



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

Third Division

**PEOPLE OF THE
PHILIPPINES,**

Plaintiff,

Crim Case No.

SB-17-CRM-0924

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

-versus-

**JOSE D. TORRES, YOLANDO
B. TUQUERO, LOURDES A.
DEL ROSARIO, ASUNCION L.
ODI, ROSARIO T.
MOLLASGO, HORACIO T.
AQUINO, JR., DOMINGO C.
VILLANUEVA, ORBEL T.
TONIO, WILLIAM T.
TUPLANO, GOMERCINDO T.
LITONG, and NERISSA B.
USERO**

Present:

Cabotaje-Tang, A.M., P.J.,
Chairperson
Fernandez, B.R., J. and
Moreno, R.B., J.

Accused.

PROMULGATED:

DEBAYBAY 21, 2022

X

X

RESOLUTION

Moreno, J.:

For resolution is the *Motion for Reconsideration (of the Decision Promulgated on 09 October 2020,*¹ filed by accused Lourdes A. Del Rosario, Yolando B. Tuquero, Rosario T. *U*

¹ Received through mail on November 11, 2020. *Records*, Vol. 3, pp. 260 - 278.

fy

X-----X

Mollasgo, Domingo C. Villanueva, William T. Tuplano, Horacio T. Aquino, Jr. and Gomercindo T. Litong (Del Rosario, et al), through counsel. The prosecution filed its *Opposition to Accused-Movants Lourdes Del Rosario, Yolando Tuquero, Roasario Mollasgo, Domingo Villanueva, William Tuplano, Horacio Aquino, Jr., and Gomercindo Litong's Motion for Reconsideration dated 24 October 2020*.²

The Motion for Reconsideration of Del Rosario, et al

Accused-movants argued that the facts alleged in the *Information* constituting the crime charged were not proven in Court, nor was there a single act which would correspond to the elements of a violation of Section 3(e) of Republic Act (R.A.) No. 3019.

To reiterate, a violation of Sec. 3(e) of R.A. 3019 requires that: (1) the accused is a public officer discharging administrative, judicial or official functions; (2) the accused acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (3) the accused caused undue injury to any party including the Government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.³

In refuting the existence of the first element, accused-movants admitted being public officers at the time *Sangguniang Bayan* (S.B.) Resolution No. 41, Series of 2005, was passed on October 3, 2005, but emphasized that when accused Jose Torres (Torres) was ousted as Mayor of Viga, Catanduanes on May 8, 2006, all transactions made by Torres were done in his personal capacity, negating the Court's findings that the accused-movants acted in conspiracy with Torres. Accused-movants noted that the various loan documents were entered into by Torres on May 19, 2006, when he was no longer the lawful Mayor of Viga. Allegedly, this fraudulent misrepresentation of his authority to validly apply for and obtain a loan from PNB was his alone and beyond the knowledge and control of accused-movants, as such, they were not privy to the transactions of Torres with the PNB after his ouster on May 8, 2006.

 
² Received through e-mail on November 23, 2020. *Id.*, pp. 313 – 322.

³ *Danilo O. Garcia and Joven SD. Brizuela v. Sandiganbayan*, G.R. No. 197204, March 26, 2014.

X-----X

Accused-movants also assailed the existence of the second element since SB Resolution No. 41, s. 2005 was not implemented nor the JCB 4CX 4x4x4 purchased, therefore, accused-movants cannot be indicted for an offense which, purportedly, was never consummated; moreover, no damage was sustained by the municipality. Further, accused-movants stressed that they could not be held guilty for resolutions subsequent to SB Resolution No. 41, s. 2005 implemented during the time of Mayor Abundo (Torres's successor) since these were not alleged in the information.

To the accused-movants, neither was the third element proven by the prosecution because the JCB 4CX 4x4x4 backhoe loader was never procured. In addition, accused-movants are also adamant that they could not be held liable for the procurement of a JCB 3CX backhoe loader and two (2) units of dump trucks since these were procured during the term of Mayor Abundo in 2007 and were not alleged in the *Information*.

