REPUBLIC OF THE PHILIPPINES
Sandiganbayan
QUEZON CITY

SEVENTH DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*

-versus-

JUNIO NORBERTO M. RAGRAGIO,[1] ROSENDO C. CALLEJA,[2] **ABDUL AZIZ M. PANGANDAMAN, ESTELITO A. NIERVA, RUBEN A. BESMONTE, NEOFITO C. PERILLA, DIVINA GRACIA D. DANTES, CESAR L. BOCANOG, AND MARIO a.k.a. "MARLO" D. ARIAS,** *Accused.*

SB-17-CRM-2140

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PEOPLE OF THE PHILIPPINES, *Plaintiff,*

-versus-

JUNIO NORBERTO M. RAGRAGIO, ROSENDO C. CALLEJA, **ABDUL AZIZ M. PANGANDAMAN, ESTELITO A. NIERVA, RUBEN A. BESMONTE, NEOFITO C. PERILLA, DIVINA GRACIA D. DANTES, CESAR L. BOCANOG, AND MARIO a.k.a. "MARLO" D. ARIAS,** *Accused.*

SB-17-CRM-2141

Present:

Gomez-Estoesta, J.,
Trespeses, J., and
Hidalgo, J.

Promulgated:

July 26, 2023

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[1] Acquitted in the Decision promulgated on June 9, 2023.
[2] *Id.*

RESOLUTION

GOMEZ-ESTOESTA, *J.*:

This resolves the separate *Motions for Reconsideration* filed by accused Ruben A. Besmonte and Divina Gracia D. Dantes;[3] and accused Estelito A. Nierva, Abdul Aziz Pangandaman, Marlo D. Arias, Cesar L. Bocanog and Atty. Neofito C. Perilla,[4] seeking a reversal of this court's Decision promulgated on June 9, 2023.

THE MOTION FOR RECONSIDERATION OF ACCUSED BESMONTE and DANTES

In their *Motion for Reconsideration,* accused Besmonte and Dantes asseverate that the prosecution has failed to prove the second and third elements of Violation of Section 3 (e) of R.A. 3019.

For the second element, as accused Besmonte and Dantes fully surmised that it was the element of inexcusable gross negligence which hooked them in the end, they reiterate their defense on the supposedly non-exclusive character of Yakal in the Notices of Award, Notices to Proceed, and Contract Agreements where specification on Yakal did not automatically mean Yakal only. They maintain that the BAC Resolutions indicated Yakal instead of Larch wood because these were merely copied and pasted from earlier files. They persist that Yakal was used as generic term that could be used interchangeably with Larch, as already remedied by the issuance of the Supplemental Bid Bulletins. Yakal was not the only specie that will be accepted for public bidding. At the most, therefore, this was not the result of simple negligence, not inexcusable gross negligence.

Accused Besmonte and Dantes also harp that they were not signatories to the contract agreements, which indicated Yakal. There was no gross negligence on their part, as there was no reason to hide the fact that Nikka Trading's bid was to supply Larch wood because while it may belong to other species or kind of wood, as long as it conforms to the mechanical and related properties of Philippine wood as equivocally stated in the Supplemental Bid Bulletins, it would still have qualified as Yakal in the definition of Goods.

For the third element, accused Besmonte and Dante aver that it was not enough that unwarranted benefits were given to the supplier; it should have been attended with corrupt intent, a dishonest design, or some unethical

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[3] *Records*, Vol. 9, pp. 457-489.
[4] *Records*, Vol. 9, pp. 494-534.

interest, as explained in *Macairan v. People,*[5] which echoed *Martel v. People.*[6] This was not proven against accused Besmonte and Dantes. Moreover, the court did not find undue injury, as in fact there was none. If the Larch wood supplied had any defects, this was beyond the responsibility of accused Dantes and Besmonte as members of the BAC.

THE MOTION FOR RECONSIDERATION OF ACCUSED NIERVA, PANGANDAMAN, ARIAS, BOCANOG and PERILLA

For their part, accused Nierva, Pangandaman, Arias, Bocanog and Perilla assert that they have been convicted for irregularities in the procurement, which acts constitute a violation of R.A. 9184, or the Government Procurement Reform Act, which is a distinct offense from Violation of Section 3(e) of R.A. 3019. However, violation of the procurement law was not at all alleged in the *Informations* which thus violated their right to be informed of the charges against them. In any event, the mere violation of R.A. 9184 did not amount to a violation of Section 3(e) of R.A. 3019, as this does not automatically translate to unwarranted benefit, advantage, and preference, to which they were convicted of. As worded, the Informations alleged falsification or misleading by the BAC, in making the PNR Board believe that Yakal, instead of Larch wood, was offered to be supplied.

