



Republic of the Philippines  
**SANDIGANBAYAN**  
Quezon City

**SIXTH DIVISION**

**PEOPLE OF THE  
PHILIPPINES,**

Plaintiff,

-versus-

SB-12-CRM-0247

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

**NICANOR C. FELIX,  
HERMINIA M. CRUZ, OPHELIA  
C. DE GUZMAN, PRIVADA B.  
GONZALES, MARCIANO A.  
DOROTEO, and ARIEL  
BAUTISTA,**

Accused,

X-----X

**PEOPLE OF THE  
PHILIPPINES,**

Plaintiff,

-versus-

SB-12-CRM-0248

For: Violation of Section 3 (e) of  
R.A. No. 3019

**NICANOR C. FELIX,  
HERMINIA M. CRUZ, OPHELIA  
C. DE GUZMAN, PRIVADA B.  
GONZALES, MARCIANO A.  
DOROTEO, and GLADY G.  
FORMALES,**

Accused,

X-----X

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**PEOPLE OF THE  
PHILIPPINES,**

Plaintiff,

-versus-

SB-12-CRM-0249

For: Violation of Section 89 of  
R.A. No. 7160, as amended

**NICANOR C. FELIX, PRESENT:**

**HERMINIA M. CRUZ, OPHELIA**

**C. DE GUZMAN, PRIVADA B. FERNANDEZ, SJ, J., Chairperson**

**GONZALES, MARCIANO A. MIRANDA, J. and**

**DOROTEO, and GLADY G. VIVERO, J.**

**FORMALES,**

Accused,

Promulgated:

**NOV 04 2019** 

X-----X

## RESOLUTION

MIRANDA, J.:

This resolves the: 1) **Motion for Leave to File Demurrer to Evidence** dated September 11, 2019 filed by accused Marciano A. Doroteo (Doroteo); 2) **Motion for Leave to File Demurrer to Evidence** dated September 16, 2019 filed by accused Gladly G. Formales (Formales); 3) **Motion for Leave to File Demurrer to Evidence** dated September 18, 2019 filed by accused Privada B. Gonzales (Gonzales); and 4) **Consolidated Comment/Opposition (To Accused's Motion for Leave to File Demurrer to Evidence)** dated September 19, 2019 filed by the Prosecution.


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These cases involve the purchase of a Contex scanner<sup>1</sup> and miscellaneous supplies<sup>2</sup> by the Municipality of Cainta, Rizal during the incumbency of former Mayor and accused Nicanor C. Felix (Felix). The purchase of Contex scanner was allegedly overpriced and made without competitive public bidding. On the other hand, the purchase of miscellaneous supplies from Tueance Alera Gentrade Industries (Tueance) was also made without competitive public bidding and in violation of Section 89<sup>3</sup> of R.A. 7160 because Tueance is owned by accused Formales and her husband, Alden Formales. Accused Doroteo, Formales, and Gonzales were municipal officials at the time occupying the positions of Officer-in-Charge (OIC) of General Services Office, Budget Officer III, and Municipal Budget Officer, respectively.

In his motion for leave, accused Doroteo alleged that the Prosecution's evidence is insufficient to convict him for Violation of Section 3 (e) of R.A. No. 3019<sup>4</sup> and Section 89 of R.A. No. 7160<sup>5</sup>. He said that:

- 1) the Contex scanner was not overpriced because the price quotation of Eight Hundred Ninety-Seven Thousand Three Hundred Pesos (Php 897,300.00) by MSI Digiland Phils. Inc. is merely a suggested retail price and not the real market price;
- 2) the price of the Contex scanner was naturally higher because it was imported from Denmark and paid by installment after 10 months from the shipping date;
- 3) the resort to the alternative mode of direct purchasing was justified because Joriel Trading submitted a Certificate of Exclusive Distributorship<sup>6</sup>;

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<sup>1</sup> SB-12-CRM-0247 pertains to the purchase by the Municipality of Cainta, Rizal of a Contex scanner from Joriel Trading without the benefit of a public bidding.

