



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

QUEZON CITY

SEVENTH DIVISION

MINUTES of the proceedings held on January 18, 2024.

Present:

JUSTICE MA. THERESA DOLORES C. GOMEZ-ESTOESTA ----- Chairperson

JUSTICE ZALDY V. TRESPESES ----- Member

JUSTICE GEORGINA D. HIDALGO ----- Member

The following resolution was adopted:

SB-22-A/R-0004 – People v. Roy Hunnob & Salvador Galeon

This resolves the following incidents:

1. Accused-Appellants Roy Hunnob and Salvador Galeon's "RESPECTFUL MOTION FOR RECONSIDERATION" dated December 19, 2023;¹ and
2. Plaintiff-Appellee People of the Philippines' "OPPOSITION" dated January 10, 2024.²

GOMEZ-ESTOESTA, J.,

In its Decision³ dated November 24, 2023, this court affirmed the judgment of conviction of the Regional Trial Court which dispositive portion read:

WHEREFORE, considering the foregoing, the instant appeal is **DISMISSED**. The Decision of the Regional Trial Court finding accused Roy Hunnob and Salvador Galeon **GUILTY** of the crime of Violation of Section 3(e) of Republic Act 3019 is **AFFIRMED in toto**.

The accused-appellants are now before this court with their "RESPECTFUL MOTION FOR RECONSIDERATION" dated December 19, 2023, praying for the reconsideration of the said Decision and to acquit them of the offense charged.

¹ Records, pp. 211-218.

² Records, pp.223-229.

³ Records, pp. 162-202.

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GROUND S ALLEGED IN THE MOTION

The arguments harped by the accused-appellants are:

- i. The element of "*manifest partiality by giving unwarranted benefits, advantage, or preference in the discharge of their functions*" is not present in this case. The said conclusion was arrived at only because of the blood relationship of accused-appellant Roy Hunnob and supplier Caroline Hunnob.

In order that "*manifest partiality by giving unwarranted benefits, advantage, or preference in the discharge of their functions*" be present, it must be shown that others participated in the bidding process or submitted offers to deliver the engine sought to be purchased. There cannot be a "favoring" of another if there was no other competitor who was prejudiced because of the unwarranted benefit given.

- ii. Conspiracy, in this case, is not supported by evidence. The accused-appellants had no participation in the selection of Caroline Hunnob as the supplier. If there was conspiracy, the members of the BBAC should have been included. In this case, it was a ministerial act of the Barangay Treasurer to prepare the check since there was a fund available for a specific purpose and there was already a valid recommendation by the BBAC. On the other hand, the Barangay Captain was just exercising a ministerial duty to sign the check since there was a recommendation by the BBAC.
- iii. The case should not have been instituted with the payment already made. The "novation theory" held in *People v. Nery* can be applied in this case since it was admitted that Caroline Hunnob was able to return the purchase price of the speedboat engine before the institution of the case.

OPPOSITION OF THE PROSECUTION

The prosecution counters:

1. The elements of Violation of Sec. 3(e) of R.A. 3019 were sufficiently proven. While the existence of the first element relating to public office is not in issue, the discussion of the second and third element on "*manifest partiality by giving unwarranted benefits, advantage, or preference in the discharge of their functions*" is premised on the wrong track. Accused-appellants claim that BBAC conducted two (2) biddings, both of which failed since no one participated nor have shown any interest to participate, for which reason the same was negotiated to Caroline Hunnob. Such posture does not reflect the testimonies made

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by prosecution witnesses Edwin Dulnuan, Peter Maugao, and Mercy Bahiwag who denied at the outset the holding of any public bidding for the procurement of the speedboat engine. As a matter of fact, prosecution witnesses Edwin Dulnuan, Peter Maugao, and Mercy Bahiwag have denied having signed any bidding document for the speedboat engine, asseverating that the signatures appearing above their names on the purported BBAC Resolutions⁴ were not theirs.

2. Conspiracy exists as evidence on record proved that the respective actions and participation of the accused-appellants led to the consummation of the crime charged. Roy Hunnob awarded the contract to his sister and Salvador Galeon made it possible by releasing the public funds involved.

RULING OF THE COURT

The finding of the existence of manifest partiality and evident bad faith remains unruffled.

The accused-appellants contend that the element of “*manifest partiality by giving unwarranted benefits, advantage, or preference in the discharge of their functions*” is not present in this case because there cannot be a “favoring” of another if there is no other competitor who can be prejudiced or disadvantaged by the set-up.

The claim does not persuade.

Reiterating *Tiongco v. People*⁵ citing *People v. Atienza*, the Supreme Court defined *manifest partiality* as “a clear, notorious, or plain inclination or predilection to favor one side or person rather than another.”

In this case, there was a clear inclination to favor one person, and not just any person, but the sister of accused-appellant Roy Hunnob as he is the Head of the Procuring Entity.

For emphasis, the Decision⁶ dated November 24, 2023 of this court elucidated, thus:

What happened in this case is the very evil the law sought to avoid. Despite a failed public bid, assuming one was indeed made in the first place, the fact that the contract was eventually awarded to the sister of the barangay captain, who had control over the procurement process as head of

⁴ Records, Exhibit “E and F”, p. 9-10.

