



Republic of the Philippines
Sandiganbayan
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-16-CRM-0546

For: Violation of Section 3(e) of
Republic Act No. 3019

- versus -

Present:

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

ROLANDO MARTIN ASIS,
BERNA COLAGO COCA,
LUVISMINDA HARDER NARCISO,
DANILO MINGUEZ PEROY,
MARILYN HILAGA CELIZ, and
FERNANDO SEBLET TUARES.
Accused.

Promulgated:

OCT 16 2019 *[Signature]*

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RESOLUTION

VIVERO, J.:

This resolves the following incidents:

1. The *Motion for Reconsideration*¹ (To the *Decision*² of the Honorable Court dated July 31, 2019) filed via private courier

¹ Records, Vol. 5, pp. 242 – 253.

² Id. at pp. 127 - 199.

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RESOLUTION

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by accused Berna Colago Coca, Danilo Minguez Peroy and Fernando S. Tuares on August 14, 2019;

2. The *Motion for Reconsideration*³ (Of the Decision of the Honorable Court dated 31 July 2019) filed via private courier by Luvisminda H. Narciso and Marilyn H. Celiz on August 15, 2019;
3. The *Consolidated Comment/Opposition*⁴ (To Accused Celiz and Narciso's Motion for Reconsideration to the Decision of [the] Honorable Court dated 31 July 2019) and (To Accused Coca, Peroy and Tuares' Motion for Reconsideration to the Decision of the Honorable Court dated July 31, 2019), which was filed on September 11, 2019 by Office of the Special Prosecutor.

Accused Narciso and Celiz called into question the Court's verdict on the following ground:

"... THE HONORABLE COURT PATENTLY AND PALPABLY ERRED WHEN IT FOUND ACCUSED NARCISO AND CELIZ GUILTY BEYOND REASONABLE DOUBT FOR VIOLATION OF SECTION 3(e) OF REPUBLIC ACT NO. 3019 DESPITE THE PROSECUTION'S FAILURE TO PROVE BEYOND REASONABLE DOUBT THAT THEY ACTED IN CONSPIRACY WITH THE OTHER MEMBERS OF THE BIDS AND AWARDS COMMITTEE ('BAC') IN COMMITTING THE ACTS ALLEGED IN THE INFORMATION, THAT IS, BY AWARDING TO THE IBC INTERNATIONAL BUILDER'S CORPORATION (IBC) THE ASPHALT OVERLAY PROJECT, (I) WITHOUT AN APPROPRIATION TO COVER THE EXPENDITURE FOR SAID PROJECT AND CERTIFICATE SHOWING FUNDS SPECIFICALLY APPROPRIATED TO MEET [THE] CONTRACT AS REQUIRED BY SECTIONS 85(1) AND 86 OF PRESIDENTIAL DECREE NO. 1445 AND (II) WITHOUT CONDUCTING A PUBLIC BIDDING AS REQUIRED UNDER R.A. 9184, AS CHARGED IN THE INFORMATION."⁵

On the other hand, the joint *Motion* of accused Coca, Peroy and Tuares are, by and large, warmed-over ideas that had been passed upon by the Court. Chiefly, they invoked the twin presumptions of good faith and regularity in the performance of official functions,⁶ and alleged that:

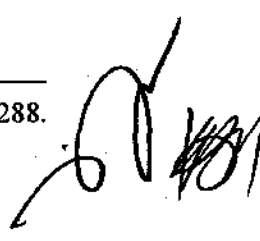


³ Records, Vol. 5, pp. 256 – 288.

⁴ Id. at pp. 356 – 366.

⁵ Id. at p. 257.

⁶ Id. at pp. 242 – 243.



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1. The asphalt overlay project of Iloilo-Jaro Diversion Road (Jct. Iloilo-Antique Road up to Dungon Bridge, Sta. 2+732.60 – Sta. 5+102.30, Iloilo City) was prompted by –
 - 1.1 urgent necessity; and
 - 1.2 the request of then-Mayor Jerry P. Treñas.⁷
2. The request for the negotiated procurement was approved by the Secretary Hermogenes E. Ebdane, DPWH.⁸
3. IBC International Builders Corporation (*IBC, for brevity*), the contractor handpicked by the BAC for the asphalt overlay project, was financially, legally and technically capable to undertake the subject project.
4. Absent any clear showing of overpricing and sub-standard civil works, no pecuniary injury to the zone of interests of the government resulted from the contract between the DPWH Regional Office No. VI and IBC.

Accused Coca, Peroy and Tuares maintain that there is a dearth of evidence proving –

1. the misfeasance imputed against them; and
2. the alleged conspiracy.

