



Republic of the Philippines
SANDIGANBAYAN
Quezon City

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,

Plaintiff,

SB-17-CRM-1495

For: Violation of Section 3 (e)
of R.A. No. 3019, as
amended.


-versus-

Present:

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

**THEODORE B. MARRERO,
NENITA D. LIZARDO, HELEN K.
MACLI-ING, PAULO P.
PAGTEILAN, LILY ROSE T.
KOLLIN, FLORENCE R. GUT-
OMEN, EDWARD B. LIKIGAN,
SOLEDAD THERESA F.
WANAWAN, JEROME M.
FALINGAO, ABDON A.
IMINGAN, ABELARD T.
PACHINGEL, RONALD C.
KIMAKIM.**

Promulgated:

JUN 13, 2023 

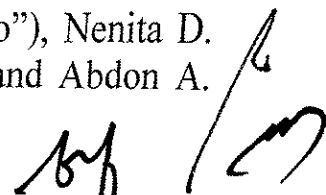
Accused.

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RESOLUTION

Moreno, J.:

For resolution are the following: (1) *Motion for Reconsideration*
filed by accused-movants Theodore B. Marrero ("Marrero"), Nenita D.
Lizardo ("Lizardo"), Helen K. Macli-ing ("Macli-ing"), and Abdon A.



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Imingan (“Imingan”) received on April 11, 2023;¹ (2) *Motion for Reconsideration* filed by accused-movants Paulo P. Pagteilan (“Pagteilan”), Lily Rose T. Kollin (“Kollin”), Florence R. Gut-omen (“Gut-omen”), Edward B. Likigan (“Likigan”), Soledad Theresa F. Wanawan (“Wanawan”), and Jerome M. Falingao (“Falingao”) received on April 10, 2023;² (3) *Motion for Reconsideration* filed by accused-movant Ronald C. Kimakim (“Kimakim”) filed on April 11, 2023;³ and (4) the prosecution’s *Consolidated Opposition* received on April 19, 2023.⁴

Motion for Reconsideration
filed by accused-movants Marrero, Lizardo, Macli-ing, and Imingan

Accused-movants Marrero, Lizardo, Macli-ing, and Imingan move for reconsideration of the Court’s *Decision* dated March 24, 2023,⁵ based on the following grounds: *first*, that the aforementioned accused-movants are not charged with the violation of Republic Act No. 9184 (“R.A. No. 9184”) otherwise known as the Government Procurement Reform Act and its Implementing Rules and Regulations Part A (“IRR-A”); *second*, that contrary to the findings of the Court, there was no deviation from the purpose of procurement; *third*, there is neither loss nor injury to the government as the item actually purchased and delivered was an ambulance, complete with accessories and equipment; *fourth*, that there was no unwarranted benefit, preference, and advantage given to accused-movant Kimakim; and *lastly*, that there was no conspiracy to commit a criminal offense.

Under the first ground, accused-movants Marrero, Lizardo, Macli-ing, and Imingan, citing the cases of *Richard T. Martel, et al. v. People*⁶ and *Benjamin P. Bautista, Jr. v. People*,⁷ alleged that they should be acquitted because they were not charged with violation of R.A. No. 9184 and that their acts did not constitute manifest partiality or evident bad faith and did not cause loss or injury to the government nor gave unwarranted benefit, advantage, or preference to any party. According to the accused-movants, the *Information* charged them with allegedly giving unwarranted benefit, advantage, or preference to accused-movant Kimakim, who was not proven to be the owner, shareholder, agent, or holder of any interest whatsoever in Mitsubishi Motors Phils. Corp., the corporation which owned the brand Mitsubishi L-300 Versa Van.

Anent the second ground, the accused-movants argue that the evidence adduced by the prosecution proved that the original intent was to

¹ Record, Vol. V, pp. 615-641.

² Record, Vol. V, pp. 643-667.

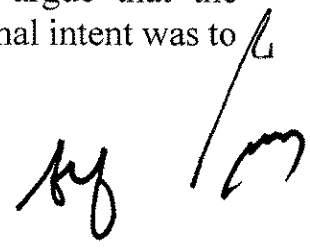
³ Record, Vol. V, pp. 668-684.

⁴ Record, Vol. V, pp. 724-759.

⁵ Record, Vol. V, pp. 542-605.

