

REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CRIM. CASE NOS. SB-16-CRM-
0242 to 0244

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

CRIM. CASE NOS. SB-16-CRM-
0245 to 0247

*For: Violation of Article 217 of the
Revised Penal Code (Malversation)*

- versus -

CRIM. CASE NO. SB-16-CRM-
0248

*For: Violation of Article 210 of the
Revised Penal Code (Direct Bribery)*

ARREL REYES OLAÑO, ET AL.,
Accused.

Present:

HERRERA, Jr., J., Chairperson
MUSNGI, J., Associate Justice
PAHIMNA, J., Associate Justice

June 5, 2017

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RESOLUTION

MUSNGI, J.:

This Court resolves the following:

- (1) *Motions to Quash* filed by accused Arrel R. Olaño ("Olaño") on 25 May 2016 in SB-16-CRM-0242,¹ SB-16-CRM-0243,² and SB-16-CRM-0244³ for violation of Section 3 (e) of Republic Act No. 3019 ("R.A. No. 3019");
- (2) *Motions to Quash* filed by Olaño on 25 May 2016 in SB-16-CRM-0245,⁴ SB-16-CRM-0246,⁵ and SB-16-CRM-0247⁶ for violation of Article 217 of the Revised Penal Code (Malversation);

¹ Records, Vol. 2, pp. 448-488.

² *Ibid.*, pp. 490-535.

³ *Ibid.*, pp. 536-582.

⁴ Records, Vol. 2, pp. 583-622.

⁵ *Ibid.*, pp. 624-667.

⁶ *Ibid.*, pp. 668-713.



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- (3) *Motions to Quash* filed by Olaño on 25 May 2016 in SE -16-CRM-0248⁷ for violation of Article 210 of the Revised Penal Code (Direct Bribery);
- (4) *Comment/Opposition (To Accused Arrel Reyes Olaño's Motion to Quash)*⁸ filed by the plaintiff on 08 June 2016;
- (5) *Reply (To Comment/Opposition dated 7 June 2016)*⁹ filed by Olaño on 09 August 2016; and
- (6) *Rejoinder (To Accused Reply to Comment/Opposition dated 07 June 2016)*¹⁰ filed by the plaintiff on 18 August 2016.

In Olaño's three (3) separate *Motions to Quash* in **Crim. Case Nos. SB-16-CRM-0242 to 0244** for violation of Section 3 (e) of R.A. No. 309, he cites the following grounds for the quashal of the *Informations* in the said cases:

- (1) The facts charged do not constitute an offense because there is no law prohibiting the endorsement of a non-government organization ("NGO"); he is not obliged to conduct public bidding or to accredit or qualify NGOs; and there is no law prohibiting him from entering into a Memorandum of Agreement ("MOA") with an NGO.
- (2) More than one (1) offense is charged because the acts subject of each of the three (3) *Informations* in Crim. Case Nos. SB 16-CRM-0242 to 0244 are already covered in Crim. Case Nos. SB-16-CRM-0245 to 0247; and
- (3) The officer who filed the *Informations* in Crim. Case Nos. SB-16-CRM-0242 to 0244 had no authority to do so because it is the Commission on Audit ("COA") that has the primary jurisdiction to determine whether or not there is a probable cause against him.

On the other hand, in Olaño's three (3) separate *Motions to Quash* in **Crim. Case Nos. SB-16-CRM-0245 to 0247** for violation of Article 217 of the Revised Penal Code (Malversation), he cites the following grounds for the quashal of the *Informations* in the said cases:

- (1) The facts charged do not constitute an offense because there was no allegation of demand against him; there is no law prohibiting the

⁷ *Ibid.*, pp. 714-720.

⁸ Records, Vol. 3, pp. 161-173.

⁹ Records, Vol. 4, pp. 68-74.

¹⁰ *Ibid.*, pp. 111-117.

