



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
 Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-17-CRM-1670
 For: Violation of Section 3(e),
 R.A. No. 3019

- versus -

Present:

ROGER CABALES CHIO, ET AL.
Accused.

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

Promulgated:

MAY 14 2019 *[Signature]*

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves the *Motion for Reconsideration*¹ filed by accused Roger Cabales Chio; together with the *Comment/Opposition*² filed by the prosecution.

Accused Chio asks this Court to reconsider its April 8, 2019 *Resolution* denying his *Motion for Leave to File Demurrer to Evidence*. Accused Chio prays:

1. That the submission of the *Judicial Affidavits* be deferred and the hearing on April 29, 2019, for the presentation of evidence for accused Chio, be suspended, pending the resolution of the present *Motion*; and,

[Handwritten signature]

¹ [Re: Resolution dated 8 April 2019] [With Prayer to Defer Submission of Judicial Affidavits and Postpone Hearing] dated April 22, 2019; received through registered mail by this Court on April 30, 2019.

² (Re: Motion for Reconsideration of the Resolution dated 08 April 2019) dated April 24, 2019; filed on April 25, 2019.

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2. That this Court grant accused Chio leave of Court to file *Demurrer to Evidence*.³

Accused Chio argues:

1. The assailed *Resolution* warrants reconsideration, considering its failure to state the factual and legal bases relied upon, in violation of accused Chio's right to due process.
 - a. The assailed *Resolution* does not state the facts and law upon which it is based, in violation of the requirements of law.
 - b. The assailed *Resolution* has fallen short of the clarity and distinctiveness required for decisions. It does not clearly state the evidence adduced by the prosecution upon which its conclusion is based.⁴
2. The Court committed grave but reversible error considering that in the *Motion for Leave*, accused Chio demonstrated that it is not dilatory, and, a *Demurrer to Evidence* is necessary in order to relieve the accused from going through trial where the prosecution failed to show his guilt beyond reasonable doubt.
 - a. The Court essentially prejudged the *Demurrer to Evidence* yet to be filed by accused Chio by concluding that the evidence adduced by the prosecution is supposedly sufficient to sustain a conviction. The Court overstepped the purpose of the discretion granted to it when it determined the supposed sufficiency of the prosecution's evidence, without giving accused Chio an adequate opportunity to fully show that the prosecution's evidence was insufficient to sustain a conviction in a *Demurrer to Evidence*.
 - b. The Court has foreclosed a remedy available to accused Chio, without allowing him to argue and present his side regarding his case. This is a clear denial of accused Chio's right to due process.⁵
3. The Court erred in ruling that the prosecution's evidence is supposedly sufficient to support a verdict of guilt considering that the evidence presented by the prosecution are immaterial, insufficient, and incompetent to sustain the existence of any of the elements of the crime charged.

The prosecution only presented the following witnesses and their respective testimonies, most of which are completely irrelevant in proving the existence of the purported crime and/or the involvement of accused Chio therein:

³ Motion for Reconsideration dated April 22, 2019, p. 27.
⁴ Motion for Reconsideration dated April 22, 2019, pp. 5-7.
⁵ Motion for Reconsideration dated April 22, 2019, pp. 7-9.

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- a. Ms. Floreen Marie O. Verdad, State Auditor IV, to show that as the Audit Team Leader of Department of Agriculture Regional Field Unit XI (DA-RFU XI), she has in her custody original documents relative to the procurement of water system materials from PZA Trading.
- b. Ms. Ligaya B. Seroy, Regional Accountant of DA-RFU XI, to show that as the Regional Accountant of the Department of Agriculture, she submitted certified true copies of documents relevant to the procurement of water system materials from PZA Trading by the Department of Agriculture-Regional Field Unit XI in 2006.
- c. Ms. Franzel A. Racho, to show that as the Chief of the Records Unit of the DA-RFO XI, she issued a *Certification* dated July 23, 2018, stating that the documents pertaining to the water system materials by DA-RFU XI from PZA Trading sometime in 2006, are not in the custody of her office.
- d. Ms. Victoria R. Grupo, to show that as Chief of the General Services and Head of the BAC Secretariat of the DA-RFU XI, she issued a *Certification* dated August 2018 stating that her office can only provide unauthenticated photocopies of the following documents: (1) *Invitation to Apply for Eligibility and to Bid*; (2) Minutes of the Meeting during Opening of Bids on November 2, 2006; (3) Notice to Bidders for Sealed Canvassing; and (4) BAC III Resolution No. 56 series of 2006.

Although Ms. Grupo testified that her office ensures that the procurement undertaken by her office is properly documented, the following documents were not found: (1) Notice and Minutes of all Pre-Procurement Conference conducted by the BAC from September-December 2006; (2) Notice and Minutes of all Pre-Bid Conference and Lists of Activities conducted by the BAC from September to December 2006. The *Certification* also states that her office submitted official machine copies of documents relevant to the procurement of water system materials from PZA Trading.

