



Republic of the Philippines
SANDIGANBAYAN
Quezon City

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

Crim. Case No.
SB-13-CRM-0130

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

JESUS A. VERZOSA,
BENJAMIN A. BELARMINO, JR.,
JEFFERSON P. SORIANO,
LUIZO C. TICMAN,
ROMEO C. HILOMEN,
HEROLD G. UBALDE (+),
RONALD D. RODEROS and
VILLAMOR A. BUMANGLAG,
Accused.

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Present:

CABOTAJE-TANG, A.M.,
P.J./Chairperson
FERNANDEZ, B. R., J. and
MORENO, R. B., J.

Promulgated:

JULY 19, 2022

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by
[Signature]

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RESOLUTION

FERNANDEZ, B. R., J.

For resolution are the following - -

Motions for Reconsideration

The Motion for Reconsideration
dated July 8, 2021 of accused-
movant Jesus A. Verzosa

Accused-movant Verzosa, principally citing the Arias doctrine and good faith, alleges that, being the Chief of the Philippine National Police (PNP), tasked at overseeing law enforcement nationwide, was not involved in the nitty-gritty of the procurement process. He was not a member of the Bids and Awards Committee (BAC) that determines the eligibility of the suppliers of the police rubber boats (PRBs) and the outboard motors (OBMs).

He avers that prosecution witness PSSupt. Lurimer Detran testified that accused-movant Verzosa neither attended BAC meetings nor talked directly to any suppliers. He also affixed his signatures on documents only upon the recommendation of the BAC.

Accused-movant Verzosa emphasized that the BAC was acting in accordance with Napolcom Resolutions, particularly NHQ-BAC Resolutions Nos. 2009-61 and 2009-76, recommending negotiated procurement. He added that he found nothing irregular, blatant or otherwise, from these Resolutions, including the assurance of an immediate delivery of the items to be procured and that he was not required to go over the voluminous records on the procurement and negotiation.

He further contends that the Inspection and Acceptance Committee (IAC) was duly constituted not only for the procurement of the PRBs and the OBMs but also to conduct tests and ensure compliance with the Napolcom specifications. He did not personally test the items delivered and determine compliance with Napolcom specifications, even



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if he was a signatory thereof. Neither was it his duty to personally confirm the functional compatibility of the items.

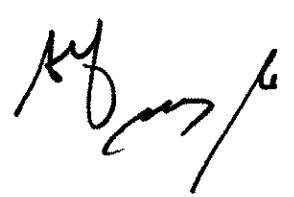
Additionally, he claims that there was no defect in the procurement process and, after the delivery of the items procured, his attention was never called until he retired on September 17, 2010. Issues on functional incompatibility only arose after his retirement. However, accused-movant Verzosa admitted that the results of the sea trial conducted during the time of Gen. Montenegro were contained in a Memorandum re: Result of the Technical Inspection and Sea Trial of Police Rubber Boats (PRBs) and Outboard Motors (OBMs) dated September 8, 2010.

Accused-movant Verzosa admitted signing NHQ-BAC Resolution No. 2009-61 dated October 19, 2009, recommending that the bidding process be discontinued and instead proceed to negotiated procurement because of the onslaught of super typhoons *Ondoy* and *Pepeng* in September and October 2009, respectively, and the role of the PNP in the ongoing rescue, relief, and rehabilitation operations. He added that he found nothing irregular or anomalous with this.

He also noted that he signed, in good faith, Napolcom Resolution No. 2009-223, providing for the specifications of the PRBs and OBMs to be procured by the PNP, because it did not expressly prohibit separate procurement. Citing the testimony of Napolcom Commissioner Eduardo U. Escueta, accused-movant Verzosa alleged that the PNP has the discretion to determine the manner of procurement.

Accused-movant Verzosa further stressed that, prior to allowing payment, he was informed that the items were inspected, in conformity with specifications, and accepted by the Director for Comptrollership, PNP Directorate for Research and Development, and Inspection and Acceptance Committee (IAC). He relied on these bodies and their respective actions. Moreover, COA Auditor Zita R. De Guia confirmed that the concerned offices inspected and approved the deliveries.

Although he was aware of the Memorandum re: Result of the Technical Inspection and Sea Trial of Police Rubber Boats (PRBs) and Outboard Motors (OBMs) dated September 8, 2010, it was not shown that he received it prior to his

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retirement. He also maintained that he remained silent through the process because he found nothing anomalous or defective.

Relative to the existence of a conspiracy, accused-movant Verzosa cited Sistoza vs. Desierto on "tolerable margin of error", stating that if he erred in relying on his subordinates, it was tolerable. He added that there was no overt act other than his mere signing of documents.


Furthermore, accused-movant Verzosa maintains that mistakes committed by a public officer are not actionable absent any clear showing that they were motivated by malice or gross negligence amounting to bad faith. He maintains that the prosecution failed to overcome the presumption of good faith and there is nothing to hold him liable under a sweeping charge of conspiracy.

The Motion for Reconsideration
dated July 10, 2021 of accused-
movant Benjamin A. Belarmino, Jr.

Accused-movant Belarmino Jr. maintains that this Court cannot link him as a conspirator on the strength of his mere membership in the Negotiation Committee on October 23, 2009. He insists that he was not a member of the PNP-NHQ-BAC during the September 9, 2008 opening of bids for the seventy five (75) units of PRBs and eighteen (18) units of 40hp engines spare engines. Neither was he a member of the Negotiation Committee that passed and approved Resolution No. 2009-61 dated October 19, 2009 entitled Recommending the procurement of Police Rubber Boats through negotiation pursuant to Section 53.2 of the Revised IRR of R.A. 9184 in lieu of public bidding held on September 9, 2009.

