

Republic of the Philippines
SANDIGANBAYAN
Quezon City
SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-17-CRM-0030

-Versus-

PRESENT:

PONFERRADA, *J.*, *Chairperson*
FERNANDEZ, B.* &
MUSNGI, ** *JJ.*

GERARDO PAAT VERZOSA,
Accused.

Promulgated:

AUG 24 2017 *mf*

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R E S O L U T I O N

PONFERRADA, *J.*:

This refers to the *Motion for Reconsideration* dated July 25, 2017, of accused-movant Gerardo P. Verzosa of the Court's Resolution of July 10, 2017, which denied his *Motion to Dismiss* dated April 21, 2017; and the prosecution's *Opposition* thereto dated August 3, 2017.

Accused-movant's subject motion for reconsideration is anchored on the following grounds –

“A. This Honorable Court has no jurisdiction over the case and the person of the accused because although the case is for alleged violation of Republic Act No. 3019 (R.A. 3019), the accused is a private individual and is not accused with an official occupying a Listed Government Position.

* Special Member in lieu of Justice Karl B. Miranda, per Adm. Order No. 023-2017 dated January 31, 2017.

** Special Member in view of the vacancy in the Sixth Division, per Adm. Order No. 205-2017 dated May 31, 2017.

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“B. The Sandiganbayan exercises exclusive jurisdiction over cases of violations of R.A. 3019 only when one or more of the accused occupy a Listed Government Position.

“C. The ruling in People v. Go is not applicable in this case because the peculiar circumstances that impelled the said Go ruling, i.e. the voluntary submission of the accused to the jurisdiction of the Sandiganbayan and the impropriety of referral to the RTC or other courts because of resulting delays that will not promote Go’s right to speedy trial and speedy disposition of his case, are not present in this case.

“D. Although courts generally refrain from interfering in the OMB’s investigative powers, the Sandiganbayan has time and again properly issued orders to correct OMB resolutions and acts that violate constitutional rights like the equal protection of the laws in this case.

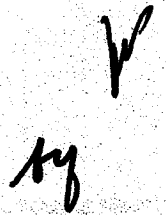
“E. The general rule that a Motion to Dismiss is tested within the confines of the information has exceptions. Thus, where the law and Tacitly Admitted Facts show that the information is Unsustainable, the information is quashable. Here, there is enough to show that the procured equipment pertains to KAELCO and therefore, the strictures of RA 9184 is inapplicable and non-compliance therewith is not criminal.”

At the outset, it should be pointed out that the foregoing issues presented by the accused-movant and the allegations and discussions in support thereof are but a rehash/repetition of the same issues and arguments that he presented and discussed, not only in his *Motion to Dismiss the Case and Withhold Issuance of the Warrant of Arrest on Jurisdictional Grounds By Way of Special Appearance* dated January 20, 2017, but also in his *Motion to Dismiss* dated April 21, 2017, which the Court had already judiciously considered and resolved in the subject Resolution sought to be reconsidered.

Thus, there being no new issue/s raised in his motion, the Court finds no cogent reason to disturb or reconsider the following findings and conclusions contained in the assailed Resolution, viz -

“The arguments raised by accused-movant that this Court has no jurisdiction over the case and on his person because he is a private individual who does not occupy a government position listed in Section 4 of Presidential Decree (P.D.) No. 1606, as amended; and that the case of People v. Go¹ is not applicable in this case because,

¹ 719 SCRA 706.



unlike Go, the accused-movant did not submit himself voluntarily to the jurisdiction of this Court, are but a rehash/reiteration of the arguments raised by him in support of his Motion to Dismiss the Case and Withhold Issuance of the Warrant of Arrest on Jurisdictional Grounds By Way of Special Appearance dated January 20, 2017, which were already considered and passed upon by the Court in its Resolution of March 9, 2017; and there being no new matters/issues raised that would warrant a reversal thereof, the Court hereby reiterates its ruling on the matter in the said Resolution, to wit -

