



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-16-CRM-0317

For: Violation of Sec. 3(e) of
R.A. 3019

- versus -

GEMMA FLORANTE ADANA,
ET AL.,

Present:

FERNANDEZ, SJ, J.

Chairperson

MIRANDA, J. and

VIVERO, J.

Promulgated:

OCT 04 2019

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RESOLUTION

VIVERO, J.

This resolves the (a) *Motion for Reconsideration* dated 14 August 2019 filed by accused Gemma F. Adana on 14 August 2019; (b) the *Motion for Reconsideration* dated 15 August 2019 filed by accused Roland C. Grijalvo, Felix A. Timsan, Emmanuel F. Enteria, and Jonathan K. Cartagena (Grijalvo, et al.) on 15 August 2019; and (c) the *Consolidated Opposition* dated 06 September 2019 filed by the prosecution on 09 September 2019.

The accused implores this Court to reconsider and set aside its *Decision* promulgated on 31 July 2019 finding them guilty beyond reasonable doubt of violation of Section 3(e) of Republic Act No. 3019 (R.A. No. 3019) or the *Anti-Graft and Corrupt Practices Act*, as amended, and instead a judgment of acquittal be rendered in their favor.

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

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- a) Her conviction based on grounds not alleged in the *Information* violated her constitutional right to be informed of the nature and cause of accusation against her;¹
- b) There is no factual basis to conclude, beyond reasonable doubt, that accused Adana gave unwarranted benefit, advantage or preference to the winning bidder (CVCK Trading);²
- c) Assuming that accused Adana was negligent, the same did not constitute gross and excusable negligence as contemplated by law and prevailing jurisprudence;³ and
- d) The omission or violation proven by the prosecution is manifestly insufficient to sustain a finding of guilt beyond reasonable doubt on the part of accused Adana, or of conspiracy between Adana and with any one of her co-accused.⁴

In their *Motion for Reconsideration*, accused Grijalvo, et al. raised the following grounds for the reversal of the subject Decision:

- a) In convicting the accused, the Court was indulging itself in speculative assumption, by anchoring its conclusion upon speculations, conjectures or guesswork, devoid of reasonable degree of moral certainty;⁵
- b) The error committed by the accused in the subject bidding process are mistakes attributable to human frailties, devoid of any malicious motives, neither any ulterior designs and intentions to perpetuate fraud for monetary gains, nor constitutive of gross negligence amounting to bad faith;⁶
- c) The finding of the Court that there is no evidence of bad faith is a clear recognition of the presumption that the accused public officials acted in good faith;⁷
- d) Convicting accused probably will ignite public scepticism that would send a chilling effect to all public officials

¹ Accused Adana's Motion for Reconsideration dated 14 August 2019, p. 1.

² *Ibid.* pp. 1-2.

³ *Ibid.* p. 3.

⁴ *Ibid.*

⁵ Accused Grijalvo et al.'s Motion for Reconsideration dated 15 August 2019, p. 2.

⁶ *Ibid.*

⁷ *Ibid.*

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whether of minimal or significant discretion, the result of which would cause a dangerous paralysis of the bureaucratic activity seriously inimical to the development of our society;⁸ and

- e) In any of the two (2) modes in the commission of the offense, i.e. (i) causing undue injury to any party, including the government; (ii) giving any party unwarranted benefits, advantage or preference, "undue injury" or "damage" is indispensable.⁹

In its *Consolidated Opposition*, the prosecution seeks the denial of instant motions for reconsideration on the following grounds:

- a) Contrary to the accused's arguments, the prosecution was able to prove all the elements of the crime charged beyond reasonable doubt;¹⁰ and
- b) The findings of the Court were based on records and facts established during the trial of the case, and on the jurisprudence applicable to it.¹¹

RULING

The Court finds no cogent reason that would warrant the reversal of the assailed Decision. The bulk of the grounds raised by the accused is a mere reiteration or rehash of their previous arguments, which were already squarely and sufficiently addressed by this Court in the subject Decision. It would be a useless ritual for this Court to reiterate itself. Nevertheless, lest we be misunderstood, the Court deems it proper to correct several misconceptions or fallacies postulated by the accused in their respective motions for reconsideration.

It is incorrect to assume that the conviction was based on grounds not alleged in the *Information*, and thus a violation of the constitutional right of the accused to be informed of the nature and cause of accusation against them. It has been consistently and repeatedly held in a number of cases that an *Information* need only state the ultimate facts constituting the offense and not the finer details of why and how the crime was committed.¹² Thus, it is of no moment that some of the violations of Republic Act No. 9184 (R.A. No. 9184)

⁸ *Id.* p. 3.

⁹ *Id.* pp. 5-6.

¹⁰ Prosecution's Consolidated Opposition dated 06 September 2019, p. 2.

¹¹ *Id.* p. 9.

¹² *People vs. Castillo*, G.R. No. 160619, 09 September 2015.

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proven to be committed by the accused were not specified in the *Information*. It was already sufficient, as the prosecution did in this case, to allege that the accused unlawfully purchased the subject heavy equipment without complying with R.A. No. 9184 – the ultimate facts constituting the offense of violation of Section 3(e) of R.A. No. 3019.

In support of their prayer for acquittal, the accused likewise heavily relied on the findings of the Court that the elements of undue injury and evident bad faith were not successfully proven. The accused, however, lost sight of the fact that "undue injury" is separate and independent from "unwarranted benefits, advantage or preference" and the modalities of "manifest partiality," "evident bad faith," and "gross inexcusable negligence" are also distinct from each other.

The Supreme Court in the case of *Abubakar vs. People*¹³ aptly discussed these elements, as follows:

"Section 3(e) of Republic Act No. 3019 punishes a public officer who causes "any undue injury to any party, including the Government" or gives "any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence."

