



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, SB-18-CRM-0536

Plaintiff,

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:

June 9, 2021

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RESOLUTION

FERNANDEZ, SJ, J.

For resolution is the *Motion for Reconsideration and Deferment of the Presentation of Defense Evidence (Re: Resolution dated 17 March 2021)*¹ of accused Gerardo Noveras.

In his *Motion for Reconsideration*, accused Noveras prays for the reconsideration of the Court's Resolution dated March 17, 2021. He argues that the Court committed reversible error in denying his *Motion for Leave to File Demurrer to Evidence*.² He likewise asks for the deferment of the presentation of defense evidence during the pendency of his *Motion*. He claims:

¹ Filed through electronic mail on March 23, 2021.

² p.2, *Motion for Reconsideration and Deferment of the Presentation of Defense Evidence (Re: Resolution dated 17 March 2021)*.

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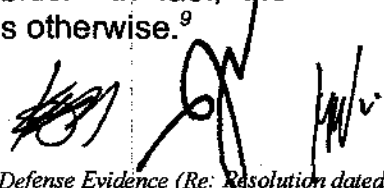
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1. He filed his *Motion for Leave* in compliance with all the requirements provided under the Rules of Court.³ He specifically stated the ground for his *Motion*, i.e., that the prosecution's evidence is insufficient to prove the offense charged and there is no sufficient proof to show the participation of the accused in the offense charged.⁴
2. The grant of his *Motion for Leave* will not delay the proceedings. His move to dismiss the case on account of the prosecution's failure to establish his guilt beyond reasonable doubt will even save the court more time to resolve other meritorious cases.⁵
3. The prosecution failed to establish all the elements of the offense charged.
 - a. *First element.* Although he is the Governor of Aurora Province and the head of the procuring entity during the time material to this case, he was not a member of the Bids and Awards Committee. He had no active participation in the preparation of the bidding documents.⁶
 - b. *Second element.* The prosecution failed to prove that he acted with manifest partiality, evident bad faith, or gross inexcusable negligence.⁷
 - i. The prosecution failed to prove his unlawful act.⁸
 - ii. The prosecution failed to establish that he knew that the projects have already been implemented before the opening of the bids. In fact, the prosecution's evidence proves otherwise.⁹



³ p.3, *Motion for Reconsideration and Deferment of the Presentation of Defense Evidence (Re: Resolution dated 17 March 2021).*
⁴ p.4, *Motion for Reconsideration and Deferment of the Presentation of Defense Evidence (Re: Resolution dated 17 March 2021).*
⁵ p.7, *Motion for Reconsideration and Deferment of the Presentation of Defense Evidence (Re: Resolution dated 17 March 2021).*
⁶ p.14, *Motion for Reconsideration and Deferment of the Presentation of Defense Evidence (Re: Resolution dated 17 March 2021).*
⁷ p.15, *Motion for Reconsideration and Deferment of the Presentation of Defense Evidence (Re: Resolution dated 17 March 2021).*
⁸ p.4, *Motion for Reconsideration and Deferment of the Presentation of Defense Evidence (Re: Resolution dated 17 March 2021).*
⁹ p.10, *Motion for Reconsideration and Deferment of the Presentation of Defense Evidence (Re: Resolution dated 17 March 2021).*

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- iii. The prosecution tried to mislead the Court when it presented the *Office Order No. 003* dated February 10, 2014 (Exhibit Y) and *Travel Order* dated July 23, 2014 (Exhibit WWW) as evidence. The *Office Order No. 003* pertains to a different project and is not related to the projects subject matter of this case.¹⁰ Moreover, the prosecution concealed the fact that it was not him, but the provincial engineer who signed the *Travel Order*.¹¹
- iv. Although his signature appears in the *Individual Programs of Work, Bills of Materials and Detailed Estimates, Detailed Engineering Designs and Technical Specifications*, the prosecution failed to present proof that he had a hand in the preparation of said documents.¹²
- v. He had no hand in the preparation of *BAC Resolution No. INF14-020* and *BAC Resolution No. IN14-21*, declaring RMCR Construction as the lone bidder.¹³
- vi. He awarded the contract to RMCR Construction only as a matter of course. The doctrine laid down in the cases of *Arias v. Sandiganbayan* and *Tomas N. Joson III v. COA* applies to him. He relied on his subordinates in good faith. Nothing appears on record that would have prompted him to thoroughly review and go over the documents presented to him.¹⁴
- vii. The location of the projects was far from the Provincial Capitol, where he holds office. Without any evidence that he personally visited the area, he cannot be presumed to have known that the project already commenced.¹⁵

¹⁰ p.10, *Motion for Reconsideration and Deferment of the Presentation of Defense Evidence (Re: Resolution dated 17 March 2021)*.