⁵ G.R. No. 218709, Nov. 2018.

⁶ Records, pp. 162-202.

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the procuring entity, spells nothing but suspicion of favoritism and anomalies in the execution of public contracts.

The IRR of R.A. No. 9184 provides that the Barangay Captain shall be the Head of the Procuring Entity or HoPE. To quote:

Section 5. *Definition of Terms.* For purposes of this IRR, the following terms or words and phrases shall mean or be understood as follows:

xxx

t) Head of the Procuring Entity refers to:

xxx

(iii) **the local chief executive, for local government units.** Provided, that in a department, office or agency where the procurement is decentralized, the Head of each decentralized unit shall be considered as the Head of the Procuring Entity subject to the limitations and authority delegated by the head of the department, office or agency.

Under Section 11.2.3 of the same IRR, the Punong Barangay, being the local chief executive, is the one who designates the Chairperson, Vice-Chairperson, and members of the BAC, viz:

11.2.3 The BAC for Local Government Units shall be composed of the following:

xxx

b) For Barangays:

- i. The BAC shall be composed of at least five (5), but not more than seven (7) regular members of the Sangguniang Barangay, except the Punong Barangay.
- ii. The Punong Barangay, being the Local Chief Executive, shall designate the Chairperson, Vice-Chairperson, and members of the BAC.

Furthermore, the same IRR provides for a restriction against persons within the third civil degree to participate in the procurement process:

Section 47. **Disclosure of Relations** – All bids shall be accompanied by a sworn affidavit of **the bidder that it is not related to the Head of the Procuring Entity**, members of the BAC, the TWG, and the BAC Secretariat, the head of the PMO or the end-user unit, and the project consultants, by consanguinity or affinity up to the third civil degree. Failure to comply with the aforementioned provision shall be a ground for the automatic disqualification of the bid in consonance with Section 30 of this IRR. For this reason, **relation to the aforementioned persons within the third civil degree of consanguinity or affinity shall automatically disqualify the bidder from participating in the procurement of contracts of the procuring entity.** (emphasis supplied).

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In this case, Caroline Hunnob, the sister of accused Roy Hunnob, should have been automatically disqualified from participating in the procurement process of Barangay Dulao. Despite the clear disqualification against Caroline, not only did accused-appellant Hunnob allow his sister to participate as the sole bidder, but he also even awarded the final bid to her. This was a blatant disregard of the law and legal processes in favor of his sister -- clear badges of manifest partiality and evident bad faith. This anomaly was inevitably sealed with the act of the barangay treasurer, in the person of accused Galeon, to allow the disbursement of barangay funds in favor of a disqualified party.

Based on the evidence, accused Hunnob deliberately ignored the prohibitions against relatives. Bypassing an otherwise failed bidding process, which resulted in the awarding of the contract to his sister, Caroline Hunnob, was a clear and obvious case of bad faith and manifest partiality.

The circumstances in this case are too glaring for one to turn a blind eye. Assuming that two failed biddings preceded the award of the contract, as what accused-appellants would have wanted to infer, the procurement process is still within the control of the Head of the Procuring Entity, who in this case happens to be accused-appellant Roy Hunnob being the Barangay Captain. This conveniently cleared the path for his very own sister to be awarded the procurement contract, uncontested by anyone else.

There is an ethical reason why disclosure of relations is made in procurement processes. A blood relation in public bidding puts a stigma on the integrity of the process itself. The fact that accused-appellant Roy Hunnob sealed the supply contract with his sister already speaks for itself. This is regardless of the alleged fact that prior public biddings, assuming these were held, already failed. Certainly, the recourse is not to award the contract to a blood relative.

The finding of conspiracy remains.

Accused-appellants posit that there was no conspiracy in this case because it was a ministerial duty of accused-appellant Barangay Treasurer Galeon to prepare the check since there was a fund available for a specific purpose and there was already a valid recommendation by the BBAC. On the other hand, accused-appellant Barangay Captain Hunnob was just exercising a ministerial duty to sign the check since there was a recommendation by the BBAC.

This position cannot be taken.

The roles of the HoPE and the Barangay Treasurer in the barangay procurement process are by no means ministerial in nature. A Barangay Captain is Head of the Procuring Entity with substantial discretion to approve

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the recommendation of the BBAC.⁷ A Barangay Treasurer has sufficient control over the local funds and how to disburse them. As both contributed to awarding a relative of the HoPE under the pretense of “ministerial duty,” this is simply a ruse to evade compliance with R.A. 9184 when all palpable indications for irregularities are seen. As it stood, only the two accused-appellants admitted having signed the procurement documents. BBAC members and prosecution witnesses Edwin Dulnuan and Peter Maugao denied having signed any of the procurement documents. The procurement ended in the award of the supply contract to Caroline Hunnob. These facts only showed the opposite of what accused-appellants conveniently denied: the indelible marks of conspiracy.

The “novation theory” is irrelevant in this case.