Conformably with the Order⁹ dated August 27, 2019, the *Motions for Reconsideration* filed by accused are submitted for resolution.

THE COURT’S RULING

At the outset, the Court *motu proprio* takes **judicial notice** of the Supreme Court’s contemporaneous ruling in *Office of the Ombudsman v. Marilyn H. Celiz and Luvisminda H. Narciso*.¹⁰ The Office of the Ombudsman, in the exercise of its administrative disciplinary jurisdiction, found just cause to dismiss **the same** six (6)

⁷ EXHIBIT “3” for Coca, Peroy and Tuares.

⁸ EXHIBIT “5” for Coca, Peroy and Tuares.

⁹ Records, Vol. 5, p. 306-A.

¹⁰ G.R. No. 23683, June 26, 2019 [Per J. A. B. Reyes, Jr., Third Division].

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officials (i.e. accused herein) of the DPWH Regional Office No. VI on account of the same anomalous asphalt overlay project herein. In *Tiburcio v. People's Homesite and Housing Corporation, et. al.*,¹¹ the Supreme Court, citing former Chief Justice Manuel Moran, took occasion to state that:

"In some instance, courts have taken judicial notice of proceedings in other causes, because of their close connection with the matter in the controversy. x x x"¹²

In a Joint Resolution dated October 6, 2015, the Ombudsman found probable cause to charge the respondents with a violation of Section 3(e) of R.A. No. 3019. The Ombudsman, likewise, found all of them guilty of Grave Misconduct, and meted the penalty of dismissal from the service, thus:

WHEREFORE, let the attached Information for Violation of Section 3(e) of R.A. No. 3019 be FILED against respondents Rolando M. Asis, Berna C. Coca, Luvisminda H. Narciso, Fernando S. Tuares, Danilo M. Peroy and Marilyn H. Celiz.

Respondents Rolando M. Asis, Berna C. Coca, Luvisminda H. Narciso, Fernando S. Tuares, Danilo M. Peroy and Marilyn H. Celiz are found GUILTY OF GRAVE MISCONDUCT and hereby meted the penalty of DISMISSAL from the service, which shall carry with it cancellation of eligibility, forfeiture of retirement benefits and the perpetual disqualification from re-employment in the government service.

In the event that the penalty of dismissal can no longer be imposed due to their separation from the service, it shall be converted into FINE amounting to respondents' salary for ONE (1) YEAR, payable to the Office of the Ombudsman, and may be deducted from their accrued leave credits or any receivable from their office. It is understood, however, that the accessory penalties of forfeiture of retirement benefits, cancellation of eligibility and perpetual disqualification to hold public office shall still be applied.

SO ORDERED. (Citation omitted)

Following the denial of their motion for reconsideration, respondents filed a petition for review under Rule 43 of the Rules of Court before the Court of Appeals. The petition was adjudged as partially meritorious; consequently, the offense was downgraded to

¹¹ G.R. No. L-13479, October 31, 1959.

¹² Cited in *Degayo v. Magbanua-Dinglasan, et. al.*, G.R. Nos. 173148, April 6, 2015 [Per J. A. D. Brion, Second Division].

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Simple Misconduct. Disgruntled, the Ombudsman elevated the matter before the Supreme Court *via* petition for review on *certiorari* under Rule 45 of the Rules of Court. The Supreme Court found reversible error in the appellate tribunal's ruling. The *fallo* of the Supreme Court's judgment runs thus:

WHEREFORE, premises considered, the present petition is **GRANTED**. The Decision dated September 15, 2017 and the Resolution dated December 11, 2017 of the Court of Appeals in CA-G.R. CEB-SP. No. 10438 are hereby **REVERSED** and **SET ASIDE**. A new judgment is entered finding respondents Marilyn H. Celiz and Luvisminda H. Narciso **GUILTY** of **GRAVE MISCONDUCT**. As such, they are **DISMISSED** from the government service with all the accessory penalties of cancellation of eligibility, forfeiture of leave credits and retirement benefits, and disqualification for re-employment in the government service.

SO ORDERED.

Considering that the factual milieu in the Supreme Court's Decision in *Office of the Ombudsman v. Celiz and Narciso*¹³ is germane to, if not congruent with, the factual antecedents and the applicable law in the instant case, deference to the Supreme Court dictates that its rubric of analysis be adopted. This calls to mind the axiom: *Nihil in lege intolerabilius est quam erandem rem diverso jure ceneri* (Nothing is more intolerable in law than that like cases should be decided upon different constructions of the law.). The Supreme Court's ratiocination in the above-entitled case is quoted below, *viz*:

"The respondents violated R.A. No. 9184 and P.D. No. 1445 in the procurement of the Asphalt Overlay Project.

