



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
 Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Crim. Case No. SB-08-CRM-0270

- versus -

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

ROBERT GINGGING LALA, GLORIA RUIZ DINDIN, MARLINA SANCHEZ ALVIZO, PUREZA ANUNCIADO FERNANDEZ, CRESENCIO TOCMO BAGOLOR, AGUSTINITO PAGE HERMOSO, LUIS ABREGANA GALANG, RESTITUTO ROSELL DIANO, BUENAVENTURADA CONOL PAJO, AYAON SOGADOR MANGGIS, MARILYN ABRIO OJEDA, and GERARDO SISON SURLA,

Accused.

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PEOPLE OF THE PHILIPPINES,
Plaintiff,

Crim. Case No. SB-12-CRM-0006

- versus -

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

ROBERT GINGGING LALA, GLORIA RUIZ DINDIN, MARLINA SANCHEZ ALVIZO, PUREZA ANUNCIADO FERNANDEZ, CRESENCIO TOCMO BAGOLOR, AGUSTINITO PAGE HERMOSO, LUIS ABREGANA GALANG, RESTITUTO ROSELL DIANO, AYAON SOGADOR MANGGIS, MARILYN ABRIO OJEDA, TERESA BALDO BERNIDO, and GERARDO SISON SURLA,

Accused.

Present:

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

Promulgated:

DEC 23 2020

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RESOLUTION

VIVERO, J.

This resolves the *Partial Motion for Reconsideration*¹ filed by accused Gerardo Surla (Surla) on 13 October 2020 and the *Motion for Reconsideration (to the Joint Decision dated 19 September 2020)*² filed by accused Robert Lala, Pureza Fernandez and Agustinito Hermoso (accused Lala, et al.) through email on 13 October 2020, and also received by the Court via private courier on 21 October 2020. The prosecution filed its *Consolidated Comment/Opposition (Re: Motions for Reconsideration filed by Accused Lala, Fernandez, Hermoso and Surla)*³ through email on 05 November 2020.

The accused-movants implore this Court to reconsider and set aside its *Decision dated 19 September 2020*⁴ finding them guilty beyond reasonable doubt of violation of Section 3(e) of Republic Act (R.A.) No. 3019 or the *Anti-Graft and Corrupt Practices Act*, as amended, in Criminal Case No. SB-12-CRM-0006, and instead, render a judgment of acquittal in their favor.

In support of his *Partial Motion for Reconsideration*, accused Surla argues that:

- a) His act of signing in the Memorandum of Understanding (MOU) should not be considered as a conspirational act in their alleged violation of Section 3(e) of R.A. No. 3019, and that he acted in good faith when he signed the MOU;⁵ and
- b) The Information in SB-12-CRM-0006 did not charge the accused of pre-determining the winner of the bidding by executing a prior MOU, thus violating his right to be informed of the nature and cause of accusation against him.⁶

In their *Motion for Reconsideration*, accused Lala, et al. assails the Decision based on the following grounds:

- a) Accused Hermoso's testimony that the MOU came only after the 28 November 2006 bidding and that the dates were just

¹ Dated 11 October 2020; Record, Vol. 13, pp. 167 to 174.

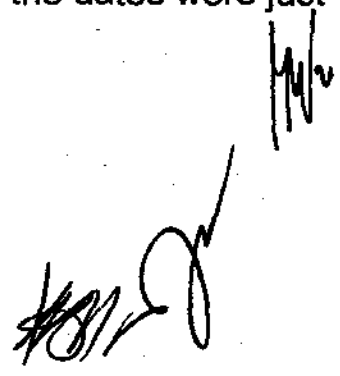
² Dated 13 October 2020; Record, Vol. 13, pp. 202 to 252.

³ Dated 04 November 2020.

⁴ Record, Vol. 13, pp. 78 to 162.

⁵ *Id.*, at p. 170.

⁶ *Id.*, at p. 172.

