

REPUBLIC OF THE PHILIPPINES
Sandiganbayan
QUEZON CITY

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-19-CRM-0173
Violation of Sec. 3(e) of
R.A. No. 3019

- versus -

BERNIE G. FONDEVILLA, ET AL.
Accused.

X ----- X

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-19-CRM-0174
Violation of Sec. 3(e) of
R.A. No. 3019

- versus -

PROCESO J. ALCALA, ET AL.
Accused.

PRESENT:

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

Promulgated:

OCT 12 2022 *MS*

X ----- X

RESOLUTION

For resolution are the following:

1. *Motion for Leave to File Demurer to Evidence*¹ of accused Fondevilla;
2. *Motion for Leave*² of accused Alcala;
3. *Motion for Leave to File Demurrer to Evidence*³ of accused Tejada, Salguero, Santos, Andal, Gesite, Sanidad, Monte, Carating, Manalus, Brampio, Orlanes and Sison;
4. *Earnest Motion for Leave to File a Demurrer to Evidence*⁴ of accused Baquiran and Villamor; and,
5. *Consolidated Comment/Opposition (Re: Motions for Leave to File Demurrer to Evidence)*⁵ of the prosecution.

¹ Dated September 19, 2022; filed on even date.

² Dated September 16, 2022; filed on September 19, 2022.

³ Dated September 13, 2022; filed on even date.

⁴ Dated September 19, 2022; filed through electronic mail on September 20, 2022.

⁵ Dated September 29, 2022; filed on even date.

[Handwritten signatures]

In his *Motion*, accused Bernie G. Fondevilla asks the Court to grant him leave to file demurrer to evidence in view of the insufficiency of the evidence of the prosecution. He claims:

1. To be held liable under the law, bad faith must be evident, partiality must be manifest, and negligence should be both gross and inexcusable. Mere bad faith, partiality, or negligence is not enough. The evidence of the prosecution failed to establish that he acted with manifest partiality, evident bad faith, or gross inexcusable negligence when he approved the conduct of bidding, entered into the contract for the procurement of 1,500 sets of STW/PISOS with Agricom, and for issuing the *Notice to Proceed*.⁶
2. The El Niño Phenomenon was a looming problem in the country when he entered into the contract with Agricom. He merely acted in the performance of his regular functions to address the problem.⁷
3. The prosecution failed to prove conspiracy with his co-accused in giving unwarranted benefits to Agricom.⁸

Accused Proceso J. Alcala, in his *Motion for Leave*, similarly argues that the prosecution failed to present sufficient evidence to prove the elements of violation of Section 3(e) of R.A. No. 3019 and his participation therein. *Viz:*

1. His approval of the request of accused Tejada to procure additional 375 units of STW/PISOS, is limited to the procurement. It did not extend to the adoption of the alternative mode of procurement of repeat order.⁹
2. The adoption of an alternative method of procurement is upon the recommendation of the BAC to the head of the procuring entity. He is not the head of the procuring entity, the Bureau of Soils and Water Management (BSWM). The Department of Agriculture is not the procuring entity.¹⁰
3. His signatures appearing in the Purchase Order, Disbursement Voucher and Checks are insufficient proof of evident bad faith and manifest partiality. No other

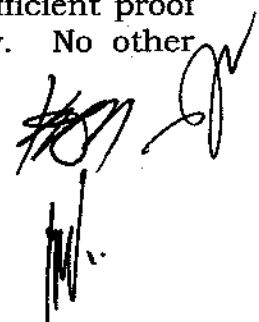
⁶ Motion for Leave to File Demurrer to Evidence of accused Fondevilla, p. 5.

⁷ Motion for Leave to File Demurrer to Evidence of accused Fondevilla, pp. 5-6.

⁸ Motion for Leave to File Demurrer to Evidence of accused Fondevilla, p. 6.

