



REPUBLIC OF THE PHILIPPINES

**Sandiganbayan**

QUEZON CITY

**THIRD DIVISION**

**PEOPLE OF THE PHILIPPINES**

**OF THE**

**Criminal Case No. SB-19-CRM-0099**

*Plaintiff,*

*For: Violation of Section 3 (e) of Republic Act No. 3019, as amended.*

**- versus -**


*Present:*

**ORVILLE A. FUA, et al.,**

*Accused.*

**CABOTAJE-TANG, P.J.,**  
Chairperson,  
**FERNANDEZ, B., J.** and  
**MORENO, J.**

*Promulgated:*

APR 3, 2024 

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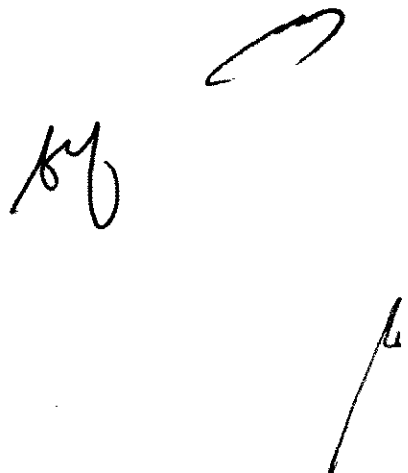
**RESOLUTION**

**CABOTAJE-TANG, P.J.:**

**THE INCIDENT**

For resolution is accused Orville A. Fua, Rose Marie V. Tomogsoc, Natalio B. Jumawan, Jr., Sue Agnes A. Castillon and Merlyn E. Lu's "Joint Motion for Reconsideration for All Accused (of the December 7, 2023, Decision" dated December 22, 2023.<sup>1</sup>

<sup>1</sup> pp. 257-274, Vol. VI, Record



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**THE ACCUSED'S MOTION FOR RECONSIDERATION**

The said accused-movants seek a reconsideration of the Court's *Decision* promulgated on December 7, 2023, which found them guilty of a Violation of Section 3 (e) of Republic Act (R.A.) No. 3019, as amended. In support of their *joint motion for reconsideration*, accused-movants Fua, et al., rely on the following grounds, thus:

1. Conviction must be based on the strength of the prosecution's evidence and not on the weakness or lack of evidence for the defense;
2. There is no evidence that [the] accused consciously and deliberately acted with manifest partiality, evident bad faith and/or gross inexcusable neglect to favor Mangopina;
3. There is no evidence that [the] accused acted with any corrupt or ulterior motive;
4. Being the custodian of financial documents, the accountant's (Monte) imprimatur that the supporting documents are complete and in order justifying payment taken context of COA's admission that Monte failed to comply with their request for submission cannot be taken against [the] accused as it negates the court's conclusion of deficiency and non-compliance of R.A. No. 9184;
5. Vital pieces of exculpatory evidence establishing the innocence or at least create reasonable doubt of the guilt of [the] accused were disregarded; and,
6. With respect to accused Meryln Lu, other than her name being included in some documents, there is no evidence of her participation in the commission of the offense or that she signed any document for that matter.<sup>2</sup>

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<sup>2</sup> *Id.*, at pp. 258-259



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The accused-movants further submit that prosecution witnesses Corazon Lenares Jerusalem (Jerusalem) and Eufemia Clemente Jaugan (Jaugan) confirmed in open court that they did not have any findings on the alleged premature issuance of a Purchase Request (PR) in the subject transaction; the Court's conclusion in its challenged *Decision* that there was no basis for accused Tomogsoc to certify as to the availability of funds at the time he signed P.R. No. 03-06404 on March 12, 2004, merely assumes a fact because there is no indication therein that it was issued or prepared in consideration of the Memorandum of Agreement (MOA) dated April 6, 2004, between the Municipality of Lazi, Siquijor and the Department of Agriculture Regional Field Unit 7 (DA-RFU7); accused Tomogsoc's certification was made in the performance of his regular duties and it cannot be overcome by mere guesswork; accused Tomogsoc was in the best position to certify on the financial position of the municipality; the absence of the said MOA does not preclude the municipality from undertaking a "farm inputs" project on its own; and, that there were three (3) Commission on Audit (COA) auditors who failed to render any adverse audit findings on the financial accounts of the Municipality of Lazi, Siquijor.<sup>3</sup>

Accused-movants Fua, et al., further argue that the Court's findings in its *Decision* promulgated on December 7, 2023, that there was non-compliance with the pertinent provisions of Republic Act (R.A.) No. 9184 were only "selective inferences and extrapolations of unfavorable circumstances." Relying on the case of *People v. Manalo*,<sup>4</sup> the accused-movants contend that if a criminal charge is predicated on a negative allegation, the prosecution must prove the said allegation.<sup>5</sup> According to them, the certification appearing on Disbursement Voucher (DV) No. 300-0405-004 dated May 7, 2004, which reads: "Completeness and propriety of supporting documents/previous cash advance liquidated/existence of funds held in trust;" disproves, or at the very least, gives the Court "sufficient reason to doubt" their alleged non-compliance with

<sup>3</sup> *Id.*, at p. 260-261

<sup>4</sup> 230 SCRA 309 (1994)

<sup>5</sup> *Id.*, at p. 261



the procurement law;<sup>6</sup> the said certification served as basis for the issuance of Journal Entry Voucher (JEV) No. 300-04-05-68;<sup>7</sup> accused Monte, in her capacity as municipal accountant, reviewed the supporting documents; however, she failed and/or refused to submit the said documents to the COA during the investigation; such failure of accused Monte cannot now be used to prejudice them; the said facts cannot establish to the point of moral certainty that they did not comply with the provisions of R.A. No. 9184; and, in the absence of a strong, complete and conclusive proof of any falsity, the certifications appearing on the said DV must be appreciated in their favor.<sup>8</sup>

On another point, accused-movants Fua, et al., rely on the case of *Martel v. People*<sup>9</sup> and submit that a finding of a violation of R.A. No. 9184 does not *ipso facto* result in a violation of R.A. No. 3019. They argue that a “recalibrated scrutiny of the evidence unveils a substantial and colorable compliance to the provisions of R.A. 9184 on public bidding;” there were three (3) bidders which participated in the subject bidding; Mangopina submitted the lowest bid price that was favorable to the government; the alleged violations committed by the accused were not specifically directed to benefit Mangopina; the alleged reference to brand names were “debunked” by the COA examiners who categorically answered that they did not make any findings relative to the allegation of “reference to brand names;” there is no evidence on record which shows that the accused knew or were aware that “MRG Liquid Fertilizer” is a brand name; the confusion regarding the issue of the validity of Mangopina’s mayor’s permit is not a corruption issue; and, that the evidence in this case failed to prove that they acted with fraudulent intent to cause damage.<sup>10</sup>

Furthermore, the said accused-movants reiterate that it is settled in our jurisprudence that the conviction of the accused must rest, not on the weakness of the defense, but on the strength

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<sup>6</sup> *Id.*, at p. 261-262

<sup>7</sup> *Id.*, at p. 263

<sup>8</sup> *Id.*, at p. 264-266

<sup>9</sup> 971 SCRA 373 (2021)

<sup>10</sup> *Id.*, at pp. 266-268



**RESOLUTION**

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of the evidence of the prosecution; that conspiracy is not a harmless inuendo taken lightly or accepted at every turn; it is a legal concept that imputes culpability under specific circumstances; as such, it must be established as clearly as any element of the crime; relying on the cases of *Arias v. Sandiganbayan*,<sup>11</sup> *Sabiniano v. Court of Appeals*,<sup>12</sup> *Joson v. Commission on Audit*,<sup>13</sup> and *Magsuci v. Sandiganbayan*,<sup>14</sup> they submit that a mere signature or approval appearing on a voucher, check or warrant is not enough to sustain a finding of conspiracy among public officials and employees charged with defraudation; there must be proof to indicate that they had taken part in the planning, preparation, and perpetration of the alleged conspiracy to defraud the government.<sup>15</sup>

Also, accused-movant Fua asserts that he only relied on the recommendation of the Bids and Awards Committee (BAC) and there was no exceptional circumstance that should have prompted him as the head of office to exercise a higher degree of circumspection and to doubt what his subordinates had prepared.<sup>16</sup>

On the part of accused-movant Lu, she contends that there is inadequate evidence to establish her guilt in this case. She avers that she did not participate in the proceedings which allegedly constituted a violation of the procurement law subject of this case; assuming *arguendo* that she signed the Notice to Bidders, it indicates her intention to join the subject bidding which is not illegal or irregular; and, the documents in this case show that it was accused Milne who directly facilitated and received the payments.<sup>17</sup>

