

FIRST DIVISION

[G.R. No. 192591, July 30, 2012]

**EFREN L. ALVAREZ, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

RESOLUTION

VILLARAMA, JR., J.:

This resolves the motion for reconsideration of our Decision dated June 29, 2011 affirming the conviction of petitioner for violation of Section 3 (e) of R.A. No. 3019 (Anti-Graft and Corrupt Practices Act).

Petitioner sets forth the following grounds in his motion:

I

THE HONORABLE COURT FAILED TO CONSIDER THAT THE SANDIGANBAYAN COMMITTED MANIFEST ERROR, VIOLATED PETITIONER'S CONSTITUTIONAL RIGHT TO THE PRESUMPTION OF INNOCENCE, AND BLATANTLY DISREGARDED THE PRINCIPLE OF REGULARITY IN THE PERFORMANCE OF OFFICIAL FUNCTIONS WHEN IT CONVICTED MAYOR ALVAREZ OF VIOLATING R.A. 3019 ON THE BASIS OF HIS FAILURE TO COMPLY WITH THE REQUIREMENTS OF R.A. 7718 ON "SOLICITED PROPOSALS" WHEN IT WAS CLEAR THAT THE CONSTRUCTION OF THE WAG WAG SHOPPING MALL WAS AN UNSOLICITED AND UNCHALLENGED PROPOSAL.

II

THE HONORABLE COURT FAILED TO CONSIDER THE SERIOUS AND MANIFEST ERROR COMMITTED BY THE SANDIGANBAYAN WHEN THE LATTER DISREGARDED MAYOR ALVAREZ' SUBSTANTIAL COMPLIANCE WITH THE REQUIREMENTS OF R.A. 7718.

III

THE HONORABLE COURT FAILED TO CONSIDER THAT THE SANDIGANBAYAN DISREGARDED THE RIGHT OF MAYOR ALVAREZ TO THE EQUAL PROTECTION OF THE LAWS WHEN HE ALONE AMONG THE NUMEROUS PERSONS WHO APPROVED AND IMPLEMENTED THE UNSOLICITED PROPOSAL WAS CHARGED, TRIED AND CONVICTED.

IV

THE HONORABLE COURT FAILED TO CONSIDER THAT THE

SANDIGANBAYAN CONVICTED PETITIONER DESPITE THE CLEAR FACT THAT THE PROSECUTION FAILED TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT, AS SHOWN BY THE FOLLOWING CIRCUMSTANCES:

(A) THE PROSECUTION FAILED TO ESTABLISH ALLEGED GROSS INEXCUSABLE NEGLIGENCE, EVIDENT BAD FAITH OR MANIFEST PARTIALITY OF PETITIONER

(B) THE PROSECUTION FAILED TO ESTABLISH THE ALLEGED DAMAGE OR INJURY PURPORTEDLY SUFFERED BY THE GOVERNMENT

V

THE HONORABLE COURT FAILED TO CONSIDER THE ESTABLISHED FACTS SHOWING THAT PETITIONER:

(A) NEVER ACTED WITH "GROSS INEXCUSABLE NEGLIGENCE" AND/OR "MANIFEST PARTIALITY";

(B) NEVER GAVE ANY "UNWARRANTED BENEFIT", "ADVANTAGE" OR "PREFERENCE" TO API.

VI

THE HONORABLE COURT FAILED TO CONSIDER THAT PETITIONER IS AN OUTSTANDING LOCAL EXECUTIVE WITH UNIMPEACHABLE CHARACTER AND UNQUESTIONED ACCOMPLISHMENT, PETITIONER IS NOT THE KIND OF INDIVIDUAL WHO WOULD ENTER INTO A CONTRACT THAT WOULD PREJUDICE THE GOVERNMENT AND HIS CONSTITUENTS.^[1]

Petitioner contends that bad faith, manifest partiality and gross negligence were not proven by the respondent. He stresses that there was substantial compliance with the requirements of R.A. No. 7718, and while it is true that petitioner may have deviated from some of the procedures outlined in the said law, the essential purpose of the law – that a project proposal be properly evaluated and that parties other than the opponent be given opportunity to present their proposal – was accomplished. The Sandiganbayan therefore seriously erred when it immediately concluded that *all* actions of petitioner were illegal and irregular. Petitioner maintains such actions are presumed to be regular and the burden of proving otherwise rests on the respondent. Because all the transactions were done by him *with the authority* of the Sangguniang Bayan, petitioner argues that there can be no dispute that he endeavored *in good faith* to comply with the requirements of R.A. No. 7718. Moreover, petitioner asserts that the non-inclusion of all the other members of the Sangguniang Bayan denied him the equal protection of the laws.