Further, accused-movant Belarmino Jr. makes specific reference to the case of Office of the Deputy Ombudsman for the MOLEO vs. Saligumba (G.R. No. 223768, February 22, 2017). Although pertaining to administrative issues, these are similar to the issues before this Court.

He also noted that he was convicted on the basis of his functional participation as Director, Directorate for Research and Development (DRD). He argues, however, that the PNP has a separate Weapons, Transportation and Communication



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Division (WTCD), tasked to evaluate and conduct tests on procured vehicles and other mode of transportation for the PNP, the results of which are contained in a WTCD report. He cannot be convicted for his approval of the WTCD reports.

Accused-movant Belarmino, Jr. further describes the task of the Inspection and Acceptance Committee (IAC) to include the inspection of deliveries and to either accept or reject them. He emphasizes that the IAC is instrumental in the procurement process and that, without its approval, no procurement of the PRBs and OBM's could be consummated. Notably, only after the IAC finally accepts the delivered items can the supplier be paid by the PNP.

He thus stressed that his role in the subject procurement is limited to the functions of his office, the DRD. Hence, he claims that there can be no conspiracy.

The Motion for Reconsideration
dated July 10, 2021 of accused-
movant Jefferson P. Soriano and
accused-movant Luizo C. Ticman

Accused-movants Soriano and Ticman, in chorus, revolve their discussions and positions around the following grounds, namely: (1) The functional incompatibility or non-usability of the rubber boats was not caused by the alleged separate procurement of the rubber boat and the outboard motors; (2) During the negotiation, the Negotiation Committee was only required to specify the subject of the procurement based on the Napolcom specifications, prior determination was not among the responsibilities of the BAC or the Negotiation Committee since that was already addressed by the Napolcom specifications; (3) Based on the testimonies of several prosecution witnesses, the failure of the Inspection and Acceptance Committee (IAC) to comply with the requirements of the Napolcom specifications to conduct tests and evaluation and the failure to conduct the required inspection prior to acceptance was the cause of the functional incompatibility since it resulted to a wrongful acceptance of the delivered undersized non-compliant rubber boats which were not compatible with 60hp engine; (4) The Inspection and Acceptance Committee (IAC) is a committee separate and distinct from the BAC or the Negotiation Committee and even operates autonomously and independently from the Chief PNP on matters of inspection and accepting deliveries; (5)



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Despite the submission of eligibility documents, being not necessary in the negotiated procurement through emergency, the Negotiation Committee still required its submission which were complied with by the three (3) suppliers by submitting eligibility documents to prove their legal, financial and technical capabilities; (6) The determination that the three suppliers were legally, technically and financially capable was made by the Technical Working Group (TWG) and not by the Negotiation Committee; (7) The discontinuance of the bidding process and the resort to negotiated procurement are justified and necessary in order to address the genuine emergency articulated by the Director of the Maritime Group; (8) The conditions under which the negotiated procurement by reason of emergency was based on the then prevailing circumstances not by future events; and, (9) There was no shred of proof submitted by the prosecution to prove conspiracy among the accused in this case.


Both accused-movants further dispute the allegation that they were both acting in bad faith or that they exercise manifest partiality in their actions during the procurement process. Neither was there any gross inexcusable negligence on their part.

They likewise maintain that, based on the testimonies of the witnesses for the prosecution and the documentary exhibits presented by both parties, it was the Inspection and Acceptance Committee (IAC) that caused damage or injury to the government, not both accused-movants.

Both accused-movants point further blame on the three (3) suppliers. They claim that these suppliers knew exactly what to deliver. However, the suppliers instead, acting with bad faith, delivered small rubber boats with only ten (10) persons capacity, which expectedly did not match the 60hp engine, despite Napolcom safeguards.

The Motion for Reconsideration
dated July 12, 2021 of accused-
movant Romeo C. Hilomen

Accused Hilomen maintains that there was nothing irregular or illegal in the separate procurement of the PRBs and OBMs because the Napolcom Resolution No. 2009-223 did not specify that procurement be made as a single unit.

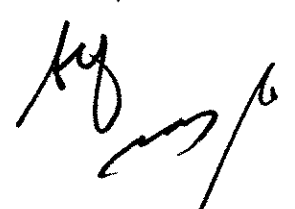


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Likewise, the resort to negotiated procurement or the award of the project was not the cause of the non-usability and/or incompatibility of the PRBs and OBMs. He further alleges that this Court erred in assuming that the same stringent requirements for determining eligibility in ordinary public biddings are equally applicable to negotiated procurement, citing Sec. 53 of the Implementing Rules and Regulations (IRR) of R.A. 9184. He insists that this provision merely mandates that the procuring entity negotiates with a supplier that is technically, legally and financially capable. It did not specify the criteria or conditions from which these qualifications can be drawn.

Similarly, accused Hilomen cites GPPB Circular No. 03-2006, showing the instances where immediate procurement due to the occurrence of a natural calamity are allowed and where the procuring entity may simply negotiate with a contractor of good standing.