Lastly, accused-movant Fua prays that the Court note his change of address and requests that all notices, pleadings, court

<sup>11</sup> 180 SCRA 309 (1989)

<sup>12</sup> 249 SCRA 24 (1995)

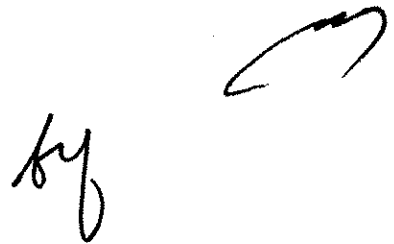
<sup>13</sup> 844 SCRA 220 (2017)

<sup>14</sup> 240 SCRA 13 (1995)

<sup>15</sup> *Id.*, at pp. 268-270

<sup>16</sup> *Id.*, at p. 271

<sup>17</sup> *Id.*, at p. 271



processes, orders, and resolutions intended to him be served at his new address, namely: LAVS Law Office, No. 861 LA Building, 3<sup>rd</sup> Floor, Unit 301 and 302, Don Quijote Street corner Espana, Sampaloc, 1008 Manila.<sup>18</sup>

**THE PROSECUTION'S OPPOSITION**

In its "*Opposition (to the Joint Motion for Reconsideration for All Accused of the December 7, 2023, Decision)*" dated January 30, 2023,<sup>19</sup> the prosecution contends that [1] it was able to prove all the elements of a Violation Section 3 € of R.A. No. 3019, as amended, against the said accused-movants; and, [2] the Court correctly convicted the said accused-movants of the above crime.<sup>20</sup>

According to the prosecution, the Court aptly found in its challenged *Decision* promulgated on December 7, 2023, that P.R. No. 0306404 dated March 12, 2004, had no legal basis. It points out that the accused tries to "*downplay*" the fact that there was no memorandum of agreement between the Municipality of Lazi, Siquijor and the DA-RFU7 when the said PR was issued by the accused-movants. However, the records show that it is precisely the said memorandum of agreement which entitled the Municipality of Lazi, Siquijor to receive the subject funds which were eventually used to purchase the subject fertilizers.<sup>21</sup>

On the issue of the alleged "*reference to brand names,*" the prosecution asserts that the documentary evidence it submitted in this case proved that the accused-movants referred to the brand names of the subject fertilizers in the questioned procurement. Nevertheless, the accused-movants proceeded with the procurement of the subject fertilizers despite the "*glaring illegal use*" of brand names in the subject PR.<sup>22</sup>



<sup>18</sup> *Id.*, at pp. 272-273

<sup>19</sup> *Id.*, at pp. 386-397

<sup>20</sup> *Id.*, at p. 388

<sup>21</sup> *Id.*, at p. 389

<sup>22</sup> *Id.*, at pp. 389-

Moreover, the prosecution avers that it was also able to prove in this case that the BAC failed to observe the proper procedure for the procurement of the subject fertilizers: *i.e., the members of the BAC allowed accused Fua to actively participate in the procurement of the subject fertilizers in violation of Sections 11 and 12 of R.A. No. 9184; accused Fua arrogated upon himself the functions of the BAC when he signed the Notice to Bidders; a review of the said Notice to Bidders show that the prospective suppliers only indicated the unit prices of the fertilizers, and the portion where the bid security should have been reflected were left blank, however, the BAC still recommended the award of contract to Mangopina despite the said deficiencies.*<sup>23</sup>

On another point, the prosecution further argues that the acquittal of accused Monte in this case does not necessarily follow that the accused-movants should also be acquitted of the crime charged against them. It avers that the accused-movants' participation in this case was proven by the prosecution evidence and was thoroughly discussed in the questioned *Decision*.<sup>24</sup>

Also, the prosecution submits that it proved the guilt of accused Lu beyond reasonable doubt in this case. It explains that accused-movant Lu was the representative of Mangopina, who acted for and on its behalf of the said entity, at the time material to this case. Thus, the actions of Mangopina in perpetuating the crime are also deemed to be the actions of the said accused-movant. It stresses that the documents that were submitted by Mangopina in relation to the subject procurement were expired documents; hence, Mangopina was not qualified to bid for the supply of the said fertilizers.<sup>25</sup>

On the accused-movants' denial of the existence of conspiracy in this case, the prosecution relies on settled jurisprudence and contends that *"conspiracy need not be proven by direct evidence; after all, secrecy and concealment are essential features of a*

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<sup>23</sup> *Id.*, at pp. 392-393

<sup>24</sup> *Id.*, at p. 393

<sup>25</sup> *Id.*, at pp. 393-394

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*successful conspiracy; it may be inferred from the conduct of the accused before, during and after the commission of the crime, showing that they acted with common purpose and design.*<sup>26</sup>

It further asserts that the reliance of the accused-movants in the case of *Martel v. People*<sup>27</sup> is misplaced. It explains that in its challenged *Decision* promulgated on December 7, 2023, the Court already ruled that the said case finds no application in this case considering that the procurement subject of this case was riddled with irregularities.<sup>28</sup>

Finally, the prosecution submits that the grounds raised by the accused-movants in their *joint motion for reconsideration* were already squarely addressed by the Court in its assailed *Decision*. Thus, the said *joint motion for reconsideration* must necessarily be denied.<sup>29</sup>

**THE RULING OF THE COURT**

To begin with, the prosecution aptly points out that the above-mentioned arguments raised by the accused-movants in their *joint motion for reconsideration* were already passed-upon by the Court in its questioned *Decision* promulgated on December 7, 2023. Nevertheless, the Court will dwell over on the same arguments if only to show their lack of merit.

In their *joint motion for reconsideration*, accused-movants Fua, et al., heavily rely on the testimonies of prosecution witnesses Jerusalem and Jaugan stating that they did not have any adverse findings in their audit report and audit observation memorandum regarding the [1] alleged premature issuance of the subject PR in this case; and [2] reference to brand names.

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<sup>26</sup> *Id.*, at pp. 394-395

<sup>27</sup> 971 SCRA 373 (2021)

<sup>28</sup> *Id.*, at p. 395

<sup>29</sup> *Id.*, at p. 395





To be sure, in its challenged *Decision* promulgated on December 7, 2023, the Court reviewed the records of this case and found that it is exceedingly obvious that accused Fua and Tomogsoc signed and issued P.R. No. 03-06404 ahead of the execution of the memorandum of agreement (MOA) between the Municipality of Lazi, Siquijor and the Department of Agriculture Regional Field Unit 7 (DA-RFU7), thus:

**1. Accused Fua and Tomogsoc signed and issued PR No. 03-06404 ahead of the execution of the subject MOA.**

While prosecution witnesses Jerusalem and Jaugan testified that they did not make any adverse observation regarding the alleged “premature issuance of a purchase request,” the evidence on record unmistakably shows that the issuance of the said purchase request was indeed premature.

**On its face, PR No. 03-06404<sup>30</sup> indicates that it was issued on March 12, 2004.<sup>31</sup> On the other hand, the subject MOA was executed only on April 6, 2004, between the Department of Agriculture (DA) Regional Field Unit 7 (DA-RFU7) and the Municipality of Lazi.<sup>32</sup> In fact, the first tranche of Php5,200,000.00 was transferred to the Municipality of Lazi, Siquijor only on **May 6, 2004**,<sup>33</sup> while the second tranche of Php2,800,000.00 was transferred to the same municipality on **January 4, 2005**.<sup>34</sup>**

Thus, when accused **Tomogsoc** certified as to the availability of funds in the said PR dated **March 12, 2004**, the same had absolutely no basis because the Municipality of Lazi had not yet entered into any MOA with the DA-RFU7. It must be stressed that it was through this instrument that the DA-RFU7 agreed to transfer the amount of Php8,000,000.00 for



<sup>30</sup> Exhibit A-58-d

<sup>31</sup> Exhibit A-58-d

<sup>32</sup> Exhibit A-56; Emphasis supplied.

<sup>33</sup> Exhibit A-57-g

<sup>34</sup> Exhibit A-58-c


the implementation of the subject project. Thus, when accused **Tomogsoc** issued the said *certification*, there were no funds actually available.

Also, the purpose indicated by accused **Fua** in the said PR, namely: "*Farm Inputs*," had no basis considering that the "*Farm Inputs/Farm Implements Program*" in the lone district of Siquijor and in the province of Siquijor was not yet in effect when accused **Fua** signed the subject PR.<sup>35</sup>

In the same vein, the evidence on record is astoundingly clear in demonstrating that the accused-movants referred to the brand names of the subject fertilizers during the subject procurement. In fact, in its questioned *Decision* promulgated on December 7, 2023, the Court ruled, *viz*:

Section 18 of R.A. No. 9184 provides that the specifications for the procurement of goods shall be based on **relevant characteristics and/or performance requirements**. The same section expressly prohibits any reference to brand names. In fact, this prohibition is echoed in Section 18 of the Implementing Rules and Regulations (IRR) of R.A. No. 9184.<sup>36</sup>

Again, prosecution witnesses Jerusalem and Jaugan likewise testified before the Court that they did not make any adverse observations in their AOM and audit report regarding the accused's reference to brand names in the procurement in question. The prosecution evidence nonetheless show that the said accused clearly referred to two (2) brand names of fertilizers in the said procurement.