⁹ Motion for Leave to File Demurrer to Evidence of accused Alcala, p.4

¹⁰ Motion for Leave to File Demurrer to Evidence of accused Alcala, p.4.



evidence was presented by the prosecution to render him liable for a violation of R.A. No. 3019.¹¹

4. There is no evidence to prove any damage to the government.¹² There is no notice of disallowance from COA.¹³
5. Audit Observation Memorandum (AOM) No. 2011-12 pertains to the procurement of 1,500 units of STW/PISOS and not to the procurement of the additional 375 units. No AOM was issued for the latter.¹⁴
6. The prosecution failed to prove conspiracy. The prosecution failed to prove, with moral certainty, his participation in the alleged conspiracy.¹⁵

In their *Motion for Leave to File Demurrer to Evidence*, accused Tejada, Salguero, Santos, Andal, Gesite, Sanidad, Monte, Carating, Manalus, Brampio, Orlanes and Sison similarly contend that the evidence of the prosecution is not enough to warrant their conviction. They claim:

1. The witnesses presented by the prosecution are incompetent; they do not have personal knowledge of the transactions subject matter of the cases.¹⁶
2. In Criminal Case No. SB-19-CRM-0173, the prosecution failed to prove that they approved the procurement without complying with the provisions of R.A. No. 9184.¹⁷
 - a. The procedure for the conduct of emergency procurement was complied with. Section 53 of R.A. No. 9184 does not require a second failed bidding. There was danger to life, and there was an urgency to dispense with public bidding.¹⁸
 - b. There was no legal requirement to invite more than one bidder to participate.¹⁹
 - c. The prosecution failed to present evidence to prove any irregularity in the emergency procurement.²⁰

¹¹ Motion for Leave to File Demurrer to Evidence of accused Alcala, p.5.

¹² Motion for Leave to File Demurrer to Evidence of accused Alcala, p.6.

¹³ Motion for Leave to File Demurrer to Evidence of accused Alcala, p.6.

¹⁴ Motion for Leave to File Demurrer to Evidence of accused Alcala, p.6.

¹⁵ Motion for Leave to File Demurrer to Evidence of accused Alcala, p. 6.

¹⁶ Motion for Leave to File Demurrer to Evidence of accused Tejada, et. al., p. 2.

¹⁷ Motion for Leave to File Demurrer to Evidence of accused Tejada, et. al., p. 2.

¹⁸ Motion for Leave to File Demurrer to Evidence of accused Tejada, et. al., p. 2.

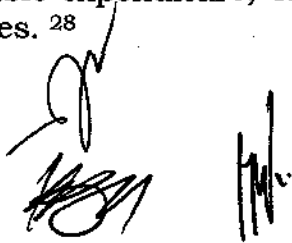
¹⁹ Motion for Leave to File Demurrer to Evidence of accused Tejada, et. al., p. 2.

²⁰ Motion for Leave to File Demurrer to Evidence of accused Tejada, et. al., p. 2.

- d. The payment in installment is sanctioned under the rules; the prosecution failed to prove that the bidding documents proscribed the same.²¹
 - e. The pumps and accessories were delivered at the agreed sites. The prosecution failed to show proof of non-delivery.²²
 - f. The accused performed all their legal and contractual obligations. They should not be held liable for any delay by third party providers who are not under their control and supervision.²³
3. In Criminal Case No. SB-19-CRM-0174, the prosecution failed to prove that the accused acted with manifest partiality, evident bad faith, or gross inexcusable negligence for the repeat order.²⁴
 4. The prosecution failed to prove conspiracy among the accused.²⁵

In their *Earnest Motion for Leave to File a Demurrer to Evidence*, accused Baquiran and Villamor contend:

1. The prosecution failed to prove beyond reasonable doubt the existence of conspiracy. The only basis in including them in the prosecution's theory of conspiracy are some letters/correspondence addressed to them.²⁶
2. The prosecution failed to present evidence to prove damage or undue injury to the government.²⁷
3. The absence of a *Notice of Suspension or Notice of Disallowance* after the issuance of an AOM simply means that the auditor found the explanation/action of the addressee satisfactory, and that the disbursement is not an irregular, unnecessary, excessive, extravagant, or unconscionable expenditure, or use of government funds and properties.²⁸



²¹ Motion for Leave to File Demurrer to Evidence of accused Tejada, et. al., p. 3.

