



REPUBLIC OF THE PHILIPPINES

**Sandiganbayan**

Quezon City

**SIXTH DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
*Plaintiff,*

**SB-18-CRM-0536**

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

**- versus -**

**GERARDO NOVERAS, ET AL.,**

*Present :*

*Accused.*

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

*Promulgated:*

**MAR 17 2021**

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**RESOLUTION**

**FERNANDEZ, SJ, J.**

For resolution are the following:

1. *Motion for Leave to File Demurrer to Evidence*<sup>1</sup> of accused Manding Claro Ramos;
2. *Motion for Leave of Court to File Demurrer to Evidence*<sup>2</sup> of accused Isaias Noveras, Jr.;

<sup>1</sup> Dated January 19, 2021, filed through electronic mail on same date.

<sup>2</sup> Dated January 19, 2021, filed through electronic mail on same date.

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3. *Motion for Leave of Court to File Demurrer to Evidence*<sup>3</sup> of accused Ricardo Bautista, Simeon De Castro, Benedicto Rojo and Norma Clemente;
4. *Motion for Leave to File Demurrer to Evidence*<sup>4</sup> of accused Paz Torregosa;
5. *Motion for Leave of Court to File Demurrer to Evidence*<sup>5</sup> of accused Gerardo A. Noveras;
6. *Consolidated Comment/Opposition (To Accused's Motions for Leave to File Demurrer to Evidence)*<sup>6</sup> of the prosecution.

In their respective *Motions*, accused Ramos and accused Torregosa pray that they be granted leave to file demurrer to evidence on the ground that the evidence of the prosecution failed to meet the quantum of proof to establish their guilt beyond reasonable doubt.<sup>7</sup>

Accused Bautista, De Castro, Rojo and Clemente aver that the evidence of the prosecution is inherently weak, unsubstantiated, and insufficient to prove their guilt beyond reasonable doubt. They ask that they be allowed to file *Demurrer with Leave of Court* so that they can point out in detail the weakness of the prosecution's evidence, warranting the dismissal of this case.<sup>8</sup>

Similarly, in his *Motion*, accused Noveras, Jr. asks for leave to file demurrer to evidence and argues that the evidence of the prosecution is insufficient to support a conviction. He claims:

1. Since the prosecution failed to present private Complainant Engr. Rodante A. Tolentino, he (Engr. Tolentino) was not able to identify and authenticate his (Engr. Tolentino) *Complaint-Affidavit*, thus making said *Complaint-Affidavit* hearsay evidence, and

<sup>3</sup> Dated January 19, 2021, filed through electronic mail on January 20, 2021.

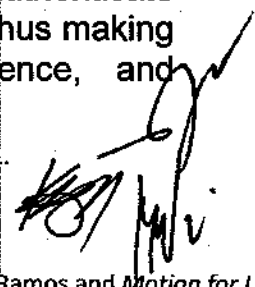
<sup>4</sup> Dated January 19, 2021, filed through registered mail on same date.

<sup>5</sup> Dated February 15, 2021, filed through electronic mail on same date.

<sup>6</sup> Dated February 22, 2021, filed through electronic mail on same date.

<sup>7</sup> *Motion for Leave to File Demurrer to Evidence* of accused Manding Claro Ramos and *Motion for Leave to File Demurrer to Evidence* of accused Torregosa.

<sup>8</sup> *Motion for Leave of Court to File Demurrer to Evidence* of accused Bautista, De Castro, Rojo and Clemente.



