



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
QUEZON CITY

SEVENTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Case No. **SB-18-CRM-0379**


-versus -

Present:

MARIO PATRICIO PARAZ
BARCENAS,
ROQUE RELLON SARCAUGA,
VALENTIN A. GAMUTAN, JR.¹ and
MARLYN M. CASTILLO

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

Promulgated:

July 12, 2019 

Accused.

X-----X

DECISION

GOMEZ-ESTOESTA, J.:

As another offshoot of the Fertilizer Fund Scam, an Information for Violation of Section 3 (e) of R. A. 3019 was filed against accused **Roque Rellon Sarcauga** ["Sarcauga"], among others, which alleged, as follows:

That on 26 April 2005 to 9 May 2005, or sometime prior or subsequent thereto, in the Municipality (now City) of Carcar, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, accused **MARIO PATRICIO PARAZ BARCENAS** (Barcenas), a high-ranking public official, being then the Municipal Mayor of Carcar, Cebu, with **ROQUE RELLON SARCAUGA** (Sarcauga), and **VALENTIN A. GAMUTAN JR.** (Gamutan), also public officers being the Municipal Agriculturist and Municipal Planning and Development Coordinator/Bids and Awards Committee Chairman, respectively, of the Municipal Government of Carcar, Cebu, while in the performance of their official functions, committing the crime in relation to their office, and taking advantage of their official positions, conspiring and confederating with one another and with accused **MARLYN M. CASTILLO** (Castillo), a private person representing M.M. Castillo General Merchandise (MMCGM), acting with manifest partiality, evident bad faith or gross inexcusable negligence, did then and there, willfully, unlawfully and criminally give

¹ Due to his death, case was dismissed against him per Resolution dated August 29, 2018

Ji

MMCGM, through Castillo, unwarranted benefits, privilege and advantage by entering into a contract to purchase 166 liters/bottles of foliar fertilizers with brand name Ferti King Foliar Fertilizer at Php1,500.00 per liter/bottle, and causing the payment thereof for a total amount of Php239,040.00 (Php249,000.00 less Php9,960.00 tax withheld) through the following individual and/or collective acts:

a. Sarcauga changed the Program of Work specifications from common to foliar fertilizer upon MMCGM and Castillo's representation that it is interested to supply the municipality's required fertilizer and recommended to the Bids and Awards Committee (BAC) to qualify MMCGM as the direct contractor for the 166 liters/bottles of foliar fertilizers.

b. Gamutan introduced Castilo and MMCGM for pre-qualification of bidder for direct contracting/sole distributor.

c. Sarcauga was required to write a letter to the BAC to cancel the purchase of common fertilizer, change his purchase specifications to foliar fertilizer and specify what mode of procurement method will be used for the BAC to study; the next day, he prepared Purchase Order (PO) No. 2005-058 for the purchase of 166 liters/bottles of foliar fertilizers unit cost of Php1,500.00 per liter for Php249,000.00 from MMCGM, which was later approved and conformed to by Barcenas and Castillo, respectively. Sarcauga's letter thus was treated as a Request for Direct Contracting as Mode of Procurement for the purchase of foliar fertilizer.

d. Gatmaitan facilitated the immediate submission, verification and approval of MMCGM as qualified direct contractor/sole distributor of the municipality.

e. The Municipal Government of Carcar, Cebu, entered into and consummated the transaction while the BAC, as a collegial body, just agreed to recommend to the head of the procuring entity to approve MMCGM as its direct contractor/sole distributor of the municipality's required foliar fertilizer, contrary to the provisions of Section 50 of the Implementing Rules and Regulations – A (IRR-A) of Republic Act No. 9184 (The Government Procurement and Reform Act).

f. The supporting documents of the transaction lacked the required information, i.e., in the Inspection and Acceptance Report, Sarcauga failed to describe whether there was a complete or partial delivery of the foliar fertilizers; Box "B" of Disbursement Voucher No. 401-0505-0001 was unsigned by the Municipal Accountant; and the Accountant's Advice of Local Check Disbursement was certified correct for and in behalf of the Municipal Accountant, contrary to the provisions of Section 4 (6) of Presidential Decree 1445 (The Government Auditing Code of the Philippines).

g. Castillo received the Notice of Award that Barcenas solely signed as the Committee on Awards, three (3) days after the consummation of the questioned transaction, contrary to Section 106, Rule II of the Commission on Audit Circular No. 92-386.

to the damage and prejudice of the government in the amount of Php236,040.00.

CONTRARY TO LAW.²

² Record, Volume 1, pp. 1-4

ANTECEDENTS

On June 8, 2018, accused Sarcauga was arrested³ by elements of the Argao Police Station in Cebu City by virtue of the warrant of arrest⁴ issued against him by this Court on May 24, 2018. He posted a cash bail in the amount of ₱30,000.00 before the Office of the Executive Judge of the Regional Trial Court of Cebu City, Branch 18. Such bail documents were thereafter transmitted to this Court, and were duly approved to answer for the provisional liberty of said accused.⁵

Upon arraignment on July 17, 2018, accused Sarcauga entered a plea of *not guilty*.⁶ He was assisted by Atty. Bienvenido Baring. Accused Sarcauga would have moved to defer his arraignment in view of his pending Petition for Review of an administrative case before the Court of Appeals but this was denied outright.⁷ The case was thereafter set for preliminary conference for the parties' stipulation of facts and issues, and pre-marking of documentary exhibits.