²² Motion for Leave to File Demurrer to Evidence of accused Tejada, et. al., p. 3.

²³ Motion for Leave to File Demurrer to Evidence of accused Tejada, et. al., p. 3.

²⁴ Motion for Leave to File Demurrer to Evidence of accused Tejada, et. al., p. 2.

²⁵ Motion for Leave to File Demurrer to Evidence of accused Tejada, et. al., p. 2.

²⁶ Earnest Motion for Leave to File Demurrer to Evidence of accused Baquiran and Villamor, p. 2.

²⁷ Earnest Motion for Leave to File Demurrer to Evidence of accused Baquiran and Villamor, p. 2.

²⁸ Earnest Motion for Leave to File Demurrer to Evidence of accused Baquiran and Villamor, p. 2.

4. They have fully delivered 1,875 STW/PISOS to the regional offices. They should not be held responsible for any delay in the deliveries to the beneficiaries.²⁹
5. They have the right to rely in good faith on the legal warranties of the procuring entity. The alleged violations of R.A. No. 3019 pertain to the acts of the procuring entity, and not to what they (Baquiran and Villamor) should have done under the circumstances.³⁰

In its *Consolidated Comment/Opposition (Re: Motions for Leave to File Demurrer to Evidence)*, the prosecution argued:

1. The evidence of the prosecution established beyond reasonable doubt all the elements for violation of R.A. No. 3019 in SB-19-CRM-0173.
 - a. Accused Fondevilla, Tejada, Santos, Andal, Salguero, Gesite, Sanidad, Monte, Carating, Manalus, and Brampio are public officers discharging administrative and/or official functions. They were directly responsible in the procurement and delivery of 1,500 sets of STW/PISOS. Private individuals, accused Baquiran and Villamor, are charged in conspiracy with them.³¹
 - b. The accused acted with manifest partiality, evident bad faith or gross inexcusable negligence in the procurement, delivery, and payment of 1,500 sets of STW/PISOS from Agricon, as shown by the following:³²
 - i. The evidence shows that the resort to the alternative mode of negotiated procurement is not justified.³³ Accused Gesite, Sanidad, Monte, Carating and Manalus recommended, through BAC Resolution No. 079-10 dated March 25, 2010, the conduct of negotiated procurement for the 1,500 sets of STW/PISOS based on their claim that an emergency exists brought about by the El Niño. But such is without basis. The resort to negotiated procurement was brought about by the belated procurement and an error they committed during the opening of the bids, not by an emergency situation.³⁴
 - ii. At the time of the delivery of the subject STW/PISOS, the El Niño has weakened.³⁵
 - iii. There were two interested bidders during the public bidding, Agricon and Lyndelle. But after the failed

²⁹ Earnest Motion for Leave to File Demurrer to Evidence of accused Baquiran and Villamor, p. 4.

³⁰ Earnest Motion for Leave to File Demurrer to Evidence of accused Baquiran and Villamor, p. 4.

³¹ Consolidated Comment/Opposition, p.6.

³² Consolidated Comment/Opposition, p. 7.

³³ Consolidated Comment/Opposition, p. 9.

³⁴ Consolidated Comment/Opposition, pp. 8-12.

