



REPUBLIC OF THE PHILIPPINES

# Sandiganbayan

Quezon City

## FIRST DIVISION

PEOPLE OF THE PHILIPPINES,  
*Plaintiff,*

CASE No. SB-15-CRM-0089

-versus-

Present:

LORENZO G. FORMOSO III,  
ET AL.,

DE LA CRUZ, J., *Chairperson*  
CORNEJO, J.  
CRUZ, J.

*Accused.*

Promulgated on:

MAY 19 2016

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## RESOLUTION

**CRUZ, J.**

This resolves the (1) Motion to Quash Information and/or Motion for Judicial Determination of Probable Cause dated 12 January 2016 of accused Arthur P. Ancheta (hereinafter "Ancheta"), the (2) Comment/Opposition (To the Motion to Quash Information and/or Motion for Judicial Determination of Probable Cause by accused Arthur P. Ancheta) dated 28 January 2016 of the Prosecution, and (3) Reply (To Plaintiff's Comment/Opposition) dated 09 February 2016 of accused Ancheta.

On 15 October 2015, this Court issued a Resolution<sup>1</sup> requiring the prosecution to amend the Original Information in this case. The above-said incidents arose out of the prosecution's compliance therewith.

Ancheta seeks the quashal of the Amended Information on the ground that despite amendments, the facts alleged did not constitute a violation of Section 3(e) of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act). He alleges that the prosecution failed to specify how his actions in preparing the acquisition

<sup>1</sup> Record, Vol. I, pp. 437-44.

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documents showed “manifest partiality and/or evident bad faith” and that the element of “unwarranted benefit and/or undue advantage” was missing.

He prays in the same Motion<sup>2</sup>, for a judicial determination of probable cause alleging that the Amended Information lacks factual basis.

Specifically, Ancheta claims that the acts complained of therein had in fact complied with the requirements of Section 50, R.A. No. 9184 (The Philippine Government Procurement Reform Act) and that his preparation of the documents for the direct acquisition of the EXS Switch from Advance was justified.

In its Comment/Opposition<sup>3</sup>, the prosecution argues that the Amended Information specifically alleged all the necessary elements for the violation of Sec. 3(e) of R.A. No. 3019 and concludes that there is probable cause to indict accused Ancheta for violation of Section 3(e), R. A. No. 3019 as it discussed each element of the offense in relation to the evidence on record and the pertinent provisions of R.A. 9184.

On 11 February 2016, accused Ancheta filed a Reply<sup>4</sup> reiterating all of his arguments in his Motion.

The issues for Resolution are:

- (1) Whether or not the Amended Information sufficiently alleged facts that would constitute a violation of Section 3(e) of R.A. No. 3019; and
- (2) Whether or not the facts on record support the allegations in the Amended Information.

On the first issue, Ancheta argues that the Amended Information should be quashed because its allegations failed to specify the details on how his actions amounted to a violation of Section 3(e), R.A. No. 3019.

This argument is misplaced.

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<sup>2</sup> Record, Vol. II, pp. 32-61

<sup>3</sup> Record, Vol. II, pp. 71-81

<sup>4</sup> Record, Vol. II, pp. 88-95

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The test of sufficiency of an Information is provided in Section 6, Rule 110 of the Revised Rules on Criminal Procedure. Under the said provision, an Information is deemed sufficient when it states the following allegations:

1. The name of the accused;
2. The designation of the offense given by the statute;
3. The acts or omissions complained of as constituting the offense;
4. The name of the offended party;
5. The proximate date of the commission of the offense; and
6. The place where the offense is committed.

On the other hand, jurisprudence dictates that the fundamental test in determining the adequacy of the averments in an information is whether the facts alleged, if hypothetically admitted, would establish the essential elements of the crime.<sup>5</sup>

The court now applies the foregoing rules in examining the essential elements constituting a violation of Section 3(e) of R.A. No. 3019 in relation to the allegations found in the Amended Information.

Section 3(e) of R.A. No. 3019 is committed when the following elements are present:

1. That the accused are public officers or private persons charged in conspiracy with them;
2. That said public officers committed the prohibited acts during the performance of their official duties or in relation to their public positions;
3. That they caused undue injury to any party, whether the Government or a private party;
4. That such injury was caused by giving unwarranted benefits, advantage or preference to such parties; and
5. That the public officers acted with manifest partiality, evident bad faith or gross inexcusable negligence.<sup>6</sup>

Contrary to Ancheta's contention, a close reading of the Amended Information confirms that the allegations stated therein,

<sup>5</sup> 640 SCRA 565, 573 *People of the Philippines vs. Robert P. Balao, et al.*, January 26, 2011

<sup>6</sup> *Ibid.*



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hypothetically admitted, would establish the essential elements of the crime charged. The Amended Information states that:

1. Accused Ancheta is a public officer working as an Engineer assigned to the Telecommunications Office of the Department of Transportation and Communications (DOTC).
2. He acted in conspiracy with the other public officers from the DOTC in violating Section 3(e) of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act), sometime in March to April 2006, in Quezon City, while in the performance of his administrative and/or official functions.
3. He gave unwarranted benefit and undue advantage to Advance when he prepared the documentation for the acquisition of the EXS Switch and proposed to directly acquire the same from the Advance in contravention of procurement law and rules mandating the conduct of public bidding for government procurement.
4. Advance, the supplier was awarded the procurement contract, amounting to at least Php 24,805,000.00, without the benefit of public bidding, thus allowing its owners/operators to unduly profit from the subject transaction without showing proof that Advance was qualified to undertake the project or that its price was the most beneficial to the Government.
5. He acted with manifest partiality and/or evident bad faith.