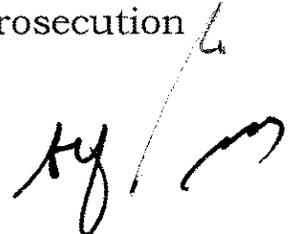
It was also mentioned that there were errors in the *Pre-Trial Order* dated January 8, 2018 wherein it was stipulated that the Municipality of Viga, Catanduanes purchased a JCB 4CX 4x4x4 backhoe from Compressed Air Machineries Equipment Corporation (CAMEC) through SB Resolution No. 41, s. 2005 of the *Sangguniang Bayan* and approved by Mayor Torres which purportedly was inconsistent with another stipulation which states that what was purchased is one (1) unit of JCB 3cx backhoe loader 4x4x4 and two (2) units of six-wheeler dump trucks.

The Prosecution's Opposition

In its *Opposition*,⁴ the prosecution opined that the assailed *Decision* was in accord with facts, law, and jurisprudence.

There is no question that Del Rosario, et al. were public officers when *Resolution* No. 41, s. 2005 was passed. By virtue of the said resolution, and as alleged in the *Information*, its enactment initiated the procurement process for the JCB 4CX 4x4x4 backhoe loader from CAMEC without public bidding and authorized accused Torres to obtain a loan from PNB for and in behalf of the Municipality of Viga. The prosecution

⁴ *Records*, Vol. 3, pp. 313 – 321.



x-----x

further averred that the accused-movants need not be present in all stages of the procurement process after the enactment of the *Resolution* in order to establish conspiracy with accused Torres, and other members of the *Sangguniang Bayan* who joined them in signing the resolution at issue.

The prosecution emphasized that any subsequent change in the delivered equipment does not negate the fact that accused-movants still dispensed with the requirements and required procedures of public bidding by specifying a brand name and identifying a supplier, in violation of R.A. 9184.

OUR RULING:

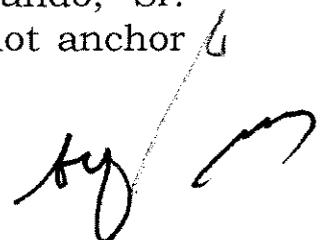
After due consideration, the Court **denies** the *Motion for Reconsideration* filed by accused-movants Del Rosario, et al.

All the elements for the violation of Sec. 3(e) of R.A. 3019 are present.

Foremost is accused-movants' erroneous impression that they are being held liable for acts and transactions which were not alleged in the *Information*. All the elements for the violation of Sec. 3(e) of R.A. 3019 were proven by the prosecution and supported by documentary and testimonial evidence. Culled from the *Information* are the acts for which accused-movants are held liable:

x x x *accused Municipal Vice-Mayor and SB Members, by passing SB Resolution No. 41, Series of 2005 authorizing the acquisition from CAMEC of a JCB 4CS 4x4x4 backhoe loader in the amount of P13,950,000.00 without public bidding by declaring that CAMEC is the sole distributor of said backhoe, thereby arrogating upon themselves the duties and functions of the Bids and Awards Committee and doing away with the required procurement process, depriving other interested suppliers the opportunity to submit competitive proposals and ensuring the award of the contract to CAMEC, x*
x x

Contrary to accused-movants' asseverations, nowhere in the assailed *Decision* were they charged of any transactions entered into by the accused Torres after he was removed from office on May 8, 2006. Neither did the Court hold accused-movants accountable for any of the resolutions enacted during the term of Torres's successor, Abelardo M. Abundo, Sr. (Abundo). Additionally, the assailed *Decision* did not anchor



x-----x

its finding of guilt in the actual purchase and delivery of either the JCB 4CX 4x4x4 backhoe loader or the substituted equipment, a JCB 3CX backhoe loader 4x4x4 and two (2) units of six-wheeler dump trucks.

For the **first element**, there is no question that all accused-movants were public officials at the time the *SB* Resolution No. 41, s.2005 was enacted.