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further, as a result, accused Noveras, Jr. was deprived of his right to cross-examine said complainant.<sup>9</sup>

2. The prosecution failed to present sufficient evidence to establish conspiracy.<sup>10</sup>
3. The prosecution failed to present evidence of damage resulting from the projects complained of.<sup>11</sup>

In his *Motion*, accused Gerardo Noveras argues that the evidence of the prosecution is insufficient to prove the offense charged and there is no sufficient proof of his participation in the alleged crime.<sup>12</sup> He contends:

1. The prosecution failed to prove the very act in violation of Section 3(e) of R.A. No. 3019.<sup>13</sup>
  - i. The prosecution failed to establish the element of giving of unwarranted benefits to a private party.
  - ii. The prosecution failed to show his precise degree of participation in ensuring the award of the contract to RMCR Construction.
  - iii. The prosecution failed to prove that he acted with evident bad faith, manifest partiality and/or gross inexcusable negligence in committing the acts imputed to him.<sup>14</sup>
2. The prosecution merely relied on hearsay evidence. Engr. Rodante A. Tolentino was not presented in court to testify on his (Engr. Tolentino) *Complaint-Affidavit*.
3. In local projects, the Office of the Provincial Engineer conducts actual project site visits. Engr. Tolentino has personal knowledge of the construction projects

<sup>9</sup> *Motion for Leave of Court to File Demurrer to Evidence* of accused Noveras, Jr. p.1.

<sup>10</sup> *Motion for Leave of Court to File Demurrer to Evidence* of accused Noveras, Jr. p.2.

<sup>11</sup> *Motion for Leave of Court to File Demurrer to Evidence* of accused Noveras, Jr. p.2.

<sup>12</sup> *Motion for Leave of Court to File Demurrer to Evidence* of accused Noveras, p.2.

<sup>13</sup> *Motion for Leave of Court to File Demurrer to Evidence* of accused Noveras, p.3.

<sup>14</sup> *Motion for Leave of Court to File Demurrer to Evidence* of accused Noveras, p.2.

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of the local government. He (accused Gerardo Noveras) basically gave weight to the recommendations of the Provincial Engineer.

The prosecution insists that all the elements of violation of Section 3(e), R.A. No. 3019 have been established. The prosecution contends that the evidence presented by the prosecution shows that the two projects, i.e. (1) Repair of Dimalang Bridge (Box Culvert) Approaches and (2) Repair of Road Section, Casiguran-Dilasag Road Project were undertaken by RMCR Construction and were almost complete even before the conduct of procurement, and, that the accused caused the conduct of simulated biddings to ensure the award of the project to RMCR Construction. *Viz:*

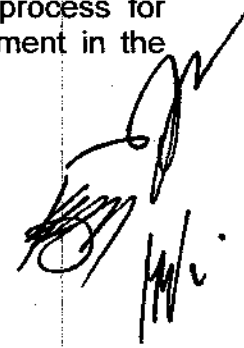
1. The respective *Motions* filed by accused Torregosa, accused Bautista, De Castro, Rojo, and Clemente, and accused Ramos merely averred, but failed to show, that the plaintiff's evidence are insufficient to establish their guilt beyond reasonable doubt and to sustain a conviction. The accused did not state the grounds for the court to grant them leave to file demurrer to evidence as required under *Section 23 of Rule 119 of the Rules of Court*.<sup>15</sup>
2. The prosecution sufficiently established all the elements of Section 3(e) of R.A. No. 3019.<sup>16</sup>
  - a. *First element.* Accused Noveras, De Castro, Bautista, Rojo, Clemente, Torregosa and Noveras, Jr. were public officers. Accused Ramos is charged to have acted in conspiracy with the accused public officers.<sup>17</sup>
  - b. *Second element.* The prosecution established the facts showing that the accused acted in conspiracy with one another and with manifest partiality, evident bad faith and/or gross inexcusable negligence in perpetrating the offense charged.

The accused rigged the bidding process for the two (2) projects. The procurement in the

<sup>15</sup> Consolidated Comment/Opposition of the prosecution, pp.4-5.

<sup>16</sup> Consolidated Comment/Opposition of the prosecution, p.5.

<sup>17</sup> Consolidated Comment/Opposition of the prosecution, p.5.