- e. Ms. Siegfried L. Labang, Associate Graft Investigation Officer II, to prove the material allegations in the *Information* and that the participation of all the accused in the commission of the offense charged were supposedly supported by documents.⁶
4. The prosecution failed to provide sufficient and competent evidence that there were irregularities in the bidding process, *i.e.*, absence of pre-procurement or pre-bid conference.
- a. The prosecution's documentary exhibits do not link accused Chio to any act which violates Section 3(e), R.A. N. 3019.

The pieces of documentary evidence of the prosecution are not only unreliable for being mere photocopies, but also do not show that there was an absence of pre-procurement or a pre-bid conference; nor that there were irregularities in the bidding process, in violation of R.A. No. 9184. At most, the

⁶ Motion for Reconsideration dated April 22, 2019, pp. 9-11.

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prosecution was only able to establish the existence of these documents.⁷

- b. There is no direct testimony to the effect that there was an absence of pre-procurement and pre-bid conference. Considering that there is no proper custody and turn-over of documents, and, the bidding proceedings subject of the present case happened more than a decade ago, it is impossible to have a conclusive finding as to the existence or inexistence of the documents relative thereto.

The cross-examination of the prosecution witness Ms. Grupo shows that there is no certainty as to the supposed absence of pre-procurement and pre-bid conference.⁸

Ms. Verdad also testified that there is no certainty as to any supposed absence of documents, considering that it has been more than a decade when the procurement of the water system happened.

Meanwhile, the testimony of Ms. Racho was dispensed with by the prosecution since the parties stipulated on the due execution and authenticity of the *Certification* executed by Ms. Racho.

Mr. Labang's testimony does not support personal knowledge on his part as to the procurement of the water system in 2006 awarded to PZA Trading.⁹

In relation to Ms. Grupo's testimony, the prosecution also stipulated that said witness cannot confirm whether a pre-bid conference or pre-procurement conference was conducted.¹⁰

- 5. The prosecution failed to provide sufficient and competent evidence that accused Chio acted with manifest partiality, evident bad faith or gross inexcusable negligence.
 - a. Accused Chio was merely performing his official duties in accordance with law.¹¹
 - b. The act of signing the Purchase Request No. 2006-3114 dated October 6, 2006; 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; which were documents used to pin liability on accused Chio, is not tantamount to manifest partiality, evident bad faith or gross inexcusable negligence.
 - c. The ABC of PhP2,591,435.4 is consistent throughout the bidding process of the instant case and that the supposed difference of 40 centavos is clearly a typographical error. Assuming that the 40-centavo difference is not a typographical error, the same is not sufficient to warrant a

⁷ Motion for Reconsideration dated April 22, 2019, pp. 11-12.

⁸ Motion for Reconsideration dated April 22, 2019, pp. 12-14.

⁹ Motion for Reconsideration dated April 22, 2019, pp. 14-15.

¹⁰ Motion for Reconsideration dated April 22, 2019, p. 16.

¹¹ Motion for Reconsideration dated April 22, 2019, pp. 17-18.

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finding of manifest partiality, evident bad faith or gross inexcusable negligence on the part of accused Chio, or, of undue injury to the Government, or unwarranted benefits, advantage or preference to PZA Trading.¹²

6. The prosecution failed to prove any act committed by 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.

a. The items delivered by PZA Trading amounted to PHP2,591,435.40. The Government cannot claim that it was shortchanged by PZA Trading.

b. The prosecution failed to establish that the assailed transaction was subject of any notice of disallowance and suspension that would have caused undue injury to the Government. Ms. Seroy's statement during her cross-examination further supports that there was no injury to the Government.¹³

c. Records do not show how PZA Trading was given unwarranted benefit, advantage or preference. Assuming *arguendo* that there is unwarranted benefit, advantage or preference given to PZA Trading, the same cannot be attributed to accused Chio. Accused Chio merely approved the *BAC Resolution*, where BAC recommended that the contract be awarded to PZA Trading.¹⁴

7. The prosecution did not refute that the duty and responsibility of taking custody of the procurement documents and of making arrangements in relation to the pre-procurement and pre-bid conferences are reposed on the Bids and Awards Committee Secretariat and not on accused Chio.

a. Accused Chio, as the Head of the Procuring Entity, merely relied on the representation of the BAC that the procurement procedure was done in accordance with law.

Under R.A. No. 9184, the BAC is the custodian of procurement documents; it is likewise in charge of making arrangements for the pre-procurement and pre-bid conferences. The HOPE is not required to participate or attend the pre-procurement conference.¹⁵

b. Any act ascribed by the prosecution on accused Chio were only done in the regular performance of his duties.