To be sure, prosecution witness Reyes, the current Supervising Agriculturist and the Acting Assistant Chief of the Fertilizer Regulations Division (FRD) of the Department of

<sup>35</sup> Footnote omitted; pp. 232-233, Vol. VI, Record; pp. 59-60, Decision.

<sup>36</sup> IRR-A of R.A. No. 9184 was the applicable rule at the time material to this case. It was approved by the president on September 18, 2003, and took effect on October 8, 2003.



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Agriculture-Fertilizer and Pesticide Authority (DA-FPA), testified that [1] “MRG Liquid Fertilizer” is a product brand name registered under Mangopina with Registration No. 1-31-F-007 dated April 1, 2003, and [2] “Del Gro Super Foliar Fertilizer” is a product brand name registered under JR & JP Enterprises with Registration No. 1-1LP-2110 dated November 8, 2005.<sup>37</sup>

**Here, PR No. 03-06404 dated March 12, 2004,<sup>38</sup> the Notice to Bidders dated April 20, 2004,<sup>39</sup> the undated Abstract of Quotation,<sup>40</sup> and PO No. 04-00067(A) dated April 20, 2004,<sup>41</sup> all indicate the above-mentioned brand names of the subject fertilizers. Other than the said brand names, there is the conspicuous absence of any technical description and/or specifications of the subject fertilizers in the said procurement documents.<sup>42</sup>**

Furthermore, the accused-movants cannot now deny that they had no knowledge that “MRG LIQUID FERTILIZER” and “DEL GRO SUPER FOLIAR FERTILIZER” were brand names of fertilizers considering that the Court found in its assailed *Decision* the following circumstances which indicate otherwise, *viz*:

It is undisputed that “MRG Liquid Fertilizer” and “Del Gro Super Foliar Fertilizer” are brand names of fertilizers which all appeared in the procurement documents subject of this case.

The prosecution evidence show that as early as **November 5, 2001**, Mangopina, through its vice-president for finance, accused Milne, issued a “Certification” stating that [1] “Mangopina Trading Co., Inc., a Philippine Corporation, is the sole manufacturer and distributor of the product “M-R-G” in the Philippines,” [2] “no other dealer can offer prices and terms more

<sup>37</sup> p. 665, Vol. IV, Record; Exhibit G-1.

<sup>38</sup> Exhibit A-58-d

<sup>39</sup> Exhibits A-58-e to g

<sup>40</sup> Exhibit A-58-h

<sup>41</sup> Exhibit A-58-i

<sup>42</sup> pp. 233-234, Vol. VI, Record; pp. 61-62, Decision; Emphasis supplied.

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*advantageous to the government,” and [3] “Mangopina Trading has no [authorized] distributor/dealer in the island [of] Siquijor.”<sup>43</sup> The records further reveal that on **March 6, 2004**, or six (6) days before accused **Fua** signed PR No. 03-06404 on **March 12, 2004**, accused Milne wrote to accused **Fua** offering the supply of various agricultural products, which included “DELGRO Products such as liquid foliar fertilizers and granular fertilizers NPK 10-18-10.”<sup>44</sup> Worse, on **March 12, 2004**, or one (1) month before Mangopina was selected<sup>45</sup> by accused **Fua, Castillon, Jumawan** and **Tomogsoc** as the supplier for the subject fertilizers, accused Milne already issued a *Letter of Authority* designating accused **Lu** as Mangopina’s representative, and giving her the authority “[t]o sign any pertinent paper or document relating to Mangopina’s transaction in Lazi, Siquijor.”<sup>46</sup>*

To stress, while the accused-movants cite the supposed “negative findings” of witnesses Jerusalem and Jaugan in their subject audit report and audit observation memorandum in relation to the above-mentioned allegations, the said “negative findings” cannot simply prevail over the undeniable evidence in this case showing that the said accused-movants [1] issued the subject PR ahead of the MOA executed by the Municipality of Lazi, Siquijor and the DA-RFU7, and [2] referred to the brand names of the subject fertilizers in the procurement in issue. To be clear, the said findings of the Court in its *Decision* promulgated on December 7, 2023, were based on its assessment of the totality of the evidence adduced in case and not solely on the supposed findings of prosecution witnesses Jerusalem and Jaugan.

Moreover, the accused-movants argue that the subject MOA between the Municipality of Lazi, Siquijor and the DA-RFU7 was not a pre-condition to the issuance of P.R. No. 03-06404 dated




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<sup>43</sup> Exhibit D-35

<sup>44</sup> Exhibit D-22

<sup>45</sup> Accused Castillon, Jumawan and Tomogsoc recommended the award of the subject project to Mangopina on April 20, 2004. (Exhibit A-58-h); PO No. 04-00067(A) which directed Mangopina to deliver the subject fertilizers was issued by the Municipality on April 20, 2004. (Exhibit A-58-i)

<sup>46</sup> Footnote omitted; pp. 229-230, Vol. VI, Record; pp. 74-75, Decision.



March 12, 2004,<sup>47</sup> because the absence thereof does not preclude the municipality from undertaking a farm inputs project.

The Court finds the said argument unconvincing.

In its questioned *Decision* promulgated on December 7, 2023, the Court spelled out the chronology of events surrounding the transfer of the amount of Php5,200,000.00 from the DFA-RFU7 to the Municipality of Lazi, Siquijor, until the payment of the amount Php4,990,752.00 to Mangopina for the purchase of the subject fertilizers, thus:

On **April 6, 2004**, the Department of Agriculture (DA) Regional Field Unit 7 (DA-RFU7), represented by a certain Eduardo B. Lecciones, and the Municipality of Lazi, Siquijor (Municipality), represented by accused **Fua**, entered into a *Memorandum of Agreement* (MOA) wherein the DA-RFU7 agreed to transfer in tranches to the said municipality the amount of Php8,000,000.00 for the implementation of the municipality's "*Farm Inputs/Farm Implements Program*."<sup>48</sup> The same agreement states that the DA-RFU7 received the amount of Php3,000,000.00 under Special Allotment Release Order (SARO) No. E-04-00156 dated February 3, 2004, and the amount of Php5,000,000.00 under SARO No. E-04-00164 dated February 3, 2004.<sup>49</sup> Notably, the third *Whereas Clause* of the said MOA states that a certain Orlando A. Fua, Jr., representative of the lone district of Siquijor, and a certain Orlando B. Fua, Sr., governor of the Province of Siquijor, have assigned the above-mentioned amounts to the Municipality of Lazi, Siquijor.<sup>50</sup>

On **May 5, 2004**, the DA-RFU7 prepared Disbursement Voucher (DV) No. 101-2004-5-1342 (first tranche) in the

<sup>47</sup> Exhibit A-58-d

<sup>48</sup> Exhibit A-56

<sup>49</sup> Exhibit A-56

<sup>50</sup> Footnote omitted; pp. 229-230, Vol. VI, Record; pp. 53-54, Decision.



amount of Php5,200,000.00 to be disbursed to the municipality.<sup>51</sup>

Thereafter, or on **May 6, 2004**, the DA-RFU7 issued Land Bank of the Philippines Check Nos. 19659,<sup>52</sup> 19660,<sup>53</sup> 19661,<sup>54</sup> 19662,<sup>55</sup> 19663,<sup>56</sup> and 19664<sup>57</sup> covering the above-mentioned amount. On even date, the municipality issued Official Receipt No. 1598157 evidencing the receipt of the amount of Php5,200,000.00 from the DA-RFU7.<sup>58</sup>

On **May 7, 2004**, the municipality prepared DV No. 300-0405-6-42 in the amount of Php4,990,752.00, in favor of Mangopina for the purchase of the subject items. The said DV was signed by accused **Fua** (*"Cash Advances necessary, lawful, and under his direct supervision," "Approved for Payment"*), accused **Monte** (*"Completeness and propriety of supporting documents/previous cash advance liquidated/existence of funds held in trust"*), accused **Tomogsoc** (*"Cash Available"*), and accused **Lu** (*"Received Payment"*).<sup>59</sup> On even date, Mangopina issued Official Receipt No. 0612 for the amount of Php4,990,752.00 to the municipality.<sup>60</sup>

As may be gleaned from the above-cited circumstances, the timeline of events in this case discredits the accused-movants' claim that the subject *"farm inputs"* project was not dependent on the execution of the MOA dated April 6, 2004. Indeed, the subject PR was issued as early as **March 12, 2004**.<sup>61</sup> However, the records of this case reveal that D.V. No. 300-0405-6-42 was prepared and signed by accused-movants Fua, Tomogsoc and Lu only on **May 7, 2004**,<sup>62</sup> or one (1) day after the municipality's receipt of Land Bank

<sup>51</sup> Exhibit A-57

<sup>52</sup> Payable to the Municipality of Lazi in the amount of Php1,000,000.00.