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typographical error is credible, substantiated and entitled to great weight;⁷

- b) There was no prior determination as winner in favor of GAMPIK Construction and Development, Inc. (GAMPIK);⁸
- c) The prosecution failed to discharge its onus and rebut accused Hermoso's testimony;⁹
- d) There was no proof that the project started before 28 November 2006;¹⁰
- e) Accused Hermoso stood firm on the sequence of events and the start of the project after 28 November 2006;¹¹
- f) The MOU was not part of the checklist nor in the bid documents, thus it will not have a bearing on the determination of the lowest bid or in the recommendation of the Bids and Awards Committee (BAC) or Technical Working Group (TWG) for the award;¹²
- g) The BAC signatures affixed in the bid documents of the three bidders confirmed the 28 November 2006 actual bidding;¹³
- h) The presence of GAMPIK including other bidders for other ASEAN-related projects proves regularity in the bidding;¹⁴
- i) GAMPIK's determination as the lowest bidder was established through the Abstract of Bids and TWG Report;¹⁵
- j) Typographical error is a normal occurrence but more so in the abnormal situation that the accused were in;¹⁶
- k) There is presumption of regularity;¹⁷

⁷ Record, Vol. 13, p. 206.

⁸ *Id.*, at p. 208.

⁹ *Ibid.*

¹⁰ *Id.*, at p. 225.

¹¹ *Id.*, at p. 224.

¹² *Id.*, at p. 230.

¹³ *Ibid.*

¹⁴ *Id.*, at p. 224.

¹⁵ *Ibid.*

¹⁶ *Id.*, at p. 235.

¹⁷ *Ibid.*

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- l) Judicial notice should have been taken on the acquittal of the accused in the Decision dated 25 October 2019 in "*People vs. Lala, et al.*" docketed as Criminal Case No. SB-09-CRM-0141 involving another contract awarded to a different contractor, FABMIK Construction and Equipment Supply Company, Inc., which was bidded out together with Contract ID No. 06HO0048 on 28 November 2006;¹⁸ and
- m) Accused cannot be convicted of a charge not found or indicted in the Information. The finding of prematurity and illegality in the execution of the MOU is not what is charged or included in the Information.¹⁹

In its *Consolidated Comment/Opposition*, the prosecution seeks the denial of accused's *Motions for Reconsideration* on the following contentions:

- a) The fact that the MOU – which guaranteed payment to GAMPIK – was executed before the scheduled bidding could only mean that GAMPIK was the predetermined winning bidder for the project;²⁰
- b) The bidding conducted on 28 November 2006 was a sham. It did not meet the principles of competitiveness as the winner was already identified even when the bidding has yet to take place;²¹
- c) The claims that the dates in the MOU were mere typographical errors and that it was executed only after the 28 November 2006 bidding cannot stand merely on the basis of the bare, self-serving testimony of accused Hermoso;²²
- d) The accused cannot rely on the principle of presumption of regularity to escape criminal liability, as they failed to provide credible evidence that the dates in the MOU were mere typographical errors;²³
- e) The Decision dated 25 October 2019 in "*People vs. Lala, et al.*" docketed as Criminal Case No. SB-09-CRM-0141 before

¹⁸ Record, Vol. 13, p. 239.

¹⁹ *Id.*, p. 242.

²⁰ Prosecution's Consolidated Comment/Opposition, p. 7.

²¹ *Id.*, p. 9.

²² *Id.*, p. 11.

²³ *Id.*, p. 17.

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the Honorable Fourth Division of this Court cannot bind the Honorable Sixth Division;²⁴

- f) Conspiracy between accused public officers and accused Surla was sufficiently established through their individual acts pointing to a joint purpose and design;²⁵ and
- g) The prematurity and illegality in the execution of the MOU need not be specifically alleged in the Information.²⁶

OUR RULING

We resolve to **deny** the instant motions for lack of merit. The Court finds no cogent reason that would warrant the reversal of the assailed Decision.

The prosecution has established that the accused public officers had predetermined GAMPIK as the winning bidder through the execution of an MOU even before the actual bidding; the defense failed to present clear and convincing evidence to rebut the same.

