



Republic of the Philippines
Sandiganbayan
Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on 23 January 2023.

Present:

- Justice MA. THERESA DOLORES C. GOMEZ-ESTOESTA ----- Chairperson
Justice ZALDY V. TRESPESES ----- Member
Justice GEORGINA D. HIDALGO ----- Member

The following resolution was adopted:

Crim. Case No. SB-18-CRM-0340 - People vs. ISIDORO REAL, JR., et al.

This resolves the following:

1. Accused Ma. Perlice Socorro Julian and Oscar Parawan's "MOTION FOR RECONSIDERATION" dated 16 December 2022;¹
2. Prosecution's "COMMENT/OPPOSITION" dated and electronically filed on 22 December 2022.²

TRESPESES, J.

This resolves the Motion for Reconsideration filed by accused Ma. Perlice Socorro Julian and Oscar Parawan (collectively as "accused") and the Prosecution's Comment/Opposition thereto.

ACCUSED'S MOTION

Accused ask for this court to reconsider its Decision promulgated on 02 December 2022³ finding them guilty of violating Section 3(e) of R.A. No. 3019.

Accused argue that this court treated Masaganang Ani Para sa Magsasaka Foundation, Inc. ("MAMFI") as an ordinary supplier and not as a Non-Government Organization (NGO) within the spirit of the 1987 Constitution. Further, they claim that MAMFI is not a supplier which should

¹ Record, Vol. 4, pp. 368-376

² Id. pp. 377-381

³ Record, Vol. 4, pp. 291-346

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be subjected to competitive bidding when it participated in the implementation of the Farm Inputs and Farm Implements Program ("FIFIP") of the government.

To elaborate on this point, accused is quoted thus:⁴

The participation of NGOs in economic development for which government financial assistance must be extended is an entirely different situation from a government project that is opened [*sic*] for competitive bidding and for which anybody, including NGOs, may bid and comply with such bidding requirements. In the spirit of the 1987 Constitution and the Local Government Code as stated in COA Circular 96-003, NGOS [*sic*] must be encouraged and must be supported with financial assistance in the implementation of their projects. Since what the government provides is financial assistance, a competitive bidding is not necessary in the selection of NGOs to be extended such assistance therefore it is not even proper to fault herein accused for not "entertaining other NGOs". What is significant is that the NGO meets the criteria for such financial assistance.

MAMFI's low organizational asset, combined with using government funds as capital for the implementation of its project, is what accused assert to be the ideal set-up.

Accused also allege that this court presumed them to be guilty, instead of staying true to the Constitutional presumption of innocence. In their motion, they argue that:⁵

Firstly, the Hon. Court held that there was no proper accreditation of MAMFI conducted by herein accused stating, as follows: "*it is clear that the LGUs Certifications do not contain their attestations on the credibility and capability of the NGO/PO's officers and staff, as required by the Circular. Nor do they indicate that the projects implemented by the NGO/PO were similar to FIFIP. What the LGU certified were simply MAMFI's recognition, its clearance from obligations, and its previous dealings with the LGUs.*"

In accordance with the Constitutional presumption of innocence of an accused, however, it is the burden of the prosecution to prove that the documents from the LGUs presented by MAMFI did not meet the requirements of accreditation. In fact, even without such documents, it is the Prosecution's burden to prove that MAMFI has not implemented any similar government projects. Since the documents from the LGUs were submitted by State Auditor Remigio G. Suico to the Ombudsman, the Prosecution should, at the very least, have secured evidence from the LGUs that MAMFI has not implemented similar projects with them. What happened was that this Hon. Court, with all due respect, relied not on the strength of the Prosecution's evidence but on the alleged weakness of the defense.

⁴ Record, Vol. 4, pp. 368-376

⁵ *Id.*

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Since, along with the issue of public bidding, accreditation is determinative of the issue of the alleged provision by herein accused of unwarranted benefit in favor of MAMFI, the failure of the Prosecution to prove such non-compliance with the requirement of accreditation cannot result in a judgment of conviction even if the documents presented by said accused did not clearly indicate compliance with the requirement.

Accused reiterate that the report of State Auditor Guillermo Rojas Mateo states that the "(i)nterview with some farmers last September 2004 and December 2005 on a selective sampling basis indicated no adverse findings." Accused conclude that if there was a violation on proper monitoring, then it is the burden of the Prosecution to prove the same.