³⁵ Consolidated Comment/Opposition, p. 12.

bidding, only Agricom was invited to submit a bid proposal.³⁶

- iv. Since the resort to negotiated procurement was unjustified, the award of the contract to Agricom through BAC Resolution No. 092-10 dated April 8, 2010, and accused Fondevilla's issuance of the *Notice of Award* and *Notice to Proceed*, his certification in the *Obligation Request*, and his execution of a contract with Agricom are also unjustified.³⁷
- v. The disbursement vouchers and the checks signed by accused Tejada and Santos, allowing advance and installment payments to Agricom in the amount of P116,925,000.00 is contrary to paragraph C-4 of the Contract dated April 12, 2010, which provides for payment "upon full completion/delivery duly accepted by DA/BSWM."³⁸
- vi. Accused Andal signed the Inspection and Acceptance Report (IAR), but Mario Banga, municipal agriculturist of Catigbian, Bohol, testified that one of the units received by LGU Catigbian has incomplete accessories.³⁹
- vii. Accused Salguero signed the IAR showing that she accepted the delivery on similar dates, when there was no actual inspection considering that the STW/PISOS were delivered to different places.⁴⁰

c. The evidence of the prosecution established undue injury and unwarranted benefit as shown by the following:

- i. Public funds in the amount of P116,925,000.00 were disbursed despite the irregularities in the procurement;⁴¹
- ii. AOM No. 2011-09 found that BSWM did not fully evaluate the actual needs of the intended beneficiaries, resulting to undistributed, uninstalled or unutilized units;⁴²
- iii. The units were distributed to the beneficiaries several months, or even more than a year after the procurement, and after the El Niño phenomenon had ceased.⁴³

2. The evidence of the prosecution established beyond reasonable doubt all the elements for violation of R.A. No. 3019 in SB-19-CRM-0174, as shown by the following:

- a. Accused Alcala, Tejada, Santos, Sanidad, Monte, Carating, Orlanes and Sison are public officers discharging administrative and/or official functions at the DA or BSWM. They were directly responsible in the procurement, through repeat order, and payment of the additional 375

³⁶ Consolidated Comment/Opposition, p. 12.

³⁷ Consolidated Comment/Opposition, pp. 12-13.

³⁸ Consolidated Comment/Opposition, p. 13.

³⁹ Consolidated Comment/Opposition, p. 13-14.

⁴⁰ Consolidated Comment/Opposition, p. 13.

⁴¹ Consolidated Comment/Opposition, p. 16.

⁴² Consolidated Comment/Opposition, pp. 16-17.

⁴³ Consolidated Comment/Opposition, p. 17.

sets of STW/PISOS. Private individuals, accused Baquiran and Villamor, are charged in conspiracy with them.⁴⁴

- b. Under Section 51, Article XVI of R.A. No. 9184, procurement through repeat order may be resorted to whenever there arises a need to replenish goods under a contract previously awarded through competitive bidding. The accused knew or ought to know that the procurement of the initial 1500 sets of STW/PISOS was through negotiated procurement. The following acts show that the accused, in violating the foregoing provision, acted with manifest partiality, evident bad faith or gross inexcusable negligence:
 - i. Accused Tejada requested accused Alcala, and the latter approved, the procurement of the additional 375 sets of STW/PISOS through repeat order;⁴⁵
 - ii. Accused BAC members issued BAC Resolution No. 215-10 dated September 8, 2010 for the procurement, through repeat order, of the 375 sets of STW/PISOS;⁴⁶
 - iii. Accused Alcala issued Purchase Order No. 284-10, approved the disbursement voucher, and together with accused Santos, issued the check in favor of Agricom, and which the latter received.⁴⁷
- c. Regardless of whether Alcala was the HoPE or not, he was responsible for the disbursement of funds in the amount of P27,477,375.00.⁴⁸
- d. The government suffered undue injury in the amount of P27,477,375.00 and gave unwarranted benefits to Agricom because public funds were disbursed even when the procurement was done in violation of Section 51 of R.A. No. 9184.⁴⁹
- e. Further, COA, in its AOM, found that BSWM did not evaluate the actual needs of its beneficiaries; the procurement of the additional 375 sets of STW/PISOS resulted to wastage because some of the units remain undistributed, uninstalled or unutilized, resulting to undue injury to the government.⁵⁰

3. Conspiracy was established.

- a. Without the individual acts of the accused in the procurement, delivery, and payment of the initial 1,500 set of STW/PISOS [in SB-19-CRM-0173], and in the procurement and payment of the additional 375 sets of

⁴⁴ Consolidated Comment/Opposition, p. 18.