<sup>53</sup> Payable to the Municipality of Lazi in the amount of Php1,000,000.00.

<sup>54</sup> Payable to the Municipality of Lazi in the amount of Php1,000,000.00.

<sup>55</sup> Payable to the Municipality of Lazi in the amount of Php1,000,000.00.

<sup>56</sup> Payable to the Municipality of Lazi in the amount of Php1,000,000.00.

<sup>57</sup> Payable to the Municipality of Lazi in the amount of Php200,000.00.

<sup>58</sup> Exhibit A-57-g

<sup>59</sup> Exhibit A-59

<sup>60</sup> Footnote omitted; pp. 230-231, Vol. VI, Record; pp. 55-56, Decision.

<sup>61</sup> Exhibit A-58-d

<sup>62</sup> Exhibit A-59-a

of the Philippines Check Nos. 19659,<sup>63</sup> 19660,<sup>64</sup> 19661,<sup>65</sup> 19662,<sup>66</sup> 19663,<sup>67</sup> and 19664, on May 6, 2004.<sup>68</sup> The said checks were all issued by the DA-RFU7 pursuant to the provisions of the above-mentioned MOA dated April 6, 2004.<sup>69</sup> Certainly, this uncontroverted fact undoubtedly demonstrates that the subject “farm inputs” project of the Municipality of Lazi, Siquijor was contingent upon the execution of the said MOA between the Municipality of Lazi, Siquijor and the DA-RFU7.

Even the accused-movants’ argument that the certifications appearing on the disbursement voucher subject of this case which reads: “Completeness and propriety of supporting documents/previous cash advance liquidated/existence of funds held in trust” gives the Court “sufficient reason to doubt” their alleged non-compliance with the procurement law is simply incredible.

In its challenged *Decision* promulgated on December 7, 2023, the Court reviewed the records of this case and found that the acts of the accused unerringly show their brazen violations of the procurement law; that the selection of Mangopina as the supplier of the subject fertilizers had been pre-ordained; and that their collective acts to completely disregard the procedure prescribed by law ensured that Mangopina will be, as in fact it was, awarded the subject contract.<sup>70</sup> Therein, the Court discussed at length the said violations committed by the accused which evince their *evident bad faith, manifest partiality* and/or *gross inexcusable negligence* in relation to the procurement in issue, *viz:*

**1. Accused Fua and Tomogsoc signed and issued PR No. 03-06404 ahead of the execution of the subject MOA.**

<sup>63</sup> Payable to the Municipality of Lazi in the amount of Php1,000,000.00.

<sup>64</sup> Payable to the Municipality of Lazi in the amount of Php1,000,000.00.

<sup>65</sup> Payable to the Municipality of Lazi in the amount of Php1,000,000.00.

<sup>66</sup> Payable to the Municipality of Lazi in the amount of Php1,000,000.00.

<sup>67</sup> Payable to the Municipality of Lazi in the amount of Php1,000,000.00.

<sup>68</sup> Exhibit A-57-g

<sup>69</sup> Payable to the Municipality of Lazi in the amount of Php200,000.00.

<sup>70</sup> p. 230, Vol. VI, Record; p. 75, Decision.

**RESOLUTION**

People v. Fua, et al.

Criminal Case No. SB-19-CRM-0099

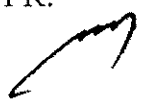
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While prosecution witnesses Jerusalem and Jaugan testified that they did not make any adverse observation regarding the alleged “*premature issuance of a purchase request*,” the evidence on record unmistakably shows that the issuance of the said purchase request was indeed premature.

On its face, PR No. 03-06404<sup>71</sup> indicates that it was issued on **March 12, 2004**.<sup>72</sup> On the other hand, the subject MOA was executed only on **April 6, 2004**, between the Department of Agriculture (DA) Regional Field Unit 7 (DA-RFU7) and the Municipality of Lazi.<sup>73</sup> In fact, the first tranche of Php5,200,000.00 was transferred to the Municipality of Lazi, Siquijor only on **May 6, 2004**,<sup>74</sup> while the second tranche of Php2,800,000.00 was transferred to the same municipality on **January 4, 2005**.<sup>75</sup>

Thus, when accused **Tomogsoc** certified as to the availability of funds in the said PR dated **March 12, 2004**, the same had absolutely no basis because the Municipality of Lazi had not yet entered into any MOA with the DA-RFU7. It must be stressed that it was through this instrument that the DA-RFU7 agreed to transfer the amount of Php8,000,000.00 for the implementation of the subject project. Thus, when accused **Tomogsoc** issued the said *certification*, there were no funds actually available.

Also, the purpose indicated by accused **Fua** in the said PR, namely: “*Farm Inputs*,” had no basis considering that the “*Farm Inputs/Farm Implements Program*” in the lone district of Siquijor and in the province of Siquijor was not yet in effect when accused **Fua** signed the subject PR.<sup>76</sup>



<sup>71</sup> Exhibit A-58-d

<sup>72</sup> Exhibit A-58-d

<sup>73</sup> Exhibit A-56

<sup>74</sup> Exhibit A-57-g

<sup>75</sup> Exhibit A-58-c

<sup>76</sup> The second *Whereas Clause* of the Memorandum of Agreement dated April 6, 2004, between the Municipality of Lazi and the DA-RFU7 provides that the amount of Php8,000,000.00, which was received by the DA-RFU7 under SARO Nos. E-04-00156 and E-04-00164 both dated February 3, 2004, was for the implementation of the “*Farm Inputs/Farm Implements Program*” in the lone district of Siquijor and the Province of Siquijor.





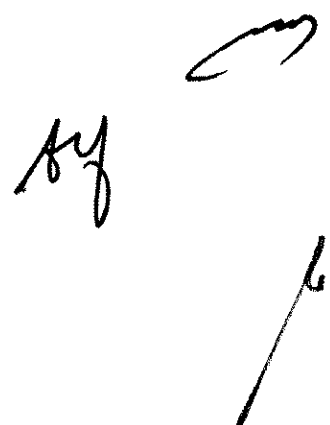
**2. Accused Fua, Castillon, Jumawan and Tomogsoc blatantly disregarded the explicit provisions of R.A. No. 9184 and its Implementing Rules and Regulations on competitive bidding in the procurement of the subject fertilizers.**

Section 10, Article IV of R.A. No. 9184 provides that all procurements shall be done through competitive bidding, except when the head of the procuring entity or his/her duly authorized representative resorts to alternative methods of procurement when justified by certain conditions mentioned under Section 48 of the same law. To be clear, there is nothing from the records of this case which indicates that the accused resorted to any of these alternative methods of procurement. Thus, they were duty-bound to strictly comply with the provisions of R.A. No. 9184 on competitive bidding. However, they disregarded the same and skewed the purported bidding in favor of Mangopina.

**3. Accused Fua, Castillon, Jumawan and Tomogsoc failed to comply with Section 17 of R.A. No. 9184.**

Section 17, Article VI of R.A. No. 9184 requires the procuring entity to prepare bidding documents conforming with the standard forms and manuals prescribed by the Government Procurement Policy Board (GPPB). Pursuant to the same section, said bidding documents shall include the following, namely: [1] Approved Budget for the Contract, [2] Instruction to Bidders, [3] Terms of Reference, [4] Eligibility Requirements, [5] Plans and Technical Specifications, [6] Form of Bid, Price Form, and the List of Goods or Bill of Quantities, [7] Delivery Time or Completion Schedule, [8] Form and Amount of Bid Security, [9] Form and Amount of Performance Security and Warranty, and [10] Form of Contract, and the General and Special Conditions of Contract.

Indeed, aside from PR No. 03-6404 dated March 12, 2004, which was signed by accused **Fua**, the records of this

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case do not show that the above enumerated bidding documents were prepared by the Municipality of Lazi before Mangopina, Gelly's General Merchandise, and Estajera Store were supposedly allowed to submit their respective bids.