While several settings were held for preliminary conference,⁸ a *Manifestation* was later filed by the Office of the Special Prosecutor on July 2, 2019 stating that accused Sarcauga has offered to plea bargain to the lesser offense of Violation of Section 218 of the Revised Penal Code, or *Failure of Accountable Officer to Render Accounts*, and that the same be heard on July 12, 2019. A copy of an inter-office Memorandum dated June 17, 2019 addressed to Ombudsman Samuel R. Martires⁹ was shown which stated, among others, that:

(i) the plea bargaining can be entertained, following the Court's disposition in similar plea bargaining agreements made in *People v. Racho, et al.*, SB-16-CRM-0132, and *People v. Centena, et al.*, SB-17-CRM-1782;

(2) the crime of *Failure of Accountable Officer to Render Accounts* is an offense necessarily included in the offense charged;

(3) it may be worthy to note that there is no allegation in the Information that the fertilizers subject of the charge were not delivered to the Municipality of Carcar, Cebu;

(4) accused Sarcauga is willing to restitute the amount of ₱125,000.00 to the government; and

³ Id., pp. 147-148

⁴ Id., p. 125

⁵ Order dated July 6, 2018; Record, Volume, p. 150

⁶ Arraignment was conducted during the Court's provincial hearing in the Regional Trial Court of Cebu City, Branch 20; Record, Volume 1, p. 212-D

⁷ Vide: Minutes of the July 17, 2018 hearing; Record, Volume 1, p. 212-A

⁸ Minutes of the Preliminary Conference dated July 19, 2018, August 7, 2018, September 28, 2018, November 16, 2018, January 19, 2019, and June 25, 2019

⁹ The Internal Memorandum dated June 17, 2019 was submitted by Acting Director Froilan C. Dayco, ASP 1 Marciel Pintucan-Acayan, ASP 1 A.D. Vicednt B. Salvani IV, ASP 1 Joshua A. Tan, and GIPO II Joebil B. Delmoro.

(5) Nominal complainant Field Investigation Office II of the Office of the Ombudsman has no objection to the plea bargaining being made.¹⁰

The Prosecution thus recommended that the plea bargaining be approved.

For this reason, considering the persistent intent of accused Sarcauga to plead guilty to the lesser offense of *Failure of Accountable Officer to Render Accounts*, the plea bargaining proposal was entertained at today's setting.

THE PLEA BARGAINING AGREEMENT

To his intended plea to the lesser offense of *Failure of Accountable Officer to Render Accounts*, accused Sarcauga was fully apprised of the consequences thereof in open Court.

In clear terms, he was asked, and thereafter stated in the affirmative, that he understood the nature of the change of plea, and that it is inevitably a judgment of conviction; that if he pleaded guilty to the charge, he is deemed to have admitted all the accusations alleged in the Information, and that a consequent penalty of *prision correccional in its minimum period, or a fine ranging from 200 to 6,000 pesos, or both* may be imposed pursuant to Article 218 of the Revised Penal Code.

The Prosecution, on the other hand, is in full support of the plea bargaining as it no longer intends to present evidence against said accused.

THE COURT'S RULING

The acceptance of an offer to plead guilty to a lesser offense is not demandable by the accused as a matter of right but is a matter that is addressed entirely to the sound discretion of the trial court.¹¹

A matrix of the elements of the offense charged, which is a *Violation of Section 3 (e) of R.A. 3019* and, the lesser plea to *Failure of Accountable Officer to Render Accounts* would show the following notable variances:¹²

(1) That the accused is a public officer or a private person charged in conspiracy with the former;	(1) That the offender is a public officer whether in the service or separated therefrom;
(2) That said public officer commits the prohibited acts during the performance of his or her official duties or in relation to his or her public positions;	(2) That he must be an accountable officer for public funds or property;

¹⁰ Memorandum dated June 13, 2019 as attached to the Internal Memorandum dated June 17, 2019

¹¹ *People v. Villarama, et al.*, G.R. No. 99287, June 23, 1992, citing *Manuel v. Velasco, et al.*, G.R. No. 94732, February 26, 1991

¹² Elements as delineated in *Lumauig v. People*, G.R. No.166680, July 7, 2014

(3) That he or she causes undue injury to any party, whether the government or a private party;	
(4) That such injury is caused by giving unwarranted benefits, advantage or preference to such parties; and	
(5) That the public officer has acted with manifest partiality, evident bad faith or gross inexcusable negligence.	
	(3) That he is required by law or regulation to render accounts to the COA or to a provincial auditor; and,
	(4) That he fails to do so for a period of two months after such account should be rendered.