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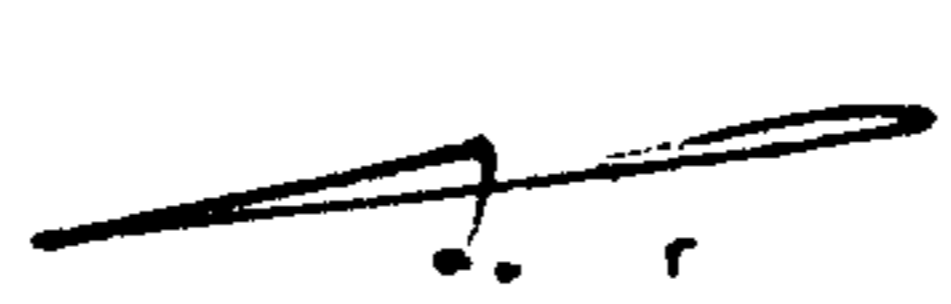
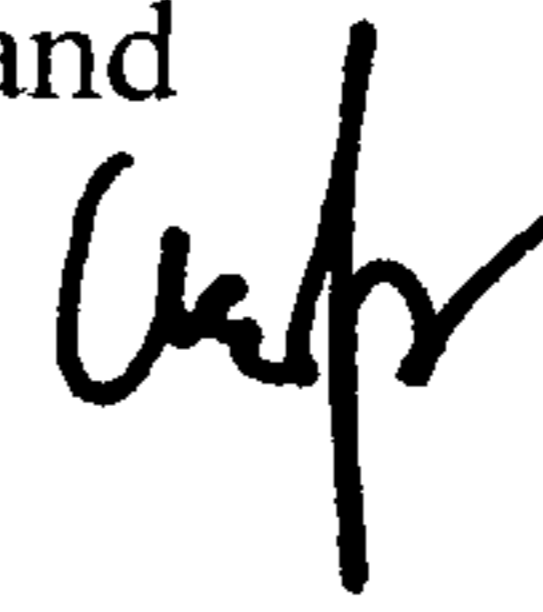

endorsement of an NGO; he is not obliged to conduct public bidding or to accredit or qualify NGOs; there is no law prohibiting him from entering in to a MOA with an NGO; he is not an accountable officer; and there was no allegation that he received public funds; and

- (2) The officer who filed the *Informations* in Crim. Case Nos. SB-16-CRM-0245 to 0247 had no authority to do so because it is the Commission on Audit ("COA") that has the primary jurisdiction to determine whether there is a probable cause against him.

Lastly, in Olaño's *Motion to Quash* in **Crim. Case No. SB-16-CRM-0248** for violation of Article 210 of the Revised Penal Code (Direct Bribery), he alleges that the *Information* charges more than one (1) offense of direct bribery and/or indirect bribery.

In its *Comment/Opposition*, the plaintiff responds to Olaño's *Motions to Quash* as follows:

- (1) The *Informations* for violations of Section 3(e) of R.A. No. 3019 alleged factual averments satisfying essential elements required under the crime charged;
- (2) Olaño, whose PDAF was utilized by all the accused, gave unwarranted benefits to private individuals when he disregarded guidelines on accreditation and endorsement of NGOs;
- (3) Manifest partiality, evident bad faith, and/or gross inexcusable negligence may be alleged in an information because they merely describe the different modes by which the offense penalized in Section 3(e) of R.A. No. 3019 may be committed, and the use of all these phrases in the same information does not mean that the indictment charges three distinct offenses;
- (4) Olaño took advantage of his official position, gave unwarranted benefits to private individuals, and caused undue injury to the government when he received kickbacks from Napoles for endorsing unaccredited/unqualified NGOs;
- (5) The interest of the COA is solely administrative. Its investigation does not foreclose the Ombudsman's authority to investigate and determine whether there is a crime to be prosecuted for which a public official is answerable;
- (6) Olaño is an accountable public officer; and

- (7) Only one (1) offense of Direct Bribery was charged in SB-16-CRM-0248.

