



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,¹
VALENTIN A. GAMUTAN, JR.² and
MARLYN M. CASTILLO³**

Gomez-Estoesta, J., *Chairperson*
Hidalgo, J. and
Jacinto, J.*

Promulgated:

January 22, 2020
PMP

Accused.

X-----X

DECISION

GOMEZ-ESTOESTA, J.:

In his capacity as Municipal Mayor of the Municipality (now City) of Carcar, Cebu, accused Mario Patricio Paraz Barcenas, among others, was charged with Violation of Section 3 (e) of R. A. 3019 under an *Information*, 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

*Special Member per Administrative Order No. 019-2020 dated January 21, 2020

¹ Pleaded guilty pursuant to a plea bargain agreement per Decision dated July 12, 2019; Records, Volume 2, pp. 137-145

² Due to his death, case was dismissed against him per Resolution dated August 29, 2018; Records, Volume 1, p. 374

³ At large

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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 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.⁴

ANTECEDENTS

At the outset, accused Barcenas filed an *Omnibus Motion (to Quash the Criminal Information, to Quash the Warrant of Arrest and/or to Dismiss the Case)* on July 2, 2018 on ground that: (i) direct contracting as an alternative mode of procurement is not illegal per se; (ii) the element of undue injury is lacking in the absence of proof that the foliar fertilizers procured were ghost deliveries; (iii) accused Barcenas could not be said to have acted with manifest partiality because in approving the payment for the foliar fertilizers, he merely relied on the signatures of his subordinates on the vouchers; (iv) the element of conspiracy was not established; (v) the pendency of a *Petition for Certiorari* with the Supreme Court should have suspended the proceedings, following the case of *Eternal Gardens Memorial Park v. Court of Appeals*;⁵ and (vi) there was inordinate delay in the filing of the instant case, as the Office of the Ombudsman took a period of seven (7) years until it filed its Complaint on November 28, 2011.

In its Resolution dated August 23, 2018, the Court denied the *Omnibus Motion*, ruling that: (i) the facts charged in the Information are sufficient; (ii) matters raised in the *Omnibus Motion* are matters of defense evidentiary in nature; and (iii) there was no inordinate delay on the part of the Ombudsman.

The *Motion for Reconsideration* subsequently filed by accused Barcenas was denied in open Court per Order dated September 10, 2018.⁶

Following his arraignment on September 10, 2018, accused Barcenas entered a plea of *not guilty*.⁷ He was then assisted by own counsels, Atty. Jude A. Fernandez and Atty. Jonas V. Asis. Being then the incumbent Vice Mayor of Carcar City, Cebu, the proceedings were converted into a pre-suspension hearing for purposes of preventive suspension. In the Court's Resolution dated October 15, 2018, accused Barcenas was preventively suspended from his present position as Vice Mayor of Carcar City for a period of ninety (90) days.⁸

The case was thereafter set for preliminary conference for the parties' stipulation of facts and issues, and pre-marking of documentary exhibits.

⁴ Records, Volume 1, pp. 1-4

⁵ 247 Phil. 387, 394 (1988)

⁶ *Ibid.*, pp. 410-411

⁷ Arraignment was conducted during the Court's provincial hearing in the Regional Trial Court of Dumaguete City; Records, Volume 1, p. 412

⁸ Records, Volume 1, pp. 436-437

On September 2, 2019, the Pre-Trial Order⁹ was issued, having adopted the parties' *Joint Stipulation of Facts and Issues*.

During the supposed presentation of prosecution evidence on September 16, 2019 and November 13, 2019, accused Barcenas manifested his intention to plea bargain with the Prosecution by pleading to a lesser offense.

For this reason, considering the persistent intent of accused Barcenas 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 Barcenas 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. As manifested in open Court, the Ombudsman has given his approval to the plea bargain agreement.

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.¹⁰

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:¹¹

(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;
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⁹ Records, Volume 2, pp. 185-194

¹⁰ *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

¹¹ Elements as delineated in *Lumauig v. People*, G.R. No.166680, July 7, 2014

(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;
(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*,¹² 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.*”¹³ But the appreciation of the existence of the elements 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.

¹² *Supra*, note 6

¹³ 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.”

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:

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;
- (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 116¹⁴ 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 Barcenas spontaneously entered a plea of **guilty**.

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

WHEREFORE, judgment is hereby rendered finding accused **MARIO PATRICIO PARAZ BARCENAS** **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 **MARIO PATRICIO PARAZ BARCENAS** is imposed the penalty of **FINE** of **FIVE THOUSAND PESOS (P5,000.00)**.

Every person criminally liable for a felony is also civilly liable.¹⁵

¹⁴ 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.

¹⁵ Article 100, Revised Penal Code

For his civil liability, on account of the willingness of accused **MARIO PATRICIO PARAZ BARCENAS** to shoulder the amount of ₱249,000.00 as his unliquidated account, he is directed to **PAY** the Municipality of Carcar (now Carcar City), Cebu, the amount of **TWO HUNDRED FORTY NINE THOUSAND PESOS (₱249,000.00)**, as part of the plea bargaining agreement with the Office of the Ombudsman. Compliance therewith is strictly enjoined.

This is without prejudice to the enforcement of the civil liability imposed on other accused Roque Rellon Sarcauga in the amount of One Hundred Twenty Five Thousand Pesos (₱125,000.00) per Decision dated July 12, 2019, in which case, the liability may be considered joint, considering the general presumption favoring joint liability.

SO ORDERED.


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

WE CONCUR:


GEORGINA D. HIDALGO
Associate Justice


BAYANI H. JACINTO
Associate Justice

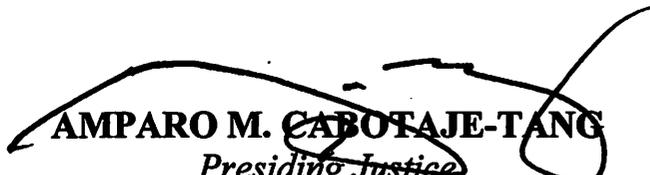
ATTESTATION

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

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