In compliance with the directive of this Court, the Solicitor General filed his Comment asserting that petitioner was correctly convicted of Violation of Section

3(e) of R.A. No. 3019. The Solicitor General stressed that the findings of the Sandiganbayan and this Court that the requirements of the Build Operate-Transfer (BOT) law and its implementing rules have not been followed in the bidding and award of the contract to Australian-Professional, Inc. (API) were based on the documents of the project which have not been questioned by petitioner. Thus, despite petitioner's claim of substantial compliance and API's proposal being "complete," it is undisputed that it did not include the required company profile of the contractor and that the publication of the invitation for comparative proposals, as found by this Court, was defective. These findings supported by the evidence on record were shown to have resulted in the failure to assess the actual experience and financial capacity of API to undertake the project, and in contravention of the law foreclosed submission of rival proposals. Finally, the fact that the Sangguniang Bayan members were not included in the charge does not negate the guilt of petitioner who had the power and discretion over the implementation of the Wagwag Shopping Mall project and not simply to execute the resolutions passed by the Sangguniang Bayan approving the contract award to API. The facts established in the decision of the Sandiganbayan bear great significance on petitioner's role in the bidding and contract award to API, which also clearly showed that petitioner as local chief executive was totally remiss in his duties and functions.

We find no cogent reason for reversal or modification of our decision which exhaustively discussed the afore-cited issues being raised anew by the petitioner.

Notably, petitioner's invocation of good faith deserves scant consideration in the light of established facts, as found by the Sandiganbayan and upheld by this Court, clearly showing that he acted with manifest partiality and gross inexcusable negligence in awarding the BOT project to an unlicensed and financially unqualified contractor.

It bears stressing that the offense defined under Section 3 (e) of R.A. No. 3019 may be committed even if bad faith is not attendant.^[2] Thus, even assuming that petitioner did not act in bad faith, his negligence under the circumstances was not only gross but also inexcusable.^[3] Submission of documents such as contractor's license and company profile are minimum legal requirements to enable the government to properly evaluate the qualifications of a BOT proponent. It was unthinkable for a local government official, especially one with several citations and awards as outstanding local executive, to have allowed API to submit a BOT proposal and later award it the contract despite lack of a contractor's license and proof of its financial and technical capabilities, relying merely on a piece of information from a news item about said contractor's ongoing mall construction project in another municipality and verbal representations of its president.

In his testimony at the trial, petitioner admitted that after the awarding of the contract to API, the latter did not comply with the posting of notices and submission of requirements. He simply cited the reason given by API for such non-compliance, *i.e.*, that the BOT law does not provide for such requirements. This clearly shows petitioner's indifference and utter disregard of the strict requirements of the BOT law and implementing rules, which as local chief executive, he is mandated to follow and uphold. Petitioner's reliance on the representations and statements of the contractor on the compliance with legal requirements is an unacceptable excuse for his gross negligence in the performance of his official duties. He must now face the

consequences of his decisions and acts relative to the failed project in violation of the law.

The substantial compliance rule is defined as “[c]ompliance with the essential requirements, whether of a contract or of a statute.”^[4] Contrary to petitioner’s submission, his gross negligence in approving API’s proposal notwithstanding its failure to comply with the minimum legal requirements prevented the Sangguniang Bayan from properly evaluating said proponent’s financial and technical capabilities to undertake the BOT project. Such gross negligence was evident from the taking of shortcuts in the bidding process by shortening the period for submission of comparative proposals, nonobservance of Investment Coordinating Committee of the National Economic Development Authority approval for the Wag-wag Shopping Mall Project, publication in a newspaper which is not of general circulation, and accepting an incomplete proposal from API. These forestalled a fair opportunity for other interested parties to submit comparative proposals. Petitioner’s argument that there was substantial compliance with the law thus fails. The essential requirements of the BOT law were not at all satisfied as in fact they were sidestepped to favor the lone bidder, API.