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said projects were given a semblance of legality, and were awarded to RMCR Construction, knowing that the projects were almost complete before the procurement process was concluded.<sup>18</sup>

- i. On February 10, 2014, accused Noveras designated Mr. Urbano as Project-in-Charge for the *Improvement of Casiguran Dilasag Provincial Road, Construction of Box Culvert Dimalang Section, Casiguran, Aurora* project. Mr. Urbano was directed to monitor and assist in the supervision of the said project and to submit to the governor an *accomplishment report* every 15<sup>th</sup> and 30<sup>th</sup> day of the month until the project is completed (*Exhibit Y*).<sup>19</sup>
- ii. On March 10, 2014, accused Noveras designated Mr. Urbano as the Material Test and Quality Control Laboratory Technician and Safety Officer of the Provincial Engineering Office (PEO). One of his functions as such is to assist in the conduct of inspection/verification of the implementation of infrastructure projects of the PEO, among others (*Exhibit Z*).<sup>20</sup>

Repair of Dimalang Bridge (Box Culvert) Approaches

- iii. In March 2014, the PEO prepared the *Individual Program of Work (Exhibit B), Bill of Materials and Detailed Estimates (Exhibit B-1), Detailed Engineering Design (Exhibit C), and Technical Specification (Exhibit O-1)* for the "Repair of Dimalang Bridge (Box Culvert) Approaches" project. The

<sup>18</sup> Consolidated Comment/Opposition of the prosecution, pp.11-12.

<sup>19</sup> Consolidated Comment/Opposition of the prosecution, p.6.

<sup>20</sup> Consolidated Comment/Opposition of the prosecution, p.6.

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estimated duration of the project is 60 calendar days. Accused Rojo submitted the documents to the Provincial Engineer for the approval of accused Noveras.<sup>21</sup>

- iv. Accused Gerardo Noveras approved the *Individual Program of Work, Bill of Materials and Detailed Estimates, Detailed Engineering Design*.<sup>22</sup>
- v. On July 16, 2014, the BAC issued *Invitations to Bid (Exhibit D)* for the project.<sup>23</sup>
- vi. On August 4, 2014, the BAC opened the bid for the project (*Exhibit I*).<sup>24</sup>
- vii. On August 8, 2014, accused BAC members, De Castro, Bautista, Rojo, Noveras Jr., Clemente and Torragosa issued *BAC Resolution No. INF14-020 (Exhibit G)*, declaring RMCR Construction as the bidder with the lone calculated responsive bid in the project. Accused Gerardo Noveras approved said BAC Resolution.<sup>25</sup>
- viii. On August 11, 2014, accused Gerardo Noveras awarded the project to RMCR Construction. The following day, accused De Castro notified accused Ramos of the provincial government's acceptance of RMCR's bid for the project (*Exhibit K*).<sup>26</sup>
- ix. On August 13, 2014, the provincial government, represented by accused Gerardo Noveras and

<sup>21</sup> Consolidated Comment/Opposition of the prosecution, p.6.

<sup>22</sup> Consolidated Comment/Opposition of the prosecution, p.7.

<sup>23</sup> Consolidated Comment/Opposition of the prosecution, p.7.

<sup>24</sup> Consolidated Comment/Opposition of the prosecution, p.7.

<sup>25</sup> Consolidated Comment/Opposition of the prosecution, p.7.

<sup>26</sup> Consolidated Comment/Opposition of the prosecution, p.7.

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RMCR, represented by accused Ramos, entered into a contract for the project (*Exhibit L*).<sup>27</sup>

- x. On August 15, 2014, accused Gerardo Noveras issued a *Notice to Proceed (Exhibit M)*.<sup>28</sup>