Accused Hilomen further noted the following: (1) In the COA-prepared Table to supposedly represent the milestones for a public bidding, the delivery period was conspicuously excluded; (2) The time frame cited in the COA Report, which was based on Annex C of the IRR of R.A. 9184, applies only to ordinary supplies procured in the Philippines and not to items sourced abroad such as the subject PRBs and OBMs; (3) The COA's entire premise for concluding that the procurement supposedly took 220 days was proven wrong as it reckoned the period from the time the Invitation to Bid in the public bidding was published; (4) There is nothing in Napolcom Res. No. 2009-223 that expressly requires, or even impliedly suggests, that the PRBs and the OBMs should be purchased as a single unit; (5) Even if the PNP wanted to, the PRBs and OBMS could still not be procured as a single unit because there is no company that manufactures both; (6) The separate procurement of the PRBs and OBMs was necessitated by the urgency of expediting their delivery and the suppliers' inability to deliver all seventy-five (75) PRBs with engine and eighteen (18) spare OBMs within a limited period of two weeks; (7) The separate procurement of PRBs and OBMs did not amount to an unlawful splitting of contracts purportedly meant to favor and give unwarranted benefit to the suppliers; (8) It is not accurate to say that the reason for the emergency procurement ceased at the time the negotiation was conducted as there were still relief, rescue,




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rehabilitation efforts that ensued; (9) Contrary to the Napolcom specifications, suppliers Geneve and Bay Industrial delivered the PRBs that were smaller than those actually prescribed; (10) Accused-movant Hilomen cannot be blamed for requiring the delivery of 60hp OBMs as this was well within the range of "40hp or better" as provided for in the Napolcom specifications; (11) The responsibility of inspecting and accepting these goods did not fall on all of the accused; (12) The PNP was without recourse when the incompatibilities arose; (13) The separate procurement of the PRBs and OBMs was not attended with evident bad faith, manifest partiality or gross inexcusable negligence; (14) There is no proof that the suppliers in whose favor the supply of the PRBs and OBMs was awarded were purportedly technically, financially, and legally incapable; (15) The resort to negotiated procurement on account of an emergency situation was justified and legal; and, (16) There was no conspiracy.

The Motion for Reconsideration
dated July 27, 2021 of accused-
movant Villamor A. Bumanglag

For his part accused-movant Bumanglag poses the following: (1) His compliance with his obligation under Article IV is predicated on the compliance by the suppliers of the second paragraph, Article III of the Supply Contract; (2) His participation in the Supply Contracts is merely that of a witness being the end-user; (3) He did not "award" nor enter into a contract with supplier Geneve SA; (4) The PNP did not enter into any contract with the manufacturer of rubber boats from whom supplier Geneve SA was getting its rubber boats; (5) He and the members of the Negotiation Committee instructed supplier Geneve SA and the other suppliers to deliver PRBs which could accommodate 12 passengers in accordance with the Napolcom specification; (6) He acted in good faith; (7) On the issue of conspiracy, accused-movant Bumanglag maintains that the totality of the foregoing facts arising from the evidence undoubtedly show the absence of a conspiracy; and, (8) No gross inexcusable negligence, evident bad faith nor manifest partiality was committed by accused-movant Bumanglag.

The prosecution was granted time (Minutes, July 16, 2021) to respond to the Motions. The following are the - -

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The Oppositions of the Prosecution

The Opposition dated
October 25, 2021 to the
Motion for Reconsideration
of accused-movant Verzosa

The prosecution maintains that accused Verzosa was indicted and prosecuted in his official capacity as Head of the Procuring Entity (HOPE) and not as a member of the BAC or the IAC. As the HOPE, accused Verzosa had the responsibility and the discretion to act on the recommendations of the BAC and effect payments on approved transactions.

Citing the functions of the HOPE, the prosecution alleges that accused Verzosa may either approve or disapprove the recommendations of the BAC. This function is far from being ministerial. He should have exercised more diligence as the PRBs and OBMs were not only important to the PNP but also the procurement involved the large amount of P131,550,000.00.

The prosecution further maintains that the Arias doctrine, although citing its applicability by accused Verzosa, had exceptions. It also reiterates that Napolcom Res. No. 2009-223 (Exh. "K"), signed by accused-movant Verzosa, indicates that the PRBs and OBMs were supposed to be procured as a single unit and this included the OBMs.

Accused-movant Verzosa likewise approved NHQ-BAC Res. No. 2009-61 (Exh. "O") that recommended the resort to the alternative mode of negotiated procurement. He cannot likewise deny knowledge that there was a supplier during the public bidding that passed the requirements for both the PRBs and OBMs and was to undergo post-qualification as provided for in 2nd Whereas clause of NHQ-BAC Res. No. 2009-61.

Further, the prosecution alleges that accused-movant Verzosa signed and approved the BAC recommendation in NHQ-BAC Res. No. 2009-76 (Exh. "P") dated November 24, 2009, to resort to a negotiated emergency procurement due to the allegedly emergency brought about by super typhoons *Ondoy* and *Pepeng* as well as the revision of the Annual Procurement Program for calendar year 2008 for the



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procurement of the PRBs and OBMs, thus allowing separate procurements. This is despite a showing that none of the suppliers could deliver the entire 75 units of PRBs and 18 spare engines within the required period of delivery.

Likewise, the prosecution insists that accused-movant Verzosa approved NHQ-BAC Res. No. 2009-93 (Exh. "Q") dated December 18, 2009, almost 60 days after the BAC resorted to negotiated emergency procurement.