"Generally, all government procurement must be done through competitive bidding.¹⁴ Alternative methods of procurement, however, are available under the conditions provided in R.A. No. 9184.¹⁵ For infrastructure

¹³ *Supra*, Note 10.

¹⁴ Office of the President, Memorandum Circular No. 28, October 15, 2017; Office of the President, Memorandum Circular No. 29, October 16, 2017.

¹⁵ R.A. No. 9184, Article IV, Section 10.

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projects in particular, the only alternative mode is negotiated procurement.¹⁶

“X X X

“Here, the respondents argued before the OMB [Ombudsman] that the Asphalt Overlay Project must be negotiated because time was of the essence. The Dinagyang Festival was soon approaching, and the road used for its primary route needs major repairs. But invoking this circumstance does not automatically warrant the application of negotiated procurement; otherwise, it would be easy to dispense with competitive bidding. As aptly held by the CA [Court of Appeals], **THERE MUST BE AN IMMEDIATE AND COMPELLING NEED TO JUSTIFY NEGOTIATED PROCUREMENT OTHER THAN THAT PROVIDED BY THE RESPONDENTS.** The requirement of urgency is qualified under the law as “arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property.”¹⁷ As such, it does not cover situations outside this qualification X X X

“X X X

“Section 53(b), Article XVI of R.A. No. 9184 evidently does not contemplate a yearly occasion and the promotion of tourism to justify resort to negotiated procurement. Since the Dinagyang Festival is an annual event that has always been scheduled to take place in the middle of January, there was plenty of time for the preparation of the necessary infrastructure. Furthermore, aside from the promotion of tourism, there was **NO SHOWING THAT THE REPAIRS WERE NECESSITATED BY A CALAMITY, THAT THERE WAS IMMINENT DANGER TO LIFE OR PROPERTY, OR THAT THERE WAS A LOSS OF VITAL PUBLIC SERVICES AND UTILITIES.** Evidently, **the decision of the respondents and other DPWH Region VI officials to begin the**

¹⁶ Id. at Article XVI, Section 48. 46 Implementing Rules and Regulations Part A (RR-A) of R.A. No. 9184, Rule XVI, Section 53 (Approved: September 18, 2003); see also Government Procurement Policy Board (GPPB) Manual of Procedures for the Procurement of Infrastructure Projects, Vol. 3, p. 73;
<<https://www.gppb.gov.ph/downloadables/forms/GPM%20-%20Vol.3.pdf>> (last accessed May 28, 2019).

¹⁷ R.A. No. 9184, Article XVI, Section 53(b).

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repairs for the Iloilo Diversion Road with only two (2) months left before the Dinagyang Festival is not the urgent situation contemplated under Section 53(b), Article XVI of R.A. No. 9184.

“Even if the resort to negotiated procurement is justified, its application does not warrant dispensing with the other requirements under R.A. No. 9184.”¹⁸

The respondents and the other concerned officials should still, among other things: (a) conduct a pre-procurement conference; (b) post the procurement opportunity in the Philippine Government Electronic Procurement System, the website of the Procuring Entity and its electronic procurement service provider, if any, and any conspicuous place in the premises of the Procuring Entity; and (c) require the submission of a bid security and a performance security.¹⁹

“x x x

“SUFFICIENT APPROPRIATION IS ALSO REQUIRED BEFORE THE GOVERNMENT ENTERS INTO A CONTRACT.”²⁰ While Sections 85 and 86 of the Government Auditing Code requires an appropriation prior to the execution of the contract, the enactment of R.A. No. 9184 modified this requirement by requiring the availability of funds upon the commencement of the procurement process. x x x

“x x x

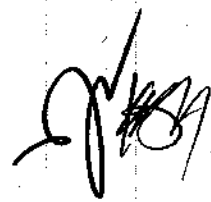
“In this case, the BAC, of which the respondents were members, approved the direct negotiation of the contract to IBC on January 2, 2008. Eventually, on January 8, 2008, the BAC proceeded to recommend the award of the Asphalt Overlay Project to IBC in the amount of P54,308,803.44. By January 10, 2008, IBC started the implementation of the Asphalt Overlay Project.



¹⁸ Id. at 633 - 635.

¹⁹ Also GPPB Manual of Procedures for the Procurement of Infrastructure Projects, Vol. 3, pp. 7677, <<https://www.gppb.gov.ph/downloadables/forms/GPM%20-%20Vol.3.pelt>> (last accessed May 28, 2019).