In his *Reply (To Comment/Opposition dated 7 June 2016)*, Olaño reiterates that the plaintiff failed to allege in the *Informations* the particular act or acts in which he acted with manifest partiality, evident bad faith and/or inexcusable negligence. He further asserts that members of the House of Representatives are not accountable officers insofar as the national budget is concerned. He alleges that demand is essential in malversation. Finally, he argues that the nomination or endorsement of an NGO was not an unjust act when it was done, which was prior to the Supreme Court decision in the case of *Belgica v. Executive Secretary*.¹¹

In its *Rejoinder (To Accused Reply to Comment/Opposition dated 07 June 2016)*, the plaintiff restates that matters of defense are not grounds for a motion to quash. It asserts that the grounds raised by Olaño are evidentiary in nature, which can only be threshed out in a full-blown hearing subject to the appreciation of the court.

Ruling

The instant motions are denied for lack of merit.

(A) The facts charged constitute an offense.

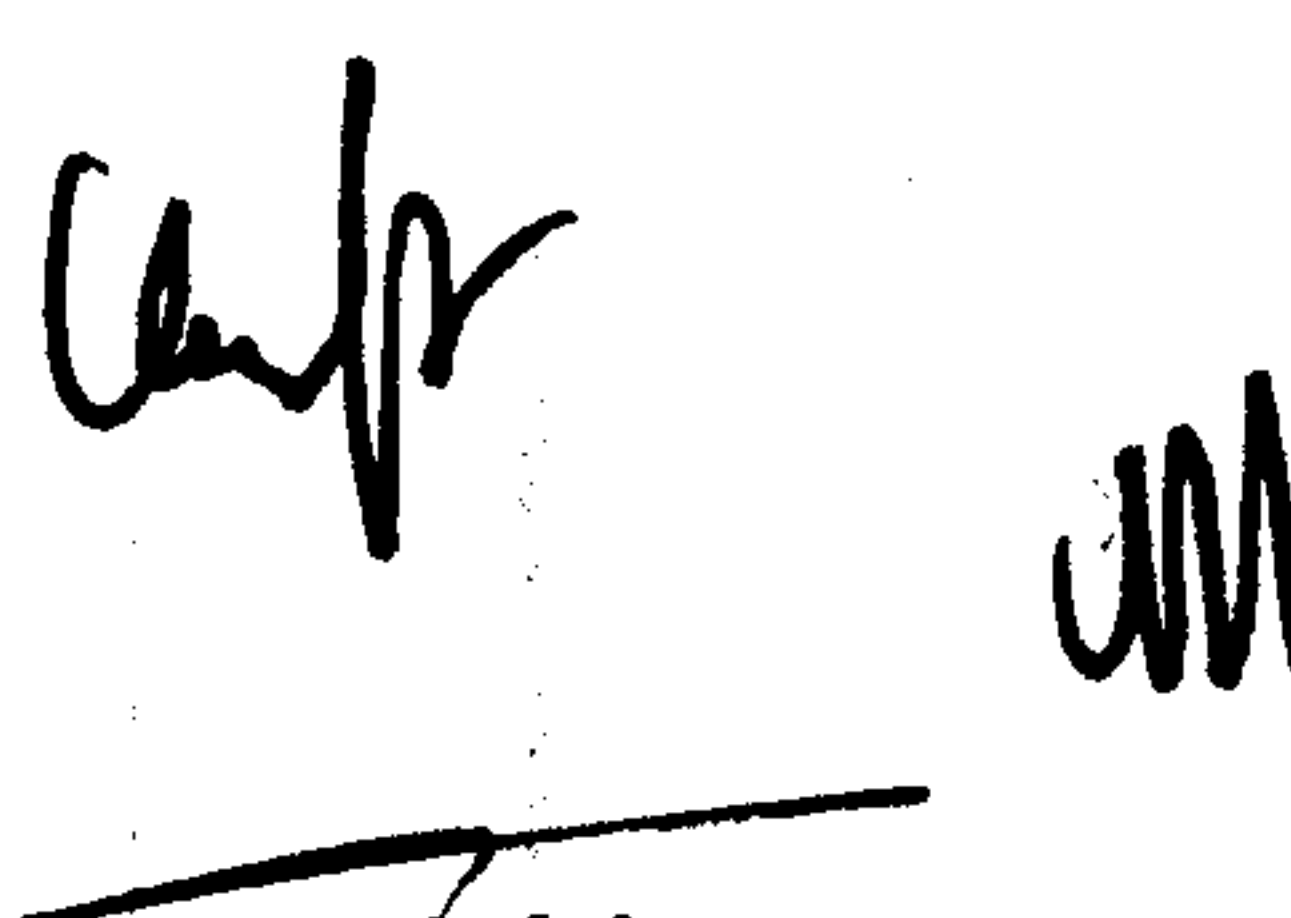
- (1) Crim. Case Nos. SB-16-CRM-0242 to 0244 [Violation of Section 3(e) of R.A. No. 3019]***