<sup>2</sup> SB-12-CRM-0248 to 0249 pertain to the purchase by the Municipality of Cainta, Rizal of miscellaneous supplies from Tueance Alera Gentrade Industries.

<sup>3</sup> SECTION 89. *Prohibited Business and Pecuniary Interest* – (a) It shall be unlawful for any local government official or employee, directly or indirectly, to:

- (1) Engage in any business transaction with the local government unit in which he is an official or employee or over which he has the power of supervision, or with any of its authorized boards, officials, agents, or attorneys, whereby money is to be paid, or property or any other thing of value is to be transferred, directly or indirectly, out of the resources of the local government unit to such person or firm;

xxx

<sup>4</sup> SB-12-CRM-0247 and SB-12-CRM-0248.

<sup>5</sup> SB-12-CRM-0249.

<sup>6</sup> SECTION 366 of the Local Government Code provides for the alternative modes of procurement of supplies by local government units, as follows: (a) personal canvass of responsible merchants; (b) emergency purchase; (c) negotiated purchase; (d) direct purchase from manufacturers or exclusive distributors; and (e) purchase from other government entities.

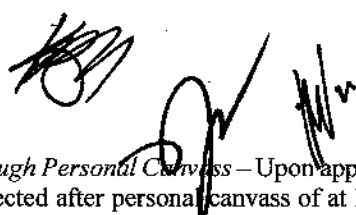
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- 4) the finding in the Commission on Audit (COA) audit report stating that *“the role of the supply officer could be purely administrative in nature, which could involve the mere act of typing documents”* proves his innocence to the crimes charged because he is merely the OIC of the General Services Office;
- 5) the purchase of office supplies from Tueance is exempted from public bidding because it consists of 15 different and separate transactions, none of which exceeds the maximum allowable limit of Php 60,000.00 for procurement through personal canvass<sup>7</sup>; and
- 6) the Prosecution failed to prove that he knew of the relationship of accused Formales to the supplier, Alden Formales.

For her part, accused Formales similarly alleged that the Prosecution’s evidence is insufficient to convict her with Violation of Section 3 (e) of R.A. No. 3019<sup>8</sup> and Section 89 of R.A. No. 7160<sup>9</sup>. She said that:

- 1) none of the Prosecution witnesses have personal knowledge of the crimes she allegedly committed;
- 2) the Prosecution was not able to prove that she gave unwarranted benefits to Tueance;
- 3) she was not a member of the Bids and Awards Committee (BAC) and therefore, had no hand in the procurement process of the miscellaneous supplies;
- 4) she has fulfilled her duties as a Budget Officer III even after the award of the contracts to Tueance;



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<sup>7</sup> SECTION 367 – *Procurement through Personal Canvass* – Upon approval by the Committee on Awards, procurement of supplies may be effected after personal canvass of at least three (3) responsible suppliers in the locality by a committee of three (3) composed of the local general services officer or the municipal or barangay treasurer, as the case may be, the local accountant, and the head of office or department for whose use the supplies are being procured. The award shall be decided by the Committee on Awards.

Purchases under this Section shall not exceed the amounts specified hereunder for all items in any one (1) month for each local government unit:

xxx

Municipalities:

First Class – Sixty Thousand Pesos (Php 60,000.00)

xxx.

<sup>8</sup> SB-12-CRM-0248.

<sup>9</sup> *Supra* note 5.

- 5) there was no evidence presented to prove the absence of a public bidding in the procurement of miscellaneous supplies; and
- 6) there was no evidence of conspiracy between and among Formales and her co-accused Felix, Herminia Cruz (Cruz), Ophelia De Guzman (De Guzman), Gonzales, and Doroteo.

For accused Gonzales, she also claimed that the testimonies of the Prosecution witnesses, along with the documents offered, were not enough to prove her guilt beyond reasonable doubt for Violation of Section 3 (e) of R.A. No. 3019<sup>10</sup> and Section 89 of R.A. No. 7160<sup>11</sup>.