⁶ G.R. No. 224720-23, February 02, 2021.

⁷ G.R. No. 224765-68, February 02, 2021.



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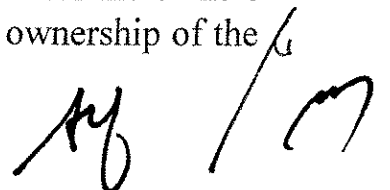
purchase an ambulance and not a service vehicle. While several documents presented by the prosecution showed that the subject vehicle was for a service vehicle only, the prosecution also adduced and offered in evidence three (3) other documents during the procurement process which indicated that the intent was to purchase an ambulance vehicle (*i.e.*, Minutes of the Pre-Bid Conference marked as *Exhibit "D-34"*, Minutes of the Regular Meeting and Opening of Bids marked as *Exhibits "D-45" to D-45-a"*, and Property Issue Slip dated March 28, 2006, marked as *Exhibit "D-66"*). According to accused-movants, this was also the conclusion reached by the Ombudsman in OMB-C-11-0107-C dated November 4, 2014, which was the basis of the instant case.

In addition, the accused-movants contend that the Supplemental Bid Notice corrected the earlier Notice to Bid and clarified that the subject of the bid was a van with ambulance equipment and accessories. According to them, while there may have been a violation of the provision of the R.A. No. 9184 and its IRR-A when the necessary technical specifications were not completed in some documents, such violation does not prove that the original intent was to purchase only a service vehicle.

Accused-movants likewise allege that the revision was intended to correct a mistake and not to conceal and repress the alleged irregularities. According to them, since there is such undeniable evidence of an original intent to purchase an ambulance vehicle, the non-inclusion of the phrase "ambulance equipment and accessories" in the other purchase documents was a mistake or an error that is not actionable because of lack of malice.

In support of the third ground, the accused-movants argue that no less than the prosecution witnesses testified that what was purchased and delivered was an ambulance vehicle with equipment and accessories and not just the subject vehicle purchased by Kimakim from Motorplaza, Inc. According to the accused-movants, the balance of Php87,700.91, representing the difference between what was paid for by the government and the cost of the plain van purchased from Motorplaza, Inc., actually pertains to the cost of the ambulance equipment and accessories. Moreover, the Property Issue Slip and the registration of the subject vehicle with the Land Transportation Office belies the impression that the transaction involved a second-hand sale considering that the passing of the subject vehicle to accused-movant Kimakim was solely to re-purpose the same into an ambulance.

Under the fourth ground, accused-movants contend that accused-movant Kimakim cannot be given unwarranted benefit, advantage, or preference because he did not have any connection at all with the owners of the Mitsubishi L-300 Versa Van. With respect to the ownership of the



specified brand, accused-movant Kimakim was a complete stranger and thus he stood on the same footing as all other car dealers.

As for the final ground, accused-movants argue that they did not act with evident bad faith or manifest partiality because the alleged loss is imaginary or non-existent considering that the difference between the price of the subject vehicle purchased from Motorplaza, Inc., and the amount paid by the Provincial Government actually covered the painting and the ambulance equipment and accessories. Relying on the testimony of accused-movant Lizardo, they allege the specification of the brand was valid and legitimate.

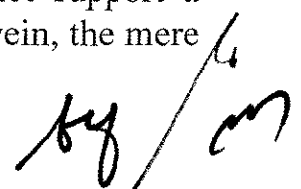
As for the non-completion of the technical specification of the subject procurement and the non-inclusion of the phrase “ambulance equipment and accessories,” accused-movants claim that it was the result of the decision of the BAC to conduct a one-time purchase, with the supplier purchasing a brand new van, reconfiguring its seating arrangements, painting and installing the necessary equipment and accessories.

Lastly, the accused-movants assert that there was no criminal conspiracy among the accused since their individual acts are regular and legitimate performances of their respective duties. The fact that the subject transaction passed the audit by the COA only affirms that there was no actual loss to the government nor unwarranted benefit, advantage, or preference granted to accused-movant Kimakim.