**4. Accused Fua, Castillon, Jumawan and Tomogsoc violated Section 18 of R.A. No. 9184 when they referred to the brand names of the fertilizers in issue in the subject procurement documents.**

Section 18 of R.A. No. 9184 provides that the specifications for the procurement of goods shall be based on **relevant characteristics and/or performance requirements**. The same section expressly prohibits any reference to brand names. In fact, this prohibition is echoed in Section 18 of the Implementing Rules and Regulations (IRR) of R.A. No. 9184.<sup>77</sup>

Again, prosecution witnesses Jerusalem and Jaugan likewise testified before the Court that they did not make any adverse observations in their AOM and audit report regarding the accused's reference to brand names in the procurement in question. The prosecution evidence nonetheless show that the said accused clearly referred to two (2) brand names of fertilizers in the said procurement.

To be sure, prosecution witness Reyes, the current Supervising Agriculturist and the Acting Assistant Chief of the Fertilizer Regulations Division (FRD) of the Department of Agriculture-Fertilizer and Pesticide Authority (DA-FPA), testified that [1] "*MRG Liquid Fertilizer*" is a product brand name registered under Mangopina with Registration No. 1-31-F-007 dated April 1, 2003, and [2] "*Del Gro Super Foliar Fertilizer*" is a product brand name registered under JR & JP Enterprises with Registration No. 1-1LP-2110 dated November 8, 2005.<sup>78</sup>

<sup>77</sup> IRR-A of R.A. No. 9184 was the applicable rule at the time material to this case. It was approved by the president on September 18, 2003, and took effect on October 8, 2003.

<sup>78</sup> p. 665, Vol. IV, Record; Exhibit G-1.

Here, PR No. 03-06404 dated March 12, 2004,<sup>79</sup> the Notice to Bidders dated April 20, 2004,<sup>80</sup> the **undated** Abstract of Quotation,<sup>81</sup> and PO No. 04-00067(A) dated April 20, 2004,<sup>82</sup> all indicate the above-mentioned brand names of the subject fertilizers. Other than the said brand names, there is the conspicuous absence of any technical description and/or specifications of the subject fertilizers in the said procurement documents.

Admittedly, the case of **Martel, et al., v. Sandiganbayan**<sup>83</sup> teaches that Section 54 of COA Circular No. 92-386<sup>84</sup> allows a “*non-restrictive reference to brand names,*” or those made in the **call for bids**, which refers to the act of the office of the provincial or city general services officer to call for bids for open public competition. It must be underscored, however, that the Supreme Court categorically ruled in the same case that Section 54 does not apply to the issuance purchase requests. In fact, the procurement law unequivocally mandates that local government units shall only indicate the technical specifications and not specify the particular brand names and makes, to wit:<sup>85</sup>

Hence, when the LGU undertakes the process of requisition of supplies or properties, which the procurement law defines as the formal requesting of supplies or property made through a written request or order,<sup>86</sup> only the technical description of the supplies or properties shall be indicated. ***The particular brand names of the goods cannot be specified in the requisition.***<sup>87</sup>

<sup>79</sup> Exhibit A-58-d

<sup>80</sup> Exhibits A-58-e to g

<sup>81</sup> Exhibit A-58-h

<sup>82</sup> Exhibit A-58-i

<sup>83</sup> **Martel, et al., v. People**, G.R. No. 224720, February 2, 2021.

<sup>84</sup> Section 54. Whenever reference to a manufacturer's brand-name is indicated in the call for bids, it shall be intended to be descriptive, not restrictive, and shall be understood to merely indicate to prospective bidders that brand-names other than those specified, if of equal quality, may be considered, regardless of whether or not a statement to that effect is made in the tender, provided that the bidder shall give full description of his offer accompanied with catalog, literature, and/or sample . . .

<sup>85</sup> p. 20, **Martel, et al., v. People**, G.R. No. 224720, February 2, 2021.

<sup>86</sup> Footnote omitted.

<sup>87</sup> Emphasis supplied.

5. ***There was no Pre-Procurement Conference.***

Section 20, Article VII of R.A. No. 9184 requires the BAC to hold a pre-procurement conference prior to the issuance of an *Invitation to Bid* (ITB) on ***each and every procurement*** except in cases of procurement of goods which costs two million pesos (Php2,000,000.00) and below, procurement of infrastructure projects costing five million pesos (Php5,000,000.00) and below, and procurement of consulting services costing one million pesos (Php1,000,000) and below.<sup>88</sup> Certainly, the cost of the subject fertilizers (Php4,990,752.00)<sup>89</sup> exceeded the threshold amount in cases of procurement of goods. Thus, the conduct of a pre-procurement conference by the BAC was mandatory.

6. ***The subject bidding was not properly advertised, no Invitation to Bid was issued, and there was no pre-bid conference conducted.***

Moreover, Section 21 of the same law requires that all *Invitations to Bid* for contracts under competitive bidding be advertised by the procuring entity consistent with the principle of transparency and competitiveness. As earlier mentioned, PR No. 03-6404 was signed by accused **Fua** on March 12, 2004. Thereafter, he signed an undated "*Notice to Bidders.*" This "*Notice to Bidders,*" which purportedly reflected the ***handwritten*** bids submitted by Mangopina, Gelly's General Merchandise and Estajera Store, became the basis for the "*Abstract of Quotation*" signed and prepared by accused **Castillon, Jumawan** and **Tomogsoc**. Therein, they recommended to accused **Fua** the award of the subject project to Mangopina which was represented by accused **Lu**. However, there is absolutely no showing that the said "*Notice to Bidders*" was properly advertised to ensure the widest possible dissemination thereof. In fact, the records do not show that the

<sup>88</sup> Section 20.2., IRR-A of R.A. No. 9184. (IRR-A of R.A. No. 9184 was the applicable rule at the time material to this case. It was approved by the president on September 18, 2003, and took effect on October 8, 2003).

<sup>89</sup> Exhibit A-59



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said document had any semblance of an *Invitation to Bid* or complied with its prescribed form under the law.<sup>90</sup>

It is also important to underscore that Section 22.1 of the Implementing Rules and Regulations of R.A. No. 9184 requires the BAC to convene at least one (1) pre-bid conference in contracts to be bid with an approved budget of one million pesos (Php1,000,000.00) or more in order to clarify and/or explain any of the requirements, terms, conditions, and specifications stipulated in the bidding documents.

Again, the records of this case are bereft of any showing that a pre-bid conference was held in relation to the procurement in issue. The non-conduct thereof is the logical consequence of non-preparation of the bidding documents by the BAC in this case.

**7. The BAC did not review any eligibility requirement of Mangopina and there was no proper bid evaluation done by the BAC in the questioned procurement.**

Section 23.1 of the Implementing Rules and Regulations of R.A. No. 9184 requires the bidders to submit its eligibility requirements (*Class A Documents* – Legal, Technical, Financial; and *Class B Documents* – valid joint venture agreement, in case of joint venture, and a letter authorizing the BAC or its duly authorized representative/s to verify any or all of the

<sup>90</sup> Section 21. *Advertising and Contents of the Invitation to Bid.* - . . .

The Invitation to Bid shall contain, among others:

- (a) A brief description of the subject matter of the Procurement;
- (b) A general statement on the criteria to be used by the Procuring Entity for the eligibility check, the short listing of prospective bidders, in the case of the Procurement of Consulting Services, the examination and evaluation of Bids, and post-qualification;
- (c) The date, time and place of the deadline for the submission and receipt of the eligibility requirements, the pre-bid conference if any, the submission and receipt of bids, and the opening of bids;
- (d) The Approved Budget for the Contract to be bid;
- (e) The source of funds;
- (f) The period of availability of the Bidding Documents, and the place where these may be secured;
- (g) The contract duration; and,
- (h) Such other necessary information deemed relevant by the Procuring Entity.



documents submitted for the eligibility check)<sup>91</sup> to the BAC in a sealed envelope duly marked as such. In turn, the BAC shall determine if each prospective bidder is eligible to participate in the bidding by examining the completeness of each prospective bidder/s eligibility requirements or statements against a checklist of requirements, using a non-discretionary “pass/fail” criteria. The BAC shall determine whether the said bidders are “eligible” or “ineligible.”<sup>92</sup>

Here, the records show that except for the above-mentioned “Notice to Bidders,” accused BAC members did not even require/receive the eligibility requirements or statements from Mangopina, Gelly’s General Merchandise and Estajera Store. Without the said eligibility requirements, accused BAC members **Castillon, Jumawan** and **Tomogsoc** had nothing to evaluate during the supposed Bid Evaluation Phase of the subject procurement.<sup>93</sup> Lamentably, the said accused weighed on the bids of the said purported bidders without prior determination of their respective eligibilities; they simply relied on the price that was submitted by Mangopina in the said “Notice to Bidders” and declared its bid as “the lowest advantageous to the government.” Notably, the said recommendation made by accused **Castillon, Jumawan** and **Tomogsoc** was approved by accused **Fua**.

