



REPUBLIC OF THE PHILIPPINES

Sandiganbayan  
Quezon City

Seventh Division

PEOPLE OF THE  
PHILIPPINES,

Plaintiff,

Crim. Case No. SB-16-CRM-0529

For: Violation of Section 3(e) of  
Republic Act No. 3019

- versus -

Present:

ROMEL P. YOGORE,  
GIOVANNI M. ROBLES,  
JOSEPH ALFONSO L.  
MANAYON, ERNESTO S.  
GENOBIS, DAISY C. GALVE,  
MERLENE E. MAGBANUA,  
JONIE B. NIEVE,

Accused.

GOMEZ-ESTOESTA, J., Chairperson,  
TRESPESES, J., and  
HIDALGO, J.

Promulgated:

*September 2, 2019 JF*

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**DECISION**

**HIDALGO, J.:**

For non-compliance with the requirements for a valid procurement provided for by Republic Act No. 9184 (RA 9184) or the "Government Procurement Reform Act), accused Joseph Alfonso L. Manayon, then Vice-Chairman of the Bids and Awards Committee of the Municipality of Valladolid, Province of Negros Occidental, along with his co-accused Romel P. Yogore, Giovanni M. Robles, Ernesto S. Genobis, Daisy C. Galve, Merlene E. Magbanua, and Jonie B. Nieve, were charged for Violation of Section 3 (e) of RA 3019, as amended, in an Information filed before this Court on August 12, 2016. The accusatory portion of the Information reads:

That on or about 18 December 2008, or sometime prior or subsequent thereto, in the Municipality of Valladolid, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-

*J. V.*

named accused, **ROMEL P. YOGORE (YOGORE), GIOVANNI M. ROBLES, JOSEPH ALFONSO L. MANAYON, ERNESTO S. GENOBIS, DAISY C. GALVE** and **MERLENE E. MAGBANUA**, public officers, then the Municipal Mayor, Chairman, Vice-Chairman, and Members respectively, of the Bids and Awards Committee of the Municipality of Valladolid, in such capacity and committing the offense in relation to office, taking advantage of their respective position, conniving, conspiring, confederating and mutually helping with (sic) each other and with accused **JONIE B. NIEVE (NIEVE)**, owner/proprietor of **JB NIEVE HARDWARE & CONSTRUCTION SUPPLIES**, acting with manifest partiality, evident bad faith, and or gross inexcusable negligence, did then and there willfully, unlawfully, and criminally award the procurement of construction materials for the repair and improvement of the Rural Health Unit of Valladolid worth about Two Hundred Thirty Thousand Three Hundred Ninety Five Pesos & 31/100 (Php 230,395.31), to **JB NIEVE HARDWARE & CONSRUCTION SUPPLIES**, owned by accused **NIEVE**, the brother-in-law of accused **YOGORE**, without conducting competitive/public bidding, as required under Section 10 of Republic Act 9184, (Government Procurement Reform Act), thereby giving unwarranted benefits, advantage or preference to **JB NIEVE HARDWARE & CONSTRUCTION SUPPLIES**, and depriving the Municipality of Valladolid and or the government, the lowest calculated responsive bid, and thereafter, accused **YOGORE** cause (sic) the disbursement of the amount of Two Hundred Thirty Thousand Three Hundred Ninety Five Pesos & 31/100 (Php 230,395.31), as payment to **JB NIEVE HARDWARE & CONSTRUCTION SUPPLIES**, thus causing undue injury to the government in the aforestated amount.

**CONTRARY TO LAW.**

During the arraignment on August 17, 2017, all the accused, namely, Romel P. Yogore (Yogore), Giovanni M. Robles (Robles) Joseph Alfonso L. Manayon (Manayon), Ernesto S. Genobis (Genobis), Daisy C. Galve (Galve), Merlene E. Magbanua (Magbanua), and Jonie B. Nieve (Nieve), pleaded "not guilty" to the offense charged. Accused Joseph Alfonso L. Manayon (Manayon) was suspended for three (3) months and was eventually dismissed from service in March 2017.<sup>1</sup>

On March 5, 2018, the parties, through their respective counsels, entered into a *Joint Stipulation of Fact and Issue*, on the basis of which, the Sandiganbayan issued a *Pre-Trial Order* dated March 20, 2018.<sup>2</sup>

During trial, after the presentation of the prosecution evidence, and pending the resolution of the various *Formal Offer of Evidence* filed by the accused, Manayon filed the instant *Urgent Motion to Enter into Plea Bargain*<sup>3</sup> dated March 25, 2019. In said *Urgent Motion*, Manayon made the following allegations and requests, thus:

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<sup>1</sup> Record, Vol. 8, p. 392.