From these Resolutions, signed and approved by accused-movant Verzosa, indicate that he had knowledge that the PRBs and OBMs were to be procured as a single unit. Although a supplier was capable of providing the PRBs and OBMs, accused-movant Verzosa heeded the departure from the mode of public bidding and instead approved the BAC recommendation to resort to negotiated procurement, even if the cited emergencies no longer existed.

The prosecution added that there was no showing that accused-movant Verzosa questioned the necessity of abandoning the mode of public bidding or inquire into the separate procurement of the PRBs and the OBMs. It was also established that the three (3) suppliers were not technically, financially and legally capable.

It further noted that accused-movant Verzosa approved payment even if no sea trials were conducted on the delivered PRBs and OBMs and that the capacity of the PRBs which were delivered by suppliers Geneve and Bay Industrial was 10 persons contrary to Napolcom specifications requiring a maximum capacity of 12 persons.

On the issue of conspiracy, the prosecution maintains that, based on the facts established, the accused conspired with one another.

The Opposition dated
July 27, 2021 to the
Motion for Reconsideration
of accused-movant
Belarmino, Jr.

The prosecution insists that, although accused-movant Belarmino Jr. was not a member of the Negotiation



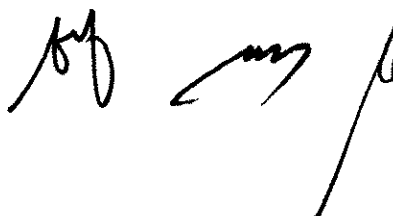
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Committee who signed NHQ-BAC Res. No. 2009-61 dated October 9, 2009 (Exh. "O"), he, nevertheless, was a member of the Negotiation Committee and signed NHQ-BAC Res. No. 2009-76 dated November 24, 2009 (Exh. "P"), recommending, among others, the revision of the Annual Procurement Program for calendar year 2008 in order to separate the procurement of the OBMs from the PRBs and that he knew that none of the invited suppliers could supply the required number of PRBs and OBMs, as shown in the Minutes of Negotiation dated October 21, 2009 (Exh. "L³"). He was also among those who recommended the award of the contract to suppliers EnviroAire, Geneve and Bay Industrial without ascertaining that the PRBs they will deliver were compliant with Napolcom specifications and functionally compatible with 60hp OBMs.

Furthermore, the prosecution alleged that accused-movant Belarmino Jr. approved the WTCD Reports although the inspected PRBs merely had a capacity of 10 persons per boat, in violation of the Napolcom specifications and that the method of inspection was merely visual, not a sea trial or a functional test.

Additionally, the prosecution maintains that the reliance of accused-movant Belarmino Jr. on the case of Office of the Deputy Ombudsman for the MOLEO vs. Saligumba (G.R. No. 223768, February 22, 2017) is misplaced and finds no applicability herein. As accused-movant Belarmino Jr. himself admitted, the cited case refers to the administrative aspect of the case. Citing Ramiscal, Jr. vs. COA (G.R. No. 213716, October 10, 2017), the prosecution maintains that the three-fold liability rule applies herein. This means that a public officer may be held civilly, criminally, and administratively liable for a wrongful doing. The action that may result for each liability under the "three-fold liability rule" may proceed independently of one another, as in fact, the quantum of evidence required in each case is different.

The Consolidated Opposition
dated October 27, 2021 to the
Motions for Reconsideration of
Accused-movant Soriano,
Accused-movant Ticman and
Accused-movant Bumanglag



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The prosecution maintains that the arguments raised in the Motion for Reconsideration of accused-movants Ticman and Soriano were substantially the same as those they advanced in their Memorandum dated February 27, 2020. Moreover, accused-movant Bumanglag also substantially adopted the arguments of accused-movants Soriano and Ticman.

The insistence of accused-movants Soriano, Ticman and Bumanglag that the submission of eligibility documents is not necessary in negotiated procurement through emergency, is misplaced, citing Section 48 (e) of R.A. No. 9184. Further, the prosecution also alleged that Memorandum Circular No. 213 dated May 8, 2006 and GPPB Circular No. 03-2006 dated December 6, 2006, testified to by Atty. Loreto, cannot amend or qualify the much later issued 2009 IRR while GPPB Opinion No. NMP 142-2012 is inapplicable herein.

The prosecution also noted that accused-movants Soriano, Ticman and Bumanglag and the Negotiation Committee required the three (3) suppliers to submit eligibility documents and that they complied. Hence, the Negotiation Committee and the BAC cannot feign ignorance of the lack of technical, legal and financial qualifications of the suppliers as the latter's ineligibility was apparent on the face of the documents submitted.

It stresses that the alleged reliance by the BAC on the supposed findings of the TWG relative to the eligibility of the three (3) suppliers are not valid defenses, as Sec. 12 of R.A. 9184 provides that the BAC is responsible for ensuring that the procuring entity complies with the provisions of the statute and the relevant rules and regulations.

The prosecution also cited the undisputed Attendance Sheet (Exh. "N⁶") for the October 21, 2009 negotiation that undoubtedly show that a certain Ryan Uy was present. However, his non-inclusion shows an evident preference on the part of the accused to award the contracts to the three (3) ineligible suppliers. Hence, there exists manifest partiality.

It further noted that, in a last attempt to control the damage brought about by their fabricated Minutes of Negotiation, accused-movants Soriano and Ticman attached to their present Motion for Reconsideration an Affidavit dated



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October 9, 2012, purportedly executed by Lurimer B. Detran. However, the prosecution claim that the same is hearsay because it deprived the prosecution an opportunity to cross-examine him. Besides, the same Affidavit was never offered in evidence for the defense.