²⁰ P.D. No. 1445, Sections 85-86.



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“But in a letter dated May 13, 2008, the DPWH Region VI Accountant stated that there were no available funds, SARO, or SAA for the Asphalt Overlay Project. This was later confirmed by the belated issuance of the SARO on December 24, 2008. The SARO also authorized the expenditure of only P53,595,000.00,⁶⁵ an amount less than the ABC of P54,308,803.44 in the BAC’s unnumbered Resolution dated January 2, 2008. Finally, the SARO was issued after the award of the contract to IBC, and about 11 months following the commencement of the project.

“On January 26, 2009, the BAC again resolved to recommend the award of the contract for the Asphalt Overlay Project to IBC. This time, the award to IBC was for the amount of P52,110,000.00, with an undertaking to pay the remaining amount of P2,198,803.45 upon availability of funds. Thereafter, the Notice of Award was issued to IBC, and a contract was executed between DPWH Region VI and IBC.

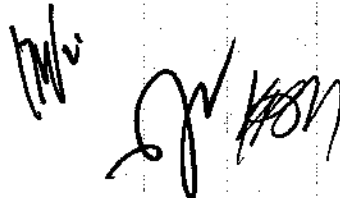
“Clearly, **THE RESPONDENTS AND THE OTHER DPWH OFFICIALS INTENDED TO CIRCUMVENT THE REQUIREMENT THAT THERE SHOULD BE PRIOR APPROPRIATION.** The execution of the contract with IBC, as well as the issuance of the Notice of Award, was delayed until such time that the SARO was issued. By the time the funds for the project were released, the award of the contract to IBC was already a foregone conclusion. IBC had commenced construction activities as early as January 10, 2008, almost a year prior to the execution of the contract for the project.” (Emphases, Underscoring and Capitalization Supplied.)

Here, the Audit Team spearheaded by State Auditor IV Helen P. Hubo characterized the subject project in this wise:

First. The award of the project to IBC International Builders Corporation was made without prior appropriation to cover expenditures therefor.

Second. No certificate of available funds existed.

Third. The project was implemented without going through mandatory, competitive bidding in accordance with Republic Act No. 9184.



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Fourth. The award of the project to IBC showed that said contractor was given unwarranted benefits or preference by then-members of the Bids and Awards Committee (BAC) of the DPWH, Regional Office No. VI, Iloilo City.²¹

In sum, the subject project is **"highly irregular"**.²² It bypassed public bidding altogether.²³ Moreover, the project gained headway and was implemented even though there was –

- a. **no** notice of award;²⁴
- b. **non**-inclusion of the asphalt overlay in the Annual Procurement Plan of the DPWH (Region VI-Western Visayas) for CY 2008 to 2009;²⁵
- c. **no** available funds that had been earmarked and allotted for the project;²⁶
- d. **no** written contract that had been perfected beforehand;²⁷ and
- e. **no** calamitous event or emergency situation justifying resort to negotiated procurement.

The foregoing findings prompted the Audit Team to issue a Notice of Disallowance.²⁸ Both the Regional Office No. VI and the Central Office of the Commission on Audit affirmed *in toto* the Team's Notice of Disallowance.²⁹

²¹ TSN dated October 12, 2017, p. 10.

²² *Id.* at p. 15.

²³ *Id.* at pp. 20, 43; TSN dated November 7, 2017, p. 20.

²⁴ EXHIBITS "X-39", "X-39-A"; TSN dated October 12, 2017, p. 23 – 24.

²⁵ TSN dated October 12, 2017, pp. 22 – 23; TSN dated November 7, 2017, p. 14.

²⁶ TSN dated October 12, 2017, pp. 20 – 22; 38 - 39.

²⁷ *Id.* at pp. 25 – 26; TSN dated November 8, 2017, p. 5.

²⁸ EXHIBIT "Z"; TSN dated October 12, 2017, pp. 27 – 32.

²⁹ EXHIBITS "CC", "DD"; TSN dated October 12, 2017, pp. 31 - 35.