Further, accused insist that they are not covered by the requirement of public bidding and anchor their argument on the statement in the Special Audit Report that "not being government entities, they were not bound by the procurement reform law despite the fact that they were spending public funds."

On the application of R.A. No. 9184, accused claim that it does not extend to NGOs. The NGOs are not required to conduct public bidding in the implementation of government programs. Accused note that public bidding under said law follows a process which includes the establishment of a Bids and Awards Committee in the procuring entity, and since NGOs and POs do not have such, R.A. No. 9184 is inapplicable as to said entities.

Lastly, accused maintain that the letter request from Representative Real, Jr. to Oscar Parawan is sufficient qualification to implement the project, and that there is no requirement that the accrediting body must consider other NGOs.

THE PROSECUTION'S OPPOSITION

The prosecution posits that accused's motion for reconsideration fails to persuade.

Anent the role of the NGOs in promoting the welfare of the nation, the prosecution claims that it is only a state policy and not a self-executing law, which can give rise to demandable rights or obligation.

The prosecution reiterates that the Constitution and COA Circular 96-003 did not exempt NGOs like MAMFI from complying with the requirements and regulations provided by R.A. No. 9184, especially when disbursement of public funds is involved.

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It points out that the accused did not specify any reversible error in the assailed Decision but merely discussed matters that are off-tangent and cannot be reasonably expected to overturn the judgment against them.

Addressing the contention that this court presumed accused's guilt, the prosecution emphasizes that there was failure on the part of the defense to overcome the pieces of evidence which resulted in their conviction. They assert that they have presented evidence which clearly established the guilt of accused beyond reasonable doubt.

The prosecution argues that the selection of MAMFI to implement the project despite questionable accreditation (because it lacked documentary requirements) was tied with the charge of manifest partiality exhibited by accused.

Prosecution witness Guillermo A. Rojas Mateo testified that the documents submitted by MAMFI was not sufficient to qualify its accreditation, hence, establishing manifest partiality. It is the theory of the prosecution that after it has presented evidence on such matters, it is for the defense to dispute such and show compliance with the applicable rules and regulations.

As to the number of fertilizer bottles delivered, the prosecution claims that it is a positive duty of accused Real, Jr. and Parawan to ensure that the correct number was delivered to the beneficiaries.

Meanwhile, the statement of State Auditor Suico that no public bidding is required in this case, the same has no probative value since it is a question of law to be resolved by the court.

The prosecution insists that the letter of accused Real, Jr. identifying MAMFI as the preferred NGO to implement the project is precise proof of conspiracy.

OUR RULING

We **deny** the motion for reconsideration for lack of merit.

Section 10 of R.A. No. 9184 provides that "all procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act." This was discussed in the assailed decision, as follows:

As a general rule, all procurement done by government offices shall be through competitive bidding, with exceptions and corresponding requirements provided for in R.A. No. 9184.

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There is nothing to support the selection of MAMFI as the project implementor, aside from the Undated Letter of Representative Real, Jr. to Oscar Parawan's office asking it to extend support to MAMFI. Parawan admitted in his testimony that the letter was his sole basis for considering MAMFI.

In effect, what the MOA amounted to was a negotiated procurement. DA-RFU-IX directly negotiated a contract with MAMFI as the supplier.

Negotiated procurement can only be resorted to in the following cases specified by R.A. No. 9184, to wit:

SEC. 53. Negotiated Procurement. – Negotiated Procurement shall be allowed only in the following instances:

- (a) In cases of two failed biddings, as provided in Section 35 hereof;
- (b) In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities;
- (c) Take-over of contracts, which have been rescinded or terminated for causes provided for in the contract and existing laws, where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities;
- (d) Where the subject contract is adjacent or contiguous to an ongoing infrastructure project, as defined in the IRR: Provided, however, That the original contract is the result of a Competitive Bidding; the subject contract to be negotiated has similar or related scopes of work; it is within the contracting capacity of the contractor; the contractor uses the same prices or lower unit prices as in the original contract less mobilization cost; the amount involved does not exceed the amount of the ongoing project; and, the contractor has no negative slippage: Provided, further, That negotiations for the procurement are commenced before the expiry of the original contract. Whenever applicable, this principle shall also govern consultancy contracts, where the consultants have unique experience and expertise to deliver the required service; or,
- (e) Subject to the guidelines specified in the IRR, purchases of Goods from another agency of the Government, such as the Procurement Service of the DBM, which is tasked with a centralized procurement of commonly used Goods for the government in accordance with Letters of Instruction No. 755 and Executive Order No. 359, series of 1989.

