



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

SB-15-CRM-0101-0102

For: Violations of Sec. 3(e) of
R.A. 3019 and Sec. 7(d) of
R.A. 6713

HENRY M. GELACIO,
Accused.

Present:

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

Promulgated:

JUN 26 2019

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RESOLUTION

VIVERO, J.

This resolves the *Motion for Reconsideration*¹ filed by accused Gelacio on 30 May 2018 and the *Comment/Opposition (to the Motion for Reconsideration dated 14 May 2019)*² filed by the prosecution on 04 June 2019.

Accused implores this Court to reconsider and set aside its Decision dated 29 April 2019 finding him guilty beyond reasonable doubt of violations of Section 3(e) of Republic Act No. 3019 or the *Anti-Graft and Corrupt Practices Act*, as amended, and Section 7(d) of Republic Act No. 6713 otherwise known as the *Code of Conduct and Ethical Standards for Public Officials and Employees*, and instead a judgment be rendered acquitting him of the said charges.

¹ Dated 14 May 2019.

² Dated 04 June 2019.

In support of his *Motion for Reconsideration*, accused posits the following:

- a) The Court erred when it relied on hearsay evidence in establishing some of the essential elements of the offenses charged;³
- b) The Court erred when it ruled that proof beyond reasonable doubt was established despite doubts on the fate of the moneys that had been entrusted to Mr. Garbo, the ascertainment of which is forever foreclosed by his death;⁴ and
- c) The Court erred when it ruled that proof of guilt was established despite doubts on whether accused truly solicited and accepted gifts from the plaintiffs in the DARAB Case No. XII-990-SC-2007 and despite other glaring inconsistencies.⁵

In its *Comment/Opposition*, the prosecution seeks the denial of accused's *Motion for Reconsideration* on the following grounds:

- a) The *Motion for Reconsideration* failed to comply with the requirement of notice of hearing under Rules of Court;⁶
- b) Contrary to the allegation of the accused that the conviction was based on hearsay evidence, the Court correctly found the accused guilty on the basis of the straightforward, positive and detailed personal accounts of the witnesses;⁷
- c) The supposition that Mr. Garbo appropriated the moneys entrusted to him by the plaintiffs in the DARAB case for his personal benefit is without legal ground to stand on;⁸
- d) The prosecution evidence undoubtedly established the fact that accused solicited and accepted money and gift from Mr. Garbo and the plaintiffs in the DARAB Case;⁹ and

³ Accused's Motion for Reconsideration dated 14 May 2019, p. 7.

⁴ *Id.* pp. 9-10.

⁵ *Id.* pp. 10-16.

⁶ Prosecution's Comment/Opposition (to the Motion for Reconsideration dated 14 May 2019) dated 04 June 2019, pp. 2-3.

⁷ *Id.* p. 3.

⁸ *Id.* p. 4.

⁹ *Id.* pp. 4-7.

- e) The alleged inconsistencies in the testimonies of the prosecution witnesses did not destroy their credibility, but even enhanced the same as they remove any suspicion of rehearsed testimony.¹⁰

RULING

The Court deems it proper to resolve first the procedural issue raised by the prosecution. Sections 4 and 5, Rule 15 of the Rules of Court provide that:

"Section 4. Hearing of motion. — Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

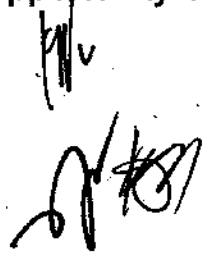
Section 5. Notice of hearing. — The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.
(Emphasis supplied)

It has been consistently held that a motion that fails to comply with the above requirements is considered a worthless piece of paper which should not be acted upon. However, such rule is not absolute. In *Cabrera vs. Ng*,¹¹ the Supreme Court held that when the adverse party had been afforded the opportunity to be heard, and has been indeed heard through the pleadings filed in opposition to the motion, the purpose behind the three-day notice requirement is deemed realized and in such case, the requirements of procedural due process are substantially complied with.

In the instant case, while accused's *Motion for Reconsideration* failed to comply with the requirement of notice of hearing, records, however, show that the prosecution was given an opportunity to be

¹⁰ *Id.* pp. 7-8.

¹¹ G.R. No. 201601, 12 March 2014.



heard and it did in fact file its *Comment/Opposition* on 04 June 2019, five (5) days after the filing of the *Motion for Reconsideration* on 30 May 2019. Hence, the non-compliance with the rules is inconsequential as the requirements of procedural due process have been substantially complied with.

Going into the merits of the *Motion for Reconsideration*, the Court finds no compelling reason that would warrant the reversal of the assailed Decision. The accused raised no new and substantial arguments and merely reiterated and rehashed those contained in his *Memorandum* dated 19 October 2018,¹² which was already squarely addressed by this Court in the assailed Decision.

This, however, is without prejudice to the remedy of the accused to appeal to the Supreme Court, which is now *via* notice of appeal filed with this Court and by serving a copy upon the adverse party pursuant to Section 1(a), Rule XI of the 2018 Revised Internal Rules of the Sandiganbayan.

WHEREFORE, accused Gelacio's *Motion for Reconsideration* dated 14 May 2019 is hereby DENIED for lack of merit.

SO ORDERED.


KEVIN NARCE B. VIVERO
Associate Justice

WE CONCUR:


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson


KARL B. MIRANDA
Associate Justice

¹² *Rollo* (SB-15-CRM-0101), pp. 360-375.