**Motion for Reconsideration of Accused Pagteilan,
Kollin, Gut-omen, Likigan, Wanawan, and Falingao**

On April 10, 2023, the Court received the *Motion for Reconsideration* of accused-movants Pagteilan, Kollin, Gut-omen, Likigan, Wanawan, and Falingao filed through electronic filing. In their motion, the accused-movants move for reconsideration of the Court’s *Decision* based on the following grounds: (a) the prosecution has not proven all the elements of the crime which they were charged with and convicted for; and (b) the prosecution has not proven their guilt beyond reasonable doubt.

In support of the said grounds, the accused-movants claim that the prosecution has failed to prove its theory and that it failed to overcome the presumption of innocence. For accused-movant Falingao, he argues that his act of affixing his signature to the Post Qualification Evaluation Summary Report and his membership in the TWG do not support a conviction for the crime he was charged with. In the same vein, the mere

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act of accused-movant Wanawan in signing the Acceptance and Inspection Report does not make her liable.

Anent the elements of the crime as charged, the accused-movant argues that the second and third elements of the crime were not duly proved by the prosecution. According to them, the original intent, as understood by the BAC which they are all members of, was to purchase an ambulance. Unfortunately, at the time material to the case, the vehicle must be converted into an ambulance. As members of the BAC, the accused-movants allege that they complied with their duties without any ill-motive. Furthermore, the reference made to a particular vehicle was not intended to violate any law but to ensure the quality of the vehicle to be purchased and used as an ambulance.

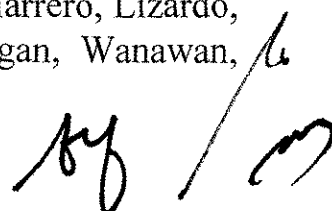
Motion for Reconsideration of Accused Kimakim

Accused-movant Kimakim filed his Motion for Reconsideration on April 11, 2023, based on the following grounds: (a) not all the essential elements of Section 3(e) of R.A. No. 3019, amended are present insofar as he is concerned; (b) the prosecution failed to prove with moral certainty the alleged conspiracy of accused-movant Kimakim with the other accused; and (c) he has no hand in the procedures observed in the procurement of the vehicle.

For the first and second grounds, accused-movant Kimakim alleges that he is neither guilty of manifest partiality, evident bad faith, nor of gross negligence and that he enjoys the presumption of good faith and innocence. Based on the NBI Report and the Resolution of the Ombudsman, he is "out-of-the-loop" at the very start of the purchase of the subject vehicle. He argues that he never had a hand in the purchase of the vehicle from Motorplaza, Inc. The act of accused-movant Macli-ing in purchasing the subject vehicle even before accused-movant Kimakim was unwittingly used as a tool in giving a semblance of lawfulness to the perpetrated acts was already a *fait accompli*. According to him, his supposed participation was not substantiated beyond reasonable doubt. Except for his signature appearing in some of the bid documents hastily prepared by his co-accused, the records lack any facts, circumstances, or events indicative of conspiracy among them.

Consolidated Comment/Opposition of the Plaintiff

On April 19, 2023, the Court received through electronic mail the *Consolidated Opposition* of the prosecution, praying for the denial of the *Motions for Reconsideration* filed by accused-movants Marrero, Lizardo, Macli-ing, Imingan, Pagteilan, Kollin, Gut-omen, Likigan, Wanawan,



Falingao, and Kimakim. According to the prosecution, all the essential elements of Section 3(e) of R.A. No. 3019, were present in the instant case.

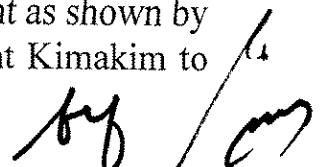
For the first element, the prosecution argues that it is undisputed considering that the parties entered into stipulation during the pre-trial that the accused-movants Marrero, Lizardo, Macli-ing, Imingan, Pagteilan, Kollin, Gut-Omen, Likigan, Wanawan, and Falingao were public officials and employees of the Provincial Government of Mountain Province at the time material to the case. On the other hand, accused-movant Kimakim can be convicted as a private individual if he acted in conspiracy with the public officers.

For the second element, the prosecution agrees with the Court that the modalities of manifest partiality and evident bad faith are present as proved by the apparent irregularities and illegalities accompanying the procurement process in circumvention of R.A. No. 9184 and its IRR-A. Manifest partiality was present when the accused-movants awarded the contract to accused-movant Kimakim despite the presence of irregularities. On the other hand, evident bad faith was present when the accused-movants actively participated in the revision of the procurement documents.