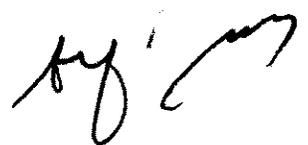
As regards the **second element**, of the three modalities, that the accused acted with either manifest partiality, evident bad faith, or gross inexcusable negligence—the prosecution was able to prove the existence of manifest partiality and gross inexcusable negligence. Proof of the existence of *any* of the three modalities in connection with the prohibited acts is enough to convict.⁵

SB Resolution No. 41, s. 2005 clearly showed an outright bias towards CAMEC to supply the JCB 4CX 4x4x4 backhoe loader. The title, ‘whereas’ clauses of the questioned resolution mentioned the specific brand name of the back hoe loader; worse, it specifically identified from what supplier it would be purchased—CAMEC. In the same resolution, accused-movants, as members of the *SB* of Viga, declared that CAMEC was exempt from public bidding citing provisions which were inconsistent with the prevailing Procurement Law (R.A. 9184) and its implementing rules and regulations. The Resolution even named CAMEC or its duly authorized representative to represent the Municipality of Viga in the filing, processing and follow-up of the loan application. Accused-movants, together with their co-accused members of the *SB*, attested to the contents of *SB* Resolution No. 41, s. 2005 and was subsequently approved by accused Torres as Municipal Mayor.

The obvious partiality exhibited by the *SB* members and officers together with accused Torres was aggravated by their gross inexcusable negligence in arrogating upon themselves powers and duties rightfully belonging to the Bids and Awards Committee (BAC) and did not proceed with the procurement process as mandated by R.A. 9184. Then members of the BAC Secretariat, in their *Joint Certification*,⁶ attested that there was no procurement for a JCB 4CX 4x4x4 backhoe, there being no

⁵ *Farouk AB. Abubakar v. People of the Philippines*, G.R. Nos. 202408, 202409 and 202412, June 27, 2018.

⁶ Dated September 16, 2010, Exh. “V” and series.



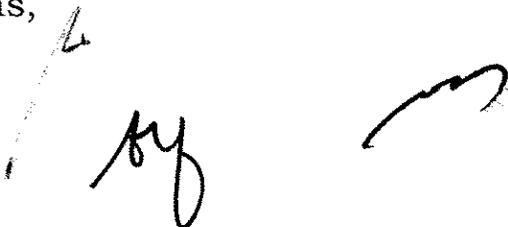
X-----X

records or bidding documents showing that it passed through the BAC and the BAC Secretariat. Even the recommendation of whether alternative methods of procurement should be pursued and what method would be appropriate should also be coursed through the BAC and elevated to the Head of the Procuring Entity, in this case, the Mayor of Viga. However, accused-movants and other members of the SB unanimously declared CAMEC as the purported exclusive distributor of the JCB 4CX 4x4x4 backhoe, hence, its procurement was exempted from public bidding. During trial, accused-movants did not present any countervailing evidence which would justify foregoing public bidding and instead, opt for direct contracting.

Further, accused-movants demonstrated their gross inexcusable negligence when they simply adopted a resolution giving the Municipal Mayor the authority to apply for, negotiate, and take out a loan to procure the backhoe loader without requesting for supporting documents justifying why public bidding was skirted and an alternative method of procurement was being utilized.

On the **third element**, the prosecution was able to prove that all the accused, with manifest partiality and gross inexcusable negligence, gave CAMEC unwarranted benefits, advantage or preference. This is one of the ways by which a public official violates Sec. 3(e) of R.A. 3019, the other, by causing undue injury to any party, including the Government. Accused-movants mistakenly assume that it is by the latter manner for which they are made liable, hence, their insistence that the JCB 4CX 4x4x4 mentioned in the questioned resolution was never actually purchased and delivered and that the Court convicted the accused-movants for the purchase of a JCB 3CX backhoe loader 4x4x4 and two (2) six-wheeler dump trucks—when these were not alleged in the *Information*.