**8. There was no post-qualification proceedings.**

Section 34 of R.A. No. 9184 requires that a bidder with the lowest calculated bid, in the case of goods and infrastructure projects, undergo verification and validation on whether the said bidder has passed all the requirements and conditions as specified in the bidding documents. Section 34.2, Rule X of the IRR-A<sup>94</sup> of R.A. No. 9184 prescribes the requirements (Legal, Technical and Financial) to be considered by the BAC during post-qualification. Also, case law provides

<sup>91</sup> Section 23.6., IRR-A of R.A. No. 9184.

<sup>92</sup> Section 23. 2, *Id.*

<sup>93</sup> Sections 30 to 33, R.A. No. 9184

<sup>94</sup> IRR-A of R.A. No. 9184 was the applicable rule at the time material to this case. It was approved by the president on September 18, 2003, and took effect on October 8, 2003.



that post-qualification is that stage in the procurement process where the statements and documents submitted by the bidder with the lowest calculated bid are supposed to be **verified, validated, and ascertained by the BAC or BAC TWG.**<sup>95</sup>

In this case, however, the records do not show that the BAC conducted any post-qualification proceedings before it allowed Mangopina to deliver the subject fertilizers.

Had post-qualification proceedings been conducted on the subject procurement, accused **Castillon, Jumawan, Tomogsoc** and **Fua** could have readily discovered that Mangopina was [1] unqualified to enter into any kind of contract with the municipality because it did not possess a valid business permit, and [2] pursuant to Section 9 of P.D. No. 1144, it was unauthorized to sell, or offer for sale fertilizers because its "Manufacturer-Distributor" license had already expired at the time material to this case. Instead, accused BAC members **Castillon, Jumawan, Tomogsoc** recommended the award of contract to Mangopina and on **April 20, 2004**, accused **Fua** and **Lu** signed PO No. 04-00067(A) which paved the way for Mangopina to deliver the subject fertilizers on **April 26, 2004.**<sup>96</sup>

**9. There was no Notice of Award and no formal contract entered into between the Municipality of Lazi, Siquijor and Mangopina for the delivery of the subject fertilizers.**

Section 37 of R.A. No. 9184 provides that where the Head of the Procuring Entity approves the recommendation of award, the Head of the Procuring Entity or his/her duly authorized representative shall immediately issue the Notice of Award to the bidder with the "*Lowest Calculated Responsive Bid*" or "*Highest Rated Responsive Bid*," as the case may be. The same section further instructs that within ten (10) calendar days

<sup>95</sup> Office of the Ombudsman v. Chipoco and Baganutan, 914 SCRA 533 (2019)

<sup>96</sup> Exhibit A-58-j



from receipt of the Notice of Award, the winning bidder shall formally enter into a contract with the Procuring Entity.

Here, the records reveal that after the BAC allegedly evaluated the purported bids of Mangopina, Gelly's General Merchandise and Estajera Store on April 20, 2004, it recommended the award of the subject project to Mangopina on the same day, and the same was immediately approved by accused **Fua**.<sup>97</sup> Conspicuously, Purchase Order (P.O.) No. 04-00067(A), which directed Mangopina to deliver the subject fertilizers, was also issued **on the same day**. This, despite that no notice of award was issued to Mangopina, no *performance security bond* was posted by Mangopina,<sup>98</sup> and no formal contract<sup>99</sup> for the delivery of the fertilizers in issue was executed between the Municipality of Lazi, Siquijor and Mangopina.

The Court fails to find any compelling reason for the accused to dispense with the said requirements and forthwith allow Mangopina to deliver the subject fertilizers. Mangopina thereafter received the amount of Php4,990,752.00 as payment for the said fertilizers as evidenced by Land Bank Check No. 65800 dated May 7, 2004, which was signed by accused **Tomogsoc** and **Fua**.<sup>100</sup> Interestingly, the said check was made payable to accused Milne and not Mangopina<sup>101</sup> although Mangopina issued Official Receipt No. 0612 evidencing its receipt of the above-mentioned amount.<sup>102</sup>

**10. There was no performance security bond posted by Mangopina.**



<sup>97</sup> Exhibit A-58-h

<sup>98</sup> Section 39. *Performing Security* – Prior to the signing of the contract, the winning bidder shall, as a measure of guarantee for the faithful performance of a compliance with his obligations under the contract prepared in accordance with the bidding documents, be required to post a performance security in such form and amount as specified in the bidding documents.

<sup>99</sup> *Id.*

<sup>100</sup> Exhibit A-59-a

<sup>101</sup> Exhibit A-59-a

<sup>102</sup> Exhibit A-59-b





Section 39 of R.A. No. 9184<sup>103</sup> requires the posting of the winning bidder of a *performance security bond* prior to the signing of the contract. R.A. No. 9184 further declares that the posting of a *performance security bond* by the winning bidder serves as a guarantee for the faithful performance of the said bidder's obligations under the contract. If the said bidder passes all the criteria for post-qualification, his/her bid shall be considered as the "*lowest calculated responsive bid*."<sup>104</sup>

Again, the testimonies of prosecution witnesses Jerusalem<sup>105</sup> and Jaugan<sup>106</sup> confirm that they did not have any adverse observation regarding the issue of "*lack of performance security bond*" in relation to the procurement subject matter of this case.

What is telling, however, is the *Counter-Affidavit* dated December 5, 2016, of accused Marchan, which was submitted before the Office of the Ombudsman during the preliminary investigation of this case. Therein, he expressly admitted that the BAC did not anymore require the winning bidder to post a *performance security bond* in the subject transaction because the BAC "*felt no need for the posting of the qualification bond since the goods were delivered ahead of payment*."<sup>107</sup> However, the BAC members absolutely had no discretion to dispense with the posting of a *performance security bond* as it is a requirement specially mandated by law.

Section 40 of R.A. No. 9184 and Section 40.3 of its IRR are unmistakable in their directive to the BAC should the winning bidder fail to post the required performance security within the period stipulated in the bidding documents, thus:

**Section 40. Failure to Enter into Contract and Post Performance Security.** – If, for justifiable causes, the bidder

<sup>103</sup> Section 39, *Performing Security* – Prior to the signing of the contract, the winning bidder shall, as a measure of guarantee for the faithful performance of a compliance with his obligations under the contract prepared in accordance with the bidding documents, be required to post a performance security in such form and amount as specified in the bidding documents.

<sup>104</sup> Section 34, R.A. No. 9184.

<sup>105</sup> pp. 67-68, TSN, June 2, 2022.

<sup>106</sup> pp. 76-77, TSN, June 7, 2022.

<sup>107</sup> p. 26, Vol. I, Record

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with the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid fails, refuses or is otherwise unable to enter into contract with the Procuring Entity, **or if the bidder fails to post the required performance security within the period stipulated in the Bidding Documents, the BAC shall disqualify the said bidder and shall undertake post-qualification for the next-ranked Lowest Calculated Bid or Highest Rated Bid. This procedure shall be repeated until an award is made. However, if no award is possible, the contract shall be subject to a new bidding.**<sup>108</sup>

...

40.3. In the case of failure, refusal, or inability of the bidder with the Single Calculated/Rated Responsive Bid to enter into contract and post the required Performance Security, as provided in this Section, **the BAC shall disqualify the said bidder, and shall declare the bidding a failure and conduct a re-bidding with re-advertisement and/or posting,**<sup>109</sup> as provided for in Sections 21 and 25 of this IRR-A. Should there occur another failure of bidding after the conduct of the contract's re-bidding, the procuring entity concerned may enter into a negotiated procurement.

...

**11. Mangopina (represented by accused Lu) was unqualified to supply the subject fertilizers at the time material to this case.**

The records show that accused **Lu** signed the following documents on behalf of Mangopina, to wit:

<sup>108</sup> Emphasis supplied.  
<sup>109</sup> Emphasis supplied.



- 
1. Undated *Notice to Bidders* wherein she submitted Mangopina's bid for the supply of "MRG Liquid Fertilizer" at Php1,550.00 per unit and "Del Gro Super Foliar Fertilizer" at Php1,550.00 per unit; and,<sup>110</sup>
  2. PO No. 04-00067(A) dated April 20, 2004, wherein she committed, on behalf of Mangopina, to deliver the subject fertilizers within the time agreed upon, and to pay a penalty of one-tenth (1/10) of one percent (1%) for every delay shall be imposed.<sup>111</sup>

Exhibit D-49-a, or the *Certification* dated June 20, 2022, issued by Edgar T. Villanueva, City Treasurer of Quezon City, shows that Mangopina did not pay for the renewal of its mayor's permit and license for the years **2003** and **2004**.