The reference made by the accused-movants to the specific brand and model of Mitsubishi L-300 Versa Van in the procurement documents violated Section 18 of R.A. No. 9184. According to the prosecution, Section 54 of COA Circular No. 92-386, s. 1992, on which the accused anchor their good faith defense, cannot prevail over the express provision of the law.

As for the original intent to purchase, the prosecution argues that the original set of procurement documents did not include the phrase "ambulance equipment and accessories" or their description and technical specification, hence what was intended to be purchased and actually procured was only a Mitsubishi L-300 Versa Van. This fact is further demonstrated by the LTO database. After realizing the discrepancy between the item described in the original set of procurement documents and the items actually delivered, the accused-movants immediately caused the revision of the procurement documents instead of putting a halt to the procurement process.

The prosecution likewise contends that the third element of the crime as charged is present because the accused-movants caused undue injury to the government in the aggregate amount of Php 87,700.91 by giving unwarranted benefits and advantages to accused-movant Kimakim. *The first punishable act under the second element is apparent as shown by the difference between the amount paid by accused-movant Kimakim to*

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Motorplaza, Inc. and the amount he received from the Provincial Government for the same vehicle. According to the prosecution, the amount of Php 87,700.91 cannot be considered as the cost of the ambulance equipment and accessories considering that accused-movant Kimakim admitted that at the time he made his bid, he was only bidding for the subject vehicle. Moreover, except for the revised Acceptance and Inspection Report, there is no record or document at all showing that the ambulance equipment and accessories came from accused-movant Kimakim's company, Ronhil Trading.

In addition, the prosecution avers that the accused-movants conspired with one another in violating Section 3(e) of R.A. No. 3019, as amended. According to the prosecution, each of the accused-movant committed specific overt acts indicating a unity of design and collective effort to achieve a common criminal objective.

RULING OF THE COURT

After due consideration, the Court denies the separate motions for reconsideration filed by accused Marrero, Lizardo, Macli-ing, Imingan, Pagteilan, Kollin, Gut-Omen, Likigan, Wanawan, Falingao, and Kimakim.

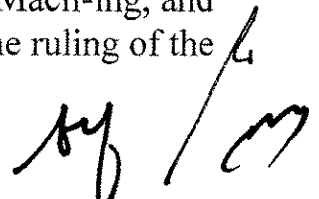
Stripped to the bare essential, accused-movants contend that: (a) the prosecution has not proven all the elements of the crime of violation of Section 3(e) of R.A. No. 3019, as amended; and (b) the prosecution failed to prove with moral certainty the alleged conspiracy among the accused-movants. The Court is not persuaded by the respective motions of the accused-movants.

The aforementioned grounds relied upon are not novel. The lengthy discussions in the separate motions are essentially the same points raised during the trial which have been all thoroughly and assiduously passed upon by the Court in the *Decision* dated March 24, 2023.

Notwithstanding, the Court deems it necessary to discuss the following matters raised in the present motions.

I. The reliance made by accused-movants on *Richard T. Martel, et al. v. People* and *Benjamin P. Bautista, Jr. v. People* is erroneous.

In their motion, accused-movants Marrero, Lizardo, Macli-ing, and Imingan allege that the Court should have been bound by the ruling of the



Supreme Court in *Richard T. Martel, et al. v. People*⁸ and *Benjamin P. Bautista, Jr. v. People*.⁹ The accused-movants are mistaken.

Stare decisis et non quieta movere means "to adhere to precedents, and not to unsettle things which are established."¹⁰ Under the doctrine, when the Supreme Court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all future cases, where facts are substantially the same.¹¹

In the above-cited cases, the Supreme Court acquitted the accused therein for the failure of the prosecution to prove their guilt beyond reasonable doubt. In arriving at such a decision, the Supreme Court ruled that the violation of the procurement laws does not *ipso facto* give rise to a violation of R.A. No. 3019, as amended. Citing the earlier cases of *Sabalda, Jr. v. Ombudsman*¹² and *Sistoza v. Desierto*,¹³ the Supreme Court held that it is through the lens of the anti-graft and corruption law, and not the procurement laws, that the guilt of the accused for violation of Section 3(e) of R.A. No. 3019 must be determined. In other words, in order to successfully prosecute the accused under Section 3(e) of R.A. No. 3019 based on a violation of procurement laws, the prosecution cannot solely rely on the fact that a violation of procurement laws has been committed. The prosecution must also prove beyond reasonable doubt that the violation of the procurement laws caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage, or preference, and the accused acted with evident bad faith, manifest partiality, or gross inexcusable negligence.