Accused failed to present evidence that the procurement falls under any of the above situations which would allow for negotiated procurement. Instead, accused relied on COA Circular 96-003, claiming that it does not require public bidding but merely mandates the accreditation of an NGO which will implement a government project.

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Accused's reliance on the Circular is misplaced. COA Circular 96-003 provides for accounting and auditing guidelines on the release of fund assistance extended to accredited NGOs as fund conduits for implementation of government-sponsored projects but not on how an implementor is selected. Compliance with the Circular does not exempt an entity from complying with the procurement requirements under R.A. No. 9184. As stated in COA Circular 95-003, which was amended by COA Circular 96-003, the purpose of the Circular is:

This Circular is issued to ensure that the accountability relationships between the NGO/PO and the grantor Government Office (GO).

R.A. No. 9184 also provides for alternative methods of procurement, to wit:

SEC. 48. Alternative Methods. – Subject to the prior approval of the Head of the Procuring Entity or his duly authorized representative, and whenever justified by the conditions provided in this Act, the Procuring Entity may, in order to promote economy and efficiency, resort to any of the following alternative methods of Procurement:

- (a) Limited Source Bidding, otherwise known as Selective Bidding – a method of Procurement that involves direct invitation to bid by the Procuring Entity from a set of preselected suppliers or consultants with known experience and proven capability relative to the requirements of a particular contract;
- (b) Direct Contracting, otherwise known as Single Source Procurement – a method of Procurement that does not require elaborate Bidding Documents because the supplier is simply asked to submit a price quotation or a pro-forma invoice together with the conditions of sale, which offer may be accepted immediately or after some negotiations;
- (c) Repeat Order – a method of Procurement that involves a direct Procurement of Goods from the previous winning bidder, whenever there is a need to replenish Goods procured under a contract previously awarded through Competitive Bidding;
- (d) Shopping – a method of Procurement whereby the Procuring Entity simply requests for the submission of price quotations for readily available off-the-shelf Goods or ordinary/regular equipment to be procured directly from suppliers of known qualification; or
- (e) Negotiated Procurement – a method of Procurement that may be resorted to under the extraordinary circumstances provided for in Section 53 of this Act and other instances that shall be specified in the IRR, whereby the Procuring Entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant. In all instances, the Procuring Entity shall ensure that the most advantageous price for the Government is obtained.

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Accused failed to show that the procurement in this case falls under any of the above exemptions. As held in *Subic Bay Metropolitan Authority, et al., vs. Commission on Audit*:⁶

As public bidding is the general rule and alternative methods of procurement are mere exceptions, it was incumbent upon petitioners to prove the definite and particular alternative method of procurement they availed of under Section 48 of R.A. No. 9184.

Instead of explaining why they did not resort to the alternative modes of procurement, accused delved into the provisions of the 1987 Constitution. To justify the lack of public bidding, accused cite Section 23 of Article II of the 1987 Constitution which declares that the “State shall encourage non-governmental, community-based, sectoral organizations that promote the welfare of the nation.”

We rule that the above directive is not in contrast with the requirement of public bidding. The state can encourage the participation of non-government organizations in nation building while still complying with the law.

Further, accused quoted a statement made in the State Audit Report,⁷ as well as COA Circular 96-003, to bolster their position. Accused called attention of this court to Exhibit II of the Prosecution, an audit report, which states that “not being government entities, they were not bound by the procurement reform law despite the fact that they were spending public funds.”⁸ We disagree.

The statement in the Special Audit Report does not have probative value as it is a mere opinion on how the law should be interpreted. In the case at hand, R.A. No. 9184, as already discussed, does not exempt non-government organizations from the requirement of public bidding.

Contrary to accused’s assertion, it is not the NGO which is mandated to conduct the public bidding, but the government entity which will pursue procurement activities. The procuring entity is tasked to conduct competitive bidding to determine the most advantageous price for the government, and any NGO that wishes to implement the project should participate as bidders.

The crux of their argument is that COA Circular 96-003 exempted accused from complying with R.A. No. 3019. However, accused fail to point to any provision in the circular which explicitly exempts them from this

⁶ G.R. No. 230566, January 22, 2019

⁷ Exh. 42

⁸ Id.