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Further, the Statement of Overlay Work Accomplished,³⁰ which was signed by accused Asis, Coca and Tuares,³¹ showed that the project was implemented from January 11 to February 9, 2008.³² To be sure, the completion of said project came three (3) weeks after the Dinagyang Festival; hence, the very reason for resorting to negotiated procurement was non-existent.³³

Furthermore, the Sub-Allotment Release Order³⁴ (SARO) for the project was issued on December 24, 2008,³⁵ while the Contract³⁶ was executed only on January 29, 2009.³⁷ Lest we forget, accused Coca and Tuares signed said Contract on behalf of the "Republic of the Philippines".³⁸ The irregularity, as explained in the Notice of Disallowance, stems from the fact that the project had no Availability of Funds.³⁹ Thus, deviation from the law's stringent requirements for negotiated procurement was manifest.⁴⁰

Prescinding from the foregoing, the findings by the COA must be treated with utmost respect. Indeed, by reason of their special knowledge and expertise over matters falling under their jurisdiction, administrative agencies are in a better position to pass judgment on the same, and their findings of fact are generally accorded great respect, if not finality, by the courts. Such findings must be respected as long as they are supported by substantial evidence, even if such evidence is not overwhelming or even preponderant.⁴¹

³⁰ EXHIBIT "X-16".

³¹ EXHIBIT "X-16-b".

³² EXHIBIT "X-16-a"; TSN dated October 12, 2017, pp. 16, 56; TSN dated November 8, 2017, pp. 20 – 21.

³³ TSN dated October 12, 2017, pp. 56 – 57.

³⁴ EXHIBIT "X-46".

³⁵ EXHIBIT "X-46-A".

³⁶ EXHIBITS "X-40", "X-41", "X-42".

³⁷ EXHIBIT "X-40-A"; TSN dated October 12, 2017, pp. 26 – 27, 61.

³⁸ EXHIBIT "X-42-B".

³⁹ TSN dated November 8, 2017, pp. 10 - 12.

⁴⁰ Id. at p. 18; TSN dated October 12, 2017, p. 18.

⁴¹ *Mario M. Geronimo, doing business under the name and style of Kabukiran Garden v. Commission on Audit and Department of Public Works and Highways*, G.R. No. 224163, December 4, 2018 [Per J. Reyes, Jr.]; *De los Reyes v. Municipality of Kalibo, Aklan*, G.R. No. 214587, February 26, 2018.

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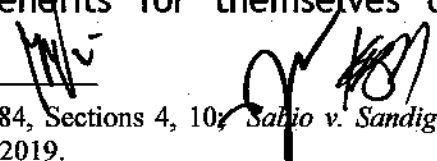
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Competitive public bidding is the primary mode of procurement,⁴² and it was thus necessary on the part of the accused to show why an alternative mode of procurement was resorted to. This they failed to demonstrate before the Court. The rule is akin to the maxim in criminal law that whenever a person accused of the commission of a crime claims to be within the statutory exception, it is more logical and convenient that he should aver and prove the fact than that the prosecutor should anticipate such defense, and deny it.⁴³

Accused insist that their good faith should be presumed. Yet, the glaring fact is that there had been patent lapses in the manner in which the project was awarded and undertaken. Notably, the project was not included in the Annual Procurement Plan (APP). That fact is suspicious in itself, and should alert all officers genuinely minded in pursuing good and transparent government not to ignore such fact in their course of action. This brings us back to the Supreme Court's Decision in ***Office of the Ombudsman v. Marilyn H. Celiz and Luvisminda H. Narciso***, wherein the acts that run afoul of R.A. No. 9184 was adjudged as constitutive of Grave Misconduct. Salient excerpts therefrom read as follows:

“Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer.⁴⁴ Grave Misconduct, as distinguished from simple misconduct, involves the additional element of corruption, willful intent to violate the law or disregard established rules.⁴⁵ Mere failure to comply with the law, however, is not sufficient. There should be a showing of deliberateness on the part of the respondents, with the purpose of securing benefits for themselves or for some other person.⁴⁶ 

⁴² Republic Act No. 9184, Sections 4, 10, *Sabio v. Sandiganbayan (First Division)*, G.R. No. 233853 – 54, July 15, 2019.

⁴³ *Cabrera v. Marcelo*, G.R. No. 157419 – 20, December 13, 2004 (446 SCRA 207, 221 – 222); *People v. San Juan*, 130 Phil. 515, 519 (1968), citing *US. v. Chan Toco*, 12 Phil. 268 (1980).

⁴⁴ See *Office of the Ombudsman - Visayas, et al. v. Castro*, G.R. No. 172637, April 22, 2015 (759 Phil. 68, 75); and *Atty. Valera v. Office of the Ombudsman, et al.*, G.R. No. 167278, February 27, 2008 (570 Phil. 368, 385), citing *Bureau of Internal Revenue v. Organo*, 468 Phil. 111, 118 (2004).

