are no longer in the possession of the Commission on Audit since the same are more than 10 years old. The documents mentioned in the *Certification* include Notices and Minutes of the pre-procurement and pre-bid conferences conducted by the BAC, as well as other documents that would establish the conduct of said conferences.<sup>17</sup>
3. Ombudsman Investigator Labang failed to establish that there were no pre-bid and pre-procurement conferences. Investigator Labang failed:
  - a. To inquire from the BAC Secretariat whether there were pre-bid and pre-procurement conferences; and,
  - b. To furnish the accused and/or the BAC Secretariat with a copy of his Investigation Report, for the latter to rebut Investigator Labang's findings.
4. The difference in the Approved Budget for the Contract and the bid amount was due to a typographical error. Accused Labang concluded that there was an irregularity in the subject procurement due to the difference of 40 centavos in the ABC and the bid amount. The correct amount of the ABC, i.e.,

<sup>15</sup> Motion for Leave dated January 28, 2019, pp. 20-21.

<sup>16</sup> Motion for Leave dated January 28, 2019, p. 23.

<sup>17</sup> Motion for Leave dated January 21, 2019, pp. 3-4.

**RESOLUTION**

*People vs. Chio, et al.*  
*Criminal Case No. SB-17-CRM-1670*

Page 4 of 6

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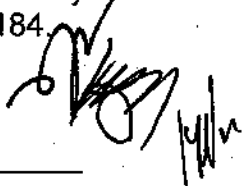
Php2,591,435.40, is reflected in the Purchase Request, Notice to Bidders, BAC Resolution, Notice of Award, Purchase Order, Disbursement Voucher and Delivery Receipt.

5. Public bidding was conducted and, despite publication, PZA Trading was the lone bidder. Investigator Labang confirmed that there was a public bidding.<sup>18</sup>

The prosecution argues that there is sufficient and competent evidence to sustain the Information and to support a guilty verdict.<sup>19</sup>  
Thus:

1. The first element of violation of Section 3(e), R.A. No. 3019, is not disputed. The parties stipulated on the positions held by accused Palcon, Mahinay, Ramos, and Chio at the Department of Agriculture, at the time material to the allegations in the Information.<sup>20</sup>
2. The second element of the crime charged was sufficiently proved through the presentation of several bidding documents, *i.e.*, Philippine Fiscalizer, October 17, 2016 issue, containing DA-RFU XI's *Invitation to Apply for Eligibility and to Bid* (Exhibit I to I-3-d); *Minutes of the Opening of Bids and Meeting* on November 7, 2006, with the attached Attendance Sheet (Exhibit J to J-4); DA-RFU XI BAC III's Resolution No. 56, series of 2006 (Exhibit K to K-8); DA-RFU XI's Purchase Request No. 2006-3114 dated October 6, 2006 (Exhibit L to L-5); and, Notice to Bidders for Sealed Canvassing dated October 6, 2006 (Exhibit M to M-5); Notice of Award dated November 10, 2006 (Exhibit N to N-1); Purchase Order No. 06-11-15165 dated November 22, 2006 (Exhibit P to P-4); PVB Check No. 183444 dated November 22, 2006 (Exhibit Q to Q-3); and, Summary of Quotation (Exhibit II to II-7), which were all identified by the prosecution witnesses. The existence and due execution of these documents were stipulated by the parties during the pre-trial.

Accused Palcon, Mahinay, Ramos and Chio acted with evident bad faith, manifest partiality, or gross inexcusable negligence when they awarded and approved (in the case of accused Chio) the contract for the water system materials to PZA Trading, even when the bid amount of Php2,591,435.40 exceeded the ABC of Php2,591,435.00. The award and approval of the contract in favor of PZA Trading by accused Palcon, Mahinay and Ramos and Chio were in violation of R.A. No. 9184.



<sup>18</sup> Motion for Leave dated January 21, 2019, pp. 4-5.

<sup>19</sup> Comment/Opposition dated January 28, 2019, p. 3; Comment/Opposition dated January 29, 2019, p. 3.

<sup>20</sup> Comment/Opposition dated January 28, 2019, p. 2; Comment/Opposition dated January 29, 2019, p. 2.