The accused further assert that the acts alleged in the Informations were limited to the purchase of Larch wood when the accused knew that the **Board Resolutions** and all bidding documents required Yakal, and yet the finding of gross negligence was based on the violation of R.A. 9184. The reference to Board Resolutions, which are not bidding documents, was a conscious declaration by the prosecution that there was no violation of R.A. 9184. Moreover, what were presented were mere Secretary's Certificates, and not Board Resolutions, which were also copy-pasted, and did not convey the real intent of the Board. Moreover, the Informations did not touch upon the strength of the Larch wood supplied, and was never the concern of the prosecution. Safety is a given at this point, since the Larch wood has been used continuously since the time they were installed.

They asseverate that this court placed too much weight against the decision of the BAC not to test the wood supplied during post-qualification, when the BAC deemed it prudent at the time to leave actual testing to the expertise of the end-users. The BAC, through its TWG, believed in good faith that testing could be done upon delivery and hence, limited post-qualification to checking and verifying documents. Contrary to the court's finding, the requirement of testing during post-qualification may not be so strict, as it

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[5] 628 Phil. 573 (2010).
[6] G.R. No. 224720-23, February 2, 2021.

provides that it shall be done "*in applicable cases*", citing Section 34.3 of the IRR of R.A. 9184. It does not apply in these cases as nothing in the bidding documents specifically required that testing be done during post-qualification, such option having been left to the end-users. That they did not conduct testing during post-qualification constituted simple negligence, if at all, not gross inexcusable negligence, as found by the court.

Accused Nierva, et al. further emphasize that deceitful intent and motivation are necessary in a finding of unwarranted benefits, advantage and preference. Evidence should have been further shown that the accused were animated by fraudulent motives which they consciously and intentionally adopted to do. This is negated, however, by the fact that the supplier, Nikka Trading, was not even impleaded, thus ruling out collusion, a matter not even alleged in the Informations. They further argue that this court should have considered the testimony that Larch wood is actually being used in some PNR railways to this day, proving that it is as durable, if not more durable, than Yakal. Had the inferiority of the Larch wood been an issue, this should have likewise been alleged in the Information, but this was not the case. Moreover, any lapse on their part did not result in any harm. The finding of Elvina Bondad, the witness from the DOST, that the properties of Larch wood were not at par with Yakal, deserved scant consideration considering that there was no proof that the wood sample she actually tested was Larch wood.

The accused lament that for the court to put a strict standard on exacting that "yakal is yakal and larchwood is larchwood" totally erases the human factor on vulnerability to commit a human mistake. Since they were not sophisticated enough to decipher that Yakal is no generic term, there is nothing in the records to show that they benefitted directly or indirectly in the subject transactions. They continue to point to mere honest mistake that the documents continued to refer to Yakal even when Larch wood was offered. They were newly convened under the new administration when this procurement was held. They emphasize that the BAC Secretariat merely copy-pasted the particulars including Yakal from earlier documents, but the management very well knew that what was offered was Larch wood. That the subsequent BAC issuances indicated Yakal was merely indicative of their reliance on the BAC Secretariat. Indicating *Larch wood* would have been more suggestive of an intent to defraud, as this would have been done to conceal the earlier misrepresentation. Graft entails the acquisition of gain in some ways. Following *Martel,* it is not thus enough that unwarranted benefits were given to another. The acts constituting the elements of Violation of Section 3 (e) must be effected with corrupt intent, a dishonest design, or some unethical interest, which were clearly wanting in these cases.

Accused further assail the statements in the Secretary's Certificate approving the supply of Yakal, and point out that it is inconsistent with the Minutes of the Meeting of the Board of Directors, which clearly showed that the Board of Directors knew that what was to be supplied was imported wood.

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Between the Secretary's Certificate and the Minutes, the latter should prevail, as it more accurately reflects the sentiments of the Board of Directors, and is more consistent with their innocence. The court has failed to address these contradictions. The Secretary's Certificate is in itself questionable, not having been testified on by the person who issued it, but identified only by the records custodian who was not credible enough to testify on their contents, when the supposed disparity on intent could have been properly explained by Atty. Fernandez, author of the Secretary's Certificates, but who was not presented by the prosecution. Besides, the series of blunders carried over to the BAC Resolutions were admitted to have emanated from the BAC Secretariat, having been explained by Atty. Tareeq Yahya Timhar Anduhol Radjaie himself, as patterned from its copy-paste oversight shown in the copied forms of hyphens, capitalization, and overall flaws. This only showed that the accused were not criminally motivated, but were merely careless to which, if at all, they should be administratively punished, but not criminally.

