



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-17-CRM-2082**
Plaintiff, For: Violation of Section 3(e)
of R.A. 3019 as amended

- versus -

Present :

ANNALIZA P. GONZALES-KWAN, **FERNANDEZ, SJ, J.,** Chairperson
ET AL., **MIRANDA, J.** and
Accused. **VIVERO, J.**

Promulgated:

AUG 13 2019

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves the following:

1. *Motion for Reconsideration filed by accused Arsenio Valdenor Salamida, Esperanza Gormate Cotin, Ma. Nenita Salamida Ecleo, Felipe Darang Padual, and Danilo Gagarion Colandog;*¹
2. *Motion for Reconsideration (Of the Resolution Promulgated on 1 July 2019) filed by Annaliza Projimo Gonzales-Kwan;*²
3. *Consolidated Comment/Opposition Re: Accused Annaliza Projimo Gonzales-Kwan's Motion for Reconsideration and Accused Arsenio Valdenor Salamida, Esperanza Gormate Cotin, Ma. Nenita*

¹ Dated July 8, 2019, filed on July 8, 2019.

² Dated July 8, 2019, received by mail on July 12, 2019; *Manifestation* with attached advanced copy received by the Court on July 9, 2019.

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*Salamida Ecleo, Felipe Darang Padual, and Danilo Gagarion Colandog's Motion for Reconsideration (Resolution dated 01 July 2019) filed on July 15, 2019 by the prosecution.*³

Accused similarly contend that the Court erred in denying their respective *Motions for Leave of Court to File Demurrer to Evidence* considering that the evidence presented by the prosecution is not sufficient to support a verdict of guilt for violation of Section 3(e) of R.A. 3019.

Accused Salamida, Cotin, Ecleo, Padual, and Colandog argue:

1. The prosecution was not able to present evidence to prove that they acted with manifest partiality, evident bad faith or gross inexcusable negligence.
2. The documentary evidence of the prosecution failed to prove the allegations in the complaint and Information.
 - a. Exhibit B (Affidavit-Complaint dated March 25, 2014) of the prosecution does not prove: (1) the allegations in the complaint, (2) conspiracy among the accused, (3) prejudice and damage to the public interest and the government, (4) no bidding was conducted.
 - b. Exhibit J (Bid form, Schedule of Requirements, General Condition of Contract, Special Conditions of Contract) does not prove that Integrated Energy and Resource Systems, Inc. (IERSI) was a favored supplier and that it was given unwarranted benefits, advantage or preference. Instead, it proves that there was competitive bidding and the bidding process was followed.
 - c. Exhibit K (Notice of Award) does not prove the allegations in the Information and that on January 19, 2007 the Municipality of Guiuan awarded to IESRI the contract to supply the fire truck. The Notice of Award is in itself suspicious.
 - d. Exhibits L (Disbursement Voucher), M (Obligation Request No. 101-06-12-2684), N (Obligation Request No. 101-07-02-303), O

³ Dated July 15, 2019.

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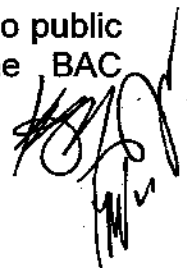
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(Purchase Request No. 1011-07-02-027), P (BAC Resolution 01022007), Q (Purchase Order 07-02-027), R (O.R. No. 818), S (Check No. 55127), T (Sales Invoice No. S-1641), W (Sangguniang Bayan Resolution No. 07 series of 2007), X (Negotiated Contract), and, CC (Certification issued by accused Esperanza Cotin) do not prove the allegations in the Information and only shows that bidding was conducted, the bidding process was followed, and, the accounting department and the Commission on Audit (COA) found nothing irregular in the bidding process.

3. The testimony of prosecution witness Mr. Alejandro P. Borden is full of inconsistencies and should not be given weight.
 - a. Mr. Borden testified that the instant complaint was initiated through a letter sent by a certain Mr. Gica but he did not present such letter in court;
 - b. Mr. Borden testified that he received all the bidding documents from then BAC-Secretariat Chairman. He, however, recanted his testimony and said that he has no document in his possession.
 - c. Mr. Borden testified that the Notice of Award was dated January 19, 2017 but the date written in the Notice of Award is January 9, 20107.
 - d. Mr. Borden testified that no competitive bidding was conducted but he presented documentary evidence, including the letter-reply of the BAC Chairman, showing that there was competitive bidding and there was failure of bidding.
4. The prosecution failed to show that there was prejudice or undue injury to the government and to the public.
5. The prosecution failed to prove conspiracy. No evidence was presented as to how the accused conspired and confederated with one another to commit the crime.
6. The prosecution failed to prove that there was no public bidding. In fact, Exhibits "P" and "W", the BAC



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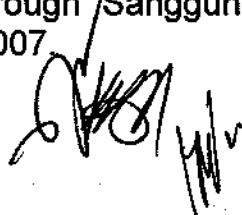
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Resolution, and, the Sangguniang Bayan Resolution all prove that a competitive bidding was conducted and that it resulted to a failure of bidding. The documents showing a failure of bidding only presupposes that bidding was in fact conducted.