The prosecution was able to establish a case of violation of Section 3(e) of R.A. No. 3019 when it was shown that accused Lala and Fernandez, upon the advice of accused Hermoso, illegally and prematurely entered into an MOU²⁷ with GAMPIK on 22 November 2006, authorizing the latter to immediately proceed with the project and guaranteeing the payment for the work done, even before the supposed-to-be competitive bidding on 28 November 2006. Having established at the very least a *prima facie* case, the burden of evidence already shifted to the accused to destroy the prosecution's evidence. It was thus incumbent upon the accused to adduce evidence to meet and nullify, if not overthrow, the aforementioned proof against them.

In this case, instead of shedding light as to the circumstances that surrounded the execution of the subject MOU, the defense's alibi consists merely of accused Hermoso's flimsy explanation that the dates "17 November 2006" (date of bidding) and "22 November 2006" (date of execution of the MOU) indicated in the MOU were just typographical errors. No other convincing elucidation were put forth by

²⁴ Prosecution's Consolidated Comment/Opposition, p. 18.

²⁵ *Id.*, p. 19.

²⁶ *Id.*, p. 20.

²⁷ Exhibit "C4" for the prosecution; Exhibit "227" for the defense.

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the accused. Accused Lala, Fernandez and Surla, who were the signatories to the MOU, failed to corroborate accused Hermoso's bare claim, much less present their version of the chronology of events. Accused Fernandez and Surla kept mum about the MOU, while accused Lala chose not to take the witness stand.

Accused-movants Lala, et al. insist that typographical error is a normal occurrence. While a claim of typographical error could have been an effective and valid defense for the accused, the Court, however, cannot accept a bare claim of typographical error that leaves much to the imagination. The unsubstantiated and self-serving claim that the dates "17 November 2006" and "22 November 2006" indicated in the MOU will hold no water absent credible and logical explanation on why and how such error was committed.

The instant motions for reconsideration notwithstanding, the Court still has no clue as to what date the defense is claiming to be the date of execution of the said MOU. Thus, absent any convincing controverting evidence from the accused, the MOU should be made to speak for itself – *res ipsa loquitur*. Besides, in the weighing of evidence, documentary evidence prevails over testimonial evidence.²⁸

While accused Lala, et al., insist that accused Hermoso was able to provide a straightforward explanation as to why the dates in the MOU were mere typographical errors, the records, however, reveal otherwise. The essence of accused Hermoso's testimony consists merely of the following: (a) the dates 22 November 2006 and 17 November 2006 in the MOU were mere typographical errors;²⁹ (b) he was the one who came up with the idea of an MOU so that GAMPIK would be convinced to start the project, even if the funds were still forthcoming and even without the recommendation from BAC;³⁰ and (c) the Dropping and Opening of Bids for Contract ID No. 06HO0048 was held on 28 November 2006.³¹

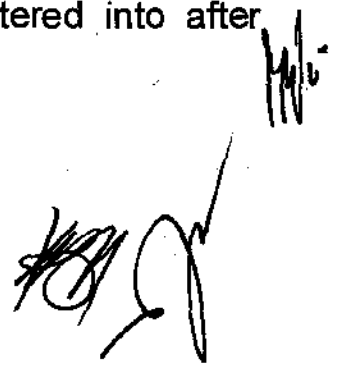
Apart from the sheer statement that the dates in the MOU were mere typographical errors, the testimony of accused Hermoso was dearth of any account as to when the MOU was actually executed and the date when GAMPIK was determined as the winning bidder. Contrary to what the accused-movants imply, accused Hermoso did not mention at all that the MOU was executed after the 28 November 2006 bidding and that the said document was entered into after

²⁸ *Go vs. Court of Appeals*, G.R. No. 112550, 05 February 2001.

²⁹ *Rollo*, Vol. XI-A, p. 41.

³⁰ *Id.*, p. 40.

³¹ *Id.*, pp. 31-32.



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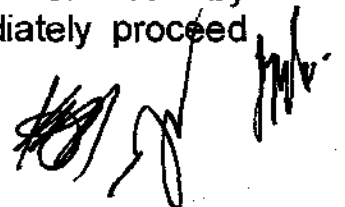
GAMPIK was already determined to be the winning bidder with the lowest responsive and calculated bid, and not just the lowest bidder.