*Repair of Road Section,  
Casiguran-Dilasag Road Project*

- xi. On June 2014, the PEO prepared the *Individual Program of Work (Exhibit N)*, *Bill of Materials and Detailed Estimates (Exhibit N-1)*, *Detailed Engineering Design (Exhibit O)*, and *Technical Specification (Exhibit C-1)* for the "Repair of Road Section, Casiguran-Dilasag Road Project." Accused Rojo submitted said documents to the Provincial Engineer for the approval of accused Gerardo Noveras.<sup>29</sup>
- xii. Accused Noveras approved the *Individual Program of Work, Bill of Materials and Detailed Estimates, Detailed Engineering Design* for the project.<sup>30</sup>
- xiii. On August 4, 2014, the BAC opened the bids (*Exhibit P*).<sup>31</sup>
- xiv. On August 8, 2014, the accused BAC members issued BAC Resolution No. INF14-21, declaring RMCR Construction as the bidder with the Lone Calculated Responsive Bid (*Exhibit R*). Accused Gerardo Noveras approved the same.<sup>32</sup>

<sup>27</sup> Consolidated Comment/Opposition of the prosecution, p.8.

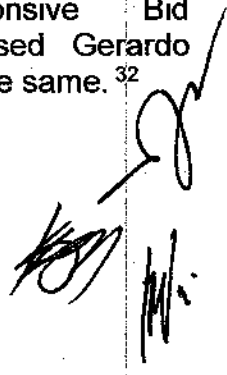
<sup>28</sup> Consolidated Comment/Opposition of the prosecution, p.8.

<sup>29</sup> Consolidated Comment/Opposition of the prosecution, p.8.

<sup>30</sup> Consolidated Comment/Opposition of the prosecution, p.8.

<sup>31</sup> Consolidated Comment/Opposition of the prosecution, p.8.

<sup>32</sup> Consolidated Comment/Opposition of the prosecution, p.8.



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- xv. On August 11, 2014, accused Gerardo Noveras awarded the project to RMCR Construction (*Exhibit U*). The following day, accused De Castro notified accused Ramos of the provincial government's acceptance of RMCR's bid to execute the project (*Exhibit V*).<sup>33</sup>
- xvi. On August 13, 2014, the provincial government, represented by accused Gerardo Noveras, and RMCR Construction, represented by accused Ramos, entered into a contract (*Exhibit W*).<sup>34</sup>
- xvii. On August 15, 2014, accused Noveras issued a *Notice to Proceed (Exhibit X)*.<sup>35</sup>

*Inspection of the projects*

- xviii. On August 18, 2014, Mr. Urbano prepared his accomplishment report for the period July 28 to August 15, 2014 and submitted the same to the Provincial Engineer. In his report, Mr. Urbano stated that the projects for the "*Repair of Dimalang Bridge (Box Culvert) Approaches*" and "*Repair of Road Section, Casiguran-Dilasag Road Project,*" are 100% completed (*Exhibit AA*).<sup>36</sup>
- xix. On August 20, 2014, the Provincial Engineer forwarded Mr. Urbano's accomplishment report to the BAC Chairman and Provincial Administrator, accused De Castro (*Exhibit BB*).<sup>37</sup>

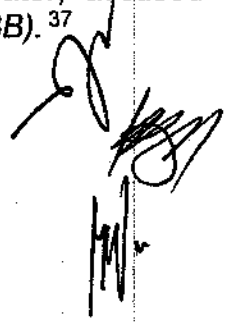
<sup>33</sup> Consolidated Comment/Opposition of the prosecution, p.8.

<sup>34</sup> Consolidated Comment/Opposition of the prosecution, p.8.

<sup>35</sup> Consolidated Comment/Opposition of the prosecution, p.8.

<sup>36</sup> Consolidated Comment/Opposition of the prosecution, p.8.

<sup>37</sup> Consolidated Comment/Opposition of the prosecution, p.9.