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requirement.

Assuming *arguendo* that the circular did afford exemption from public bidding, accused still did not comply with its provisions.

Several requirements in the circular for accreditation were not submitted. Despite this, accused still granted the implementation of the project to MAMFI. This was discussed in the assailed Decision, to wit:⁹

MAMFI failed to submit several of the required documents for accreditation. As an NGO which has been in operation for less than three years, MAMFI is supposed to submit proof that it had previously implemented similar projects, and a certificate from the LGU concerned attesting to the credibility and capability of the officers and staff of the NGO/PO in lieu of financial statements.

In Exh. 11, the findings of the BAC addressed to accused Parawan listed down documents submitted by MAMFI for its accreditation. At a cursory glance, it would seem that the Circular was complied with, as all required documents were listed to have been submitted. However, item number seven (7) of the actual submissions by accused, namely, "Certification from the Office of Mayor, Province of Amadeo Cavite, certifying that MAMFI is a recognized Governmental Organization and is clear from any Obligations since January 2004," is not the Certificate from the LGU that the Circular requires.

Exhibit 15, which refers to the same certification above, is quoted thus:

This is to certify that MASAGANANG ANI PARA SA MAGSASAKA, INC., a duly recognized non-government organization with postal address at Blk 23, 1 Lt Rd 18 St. AFPOVAI Phase 2 Western Bicutan, Taguig is clear from any obligations and has previously dealt with our Municipality since January of 2004.

Meanwhile, Exhibit 16, the "Certification from the Office of the Mayor of the Municipality of Cavinti, Laguna re: implementation of project in the municipality of Cavinti by MAMFI," states:

This is to certify that MASAGANANG ANI PARA SA MAGSASAKA, INC., a duly recognized non-government organization with postal address at Blk 23, 1 Lt Rd 18 St. AFPOVAI Phase 2 Western Bicutan, Taguig is clear from any obligations and has previously dealt with our Municipality since February of 2004.

From reading the above, it is clear that the LGUs' Certifications do not contain their attestations on the credibility and capability of the NGO/PO's officers and staff, as required by the Circular. Nor do they

⁹ Record, Vol. 4, pp. 291-346

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indicate that the projects implemented by the NGO/PO were similar to FIFIP. What the LGUs certified were simply MAMFI's recognition, its clearance from obligations, and its previous dealings with the LGUs.

A reading of the MOA between accused Real, Jr., MAMFI, and DA-RFU-IX, represented by accused Parawan leads to the conclusion that, again, COA Circular 96-003 was not complied with. There is no statement on the standards for project implementation, just a general referral to an "Annex A" as approved project documents. However, this "Annex A" is neither attached to the MOA, nor submitted in evidence. Taken by itself, the MOA only referred to the schedule of payment, as well as reporting and monitoring guidelines.

This court finds illogical the defense's argument that having a low organizational asset and using government funds as capital for the implementation of the project is the ideal set-up. COA Circular 96-003 requires the submission of its financial statements to ensure that an entity "has a stable financial condition so that the fund assistance shall not be its sole source of funds."¹⁰

While MAMFI was exempted from submitting financial statements, it was still required to submit proof that it had previously implemented similar projects and other certifications from the LGU in lieu of financial statements. It is safe to conclude that the reason for this is the same as above.

The disparity between MAMFI's assets – ₱159,995.50 – and the value of the project – ₱5 Million – is so glaring that it is palpably obvious that the fund assistance will be its sole source of funds to implement the project, contrary to the circular.

In any case, without strict compliance with COA Circular 96-003, MAMFI could not have been accredited, and hence, the financial assistance could not be extended to it.

Manifest partiality on the part of accused was clearly proven by the prosecution in this case when they accredited MAMFI even without the proper documentary requirements and solely based on the letter of Representative Real, Jr.

