



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
QUEZON CITY

SEVENTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Case No. SB-17-CRM-0064
to 0069

-versus -

Present:

CARLITO SAN ANTONIO FAJARDO,
Accused.

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

X-----X

Promulgated:

May 10, 2019 *JP*

DECISION

TRESPESES, J.:

Accused Carlito San Antonio Fajardo (“accused Fajardo”) was a former Executive Director of the National Parks and Development Committee (“NPDC”) of the City of Manila. He was charged with violations of Section 3 (e) of Republic Act No. 3019 (R.A. No. 3019) for approving the security contract with and signing the disbursement vouchers facilitating the release of payment to Variance Protective and Security Agency (“Variance”) for security services, purportedly rendered by the latter from 2004 to 2010, based on a month-to-month contract extension and despite the lack of public bidding.

In SB-17-CRM-0064, the Amended¹ Information² against Fajardo reads as follows:

¹ The motion to amend the Informations filed against accused Fajardo were made to correct his middle name from “Antonio” to “San Antonio.” (Records for SB-17-CRM-0065 to 0069, Vol. II, pp. 72-75.) The motion was granted by the Court in its Order dated 24 March 2017. (Records for SB-17-CRM-0065 to 0069, Vol. II, p. 102.)

² Records, Vol. II, pp. 76-78.

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That on 29 October 2004 to 5 May 2005, or thereabout, in the City of Manila, and within this Honorable Court's jurisdiction, public officer CARLITO SAN ANTONIO FAJARDO, Executive Director, National Parks and Development Committee, City of Manila, while in the performance of his official functions, acting with evident bad faith, manifest partiality, or gross inexcusable negligence, did then and there willfully, unlawfully and criminally give unwarranted benefits, preferences, or advantage to Variance Protective and Security Agency (Variance), a private corporation, when he signed Disbursement Vouchers facilitation the release of payment to Variance for security services purportedly rendered from 16 September 2004 to 31 December 2004, amounting to ₱3,409,720.75, knowing fully well that Variance was not legally entitled thereto considering that the public bidding and other procurement activities required under Republic Act No. 9184 and its implementing rules and regulations were not conducted prior to the procurement of Variance's security service for said period, to the damage and prejudice of the government.

The rest of the Amended Informations against accused Fajardo contain the same allegations, varying only in the dates of alleged commission of the offense, the inclusive date of services rendered by Variance and the amount covered by the disbursement vouchers, as follows:

Case Number	Date of signing DV	Date of Variance's Services	DV Amount
SB-17-CRM-0065 ³	4 February 2005 to 298 March 2006	1 January 2005 to 31 December 2005	₱11,098,277.86
SB-17-CRM-0066 ⁴	31 January 2006 to 15 December 2006	1 January 2006 to 30 November 2006	₱12,796,422.31
SB-17-CRM-0067 ⁵	31 January 2007 to 23 January 2008	1 January 2007 to 31 December 2007	₱14,028,214.13
SB-17-CRM-0068 ⁶	4 February 2008 to 16 February 2009	1 January 2008 to 31 December 2008	₱17,378,679.77
SB-17-CRM-0069 ⁷	28 January 2009 to 19 June 2009	1 January 2009 to 15 May 2009	₱ 8,073,667.90

³ Records, Vol. II, pp. 79-81.

⁴ Id. at 82-84.

⁵ Id. at 85-87.

⁶ Id. at 88-90.

⁷ Id. at 91-93.

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On 1 February 2017, the Court issued a Hold Departure Order against accused Fajardo.⁸ On 21 February 2017, accused Fajardo posted a cash bond to secure his temporary liberty.⁹

A Motion to Consolidate the cases filed against accused Fajardo and former (Acting) Executive Director of NPDC, Salome Tiongco Habal, was filed by the prosecution on 14 March 2017.¹⁰ This was denied by the Court in its Order dated 19 April 2017.¹¹ Nevertheless, the Court allowed a joint trial for the prosecution's presentation of common witnesses in the cases against accused Fajardo and Habal.