The prosecution emphasizes that it was able to establish the ineligibility of the suppliers through documents and testimonies, which were corroborated by the findings of the COA.

Specific to the Motion for Reconsideration of accused-moovant Bumanglag, the prosecution noted that there was no pronouncement or findings from the Court that there was no need for the Maritime Group to purchase PRBs. It also noted that, upon the admission of accused-movant Bumanglag himself, the PNP Maritime Group was not the lead agency involved in the search and rescue operations from the National Disaster Coordinating Council (NDCC). Rather, other government agencies were also involved requiring other water assets and equipment available at that time.

The prosecution maintains that there was no showing that the accused-movants had dutifully carried out their functions as members of the BAC, including ascertaining the propriety and advisability of resorting to negotiated procurement. As established by the evidence, the accused-movants discontinued the public bidding, then in its post-qualification stage, and resorted to negotiated procurement instead without first ascertaining whether there was any legally, technically and financially qualified supplier who could deliver the PRBs with the compatible OBMs within the new and shortened period of delivery they had set. Worst, the prosecution claims that the accused-movants did not dutifully ascertain that the PRBs and OBMs to be separately purchasing were functionally compatible with each other.

On the issue of giving unwarranted benefit, the Court, clearly found that the three (3) ineligible suppliers were accorded this.

The prosecution, on the issue of causing undue injury, maintains that it was able to prove that the equipment delivered by the three (3) ineligible suppliers failed to meet the standard specifications required under Napolcom Res. No.

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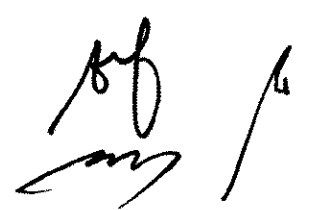
2009-223. Worst, the PRBs and OBMs were not functionally compatible with each other.

On the issue of the incompatibility of the Zodiac FC470 Futura Commando with a Mercury 60hp OBM, the prosecution alleges that this Court did not err in holding that the procured PRBs and OBMs were not used by the end-users for their intended purposes due to defects or incompatibility. There was likewise no evidence adduced by the accused-movants to prove that indeed the PRBs and OBMs delivered by the suppliers were actually used for the purposes for which they were purchased.

The prosecution further emphasizes that there is nothing in the testimonies of the prosecution witnesses that will support the assertions of the accused-movants that the failure of the Inspection and Acceptance Committee (IAC) to comply with the requirements of the Napolcom specifications to conduct tests and evaluation and the failure to conduct the required inspection prior to acceptance, were the cause of the functional incompatibility. It was actually the decision of the accused-movants to separate the procurement of the PRBs from the OBMs and their collective actions to procure and award the contracts to suppliers who could not provide compliant rubber boats compatible with 60hp outboard motors that led to the functional incompatibility.

On the issue of conspiracy, the prosecution still maintains its position of its existence, citing jurisprudence to support this claim.

In explaining this, the prosecution enumerated the following as basis - - (1) The accused BAC officials recommended that the OBMs be procured separately from the PRBs. They also recommended the award of the contract to the three ineligible suppliers without ascertaining whether the PRBs to be delivered were compliant with Napolcom specifications and functionally compatible with the 60hp OBMs; (2) Accused Belarmino Jr., as Director of the Directorate for Research and Development, approved the WTCD Reports despite the fact that the inspected PRBs only had a capacity of 10 persons per boat, in violation of Napolcom specifications requiring a maximum capacity of 12 persons. Moreover, he approved the WTCD Reports based only on a visual inspection and that no sea trial or functional



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test were conducted. These WTCD Reports were the bases of the Inspection and Acceptance Committee to accept the delivered PRBs and OBMs and the issuance of a memorandum falsely stating that the items delivered conformed to Napolcom-approved specifications; (3) Accused Bumanglag, as the then Director of the PNP Maritime Group, abdicated his duty and responsibility under Article IV (1) of the Supply Contract. He was still the Director of the PNP Maritime Group when almost all the PRBs and OBMs were delivered to the D, LSS, PNP on various dates; (4) Records will show that accused-movant Bumanglag was aware, through Ervin Provideo, the Logistic Officer of the Maritime Group, of the visual inspections; and, (5) Accused-movant Verzosa approved all the BAC recommendations and the payment despite violations of the Napolcom-approved specification and that no sea trial was conducted.

Subsequently, accused-movants Soriano, Ticman and Bumanglag filed their respective Reply. After the filing by the prosecution of its Rejoinder thereto, these pleadings were merely noted by this Court, considering that in its November 5, 2021 Resolution, the various Motions for reconsideration of the accused-movants were already submitted for resolution (Minutes, November 16, November 17, and November 23, 2021).

The Opposition dated
October 27, 2021 to the
Motion for Reconsideration of
Accused-movant Romeo C.
Hilomen

The prosecution argues that the Court did not err in applying the criteria set for competitive bidding by declaring the three (3) suppliers technically, financially, and legally ineligible in a negotiated procurement.

It submits that the mode resorted to in this case was negotiated procurement. Section 53 of the IRR of R.A. 9184 did not dispense with the obligation of the BAC/Negotiation Committee to determine whether the suppliers were technically, financially, and legally eligible.