⁴⁵ *Atty. Valera v. Office of the Ombudsman, et al.*, id., citing *Civil Service Commission v. Ledesma*, G.R. No. 154521, September 30, 2005 (471 SCRA 589; 508 Phil. 569, 580).

⁴⁶ *Office of the Ombudsman v. De Guzman*, G.R. No. 197886, October 4, 2017 (841 SCRA 616, 641).

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“THE RESPONDENTS IN THIS CASE AGREED WITH ALL THE BAC RESOLUTIONS that: (a) recommended directly negotiating with IBC for the Asphalt Overlay Project; (b) recommended awarding the contract to IBC; and (c) recommended the award to IBC for the lesser amount stated in the SARO, with the promise to pay the remaining balance once the funds are made available. DESPITE THE GLARING ABSENCE OF AN APPROPRIATION FOR THE ASPHALT OVERLAY PROJECT, AND NOTWITHSTANDING THE ABSENCE OF A JUSTIFICATION FOR THE APPLICATION OF NEGOTIATED PROCUREMENT, THE RESPONDENTS REPEATEDLY SIGNED OFF ON THESE RESOLUTIONS.

“WORSE, THE RESPONDENTS PARTICIPATED IN CIRCUMVENTING THE REQUIREMENT UNDER SECTION 85 OF P.O. NO. 1445 THAT THERE SHOULD BE AN APPROPRIATION BEFORE THE EXECUTION OF THE CONTRACT. This was manifest in their agreement to issue the BAC Resolution dated January 26, 2009, even after IBC has commenced the project a year before. In this manner, the respondents and the other concerned DPWH Region VI officials were able to make it appear that the contract with IBC was executed only after the issuance of the SARO on December 24, 2008. it should be emphasized, however, that AT THE TIME OF THE ISSUANCE OF THE SARO, IBC ALREADY PROCEEDED WITH THE PROJECT PURSUANT TO TWO (2) PREVIOUS BAC RESOLUTIONS RECOMMENDING THE DIRECT NEGOTIATION OF THE PROJECT TO IBC AND THE AWARD OF THE CONTRACT TO IBC. THE RESPONDENTS WERE ALSO SIGNATORIES OF THESE PRIOR BAC RESOLUTIONS.

“As a result, THE RESPONDENTS, THROUGH THEIR ACTIONS, GAVE UNWARRANTED BENEFITS AND ADVANTAGES TO IBC. Their actions also show a willful disregard for the established procurement rules. WITHOUT THEIR REPEATED PARTICIPATION IN THIS HIGHLY IRREGULAR PROCUREMENT PROCESS, THE AWARD OF THE PROJECT TO IBC WOULD NOT HAVE BEEN ACCOMPLISHED. The respondents' defense of being mere subordinates is without merit, as THEIR CONDUCT SHOW A BLATANT AND WILLFUL VIOLATION OF THE PROCUREMENT RULES. Thus, they should be

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held liable for Grave Misconduct, which carries the penalty of dismissal from the service.⁴⁷

“Section 12 of R.A. No. 9184 holds the BAC responsible for ensuring that the procuring entity complies with the provisions of the statute and the relevant rules and regulations. This is echoed in Section 12 of the IRR-A. For this reason, the functions of the respondents, as BAC members, are not merely ceremonial. They are tasked to safeguard the mandate of R.A. No. 9184 in order to ensure that the government and the public get the best possible goods, services, and infrastructure.” (Emphases and Capitalization Supplied.)

The defalcation of public monies through the step-by-step circumvention of R.A. No. 9184 did not escape the COA, the Ombudsman, and the Courts. The implied conspiracy between the Head of the Procuring Entity (Asis), and the members of the BAC facilitated the anomalous award of the project to IBC International Builders Corporation. Conspiracy need not be proven by direct evidence of prior agreement to commit a crime.⁴⁸ It may be deduced from the mode, method and manner by which the offense was perpetrated, or inferred from the acts of the accused themselves when such acts – taken together – point to a joint purpose and design, concerted action and community of interests.⁴⁹

In *Desierto v. Ocampo*,⁵⁰ the Supreme Court's pronouncement is instructive, viz:

“Collusion implies a secret understanding whereby one party plays into another’s hands for fraudulent purposes. It may take place between and every contractor resulting in no competition, in which case, the government may declare a failure of bidding. Collusion may also ensue between contractors and the chairman and members of the PBAC to simulate or rig the bidding process, thus insuring the award to a favored bidder, to the prejudice of the government agency and public service.
x x x **COLLUSION BY AND AMONG THE MEMBERS OF THE PBAC AND/OR CONTRACTORS SUBMITTING THEIR BIDS MAY BE**