On 12 July 2017, accused Fajardo pleaded "not guilty" to the charges against him upon arraignment.¹²

On 9 November 2017, the prosecution filed its Pre-Trial Brief in SB-17-CRM-0065 to 0069.¹³ The parties submitted their Joint Stipulation of Facts and Issue¹⁴ on 22 January 2018, where they stipulated that "(a)t the time material to these cases, accused Fajardo is a public officer holding the position of Executive Director of the National Parks and Development Committee." Exhibits "L," "O," "R," "U," "X," "AA," "DD," etc. were common exhibits of the parties. Pursuant thereto, the Court issued the corresponding Pre-Trial Order¹⁵ dated 22 January 2018.

In SB-17-CRM-0064 to 0069, the prosecution presented the following witnesses, whose Judicial Affidavits were admitted in lieu of their respective direct testimonies, and who were subjected to cross-examination:

1. Eduardo C. Villalon, Jr. is the Division Chief of the Planning and Management Division of NPDC and was a provisional member of the NPDC Bids and Awards Committee ("NPDC-BAC") from 2004 to 2010. In his Judicial Affidavit,¹⁶ he testified that during this period, no public bidding was conducted for the procurement services for NPDC. Also, there was no recommendation from NPDC-BAC as to the extension of contracts for security services for NPDC.
2. Edgardo A. Lunizo is a staff member of the Planning Division of NPDC and was designated as a member of its BAC

⁸ Records, Vol. II, p. 20.

⁹ Id. at 38.

¹⁰ Id. at 94-99.

¹¹ Id. at 117-A.

¹² Id. at 153.

¹³ Id. at 172-266.

¹⁴ Id. at 323-448.

¹⁵ Id. at 449-516.

¹⁶ Id. at 322-A-322-G.

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Secretariat on 15 December 2009. In his Judicial Affidavit,¹⁷ he stated that on this date, no recommendation was issued by BAC regarding the extension of contracts for security services for NPDC. In fact, no public bidding was conducted for the procurement of security services for NPDC, except on 22 November 2010. He submitted and identified a Memorandum dated 22 November 2010 and the Minutes of the Pre-Bid Conference Meeting dated 23 November 2010.

3. Dr. Rolando T. Mamaradlo is the Chief Administrative Officer of NPDC, with the Human Resource Section under his control and supervision. In his Judicial Affidavit,¹⁸ he identified the service records of all of the accused.
4. Dexter T. Espiritu is the Audit Team Leader of the Commission on Audit (“COA”) assigned at NPDC. In his Judicial Affidavit,¹⁹ he identified various pertinent disbursement vouchers, checks, official receipts, Audit Observation Memorandum and letters relative to NPDC’s transactions for security service in the years 2004 to 2010.
5. Atty. Epicurus Charlo S. Salcedo is a Graft Investigation and Prosecution Officer II at the Office of the Ombudsman. The parties agreed to stipulate that, if allowed to testify, he will state that he filed the case against accused as a nominal complainant and that he can identify Exhibits A (complaint).
6. Heherson M. Martinez was the Accountant of NPDC at the time material to the case. In his Judicial Affidavit,²⁰ he identified Disbursement Vouchers pertaining to NPDC’s payment to Variance for security services from 2004 to 2010 which he signed. He also identified the signatures of the accused on the said Disbursement Vouchers.

Pursuant to the prosecution’s Manifestation dated 1 June 2018, the Court directed the former to file its Formal Offer of Documentary Exhibits.²¹

On 2 July 2018, the prosecution filed its Formal Offer of Documentary Evidence,²² which was duly opposed by accused Fajardo.²³

¹⁷ Records for SB-17-CRM-0070 to 0071, Vol. II, pp. 199-209.

¹⁸ Records, Vol. IV, pp. 90-100.

¹⁹ Records, Vol. III, pp. 103-898.

²⁰ Records, Vol. IV, pp. 139-545.

²¹ Records for SB-17-CRM-0070 to 0071, Vol. III, p. 493.

²² Records, Vol. V, pp. 108-452.