Guided by the said jurisprudential requirements, the Supreme Court ruled that the prosecution therein miserably failed to prove beyond reasonable doubt that the petitioners acted with evident bad faith, manifest partiality, or gross inexcusable negligence in relation to the procurements. According to the Supreme Court, the evidence on record was insufficient to prove beyond reasonable doubt that there was evident bad faith on the part of petitioners when they directly contracted with the car dealers. The evidence showed that petitioners therein honestly believed that their resort to direct purchase was proper. Hence, it cannot be said that petitioners were spurred by any ill or corrupt motive in resorting to the direct purchase of the subject vehicles.

Likewise, there was no sufficient evidence to prove beyond reasonable doubt that petitioners therein acted with manifest partiality in

⁸ G.R. No. 224720-23, February 02, 2021.

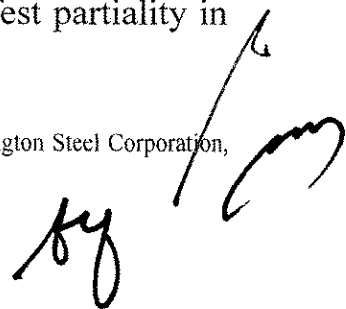
⁹ G.R. No. 224765-68, February 02, 2021.

¹⁰ *Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation*, G.R. No. 159422, March 28, 2008, citing *Black's Law Dictionary*, Fifth Edition.
Id., citing *Horne v. Moody*, 146 S.W.2d 505 (1940).

¹¹ *Id.*, citing *Horne v. Moody*, 146 S.W.2d 505 (1940).

¹² G.R. No. 238014, June 15, 2020.

¹³ G.R. No. 144784, September 3, 2002.



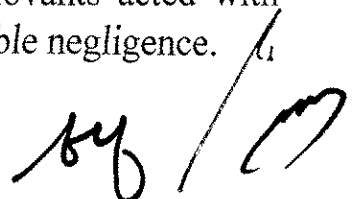
relation to the subject procurements when they specified the brands of the subject vehicles in the Purchase Requests. Moreover, there was no sufficient evidence to prove beyond reasonable doubt that the petitioners acted with gross inexcusable negligence. The Supreme Court found that petitioners' act of pursuing the subject procurements was motivated not by any corrupt intent to favor one car dealer over another or to unduly receive any pecuniary benefit but was based simply on their honest belief that direct procurement was legally permissible.

Lastly, the Supreme Court found that the procurement documents in the above-cited cases were transmitted to the Provincial Auditor of the COA prior to the procurement precisely to give COA a chance to say if such procurement was allowed. It was only when the COA did not give any adverse comment that the purchase proceeded. These circumstances, according to the Supreme Court, strengthen the conclusion that the petitioners therein were not animated by any corrupt motive.

It is clear therefore that accused-movants' reliance on the cases of *Martel* and *Bautista* is misplaced. To note, the instant case has a different set of factual antecedents. While the case at bar revolves around the irregularities committed during the public bidding, the cases of *Martel* and *Bautista* involve a direct purchase. Moreover, in the aforementioned cases, the Supreme Court found that the accused therein all acted in good faith which was further evidenced by their act of proceeding with the questioned purchase only upon the allowance of the COA. The same cannot be said in the instant case where the accused-movants never consulted the COA before proceeding with the seemingly irregular procurement procedure.

While the Court agrees that good faith is generally presumed, the Court found that the collective action of the accused-movants in continuing with the procurement procedure despite the apparent irregularities and thereafter revising the procurement documents are all badges of bad faith that were duly proven by the prosecution.

Furthermore, contrary to the assertion made by accused-movants, the Court found herein accused-movants guilty because the prosecution was able to establish beyond reasonable doubt all the elements of violation of Section 3(e) of R.A. No. 3019, as amended. While the Court relied upon the irregularities committed in violation of R.A. No. 9184, the assailed *Decision* was made based on the findings that the prosecution was able to prove beyond reasonable doubt that: (1) the violation of the procurement law by the accused-movants caused undue injury to any party, including the government, and gave unwarranted benefits, advantage, or preference, to accused-movant Kimakim; and (2) the accused-movants acted with evident bad faith, manifest partiality, or gross inexcusable negligence.