The common elements are only found in the public position of the accused. The variance lies in the manner with which the offense is committed. For both offenses, it is an inherent element that the accused be a public officer and that the offense be committed during the performance of his or her official duties or in relation to his or her public positions. That he is an accountable officer for public funds or property may be one. On the other hand, the element of manifest partiality, evident bad faith or gross inexcusable negligence resulting in undue injury or giving another unwarranted benefits, advantage or preference is different from the element of being required by law or regulation to render accounts to the COA or to a provincial auditor and that he or she fails to do so for a period of two months after such account should be rendered. In *Lumauig v. People*,¹³ the Supreme Court notably recognized “*the glaring differences between the elements of these two offenses [which] necessarily imply that the requisite evidence to establish the guilt or innocence of the accused would certainly differ in each case.*”¹⁴ But this only applies when a full trial is called, and the guilt or innocence of the accused comes to a test.

It is not so in this case when accused’s plea bargain to a lesser offense is submitted, and the Prosecution yielded.

For purposes of plea bargaining, a reading of Section 2 of Rule 116 does not require that the existence of the elements be met exactly head-on, for which reason, a plea of guilty is allowed *to a lesser offense which is necessarily included in the offense charged*. Section 2 is quoted, thus:

¹³ *Supra*, note 6

¹⁴ Or to fully quote:

“The glaring differences between the elements of these two offenses necessarily imply that the requisite evidence to establish the guilt or innocence of the accused would certainly differ in each case. Hence, petitioner’s acquittal in the anti-graft case provides no refuge for him in the present case given the differences between the elements of the two offenses.”

Section 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, circ. 38-98) [Emphasis supplied]

That the lesser offense be necessarily included in the offense charged only meant that some, if not few, of its elements be included. At this instance, when the element of the **public office** of the accused is present in both, it can be said that the offense of *Failure of Accountable Officer to Render Accounts* is necessarily included in the offense of *Violation of Section 3 (e) of R.A. 3019*. The act of having failed to render an account can also be seen as tantamount to causing **undue injury** to the Government, which is another element of the offense charged. That should be sufficient to consider accused's plea bargaining.

Whether such plea bargaining be approved, the case of *Daan v. Sandiganbayan* has significantly reiterated:


Plea bargaining in criminal cases is a process whereby the accused and the prosecution work out a **mutually satisfactory disposition** of the case subject to court approval. It usually involves the defendant's pleading guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that for the graver charge.

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 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;
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(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.

Clearly, this Court cannot compel the Prosecution to continue prosecuting the case by virtue of its agreement that accused be allowed to plea bargain to a lesser offense. The plea bargaining agreement is thus considered **APPROVED**.

Pursuant to Section 2 of Rule 116¹⁵ of the Revised Rules on Criminal Procedure, no amendment of the *Information* is thus necessary.

Upon re-arraignment of the Information for the lesser offense of *Failure of Accountable Officer to Render Accounts*, accused Sarcauga spontaneously entered a plea of *guilty*.

Let a plea of *guilty* be thus entered into the record of the case.

The mitigating circumstance of the plea of *guilty* would be appreciated in favor of the accused as the change of plea was made prior to the presentation of evidence by the prosecution.

WHEREFORE, judgment is hereby rendered finding accused **ROQUE RELLON SARCAUGA** *guilty* beyond reasonable doubt of the lesser offense of *Failure of Accountable Officer to Render Accounts* defined and penalized under Article 218 of the Revised Penal Code.

Having appreciated in his favor the mitigating circumstance of the plea of *guilty*, accused **ROQUE RELLON SARCAUGA** is imposed the penalty of **FINE** of **FIVE THOUSAND PESOS (P5,000.00)**.

Every person criminally liable for a felony is also civilly liable.¹⁶

¹⁵ 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.

¹⁶ Article 100, Revised Penal Code

At the outset, accused Sarcauga has manifested his willingness to pay the amount of ₱125,000.00 representing his unliquidated accounts as a public officer.¹⁷

For his civil liability, therefore, without prejudice to the eventual resolution of the case in the civil liability, if any, that may be effected against the other accused with whom he can share his civil liability in a joint and solidary manner, accused Sarcauga is directed to **PAY** the Municipality of Carcar (now Carcar City), Cebu, the amount of **ONE HUNDRED TWENTY FIVE THOUSAND PESOS (₱125,000.00)** representing his unliquidated accounts, as part of the plea bargaining agreement with the Office of the Ombudsman. Compliance therewith is enjoined.

SO ORDERED.


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

WE CONCUR:


ZALDY V. TRESPESES
Associate Justice


GEORGINA D. HIDALGO
Associate Justice

ATTESTATION

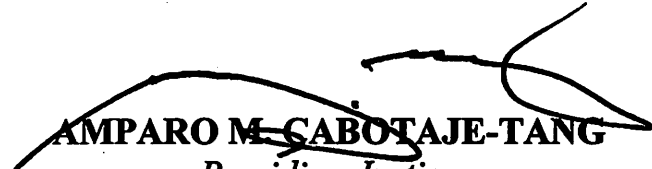
I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


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

¹⁷ Undated letter of Atty. Bienvenido V. Baring, Jr. as attached to the Memorandum dated June 17, 2019

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. CABOTAJE-TANG~~
Presiding Justice