Conversely, the testimony of accused Hermoso suggests that in order to convince GAMPIK to start with the project, the accused public officers executed the MOU even if the funds were still forthcoming and despite the fact that there was still no recommendation from the BAC. This is an admission that accused public officers already had an agreement with the contractor to proceed with the project even before the actual determination of the winning bidder, which commences, at the very least, at the time the BAC recommends the issuance of a Notice of Award.

To be clear, the determination of the winning bidder is not only limited to, and does not stop in the determination of the lowest bid during the opening of bids but instead extends to the more important part which is the post-qualification stage where the lowest bidder is assessed whether or not it complies with, and is responsive to all the requirements and conditions as specified in the bidding documents. This is the time where the lowest responsive and calculated bid is determined. By executing an agreement with a contractor to proceed with the project prior to the determination of the actual winning bidder or the one with the lowest responsive and calculated bid, accused public officers had effectively influenced and tied the hands of the BAC, and thus preempted or predetermined the result of the whole bidding process. Accordingly, even if we follow the farfetched logic of the movants that the MOU was executed after the 28 November 2006 bidding, the actuation of the accused in pre-determining the winning bidder prior to the post-qualification phase and the recommendation of the BAC to issue a Notice of Award is still highly irregular and goes against the competitive nature of a bidding.

The fact that supporting documents show that a bidding was indeed conducted on 28 November 2006 is immaterial. The holding of the said bidding does not obliterate the fact that accused public officers have already assured GAMPIK of getting the project through the execution of the MOA prior to the actual bidding. The only inference from this is that the 28 November 2006 bidding was a sham as the winning bidder had already been predetermined.

Accused Lala, et al also lament that there was no proof that GAMPIK started the project even before the 28 November 2006 opening of bids. The accused completely missed the point at issue, that is – whether or not the accused violated the principle of competitiveness of a bidding as required by R.A. No. 9184 by authorizing a contractor/prospective bidder to immediately proceed



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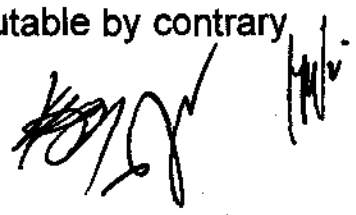
with the project and guaranteeing the payment for the work to be done, even before the actual bidding. Thus, whether or not the contractor indeed started the project in advance is inconsequential.

The postponement of the 17 November 2006 scheduled opening of bids also had no bearing to the main issue at hand – that accused public officers executed a MOU in favor of GAMPIK even before the opening of bids on 28 November 2006. The accused postulates that they had no malice because they could have covered-up the MOU by proceeding with the 17 November 2006 opening of bids but they did not. This argument is fallacious for two reasons. First, as shown in the testimony of accused Hermoso, it was the BAC, through Chairperson Marlina Alvizo, who postponed the 17 November 2006 opening of bids and not the herein accused-movants. Second, while indeed the accused would not have been caught red-handed had the opening of bids pushed through on 17 November 2006, the logical explanation for this is that the accused could have executed the MOU even before the 17 November 2006 scheduled opening of bids without anticipating that the latter will be postponed.

The date “17 November 2006” indicated in the MOU as the date when GAMPIK submitted its bid could not be attributed to a clerical error because the submission and opening of bids was in fact initially scheduled on 17 November 2006. The error of the accused is not typographical but in executing the MOU without anticipating that the 17 November 2006 scheduled opening of bids will be postponed.

The accused-movants likewise argue that since the MOU is not part of the checklist of requirements and the bid documents being evaluated by the TWG, common sense dictates that it will not have a bearing in the determination of the lowest bid or in the recommendation by the BAC/TWG for the award. This argument is devoid of merit and logic. While the MOU is not part of the documents being evaluated to determine the winning bidder, the execution and existence *per se* of such document prior to the actual bidding is a solid proof that the winning bidder had already been predetermined and the subsequent bidding is merely a formality or a sham. The subject MOU, thus, preempted the result of the supposed-to-be competitive bidding process. A document allowing a contractor to immediately proceed with the project and guaranteeing payment of the work to be done, which was signed by the top officials of the procuring entity, is a stamp of guarantee that the project will be awarded to the said contractor.