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Although accused-movant Hilomen relied on a GPPB Opinion issued in 2012, or a few years after the negotiated procurement in 2009 took place, the same is inapplicable.

Likewise, the prosecution contends that, even without admitting the arguments of accused-movant Hilomen that the Minutes and NHQ-BAC Resolutions were not indicative of whether the three (3) suppliers were in "good standing", there was no mention that any of the (3) suppliers previously transacted with the PNP or any other government for the same items or equipment. Nevertheless, citing the individual corporate documents of the three (3) suppliers, they could not be considered in good standing. Furthermore, the prosecution emphasizes that the COA found that the three (3) suppliers were technically incapable.

Likewise, the prosecution adds that the assailed Decision did not actually declare that the public bidding process would be more expeditious and practical. Rather, the Court actually referred to and considered the Period of Action on Procurement Activities (Annex C, 2009 Revised IRR of R. A. 9184) and the "Earliest Possible Time" for the conduct of post-qualification for goods. The shift to negotiated procurement at the post-qualification stage purportedly to expedite the procurement and delivery of the PRBs was unjustified.

It further emphasized that the assailed Decision did not state that the separate procurement of the PRBs and the OBMs was irregular or illegal *per se*. Rather, this caused the functional incompatibility of the delivered PRBs and OBMs, thus, they could not be used for the purposes for which they were purchased.

Accused-movant Hilomen, as noted by the prosecution, insists that there was nothing in the Napolcom Res. No. 2009-223 (Exh. "K") that suggests that the PRBs and the OBMs were to be purchased as a single unit because no entity or individual would manufacture both the PRBs and OBMs.

However, the prosecution maintains that the actions of the BAC contradict the position of accused-movant Hilomen. As pointed out in the assailed Decision, if this was not so, there would be no need for the BAC to recommend to the

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HOPE the separate procurement thereof and its funding as contained in same NHQ BAC Resolution 2009-76 (Exh. "P").

The prosecution also reiterates that the reason for the shift to negotiated procurement was to expedite the procurement and delivery of the PRBs. However, even with the change in the mode of procurement, the purpose was not achieved as it still took a long time for the delivery of the equipment to be completed.

On the issue of an emergency, the prosecution noted that even granting that about 20 typhoons were expected to hit the country, prosecution witness Vicente Malano testified that this was not the emergency or urgency contemplated by the BAC to justify the negotiated emergency procurement. If anything, this justification was an afterthought, otherwise, it would have been stated in the cited Resolution itself.

The prosecution insists that the resort to negotiated procurement did not serve the purposes for which it was recommended and approved. Rather, it was the functional incompatibility of the PRBs and OBMs.

It further stressed that the BAC/Negotiation Committee dealt with three (3) technically, financially, and legally ineligible suppliers. There is also no showing that the same Committee ascertained whether the PRBs that were to be delivered complied with Napolcom specifications and functionally compatible with the 60hp OBMs.

Finally, although accused-movant Hilomen passed the blame on the Inspection and Acceptance Committee (IAC), the prosecution, even granting without admitting, points out that the lapses of the IAC cannot absolve the BAC/Negotiation Committee and the HOPE. The violation of Section 3 (e) of R.A. 3019 was, among others, committed when (1) the recommendation to resort to the mode of negotiated procurement and abandoning competitive bidding were approved; (2) there was a separate purchase of the PRBs and OBMs; (3) the recommendation to award the contracts to ineligible suppliers was approved; and, (4) the contracts were honored and payment was made to the suppliers, despite the breach/delay in the delivery of the PRBs and OBMs.

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The Rulings of this Court

This Court noted that, in the Motions for Reconsideration filed by the accused-movants, much of the issues posed are mere reiterations of previous arguments raised. These same issues were already sufficiently and substantially addressed by this Court and further discussions would be, at most, duplications.

Nevertheless, We need to briefly underscore certain matters *in seriatim*.

On the Motion for Reconsideration
dated July 8, 2021 of accused
Jesus A. Verzosa

As aptly alleged by the prosecution, accused-movant Verzosa was indicted in his official capacity as the Head of the Procuring Entity (HOPE) and not as a member of the Bids and Awards Committee (BAC) member or even the Inspection and Acceptance Committee (IAC). While he was not be expected to actually determine the eligibility of the suppliers nor personally test the procured PRBs and OBM's, he, as HOPE, carried with it the responsibility and the discretion of acting on recommendations of the BAC as well as effecting payments on approved transactions. Considering that the amount involved in the procurement is P131,550,000.00, his function as HOPE necessitated the exercise of extra diligence.

Furthermore, accused-movant Verzosa cannot validly invoke the Arias doctrine. As indicated in the assailed Decision, accused-movant Verzosa should have noticed the financial weakness of the suppliers and functional incompatibility of the PRBs and OBM's. Instead, he remained silent, thus, his actions clearly showed manifest partiality.

This Court also noted the participation of accused-movant Verzosa in Napolcom Res. No. 2009-223 dated April 16, 2009; and, NHQ BAC Resolution 2009-93 dated December 18, 2009. These Resolutions were signed and/or approved by accused-movant Verzosa despite clear inadequacies and defects which could have been rectified had he exercised more diligence in the performance of his duties.

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Furthermore, due consideration was given to the approval of payment by accused-movant Verzosa despite the absence of a sea trial and the lesser capacity, which are all violations of Napolcom specifications requiring a capacity of 12 persons. Also, there were no validation on his part, instead, he merely relied on the recommendations of the BAC.