⁴⁷ Civil Service Commission Revised Rules on Administrative Cases, Rule 10, Section 46(A)(3); See also the Resolution dated June 20, 2018 in G .R. No. 237503, entitled Office of the Ombudsman v. Asis; rollo, pp. 194-196.
⁴⁸ *People v. Quirol*, G.R. No. 149259, October 20, 2005.
⁴⁹ *People v. Joel G. Salvador, et. al.*, Crim. Case No. SB-15-CRM-0096 to 0099, June 21, 2019, citing *Philippine Airlines, Inc. v. Court of Appeals*, G.R. No. 159556, May 26, 2005.
⁵⁰ 493 Phil. 140 (2005); 452 SCRA 789.

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DETERMINED FROM THEIR COLLECTIVE ACTS OR OMISSIONS BEFORE, DURING AND AFTER THE BIDDING PROCESS. X X X.”⁵¹ (Emphasis and underscoring supplied.)

Accused Narciso and Celiz insist that they merely recommended the award of the project to IBC.⁵²

The Court is not persuaded.

As an independent committee, the BAC was solely responsible for the conduct of the procurement and could not pass the buck to others. The BAC wielded control over the approval of the mode of procurement and the accused could not wash their hands from liability thereof. Its members’ role in choosing the mode of procurement was clearly an active action, and not a passive one as the accused wanted to convey.

Competitive public bidding provides the mechanism that enables the government agency to avoid or preclude anomalies in the execution of public contracts.⁵³ The Supreme Court succinctly stated in **Sabio v. Sandiganbayan (First Division)**.⁵⁴

“It is clear from the provisions of R.A. No. 9184 that ALL procurement by ALL branches and instrumentalities of government, its departments, offices and agencies X X X shall be done through Competitive Bidding, except as provided for in Article XVI.”

Competitive public bidding is the primary mode of procurement, and it was thus necessary on the part of the accused to show why negotiated procurement was resorted to. This they failed to justify before the Ombudsman and the Court, and such failure, in addition to other contemporaneous circumstances, established probable cause and warranted accused’s conviction. It is incumbent upon a party who invokes coverage under the exception to a general,

⁵¹ Id. at 160.

⁵² *Motion for Reconsideration* dated August 11, 2019, pp. 28 – 29; Memorandum dated February 28, 2019, of accused Celiz and Narciso, pp. 18 - 19 (Records, Vol. 5, pp. 65 - 66).

⁵³ *Office of the Ombudsman – Mindanao v. Martel and Guiñares*, G.R. No. 221134, March 1, 2017 (819 SCRA 147), citing *Rivera v. People*, G.R. Nos. 156577, 156587 & 156749, December 3, 2014 (743 SCRA 477, 500-501).

⁵⁴ G.R. Nos. 233853 – 54, July 15, 2019; Sections 4, 10, Rep. Act No. 9184.

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rule to prove the fulfillment of the requisites thereof.⁵⁵ The rule is akin to the maxim in Criminal Law that whenever a person accused of the commission of a crime claims to be within the statutory exception, it is more logical and convenient that he should aver and prove the fact than that the prosecutor should anticipate such defense, and deny it.⁵⁶

Accused-movants' contention that conspiracy had not been proven holds no water. The unjustified rashness of the BAC can be gleaned from the following series of acts: (1) the absence of any Certificate of Availability of Funds (CAF);⁵⁷ (2) non-release of allotment; (3) non-inclusion of the subject project in the Annual Procurement Plan (APP) of the DPWH, Regional Office No. VI for CY 2008 – 2009; (4) no Notice of Award; and (5) no Notice to Proceed.⁵⁸ In addition, accused's acts clearly manifest a concerted, sinister scheme to deviate from the rigid procedures under Section 13, Article V and Sections 20, 22, Article VII of R.A. 9184, including Section 21.2.4 of its IRR,⁵⁹ by doing away with:

- 1) a pre-procurement conference/pre-bid conference;
- 2) presence of observers throughout the whole bidding process; and
- 3) publication and/or posting of the Invitation to Apply for Eligibility and to Bid (IAEB) and other notices must still be followed.

Undeniably, the prosecution's evidence proved that the acts committed by the accused were in furtherance of the aforesaid common objective resulting, at the last stage thereof, in the hurriedly executed contract with between DPWH Regional Office No. VI and IBC. The Resolutions issued by the BAC were facilitative. They paved the way for its unchecked approval and the concomitant execution of the irregular contract. This calls to mind the Supreme

⁵⁵ *Cabrera v. Marcelo*, G.R. Nos. 157419 – 20, December 13, 2004 (446 SCRA 207, 221 – 222).