As above mentioned, prosecution witness Africa, who is currently the division head of the Management Information System, Records and Archiving Division (MIS-RAD) of the Business Permits and Licensing Department (BLPD) of the local government of Quezon City, testified that [1] a mayor's permit is similar to a business permit;<sup>112</sup> and [2] it was the usual practice in their office to allow business permit holders to simply pay for the renewal fee and submit its supporting documents after payment.<sup>113</sup>

Moreover, prosecution witness Bastasa, who currently serves as Local Treasury Operations Officer III at the Records, Verification and Delinquency Section of the Taxes and Fees Division, Treasury Department, Quezon City, confirmed Mangopina's non-payment of the renewal of its business permit for the years 2003 and 2004.<sup>114</sup>

Based thereon, the Court finds that Mangopina had no valid business permit when it entered into the questioned transaction with the Municipality of Lazi considering that it

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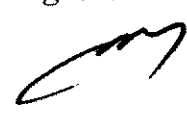
<sup>110</sup> *Id.*

<sup>111</sup> Exhibit A-58-i

<sup>112</sup> p. 18, TSN, June 14, 2022.

<sup>113</sup> *Id.*, at p. 37

<sup>114</sup> p. 585, Vol. IV, Record



failed to pay the renewal of its business permit at the time material to this case.

Also, the prosecution evidence show that Mangopina's "Manufacturer-Distributor" License No. 198 issued by the Department of Agriculture – Fertilizer and Pesticide Authority (DA-FPA) **expired on August 21, 2002.**<sup>115</sup> While prosecution witness Reyes testified before the Court that Mangopina had a valid distributor license (License No. 201 with expiration date July 26, 2005) at the time material to this case, it must be pointed out that the same witness confirmed that Mangopina was already barred from selling its products to the market when it entered into the subject transaction because its manufacturer's license (License No. 104 with expiration date January 14, 2004) had already expired. More importantly, witness Reyes further revealed that no person can engage in the business of manufacturing/sale/distribution of fertilizers unless he/she possesses a valid [1] manufacturer/distributor license, **and** [2] certificate of product registration both issued by the FPA.<sup>116</sup>

A reading of the said "Manufacturer-Distributor" License No. 198 reveals that it was issued by the DA-FPA by virtue of Presidential Decree (P.D.) No. 1144. Section 9 thereof provides, thus:

**Section 9. Registration and Licensing. – No pesticides, fertilizer, or other agricultural chemical shall be exported, imported, manufactured, formulated, stored distributed, sold or offered for sale, transported, delivered for transportation or used unless it has been duly registered with the FPA or covered by a numbered provisional permit issued by FPA<sup>117</sup> for use in accordance with the conditions as stipulated in the permit. Separate registrations shall be required for each active ingredient and its possible formulations in the case of pesticides or for each fertilizer grade in the case of fertilizer.**<sup>118</sup>

<sup>115</sup> Exhibit D-45

<sup>116</sup> p. 24, TSN, September 20, 2022.

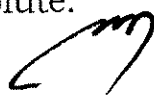
<sup>117</sup> Emphasis supplied.

<sup>118</sup> pp. 232-239, Vol. VI, Record; pp. 59-73, Decision.

As above shown, the purchase of the subject fertilizers, which was facilitated by accused **Fua**, in his capacity as mayor of the Municipality of Lazi, Siquijor, accused BAC members **Tomogsoc**, **Castillon**, and **Jumawan**, and private individual accused **Lu**, was riddled by several glaring irregularities and/or infirmities. Inarguably, the said accused-movants cannot solely rely on a certification made by a municipal accountant at the tail end of the subject transaction and seriously claim that they acted in good faith. To be sure, the said irregularities and blatant violations of R.A. No. 9184 occurred when the said accused-movants were supposedly performing their duties as the head of the procuring entity and members of the BAC of the Municipality of Lazi, Siquijor. In its assailed *Decision* promulgated on December 7, 2023, the Court held that the said accused-movants had the responsibility of ensuring that every government procurement abides by the standards and procedure set forth under R.A. No. 9184 and its Implementing Rules and Regulations.<sup>119</sup> However, this they miserably failed to do.

The Court also finds the said accused-movants' reliance on the cases of **Arias v. Sandiganbayan**,<sup>120</sup> **Magsuci v. Sandiganbayan**,<sup>121</sup> **Sabiniano v. Court of Appeals**<sup>122</sup> and **Joson III v. COA**,<sup>123</sup> utterly misplaced.

While the Supreme Court in *Arias* laid down a protective mantle over public officers and all heads of offices to have a right to "*rely to a reasonable extent on their subordinates and they are not expected to personally examine every detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing his/her signature as the final approving authority,*" it must be underscored that the said doctrine is not absolute.



<sup>119</sup> p. 231, Vol. VI, Record; p. 77, Decision.

<sup>120</sup> 180 SCRA 309 (1989)

<sup>121</sup> 240 SCRA 13 (1995)

<sup>122</sup> 249 SCRA 24 (1995)

<sup>123</sup> 844 SCRA 220 (2017)




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In the case of ***Escara v. People***,<sup>124</sup> the Supreme Court rejected the application of *Arias* and *Magsuci* after it found that the petitioner therein had foreknowledge that the lumber that was purchased and delivered to his municipality for the repair of a bridge was the same lumber that was already confiscated by the Department of Environment and Natural Resources (DENR). Nevertheless, the said petitioner signed the inspection report and disbursement voucher which paved the way for the payment of the said items.

On the other hand, in the case of ***Office of the Ombudsman, et al., v. Espina***,<sup>125</sup> the High Tribunal ruled that for the *Arias* doctrine to apply, there must be ***no reason for the head of offices to go beyond the recommendations of their subordinates***,<sup>126</sup> to wit:

Given the amounts involved and the timing of the alleged deliveries, the circumstances reasonably impose on Espina a higher degree of care and vigilance in the discharge of his duties. Thus, he should have been prompted to make further inquiry as to the truth of his subordinates' reports. Had he made the proper inquiries, he would have discovered the non-delivery of the procured items and the non-performance of the procured services, and prevented the unlawful disbursement. However, he did not do this at all. ***Instead, he blindly relied on the report and recommendation of his subordinates and affixed his signature on the IRFs. Plainly, Espina acted negligently, unmindful of the high position he occupied and the responsibilities it carried, and without regard to his accountability for the hundreds of millions in taxpayers' money involved.***<sup>127</sup>

Plainly, as held by the Court in its assailed *Decision* promulgated on December 7, 2023, the accused-movants, who

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<sup>124</sup> 463 SCRA 239 (2005)

<sup>125</sup> 820 SCRA 541 (2017)

<sup>126</sup> Emphasis supplied.

<sup>127</sup> Emphasis supplied.

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were then mayor and BAC members of the Municipality of Lazi, Siquijor, were expected to know and fully comply with the provisions of R.A. No. 9184. However, the records of this case show that they completely disregarded the same to unduly favor Mangopina. Simply stated, just like the petitioner in *Escara*, and the respondent in *Espina*, the accused had a clear foreknowledge of the irregularities surrounding the subject procurement. Despite this, they actively pursued the purchase of the fertilizers from an unqualified bidder which ultimately led to the unlawful release of public funds. It is worthy to note the following reminder of the Supreme Court in *Espina*, thus:




Verily, this Court has repeatedly emphasized the time-honored rule that a “[p]ublic office is a public trust [and] public officers and employees 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.” ***This high constitutional standard of conduct is not intended to be mere rhetoric and taken lightly as those in the public service are enjoined to fully comply with this standard or run the risk of facing administrative sanctions ranging from reprimand to the extreme penalty of dismissal from the service. . . . Thus, public officers, as recipients of public trust, are under obligation to perform the duties of their offices honestly, faithfully, and to the best of their ability.***<sup>128</sup>

Moreover, the accused-movants argue that there was a “substantial and colorable compliance to the provisions of R.A. [No.] 9184 on public bidding” in this case considering that there were three (3) bidders which participated in the subject bidding; the “confusion” on the issue on the validity of Mangopina’s mayor’s permit “is not a corruption issue;” and that there is inadequate evidence to establish the guilt of accused Lu in this case.

The Court finds the said arguments unmeritorious.

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<sup>128</sup> Emphasis supplied.



