



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
QUEZON CITY

SEVENTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Case No. **SB-18-CRM-0006**
For: Violation of Section 3 (e), RA 3019

-versus -

**FAUSTINO ALANDY SILANG,
HECTOR DONCILLO OABEL,
JOSEFINA OABEL PEREZ,
GILBERT TABERNILLA OABEL,
NELSON VALENCIA
COLLADILLA,
and ROLANDO ZALGALA OLIVAR,**
Accused.

Present:

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

Promulgated:

September 6, 2019 jpa

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DECISION

GOMEZ-ESTOESTA, J.:

On the basis of the *Joint Complaint-Affidavit* of Wenda S. De Torres, Sergio C. Caagbay, Jr., Maria Lourdes A. Reynoso, Nicomedes C. Abesamis and Dino M. Romero, all residents of Tayabas City, Quezon Province, a criminal charge for *Violation of Section 3 (e) of R.A. 3019* was filed against accused Faustino Alandy Silang, Hector Doncillo Oabel, Josefina Oabel Perez, Gilbert Tabernilla Oabel, Nelson Valencia Colladilla, and Rolando Zagala Olivar under an *Amended Information*¹ which alleged, thus:

That in May 2009, or sometime prior or subsequent thereto, in Tayabas City, Quezon, Philippines, and within the jurisdiction of this Honorable Court, accused **FAUSTINO A. SILANG, HECTOR D. OABEL, JOSEFINA O. PEREZ, GILBERT T. OABEL, NELSON V. COLLADILLA, AND ROLANDO Z. OLIVAR**, public officers being the City Mayor and members

¹ Record, Volume 1, p. 1-3

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of the Bids and Awards Committee, respectively, of Tayabas City, Quezon, committing the crime while in the performance of their duties, in relation thereto and taking advantage of their official positions, conspiring with one another, acting with evident bad faith, manifest partiality or gross inexcusable negligence, did then and there, willfully, unlawfully and criminally cause undue injury to the City of Tayabas, Quezon and give unwarranted benefits, advantage or preference to CAMEC JCB Corporation, by allowing the purchase of a 3-year supply of spare parts from CAMEC JCB Corporation and causing the disbursement, payment and/or release of public funds in the total amount of Five Million Two Hundred Sixty-Five Thousand Nine Hundred Fifty-Eight Pesos (Php5,265,958.00), more or less, despite the fact that said purchase was an excessive and unnecessary expense and in violation of the Local Government Code of 1991, procurement laws and other pertinent government rules and regulations, to the damage and prejudice of the government in the afore-stated amount.

CONTRARY TO LAW.

The factual narration stated in the Ombudsman Resolution dated January 25, 2017 would show that on August 12, 2008, the City Government of Tayabas purchased a backhoe loader from CAMEC JCB Corporation ("CAMEC") in the amount of P10,544,999.00. In a letter dated December 4, 2008, CAMEC offered the City Government to procure another backhoe loader and avail of its ex-stock unit purchase program with a 3-year supply of spare parts and savings up to 15%. On May 13, 2009, the City Government procured another backhoe loader with a 3-year supply of spare parts in the amount of P15,846,046.00. COA thereafter issued AOM No. 2009-010 stating that the purchase was unnecessary and issued Notice of Disallowance No. 2010-001-101-(09), followed by a Supplemental Notice of Disallowance No. 2010-001-101-(09A).

With the initiation of the charge, A Hold Departure Order² was issued against all the accused. A warrant for their arrest was issued, following the finding of probable cause. The warrant was subsequently lifted when accused each posted the necessary bail for their provisional liberty.³

Initially, accused Hector Oabel, Josefina O. Perez, Gilbert Oabel, Nelson Colladilla, and Rolando Olivar filed a *Motion to Quash* on ground that the Court has no jurisdiction over their person, citing Section 4 of R.A. No. 10660, considering that their salary grades varied between SG 25, SG 11 and SG 8. They further moved to quash the Information on ground that no charge of conspiracy was alleged against them. In the Resolution dated May 2, 2018 of this Court, accused's *Motion to Quash* was granted.

On *Motion for Reconsideration*, however, the Prosecution asseverated its right to remedy the defect in the Information by the amendment thereof

² *Ibid.*, pp. 202-203

³ Cash bail was posted per Official Receipt No. 6261885 (Faustino A. Silang); Official Receipt No. 6261914 (Gilbert T. Oabel); Official Receipt No. 6261913 (Josefina P. Oabel); Official Receipt No. 6261917 (Hector D. Oabel); Official Receipt No. 6261916 (Rolando Z. Olivar); and Official Receipt No. 6261915 (Nelson V. Colladilla)

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since it was being made prior to accused's arraignment. Were it not for the inclusion of the allegation of conspiracy in the amendment sought, the dismissal of the charge against accused Hector Oabel, Josefina O. Perez, Gilbert Oabel, Nelson Colladilla, and Rolando Olivar would have been sustained. On the basis of the *Amended Information*, however, the *Motion for Reconsideration* was granted in part and the *Amended Information* admitted.

Hence, the criminal charge against all the accused persisted.

On August 20, 2018, accused Faustino Alandy Silang, Hector Doncillo Oabel, Josefina Oabel Perez, Gilbert Tabernilla Oabel, Nelson Valencia Colladilla, and Rolando Zagala Olivar were arraigned and each entered a plea of *not guilty*.⁴

After a series of preliminary conferences, the parties submitted their *Joint Stipulation of Facts and Issues*.⁵ Pre-trial was terminated per Order dated July 31, 2019.⁶ A Pre-Trial Order was thus issued on August 13, 2019 on the basis of the *Joint Stipulation of Facts and Issues* submitted.