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II. The Court maintains its findings that the accused-movants acted with manifest partiality and evident bad faith when they deviated from the purpose of the procurement; and that they caused undue injury to the government in the amount of Php87,700.91.

The Court reiterates its earlier findings that the accused-movants deviated from the purpose of procurement. The records clearly show that the original intent of the accused-movants was to purchase a plain vehicle, more particularly a Mitsubishi L-300 Versa Van. The reliance made by the accused-movants on the Minutes of Pre-Bid Conference, Minutes of the Regular Meeting and Opening of Bids, Property Issue Slip, and the Supplemental Bid Bulletin is erroneous. *First*, the Minutes of Pre-Bid Conference, which includes the statement of accused-movant Lizardo, cannot be considered as proof of its contents. As observed by the Court and as pointed out by the prosecution in their *Comment/Opposition* filed on November 14, 2022,¹⁴ the genuineness of the said exhibit is questionable considering that it pertains to the “Construction of Bontoc Commercial Center Phase I” and not the subject procurement process. Accused-movants failed to present any convincing evidence that such variation is only a typographical error and the document accurately represents what it claims to be. Moreover, a scrutiny of the said minutes shows that it does not bear the required signatures, more particularly of the BAC Secretary and BAC Chairman.

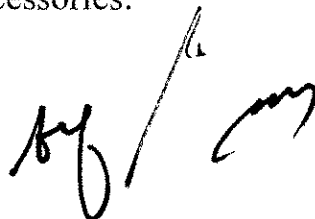
Second, the contents of the Minutes of Pre-Bid Conference, Minutes of the Regular Meeting and Opening of Bids, and the Property Issue Slip, cannot be given weight considering the judicial admissions made by the accused-movants themselves to the contrary. The records disclose that no less than accused-movant Marrero himself judicially admitted during his cross-examination on July 15, 2019, that all documents prior to the issuance of the acceptance and inspection report only reflect the purchase of the Mitsubishi L-300 Versa Van.¹⁵ This was corroborated by accused-movant Gut-omen herself when she testified during her cross-examination on August 14, 2019, that the ambulance equipment and accessories were not indicated in the Purchase Request when the BAC evaluated the Bid.¹⁶ Moreover, as stated by accused-movant Kimakim, the end-user specifically requested to purchase a Mitsubishi L-300 Versa Van without the ambulance equipment and accessories.¹⁷

¹⁴ Record, Vol. V, pp. 485-505.

¹⁵ TSN dated July 15, 2019, p. 40.

¹⁶ TSN dated August 14, 2019, p. 32.

¹⁷ TSN dated February 11, 2020, pp. 25-26.



In the same vein, the Court cannot ascribe to the theory of accused-movants that the Supplemental Bid Notice corrected the earlier Notice to Bid and clarified that the subject of the bid was a van with ambulance equipment and accessories. To note, the existence and actual preparation of the said Supplemental Bid Notice is highly doubtful considering that such was only produced by accused-movant Imingan in her Supplemental Affidavit dated March 9, 2021. Prior thereto, there was no mention of the existence of such a document. Even accused-movant Kimakim himself testified during his cross-examination that the invitation posted on the bulletin board was only for the purchase of the Mitsubishi L-300 Versa Van.¹⁸

The overwhelming evidence presented by the prosecution, coupled with the judicial admissions made by the accused-movants themselves during their respective cross-examination clearly point to the ultimate fact that the original intent was to procure a Mitsubishi L-300 Versa Van only and that this intent was the basis of the whole procurement process.

Considering that the prosecution has established that the original intent was to purchase a Mitsubishi L-300 Versa Van without the ambulance equipment and accessories, it is therefore only logical to conclude the amount of Php87,700.91 does not pertain to the cost of such equipment and accessories. On the contrary, the said amount represents not only the difference in the amount paid to Motorplaza, Inc. and that paid for by the Provincial Government of Mountain Province but also a loss or injury to the government.

III. The Court maintains its findings that the accused gave unwarranted benefit, advantage, or preference to accused Kimakim.