¹¹ p.13, *Motion for Reconsideration and Deferment of the Presentation of Defense Evidence (Re: Resolution dated 17 March 2021)*.

¹² p.15, *Motion for Reconsideration and Deferment of the Presentation of Defense Evidence (Re: Resolution dated 17 March 2021)*.

¹³ pp.16-18, *Motion for Reconsideration and Deferment of the Presentation of Defense Evidence (Re: Resolution dated 17 March 2021)*.

¹⁴ p.15, *Motion for Reconsideration and Deferment of the Presentation of Defense Evidence (Re: Resolution dated 17 March 2021)*.

¹⁵ p.18, *Motion for Reconsideration and Deferment of the Presentation of Defense Evidence (Re: Resolution dated 17 March 2021)*.

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viii. The prosecution's reliance on the *Accomplishment Report* dated August 18, 2014 executed by Urbano, to prove that he knew the project's prior completion, is misplaced. Urbano did not submit a copy of this report to him. Besides, Urbano himself testified that he has no personal knowledge whether a copy of his report was sent to the Office of the Provincial Governor.¹⁶

c. *Third element.* The prosecution failed to establish that he and the other accused gave unwarranted benefit, advantage, or preference to RMCR Construction.¹⁷

4. The prosecution failed to prove conspiracy. Conspiracy cannot be presumed, and a finding of which must be based on facts established by positive and conclusive evidence. The evidence of the prosecution failed to establish conspiracy beyond reasonable doubt.¹⁸

In its *Comment/Opposition*,¹⁹ the prosecution contends that the *Motion* of accused Noveras should be denied for lack of merit. The prosecution maintains that they were able to establish the essential elements of violation of Section 3(e) of R.A. No. 3019, viz.:

1. Accused is not relieved from liability simply because he was not a member of the BAC. Under Section 37, Article XI of Republic Act No. 9184, within a period of fifteen (15) days from the declaration by the BAC of the lowest calculated responsive bid, the head of the procuring entity or his authorized representative shall approve or disapprove the BAC's recommendation. As the head of the procuring entity, he had the power and the duty to determine whether the award of the project to the winning bidder is legal and in order.²⁰

¹⁶ p.19, *Motion for Reconsideration and Deferment of the Presentation of Defense Evidence (Re: Resolution dated 17 March 2021)*.

¹⁷ p.19, *Motion for Reconsideration and Deferment of the Presentation of Defense Evidence (Re: Resolution dated 17 March 2021)*.

¹⁸ pp.20-21, *Motion for Reconsideration and Deferment of the Presentation of Defense Evidence (Re: Resolution dated 17 March 2021)*.

¹⁹ Dated March 21, 2021, filed through electronic mail on March 29, 2021.

²⁰ p.7, *Comment/Opposition (To Accused Gerardo A. Noveras's Motion for Reconsideration and Deferment of the Presentation of Evidence [Re: Resolution dated 17 March 2021])*

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2. That he had no hand in the preparation of the bidding documents is of no moment because as the head of the procuring entity, he had a duty to protect the integrity of the public biddings in the provincial government.²¹ Besides, he cannot claim that he had no hand in the preparation of the bidding documents because he participated in every stage of the procurement process as evidenced by his signature in the bidding documents.²²
3. Based on the *Travel Order* and the *Accomplishment Report*, corroborated by the testimony of Urbano, the prosecution was able to prove that accused Noveras knew that the projects have already been implemented prior to the conduct of public bidding. Accused' denial requires a presentation of evidence.²³
4. The bidding process was replete with irregularities. The prosecution was able to prove that accused Noveras, in conspiracy with his co-accused, acted with manifest partiality, evident bad faith, and/or gross inexcusable negligence in rigging the bidding process to give semblance of legality to the award of the two projects to RMCR Construction knowing that the projects have already commenced when the procurement process was conducted.²⁴
5. Accused cannot claim that he merely relied on his subordinates because there is positive evidence that he had active participation in the rigging of the bidding process.²⁵
6. The allegation that the prosecution deliberately misled the Court in offering Exhibits Y and WWW is without basis.
 - a. The prosecution never misrepresented that Office Order No. 003 (Exhibit Y) involve the projects

²¹ p.7, Comment/Opposition (To Accused Gerardo A. Noveras's Motion for Reconsideration and Deferment of the Presentation of Evidence [Re: Resolution dated 17 March 2021])