²³ Id. at 453-471.

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On 6 September 2018, the Court issued a Resolution on the prosecution's formal offer of evidence.²⁴ The prosecution filed a motion for its reconsideration, which the Court denied in its Resolution dated 15 November 2018.²⁵

During the initial presentation of accused Fajardo's evidence on 13 February 2019, his counsel manifested that while he was ready to present accused Fajardo, he and the prosecution are exploring the possibility of entering into a plea bargaining agreement. Hence, the Court reset the hearing of the case on 27 March 2019.²⁶

On 27 March 2019, both the prosecution and counsel for Fajardo manifested that they are still in the process of exploring plea-bargaining. In view thereof, the hearing of the case was once again rescheduled on 27 May 2019.²⁷

On 26 April 2019, the prosecution filed a "Manifestation and Motion to Set for Re-Arraignment" in SB-17-CRM-0064 to 69.²⁸ It alleged that accused Fajardo requested to enter into a plea-bargaining agreement and plead guilty to the lesser offense of violation of Section 7(a) of Republic Act No. 6713 (R.A. No. 6713) on *Prohibited Acts and Transactions*.²⁹ The prosecution stated that upon evaluating the records of the case, it issued a Memorandum dated 20 March 2019 recommending the approval of said request. As of 2 April 2019, the said Memorandum was already approved by the Honorable Ombudsman Samuel R. Martires. Hence, the motion for re-arraignment of accused Fajardo.

On 10 May 2019, a hearing was held to determine the proposed plea bargain. In open court, the prosecution manifested that it is willing to accept the plea bargain offer of accused Fajardo. It manifested that the Office of the Special Prosecutor had secured authority from the Ombudsman to consent to the guilty plea offer of accused to a lesser offense of committing of Sec. 7 (a) of R.A. No. 6713.

The Court separately inquired from accused Fajardo whether he has voluntarily offered to plea to a lesser offense and whether he understood the

²⁴ Records, Vol. V, p. 472-479.

²⁵ Records for SB-17-CRM-0070 to 0071, Vol. IV, pp. 56-59.

²⁶ Records, Vol. VI, p. 49.

²⁷ Id. at 55.

²⁸ Id. at 59-61.

²⁹ SECTION 7. Prohibited Acts and Transactions. — In addition to acts and omissions of public officials and employees now proscribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

(a) Financial and material interest. — Public officials and employees shall not, directly or indirectly, have any financial or material interest in any transaction requiring the approval of their office. (Code of Conduct and Ethical Standards for Public Officials and Employees, Republic Act No. 6713, [February 20, 1989])

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consequences of his plea. With the assistance of his counsel on record, accused Fajardo manifested to the court that he has voluntarily offered to plead guilty to a lesser offense. He likewise confirmed to the court with the assistance of his counsel, he fully understood the consequences of such plea.

RULING BY THE COURT

After evaluating the facts of the case and the manifestations by the parties to the case, the Court hereby allows the parties to enter into plea bargaining wherein accused Fajardo, with the consent of the Ombudsman, through the OSP, is allowed to plead guilty to a lesser offense of Section 7 (a) of R.A. No. 6713.

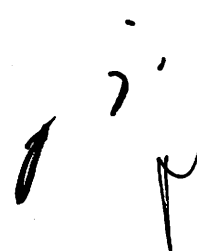
In *Estipona, Jr. y Asuela v. Lobrigo*,³⁰ the Court explained the nature of plea bargaining:

In this jurisdiction, plea bargaining has been defined as "a process whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval." There is give-and-take negotiation common in plea bargaining. The essence of the agreement is that both the prosecution and the defense make concessions to avoid potential losses. Properly administered, plea bargaining is to be encouraged because the chief virtues of the system — speed, economy, and finality — can benefit the accused, the offended party, the prosecution, and the court.

Considering the presence of mutuality of advantage, the rules on plea bargaining neither create a right nor take away a vested right. Instead, it operates as a means to implement an existing right by regulating the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for a disregard or infraction of them.