The Supreme Court explained how to determine whether or not a motion to quash on the ground that the facts charged do not constitute an offense should be granted. Thus:

The fundamental test in reflecting on the viability of a motion to quash on the ground that the facts charged do not constitute an offense is whether or not the facts asseverated, **if hypothetically admitted**, would establish the essential elements of the crime defined in law. **Matters *aliunde* will not be considered.** xxx

The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged and enable the court to know the proper judgment. The Information must allege clearly and accurately the elements of the crime charged. What facts and circumstances are necessary to be

¹¹ G.R. No. 208566, 19 November 2013.



included therein must be determined by reference to the definition and elements of the specific crimes.

The test is whether the crime is described in intelligible terms with such particularity as to apprise the accused, with reasonable certainty, of the offense charged. The *raison detre* of the rule is to enable the accused to suitably prepare his defense. Another purpose is to enable accused, if found guilty, to plead his conviction in a subsequent prosecution for the same offense. The use of derivatives or synonyms or allegations of basic facts constituting the offense charged is sufficient.¹² (Citation omitted, emphasis supplied)

This Court finds that all the *Informations* in Crim. Case Nos. SB-16-CRM-0242 to 0244 state the essential elements of violation of Section 3(e) of Republic Act No. 3019, which are:

1. The accused must be a public officer discharging administrative, judicial or official functions;
2. He must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and
3. His action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.¹³

On the **first element**, all the *Informations* in Crim. Case Nos. SB-16-CRM-0242 to 0244 state that Olaño, being then the Congressman of the 1st District of Davao Del Norte, is a public officer discharging administrative and/or official functions. Hence, the first element is present.

On the **second element**, the relevant portions of the *Informations* in Crim. Case Nos. SB-16-CRM-0242 to 0244 provide:

[A]cting with **manifest partiality, evident bad faith, and/or gross inexcusable negligence...**

(a) **Olaño unilaterally chose and indorsed** Countrywide Agri and Rural Economic and Development Foundation, Inc. (CARED), a non-government organization operated and/or controlled by Napoles, as "project partner" in implementing a livelihood project for barangays in the 1st District of Davao del Norte, which was funded by Olaño's Priority Development Assistance Fund (PDAF) in the total amount of TWO MILLION PESOS (P2,000,000.00) covered by Special Allotment Release Order (SARO No. ROCS-07-00486, **in disregard of the appropriation law and its implementing rules, and/or without benefit of public bidding, as**

¹² Lazarte v. Sandiganbayan, G.R. No. 180122, 13 March 2009.

¹³ People v. Atienza, G.R. No. 171671, 18 June 2012.

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required under Republic Act No. 9184 and its implementing rules and regulations, and with CARED being unaccredited and unqualified to undertake the project.¹⁴ (Emphasis supplied)

(a) Olaño unilaterally chose and indorsed Philippine Social Development Foundation, Inc. (PSDFI), a non-government organization operated and/or controlled by Napoles, as "project partner" in implementing a livelihood project for barangays in the 1st District of Davao del Norte, which was funded by Olaño's Priority Development Assistance Fund (PDAF) in the total amount of FOUR MILLION PESOS (P4,000,000.00) covered by Special Allotment Release Order (SARO) No. ROCS-07-03495, in disregard of the appropriation law and its implementing rules, and/or without benefit of public bidding, as required under Republic Act No. 9184 and its implementing rules and regulations, and with PSDFI being unaccredited and unqualified to undertake the project.¹⁵ (Emphasis supplied)