<sup>2</sup> Record, Vol. 8, pp. 4-17.

<sup>3</sup> Record, Vol. 8, pp. 400-404.



2. Herein Accused served the three (3)-month suspension imposed upon him in the administrative aspect of this case and was dismissed from service since March 2017 or for more than two (2) years already. Furthermore, Accused Manayon was admitted in the Bacolod Adventist Medical Center (BAMC), in Bacolod City, from May 15, 2018 until May 28, 2018 or for 13 days due to Right Pleural Effusion and underwent two (2) medical procedures, namely: s/p chest tube Thoracostomy and Video Assisted Thoracoscopic Surgery (VATS). As of the present, Accused Manayon is still under medication for his Tuberculosis and Diabetes.

3. The aforementioned events had taken a great toll in the health conditions of herein accused and the expenses incurred during court hearings drained the financial resources of the family, most especially the Accused being the head of the family.

4. Moreover, Accused Manayon and his family have suffered psychologically and emotionally since the filing of this case in the Ombudsman of Visayas in 2011.

5. Thus, WITH LEAVE AND WITH ALL DUE RESPECT, herein accused most respectfully moves of this Honorable Court to be allowed to enter into plea bargaining with the prosecution subject to the latter's consent and approval of this Honorable Court.

6. Anent thereto, herein accused respectfully requests the permission of this Honorable Court to be allowed to withdraw his former plea of "not guilty" to the offense charged and to enter a plea of "guilty" to the offense of violation of paragraph (a) of Section 7 of Republic Act No. 6713, otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees" quoted as follows:

**"Section 7. Prohibited Acts and Transactions.** - In addition to acts and omissions of public officials and employees now prescribed 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 approval of their office. xxx"

7. Further, *WITH LEAVE AND WITH ALL DUE RESPECT and in the interest of compassionate justice*, herein accused most respectfully appeals to this Honorable Court that only the penalty of fine be imposed upon him.

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In a Resolution dated March 28, 2019, the said *Urgent Motion* was referred to the prosecution, with a directive to report to the Court the result of any plea bargaining agreement within 60 days from notice.<sup>4</sup>

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<sup>4</sup> Record, Vol. 8, p. 398.

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Meanwhile, on March 29, 2019, the Court acted upon the *Formal Offer* and directed the prosecution to manifest within ten (10) days from receipt of the Resolution if it intends to proceed with the presentation of rebuttal evidence.<sup>5</sup> On April 10, 2019, the prosecution manifested that it will no longer present rebuttal evidence,<sup>6</sup> which it later withdrew. The prosecution then submitted rebuttal evidence, on which the defense was directed to file its comment.<sup>7</sup>

Thereafter, or on May 8, 2019, the Prosecution filed a *Manifestation with Motion to set re-arraignment*, stating that private complainant Larry Concepcion gave his express consent<sup>8</sup> to the *Motion* filed by Manayon for plea bargaining.<sup>9</sup> Furthermore, the prosecutor manifested therein that the Ombudsman granted her the authority to enter into said plea bargaining agreement.<sup>10</sup>

The requisite consent of the private complainant and the prosecution having been obtained, Manayon's *Urgent Motion to Enter into a Plea Bargain* is now ripe for adjudication.

Hence, this Resolution.

Section 2, Rule 116 of the Rules of Court provides that:

**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. (emphasis ours)

The requisites for the allowance of a plea of guilty to a lesser offense are as follows:

1. The plea of guilty to a lesser offense should be with the consent of the offended party and the prosecutor; and
2. The plea of guilt should be **to a lesser offense which is necessarily included in the offense charged.**

The first requisite - obtaining the consent of the private complainant and the prosecutor - needs no clarification. Too, it is already established that

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<sup>5</sup> Record, Vol. 8, p. 406-411.

<sup>6</sup> Record, Vol. 8, p. 416.

<sup>7</sup> Record, Vol. 8, P. 442.

<sup>8</sup> Letter of Larry B. Concepcion to Asst. Special Prosecutor III Leni Bajo Padaca dated April 20, 2019.

<sup>9</sup> Record, Vol. 8, p. 450.

<sup>10</sup> Record, Vol. 8, pp. 450-451.

*[Handwritten initials]*

this requisite obtains in this case. Thus, this Court focuses now on the presence or absence of the second requisite - that the plea of guilt should be to a lesser offense which is necessarily included in the offense charged.

To guide the courts on the interpretation of the meaning of the second requisite, Section 5, Rule 120 of the Rules of Court provides thusly:

**Section 5. When an offense includes or is included in another.** - An offense charged necessarily includes the offense proved **when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter.** And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter. (emphasis ours)

An offense may be said to necessarily include another when **some of the essential elements or ingredients of the former** as alleged in the complaint or information **constitute the latter.**<sup>11</sup> Applied to the scenario of plea bargaining, the elements of the offense plead should be found in those of the offense charged. In fact, it is indispensable that the ingredients of the offense specified by the accused in his plea bargain be found in the requisites of the crime charged.