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- xx. On September 4, 2014, the Provincial Engineer directed accused Rojo and Engr. Alfredo E. Penzon to confirm Mr. Urbano's accomplishment report (*Exhibit CC*).<sup>38</sup>
- xxi. On September 11, 2014, accused Rojo and Engr. Penzon submitted a *Post Travel Report* (*Exhibits EE, EE-5 to EE-13*) to Provincial Engineer Tolentino, confirming that the two projects were already 100% completed.<sup>39</sup>
- xxii. On September 5, 2014, Provincial Engineer Tolentino directed Engr. Julian J. Narvas to submit a written inspection, verification and validation report on Mr. Urbano's accomplishment report (*Exhibit D*).<sup>40</sup>
- xxiii. On September 12, 2014, Engr. Narvas submitted a *Field Report* confirming that Mr. Urbano's accomplishment report is valid and correct (*Exhibit FF*).<sup>41</sup>
- xxiv. In the *Implementation Status of Local Government Support Fund Physical Accomplishment Report* of accused Rojo, it was indicated that the "*Repair of Dimalang Bridge (Box Culvert) Approaches*" and "*Repair of Road Section, Casiguran-Dilasag Road Project*" commenced on August 15, 2014 and were estimated to be complete by September 29, 2014 and September 14, 2014, respectively.<sup>42</sup>

<sup>38</sup> Consolidated Comment/Opposition of the prosecution, p.9.

<sup>39</sup> Consolidated Comment/Opposition of the prosecution, p.9.

<sup>40</sup> Consolidated Comment/Opposition of the prosecution, p.10.

<sup>41</sup> Consolidated Comment/Opposition of the prosecution, p.10.

<sup>42</sup> Consolidated Comment/Opposition of the prosecution, p.10.

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xxv. In the *Statement of Work Accomplished* (Exhibit QQ), *Project Engineer's Report* (Exhibit SS), and the *Certificate of Acceptance* (Exhibit PP) of the "Repair of Dimalang Bridge (Box Culvert) Approaches Project," signed by accused Gerardo Noveras and Rojo, the work for the said project commenced on August 25, 2014 and was completed on September 24, 2014. Mr. Urbano's *Accomplishment Report* (Exhibit AA) stated that the project was 100% completed as of August 18, 2014.<sup>43</sup>

xxvi. In its September 22, 2014 letter to accused Gerardo Noveras, RMCR Construction requested the final billing payment for the project "Repair of Dimalang Bridge (Box Culvert) Approaches." Accused Noveras approved the request on the same day (Exhibit KK).<sup>44</sup>

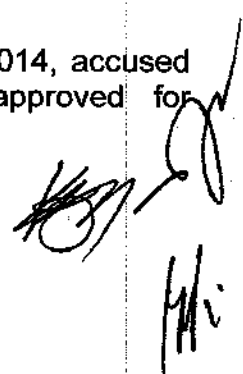
xxvii. The *Statement of Work Accomplished* (Exhibit AAA), *Project Engineer's Report* (Exhibit CCC), *Final Inspection Report* (Exhibit DDD) and the *Certificate of Acceptance* (Exhibit ZZ) of the "Repair of Road Section, Casiguran-Dilasag Road Project," signed by accused Rojo and Noveras, state that the project commenced on August 25, 2014 and was completed on September 24, 2014. Mr. Urbano's *Accomplishment Report* (Exhibit AA) stated that the project was 100% completed as of August 18, 2014.<sup>45</sup>

xxviii. On November 19, 2014, accused Gerardo Noveras approved for

<sup>43</sup> Consolidated Comment/Opposition of the prosecution, p.10.

<sup>44</sup> Consolidated Comment/Opposition of the prosecution, p.10.

<sup>45</sup> Consolidated Comment/Opposition of the prosecution, p.10.



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payment the first and final billing for the "Repair of Dimalang Bridge (Box Culvert) Approaches Project" in the amount of PhP816,076.80, and, of the "Repair of Road Section, Casiguran-Dilasag Road Project" in the amount of PhP350,001.12 (*Exhibit XX*).<sup>46</sup>

xxix. On November 20, 2014, accused De Castro and then-Acting Assistant Provincial Treasurer Mary Zenclaire N. Ong issued DBP Check Nos. 40562113 and 40562114, with RMCR Construction as payee, for the payment of the two projects (*Exhibits VV, VV-1, FFF and FFF-1*).<sup>47</sup>

xxx. The payments were received by Aurora Ramos, wife of accused Ramos, for and on behalf of RMCR Construction (*Exhibits NN, WW, XX and GGG*).<sup>48</sup>

c. *Third element.* The accused public officials caused the conduct of simulated bidding to ensure the award of the projects to RMCR Construction, thereby giving the latter unwarranted benefit, advantage and/or preference, resulting to damage to the provincial government of Aurora.<sup>49</sup>

