



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-17-CRM-2149 to 2151
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*¹ of accused Roger Cabales Chio; and,
2. *Motion for Leave of Court to File Demurrer*² of accused Romulo S. Palcon, Alma B. Mahinay, Onofre M. Nugal and Godofredo A. Ramos;³

together with the *Comment and Opposition (Re: Motion for Leave of Court to File Demurrer to Evidence)*⁴ and *Comment and Opposition*

¹ Dated January 28, 2019, filed on January 28, 2019; Record, Vol. II, pp. 149-176. Accused Chio received the Resolution on the prosecution's *Formal Offer of Evidence* on January 21, 2019.
² Dated January 28, 2019, received through courier by this Court on February 11, 2019; Record, Vol. II, pp. 209-217. Accused Palcon, et al. received the Resolution on the prosecution's *Formal Offer of Evidence* on January 23, 2019.
³ Upon agreement, the pleadings were filed by personal filing and service, or through courier.
⁴ Dated February 1, 2019; filed on February 4, 2019; Record, Vol. II, pp. 181-186.

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*(Re: Motion for Leave of Court to File Demurrer filed by accused Palcon, et al.),*⁵ both filed by the prosecution.

Accused Chio claims that the prosecution failed to prove beyond reasonable doubt the concurrence of all the elements of the offense charged. He also claims that the prosecution failed to rebut the presumption of regularity in the performance of his official functions.⁶ Accused Chio contends:

1. The testimonial and documentary evidence presented by the prosecution failed to establish beyond reasonable doubt the presence of the elements of violation of Section 3(e), R.A. No. 3019, in relation to the award and/or causing the award of the contracts for the supply of 30 sets of computer desktops, 23 units of multi-purpose tents, 308 sets of Jetmatic pumps, and 50 sets of grass cutters to PZA Trading.
 - a. The prosecution witnesses have no personal knowledge of the transactions and the procurement subject of the *Informations*, and they failed to identify any specific act on the part of accused Chio which violates Section 3(e), R.A. No. 3019.⁷
 - i. Accused Chio had no participation in the opening of the bids. Ms. Jocelyn Gerones, former Clerk II, DA-RFU XI, and BAC member from 2006 to 2010, was presented to testify on the opening of bids on December 28, 2006 and on the preparation of the Minutes (Exhibit H) for said event. It was clear from Ms. Gerones' testimony that accused Chio was neither present during the opening of bids, nor did he sign the Minutes of the Opening of Bids dated December 28, 2006.⁸
 - ii. Ms. Victoria Grupo, Chief of the General Services Section and Head of the BAC Secretariat, DA-RFU XI, only produced a *Certification* dated August 31, 2013 (Exhibit XX), transmitting to the Office of the Ombudsman photocopies of the documents that said agency requested. Ms. Grupo was incompetent to testify, as in fact she did not testify, on the veracity of the contents of said documents and on the completeness thereof.⁹
 - iii. Ms. Rinah Garrido, COA State Auditor and Audit Team Leader, COA-NGS Cluster 8, DA-RFU from November 17, 2017 to April 11, 2018, only testified as to having reproduced, at the instance of the Office of the Ombudsman, the records pertaining to said procurements in the custody of her office. Ms. Garrido is

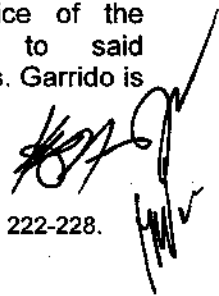
⁵ Dated February 11, 2019; filed on February 12, 2019; Record, Vol. II, pp. 222-228.

⁶ Motion for Leave dated January 28, 2019, pp. 1-2 & 4.

⁷ Motion for Leave dated January 28, 2019, p. 5.

⁸ Motion for Leave dated January 28, 2019, pp. 6 & 10.

⁹ Motion for Leave dated January 28, 2019, pp. 6 & 10-11.



