

REPUBLIC OF THE PHILIPPINES
Sandiganbayan
QUEZON CITY

SIXTH DIVISION

MINUTES of the Proceedings held on November 22, 2022

PRESENT:

Hon. SARAH JANE T. FERNANDEZ	-	Chairperson
Hon. KARL B. MIRANDA	-	Associate Justice
Hon. KEVIN NARCE B. VIVERO	-	Associate Justice

The following resolution was adopted in the following cases:

Crim. Cases No. SB-19-CRM-0173 to 0174 – PEOPLE VS. BERNIE FONDEVILLA, ET AL.

This resolves the following:

1. *Motion for Reconsideration*¹ filed by accused Bernie Fondevilla, and,
2. *Comment/Opposition (To Accused Bernie G. Fondevilla's Motion for Reconsideration dated 27 October 2022)*² filed by the prosecution.

In his *Motion for Reconsideration*, accused Fondevilla asks this Court to take a second look at the evidence presented by the prosecution and consider that it does not need to go through the rigors of trial because the prosecution failed to adduce sufficient evidence to establish his guilt beyond reasonable doubt. In support of his *Motion*, accused Fondevilla submits the following arguments:

- a. The prosecution did not present any witness, who has personal knowledge of the specific acts, to prove that there was partiality, bad faith, or negligence on his part when he: i) approved the conduct of the public bidding, ii) entered into a contract with Agricom for the procurement of the 1,500 sets of STW/PISOS, and iii) issued the *Notice to Proceed* to Agricom, for the said procurement.³

Even if there was partiality, bad faith, or negligence, the same was not established to be manifest, evident, or grossly inexcusable.⁴

¹ Dated October 27, 2022 and filed on same date.

² Dated November 2, 2022 and filed on same date.

³ *Motion For Reconsideration*, pp. 4-5.

⁴ *Motion For Reconsideration*, p. 5.

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- b. It can be deduced from the prosecution's evidence that when the contract was executed, the *El Niño* phenomenon was a recognized looming problem throughout the country. PAGASA released advisories stating that the country would experience drought brought by *El Niño* and this was expected to last until June 2010. In approving the conduct of the public bidding, and in eventually entering into an agreement with Agricom, he merely acted in the performance of his regular functions as the Secretary of the Department of Agriculture to address the said problem.⁵
- c. While he approved BWSM-BAC's request for the conduct of public bidding, there was no proof that he participated in the proceedings before the BWSM-BAC. Further, the evidence do not support the prosecution's allegations of irregularities therein.⁶
- d. Invoking the *Arias doctrine*, as the Department Secretary, it would be impossible to require him to meticulously examine each and every one of the numerous documents, including bid documents, that he needed to approve; he had to rely to a reasonable extent on the good faith of his subordinates.⁷
- e. The prosecution failed to prove, beyond reasonable doubt, the existence of conspiracy.⁸

In its *Comment*, the prosecution posits that accused Fondevilla failed to raise new matters or issues that would warrant a reconsideration or reversal of the assailed *Resolution*.⁹ Further, it claims that it presented the requisite quantum of evidence to support a guilty verdict against all the accused. In support thereof, the prosecution argued:

- a. **The first element.** There is no dispute, and accused Fondevilla stipulated, that at the time material to the allegations in the Information, accused Fondevilla is a public officer discharging administrative or official functions, being then the Secretary of the Department of Agriculture.¹⁰

There is also no dispute that pursuant to his administrative or official functions, accused Fondevilla was

⁵ *Motion For Reconsideration*, p. 5.

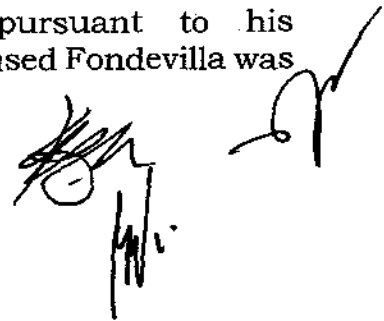
⁶ *Motion For Reconsideration*, p. 5.

⁷ *Motion For Reconsideration*, pp. 5-6.

⁸ *Motion For Reconsideration*, pp. 6-7.

⁹ *Comment/Opposition*, p. 3.

¹⁰ *Comment/Opposition*, p. 4.