The assailed *Decision* is clear, that in the execution and enactment of SB Resolution No. 41, s. 2005 by accused-movants, as approved by accused Torres, coupled with their failure to question the procurement which did not go through public bidding, all the elements constituting a violation of Sec. 3(e) of R.A. 3019 were already present. To quote pertinent portions,

Handwritten signatures and initials at the bottom of the page. On the left, there is a signature that appears to be 'Jy'. To its right is another signature that is more stylized and cursive. There are also some faint marks and lines around these signatures.

X-----X

When the accused *SB* members executed *Resolution* No. 41, s. 2005 (subsequently approved by accused Torres) and “ratified” the Loan Agreement and its supporting documents, it was clearly a manifestation that all the accused purposely did away with the procedural guidelines mandated by R.A. 9184 to guarantee that CAMEC will be awarded with the contract to supply a JCB 4CX 4x4x4 backhoe loader. The deplorable actions of all the accused gave CAMEC unwarranted advantage and preference over other suppliers who could have provided for heavy equipment with similar functions and at a better price. However, without competitive public bidding, the constituents of the Municipality of Viga were obviously shortchanged. It is of no moment that a JCB 4CX 4x4x4 backhoe was allegedly not delivered, as was sought to be proffered in evidence by the defense, because the crime already attached from the moment the accused demonstrated their manifest partiality and accorded unwarranted advantage and preference to CAMEC as their handpicked supplier.

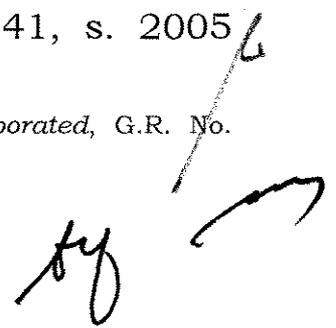
It ought to be repeated that the purpose of competitive bidding is to ensure that the public interest is protected by providing the public the best possible advantages via open competition; also, for transparency, to avoid any suspicion that there is favoritism or anomalies in the execution of public contracts.⁷ Verily, accused-movants, in unanimously approving the *Resolution* and in not questioning and delving deeper into the transaction which transgressed R.A. 9184 and its IRR, would now have to bear the consequences of their actions under the law.

Conspiracy is likewise present.

Accused-movants would have this Court believe that since they were not privy to the misrepresentations made by accused Torres with PNB regarding the loan after he was ousted on May 8, 2006, they could not be held liable for the actions of Torres subsequent thereto. This argument holds no water.

What was tried before this Court all involved acts prior to Torres’s removal from office, especially so, when all the elements for the violation of Sec. 3(e) of R.A. 3019 were already present prior to the ouster. It was when all the accused *SB* members unanimously adopted *Resolution* No. 41, s. 2005

⁷ *De Guzman v. Office of the Ombudsman and Bestforms, Incorporated*, G.R. No. 229256, November 22, 2017.

Handwritten signature and scribble in the bottom right corner of the page.

X-----X

and approved by accused Torres which served as the impetus for the procurement process to proceed *without* going through public bidding, allowed Torres to negotiate for a loan agreement with PNB for the purchase of a backhoe loader from CAMEC. Without any objection from the SB Chairperson, Vice-chairperson and members-- who were already "veteran" elective public servants-- despite the irregularities in the procurement process, is a clear showing that all the accused were in cahoots to ensure that the JCB 4CX 4x4x4 backhoe loader was to be purchased from a pre-determined supplier, CAMEC, even to the extent of entering into a 5-year loan. Also, by "ratifying" the *Loan Agreement*, the accused SB members further justified the direct contracting with CAMEC and even strengthened the authority of accused Torres to agree to the conditions in the *Loan Agreement* and other supporting documents.

The joint stipulation of facts entered into by the parties are not conflicting.

Accused-movants question the *Joint Stipulation of Facts*⁸ as reflected in the *Pre-Trial Order*,⁹ regarding the inconsistency of paragraph 5 on the purchase of a JCB 4CX 4x4x4 backhoe from CAMEC pursuant to Resolution No. 41, s.2005 of the SB and approved by Mayor Torres and paragraph 8, pertaining to the conversion of equipment to be delivered through a resolution passed and approved under Abundo's term.

