



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),
 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

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RESOLUTION

FERNANDEZ, SJ, J.

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

Accused Chio claims that: (i) The evidence submitted by the prosecution admits an interpretation which points to the innocence of accused Chio, thereby creating reasonable doubt; (ii) The *Motion for Leave* is far from dilatory as it intends to point out the flaws in the evidence for the prosecution; and, (iii) The examination of the facts, law and evidence in the instant case does not support a conclusion of conviction even if all the evidence of the prosecution is admitted.³ Thus, accused Chio prays:

¹ [Re: Resolution dated 8 April 2019] [With Prayer to Deter Submission of Judicial Affidavits and Suspend Hearing] dated April 22, 2019; received through registered mail by this Court on April 30, 2019; Record, Vol. 2, pp. 298-330
² (To Accused Roger C. Chio's Motion for Reconsideration dated April 22, 2019) dated and filed on April 30, 2019; Record, Vol. 2, pp. 332-337.
³ Motion for Reconsideration dated April 22, 2019, pp. 3-4

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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,
2. That this Court grant accused Chio leave of Court to file *Demurrer to Evidence*.⁴

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.⁵
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.⁶
3. The Court erred in ruling that the prosecution's evidence is 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.⁷

⁴ Motion for Reconsideration dated April 22, 2019, p. 28.

⁵ Motion for Reconsideration dated April 22, 2019, pp. 6-7.

⁶ Motion for Reconsideration dated April 22, 2019, pp. 7-9.

⁷ Motion for Reconsideration dated April 22, 2019, p. 9.

Handwritten signature and initials in black ink, located at the bottom right of the page. The signature appears to be 'J. [unclear]' and the initials are 'JW/v'.

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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:

- a. Ms. Jocelyn Gerones, former Clerk II at DA-RFU XI and former member of the BAC Secretariat from 2006 to 2010, was presented to testify on the opening of bids on December 28, 2006 and on her preparation of the minutes for the same (Exhibit H). However, based on her testimony, accused Chio was not present during the opening of the bids nor did he participate therein. Accused Chio was not one of the signatories in the Minutes of the Opening of Bids dated December 28, 2006. Thus, accused Chio has no participation in the events pertaining to the opening of bids.
- b. Ms. Victoria Grupo, Chief of the General Services Section and Head of the Bac Secretariat of the DA-RFU XI, did not have personal knowledge of the instant cases and merely provided a *Certification* dated August 31, 2018 (Exhibit XX), stating that she transmitted to the Office of the Ombudsman photocopies of the documents the latter requested.
- c. Ms. Rinah Garrido, COA State Auditor and Audit Team Leader of the Audit Team assigned at the COA-NGS Cluster 8, DA-RFU XI from November 17, 2017 to April 11, 2018, was admitted by the prosecution to have no personal knowledge of the transactions and procurement subject of the *Informations* and merely testified as to having reproduced, at the instance of the Office of the Ombudsman, the records pertaining to said procurement which were in the custody of her office. Notably, Ms. Garrido is not in any position to verify the contents of the same nor testify as to the completeness of such records.
- d. Ms. Siegfried L. Labang, Associate Graft Investigation Officer (AGIO) III of the Office of the Ombudsman for Mindanao and AGIO II of the OMB Field Investigation Unit in 2007, was presented in his capacity as the handling investigating officer of the case which gave rise to the *Informations*. However, Mr. Labang likewise did not have any personal knowledge of the subject procurements and even admitted to having committed a serious error in his investigation, *i.e.*, failure to verify the identity of the complainant and the veracity of the complaint from which the instant cases arose.
- e. Ms. Franzel Racho, Chief of the Records Unit of DA RFO XI, also admitted not having personal knowledge of the procurements subject of the *Informations* and merely 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, were not in the records of her office nor did her office keep records of the same.
- f. Ms. Floreen Marie Verdad, COA State Auditor IV and Audit Team Leader for DA-RFO XI, did not have any personal knowledge of the procurement subject of the *Informations* and merely testified on her execution of *Certification* dated October 29, 2018 (Exhibit ZZ), certifying that the documents pertaining to the procurement of "308 sets of Jetmatic Heavy Duty Pump

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and 50 sets of grass cutter, 30 sets of desktop computers and 23 units of multi-purpose tent 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.⁸

The documentary evidence presented by the prosecution merely showed the existence of various documents relating to the procurement of 308 sets of Jetmatic Heavy Duty Pumps and 50 sets of grass cutters, 30 sets of desktop computers and 23 units of multi-purpose tents. They did not show any irregularity therein.⁹

4. The prosecution failed to provide sufficient and competent evidence that there were irregularities in the procurement and bidding process, constituting violation of Section 3(e), R.A. No. 3019.
 - a. For any criminal liability to attach, the prosecution must have shown not only that irregularities attended the procurement process, but also that accused Chio knew of the alleged irregularities, and/or that he participated therein.
 - b. The prosecution failed to present copies of the documents pertaining to re-bidding/re-advertisement, pre-bid and pre-procurement conferences. Hence, violation of R.A. No. 3019 was not proved beyond reasonable doubt.
 - c. Ms. Grupo admitted that she is uncertain whether all the documents pertaining to the transactions subject of the instant cases were found by her office because not all the files dated 2006 were inspected.

None of the prosecution witnesses have testified with certainty that there were actually no re-bidding and re-advertisement of the contracts subject of the *Informations*.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. Apart from the presentation of documentary exhibits, showing that procurement was conducted by the DA-RFU XI, the prosecution did not present any independent proof of manifest partiality, evident bad faith, or gross inexcusable negligence, on the part of accused Chio.