Lastly, the accused cannot hide in the cloak of presumption of regularity. The presumption of regularity in the performance of official duty is merely just that — a mere presumption disputable by contrary



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proof and which when challenged by the evidence cannot be regarded as binding truth. This presumption cannot arise in the present case because the prosecution has effectively disputed it through proof of the premature and therefore unlawful execution of the MOU.

The accused clearly failed to present sufficient and credible evidence that will invalidate, or at least explain the execution of an MOU with GAMPIK prior to the actual bidding, which is in itself an incriminating evidence of their culpability. For failure of the accused to overcome the prosecution's case of violation of R.A. No. 9184, there was no need for the latter to present rebuttal evidence.

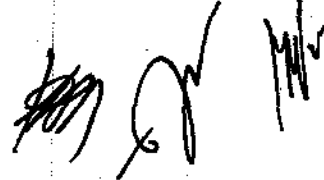
Lastly, the argument that the Court should take judicial notice of the acquittal of the accused in "*People vs. Lala, et al.*" docketed as Criminal Case No. SB-09-CRM-0141 is untenable. The issues in the said case finds slim to zero relevance as it involves a different project and contractor, and most especially the MOU in the said case was not executed prior to the actual bidding.

The Information in SB-12-CRM-0006 has sufficiently stated the ultimate facts constituting the offense; thus, the accused were properly informed of the nature and cause of the accusation against them.

Contrary to their claims, accused Lala, Fernandez, Hermoso and Surla were validly convicted of the charges under the Information in SB-12-CRM-0006. The accused were properly and sufficiently informed of the acts constituting the offense charged. The Information described the crime in intelligible terms with such particularity as to apprise the accused, with reasonable certainty, of the offense charged.

The Information in SB-12-CRM-0006 reads:

"That on or about the 08 March 2007 and for sometime prior or subsequent thereto, at the City of Cebu, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused **ROBERT GINGGING LALA, GLORIA RUIZ DINDIN, MARLINA SANCHEZ ALVIZO, PUREZA ANUNCIADO FERNANDEZ, CRESENCIO TOCMO BAGOLOR, AGUSTINITO PAGE HERMOSO, LUIS ABREGANA GALANG, RESTITUTO ROSELL DIANO, AYAON SOGADOR MANGGIS, MARILYN ABRIO OJEDA and TERESA BALDO BERNIDO**, public officers, being the Regional Director, Assistant Regional Director, Assistant Regional Director and Chairperson, Bids and Awards Committee (BAC), Officer-in-Charge Chief, Maintenance Division and BAC Member, Officer-in-Charge Assistant Chief, Maintenance Division