Accused-movants Marrero, Lizardo, Macli-ing, and Imingan suggest that the prosecution failed to prove beyond reasonable doubt that accused Kimakim was given unwarranted benefit, advantage, or preference by his co-accused because he is not connected with the owners of Mitsubishi L-300 Versa Van.

The mere fact that accused-movant Kimakim is not connected at all with the owners of Mitsubishi L-300 Versa Van, does not negate the findings of the Court that he was given unwarranted benefit, advantage, or preference. The records show the glaring intent of the accused-movants to award the bid to accused-movant Kimakim despite the presence of irregularities in the procurement process. Moreover, it was accused-movant Kimakim himself who testified that he is a dealer of second-hand

¹⁸ TSN dated February 11, 2020, p. 19.

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vehicles and that had previously purchased a car from Motorplaza, Inc. sometime before 1998.¹⁹ This means that accused-movants awarded the bid for the purchase of a “brand new” Mitsubishi L-300 Versa Van to a second-hand vehicle dealer who had a connection with the exclusive dealer of Mitsubishi L-300 Versa Van by reason of his prior transaction with them. The following exchanges during the cross-examination of accused Kimakim point to that effect:

JUSTICE MORENO:

Q: No, but at the time you, prior to the bidding and even after you have won the bidding, you were still unsure as to where to get the L300 van, correct?

ACCUSED KIMAKIM:

A: I was thinking of going to Motor Plaza, Your Honor.

Q: Why? Why do you have to go to Motor Plaza?

A: Because I bought also a car there before 1998, Your Honor.

Q: And you could get a discount from Motor Plaza?

A: Before, they gave me almost 40 from the dealer.

Q: Forty Thousand?

A: Yes, Your Honor.

Q: And you were hoping that if they could give you the same discount, you will have an income of at least Forty Thousand?

A: Yes, Your Honor.²⁰

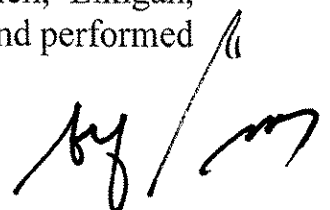
IV. The Court maintains its findings that the prosecution was able to prove beyond reasonable doubt that accused-movants acted in conspiracy to commit the crime as charged.

A common argument raised by the accused-movants focused on the existence of a conspiracy. Essentially, the accused-movants allege that the prosecution failed to prove beyond reasonable doubt the existence of conspiracy among the accused. Particularly, accused-movants Pagteilan, Kollin, Gut-omen, Likigan, Wanawan, and Falingao allege that as members of the BAC their individual acts were carried out in the regular course of their duties, hence, they cannot be considered as co-conspirators.

As aptly found by this Court, the totality of facts shows evident irregularities in the procurement proceedings undertaken by the accused. Despite such, accused-movants Pagteilan, Kollin, Gut-omen, Likigan, Wanawan, and Falingao nevertheless signed the documents and performed

¹⁹ TSN dated February 11, 2020, p. 24.

²⁰ TSN dated February 11, 2020, pp. 23-24.



overt acts in disregard of the pertinent provisions of R.A. No. 9184 and its implementing rules and regulation. Their individual actions frustrate the very function of the BAC under Section 12.2 of R.A. No. 9184, which is to be “responsible for ensuring that the procuring entity abides by the standards set forth by the act and [its] IRR-A.” Verily, the culpability of accused-movants did not stem solely from their signature on the procurement documents. Rather, their culpability was also based on their authorization of the procurement process to continue despite the obvious irregularities.

Furthermore, the acts of accused-movants show a propensity to ignore the established procurement rules, if not a willful disregard of the said rules. As held by the Supreme Court in *Mangubat v. Sandiganbayan*,²¹ “[w]hen the defendants by their acts aimed at the same object, one performing one part, and the other performing another part so as to complete it, with a view to the attainment of the same object, and their acts though apparently independent, were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments, the court will be justified in concluding that said defendants were engaged in a conspiracy.” Here, the prosecution was able to establish that the individual participation of each accused-movant was crucial to the completion of the highly irregular transaction.