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directly responsible for the procurement of the subject 1,500 sets of STW/PISOS.¹¹

b. **The second element.** The evidence presented by the prosecution sufficiently established that accused Fondevilla, in conspiracy with his co-accused, acted with manifest partiality, evident bad faith, or gross inexcusable negligence, in the procurement, payment, and delivery of the subject 1,500 sets of STW/PISOS, as demonstrated by the following:

i. In a letter dated February 15, 2010 (Exhibit B), accused Fondevilla approved the request of accused Tejada for BSWM-BAC to conduct a public bidding for the procurement of 1,500 sets of STW/PISOS. The BAC conducted a public bidding where 2 prospective bidders, Agricom and Lyndelle Agro-Industrial Sales, participated. However, on March 23, 2010, accused BAC members and accused Tejada, through BAC Resolution No. 076-10 (Exh. C), declared a failure of bidding due to an error committed by the BAC during the opening of bids. Thereafter, accused BAC members and accused Tejada, through BAC Resolution No. 079-10 dated March 25, 2010 (Exh. D) resolved to procure the subject 1,500 sets of STW/PISOS through negotiated procurement invoking the emergency brought about by *El Niño*.¹²

ii. The resort to negotiated procurement is without basis, and is unjustified.

As early as September 2009, the Philippine Atmospheric, Geophysical and Astronomical Services Administration (PAGASA) released monthly advisories for all concerned government agencies to implement measures to mitigate the adverse impacts of *El Niño*. Yet, the accused, with the approval of accused Fondevilla, decided to procure the subject 1,500 sets of STW/PISOS through public bidding, and only in mid-February 2010, when the country was already experiencing the effects of *El Niño*. Further, on March 23, 2010, eight (8) days after the opening of bids, accused BAC members and accused Tejada, through BAC Resolution No. 076-10 (Exh C) declared a failure of bidding due to an error committed by them during the opening of bids.¹³

By the time the subject STW/PISOS were procured through negotiated procurement in April 2010, and at the time of delivery by Agricom, *El Niño* has weakened. This shows that the resort to negotiated procurement was not caused by the emergency brought by the *El Niño*, but by the belated procurement resulting from accused's own actions.¹⁴

iii. The accused orchestrated the procurement process to ensure that the contract is awarded to Agricom. BAC

¹¹ Comment/Opposition, p. 4.

¹² Comment/Opposition, p. 5.

¹³ Comment/Opposition, pp. 5-6.

¹⁴ Comment/Opposition, p. 6.

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Resolution No. 076-10 shows that two (2) bidders, Agricom and Lyndelle, submitted their respective bid proposals. However, when the BAC resorted to negotiated procurement, they only invited Agricom, and they did not invite Lyndelle, to submit its bid proposal. ¹⁵

- iv. Since the negotiated procurement was without basis, the following acts of accused Fondevilla are also without legal basis: (a) issuing the *Notice of Award* (Exh. I) and *Notice to Proceed* (Exh. K); (b) certifying in the *Obligation Request* (Exh L) that the charges to appropriation or allotment are necessary, lawful, and under his direct supervision, and that the supporting documents are valid, proper and legal; and, (c) entering into a contract with Agricom (Exh J). ¹⁶
- v. The disbursement vouchers (Exhs. Z to Z-29) and checks (Exhs. AA to AA-29-a) signed by accused Tejada and accused Santos, and the official receipts issued by Agricom (Exhs. BB to BB-29) clearly show that accused Tejada and Santos approved, allowed, or caused the advance and installment payments to Agricom in the aggregate amount of P116,925,000.00, in violation of paragraph C-4 of the *Contract* dated April 12, 2010 (Exh. J) which expressly provides that the DA/BSWM shall pay Agricom only upon full delivery of the subject STW/PISOS. ¹⁷
- vi. Accused Andal signed the "Inspection" box in the *Inspection and Acceptance Reports* (IAR) (Exhs. M to M-30) and certified that the subject STW/PISOS were "inspected", verified, and OK as to quantity and specifications. However, prosecution witness Mario G. Banga testified that the units of STW/PISOS received by LGU Catigbian, Bohol had incomplete accessories. Accused Salguero signed the "Acceptance" box therein when no actual acceptance took place, because the subject STW/PISOS she accepted were delivered to different DA-Regional Offices, or the acceptance was made prior to inspection. ¹⁸

c. **The third element.** Public funds in the amount of P116,925,000.00 were disbursed and paid by the government to Agricom despite the irregularities in the procurement, delivery, and payment of the subject 1,500 STW/PISOS, resulting to undue injury to the government in the said amount, as shown by the following:

- i. COA issued several *Audit Observation Memoranda* finding, among others, that the BSWM did not fully evaluate the actual needs of its beneficiaries before embarking on the project, hence, the use of the subject STW/ISOS was not maximized, and the units were not fully distributed, resulting to overstocking caused by lack of monitoring, defeating the very purpose of the project, and resulting to wastage of government funds. ¹⁹

¹⁵ *Comment/Opposition*, p. 6.

¹⁶ *Comment/Opposition*, p. 6.

¹⁷ *Comment/Opposition*, pp. 6-7.

¹⁸ *Comment/Opposition*, p. 7.

¹⁹ *Comment/Opposition*, p. 8.