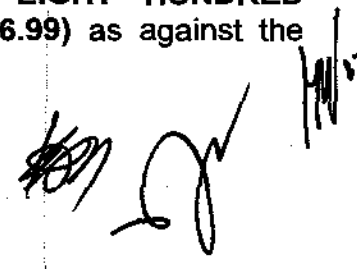
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and BAC-Technical Working Group (TWG) Member, Regional Legal Officer and BAC Member, Chief, Planning and Design Division and BAC Member, Chief, Administrative Division and BAC Member, Head, BAC-TWG and BAC-TWG Members, all of the Department of Public Works and Highways [DPWH]-VII, respectively, in such capacity and committing the offense in relation to office, conniving, confederating and mutually helping with each other, and with **GERARDO S. SURLA**, a private individual, in his capacity as Chairman of the Board of GAMPK Construction and Development, Inc., with deliberate intent, manifest partiality or evident bad faith, and/or gross inexcusable negligence, did then and there wilfully, unlawfully and criminally cause the award through negotiated procurement of **Contract ID No. 06HO0048** consisting of four (4) projects, to wit: [1] **SUPPLY AND INSTALLATION OF TESTING AND COMMISSIONING OF L.E.D. BULBS, TRAFFIC SIGNAL LANTERN AND OTHER TRAFFIC CONTROL DEVICES AT JUNCTIONS ML QUEZON AVENUE-TERMINAL BLDG. ACCESS ROAD AND ML QUEZON AVENUE-PATALINGHUG AVENUE** (1.a. Supply and installation, testing and commissioning of traffic signal equipment and other traffic control devices at junctions ML Quezon Avenue and Terminal Bldg. access road; 1.b. Replacement of old lantern and bulbs with compatible, low maintenance, low electric consumption, long life at junction ML Quezon Avenue and Patalinghug Avenue); [2] **SUPPLY AND INSTALLATION OF STREET LIGHTING FACILITIES ALONG PUNTA ENGAÑO ROAD NETWORK, LAPU-LAPU CITY** (2.a. Supply and Installation of decorative lamps [40 sets decorative park lamp assembly]; 2.b. Supply and Installation of flood lights); [3] **SUPPLY AND INSTALLATION OF STREET LIGHTING FACILITIES [DECORATIVE LAMPS] ALONG TERMINAL BLDG. ACCESS ROAD, LAPU-LAPU CITY** [60 sets of decorative park lamp assembly]; and [4] **SUPPLY AND INSTALLATION OF STREET LIGHTING FACILITIES [DECORATIVE LAMPS] ALONG PATALINGHUG AVENUE [ML QUEZON-SANGI SECTION], LAPU-LAPU CITY** (120 sets of decorative park lamp assembly) executed on 8 March 2007, by and between accused **GLORIA R. DINDIN** (in her capacity as DPWH-VII Assistant Regional Director) and accused **GERARDO S. SURLA** (Chairman of the Board, GAMPK Const. and Dev., Inc.) for **THIRTY FIVE MILLION SIX HUNDRED THIRTY FOUR THOUSAND FOUR HUNDRED ONE PESOS AND 25/100 (P35,634,401.25)**, by preparing the Program of Works and Estimates (POWE), Approved Budget for the Contract (ABC) and other related documents and conducting the procurement process, despite absence of legal requirements for a valid procurement process, such as, among others, the absence of competitive bidding, the grounds resorted to and the procedure in the negotiated procurement of Contract ID No. 06HO0048 which do not fall within the requirements under *Republic Act No. 9184, otherwise known as Government Procurement Reform Act*, aside from awarding and implementing the project at an excess price of **P35,634,401.25** which is in excess by **TWELVE MILLION SIX HUNDRED TWENTY NINE THOUSAND EIGHT HUNDRED SIXTEEN PESOS AND 99/100 (P12,629,816.99)** as against the



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Ombudsman (OMB) Computation of **TWENTY THREE MILLION FOUR THOUSAND FIVE HUNDRED EIGHTY FOUR PESOS AND 26/100 [P23,004,584.26]** which excess amount is beyond the ten percent (10%) allowable price variance under *COA Circular No. 85-55A*, thereby giving unwarranted benefits, advantage or preference to the contractor, GAMPIK Construction and Development, Inc. to the damage and/or prejudice of the government.

CONTRARY TO LAW.”

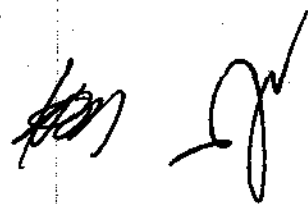
We find that the foregoing Information sufficiently alleged the essential elements of violation of Section 3(e) of R.A. No. 3019. The Information specifically alleged that the accused public officers, in their respective official capacities and in conspiracy with accused Surla, a private individual, with manifest partiality, evident bad faith, and/or gross inexcusable negligence, caused the award of Contract ID No. 06HO0048 to GAMPIK, despite the absence of legal requirements for a valid procurement process, such as, a competitive bidding, thereby giving unwarranted benefits, advantage or preference to the contractor, to the damage and/or prejudice of the government.