7. The financial documents under the law were complied with. The accounting office, as well as the COA, did not find any irregularity in the transaction and thus did not disallow the procurement of the fire truck.

Accused Gonzales-Kwan argues:

1. The Court erred in denying her *Motion for Leave to File Demurrer to Evidence* considering that she is not a member of the Bids and Awards Committee (BAC).
 - a. She had no participation in the determination of the mode of procurement to be undertaken and in the execution or issuance of documents relative to the procurement of the fire truck.
 - b. She relied in good faith on the findings of the BAC that negotiated procurement was necessary.
 - c. Any irregularity or discrepancy in the bidding process should be attributed only to the members of BAC as she only signed the BAC Resolution No. 01022007 because as the Local Chief Executive of the Guiuan, Province of Eastern Samar, she was also the Head of the Procuring Entity (HoPE) of the Municipality.
 - d. Applying the case of *Joson III vs. Commission on Audit*, as the head of the procuring entity and the local chief executive of the Municipality of Guiuan, she had the right to rely to a reasonable extent on the good faith of his subordinates considering the amount of paperwork that normally passes through their office and of the documents that has to be signed.
2. She only signed the Negotiated Contract as the Head of the Procuring Entity (HoPE) of the Municipality, in compliance with the directive and authority given by the Sangguniang Bayan of Guiuan through Sangguniang Bayan Resolution No. 07 series of 2007.



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- a. The mere existence of her signature in the award of the contract and in the contract itself without anything more cannot be considered as a presumption of liability. Liability depends upon the wrong committed and not solely by reason of being the head of a government agency.
3. The Notice of Award, which serves as the only evidence to support the prosecution's claim that IERSI was given unwarranted benefits, advantage or preference in the transaction, is a falsified and simulated document.
 - a. The address of the Municipal Hall of Guiuan, Eastern Samar is wrong.
 - b. The date indicated is 19 January 20107 and no evidence was presented to prove the correct date.
 - c. The name of the awardee is incorrect.
 - d. The initial/signature appearing above the printed name Hon. Annaliza P. Gonzalez-Kwan in the Notice of Award was forged.
 - e. The signature of the representative of IERSI found in the Notice of Award is different from the signature of the representative of IERSI found in the Negotiated Contract.
 - f. The act of investigating prosecutor Alejandro P. Borden in not requesting the original copy of the Notice of Award and in merely relying on the purported certified true copy sent to him, was suspicious.
 - g. The Notice of Award does not bear any indication that it was submitted to the state auditor. Other transactional documents bearing her genuine signature were duly submitted to the COA state auditor.
 4. The prosecution failed to present any evidence that accused Gonzales-Kwan conspired and confederated with her co-accused.

A handwritten signature in black ink, appearing to be a stylized name, possibly 'Annaliza P. Gonzalez-Kwan', written over the text of the fourth point.

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The prosecution, in its *Comment/Opposition*, contends that the *Motions for Reconsideration* filed by the accused do not deserve any consideration from the Court as the arguments raised therein are essentially a mere rehash of their claims in their respective *Motions for Leave of Court to File Demurrer to Evidence*, which had been judiciously addressed and passed upon by the Court in the Resolution dated July 1, 2019.

The prosecution claims that it was able to present evidence to prove the elements of the crime of violation of Section 3(e) of R.A. No. 3019, as amended.

THE COURT'S RULING

After a careful reconsideration of the evidence presented by the prosecution, taking into account the arguments raised by the accused, the Court still finds that the testimonial and documentary evidence presented by the prosecution sufficiently established a *prima facie* violation of Section 3 (e) of R.A. No. 3019.

The arguments raised by the accused are essentially a rehash of their previous arguments and have already been considered by the Court in denying their *Motions for Leave of Court to file Demurrer to Evidence*.

In any event, accused' basic contentions, including the alleged absence of any conspiracy among the accused, are evidentiary in nature and are matters of defense, the truth of which can be best passed upon after a full-blown trial on the merits.⁴

In fine, the Court finds no reason to reverse its *Resolution* dated July 1, 2019, denying accused' respective *Motions for Leave of Court to file Demurrer to Evidence*.

WHEREFORE, the *Motions for Reconsideration* separately filed by accused Arsenio Valdenor Salamida, Esperanza Gormate Cotin, Ma. Nenita Salamida Ecleo, Felipe Darang Padual, and Danilo Gagarion Colandog, and, Annaliza Projimo Gonzales-Kwan, are hereby **DENIED** for lack of merit.

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

⁴ *Gregorio Singian, Jr. vs. Sandiganbayan*, G.R. Nos.195011-19, September 30, 2013.

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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