



Republic of the Philippines
SANDIGANBAYAN
Quezon City

SIXTH DIVISION

PEOPLE OF THE SB-17-CRM-2082
PHILIPPINES,
Plaintiff, For: Violation of Section 3 (e) of
Republic Act No. 3019

-versus-

ANNALIZA GONZALES- PRESENT:
KWAN, ET AL.
Accused, **FERNANDEZ, SJ, J. Chairperson**
MIRANDA, &
VIVERO, JJ.

Promulgated:

OCT 14 2022 *[Signature]*

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RESOLUTION

MIRANDA, J.:

This resolves the Motion for Reconsideration dated July 2, 2022 filed by accused Esperanza G. Cotin (Cotin), Ma. Nenita S. Ecleo (Ecleo), Felipe D. Padual (Padual) and Danilo G. Colandog (Colandog) on July 7, 2022, and the Comment/Opposition dated July 19, 2022 filed by the Prosecution on July 22, 2022.

In their motion, accused-movants Cotin, Ecleo, Padual and Colandog assailed the Decision promulgated by this Court on June 22, 2022 convicting them of Violation of Section 3 (e) of R.A. No. 3019. They claimed that the Court committed an error in finding them guilty of gross inexcusable negligence in the procurement of one unit of a remanufactured fire truck for the Municipality of Guiuan, Eastern Samar. Particularly, they argued that:

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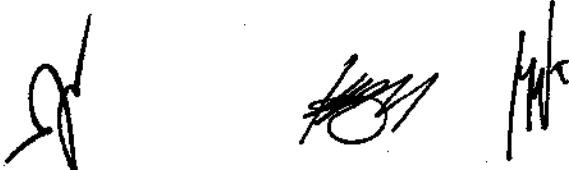
RESOLUTION

People v. Gonzales-Kwan, et al.
SB-17-CRM-2082

- 1) While there were blunders in complying with the provisions of R.A. No. 9184 and its IRR-A, these were committed by accused Arsenio V. Salamida (Salamida) and Eraño A. Macapagao (Macapagao), then Bids and Awards Committee (BAC) Chairperson and BAC Secretariat Chairperson, respectively, and not by the accused-movants;
- 2) Having been newly appointed to their positions in the BAC at that time, accused-movants did not receive any seminar or training on the implementation of R.A. No. 9184 and its IRR-A. As such, they only relied on the advice of Salamida and Macapagao regarding the procedure in the subject procurement;
- 3) Despite their non-familiarity with the procurement law, accused-movants exerted efforts in complying with the procedure and mandate of R.A. No. 9184 and its IRR-A;
- 4) Accused-movants' erroneous interpretation of Section 53(b), Article XVI of R.A. No. 9184 on instances where negotiated procurement is allowed, does not constitute gross inexcusable negligence;
- 5) Any benefit or advantage received by the Integrated Energy and Resource Systems, Inc. (IERSI) in the procurement was merely coincidental being the only supplier that submitted a proposal at that time;
- 6) Mere signature in the BAC Resolution No. 01022007 dated January 23, 2007 recommending resort to negotiated procurement is insufficient to prove conspiracy among accused-movants; and
- 7) The notice of award is spurious and falsified.

In its comment/opposition, the Prosecution, through the Office of the Special Prosecutor, argued that the evidence unequivocally established the elements of Violation of Section 3 (e) of R.A. No. 3019. The Prosecution reiterated the findings of this Court and claimed that the failure of the accused-movants to comply with the conditions and procedure of negotiated procurement sufficiently constitutes gross inexcusable negligence.

After a review of the records of this case and the arguments raised by the parties, the Court **DENIES** the Motion for Reconsideration dated July 2, 2022 of accused-movants for lack of merit.



A motion for reconsideration is based on errors of law or fact in the judgment that requires no further proceedings.¹ Accused-movants' assertions fail to persuade that the Court committed an error in the appreciation of facts and the application of law to the evidence presented.

In a prosecution of case for Violation of Section 3 (e) of R.A. No. 3019 based on a breach of procurement laws, the Prosecution must prove that: 1) the accused acted with evident bad faith, manifest partiality, or gross inexcusable negligence; and 2) the violation of procurement law caused undue injury to any party, or gave unwarranted benefits, advantage or preference.² These conditions were successfully proven by the Prosecution in this case.

Accused-movants were convicted of Violation of Section 3 (e) of R.A. No. 3019 for acting with gross inexcusable negligence in the negotiated procurement of the remanufactured fire truck. The Court, taking into account the nature and number of irregularities committed by the accused-movants as well as the unwarranted advantage given to the IERSI in the said procurement, held that the violation of R.A. No. 9184 and its IRR-A constitutes a violation of R.A. No. 3019.

It must be stressed that gross inexcusable negligence varies from evident bad faith and manifest partiality. A Violation of Section 3 (e) of R.A. No. 3019 may be committed either by *dolo* or *culpa*.³ Evident bad faith and manifest partiality are acts committed through *dolo*, while gross inexcusable negligence is committed by means of *culpa*. Felonies committed by means of *dolo* or deceit are those performed with deliberate intent.⁴ Felonies committed by means of *culpa*, on the other hand, are those performed with imprudence, negligence, lack of foresight, or lack of skill.⁵ While the Court found accused-movants not guilty of evident bad faith and manifest partiality, the evidence presented by the Prosecution was sufficient to convict them of gross inexcusable negligence.