**RESOLUTION**

*People vs. Chio, et al.*  
*Criminal Case No. SB-17-CRM-1670*

Page 5 of 6

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The Notice to Bidders for Sealed Canvassing dated October 6, 2006 (Exhibit M to M-5) exhibited manifest partiality towards PZA Trading. Said notice shows that PZA Trading has submitted its bid amount for the procurement of the water system materials prior to the publication of DA-RFU XI's *Invitation to Apply for Eligibility and to Bid in the Philippine Fiscalizer* on October 17, 2016 (Exhibit I to I-3-d).<sup>21</sup>

3. The third element of the offense was sufficiently proved. Accused' award of the contract for the supply of water system materials to PZA Trading, despite failure to comply with the provisions of R.A. No. 9184, and, the presence of irregularities in the procurement process, caused undue injury to the government and gave unwarranted advantage, preference and benefit to PZA Trading.<sup>22</sup>

**RULING**

On a procedural matter, accused Palcon, et al.'s *Motion for Leave of Court to File Demurrer* was filed out of time. Under Section 23, Rule 119 of the *Revised Rules of Criminal Procedure*, the *Motion for Leave to File Demurrer to Evidence* must be filed within a non-extendible period of five (5) days after the prosecution rests its case.

The registry return receipt of the Notice of Minute Resolution dated December 14, 2018 (Resolution on the Prosecution's Formal Offer of Evidence) shows that it was received on January 11, 2019 by Pantojan Bernardo Liban Joyce and Associates through one Andres Rosalada.<sup>23</sup> Thus, accused Palcon, et al., only had until January 16, 2019 to file a *Motion for Leave to File Demurrer to Evidence*. Having filed the instant *Motion* on January 22, 2019,<sup>24</sup> or beyond the period allowed by the *Rules*, accused Palcon, et al.'s *Motion for Leave* shall be considered unmeritorious and shall be denied outright.

Nonetheless, even on the merits, the instant motion will still be denied.

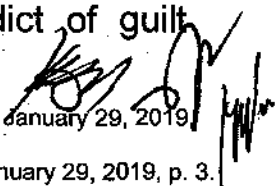
After a careful study of the documentary and testimonial evidence presented by the prosecution, the Court finds that, if un rebutted, the same is sufficient to support a verdict of guilt.

<sup>21</sup> Comment/Opposition dated January 28, 2019, pp. 2-3; Comment/Opposition dated January 29, 2019, pp. 2-3.

<sup>22</sup> Comment/Opposition dated January 28, 2019, p. 3; Comment/Opposition dated January 29, 2019, p. 3.

<sup>23</sup> Record, Vol. II, p. 45.

<sup>24</sup> *Compliance (Order dated 11 February 2019. Submission of LBC certification as proof of mailing)* dated February 25, 2019; Transaction history- Tracking No. 126808944216, p. 1.



**RESOLUTION**

*People vs. Chio, et al.*  
*Criminal Case No. SB-17-CRM-1670*

Page 6 of 6

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against accused Roger C. Chio, Romulo S. Palcon, Alma B. Mahinay, and Godofredo A. Ramos, for violation of Section 3(e) of Republic Act No. 3019. The Court hereby **DENIES** the *Motion for Leave to File Demurrer to Evidence* filed by accused Chio for lack of merit. The Court likewise **DENIES** the *Motion for Leave of Court to File Demurrer* filed by accused Palcon, Mahinay and Ramos for being filed out of time and for lack of merit.


This is without prejudice to the filing by the accused of their respective *Demurrers 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.

The hearings set for the accused to present their evidence on April 29 and 30, 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 all the accused.<sup>25</sup>

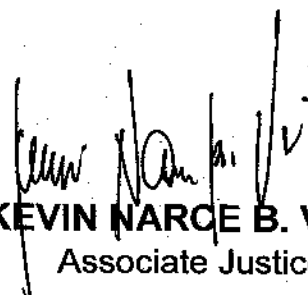
The Court **NOTES** the *Compliance* dated February 25, 2019 filed by accused Palcon, et al.

**SO ORDERED.**

  
**SARAH JANE T. FERNANDEZ**  
Associate Justice  
Chairperson

**WE CONCUR:**

  
**KARL B. MIRANDA**  
Associate Justice

  
**KEVIN NARCE B. VIVERO**  
Associate Justice

<sup>25</sup> Pursuant to A.M. No. 15-06-10-SC, Revised Guidelines for Continuous Trial of Criminal Cases