On the Motion for Reconsideration
dated July 10, 2021 of accused-
movant Jefferson P. Soriano and accused-
movant Luiz C. Ticman; and the
Motion for Reconsideration
dated July 27, 2021 of accused-
movant Villamor A. Bumanglag

It is an established fact that the NHQ-BAC officials, namely: accused-movants Soriano, Ticman, Hilomen, Belarmino Jr., Ubalde (+) and Bumanglag recommended not only that the OBMs be procured separately from the PRBs but also the award of the Supply Contracts to the three (3) ineligible suppliers, without ascertaining that the PRBs to be delivered complied with the Napolocom specifications and functionally compatible with the 60hp OBMs.

On the Motion for Reconsideration
dated July 10, 2021 of accused-
movant Benjamin A. Belarmino, Jr.

Focus is directed on the claim of accused-movant Belarmino Jr. that he should be acquitted because of his non-inclusion in the Information quoted in the assailed Decision.

After a close reading of the original Information, this Court finds that the omission is merely a clerical error, harmless and innocuous. Hence, cannot lead to an exoneration.

Furthermore, accused-movant Belarmino Jr. spotlights on the case of Office of the Deputy Ombudsman for the MOLEO vs. Saligumba (G.R. No. 223768, February 22, 2017).

This is misplaced, misleading, and finds no applicability in the instant case.



x-----x

We noted that accused-movant Belarmino Jr. only cited the assailed Court of Appeals decision dated December 23, 2014 without properly citing the Supreme Court ruling in MOLEO vs. Saligumba (G.R. No. 223768, February 22, 2017), that actually reversed and set aside the earlier-cited Decision of the Court of Appeals.

The Supreme Court decision actually reinstated the Ombudsman decision dated January 9, 2013 finding respondent Saligumba liable for simple neglect of duty and imposed the penalty of suspension for six months. The Supreme Court also ruled that - - Respondent and other members of the IAC fell short of the reasonable diligence required of them, for failing to perform the task of inspecting the deliveries in accordance with the conditions of the procurement documents and rejecting said deliveries in case of deviation.

Furthermore, in the same MOLEO vs. Saligumba (*ibid.*) case, P/S Supt. Luis L. Saligumba, the lone respondent thereat, was charged as a member of the PNP Inspection and Acceptance Committee (IAC), and not the PNP BAC, unlike herein accused-movant Belarmino, Jr. The conviction of accused-movant Belarmino Jr. was not based on his approval of the Weapons Transportation and Communication Division (WTCD) Report alone but also his being part of the PNP NHQ-BAC that recommended, among others, the revision of the Annual Procurement Program for calendar year 2008 in order to separate the procurement of the OBMs from the PRBs. Accused-movant Belarmino Jr. was also a part of the Negotiation Committee that recommended that the contracts be awarded to the ineligible suppliers.

We quote the assailed Decision on the participation of accused-movant Belarmino, Jr. and his co-accused, as follows- -

Additionally, the accused insist that the PNP Inspection and Acceptance Committee (IAC) caused the undue injury to the government by failing to ensure that the delivered PRBs and OBMs complied with the Napolcom specifications and functional compatibility before accepting them for payment. Unfortunately, this posture must fail, in light of the following established facts - -

(1) The NHQ-BAC officials - accused Soriano, Ticman, Hilomen, Belarmino, Ubalde and Bumanglag -



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recommended that the OBMs be procured separately from the PRBs. They also recommended the award of the contracts to EnviroAire, Geneve, and Bay Industrial without ascertaining that the PRBs to be delivered were compliant with the Napolcom specifications and functionally compatible with 60 HP OBMs;

(2) When accused Belarmino, the then NHQ-BAC member, became the Director of the Directorate for Research and Development, he approved the WTCD Reports, despite the fact that the inspected PRBs merely had a capacity of ten (10) persons per boat, in violation of the Napolcom specifications requiring a maximum capacity of twelve (12) persons, and that the method of inspection was merely visual, instead of a sea trial or functional test. These same WTCD Reports were the bases of the Inspection and Acceptance Committee to accept the delivered PRBs and OBMs. Accused Belarmino also issued memoranda stating that the delivered PRBs and OBMs conformed to the Napolcom-approved specifications for rubber boats; and, x x x.

It must also be emphasized that the administrative aspect of a case is distinct and separate from its criminal aspect. Even accused-movant Belarmino Jr. himself admitted that the MOLEO case only referred to the administrative aspect of the case.

This Court is guided by the Supreme Court ruling in *Mesa vs. Sandiganbayan* (G.R. No. 180700, March 4, 2008), to wit- -

Significantly, there are three kinds of remedies that are available against a public officer for impropriety in the performance of his powers and the discharge of his duties: (1) civil, (2) criminal, and (3) administrative. These remedies may be invoked separately, alternately, simultaneously or successively. Sometimes, the same offense may be the subject of all three kinds of remedies.

Defeat of any of the three remedies will not necessarily preclude resort to other remedies or affect decisions reached thereunder, as different degrees of evidence are required in these several actions. In criminal cases, proof beyond reasonable doubt is needed whereas a mere preponderance of evidence will suffice in civil cases.²² In administrative proceedings, only substantial evidence is required.

It is clear, then, that criminal and administrative cases are distinct from each other. The settled rule is that



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criminal and civil cases are altogether different from administrative matters, such that the first two will not inevitably govern or affect the third and vice versa. Verily, administrative cases may proceed independently of criminal proceedings.