The fact that the Information did not specifically allege that the accused executed an MOU prior to the actual bidding will not diminish the sufficiency of the same. For as long as the ultimate facts constituting the offense have been alleged, an Information charging a violation of Section 3(e) of R.A. No. 3019 need not state, to the point of specificity, the exact manner of how the crime was committed. The Supreme Court has consistently and repeatedly held in a number of cases that an Information need only state the ultimate facts constituting the offense and not the finer details of why and how the crime was committed.³²

The ultimate facts constituting the offense in this case is the act of the accused in awarding the subject contract to GAMPIK without the legal requirements for a valid procurement process, i.e., competitive bidding. The details of why and how there was no competitive bidding (such as the predetermination of the winning bidder through the execution of an MOU prior to the actual bidding) need not be stated in the Information. These are matters of evidence best threshed out in the course of the trial, which the prosecution eventually did in this case.

There is also no basis for the accused to lament that the finding of prematurity and illegality of the MOU would have required them to put up a different or distinct defense. Since the Information charges the

³² *People vs. Sandiganbayan*, G.R. NO. 160619, 09 September 2015; *Lazarte vs. Sandiganbayan*, G.R. No. 180122, 13 March 2009; *People vs. Romualdez*, G.R. No. 166510, 23 July 2008; *Go vs. Bangko Sentral ng Pilipinas*, G.R. No. 178429, 23 October 2009.



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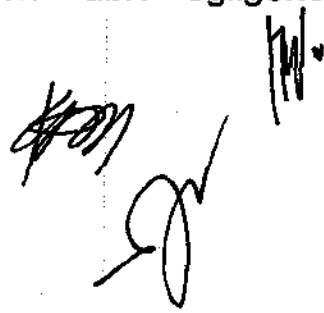
accused of causing the award of the contract absent the legal requirements for a valid procurement process, specifically a competitive bidding, the defense of the accused will consist of evidence showing that all the requirements for a valid procurement was complied with and that the bidding conducted, if any, is competitive. However, after the prosecution has sufficiently established that the accused violated the competitiveness of the bidding through the execution of an MOU prior to the actual bidding, the defense miserably failed to present clear and convincing proof to rebut the same. The accused were given ample opportunity to refute the evidence against them but they apparently contented themselves with a bare "typographical error" defense.

Conspiracy between accused Lala, Fernandez, Hermoso and Surla was established through their individual acts of signing the MOU, which pointed to a joint criminal purpose and design.

Conspiracy may be inferred from the acts of the accused before, during or after the commission of the crime which, when taken together, would be enough to reveal a community of criminal design, as the proof of conspiracy is frequently made by evidence of a chain of circumstances.³³ In this case, the evidence of their joint criminal purpose and design lies in their individual acts that led to the predetermination of GAMPIK as the winning bidder through the execution of the MOU prior to the actual bidding, thus violating the competitiveness of the bidding process. Accused Hermoso explicitly admitted that he was the one who proposed the MOU. Accused Lala and Fernandez were the top officials of the procuring entity who signed and approved the MOU. Lastly, accused Surla was the one who signed the MOU in behalf of GAMPIK, the predetermined winning bidder.

All these acts contributed in the end result of giving unwarranted advantage or preference to GAMPIK. The accused, thus, may be held liable for their collective acts and omissions, constitutive of conspiracy. Without the individual acts of the accused, the offense would not have been accomplished. The acts of the accused, taken together, were so intimately connected and related towards realization of the same goal, that is, to give unwarranted advantage or preference to GAMPIK through manifest partiality and/or gross inexcusable negligence.

³³ Go vs. Sandiganbayan, G.R. No. 172602, 13 April 2007.



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Accused Surla cannot conveniently claim that he has acted in good faith in signing the MOU and that he is not a person astute with legal matters. As correctly pointed out by the prosecution, accused Surla was not a first-timer in government biddings as he is also the contractor charged in SB-08-CRM-0270, apart from his other contracts with DPWH Region VII. As such, having participated in several procurement processes, it can be reasonably concluded that he knew or he ought to know that an MOU executed ahead of the actual bidding is very unusual and highly irregular.

All the elements of the crime of violation of Section 3(e) of R.A. No. 3019, as amended, had been duly proven.