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not in any position to verify the contents of the same nor to testify as to the completeness of the records.¹⁰

iv. Mr. Siegfred Labang, Associate Graft Investigation Officer III, Office of the Ombudsman Mindanao (AGIO) and AGIO II of the Ombudsman Field Investigation Unit in 2007, was presented in his capacity as the handling investigating officer of the cases. Mr. Labang admitted that he failed to verify the identity of the complainant and the veracity of the complaint from which the instant cases arose. Mr. Labang's investigation is incomplete and was conducted haphazardly.¹¹

v. Ms. Franzel Racho, Chief of the Record Unit, DA-RFO XI, only submitted a *Certification* dated October 26, 2018 (Exhibit YY) stating that the documents pertaining to the procurements, as requested by the Office of the Ombudsman, was not in the records of her office nor did her office keep records of the same.

vi. Ms. Floreen Marie Verdad, COA State Auditor IV and Audit Team Leader, only testified on her execution of the *Certification* dated October 29, 2018 (Exhibit ZZ), certifying that the documents pertaining to the "308 sets of Jetmatic Heavy Duty Pump and 50 sets of grass cutter, 30 sets of desktop computer and 23 units of multi-purpose tent ("projects") in 2006 xxx are not among the documents on file in the Office of the Audit Team Leader, Commission on Audit-Department of Agriculture, Regional Field Office XI, Davao City."

b. The documentary evidence presented by the prosecution only showed the existence of various documents relating to the procurement of 308 sets of Jetmatic Heavy Duty Pump and 50 sets of grass cutter, 30 sets of desktop computer and 23 units of multi-purpose tent. The documents did not show any irregularity in the foregoing transactions.¹²

2. Assuming *arguendo* that the evidence presented by the prosecution established all the elements of Section 3(e), R.A. No. 3019, the prosecution still failed to prove beyond reasonable doubt that accused Chio is guilty thereof, considering that the duty and responsibility of ensuring compliance with bidding and procurement requirements, including the conduct of pre-procurement and pre-bid conferences fall upon the Bids and Awards Committee, and not on accused Chio.¹³

On the other hand, accused Palcon, Mahinay, Nugal and Ramos ask this Court to grant them leave to file demurrer to evidence on the following grounds:

1. The witnesses have no personal knowledge of the transactions.

¹⁰ Motion for Leave dated January 28, 2019, p. 6.

¹¹ Motion for Leave dated January 28, 2019, pp. & 12-14.

¹² Motion for Leave dated January 28, 2019, p. 7.

¹³ Motion for Leave dated January 28, 2019, pp. 16-17.

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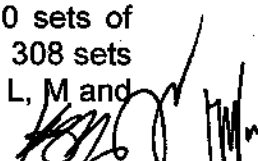
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2. Auditor Verdad admitted that it is not mandatory to submit Minutes of the pre-bid and the pre-procurement conferences to the COA.¹⁴
3. Ombudsman Investigator Labang failed to establish that there was no pre-bid and pre-procurement conferences. He did not inquire from the BAC Secretariat or agency if there were pre-bid and pre-procurement conferences.¹⁵
4. Records show that public bidding was conducted, and PZA Trading was the lone bidder. Investigator Labang affirmed that there was a public bidding, but only one (1) bidder participated.
5. The original bank certificate was submitted. PZA Trading was disqualified during the initial opening of the bids since it only submitted a photocopy of the bank certificate. However, upon motion, and submission of the original copy of the bank certificate, the BAC reconsidered its decision.
6. A re-bidding was unnecessary. Since a bidder participated, the BAC had no recourse other than to open the bid. A re-bidding is required only when there is a failure of bidding.¹⁶

The prosecution counters that there is sufficient evidence to support a guilty verdict against accused Chio, Palcon, Mahinay, Nugal and Ramos, for violations of Section 3(e) of R.A. No. 3019.¹⁷ The prosecution argues that the evidence against the accused and the stipulations entered into by the parties established the elements of violation of Section 3(e), R.A. No. 3019:¹⁸

As to accused Chio:

1. With respect to the first element, there is no dispute that during the period material to these cases, accused Chio was a public officer; he was the Regional Executive Director of the Department of Agriculture, Regional Field Unit XI, discharging official and administrative functions.
2. As regards the second element, the evidence for the prosecution sufficiently established that accused Chio approved the award of the three (3) contracts, *i.e.*, supply of 30 sets of desktop computers, 23 units of multi-purpose tent, and, 308 sets Jetmatic heavy duty and 50 sets grass cutter (Exhibits L, M and 

¹⁴ Comment/Opposition dated January 28, 2019, pp. 2-3; Comment/Opposition dated January 29, 2019, pp. 2-3.

¹⁵ Comment/Opposition dated January 28, 2019, p. 3; Comment/Opposition dated January 29, 2019, p. 3.

¹⁶ Motion for Leave dated February 4, 2019, pp. 6-8.

¹⁷ Comment and Opposition dated February 1, 2019, p. 4; Comment and Opposition dated February 11, 2019, p. 5.

¹⁸ Comment and Opposition dated February 1, 2019, p. 2; Comment and Opposition dated February 11, 2019, p. 2.

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N) to PZA Trading; and authorized the release of public funds to PZA Trading (Exhibits O, P, Q, V, W, X, DD, EE, and OO) despite the failure of PZA Trading to qualify (due to absence of the original copy of bank certificate), and, absent re-advertisement and re-bidding of the contract and pre-procurement and pre-bid conferences, in clear disregard of the guidelines in R.A. No. 9184.¹⁹

3. As to the third element, evidence show that (i) the PZA's bid was marked "failed" during the opening of the bids on December 27, 2006 (Exhibit H and series), resulting to the failure of bidding, since no bid qualified as the lowest calculated responsive bid. However, accused BAC members moved to reconsider PZA's bid and recommended the award of the three (3) contracts; (ii) despite the failure of bidding, no re-advertisement and re-bidding of the contract was conducted; and, (iii) the procurement of the subject goods was made without first conducting pre-procurement and pre-bid conferences, even if the amount involved exceeded the threshold amount under R.A. No. 9184 requiring the conduct of pre-bid and pre-procurement conferences. Other bid documents also show that preference was given to PZA Trading; notwithstanding the foregoing irregularities, accused Chio approved the award of contracts to PZA Trading and authorized the release of public funds, causing undue injury to the government and/or giving unwarranted benefits, advantage and preference to PZA Trading.

4. In its Resolution dated December 14, 2018, the Court admitted all the documentary evidence upon which the prosecution anchored the allegations in all the Informations. Among the documents admitted are Exhibits C, D, E, F to F-1, L, M, N, O, P, Q, U, V, W, X, BB, DD, EE, HH, LL, MM, NN, and OO, showing accused Chio's participation in the bidding process of the subject procurements. Accused Chio's alleged non-involvement in the irregularities identified in the Information is an evidentiary matter that relates to his defense.²⁰

As to accused Palcon, Mahinay, Nugal and Ramos:

1. With respect to the first element, there is no dispute that during the period material to these cases, accused Palcon, Mahinay, Ramos and Nugal were public officers at the Department of Agriculture, Regional Field Unit XI (DA-RFU XI), discharging official and administrative functions. They were members of the BAC of the said agency.²¹

2. As regards the second element, the evidence for the prosecution sufficiently established that accused BAC members did not comply with the standards and requirements set forth in

¹⁹ Comment and Opposition dated February 1, 2019, p. 3.

²⁰ Comment and Opposition dated February 1, 2019, pp. 3-4.

²¹ Comment and Opposition dated February 11, 2019, p. 3.