Gross inexcusable negligence requires more than simple negligence. The negligence committed must be both *gross* and *inexcusable*, characterized by the want of even slight care, wherein the accused was consciously indifferent as to the compliance with their duty as public

¹ Section 3, Rule 121 of the Revised Rules of Criminal Procedure.

² *Sabalдан, Jr. v. Ombudsman*, G.R. No. 238014, June 15, 2020.

³ *Uriarte v. People*, G.R. No. 169251, December 20, 2006.

⁴ Art. 3, Revised Penal Code.

⁵ *Ibid.*



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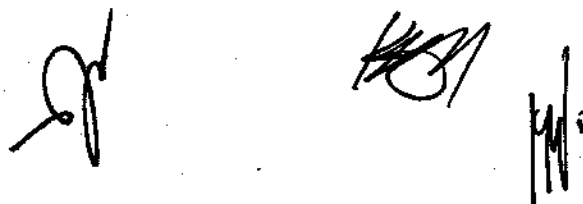
officers. ⁶ Here, the negotiated procurement suffered from a lot of procedural infirmities that the Court cannot simply close its eyes and excuse the accused-movants based on an alleged "honest belief" that they were complying with the law.

As found by this Court, accused-movants as BAC members failed to comply with the provisions of R.A. No. 9184 and its IRR-A on: 1) two failed biddings; 2) emergency procurement; and 3) negotiated procurement. The finding of conspiracy between and among accused-movants was based not only on their signatures in Resolution No. 01022007 dated January 23, 2007. It is their concerted action of declaring two failed biddings and emergency procurement and recommending negotiated procurement without complying with the provisions of R.A. No. 9184 and its IRR-A. The issue on the falsity of the notice of award has already been settled by this Court in the assailed decision. At any rate, the issuance of the notice of award prior to the BAC resolution recommending negotiated procurement is just one of the many reasons why the Court found accused-movants guilty of gross inexcusable negligence. To the mind of this Court, accused-movants' collective action of not complying with the procurement law was "gross" and "inexcusable" as contemplated by the law.

The Court cannot subscribe to accused-movants' claim that the benefit or advantage received by the IERSI was merely coincidental. As discussed in the assailed decision, there was no evidence presented that IERSI was an eligible bidder having been registered in the list of suppliers in good standing with the municipality. There was also no proof on how the BAC arrived at a successful negotiation with the IERSI. To reiterate, it is the burden of accused-movants to show evidence that the conditions and requisites of negotiated procurement were complied with. It is clear then that the kind of benefit or advantage received by the IERSI was "unwarranted" as defined and penalized by R.A. No. 3019.

In their belated attempt to escape culpability for the offense, accused-movants claimed that the irregularities were actually committed by former BAC Chairperson Salamida and former BAC Secretariat Chairperson Macapagao. They likewise asserted relying heavily on the advice of Salamida and Macapagao because of their non-familiarity with the procurement law. Despite that, accused-movants said that they exerted efforts to follow the mandate of R.A. No. 9184 and its IRR-A. Being such, their erroneous interpretation cannot be considered gross inexcusable negligence.

⁶*Sistoza v. Desierto*, G.R. No. 144784, September 3, 2002.



Accused-movants cannot, however, shift the blame to their deceased co-accused, and to a person who was not even charged as an accused in the information. While Salamida was also found guilty of gross inexcusable negligence, his criminal liability was extinguished by his death prior to the finality of this case. Macapagao cannot be held liable for the same act for lack of proper charge and sufficient evidence of his guilt.

Accused-movants' non-familiarity with or non-attendance in seminars and trainings on procurement law cannot likewise justify the procedural infirmities committed in the negotiated procurement. Contrary to such claim, accused Cotin has been serving for at least six years as BAC Vice Chairperson at the time of the negotiated procurement.⁷ Apart from this, accused-movants' claim that they merely relied on Salamida and Macapagao in the conduct of the negotiated procurement is unsubstantiated.

It is understood that those who accept a public office do so with burden, and are considered as accepting its burdens and obligations, together with its benefits. Accused-movants, as public officers, undertake to perform all the duties of their office, and are bound to follow the law. Thus, when the law exacts obedience, public officers must comply and not offer excuses.

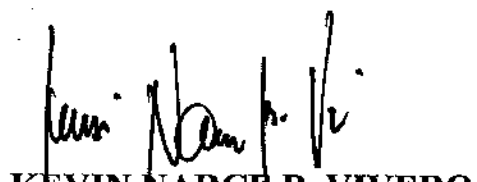
WHEREFORE, the Motion for Reconsideration dated July 2, 2022 filed by accused Esperanza G. Cotin, Ma. Nenita S. Ecleo, Felipe D. Padual and Danilo G. Colandog is **DENIED** for lack of merit. The Decision promulgated on June 22, 2022 is **AFFIRMED**.

SO ORDERED.


KARL B. MIRANDA
Associate Justice

WE CONCUR:


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson


KEVIN NARCEB B. VIVERO
Associate Justice

⁷p.9, TSN dated October 3, 2010.