In its Consolidated Comment/Opposition, the Prosecution, through the Office of the Special Prosecutor, stated that the evidence it adduced were sufficient to sustain the indictment of accused Doroteo, Formales, and Gonzales<sup>12</sup> for Violation of Section 3 (e) of R.A. No. 3019 and Section 89 of R.A. No. 7160. For the purchase of the Cortex scanner, the Prosecution maintained that the same was overpriced and the adoption of procurement through personal canvass is unjustified. For the purchase of miscellaneous supplies from Tueance, the Prosecution asserted that the transaction is covered by the proscription under Section 89<sup>13</sup> of R.A. 7160 because accused Formales was a Budget Officer III of the Municipality of Cainta, Rizal at the time of the purchases. The Prosecution further argued that the purchase exceeded the Php 60,000.00 limitation on procurement through personal canvass under Section 367 of R.A. 7160<sup>14</sup>.

After a thorough review of the records of the cases and the evidence submitted by the Prosecution, the Court finds that, if unrebutted, the same is sufficient to support a verdict of guilt for Violations of Sections 3 (e) of R.A. No. 3019 and Section 89 of R.A. 7160, as amended, against the accused<sup>15</sup>. The Court hereby **DENIES** the motions for leave to file demurrer to evidence filed by accused Doroteo, Formales, and Gonzales.

This is without prejudice to the filing by accused Doroteo, Formales, and Gonzales of a Demurrer to Evidence without prior leave of court, but

<sup>10</sup> *Supra* note 4.

<sup>11</sup> *Supra* note 5.

<sup>12</sup> Accused Doroteo and Gonzales were charged for two (2) counts of Violation of Section 3 (e) of R.A. No. 3019 and one (1) count of Violation of Section 89 of R.A. 7160. On the other hand, accused Formales was charged for one (1) count of Violation of Section 3 (e) of R.A. No. 3019 and one (1) count of Violation of Section 89 of R.A. 7160.

<sup>13</sup> *Supra* note 3.

<sup>14</sup> *Supra* note 7.

<sup>15</sup> *Supra* note 12.

subject to the legal consequence provided under Section 23, Rule 119 of the Revised Rules of Criminal Procedure, as amended, that they shall waive their right to present evidence and submit these cases for judgment on the basis of the evidence adduced by the Prosecution.

**WHEREFORE**, the Motion for Leave to File Demurrer to Evidence dated September 11, 2019 of accused Marciano A. Doroteo, Motion for Leave to File Demurrer to Evidence dated September 16, 2019 of accused Gladys G. Formales, and Motion for Leave to File Demurrer to Evidence dated September 18, 2019 of accused Privada B. Gonzales are **DENIED**.

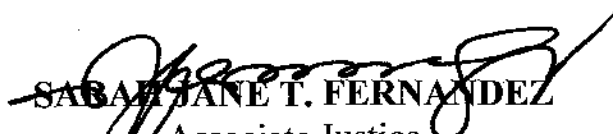
Accused Doroteo, Formales and Gonzales are given a non-extendible period of five (5) days from receipt of this Resolution within which to file their Demurrer to Evidence without prior leave of court, if they so desire, or file a Manifestation informing the Court that they will no longer file a Demurrer to Evidence.

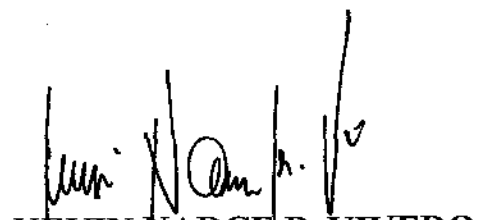
The hearings set on November 5 and 6, 2019, and every Tuesday and Wednesday thereafter, all at 1:30 in the afternoon for the presentation of the evidence for the Defense are maintained. The said scheduled dates will be considered automatically cancelled upon receipt by the Court of the Demurrer to Evidence of the accused.

**SO ORDERED.**

  
**KARL B. MIRANDA**  
Associate Justice

WE CONCUR:

  
**SABAH JANE T. FERNANDEZ**  
Associate Justice  
Chairperson

  
**KEVIN NARCE B. VIVERO**  
Associate Justice