According to the accused-appellants, the case should not have been instituted since it was admitted that Caroline Hunnob was able to return the purchase price of the engine before the institution of the motion. They rely on the “novation theory” which purportedly evolved from the 1964 case of *People v. Nery*⁸ which, as quoted, states:

The novation theory may perhaps apply prior to the filing of the criminal information in court by the state prosecutors because up to that time the original trust relation may be converted by the parties into an ordinary creditor-debtor situation, thereby placing the complainant in estoppel to insist on the original trust. But after the justice authorities have taken cognizance of the crime and instituted action in court, the offended party may no longer divest the prosecution of its power to exact the criminal liability, as distinguished from the civil. The crime being an offense against the state, only the latter can renounce it (*People vs. Gervacio*, 54 Off. Gaz. 2898; *People vs. Velasco*, 42 Phil. 76; *U.S. vs. Montañes*, 8 Phil. 620).

It may be observed in this regard that novation is not one of the means recognized by the Penal Code whereby criminal liability can be extinguished; hence, the role of novation may only be to either prevent the rise of criminal or to cast doubt on the true nature of the original petition, whether or not it was such that its breach would not give rise to penal responsibility, as when money loaned is made to appear as a deposit, or other similar disguise is resorted to (cf. *Abeto vs. People*, 90 Phil. 581; *Villareal*, 27 Phil. 481).

Even in Civil Law the acceptance of partial payments, without further change in the original relation between the complainant and the accused, can not produce novation. For the latter to exist, there must be proof of intent to extinguish the original relationship, and such intent can not be inferred from the mere acceptance of payments on account of what is totally due. Much less can it be said that the acceptance of partial satisfaction can effect the nullification of a criminal liability that is fully matured, and already in the process of enforcement. Thus, this Court has ruled that the offended party's acceptance of a promissory note for all or

⁷ Vide: Section 11.2.3 of the 2016 IRR of R.A. 9184.

⁸ G.R. No. L-19567, February 5, 1964.

part of the amount misapplied does not obliterate the criminal offense (Camus vs. Court of Appeals, 48 Off. Gaz. 3898).

The cited case at once proves irrelevant.

People v. Nery primarily dealt with the criminal charge of estafa where the accused harbored the theory that there is no prohibition in the penal law to prevent the parties to a contract to novate it so that any incipient criminal liability under the first is thereby avoided. In said case, the novation theory advanced by the accused has actually been rejected with the doctrine permanently etched in jurisprudence that the criminal liability for estafa is not affected by compromise or novation of contract, for it is a public offense which must be prosecuted and punished by the Government on its own motion though complete reparation should have been made of the damage suffered by the offended party.

It should be noted that in the present charge, there are two (2) ways by which a Violation of Section 3 (e) may be committed—*first*, by causing undue injury to any party, including the government, or *second*, by giving any private party any unwarranted benefit, advantage, or preference.⁹ Payment of the item subject of the procurement has no effect on the charge because the barangay unit and the accused-appellants can never be levelled to the relationship of a creditor and debtor with which to novate at will their contractual obligation.

The theory on novation cannot thus be given consideration.

In the same way, accused-appellants' entreaty to be accorded a mitigating circumstance alluding to the ruling of the Supreme Court in *Concerned Officials of the MWSS v. Ombudsman*,¹⁰ is misplaced, if not cited out of context. The case discussed the extent of authority of the Office of the Ombudsman in investigating any act or omission of a government official under its jurisdiction that appears illegal, unjust, improper, or inefficient, and whether it has veto or revisory power over an exercise of judgment or discretion by an agency or officer upon whom that judgment or discretion is lawfully vested. While the case ratiocinated that the Court and the Ombudsman should steer clear of any undue interference in the adjudicative (or administrative) responsibility of a government official, such as BAC members who are given the discretion to accept or reject a bid and award contracts, there is no extended discussion on its effect as a mitigating circumstance to a criminal offense. There is thus no basis for a mitigating circumstance to be appreciated at this instance.

To reiterate, the accused-appellants cannot escape the second mode of the commission of the offense; or that there was unwarranted benefit,

⁹ *Gutierrez v. People*, G.R. No. 193728, October 13, 2021.

¹⁰ G.R. No. 109113, January 25, 1995.

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advantage or preference given any private party. As proven by the evidence available, the accused-appellants had given the HOPE's relative, Caroline Hunnob, unwarranted benefit, advantage, or preference, considering that:


- (i) she was disqualified at the outset to bid; and
- (ii) she was awarded the contract to supply the speedboat despite the lack of proper procurement process and public bidding.

It is of no bearing, therefore, that Caroline Hunnob returned the funds to Barangay Dulao.

The accused-appellants thus failed to present any compelling argument that would merit a reconsideration of the judgement rendered on appeal.

WHEREFORE, the "RESPECTFUL MOTION FOR RECONSIDERATION" filed by accused-appellants Roy Hunnob and Salvador Galeon is **DENIED.**

SO ORDERED.


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

WE CONCUR:


ZALBY V. TRESPESES
Associate Justice


GEORGINA D. HIDALGO
Associate Justice