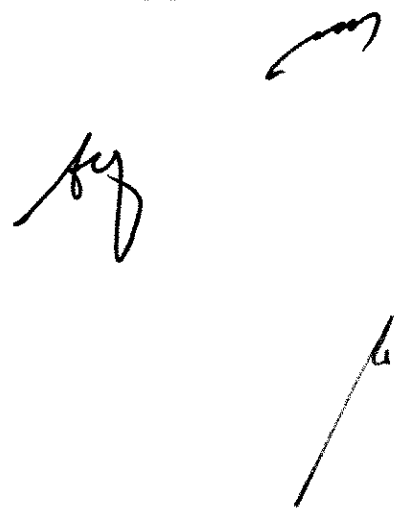
As earlier mentioned, the Court, in its assailed *Decision* promulgated on December 7, 2023, held that Section 10, Article IV of R.A. No. 9184 mandates that ***all*** procurements shall be done through competitive bidding, except when the head of the procuring entity or his/her duly authorized representative resorts to alternative methods of procurement when justified by the conditions set under Section 48 of the same law.

Also, it must be emphasized that Section 12 of R.A. No. 9184 prescribes that the *“BAC shall be responsible for ensuring that the Procuring Entity abides by the standards set forth by this Act and the IRR.”*

To reiterate, there is nothing from the records of this case which shows that the accused public officers strictly complied with the provisions of R.A. No. 9184 and its Implementing Rules and Regulations on competitive public bidding, or that they resorted to any of the alternative methods of procurement. On the contrary, the evidence on record unmistakably shows that there was no serious attempt made by the accused-movants to substantially comply with the law and rules; they completely disregarded the same to unduly favor an unqualified bidder. To further highlight the pre-ordained selection of Mangopina as the supplier for the subject fertilizers by the accused-movants, the Court noted in its questioned *Decision* promulgated on December 7, 2023, that even the participation of one (1) of the supposed bidders in the subject procurement is questionable, to wit:

Furthermore, even the supposed participation of Gelly’s General Merchandise in the purported public bidding subject of this case is highly doubtful.

To be sure, prosecution witness Jaugan testified that she personally interviewed Soledad Duhaylungsod, owner of Gelly’s General Merchandise, regarding the said procurement. Duhaylungsod denied [1] signing a *Notice to Bidders* in relation to the procurement of the subject fertilizers; and [2] writing the

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amount of “P1,870.00” which appeared on the “Unit Price” portion of the said document, thus:

Justice Moreno: I was only asking about your findings which are not included in the Audit Observation of Corazon Jerusalem.

Witness Jaugan: I approached Gelly Store, the owner of Gelly and when I asked whether it was her signature in the bid form, she denied it. She said it’s not her signature and I asked --- (*Interrupted*)

Q: Was that verification in writing or made orally?

A: Personally, I went there, Your Honor.

Q: You went there to verify?

A: Yes.



Q: Was that verification, Ma’am, reduced into writing?

A: Yes, there was an Affidavit duly notarized that it was not her signature.<sup>129</sup>

On the issue of lack of valid permits of Mangopina, the Court in its questioned *Decision* promulgated on December 7, 2023, found that Mangopina lacked the necessary valid mayor’s permit at the time material to this case.<sup>130</sup> Also, it held that Mangopina had no valid “*Manufacturer-Distributor*” license when it entered its bid for the procurement of the subject fertilizers considering that

<sup>129</sup> p. 72, TSN, June 7, 2022; Exhibit D-148

<sup>130</sup> Exhibit D-49-a

its *Manufacturer-Distributor License No. 198* had already expired on August 21, 2002.<sup>131</sup>

In plain terms, the records of this case established that Mangopina was **unqualified** to supply the subject fertilizers. Despite this, the records equally show that accused **Lu** signed [1] the Undated Notice to Bidders wherein she submitted Mangopina's bid for the supply of "*MRG Liquid Fertilizer*" at Php1,550.00 per unit and "*Del Gro Super Foliar Fertilizer*" at Php1,550.00 per unit;<sup>132</sup> and, [2] PO No. 04-00067(A) dated April 20, 2004, wherein she committed, on behalf of Mangopina, to deliver the subject fertilizers within the time agreed upon, and to pay a penalty of one-tenth (1/10) of one percent (1%) for every delay shall be imposed.<sup>133</sup>

Nevertheless, the accused-movants argue that the Court erred in finding the existence of conspiracy in this case and that assuming *arguendo* that accused Lu signed the subject Notice to Bidders, it "*only indicates her intention to join the subject bidding which is not illegal or irregular.*"

The Court finds the subject arguments puerile.

It is jurisprudentially settled that the essence of conspiracy is the common criminal design among the accused, i.e., conspirators may act separately or together in different manners but always leading to the same unlawful result.<sup>134</sup> The character and effect of conspiracy are not be adjudged by dismembering it and viewing its separate acts but only by looking at it as a whole and that acts done to give effect to conspiracy may be, in fact, wholly innocent acts.<sup>135</sup> Conspiracy need not be established by direct evidence; rather, it can be inferred from the totality of the facts and circumstances regarding their participation that pursued a common design and purpose.<sup>136</sup>

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<sup>131</sup> Exhibit D-45

<sup>132</sup> *Id.*

<sup>133</sup> Exhibit A-58-i

<sup>134</sup> See *Yongco v. People*, 731 SCRA 544 (2014)

<sup>135</sup> *Id.*

<sup>136</sup> *Reyes v. Sandiganbayan*, 946 SCRA 174 (2020); See also *Yongco v. People*, 731 SCRA 544 (2014)

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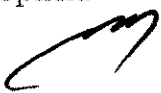
This is precisely what the Court did in this case.

In its questioned *Decision* promulgated on December 7, 2023, the Court weighed the evidence adduced in this case *vis-à-vis* the collective acts of the accused and found that they were indeed animated by a common criminal design which was to give unwarranted benefit to Mangopina, to wit:

Undeniably, the said accused had the responsibility of ensuring that every government procurement abides by the standards and procedure set forth under R.A. No. 9184 and its Implementing Rules and Regulations.<sup>137</sup> However, they utterly failed to discharge such responsibility. Instead, they violated the pertinent laws and reduced the questioned procurement to a mere charade obviously to give unwarranted benefit to Mangopina through their manifest partiality.

It is jurisprudentially settled that conspiracy takes two (2) forms.<sup>138</sup> The first is the express form, which requires proof of an actual agreement among all the co-conspirators to commit the crime.<sup>139</sup> The second form is implied conspiracy considering that conspiracies are not always shown to have been expressly agreed upon.<sup>140</sup> It exists when two (2) or more persons are shown to have aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, were in fact connected and cooperative, indicating closeness of personal association and a concurrence of sentiment.<sup>141</sup>

Taken collectively, the individual acts of the accused demonstrate that they were animated by a common criminal design by acting with manifest partiality which gave unwarranted benefit to Mangopina.



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<sup>137</sup> Section 12, R.A. No. 9184

<sup>138</sup> *People v. De Guzman, et al.*, G.R. No. 241248, June 23, 2021.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*



In sum, the Court holds that accused **Castillon, Jumawan, Tomogsoc** and **Fua's** blatant violations of the applicable procurement laws, rules and regulations reveal their common criminal design to rig the purported public bidding in this case to unduly favor Mangopina and accused **Lu**. Consequently, the said accused should be convicted of a Violation of Section 3 (e) of R.A. No. 3019.<sup>142</sup>

To reiterate, case law holds that conspiracy may be implied from the intentional participation in the transaction that furthers the common design and purpose. As long as the prosecution was able to prove that two (2) or more persons aimed their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment, conspiracy may be inferred even if no actual meeting among them was proven.<sup>143</sup>

In sum, the Court finds no new and/or substantial arguments raised by the accused-movants in their *joint motion for reconsideration* that would warrant a reconsideration of the Court's *Decision* promulgated on December 7, 2023.

**WHEREFORE**, the Court **DENIES** accused Orville A. Fua, Rose Marie V. Tomogsoc, Natalio B. Jumawan, Jr., Sue Agnes A. Castillon, and Merlyn E. Lu's "*Joint Motion for Reconsideration for All Accused (of the December 7, 2023, Decision)*" dated December 22, 2023,<sup>144</sup> for utter lack of merit and for being *pro-forma*.

The notice of change of address of the counsel of accused Fua is hereby **NOTED**.



<sup>142</sup> pp. 231-232, Vol. VI, Record; pp. 76-77, Decision.

<sup>143</sup> *Reyes v. Sandiganbayan*, 946 SCRA 174 (2020)

<sup>144</sup> pp. 257-274, Vol. VI, Record




**RESOLUTION**

People v. Fua, et al.

Criminal Case No. SB-19-CRM-0099

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**SO ORDERED.**

Quezon City, Metro Manila.



**AMPARO M. CABOTAJE-TANG**

Presiding Justice  
Chairperson

**WE CONCUR:**



**BERNELITO R. FERNANDEZ**

Associate Justice



**RONALD B. MORENO**

Associate Justice