⁵⁶ *People v. San Juan*, G.R. No. L-22944, February 10, 1968 (130 Phil. 515, 519), citing *United States v. Chan Toco*, 12 Phil. 268, and *People v. Cadabis*, 97 Phil., 829.

⁵⁷ TSN dated October 9, 2018, pp. 18 - 23.

⁵⁸ **EXHIBIT "26" for Coca, Peroy & Tuares** (Inspection Report for Infrastructure Projects dated December 2, 2009, p. 1).

⁵⁹ *Maglaya - De Guzman v. Office of the Ombudsman and Bestforms Incorporated*, G.R. No. 229256, November 22, 2017.

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Court's pronouncement in *Lagoc v. Malaga*,⁶⁰ a case involving a similarly questionable contract between Iloilo City District Engineering Office and Helen Edith Tan of IBC International Builders Corporation. The Court stresses that:

“x x x [I]t is their duty to ensure that the rules and regulations for the conduct of bidding for government projects are faithfully observed. THEY MAY THUS BE HELD LIABLE FOR COLLECTIVE ACTS AND OMISSIONS AS WHEN THEY AFFIXED THEIR SIGNATURES IN OFFICIAL DOCUMENTS AS BAC CHAIRMAN/MEMBERS, AND RECOMMENDED APPROVAL . . . , in effect certifying to compliance with the aforesaid rules.

“Petitioner Lagoc claimed that . . . she simply signed . . . as Project Engineer and provisional member of the BAC. Such excuse is flimsy and unacceptable. Indeed, THE AFFIXING OF SIGNATURES BY THE COMMITTEE MEMBERS ARE NOT MERE CEREMONIAL ACTS BUT PROOFS OF AUTHENTICITY AND MARKS OF REGULARITY.⁶¹ Moreover, there is nothing in the IRR that exempts a provisional BAC member from liability in case of violation of its provisions. x x x.”
(Emphasis and Capitalization Supplied.)

The BAC, as a collective unit, served as the enabler and the abettor of an illegality. Thence, implied conspiracy was proven beyond reasonable doubt upon a clear showing of the active participation and indispensable cooperation among the members of the BAC and Director Asis (Head of Procuring Entity [HoPE]). Indeed, their acts were “*inextricably woven*”⁶² with the end in view of consummating their common design. Consequently, unwarranted benefits in favor of IBC materialized.

The Court has taken a second, hard look at the points raised in both *Motions*. Mere reiteration or rehash of arguments already submitted before the Court and found to be untenable cannot compel the Court to modify, much less reverse, its well-studied verdict. Elsewise stated, accused fail to raise any new and substantial

⁶⁰ G.R. Nos. 184785/ 184890, July 9, 2014 (729 SCRA 421 – 439) [Per J. M. Villarama, Jr.].

⁶¹ See *Oani v. People*, G.R. No. 139984, March 31, 2005 (494 Phil. 417, 433).

⁶² Decision, p. 69.

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arguments, and no cogent reason exists to warrant a reconsideration of the Court's Decision.

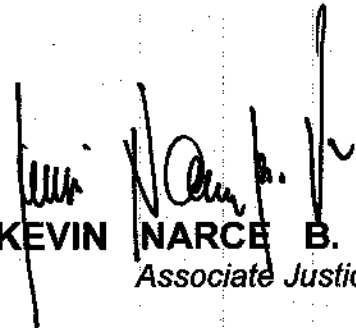
WHEREFORE, premises considered, the Court **DENIES** –

1. The *Motion for Reconsideration*⁶³ (To the Decision⁶⁴ of the Honorable Court dated July 31, 2019) filed by accused **Berna Colago Coca, Danilo Minguez Peroy and Fernando S. Tuares**; and
2. The *Motion for Reconsideration*⁶⁵ (Of the Decision of the Honorable Court dated 31 July 2019) filed by **Luvisminda H. Narciso and Marilyn H. Celiz**.

for being devoid of merit.

No further pleadings or submissions by any party shall be entertained.

SO ORDERED.


KEVIN NARCE B. VIVERO
 Associate Justice

WE CONCUR:


SARAH JANE T. FERNANDEZ
 Associate Justice
 Chairperson


KARL B. MIRANDA
 Associate Justice

⁶³ Records, Vol. 5, pp. 242 – 253.

⁶⁴ Id. at pp. 127 - 199.

⁶⁵ Records, Vol. 5, pp. 256 – 288.