The decision to plead guilty is often heavily influenced by the defendant's appraisal of the prosecution's case against him and by the apparent likelihood of securing leniency should a guilty plea be offered and accepted. In any case, whether it be to the offense charged or to a lesser crime, a guilty plea is a "serious and sobering occasion" inasmuch as it constitutes a waiver of the fundamental rights to be presumed innocent until the contrary is proved, to be heard by himself and counsel, to meet the witnesses face to face, to bail (except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong), to be convicted by proof beyond reasonable doubt, and not to be compelled to be a witness against himself.

³⁰ G.R. No. 226679, 15 August 2017.



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Yet a defendant has no constitutional right to plea bargain. No basic rights are infringed by trying him rather than accepting a plea of guilty; the prosecutor need not do so if he prefers to go to trial. Under the present Rules, the acceptance of an offer to plead guilty is not a demandable right but depends on the consent of the offended party and the prosecutor, which is a condition precedent to a valid plea of guilty to a lesser offense that is necessarily included in the offense charged. The reason for this is that the prosecutor has full control of the prosecution of criminal actions; his duty is to always prosecute the proper offense, not any lesser or graver one, based on what the evidence on hand can sustain.

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The plea is further addressed to the sound discretion of the trial court, which *may* allow the accused to plead guilty to a lesser offense which is necessarily included in the offense charged. The word *may* denotes an exercise of discretion upon the trial court on whether to allow the accused to make such plea. xxx

Plea bargaining is allowed during the arraignment, the pre-trial, or even up to the point when the prosecution already rested its case. xxx (Footnotes omitted.)

In *Daan v. Sandiganbayan*,³¹ the Court expounded on the legal basis of plea bargaining and when it could be seasonably made by the parties, thus:

Plea bargaining is authorized under Section 2, Rule 116 of the Revised Rules of Criminal Procedure, to wit:

SEC. 2. Plea of guilty to a lesser offense. — At arraignment, the accused, with the consent of the offended party and the prosecutor, may be allowed by the trial court to plead guilty to a lesser offense which is necessarily included in the offense charged. After arraignment but before trial, the accused may still be allowed to plead guilty to said lesser offense after withdrawing his plea of not guilty. No amendment of the complaint or information is necessary. (sec. 4, cir. 38-98)

Ordinarily, plea bargaining is made during the pre-trial stage of the proceedings. Sections 1 and 2, Rule 118 of the Rules of Court, require plea bargaining to be considered by the trial court at the pre-trial conference, *viz.*:

SEC. 1. Pre-trial; mandatory in criminal cases. — In all criminal cases cognizable by the *Sandiganbayan*, Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court and Municipal Circuit Trial Court, the court shall, after arraignment and within thirty (30) days from the date the court acquires jurisdiction over the person of the

³¹ 573 Phil. 368-383 (2008).

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accused, unless a shorter period is provided for in special laws or circulars of the Supreme Court, order a pre-trial conference to consider the following:

- (a) **plea bargaining;**
- (b) stipulation of facts;
- (c) marking for identification of evidence of the parties;
- (d) waiver of objections to admissibility of evidence;
- (e) modification of the order of trial if the accused admits the charge but interposes a lawful defense; and
- (f) such matters as will promote a fair and expeditious trial of the criminal and civil aspects of the case.

SEC. 2. *Pre-trial agreement.* — All agreements or admissions made or entered during the pre-trial conference shall be reduced in writing and signed by the accused and counsel, otherwise, they cannot be used against the accused. The agreements covering the matters referred to in section 1 of this Rule shall be approved by the court. (Emphasis supplied)

But it may also be made during the trial proper and even after the prosecution has finished presenting its evidence and rested its case. Thus, the Court has held that it is immaterial that plea bargaining was not made during the pre-trial stage or that it was made only after the prosecution already presented several witnesses.

Under Section 1 of Rule 118, the parties are authorized to enter into plea bargaining after arraignment. As discussed in *Daan*, they may still enter into plea bargaining even after the prosecution has already presented its evidence.