Accused claim that they were not afforded the constitutional presumption of innocence. In *People v. Lumikid*,¹¹ the Supreme Court held that:

¹⁰ COA Circular 96-003, 3.3.2

¹¹ G.R. No. 242695, June 23, 2020

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While an accused stands before the court burdened by a previous preliminary investigation finding that there is probable cause to believe that he committed the crime charged, the judicial determination of his guilt or innocence necessarily starts with the recognition of his constitutional right to be presumed innocent of the charge he faces. This principle, a right of the accused, is enshrined no less in our Constitution. It embodies as well a duty on the part of the court to ascertain that no person is made to answer for a crime unless his guilt is proven beyond reasonable doubt. Its primary consequence in our criminal justice system is the basic rule that the prosecution carries the burden of overcoming the presumption through proof of guilt of the accused beyond reasonable doubt. Thus, a criminal case rises or falls on the strength of the prosecution's case, not on the weakness of the defense. **Once the prosecution overcomes the presumption of innocence by proving the elements of the crime and the identity of the accused as perpetrator beyond reasonable doubt, the burden of evidence then shifts to the defense which shall then test the strength of the prosecution's case** either by showing that no crime was, in fact, committed or that the accused could not have committed or did not commit the imputed crime or, at the very least, by casting doubt on the guilt of the accused. (Emphasis supplied.)

Accused argue that it is the burden of the prosecution to prove that the documents from the LGUs presented by MAMFI did not meet the requirements of accreditation, and that MAMFI has not implemented any similar government projects. Accused contend that the failure of the prosecution to prove non-compliance with the requirement of accreditation cannot result in a judgment of conviction even if the documents presented did not clearly indicate compliance with the requirement.

The argument of accused highlights what they have not addressed all along, which COA Circular 96-003 clearly requires:

For NGO/PO which has been in operation for less than 3 years, proof that it had previously implemented similar projects and a certificate from LGU concerned attesting to the credibility and capability of the officers and staff of the NGO/PO shall be submitted in lieu of financial statements.¹²

To emphasize, the act which gave rise to the criminal liability of accused in this case is their signing of the checks and disbursement vouchers, certifying the completeness of the documents submitted. As discussed in the decision:

Accused Parawan and Julian have the joint purpose of giving unwarranted benefits to MAMFI. They both performed acts and omissions to achieve this goal.

¹² COA Circular 96-003, 3.3.3

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Accused Parawan performed overt acts by entering into a MOA with MAMFI based upon the request of accused Real, Jr., without public bidding, and without complying with COA Circular 96-003, and subsequently signing the checks issued to MAMFI.

Accused Julian, on the other hand, signed the disbursement vouchers. By doing so, she certified that the supporting documents are complete and proper and allowed for funds to be released in favor of MAMFI.

Parawan's signature in the Memorandum of Agreement, Disbursement Vouchers, and Checks, and Julian's signature in the Disbursement Vouchers are acts which required their discretion.

The documents MAMFI submitted were not in faithful compliance with the COA Circular. Given that the project involved the expenditure of public funds, accused should have been more circumspect before approving the release of the funds.

The prosecution was able to prove that MAMFI did not submit the required documents under the circular but was still accredited and received public funds to implement the project. This established manifest partiality on the part of accused is sufficient to merit a conviction. As such, the burden shifted to accused to present evidence to the contrary. Unfortunately, the defense failed to do so.

Accused contend that "the prosecution proved that the first step in the accreditation process is the letter from the proponent identifying the preferred NGO/PO." They based this claim on the judicial affidavit of witness Rojas Mateo.

There is no legal basis for this theory as R.A. No. 9184 requires competitive bidding in the procurement of the goods. This court agrees with the prosecution when it stated that "a pronouncement in the Audit Report and of a witness cannot prevail over the competitive bidding requirement under RA 9184 when spending public funds."

What is clear and remains un rebutted is that accused in this case failed to comply with both R.A. No. 9184 and COA Circular 96-003, which, it claimed supposedly exempted MAMFI and the public officers from public bidding.

This court remains unconvinced by accused's contentions in its motion given that all arguments and issues raised therein have already been considered and discussed in the assailed Decision. We do not see any reason to modify our Decision dated 02 December 2022.

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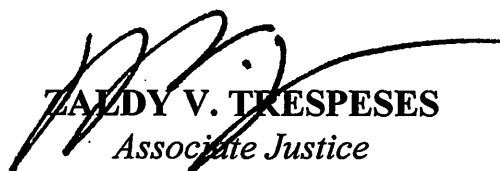
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WHEREFORE, premises considered, the Motion for Reconsideration filed by accused Ma. Perlice Socorro Julian and Oscar Parawan dated 16 December 2022 is **DENIED** for lack of merit.

SO ORDERED.

Quezon City, Philippines


ZALDY V. TRESPESES
Associate Justice

WE CONCUR:


MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Associate Justice, Chairperson


GEORGINA D. HIDALGO
Associate Justice

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