V. Accused-movant Kimakim is now estopped in denying his participation in the irregular procurement procedure.

Accused-movant Kimakim essentially moves for the reconsideration of the *Decision* alleging that he had no hand in the irregular procurement process. According to him, at the time he came into the picture, the subject vehicle was already purchased. This argument is untenable.

A review of the records proves that accused-movant Kimakim himself made judicial admissions narrating his participation in the bidding process. As testified to by accused-movant Kimakim, he was at the Provincial Capitol of Mountain Province sometime in February 2006 when he saw an Invitation to Bid posted on the Bulletin Board.²² He then purchased the bid documents and submitted a bid form to the BAC Secretariat.²³ Accused-movant Kimakim likewise participated in the pre-bid conference.²⁴ He indicated that he was with accused-movant Macli-ing when they purchased the subject vehicle from Motorplaza, Inc.²⁵ He

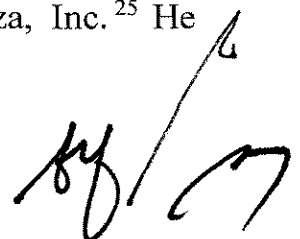
²¹ G.R. Nos. L-52872-52997, January 30, 1987.

²² TSN dated February 11, 2020, p. 11.

²³ TSN dated February 11, 2020, pp. 11-12.

²⁴ TSN dated February 11, 2020, p. 13.

²⁵ TSN dated February 11, 2020, p. 23.



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likewise testified that he was the one who purchased the ambulance equipment and accessories.²⁶

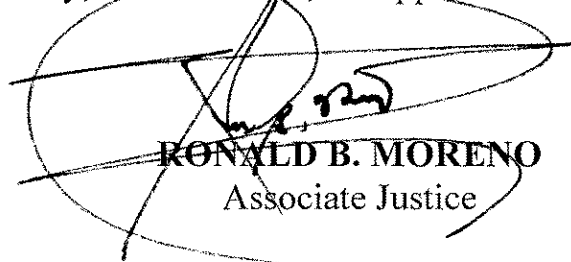
A judicial admission, verbal or written, is made by a party in the course of the proceedings in the same case which does not require proof. To contradict one's own admission, the person who made the same must show that it was made through palpable mistake or that no such admission was made.²⁷ Judicial admissions are legally binding on the party making the admissions. Hence, absent any proof to the contrary, accused-movant Kimakim is now estopped from claiming that he had no participation in the procurement procedure.

All told, the Court finds no cogent or compelling reason to warrant a reconsideration of its *Decision*.

WHEREFORE, in light of all of the foregoing, the *Motions for Reconsideration* filed by accused-movants **THEODORE B. MARRERO** ("Marrero"), **NENITA D. LIZARDO** ("Lizardo"), **HELEN K. MACLI-ING** ("Macli-ing"), **ABDON A. IMINGAN** ("Imingan"), **PAULO P. PAGTEILAN** ("Pagteilan"), **LILY ROSE T. KOLLIN** ("Kollin"), **FLORENCE R. GUT-OMEN** ("Gut-omen"), **EDWARD B. LIKIGAN** ("Likigan"), **SOLEDAD THERESA F. WANAWAN** ("Wanawan"), **JEROME M. FALINGAO** ("Falingao"), and **RONALD C. KIMAKIM** ("Kimakim") are **DENIED** for lack of merit.

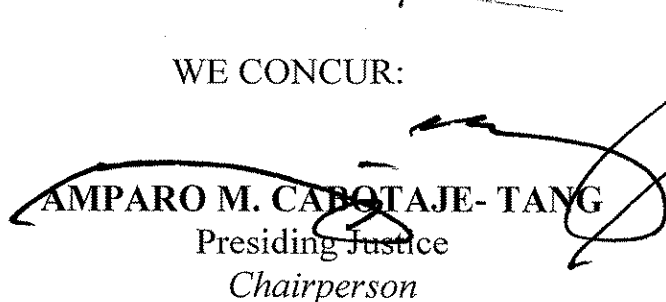
SO ORDERED.

Quezon City, Metro Manila, Philippines.



RONALD B. MORENO
Associate Justice

WE CONCUR:



AMPARO M. CABOTAJE- TANG
Presiding Justice
Chairperson



BERNELITO R. FERNANDEZ
Associate Justice

²⁶ TSN dated February 11, 2020, p. 31.

²⁷ Section 4, Rule 129, Rules of Evidence.