²² p.9, Comment/Opposition (To Accused Gerardo A. Noveras's Motion for Reconsideration and Deferment of the Presentation of Evidence [Re: Resolution dated 17 March 2021])

²³ p.7, Comment/Opposition (To Accused Gerardo A. Noveras's Motion for Reconsideration and Deferment of the Presentation of Evidence [Re: Resolution dated 17 March 2021])

²⁴ p.8, Comment/Opposition (To Accused Gerardo A. Noveras's Motion for Reconsideration and Deferment of the Presentation of Evidence [Re: Resolution dated 17 March 2021])

²⁵ p.8, Comment/Opposition (To Accused Gerardo A. Noveras's Motion for Reconsideration and Deferment of the Presentation of Evidence [Re: Resolution dated 17 March 2021])

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subject matter of this case. The prosecution offered the said exhibit only to prove the trust and confidence of the governor towards Urbano in supervising projects assigned to him and to show that he (Urbano) was assigned tasks other than his usual duties as an Administrative Aide.²⁶

- b. The argument that the prosecution concealed the fact that Engineer Tolentino was the one who signed the *Travel Order* dated July 28, 2014 has no basis. Both the signatures of Engineer Tolentino and Governor Noveras appear on the face of the *Travel Order*.²⁷
- c. The contention of the accused that the *Accomplishment Report* was made upon the provincial engineer's direction is a matter of defense, to be proven during trial.²⁸

7. Accused' contention that Urbano admitted during cross-examination that he (Urbano) did not submit his report to the Office of the Provincial Governor and he does not know what happens to reports submitted to Engr. Tolentino is misleading. During his cross-examination, Urbano testified that their office consolidates the *Accomplishment Reports* every month, specifically every 15th and 30th of the month, and they submit the same to the office of the governor.²⁹

8. The documentary and testimonial evidence of the prosecution are *prima facie* sufficient to support a verdict of guilt against accused Noveras. As pointed out in the assailed *Resolution*, the grant of the accused' *Motion for Leave to File Demurrer to Evidence* will accomplish nothing but delay the proceedings.³⁰

²⁶ p.5, *Comment/Opposition (To Accused Gerardo A. Noveras's Motion for Reconsideration and Deferment of the Presentation of Evidence [Re: Resolution dated 17 March 2021])*

²⁷ p.5, *Comment/Opposition (To Accused Gerardo A. Noveras's Motion for Reconsideration and Deferment of the Presentation of Evidence [Re: Resolution dated 17 March 2021])*

²⁸ p.6, *Comment/Opposition (To Accused Gerardo A. Noveras's Motion for Reconsideration and Deferment of the Presentation of Evidence [Re: Resolution dated 17 March 2021])*

²⁹ pp.6-7, *Comment/Opposition (To Accused Gerardo A. Noveras's Motion for Reconsideration and Deferment of the Presentation of Evidence [Re: Resolution dated 17 March 2021])*

³⁰ p.3, *Comment/Opposition (To Accused Gerardo A. Noveras's Motion for Reconsideration and Deferment of the Presentation of Evidence [Re: Resolution dated 17 March 2021])*

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THE COURT'S RULING

After a careful restudy of the documentary and testimonial evidence presented by the prosecution, the Court still finds that, if unrebutted, the same is *prima facie* sufficient to support a verdict of guilt against accused Gerardo Noveras for violation of Section 3(e) of Republic Act No. 3019. The arguments raised by the accused in his *Motion for Reconsideration* are rehashed versions of the arguments in his *Motion for Leave*, which have already been considered by the Court in issuing the assailed *Resolution*.

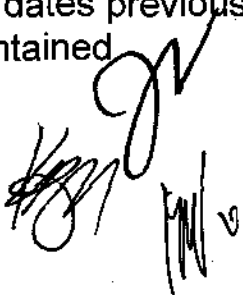
The Court finds no reason to depart from its earlier ruling.

The *Motion for Reconsideration* of accused Gerardo Noveras is **DENIED**, for lack of merit.

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

The accused is given a period of five (5) days from receipt of this Resolution within which to file his *Manifestation* to inform this Court whether he will file a *Demurrer to Evidence*, without leave of court.

The *Motion for Deferment* is likewise **DENIED**, for lack of merit. The dates previously set for the presentation of defense evidence are maintained

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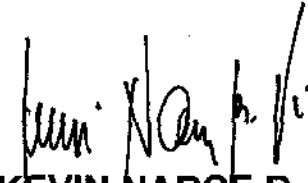
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SO ORDERED.


SARAH JANÉ T. FERNANDEZ
Associate Justice
Chairperson

WE CONCUR:


KARL B. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
Associate Justice