(a) Olaño unilaterally chose and indorsed Philippine Social Development Foundation, Inc. (PSDFI), a non-government organization operated and/or controlled by Napoles, as "project partner" in implementing a livelihood project for barangays in the 1st District of Davao del Norte, which was funded by Olaño's Priority Development Assistance Fund (PDAF) in the total amount of TWO MILLION FIVE HUNDRED THOUSAND PESOS (P2,500,000.00) covered by Special Allotment Release Order (SARC) No. ROCS-07-07940, in disregard of the appropriation law and its implementing rules, and/or without benefit of public bidding, as required under Republic Act No. 9184 and its implementing rules and regulations, and with PSDFI being unaccredited and unqualified to undertake the project.¹⁶ (Emphasis supplied)

Clearly, all three (3) *Informations* state that Olaño acted with manifest partiality, evident bad faith or gross inexcusable negligence in doing the alleged illegal acts. Thus, the second element exists.

On the **third element**, the pertinent portions of the *Informations* in Crim. Case Nos. SB-16-CRM-0242 to 0244 state that Olaño "did then and there willfully, unlawfully, and criminally cause undue injury to the government and/or give unwarranted benefits and advantage to said private individuals"¹⁷ through the above-mentioned acts. Consequently, the third and last element of violation of Section 3(e) of R.A. No. 3019 is also present.

Olaño claims that there is no law prohibiting the endorsement of an NGO, that he is not obliged to conduct public bidding or to accredit or qualify

¹⁴ *Information*, Crim. Case No. SB 16-CRM-0242, Records, Vol. 2, pp. 1-5.

¹⁵ *Information*, Crim. Case No. SB 16-CRM-0243, Records, Vol. 2, pp. 6-10.

¹⁶ *Information*, Crim. Case No. SB 16-CRM-0244, Records, Vol. 2, pp. 11-15.

¹⁷ *Informations*, Crim. Case Nos. SB 16-CRM-0242 to 0244, Records, Vol. 2, pp. 1-15.

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NGOs, and that there is no law prohibiting him from entering into a MOA with an NGO. However, all the *Informations* state that Olaño disregarded the appropriation law and its implementing rules, bidding rules, and R.A. No. 9184 and its implementing rules and regulations. Since the grounds raised by Olaño are contrary to the allegations in the *Informations*, these shall be considered as matters of defense which may be raised only during the presentation of evidence.¹⁸

Therefore, the facts charged in the *Informations* in Crim. Case Nos. SB 16-CRM-0242 to 0244 constitute an offense.

(b) *Crim Case Nos. SB-16-CRM-0245 to 0247 (Malversation)*

Olaño also asserts that the facts charged in the malversation case do not constitute an offense as there was no allegation of demand against him.

This Court rules that all the *Informations* in Crim. Case Nos. SB-16-CRM-0245 to 0247 state the essential elements of violation of Article 217 of the Revised Penal Code on Malversation, which are as follows:

- (a) That the offender be a public officer;
- (b) That he had the custody or control of funds or property by reason of the duties of his office;
- (c) That those funds or property were public funds or property for which he was accountable; and
- (d) That he appropriated, took, misappropriated or consented, or through abandonment or negligence, permitted another person to take them.¹⁹

Demand against the accused is not one of the essential elements of Malversation. In *Nizurtado v. Sandiganbayan*,²⁰ the Supreme Court explained:

Accused-appellant criticizes the Sandiganbayan for its having failed to consider the fact that no valid demand has been made, or could have been made, for the repayment of the loaned sum. Demand merely raises a prima facie presumption that missing funds have been put to personal use. **The demand itself, however, is not an element of, and not indispensable to constitute, malversation. Even without a demand, malversation can still**

¹⁸ *Antone v. Beronilla*, G.R. No. 183824, 08 Dec. 2010.

¹⁹ *Legrana v. Sandiganbayan*, G.R. No. 178626, 13 June 2012.

²⁰ G.R. No. 107383, 07 Dec. 1994.

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