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R.A. No. 9184 and its Implementing Rules and Regulations. Evidence show that their acts in relation to the conduct of the procurement were done with manifest partiality, evident bad faith, and/or gross inexcusable negligence:

- a. During the preliminary examination of the bids for the procurement of the subject goods, accused BAC members, using the non-discretionary pass/fail criteria, marked PZA Trading as "fail". Pursuant to the provisions of R.A. No. 9184, only the bids that are determined to contain all the bid requirements of the technical component shall be considered for opening and evaluation of their financial component. In the instant case, despite the absence of a qualified bidder, accused BAC members did not declare a failure of bidding and did not re-advertise and conduct a re-bid for the subject goods. Instead, accused BAC members reconsidered their decision, continued with PZA Trading's bid, and eventually recommended the award of the three (3) contracts to PZA Trading.
 - b. The manifest partiality exhibited by accused BAC members is also glaring when they did not automatically disqualify PZA Trading even when its bid price of PhP874,000.00 for 23 sets of multi-purpose tent exceeded the approved budget for the contract (PhP800,000.00) for the project, as stated in the IAEB (Exhibit G-2) and as advertised in the newspaper. The bidding documents (Exhibits D and F) were, instead, altered to match PZA Trading's quotation of PhP874,000.00
 - c. The procurement of the subject goods was made without prior conduct of pre-procurement and pre-bid conferences, even if the amounts of the contracts exceeded the threshold amount under R.A. No. 9184.
3. As to the third element, accused BAC members recommended the award of the three (3) contracts to PZA Trading, despite irregularities and violations of R.A. No. 9184 and its IRR, committed in relation to the subject procurement; thus, giving unwarranted benefit, preference and advantage to PZA Trading, and causing undue injury to the government.
 4. The Court admitted all the documentary evidence upon which the prosecution anchored the allegations in all the *Informations*. Among the documents admitted were bidding documents that show accused BAC members' participation in the bidding process of the subject procurements. Other bidding documents also show the preference given to PZA Trading.²²
 5. Accused BAC members' allegation that there is nothing wrong or illegal, or unprocedural, for reconsidering its original decision to disqualify PZA Trading, and, that the procurement is not tainted with the irregularities alleged in the *Informations*, are evidentiary matters that relate to their defense.²³

²² Comment and Opposition dated February 11, 2019, pp. 3-4.

²³ Comment and Opposition dated February 11, 2019, pp. 4-5.

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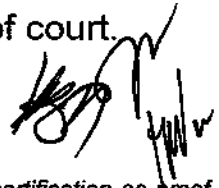
On a procedural matter, accused Palcon, et al.'s *Motion for Leave of Court to File Demurrer* was filed out of time. Under Section 23, Rule 119 of the *Revised Rules of Criminal Procedure*, the motion for leave to file demurrer to evidence must be filed within a non-extendible period of five (5) days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

The registry return receipt for 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 23, 2019 by Atty. Jonathan Pantojan through one Iyapon Mandaguit.²⁴ Thus, accused Palcon, et al., only had until January 28, 2019 to file a *Motion for Leave to File Demurrer to Evidence*. Having filed the instant *Motion* on February 4, 2019,²⁵ 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.

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 Roger C. Chio, Romulo S. Palcon, Alma B. Mahinay, Onofre M. Nugal 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 and the *Motion for Leave of Court to File Demurrer* filed by accused Palcon, Mahinay, Nugal 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.



²⁴ Record, Vol. II, p. 133-D.

²⁵ Compliance (Order dated 11 February 2019. Submission of LBC certification as proof of mailing) dated February 25, 2019; Transaction history- Tracking No. 126814363322.

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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.²⁶

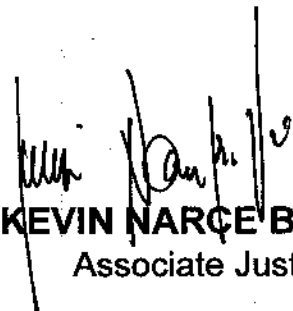
The Court **NOTES** the *Compliance* dated February 25, 2019 filed by accused Palcon, et al.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

WE CONCUR:


KARL B. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
Associate Justice

²⁶ Pursuant to A.M. No. 15-06-10-SC, Revised Guidelines for Continuous Trial of Criminal Cases