In his *Urgent Motion*, Manayon requests that he be allowed to plead guilty to Violation of Section 7(a) of RA 6713. To determine whether Section 7(a) of RA 6713 is necessarily included in Section 3(e) of RA 3019, an analysis of and a comparison of the ingredients of the two offenses, and a finding on whether the allegations in the Information meets the elements of a violation of Section 7(a) or RA 6713 is crucial in the resolution of the instant *Urgent Motion*.

With these premises, the Court shall now proceed to discuss the merits of the *Urgent Motion*, or the lack thereof.

After a review of the instant motion as well as the relevant evidence, this Court finds that the requested plea bargain meets the second requisite - that is, that the plea of guilt should be to a lesser offense which is *necessarily included* in the offense charged, as stated in the complaint or information.

Accused Manayon is charged with violation of RA 3019, specifically Section 3(e) thereof, which penalizes a public officer or employee who causes undue injury to any party, including the Government, or gives any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest **partiality, evident bad faith or gross inexcusable negligence.**

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<sup>11</sup> *Daan v. Sandiganbayan*, G.R. No. 163972-77, March 28, 2008.

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In a catena of cases, the Supreme Court held that there are two ways by which a public official violates this provision in the performance of his functions: a), by causing undue injury to any party, including the Government; or b), by giving any private party any unwarranted benefit, advantage or preference.<sup>12</sup>

To show that these elements are present in the acts committed by Manayon and his co-accused, the pertinent portion of the Information against them states:

xxx committing the offense in relation to office, taking advantage of their respective position, conniving, conspiring, confederating and mutually helping with (sic) each other and with accused [NIEVE], owner/proprietor of **JB NIEVE HARDWARE & CONSTRUCTION SUPPLIES**, acting with manifest partiality, evident bad faith, and or gross inexcusable negligence, did then and there willfully, unlawfully, and criminally award the procurement of construction materials for the repair and improvement of the Rural Health Unit of Valladolid xxx, to **JB NIEVE HARDWARE & CONSTRUCTION SUPPLIES**, owned by accused NIEVE, the brother-in-law of accused YOGORE, without conducting competitive/public bidding, as required under Section 10 of Republic Act 9184, xxx, thereby giving unwarranted benefits, advantage or preference to **JB NIEVE HARDWARE & CONSTRUCTION SUPPLIES**, and depriving the Municipality of Valladolid and or the government, the lowest calculated responsive bid, xxx.

Manayon's involvement, based on said Information, can be summarized as follows:

1. taking advantage of his position as Vice-Chairman of the Bids and Awards Committee,
2. acting with manifest partiality, evident bad faith, and or gross negligence, unlawfully awarded the procurement of construction materials to JB Nieve Hardware & Construction Supplies owned by his co-accused Nieve; and
3. thereby giving unwarranted benefit to Nieve.

For his attempt to plea bargain to merit the Court's approval, it is necessary that the ingredients of the offense of violation of Section 7(a) of RA 6713, the provision to which Manayon seeks to plead guilty to, be found in the Information. On this score, We find that the allegations in the Information are sufficient to support a conviction for violation of RA 6713, Section 7(a).

Section 7(a) of RA 6713 provides:

**Section 7. Prohibited Acts and Transactions.** - In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts

<sup>12</sup> *Braza v. SAndiganbayan*, G.R. No. 195032, February 20, 2013.



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 approval of their office.

x x x.

The thrust of Section 7(a) of RA 6713 was enunciated by the Supreme Court in *NEA v. CSC*,<sup>13</sup> where it made the following pronouncement, to wit:

**"A reading of the conflict of interest rule reveals that the prohibition against NEA personnel from participating in any question pertaining to a public service entity where he is directly or indirectly interested has the purpose of preventing such personnel from exercising the power of his office for personal pecuniary gain, which may cause grave damage and prejudice to the public interest. In the same manner, government officials and employees are prohibited under Section 7(a) of RA No. 6713 from having direct or indirect financial or material interest in any transaction requiring approval of their office, since personal interest would be involved."**

A scrutiny of the two provisions and the Information reveals that a violation of Section 7(a), RA 6713 can be deemed as necessarily included in the offense penalized under Section 3(e) of RA 3019, as stated in the Information.

The Court is of the view that "having a direct or indirect financial or material interest in a transaction requiring the approval of their office" is *necessarily included* in "causing undue injury to the Municipality of Valladolid or giving Nieve an unwarranted benefit, advantage or preference in the discharge of his functions.