A conviction under this provision requires the concurrence of the following elements:

1. The accused must be a public officer discharging administrative, judicial or official functions;
2. He must have acted with manifest partiality, evident bad faith or gross inexcusable negligence;
3. That his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.

The second element provides the modalities by which a violation of Section 3(e) of Republic Act No. 3019 may be committed. **"Manifest partiality," "evident bad faith," or "gross inexcusable negligence" are not separate offenses, and proof of the existence of any of**

¹³ *Abubakar vs. People*, G.R. No. 202408, 27 June 2018.

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**these three (3) in connection with the prohibited acts .
.. is enough to convict.**

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The third element refers to two (2) separate acts that qualify as a violation of Section 3(e) of Republic Act No. 3019. An accused may be charged with the commission of either or both.

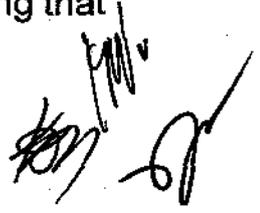
An accused is said to have caused undue injury to the government or any party when the latter sustains actual loss or damage, which must exist as a fact and cannot be based on speculations or conjectures. Thus, in a situation where the government could have been defrauded, the law would be inapplicable, there being no actual loss or damage sustained.

X X X

The second punishable act under Section 3(e) of Republic Act No. 3019 is the giving of unwarranted benefits, advantage, or preference to a private party. This does not require actual damage as it is sufficient that the accused has given "unjustified favor or benefit to another." (Emphases supplied)

In the case at bench, while the prosecution failed to prove beyond reasonable doubt the elements of undue injury and evident bad faith, the conviction must still be sustained since the evidence on record reveals that accused public officers gave unwarranted benefits, advantage or preference to CVCK Trading through manifest partiality or at the very least, gross inexcusable negligence.

The accused also overly relied on the presumption of good faith to support their cause, a claim which deserves scant consideration. The presumptions of good faith and regularity in the performance of official duty accorded to the accused were appositely overturned in the light of established facts, clearly showing that the accused acted with manifest partiality and gross inexcusable negligence in awarding and procuring, in behalf of the Municipality of Naga, the five heavy equipment from CVCK Trading, despite several irregularities in the conduct of the bidding that violates the principles of transparency and competitiveness enunciated in R.A. No. 9184. It bears stressing that the offense defined under Section 3(e) of R.A. No. 3019 may be committed even if bad faith is not attendant. Thus, even assuming that



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the accused did not act in bad faith, their manifest partiality is clearly ostensible and the negligence under the circumstances was not only gross but also inexcusable.

Lastly, contrary to the mistaken assertion of the accused, the assailed Decision was based on the evidence adduced and facts established during the trial, and not on mere speculations, conjectures or guesswork. The findings of the Court rested on the strength of the admissible evidence of the prosecution and not on the weakness or insufficiency of the evidence for the defense. After due consideration, the prosecution was able to prove the guilt of the accused beyond reasonable doubt. To be clear, proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty.¹⁴ Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind.¹⁵

All things considered, the evidence of the prosecution are clear and convincing. The prosecution had fulfilled the required burden of proof and accordingly disproved and overcame the constitutional presumption of innocence accorded to an accused with evidence proving guilt beyond reasonable doubt.

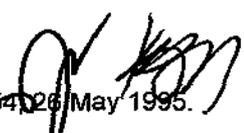
Indeed, the ruling of this Court would send a "chilling effect", as it ought to be, to all public officials to strictly observe the provisions of R.A. No. 9184. Procurement rules are not to be disdained as empty or hollow rhetoric or mere technicalities that may be ignored at will by public officials. Our Constitution stresses that a public office is a public trust and public officers must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives. These constitutionally enshrined principles, oft-repeated in our case law, are not mere rhetorical flourishes or idealistic sentiments. They should be taken as working standards by all in the public service.¹⁶

The instant ruling is, however, without prejudice to the remedy of the accused to appeal their conviction to the Supreme Court by filing a Notice of Appeal with this Court and serving a copy upon the adverse party, within fifteen (15) days from notice of this Resolution pursuant to Section 1(a), Rule XI of the 2018 Revised Internal Rules of the Sandiganbayan and Section 6, Rule 122 of the Revised Rules of Criminal Procedure.



¹⁴ *People vs. Tadepa*, G.R. No. 100354, 26 May 1995.

¹⁵ *Ibid.*


¹⁶ *Duque vs. Veloso*, G.R. No. 196201, 19 June 2012.

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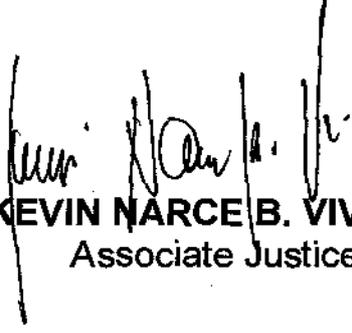
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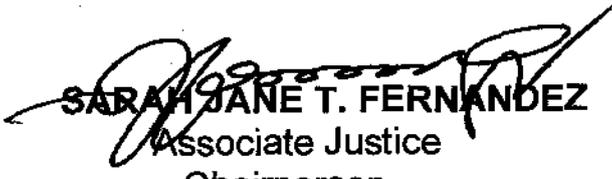
WHEREFORE, accused Adana's *Motion for Reconsideration* dated 14 August 2019 and accused Grijalvo, et al.'s *Motion for Reconsideration* dated 15 August 2019 are hereby **DENIED** for lack of merit.

SO ORDERED.



KEVIN NARCE B. VIVERO
Associate Justice

WE CONCUR:



SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson



KARL B. MIRANDA
Associate Justice