3. That Engr. Rodante A. Tolentino was not presented as a witness is of no moment because the plaintiff's cause is not based solely on his *Complaint-Affidavit*.<sup>50</sup>

### THE COURT'S RULING

The *Motions for Leave of Court to File Demurrer to Evidence* of accused Ramos, accused Noveras, Jr., accused Bautista, De

<sup>46</sup> Consolidated Comment/Opposition of the prosecution, p.11.

<sup>47</sup> Consolidated Comment/Opposition of the prosecution, p.11.

<sup>48</sup> Consolidated Comment/Opposition of the prosecution, p.11.

<sup>49</sup> Consolidated Comment/Opposition of the prosecution, p.11.

<sup>50</sup> Consolidated Comment/Opposition of the prosecution, p.11.

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Castro, Rojo and Clemente, accused Torregosa, and, accused Gerardo Noveras are **DENIED**.

In *Bernardo v. Court of Appeals*,<sup>51</sup> the Supreme Court held that the trial court is given the discretion to grant leave to the accused to file a demurrer to evidence. The purpose is to determine whether the accused, in requesting to file a demurrer, is merely stalling the proceedings. *Viz:*

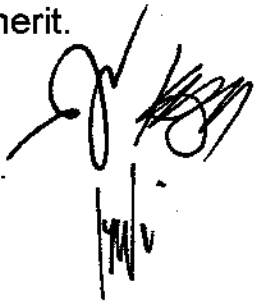
In fine, under the new rule on demurrer to evidence the accused has the right to file a demurrer to evidence after the prosecution has rested its case. If the accused obtained prior leave of court before filing his demurrer, he can still present evidence if his demurrer is denied. However, if he demurs without prior leave of court, or after his motion for leave is denied, he waives his right to present evidence and submits the case for decision on the basis of the evidence for the prosecution. This power to grant leave to the accused to file a demurrer is addressed to the sound discretion of the trial court. The purpose is to determine whether the accused in filing his demurrer is merely stalling the proceedings.

(Underscoring supplied)

After a careful examination of the evidence of the prosecution, and considering the arguments raised by the accused in their respective *Motions*, this Court rules that granting the accused leave to file demurrers to evidence will accomplish nothing but will merely delay the proceedings.

**WHEREFORE**, the respective *Motions* filed by accused Ramos, accused Noveras, Jr., accused Bautista, De Castro, Rojo and Clemente, accused Torregosa, and, accused Gerardo Noveras are **DENIED**, for lack of merit.

<sup>51</sup> G.R. No. 119010, September 5, 1997.



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This is without prejudice to the filing by the accused of a *Demurrer to Evidence* without leave of court, but subject to the legal consequences provided under Section 23, Rule 119 of the Revised Rules of Criminal Procedure, that is, they shall waive their right to present evidence and are submitting this case for judgment on the basis of the evidence adduced by the prosecution.

The accused are given a period of five (5) days from receipt of this *Resolution*, within which to file their *Manifestation* to inform this Court whether they will file a *Demurrer to Evidence*, without *Leave of Court*.

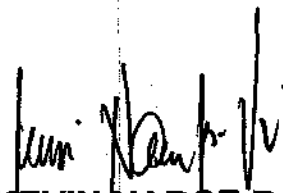
The hearings previously set are maintained. The same will be deemed automatically cancelled, as to the accused who will file *Demurrers to Evidence*, upon receipt by the Court of the same.

**SO ORDERED.**

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

**WE CONCUR:**

  
**KARL B. MIRANDA**  
Associate Justice

  
**KEVIN NARCE B. VIVERO**  
Associate Justice