Although Prosecutor Joshua A. Tan and Prosecutor Maricel C. Pintucan-Acayan were ready to present their first witness⁷ during the hearing of August 14, 2019, the same was deferred in view of the pending proposal of accused Hector Oabel, Josefina O. Perez, Gilbert Oabel, Nelson Colladilla, and Rolando Olivar to plea bargain.

It is at today's setting that such plea bargaining is being submitted for the Court's consideration.

Accused Hector Oabel, Josefina O. Perez, Gilbert Oabel, Nelson Colladilla, and Rolando Olivar seek to withdraw their former plea of *not guilty* to be able to plead *guilty* to the lesser offense under Section 7 (a) of Republic Act No. 6713 which provides, 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 the approval of their office.

⁴ Record, Volume 2, pp. 61-62

⁵ *Ibid.*, pp. 291-312

⁶ *Ibid.*, pp. 316-317

⁷ *Ibid.*, p. 339; Order dated August 14, 2019 with prosecution witness Julie V. Castillo from COA

Prosecutor Joshua A. Tan and Prosecutor Maricel C. Pintucan-Acayan have both confirmed the approval given by the Hon. Ombudsman Samuel R. Martires to the plea bargaining made.

The prosecution and the defense are conceded that the offense of *Violation of Section 7 (a) of R.A. 6713* is an offense necessarily included in the charge of *Violation of Section 3 (e) of R.A. 3019*.

Pursuant to Section 2 of Rule 116⁸ of the Revised Rules on Criminal Procedure, no amendment of the *Information* is thus necessary.

Accused Hector Oabel, Josefina O. Perez, Gilbert Oabel, Nelson Colladilla, and Rolando Olivar were fully apprised of the consequences of their intended pleas. In clear terms, they stated in the affirmative that they understood the nature of their pleas; that if they pleaded guilty to the lesser offense, they are deemed to have admitted all the material allegations stated in the *Informations* to which a consequent penalty may be imposed under the law. Section 11 of R.A. 6713 imposes a penalty of 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 for a violation of Section 7, 8, and 9 of the same Act.

The Court is satisfied that the accused have fully understood the nature and consequence of their pleas.

Proceeding to re-arraignment, accused Hector Oabel, Josefina O. Perez, Gilbert Oabel, Nelson Colladilla, and Rolando Olivar entered their separate pleas of *guilty* to the lesser offense of *Violation of Section 7 (a) of R.A. 6713*.

Let a plea of *guilty to the lesser offense* be entered into the record of the case.

Verily, the express conformity of private complainants Wenda S. De Torres, Sergio C. Caagbay, Jr., Maria Lourdes A. Reynoso, Nicomedes C. Abesamis and Dino M. Romero has to be obtained pursuant to Section 2, Rule 116 of the Revised Rules of Criminal Procedure.⁹ This has been aptly satisfied with the presentation by the Prosecution of *Affidavits of Consent* respectively submitted by Wenda S. De Torres, Sergio C. Caagbay, Jr., Maria Lourdes A. Reynoso, and Nicomedes C. Abesamis. It has been manifested that despite the issuance of subpoenas, private complainant Dino M. Romero

⁸ 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.

⁹ Ibid.

failed to answer; thus, this is deemed a lack of interest on his part to pursue the criminal charge against said accused.

Every person criminally liable for a felony is also civilly liable.¹⁰

The settlement of the damage alleged in the Information, however, is not part of the plea bargaining agreement and is thus left to the private complainants to pursue.

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

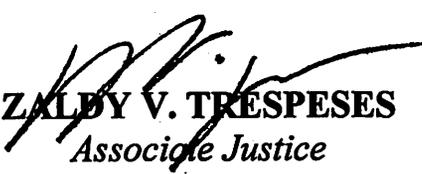
WHEREFORE, judgment is hereby rendered finding accused **HECTOR DONCILLO OABEL, JOSEFINA OABEL PEREZ, GILBERT TABERNILLA OABEL, NELSON VALENCIA COLLADILLA, AND ROLANDO ZAGALA OLIVAR** *guilty* beyond reasonable doubt of the lesser offense of *Violation of Section 7 (a) of Republic Act No. 6713* otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees."

Having appreciated in their favor the mitigating circumstance of the plea of *guilty*, accused **HECTOR DONCILLO OABEL, JOSEFINA OABEL PEREZ, GILBERT TABERNILLA OABEL, NELSON VALENCIA COLLADILLA, AND ROLANDO ZAGALA OLIVAR** are each imposed the penalty of **FINE** of **FIVE THOUSAND PESOS (P5,000.00)**.

SO ORDERED.


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

WE CONCUR:


ZALDY V. TRESPES
Associate Justice


GEORGINA D. HIDALGO
Associate Justice

¹⁰ Article 100 of the Revised Penal Code

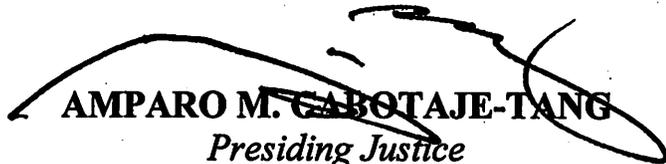
ATTESTATION

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


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

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 cases were assigned to the writer of the opinion of the Court's Division.


AMPARO M. GABOTAJE-TANG
Presiding Justice

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