*“At the outset, it should be pointed out that this Court is a special criminal court which has exclusive original jurisdiction of all cases involving violations of R.A. 3019, as amended, committed by certain public officers, as enumerated in P.D. 1606 as amended by R.A. 8249. This includes private individuals who are charged as co-principals, accomplices or accessories with the said public officers. While it is true that Section 2 of RA 10660 which amended Section 4 of P.D. 1606 conferred to the “Regional Trial Courts exclusive original jurisdiction where the information: (a) does not allege any damage to the government or any bribery; or (b) alleges damage to the government or bribery arising from the same or closely related transactions or acts in an amount not exceeding One million pesos (P1,000,000.00),” this amendment, however, is **not** applicable in this case against the accused because the amendment applies only to cases arising from offenses committed **after** R.A. 10660 took effect on **May 5, 2015**, and the offense charged against him in this case was committed “**on or about 2012, or sometime or subsequent thereto.**” Thus, the transitory provision contained in Section 5 of R.A. 10660 explicitly provides –*

*“Section 5. –Transitory Provision. – This Act shall apply to all cases pending in the Sandiganbayan over which trial has not begun: **Provided, That: (a) Section 2, amending Section 4 of Presidential Decree No. 1606, as amended, on “Jurisdiction;” and (b) Section 3, amending Section 5 of Presidential Decree 1606, on “Proceedings, How Conducted; Decision by Majority Vote” shall apply to cases arising from offenses committed after the effectivity of this Act.**” (Bold supplied).*

Accused, thru his counsel, nevertheless, asserts that in view of the death of his co-accused and brother-in-law public officer Municipal Mayor Kenneth Dale C. Mangaoang of Balbalan, Kalinga, the Court has no jurisdiction over the case and on his person as he, the lone accused, is a private person who could no longer be indicted for violating Section 3(e) of R.A. 3019, as amended; and hence, this case against him should be dismissed.

It is well settled that private persons, when acting in conspiracy with public officers, may be indicted and, if found guilty, held liable for the pertinent offenses under Section 3 of R.A. 3019, as amended, in consonance with the avowed policy of the

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anti-graft law to repress certain acts of public officers and private persons alike constituting graft or corrupt practices act or which may lead thereto.² The reason is that the death of accused's co-accused public officer did not extinguish the crime nor did it remove the basis of the charge of conspiracy between him and his co-accused public officer. What was extinguished by the death of accused's co-accused public officer is the latter's criminal liability. His death did not extinguish or expunge the basis of the charge of conspiracy between him and accused private individual. Otherwise stated, the death of accused's co-accused public officer does not mean that there was no public officer who allegedly violated Section 3(e) of R.A. 3019, as amended.

Thus, in the recent case of People of the Philippines v. Henry Go,³ aptly cited by the prosecution, the Supreme Court held

“It is true that by reason of Secretary Enrile's death, there is no longer any public officer with whom respondent can be charged for violation of R.A. 3019. It does not mean, however, that the allegation of conspiracy between them can no longer be proved or that their alleged conspiracy is already expunged. The only thing extinguished by the death of Secretary Enrile is his criminal liability. His death did not extinguish the crime nor did it remove the basis of the charge of conspiracy between him and private respondent. Stated differently, the death of Secretary Enrile does not mean that there was no public officer who allegedly violated Section 3 (g) of R.A. 3019. In fact, the Office of the Deputy Ombudsman for Luzon found probable cause to indict Secretary Enrile for infringement of Section 3 (e) and (g) of R.A. 3019. Were it not for his death, he should have been charged.

“The requirement before a private person may be indicted for violation of Section 3(g) of R.A. 3019, among others, is that such private person must be alleged to have acted in conspiracy with a public officer. The law, however, does not require that such person must, in all instances, be indicted together with the public officer. If circumstances exist where the public officer may no longer be charged in court, as in the present case where the public officer has already died, the private person may be indicted alone.

“Indeed, it is not necessary to join all alleged co-conspirators in an indictment for conspiracy. If two or more persons enter into a conspiracy, any act done by any of them pursuant to an agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. This means that everything said, written or done

² People of the Philippines v. Henry T. Go, G.R. No. 168539, March 25, 2014; Gregorio Singian, Jr. v. Sandiganbayan, et al., G.R. Nos. 195011-19, September 30, 2013; Santillano v. People, 614 SCRA 614; Go v. Fifth Division, Sandiganbayan, 521 SCRA270 [2007]; Domingo v. Sandiganbayan, 474 SCRA. 203 [2005]; Luciano v. Estrella, 34 SCRA 769 [1970].

³ Supra, Underscoring supplied.