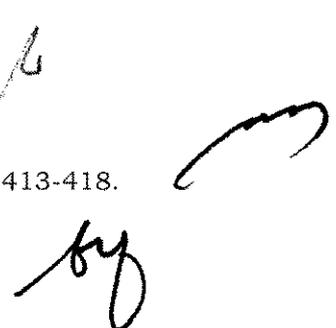
Whether these stipulations are erroneous, accused-movants could have raised the matter at an earlier time, not at this late stage when they have already been convicted and correcting the entries would not have a considerable effect on the Court's assailed *Decision* or a reconsideration thereof. A closer look at the stipulations would likewise reveal that they are not conflicting. Even if the joint stipulation was made between the prosecution and the previous counsel of the accused-movants, the same is still binding on them.

In *Bayas and Matuday v. The Sandiganbayan (1st Division)*, the *People of the Philippines* and the *Office of the Special Prosecutor*¹⁰ it was held that:

⁸ Dated November 21, 2017. *Records*, Vol. 1, pp. 413-418.

⁹ January 8, 2018, *Id.*, pp. 457 - 468.

¹⁰ G.R. Nos. 143689-91, November 12, 2002.

Handwritten signature and scribble in black ink, located at the bottom right of the page. The signature appears to be 'by' followed by a flourish.

X-----X

Once validly entered into, stipulations will not be set aside unless for good cause. They should be enforced especially when they are not false, unreasonable or against good morals and sound public policy. When made before the court, they are conclusive. And the party who validly made them can be relieved therefrom only upon a showing of collusion, duress, fraud, misrepresentation as to facts, and undue influence; or upon a showing of sufficient cause on such terms as will serve justice in a particular case.

X X X

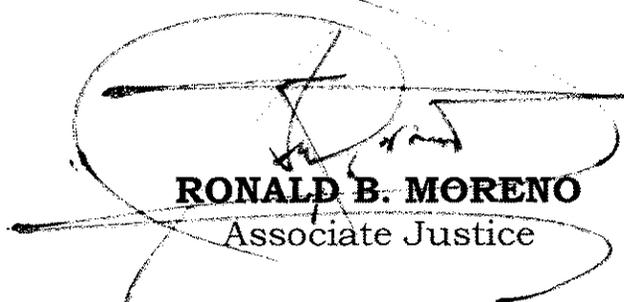
Moreover, it is hornbook doctrine that parties are bound by the action or the inaction of their counsel. To all intents and purposes, the acts of a lawyer in the defense or the prosecution of a case are the acts of the client. The rule extends even to the mistakes and the simple negligence committed by the counsel.

In the case at bar, accused-movants have not proffered proof that there was collusion, duress, fraud, misrepresentation as to facts, and undue influence; or sufficient cause on such terms as will serve justice which would warrant any amendment to the *Pre-Trial Order*.

WHEREFORE, in light of all the foregoing, the Court **DENIES** the motion for reconsideration filed by accused Lourdes A. Del Rosario, Yolando B. Tuquero, Rosario T. Mollasgo, Domingo C. Villanueva, William T. Tuplano, Horacio T. Aquino, Jr. and Gomercindo T. Litong for lack of merit.

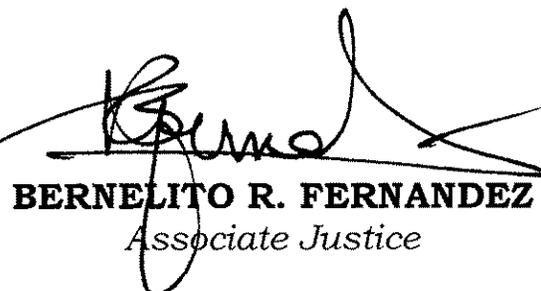
SO ORDERED.

Quezon City, Metro Manila.


RONALD B. MORENO
Associate Justice

WE CONCUR:


AMPARO M. CABOTAJE-TANG
Presiding Justice, Chairperson


BERNELITO R. FERNANDEZ
Associate Justice