The testimonial evidence presented by the prosecution did not support any of the charges against accused Chio. None of the six (6) witnesses testified as regards any supposed violation committed by accused Chio. The witnesses presented were mostly records custodian with no personal knowledge of the transactions subject of the instant cases. Mr. Labang admitted that the filing of the cases and the investigation of the factual

⁸ Motion for Reconsideration dated April 22, 2019, pp. 11-13.
⁹ Motion for Reconsideration dated April 22, 2019, p. 13.
¹⁰ Motion for Reconsideration dated April 22, 2019, pp. 13-15.

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circumstances surrounding the same are based on an unverified complaint, filed by a person who is "unknown" to him and to the prosecution.

- b. The acts of accused Chio enjoy the presumption of regularity.¹¹
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 benefit, advantage or preference in the discharge of his functions.
- a. The prosecution failed to prove actual injury. The evidence for the prosecution shows that the Government received the items procured. There was neither allegation nor proof that Government was in any way damaged or prejudiced by the purchase of said items.
 - b. The prosecution did not specify what constituted such benefit nor present any particular evidence to show the same. It failed to present any evidence to show that accused Chio gave any unwarranted benefit, advantage or preference to PZA Trading; there is no evidence linking accused Chio to the choice of PZA Trading.¹²
7. Even assuming *arguendo* that the evidence presented by the prosecution is able to establish the presence of the elements of Section 3(e), R.A. No. 3019, the prosecution 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, falls upon the BAC and not on accused Chio.
- a. Accused Chio, as the Regional Executive Director of the DA-RFU XI and Head of the Procuring Entity, is not involved in the bidding process. He is not allowed to be part of the BAC and has no participation in the posting of invitations to bid /request for expressions of interest and the conduct of pre-bid and pre-procurement conferences. The HOPE is not even required to participate or attend procurement conference.¹³
 - b. Any act on the part of the other accused cannot be taken against accused Chio, considering that the prosecution failed to prove any conspiracy among the accused.¹⁴

The prosecution contends that the *Motion for Reconsideration* must be denied for lack of merit.¹⁵ The prosecution argues:

¹¹ Motion for Reconsideration dated April 22, 2019, pp. 16-18.

¹² Motion for Reconsideration dated April 22, 2019, pp. 18-21.

¹³ Motion for Reconsideration dated April 22, 2019, pp. 21-22.

¹⁴ Motion for Reconsideration dated April 22, 2019, p. 27.

¹⁵ Comment/Opposition dated April 30, 2019, p. 2.

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1. The assailed Resolution did not violate accused Chio's right to due process since the Court clearly stated therein its legal basis for the denial of the *Motion for Leave*.¹⁶
2. Accused Chio wrongly argued that the Resolution must comply with the requirements that decisions must clearly and distinctly state the facts and the law on which it is based, citing Section 14, Article VIII of the Constitution. Said constitutional provision pertains to decisions rendered by courts and not resolutions. What is required in resolutions is to state their legal basis. The non-applicability of the constitutional provision to resolutions is explained by the Supreme Court in *Mendoza vs. Court of First Instance, viz:*

xxx Plaintiff-appellant assigns as another error that the order appealed from does not contain any statement of the facts and the law on which it is based. Obviously, this is based on Section 1, Article VIII of the Constitution. The contention is untenable, since these provisions have been held to refer only to decisions of the merit and not to orders of the trial court resolving incidental matter such as the one at bar.¹⁷
3. In the present case, the assailed Resolution provided the legal basis for the denial of accused Chio's *Motion for Leave*, resolving an incidental matter, *i.e.*, whether to grant permission to accused Chio to file his demurrer to evidence.
4. Accused Chio failed to present new arguments that would warrant the reversal of the subject Resolution. The other grounds stated in the present *Motion* are mere rehash of the arguments in accused Chio's *Motion for Leave*.
5. Accused Chio failed to show that this Court, in denying his *Motion for Leave*, committed errors of law and facts that would warrant the reversal of the assailed Resolution.
6. The evidence for the prosecution established that the bidding conducted in relation to the subject procurement is tainted with irregularities. Accused Chio's participation therein is clearly shown in the documents presented. The burden shifted to accused Chio to prove that he has no participation in said irregularities.¹⁸

RULING

After a careful restudy of the documentary and testimonial evidence presented by the prosecution, the Court maintains its

¹⁶ Comment/Opposition dated April 24, 2019, p. 2.

¹⁷ Comment/Opposition dated April 24, 2019, p. 3, citing *Mendoza vs. CFI*, 65 SCRA 96 [1973].

¹⁸ Comment/Opposition dated April 30, 2019, p. 4.

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previous assessment 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.

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.

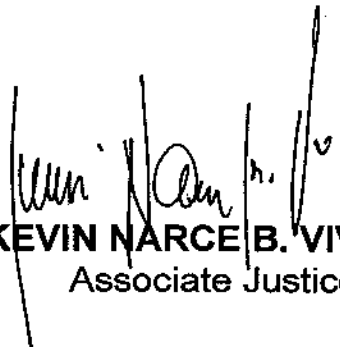
The Court **NOTES** the *Manifestation* filed by accused Chio on April 24, 2019. The hearings set for the accused to present their evidence on May 20 and 21, 2019, both at 1:30 in the afternoon, are maintained. The said scheduled dates will be considered automatically cancelled, as to accused Chio, upon receipt by the Court of his *Demurrer to Evidence*.¹⁹

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

WE CONCUR:


KARL B. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
Associate Justice

¹⁹ Pursuant to A.M. No. 15-06-10-SC, Revised Guidelines for Continuous Trial of Criminal Cases