On the Motion for Reconsideration
dated July 12, 2021 of accused-
movant Romeo C. Hilomen

In the assailed Decision, this Court referred to Sec. 53 of the Implementing Rules and Regulations (IRR) of R. A. 9184, to wit- -

Section 53. Negotiated Procurement.

Negotiated Procurement is a method of procurement of goods, infrastructure projects and consulting services, whereby the procuring entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant in any of the following cases:

While the mode resorted to in this case was negotiated procurement, the above-quoted Section did not dispense with the obligation of the BAC/Negotiation Committee to determine whether the suppliers were technically, financially, and legally eligible. In considering the technical, financial, and legal eligibility of a supplier, Section 53 did not prohibit the BAC/Negotiation Committee from referring or finding support from Sec. 23.6 of the IRR-a of R.A. 9184.

Furthermore, although accused-movant Hilomen cited Memorandum 213 in GPPB Circular 03-2006 as well as the opinion of Atty. Loreto, where a supplier needs only to be in "good standing", this same Memorandum 213 did not define or describe a supplier of good standing. Likewise, GPPB 03-2006 provides that a supplier of good standing is one who has not committed any breach of contract in any previous transactions with the procuring entity and other government entity while Atty. Loreto testified that a supplier of "good standing" is one who is not blacklisted.

However, there is no showing, particularly in the Minutes and NHQ-BAC Resolutions, that the three (3) suppliers were in "good standing". Neither did the (3) suppliers declare that they previously transacted with the PNP or any government entity relative to the same items or equipment.



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WHEREFORE, finding no cogent reason to disturb the assailed Decision promulgated on June 25, 2021, this Court hereby **DENIES** the following for lack of merit - -

The Motion for Reconsideration of accused-movant Benjamin A. Belarmino, Jr. dated July 10, 2021;

The Motions for Reconsideration of accused-movant Jefferson P. Soriano and accused-movant Luizo C. Ticman dated July 10, 2021;

The Motion for Reconsideration of accused-movant Villamor A. Bumanglag dated July 27, 2021;

The Motion for Reconsideration of accused-movant Romeo C. Hilomen dated July 12, 2021; and,

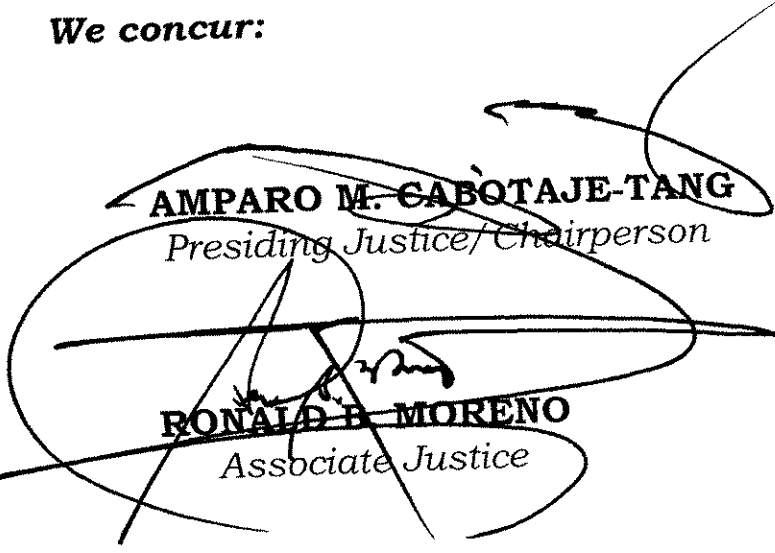
The Motion for Reconsideration of accused-movant Jesus A. Verzosa dated July 8, 2021.

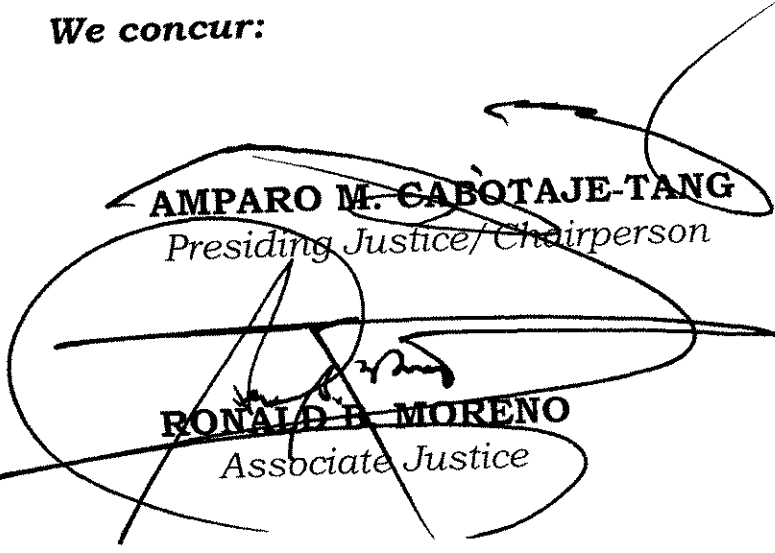
SO ORDERED.

Quezon City, Metro Manila.


BERNELITO R. FERNANDEZ
Associate Justice

We concur:


AMPARO M. CABOTAJE-TANG
Presiding Justice/Chairperson


RONALD B. MORENO
Associate Justice