PROSECUTION'S COMMENT/OPPOSITION

In its *Consolidated Comment/Opposition*,[7] the prosecution counters that unwarranted benefits were given to Nikka Trading when the PNR accommodated, accepted and approved the Larch wood ties when the Secretary's Certificate and other bidding documents required Yakal wood. The damage suffered by the government was the amount disbursed to Nikka Trading. The ABC was for the procurement of Yakal wood ties, which were never delivered. The non-inclusion of Nikka Trading as accused has no bearing on the Decision, being the sole prerogative of the Office of the Ombudsman. Whether it was simple or gross neglect of duty is likewise not relevant, as this is not an administrative case.

Post-qualification was indeed conducted by the DOST, but the results were not favorable to the accused. If the BAC lacked the competence to test the delivered wood, nothing should have stopped them from referring it to other government agencies with such competence, even if this is not provided in the bidding documents. This is especially true in this case since Larch wood was to be used for the first time. The end does not justify the means, and regardless of the benefit derived from the Larch wood ties, their procurement remains tainted with irregularity. The issue raised on whether the wood tested by the DOST was Larch wood begs the question of whether what was actually delivered by Nikka Trading to the PNR was also Larch wood, since they were accepted "as to quantity only".

The accused's defense of human mistake is unavailing considering they signed several but **short** bid documents, which they should have verified for accuracy before signing. Given this responsibility, they cannot keep on

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[7] *Records*, Vol. 9, pp. 546-550.

passing the blame to the BAC Secretariat. They are similarly culpable for the documents that they did not sign, having acted in conspiracy with one another.

Finally, the purported inconsistency between the minutes of the Board meeting and the Secretary's Certificate was raised for the first time in the Motion for Reconsideration. In any event, discussions made during the Board meetings are not automatically carried as Board Resolutions.

THE COURT'S RULING

The *Motions* fail to persuade.

Accused Nierva, et al. aver that their conviction for non-compliance with R.A. 9184 was misplaced, since they were never indicted for this offense. This is not correct. The accused are indicted for the violation of Sec. 3(e) of R.A. 3019 which, in itself, punishes the violation of procurement laws prescribed under R.A. 9184 **if** it is also proven that (1) the violation of procurement laws caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference, and (2) the accused acted with evident bad faith, manifest partiality, or gross inexcusable negligence.[8] In these cases, the prosecution established that **unwarranted benefits** were given to Nikka Trading through the **gross inexcusable negligence** of the accused.

The word "unwarranted" means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason.[9] Notably, there was no finding of undue injury against the accused; hence, any benefit derived from the irregularly-procured Larch wood is irrelevant, as the benefit would not cure the irregularity itself. The same is true with the lack of collusion with Nikka Trading, which is not necessary for a finding of unwarranted benefits in its favor.

Citing *Macairan v. People,*[10] the accused point out that it is not enough that unwarranted benefits were given to another; the acts constituting the elements of a violation of R.A. No. 3019 must be effected with corrupt intent, a dishonest design, or some unethical interest. It must be clarified, however, that the accused in *Macairan* were charged with the commission of R.A. 3019 through evident bad faith and manifest partiality, while in these cases, the accused were found to have given unwarranted benefits to Nikka Trading through gross inexcusable negligence. Evident bad faith and manifest partiality are acts committed through *dolo*, while gross inexcusable

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[8] *Sarion v. People,* G.R. Nos. 243029-30, March 18, 2021, citing Martel v. People, G.R. Nos. 224720-23 & 224765-68, February 2, 2021.
[9] *Tio v. People,* G.R. Nos. 230132 & 230252, January 19, 2021.
[10] G.R. Nos. 215104, 215120, 215147, 215212, 215354-55, 215377, 215923 & 215541, March 18, 2021, citing *Martel v. People,* G.R. Nos. 224720-23 & 224765-68, February 2, 2021.

negligence is committed by means of *culpa*. In culpable felonies, the act or omission of the offender need not be malicious. Hence, a public officer who seriously breaches his or her duty in a blatant and extremely careless manner is guilty of gross inexcusable negligence under Section 3 (e) **regardless of whether such breach of duty was done with malicious intent.**[11]

Accused's common claim to the necessary finding of corrupt intent, a dishonest design, or some unethical interest before they can be convicted for Section 3 (e), does not hold.

In his Concurring Opinion in *Libunao v. People*,[12] Justice Caguioa, the ponente of the cited cases of *Macairan* and *Martel*, clarified:

> To be clear, I maintain, as I had stressed in the case of *Villarosa v. People*,[13] that the element of "unwarranted benefits" must be seen from the lens of graft and corruption. Thus:
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> > As its name implies, and as what can be gleaned from the deliberations of Congress, RA 3019 was crafted as an anti-graft and corruption measure. At the heart of the acts punishable under RA 3019 is corruption. As explained by one of the sponsors of the law, Senator Arturo M. Tolentino, "[w]hile we are trying to penalize, the main idea of the bill is graft and corrupt practices. x x x Well, the idea of graft is the one emphasized." Graft entails the acquisition of gain in dishonest ways.
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> > Hence, in saying that a public officer gave "unwarranted benefits, advantage or preference," it is not enough that the benefits, advantage, or preference was obtained in transgression of laws, rules and regulations. Such benefits must have been given by the public officer to the private party with corrupt intent, a dishonest design, or some unethical interest. This is in alignment with the spirit of RA 3019, which centers on the concept of graft.
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> **I recognize, however, that in cases of gross negligence — meaning, the crime was committed through culpa, not dolo — the courts cannot expect to be shown proof of "corrupt intent, a dishonest design, or some unethical interest." Thus, for cases where the crime was committed through the modality of gross negligence, it is enough that the actions, or inaction, of the accused resulted in ultimately causing undue injury or giving unwarranted benefits. It is well to clarify, however, that the negligence must be so gross — as the jurisprudential definition puts it, "with conscious indifference to consequences insofar as other persons may be affected" — that the negligence would rise to the level of willfulness to cause undue injury or give unwarranted benefits.** (emphases supplied)

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[11] *Martel v. People*, G.R. Nos. 224720-23 & 224765-68, February 2, 2021.
[12] G.R. Nos. 214336-37, February 15, 2022.
[13] G.R. Nos. 233155-63, June 23, 2020.

The authority of the opinion should also extend to these cases, which only ebbs away the argument of the accused.

On another angle, the accused attempt to persuade this court that post-qualification is not a strict requirement in the procurement process. This is contrary to the very function of post-qualification, which is to verify, inspect and test whether the technical specifications of the goods offered comply with the requirements of the contract and the bidding documents. It does not give occasion for the procuring entity to arbitrarily exercise its discretion and brush aside the very requirements it specified as vital components of the goods it bids out.[14] In these cases, it was only through post-qualification that it could have been determined that the wood supplied by Nikka Trading ***conformed to the mechanical and related properties of Philippine woods,*** thus compliant with the technical specifications under the Supplemental Bid Bulletins. This, the accused cannot simply overlook, being a basic requirement under the Supplemental Bid Bulletins. It would have spelled out a big difference – had Yakal been supplied, indeed, there would have been no need to determine that it conformed to the mechanical and related properties of Philippine woods because the wood supplied is ideally Yakal but had it been any other specie, as these cases proved, the supplied Larch wood should have ***conformed to the mechanical and related properties of Philippine wood.*** How to determine this, therefore, if no post-qualification be made? Yet, accused's grave disregard of this requirement is further emphasized by the continued use of the term Yakal, as if what was supplied was indeed Yakal, when it was actually Larch wood. To give a passing fancy that this was mere oversight amounting to simple negligence or mere carelessness that is not criminal in nature only downplays the significance of the procurement law.

This court thus remains unconvinced that the continued reference to Yakal wood even after Larch wood was offered was an honest mistake. The fault attributed to the BAC Secretariat was not and should not have been binding to the members of the BAC and the TWG, who were certainly not excused from not perusing the documents they signed. This is not simple negligence especially when viewed with the BAC and TWG's accompanying failure to conduct the proper post-qualification to determine whether the Larch wood supplied complied with the required technical specifications. The belated introduction of doubt as to whether or not the wood tested by the DOST was indeed Larch wood need not detain the court for long. This was never raised nor proven during trial, and rather appears inconsequential, and would not change the fact that no proper post-qualification was done during procurement.

Finally, this court sees no need to dwell into accused Nierva, et al.'s novel discussion on the discrepancy between the Secretary's Certificate and the Minutes of the Board Meeting. Whether or not the PNR Board **knew** that the offer was to supply imported wood and not Yakal, would not change the

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[14] *Commission on Audit v. Link Worth International, Inc.*, G.R. No. 182559, March 13, 2009.

fact that what was **officially approved** was the supply of Yakal. It should not be forgotten that counsel for all the accused stipulated on the due execution and authenticity of Exhibit "G",[15] the Secretary's Certificate being assailed in the Motion, and rightly so, as the due execution and authenticity of public documents are already presumed in their presentation as evidence.[16]

WHEREFORE, in view of the foregoing, the *Motion for Reconsideration* filed by accused Besmonte and Dantes and the *Motion for Reconsideration* filed by accused Nierva, Pangandaman, Arias, Bocanog and Perilla are **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ZALDY V. TRESPESES
Associate Justice

GEORGINA D. HIDALGO
Associate Justice

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[15] *Order* dated October 2, 2019, *Records*, Vol. 5, pp. 308-309.
[16] *Heirs of Ochoa v. G & S Transport Corp.*, G.R. Nos. 170071 & 170125 (Resolution), July 16, 2012, citing *Teoco v. Metropolitan Bank and Trust Company*, G.R. No. 162333, December 23, 2008.