During his arraignment, accused Fajardo entered a plea of not guilty to the charges of violation of Section 3 (e) of R.A. No. 3019. Considering that he has entered into a plea bargaining agreement with the prosecution, they both move for the withdrawal of such pleas and, in lieu thereof, enter a guilty plea under Section 7 (a) of R.A. No. 6713 for each of the cases against him.

The prosecution manifested to the Court that they are not opposing the accused's change of plea. On the contrary, Director Leni Bajo-Padaca and Prosecutor Alexie Jane C. Tadeo informed the Court that the Honorable Ombudsman Samuel R. Martirez have authorized them to enter into a plea bargaining agreement with the accused. The Court deems the prosecution's manifestation as sufficient to allow the withdrawal of accused's former plea and to permit him to enter a plea of guilty to a lesser offense.

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Pursuant to Section 2 of Rule 116³² of the Revised Rules on Criminal Procedure, no amendment of the *Information* is necessary when withdrawing a plea of not guilty and pleading guilty to a lesser offense.

Thus, the motion of accused Fajardo to withdraw his earlier plea of *not guilty* is **GRANTED**.

Upon re-arraignment on the Informations for the lesser offense of *Section 7 (a) of RA. 6713 – Prohibited Acts and Transactions*, accused Fajardo entered a plea of *guilty*. He was assisted by his counsel *de parte*, Atty. Roland Galvan of *Galvan Law Office*.

Accordingly, let the plea of *guilty* be re-entered into the records of the accused for the charges against him.

Violation of Section 7 (a) of RA 6713 is penalized as follows:

SECTION 11. *Penalties*. — (a) Any public official or employee, regardless of whether or not he holds office or employment in a casual, temporary, holdover, permanent or regular capacity, committing any violation of this Act shall be punished with a fine not exceeding the equivalent of six (6) months' salary or suspension not exceeding one (1) year, or removal depending on the gravity of the offense after due notice and hearing by the appropriate body or agency. If the violation is punishable by a heavier penalty under another law, he shall be prosecuted under the latter statute. Violations of Sections 7, 8 or 9 of this Act shall be punishable with imprisonment not exceeding five (5) years, or a fine not exceeding five thousand pesos (P5,000), or both, and, in the discretion of the court of competent jurisdiction, disqualification to hold public office.

Considering that accused has in his favor the mitigating circumstance of the plea of *guilty*, accused is imposed the penalty of **FINE of FIVE THOUSAND PESOS (P5,000.00)** for each count of violation of Section 7 (a) of Republic Act No. 6713.

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding accused **CARLITO SAN ANTONIO FAJARDO** *guilty* beyond reasonable doubt of **six (6) counts** of the lesser offense of *Prohibited Transactions* defined and penalized under Section 7 (a) of Republic Act No. 6713.

³² Sec. 2. Plea of guilty to a lesser offense. — At arraignment, the accused, with the consent of the offended party and prosecutor, may be allowed by the trial court to plead guilty to a lesser offense which is necessarily included in the offense charged. After arraignment but before trial, the accused may still be allowed to plead guilty to said lesser offense after withdrawing his plea of not guilty. No amendment of the complaint or information is necessary.

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Appreciating the mitigating circumstance of the plea of guilty, accused **FAJARDO** is imposed a **FINE** of **FIVE THOUSAND PESOS (P5,000.00)** each in **SB-17-CRM-0064, SB-17-CRM-0065, SB-17-CRM-0066, SB-17-CRM-0067, SB-17-CRM-0068** and **SB-17-CRM-0069**, or a **total fine** of **THIRTY THOUSAND PESOS (P30,000.00)**.

The cash bond posted by the accused shall be released to accused or his representative upon payment of the fine.

The Hold Departure Order (HDO) issued against accused Carlito San Antonio Fajardo is **LIFTED**.

SO ORDERED.


ZALDY V. TRESPESES
Associate Justice


WE CONCUR:


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


GEORGINA D. HIDALGO
Associate Justice

A T T E S T A T I O N

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


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

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CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


AMPARO M. GABOTAJE-TANG
Presiding Justice