Petitioner nonetheless reiterates his position that he cannot be held liable for such acts in violation of the law since there was “substantial basis” for the Municipal Government of Muñoz to believe that API had the expertise and capability to implement the proposed Wag-wag Shopping Mall project. He points out the time they were negotiating with API, Australian- Professionals Realty, Inc. which is the same entity as API, was involved in two major BOT projects (P150 million project in Lemery, Batangas and P300 million construction project in Calamba, Laguna).

We disagree.

As extensively discussed in our Decision, petitioner was grossly negligent when it glossed over API’s failure to submit specified documents showing that it was duly licensed or accredited Filipino contractor, and has the requisite financial capacity and technical expertise or experience, in addition to the complete proposal which includes a feasibility study and company profile. These requirements imposed by the BOT law and implementing rules were intended to serve as competent proof of legal qualifications and therefore constitute the “*substantial basis*” for evaluating a project proposal. Petitioner’s theory would allow substitution of less reliable information as basis for the local government unit’s determination of a contractor’s financial capability and legal qualifications in utter disregard of what the law says and consequences prejudicial to the government, which is precisely what the law seeks to prevent.

To reiterate, we quote from the Decision the purpose of the bidding requirements:

We have held that the Implementing Rules provide for the unyielding standards the PBAC should apply to determine the financial capability of a bidder for pre-qualification purposes: (i) proof of the ability of the project proponent and/or the consortium to provide a minimum amount of equity to the project and (ii) a letter testimonial from reputable banks attesting that the project proponent and/or members of the consortium are banking with them, that they are in good financial standing, and that

they have adequate resources. The evident intent of these standards is **to protect the integrity and insure the viability of the project by seeing to it that the proponent has the financial capability to carry it out.** Unfortunately, none of these requirements was submitted by API during the pre-qualification stage.^[5] (Emphasis supplied.)

Petitioner further points out that our Decision failed to consider that the Sandiganbayan disregarded his right to the equal protection of the laws when he alone among the numerous persons who approved API's proposal and implemented the project was charged, tried and convicted.

It bears stressing that the manner in which the prosecution of the case is handled is within the sound discretion of the prosecutor, and the non- inclusion of other guilty persons is irrelevant to the case against the accused.^[6] But more important, petitioner failed to demonstrate a discriminatory purpose in prosecuting him alone despite the finding of the Sandiganbayan that the Sangguniang Bayan "has conspired if not abetted all the actions of the Accused in all his dealings with API to the damage and prejudice of the municipality" and said court's declaration that "[t]his is one case where the Ombudsman should have included the entire Municipal Council of Muñoz in the information."^[7]

As this Court explained in *Santos v. People*^[8]:

The prosecution of one guilty person while others equally guilty are not prosecuted, however, is not, by itself, a denial of the equal protection of the laws. Where the official action purports to be in conformity to the statutory classification, an erroneous or mistaken performance of the statutory duty, although a violation of the statute, is not without more a denial of the equal protection of the laws. The unlawful administration by officers of a statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination. This may appear on the face of the action taken with respect to a particular class or person, or it may only be shown by extrinsic evidence showing a discriminatory design over another not to be inferred from the action itself. **But a discriminatory purpose is not presumed, there must be a showing of "clear and intentional discrimination."** Appellant has failed to show that, in charging appellant in court, that there was a "clear and intentional discrimination" on the part of the prosecuting officials.

The discretion of who to prosecute depends on the prosecution's sound assessment whether the evidence before it can justify a reasonable belief that a person has committed an offense. The presumption is that the prosecuting officers regularly performed their duties, and this presumption can be overcome only by proof to the contrary, not by mere speculation. Indeed, appellant has not presented any evidence to overcome this presumption. The mere allegation that appellant, a Cebuana, was charged with the commission of a crime, while a