



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-17-CRM-2082
For: Violation of Section 3(e)
of R.A. 3019 as amended

- versus -

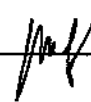
Present :

ANNALIZA P. GONZALES-KWAN,
ET AL.,

Accused.

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

Promulgated:

July 1, 2019 

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves the following:

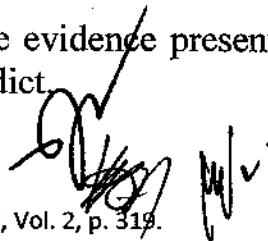
1. *Motion for Leave of Court to File Demurrer to Evidence* filed by accused Annaliza Projimo Gonzales-Kwan;¹
2. *Motion for Leave of Court to File Demurrer to Evidence* filed by accused Arsenio V. Salamida, Esperanza G. Cotin, Ma. Nenita S. Ecleo, Felipe D. Padual and Danilo G. Colandog;² and,
3. *Consolidated Opposition (Re: Motions for Leave of Court to File Demurrer to Evidence)* filed by the prosecution.³

All the accused similarly contend that the evidence presented by the prosecution is insufficient to sustain a guilty verdict.

¹ Dated April 27, 2019 and received by mail on May 7, 2019; Record, Vol. 2, p. 319.

² Dated April 27, 2019 and received by mail on April 29, 2019; Record, Vol. 2, p. 315.

³ Dated May 14, 2019 and received on May 14, 2019; Record, Vol. 2, pp. 383-388.



RESOLUTION

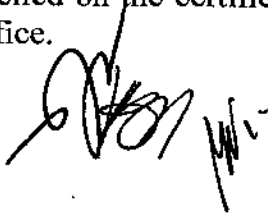
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Accused Gonzales-Kwan, in her *Motion for Leave to File Demurrer to Evidence*, contends that the prosecution failed to establish with moral certainty her guilt beyond reasonable doubt for violation of Section 3 (e) of R.A. No. 3019. She claims that:

1. The prosecution failed to present proof beyond reasonable doubt that the third and fourth elements of Section 3 (e) of R.A. No. 3019 are present in so far as she is concerned.
2. The Notice of Award, which was heavily relied upon by the prosecution to support their accusation, is false, spurious, forged, and simulated.
 - a. The address of the Municipal Hall of Guiuan, Eastern Samar indicated in the Notice of Award is wrong.
 - b. The Notice of Award is dated 19 Jan 20107. The prosecution did not present evidence to establish the definite date of issuance of such notice.
 - c. The negotiated contract for the purchase of the fire truck was actually awarded to Integrated Energy and Resource Systems, Inc. (IERSI) and not to Integrated Energy Systems & Resources, Inc. (IESRI), which was the awardee indicated in the Notice of Award.
 - d. The signature appearing in the Notice of Award, above the printed name Hon. Annaliza P. Gonzales-Kwan, is a forgery.
 - e. The signature of the representative of IERSI found in the Notice of Award is markedly different from the signature of the IERSI representative found in the negotiated contract.
 - f. The investigating prosecutor, Alejandro P. Borden, did not require the presentation of the original of the Notice of Award. He simply relied on the certified true copy sent to his office.

A handwritten signature in black ink, appearing to be a stylized name, possibly 'G. Borden', written over the text of the final list item.

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- g. The Notice of Award does not bear any indication that it was submitted to the COA State Auditor.

3. The remaining documentary exhibits offered in evidence by the prosecution only shows that she was duly authorized by the Sangguniang Bayan of the Municipality of Guiuan, Eastern Samar to enter into a negotiated contract with IERSI for the purchase of one (1) unit of remanufactured fire truck.

Accused Salamida, Cotin, Ecleo, Padual, and Colandog adopted the arguments raised by accused Gonzalez-Kwan in her *Motion for Leave* and, in addition, claim that:

1. The prosecution failed to prove their guilt beyond reasonable doubt.
2. The prosecution failed to prove the elements of the crime beyond reasonable doubt, specifically:
 - a. That no competitive bidding was conducted;
 - b. Giving of preference;
 - c. Prejudice to the government; and,
 - d. Conspiracy.

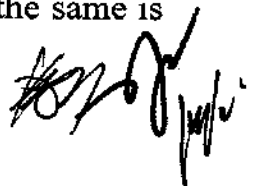
The prosecution, on the other hand, contends that the evidence presented is sufficient to prove the guilt of the accused beyond reasonable doubt and all the elements for violation of Section 3(e) of R.A. No. 3019 have been established.

The prosecution maintains that the accused awarded the contract for the purchase of a fire truck to IERSI without public bidding or a valid justification to resort to negotiated procurement and that accused failed to show that they complied with the provisions of the Implementing Rules and Regulations of R.A. No. 9184 in the procurement of the fire truck.

Finally, the prosecution argues that the accused' contention that the Notice of Award is false, spurious and forged, is immaterial in this case where the issue is whether the procurement was conducted in accordance with law.

RULING

After a careful study of the documentary and testimonial evidence presented by the prosecution, the Court finds that, if unrebutted, the same is



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prima facie sufficient to support a verdict of guilt against accused Annaliza Projimo Gonzales-Kwan, Arsenio V. Salamida, Esperanza G. Cotin, Ma. Nenita S. Ecleo, Felipe D. Padual and Danilo G. Colandog for violation of Section 3(e) of Republic Act No. 3019.


The Court hereby **DENIES** the following:

1. *Motion for Leave of Court to File Demurrer to Evidence* filed by accused Annaliza Projimo Gonzales-Kwan dated April 27, 2019; and,
2. *Motion for Leave of Court to File Demurrer to Evidence* filed by accused Arsenio V. Salamida, Esperanza G. Cotin, Ma. Nenita S. Ecleo, Felipe D. Padual and Danilo G. Colandog dated April 27, 2019.

This is without prejudice to the filing by the accused of a *Demurrer to Evidence* without prior leave of court, but subject to the legal consequences 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.

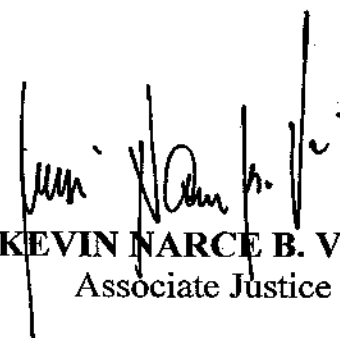
The accused are given a period of five (5) days from receipt of this Resolution within which to file, by personal filing and service, or through courier, their *Manifestation* to inform this Court whether they will file a *Demurrer to Evidence*, without leave of court.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

WE CONCUR:


KARL B. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
Associate Justice