Accused Chio participated in the procurement process of the water system materials after the BAC members had recommended the awarding of the contract to PZA Trading. Accused Chio cannot be faulted for signing the *BAC Resolution* since he only relied on the representation of the

¹² Motion for Reconsideration dated April 22, 2019, p. 18.

¹³ Motion for Reconsideration dated April 22, 2019, pp. 18-20.

¹⁴ Motion for Reconsideration dated April 22, 2019, p. 21.

¹⁵ Motion for Reconsideration dated April 22, 2019, pp. 22-23.

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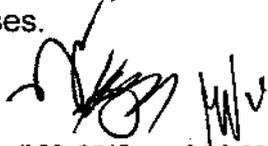
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BAC members, recommending the award thereof to PZA Trading.

The *BAC Resolution* was approved by accused Chio after the same had been signed by all the BAC members. The BAC, which has the duty to make sure that the bidding documents are complete, recommended that the assailed contract be awarded to PZA Trading; accused Chio has the right to rely, to a reasonable extent, on the good faith of his subordinates.¹⁶

The prosecution contends that the *Motion for Reconsideration* must be denied for lack of merit.¹⁷ The prosecution argues:

1. The motion does not state when the April 8, 2019 Resolution was received by accused Chio.¹⁸
2. The instant *Motion* is mere rehash of the arguments raised by accused in his *Motion for Leave to File Demurrer to Evidence*. Based on the testimonial and documentary evidence submitted by the prosecution, it was able to establish the guilt of accused Chio.
3. The first element of violation of Section 3(e), R.A. No. 3019, is not disputed. The parties stipulated on the position held by accused Chio at the Department of Agriculture, at the time material to the allegations in the Information.¹⁹
4. 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. 06-2225 dated November 10, 2006 (Exhibit O to O-4); Disbursement Voucher 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.



¹⁶ Motion for Reconsideration dated April 22, 2019, pp. 24 & 26.

¹⁷ Comment/Opposition dated April 24, 2019, p. 4.

¹⁸ Comment/Opposition dated April 24, 2019, p. 1.

¹⁹ Comment/Opposition dated April 24, 2019, p. 2.

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5. The existence and due execution of Exhibits L, N, O, P and Q was stipulated by the parties during the pre-trial. These documents established that accused Chio acted with evident bad faith, manifest partiality, or gross inexcusable negligence, when he approved the award of the assailed contract to PZA Trading, considering that the PZA's bid amount of PhP2,591,435.40 exceeded the approved ABC of PhP2,591,435.00. By approving the award of the contract to PZA Trading, accused Chio, in connivance with accused Falcon, Mahinay and Ramos, who were all officials of DA-RFU XI BAC, clearly violated R.A. No. 9184.

6. 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).²⁰

7. 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.²¹

RULING

After a careful restudy of the documentary and testimonial evidence presented by the prosecution, the Court maintains that, if unrebutted, the same is sufficient to support a verdict of guilt against accused Roger C. Chio for violation of Section 3(e) of Republic Act No. 3019. The Court hereby ***DENIES*** the *Motion for Reconsideration [Re: Resolution dated 8 April 2019]* filed by accused Chio for lack of merit.

This is without prejudice to the filing by accused Chio of a *Demurrer 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, he shall waive his right to present evidence and is submitting this case for judgment on the basis of the evidence adduced by the prosecution.

²⁰ Comment/Opposition dated April 24, 2019, p. 3.
²¹ Comment/Opposition dated April 24, 2019, pp. 3-4.

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Accused Chio is given a period of five (5) days from receipt of this Resolution within which to file, by personal filing and service, or through courier, his *Manifestation* to inform this Court whether he will file a *Demurrer to Evidence*, without leave of court.

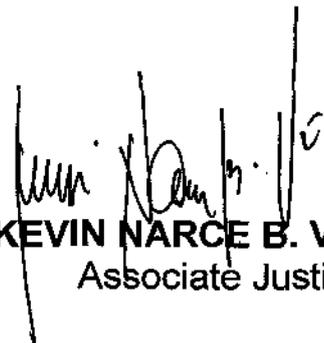
The Court **NOTES** the *Manifestation* filed by accused Chio on April 24, 2019. The hearings set for the accused to present their evidence on May 20 and 21, 2019, both at 1:30 in the afternoon, are maintained. The said scheduled dates will be considered automatically cancelled, as to accused Chio, upon receipt by the Court of his *Demurrer to Evidence*.²²

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

WE CONCUR:


KARL B. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
Associate Justice

²² Pursuant to A.M. No. 15-06-10-SC, Revised Guidelines for Continuous Trial of Criminal Cases