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- ii. The subject STW/PISOS were delivered to the beneficiaries after several months and up to more than a year from the procurement, and when the *El Niño* phenomenon had already ceased.²⁰

Accused's unjustified acts in the procurement, delivery and payment of the subject STW/PISOS led to the award of the contract in favor of Agricom, and its subsequent payment of the total amount of P116,925,000.00, giving Agricom unwarranted benefits, advantage, or preference.²¹

- d. The *Arias doctrine* does not apply to this case.

The *Arias doctrine* relates to the presence or absence of the elements of the crime; hence, it is evidentiary in nature and is a matter of defense, which may be passed upon after a full-blown trial on the merits, and not merely through a demurrer to evidence.²²

The *Arias doctrine* is not an absolute rule. Where there are circumstances that should have alerted heads of offices to exercise more diligence in the performance of their duties, they cannot escape liability by claiming that they relied in good faith on the submission of their subordinates.²³ Here, the following circumstances should have prodded accused Fondevilla to exercise a higher degree of diligence and vigilance in the discharge of his duties and to make further inquiries as to the validity of the subject transaction:

- i. Accused Fondevilla was directly involved in the subject transaction involving almost P120,000,000.00.
- ii. The subject STW/PISOS were procured and awarded through negotiated procurement, when the mode of procurement he approved was public bidding.
- iii. The accused BAC members declared a failure of bidding under Section 41(b) of RA 9184, a ground expressly reserved to the head of the agency, and not to the BAC.²⁴

- e. The accused acted in conspiracy. Without the individual acts of the accused in the procurement, delivery, and payment of the initial 1,500 sets of STW/PISOS, as above described, the crime would not have been committed. The combined acts of the accused are so interrelated and so irregularly performed that any

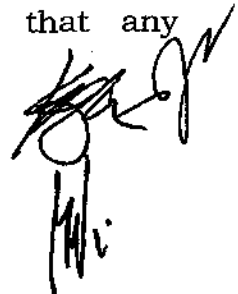
²⁰ Comment/Opposition, p. 8.

²¹ Comment/Opposition, p. 8.

²² Comment/Opposition, pp. 8-9.

²³ Comment/Opposition, p. 9.

²⁴ Comment/Opposition, pp. 9-10.



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reasonable person will be convinced that their acts were concerted and performed for a common purpose.²⁵

Accused Baquiran and Villamor's complicity is evident from their direct involvement therein, with Agricom delivering the subject STW/PISOS in March 2010, prior to the conduct of public bidding.²⁶

THE COURT'S RULING

After a careful review of the evidence presented by the prosecution, and considering the arguments raised by accused Fondevilla in his *Motion for Reconsideration* and the arguments of the prosecution in its *Comment*, the Court still finds that, if unrebutted, the same is *prima facie* sufficient to support the charge against the accused for *Violation of Section 3(e) of R.A. No. 3019*.

The Court finds no cogent reason to depart from its ruling in the assailed *Resolution*. The arguments and issues raised by the accused in his *Motion for Reconsideration* are evidentiary in nature, and are matters of defense, which may be best passed upon after a full-blown trial on the merits.

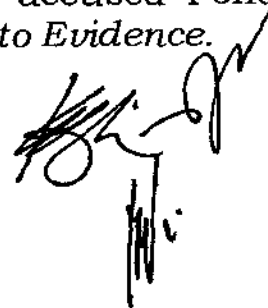
The instant *Motion for Reconsideration* is **DENIED**. This is without prejudice to the filing by the accused Fondevilla of a *Demurrer to Evidence* without prior leave of court, but subject to the legal consequences provided under Section 23, Rule 119 of the *Revised Rules of Criminal Procedure*, i.e.,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

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

The initial presentation of defense evidence set on January 18, 2023 is maintained. The scheduled hearing will be considered automatically cancelled as to accused Fondevilla upon receipt by the Court of his *Demurrer to Evidence*.

²⁵ *Comment/Opposition*, p. 11.

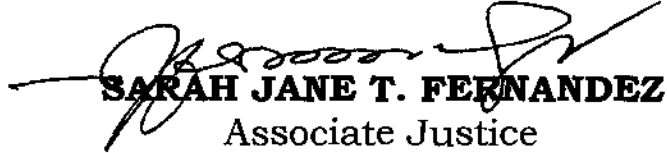
²⁶ *Comment/Opposition*, p. 11.



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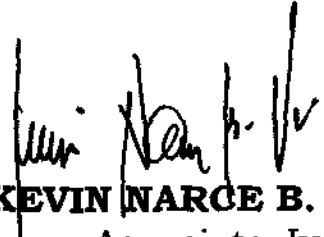
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SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

WE CONCUR:


KARLE B. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
Associate Justice