The elements of violation of Section 3 (e) of R.A. No. 3019 are as follows:

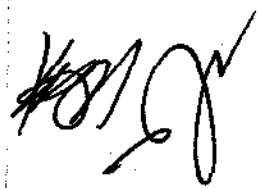
- (1) That the accused are public officers or private persons charged in conspiracy with them;
- (2) That said public officers committed the prohibited acts during the performance of their official duties or in relation to their public positions;
- (3) That they caused undue injury to any party, whether the Government or a private party or gave unwarranted benefits, advantage or preference to such parties; and
- (4) That the public officers acted with manifest partiality, evident bad faith or gross inexcusable negligence.³⁴

All these elements are present in this case.

First, accused Lala, Fernandez and Hermoso were holding public offices in the DPWH Region VII, discharging their administrative/official functions. Accused Lala was the Regional Director, accused Fernandez was the OIC-Chief of Maintenance Division, and accused Hermoso was the Legal Officer / BAC Member, all of DPWH Region VII. On the other hand, accused Surla, the Chairman of the Board of GAMPIK, is a private individual charged to have acted in conspiracy with the accused public officers.

Second, the accused committed a prohibited act during the performance of their official duties when they illegally and prematurely

³⁴ *Dela Chica vs. Sandiganbayan*, G.R. No. 144823, 08 December 2003 in relation to *Alvarez vs. People*, G.R. No. 192591, 29 June 2011.



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entered into an MOU with GAMPIK on 22 November 2006 allowing the latter to proceed with Contract ID No. 06HO0048 even before its actual bidding on 28 November 2006. By predetermining the winning bidder, accused Lala, Fernandez and Hermoso violated the principle of competitiveness of a bidding as required by R.A. No. 9184.

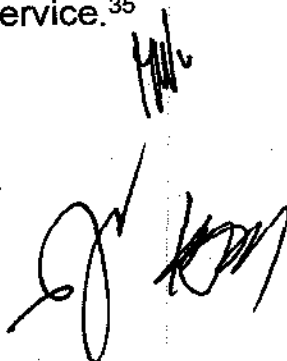
Third, the accused public officers gave unwarranted advantage or preference to GAMPIK and/or accused Surla. The MOU allowed GAMPIK to proceed with the project even before the conduct of a bidding, with a guarantee that it will be paid for the work done. The accused had effectively assured GAMPIK that it will get the project, making the subsequent bidding a sham. This glaring irregularity shows that accused public officers had no intention of complying with the rules on government bidding and that the result was already predetermined in favor of GAMPIK.

Lastly, the accused public officers acted with manifest partiality and gross inexcusable negligence. Allowing GAMPIK to start the project prior to the bidding is a clear indication of manifest partiality to favor GAMPIK and/or accused Surla over the other contractors or bidders. The act of predetermining a contractor in anticipation of the result of the actual bidding certainly constitutes manifest partiality, or, at the very least, gross inexcusable negligence on the part of the accused.

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

The Court takes this opportunity to remind all public officials to strictly observe the provisions of R.A. No. 9184. Procurement laws and rules are not to be disdained as empty or hollow rhetoric or mere technicalities that may be ignored at will by public officials. Our Constitution stresses that a public office is a public trust and public officers must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives. These constitutionally enshrined principles, oft-repeated in our case law, are not mere rhetorical flourishes or idealistic sentiments. They should be taken as working standards by all in the public service.³⁵

³⁵ *Duque vs. Veloso*, G.R. No. 196201, 19 June 2012.



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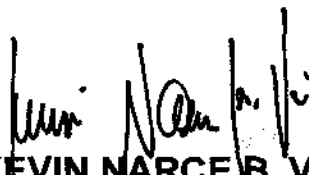
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The instant ruling, however, is without prejudice to the remedy of the accused to appeal their conviction to the Supreme Court by filing a Notice of Appeal with this Court and serving a copy upon the adverse party, within fifteen (15) days from notice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

WHEREFORE, in light of all the foregoing, the *Partial Motion for Reconsideration* filed by accused Gerardo Surla and the *Motion for Reconsideration (to the Joint Decision dated 19 September 2020)* filed by accused Robert Lala, Pureza Fernandez and Agustinito Hermoso are **DENIED** for lack of merit.


KEVIN MARCE B. VIVERO
Associate Justice

WE CONCUR:


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson


KARL B. MIRANDA
Associate Justice