It is well to emphasize that what is prohibited under RA 6713, Section 7(a) is for a public officer or employee to have a material or pecuniary interest in the transaction that required the approval of his office. As clearly explained by the High Court in *NEA*, Section 7(a) prohibits public officials and employees from having financial or material interest in a transaction requiring the approval of their office because personal interest would be involved.

RA 3019 Section 3(e), on the other hand, proscribes giving unwarranted benefit, advantage, or preference to another person or causing undue injury to another person or entity, including the Government. In this respect, the Court opines that in giving unwarranted benefit, advantage, or preference to his co-accused Nieve, it is possible that such is motivated by the accused's own interest in the transaction.

<sup>13</sup> G.R. No. 149497, January 25, 2010.

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While it is true that in the charge, the benefit was given to Nieve, not Manayon, this does not, however, foreclose the possibility that accused Manayon himself has an interest therein, prompting him to extend the favor to Nieve.

This being the case, this Court finds that the elements of a violation of Section 7(a) are sufficiently met in the Information charging Manayon with violation of RA 3019, Section 3(e). Following the wording of Section 5, Rule 120 of the Rules of Court, some of the essential elements of Section 3(e), RA 3019, as alleged in the Information, constitute the ingredients of Section 7(a) of RA 6713.

Consequently, Manayon's plea successfully meets the second requisite - that he pleads guilty to a lesser offense that is necessarily included in the offense charged, as stated in the Information.

As regards Manayon's request that he be meted the penalty of fine instead of imprisonment, the Court finds sufficient justification to grant such. The various medical conditions suffered and procedures conducted on accused Manayon, plus the corresponding fees and expenses brought about by his ailments convince us that Manayon's condition merits the equitable consideration from this Court.

We likewise take into consideration the fact that Manayon has already served the three (3)-month suspension imposed upon him in the administrative aspect of this case. Too, he was already dismissed from service since March 2017 or for more than two (2) years already. In *Daan v. Sandiganbayan*,<sup>14</sup> the Supreme Court held that "subsequent events and higher interests of justice ad fair play dictate that petitioner's plea offer should be accepted. The present case calls for the judicious exercise of this Court's equity jurisdiction." We find the High Court's pronouncements therein applicable to the instant case.

As regards the penalty, Section 11 of RA 6713 provides that:

**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 non exceeding one (1) year, xxx. **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 office. xxx.**

<sup>14</sup> G.R. Nos. 163972-77, March 28, 2008.



This Court takes note that the imposable penalty for the offense bargained by Manayon is either imprisonment not exceeding five (5) years or a fine not exceeding five thousand pesos (Php 5,000.00). By the wording of Section 11, the Court has the discretion on whether to impose imprisonment or fine as penalty. Thus, taking into consideration the merits of Manayon's plea, the extent of his participation in the questioned act, the fact that he is no longer in service, and his physical conditions or ailments, the Court imposes upon him the penalty of a fine in the maximum amount of five thousand pesos (Php 5,000.00).

Indeed, plea bargaining is 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. Trial courts are exhorted to keep in mind that a plea of guilty for a lighter offense than that actually charged is not supposed to be allowed as a matter of bargaining or compromise for the convenience of the accused.<sup>15</sup>

The Court commiserates with the plight of accused Manayon, but this is not our only reason for granting the plea. In view of his valid offer for a plea bargain, there is no other action to be properly taken herein but to grant Manayon's *Urgent Motion to Enter into a Plea Bargain*.

**WHEREFORE**, in view of the foregoing, accused Manayon's *Urgent Motion to Enter into Plea Bargain*<sup>16</sup> dated March 25, 2019 is hereby **GRANTED**.

Judgment is hereby rendered finding accused **JOSEPH ALFONSO L. MANAYON GUILTY beyond reasonable doubt** of the lesser offense of *Violation of Section 7(a) of Republic Act No. 6713*, also known as the **Code of Conduct and Ethical Standards for Public Officials and Employees**. Accused Manayon is hereby sentenced to pay a fine in the amount of Five Thousand Pesos (Php5,000.00).

**SO ORDERED.**

  
**GEORGINA D. HIDALGO**  
Associate Justice

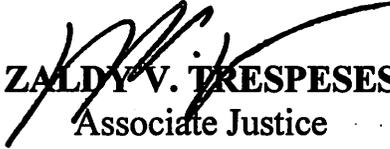
<sup>15</sup> *Estipona, Jr. v. Lobrigo*, G.R. No. 226679, August 15, 2017.

<sup>16</sup> Record, Vol. 8, pp. 400-404.



WE CONCUR:

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

  
**ZALDY V. TRESPESES**  
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**  
Chairperson, Seventh Division

### CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson'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

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