It is thus clear that the ground relied upon for the quashal of the Amended Information is not present.

With respect to the second issue, Ancheta posits that the allegations in the Amended Information are not supported by the established facts on record. He claims that his actions are justified under Section 50 of R. A. No. 9184 because he believed that EXS Switch, subject of the transaction complained of in the Amended Information, is proprietary in nature, thus direct procurement of the same from Advance is allowed.

In essence, Ancheta disputes the existence of probable cause against him as his having prepared the documents for the acquisition of the EXS Switch was made in good faith and, thus, was not attended by the requisite manifest partiality or evident bad faith.

The charge against him stemmed from the documents listed below:



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1. Requisition and Issue Slip (RIS) dated 02 March 2006 for the acquisition of the Excel Switch
2. Advance's letter<sup>7</sup> to Ancheta dated 06 March 2006, which states in part:

Thank you for the **letter dated March 3, 2006 expressing your interest on our Lucent Excel products and services**. Being the exclusive partner for Lucent Technologies Philippines and Lucent Technologies International Sales Limited for TELEOFS.

Please find attached our financial proposals for your Excel Switch requirements. (emphasis supplied);

3. His letter<sup>8</sup> dated 07 March 2006 asking BAC to "review, evaluate and recommend" Advance's proposal; and
4. The the letter<sup>9</sup> dated 20 April 2006 of Susan Maxwell, the Chief Quality Officer and Vice President of Operations of Excel Switch, stating that:

We understand (that) **there has been some confusion in the region regarding exclusivity arrangements with Excel Switching Corporation product distributors.**

**We have no exclusivity arrangements in place with any of our customers or partners in the Asia Pacific region.**

Lucent Technologies is a valued partner and long time customer of Excel Switching. Lucent Philippines is the only Excel partner working with us to offer Excel products on the Telecommunications Office's NTP1-2 Project. (Emphases supplied.)

It is undisputed that Ancheta prepared the documents for the acquisition of the Excel Switch. He signed the RIS which serves as a request for the acquisition, asked from Advance for a price quotation, and requested for BAC's assistance on the matter – all part of his official functions.

<sup>7</sup> Record, Vol. I, p 84

<sup>8</sup> Record, Vol. I, p. 90

<sup>9</sup> Record, Vol. I, p. 421



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This leaves the matter of whether or not, in the process, he had violated Section 3(e) of R.A. No. 3019 by acting with evident bad faith or manifest partiality.

In *Albert v. Sandiganbayan*<sup>10</sup>, The Supreme Court had occasion to emphasize what constitutes manifest partiality and evident bad faith:

There is "**manifest partiality**" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. "**Evident bad faith**" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. "Evident bad faith" contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. (Emphases supplied.)

In construing these phrases, the Court observed that bad faith or partiality *per se* are not enough for one to be held criminally liable under the law; that the bad faith or partiality is evident or manifest, must be shown.<sup>11</sup> The evidence of the prosecution should comply with the degree of proof to prove the same. Manifest partiality and/or evident bad faith cannot be presumed from the circumstances. Thus it is required that it be shown with moral certainty. On the other hand, good faith or lack of malice is a valid defense to the charge of violation of Section 3(e), although *malum prohibitum*, since one of its elements is evident bad faith.<sup>12</sup>

A review of the evidence presented shows that contrary to the prosecution's claim, Ancheta did not act with manifest partiality and/or evident bad faith when he prepared the documents for the acquisition of the Excel Switch because he believed in good faith that his acts were in the regular performance of his duty and are expressly authorized by law.

There is nothing on the record that shows that he was aware that Advance is not an exclusive distributor of the said switch.

While it may be true that in the letter dated 20 April 2006, Excel had categorically stated that it had no "exclusivity

<sup>10</sup> 580 SCRA 279, 288, February 26, 2009

<sup>11</sup> *Ibid.*

<sup>12</sup> Notes and Cases on Special Penal Laws, Rex Printing Company, Leonor B. Boado, 2011

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arrangements in place with any of their customers or partners in the Asia Pacific Region," it also clearly acknowledged the existence of "confusion in the region regarding exclusivity arrangements with Excel Switching Corporation product distributors."

Moreover, and fatal to the Amended Information, it is beyond disputing that the documents being attributed to Ancheta were all prepared prior to the above-said letter of Excel which is dated 20 April 2006. Stated otherwise, thinking all along that Advance was the exclusive distributor of Excel, and not having been appraised otherwise, Ancheta's claim of having acted in good faith may be given credence, thus negating the alleged existence of manifest partiality and/or evident bad faith.

In this regard, so as not to transgress the public prosecutor's authority, the judge's dismissal of a case must be done only in clear-cut cases when the evidence on record plainly fails to establish probable cause. That is when the records readily show that established facts unmistakably negate the existence of the elements of the crime charged.<sup>13</sup> Such is the case in this instance.

**WHEREFORE**, premises considered, accused Ancheta's Motion to Quash Information and/or Motion for Judicial Determination of Probable Cause dated 12 January 2016, is hereby **GRANTED**.

**SO ORDERED.**

  
**REYNALDO P. CRUZ**  
Associate Justice

We Concur:

  
**EFREN N. DE LA CRUZ**  
Chairperson/ Associate Justice

  
**MARIA CRISTINA J. CORNEJO**  
Associate Justice

<sup>13</sup> SEC. 5(a), Rule 112, Revised Rules of Criminal Procedure, as amended by A. M. No. 05-8-26-SC.