⁴⁵ Consolidated Comment/Opposition, pp. 19-20.

⁴⁶ Consolidated Comment/Opposition, pp. 19-20.

⁴⁷ Consolidated Comment/Opposition, pp. 20-21.

⁴⁸ Consolidated Comment/Opposition, p. 21.

⁴⁹ Consolidated Comment/Opposition, pp. 21-22.

⁵⁰ Consolidated Comment/Opposition, pp. 21-22.

STS/PISOS [in SB-19-CRM-0174], the crime of violation of Sec. 3(e) of R.A. No. 3019 would not have been committed.⁵¹

- b. Accused Baquiran and Villamor were directly involved in the subject procurement, and had benefited therefrom. Prosecution witness Engr. Blesita C. Tega of DA-Regional Field Office 2 testified that, as early as March 2, 2010, they have distributed to the beneficiaries the STW/PISOS allotted to their Region by the BSWM. The public bidding was conducted on March 15, 2010.⁵²
- c. The combined acts of the accused are so interrelated and so irregularly performed that any reasonable person will be impressed that their acts were concerted and performed for the common purpose, i.e, the unjustified and unlawful procurement of the subject 1,875 sets of STW/PISOS.⁵³

THE COURT'S RULING

After a careful study of the documentary and testimonial evidence of the prosecution, the Court finds that, if unrebutted, the same is *prima facie* sufficient to support a verdict of guilt against accused Fondevilla, Tejada, Santos, Andal, Salguero, Gesite, Sanidad, Monte, Carating, Manalus, Brampio, Baquiran and Villamor for violation of Sec. 3(e) of R.A. No. 3019, in SB-19-CRM-0173, and against accused Alcala, Tejada, Santos, Sanidad, Monte, Carating, Orlanes, Sison, Baquiran and Villamor for violation of Sec. 3(e) of R.A. No. 3019, in SB-19-CRM-0174.

The *Motions for Leave of Court to File Demurrer to Evidence* of accused Fondevilla, accused Alcala, accused Tejada, Salguero, Santos, Andal, Gesite, Sanidad, Monte, Carating, Manalus, Brampio, Orlanes, Sison, and accused Baquiran and Villamor, are **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, they shall waive their right to present evidence and are submitting these

⁵¹ Consolidated Comment/Opposition, p. 24.

⁵² Consolidated Comment/Opposition, p. 24.

⁵³ Consolidated Comment/Opposition, p. 24.

cases for judgment based on the evidence adduced by the prosecution.

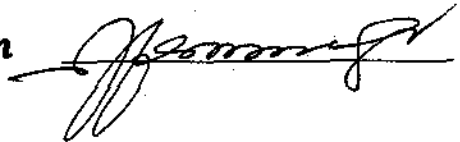
The accused are given a period of five (5) days from receipt of this *Resolution*, within which to file their *Manifestation* to inform this Court whether they will file a *Demurrer to Evidence*, without *Leave of Court*.

The initial presentation of defense evidence is set on October 19, 2022, and every Wednesday thereafter, all at 1:30 in the afternoon. The same will be deemed automatically cancelled as to the accused who files a *Demurrer to Evidence* without *Leave of Court*.

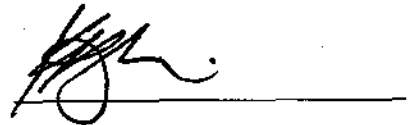
SO ORDERED.

APPROVED:

FERNANDEZ, S.J., J., Chairperson



MIRANDA, J.



VIVERO, J.