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by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done or written by each of them and it makes no difference whether the actual actor is alive or dead, sane or insane at the time of trial. The death of one of two or more conspirators does not prevent the conviction of the survivor or survivors. Thus, this Court held that:

Xxx [a] conspiracy is in its nature a joint offense. One person cannot conspire alone. The crime depends upon the joint act or intent of two or more persons. Yet, it does not follow that one person cannot be convicted of conspiracy. So long as the acquittal or death of a co-conspirator does not remove the bases of a charge for conspiracy, one defendant may be found guilty of the offense.⁴

“Accused, moreover, maintains that the above ruling in People v. Go which was promulgated on March 25, 2014, or before R.A. 10660 took effect on May 5, 2015, is not applicable in this case because, in the Go Case, private person Go voluntarily submitted himself to the jurisdiction of the Sandiganbayan by posting bail and sought affirmative relief therefrom, while in this case, the accused did not voluntarily submit himself to the jurisdiction of the Sandiganbayan and in fact questioned its jurisdiction by way of special appearance.

“Whether the accused voluntarily submitted himself to the jurisdiction of the Court as in the case of Go or appeared before the Court thru the special appearance of counsel to assail or question the jurisdiction of the Court, does not deprive the Sandiganbayan as a special court, of its exclusive original jurisdiction over cases involving violations of RA 3019 committed by certain public officers enumerated in P.D. 1606, as amended, or by private individuals in conspiracy with said public officers as in the case at bar because such jurisdiction (over the subject matter) is conferred by law.

“Of course, the Court acquires actual jurisdiction over the person of the accused thru his arrest or voluntary surrender. Here, no warrant of arrest has yet been issued against the accused and, therefore, he is still beyond the jurisdiction of the Court and is not entitled to any judicial relief. The only remedy the accused is entitled when he is beyond or not yet within the jurisdiction of the Court is a motion to quash warrant of arrest for lack of probable cause and that is when there is already a warrant of arrest issued by the Court.⁵ A motion to quash the information, albeit couched or titled as a motion to dismiss, based on lack of jurisdiction over the person of the accused, like the instant motion, may or can be availed by the accused only after he is already under the jurisdiction of the court through arrest or voluntarily surrender.

⁴ Citing Villa v. Sandiganbayan, G.R. Nos. 87186, 87281, 87466 and 87524, April 24, 1992, 208 SCRA 283, 297-298, citing U.S. Remigio, 37 Phil. 599 [1918].

⁵ See Miranda v. Tuliao, 486 SCRA 377 [2006].

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But as earlier stated, no warrant of arrest has yet been issued against the accused; hence, the Court takes this opportune time to evaluate, as it hereby evaluates, the resolution of the prosecutor and its supporting documents in filing the Information, and on the basis thereof, finds probable cause against the accused in conspiracy with his deceased co-accused brother-in-law public officer Municipal Mayor Kenneth Dale C. Mangaoang of Balbalan, Kalinga, for violation of Section 3(e) of R.A. 3019, for the issuance of a warrant of arrest against him.”

“In support of the second ground, accused-movant claims that the Office of the Ombudsman (OO) violated his constitutional right to equal protection of the laws because the latter discriminated him for prosecution as it exculpated/absolved the two (2) other respondents in this case.

“On this issue, it is the consistent policy of the Court not to interfere with the OO’s exercise of its investigatory and prosecutory powers. Thus, in Remberto C. Kara-an v. Office of the Ombudsman, et al.,⁶ the Supreme Court held that -

“The Ombudsman has the sole power to investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. The consistent policy of the Court is not to interfere with the Ombudsman’s exercise of his investigatory and prosecutory powers. We held in Alba v. Nitorreda⁷ that:

xxx this Court has consistently refrained from interfering with the exercise by the Ombudsman of his constitutionally mandated investigatory and prosecutory powers. Otherwise stated, it is beyond the ambit of this Court to review the exercise of discretion of the Ombudsman in prosecuting or dismissing a complaint filed before it. Such initiative and independence are inherent in the Ombudsman who, beholden to no one, acts as the champion of the people and preserver of the integrity of the public service.

“The Court explained the rationale underlying its policy of non-interference in this wise:

xxx The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to

⁶ G.R. No. 119990, June 21, 2004, 432 SCRA, 457.

⁷ 254 SCRA 753 [1996].

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complaints filed before it, in much the same way that the courts would be extremely swamped if they would be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.”⁸

“Thus, the OO’s non-finding of probable cause against accused-movant’s two co-respondents is but an exercise of its plenary investigatory and prosecutorial powers granted to it by the Constitution. The Court should not interfere with such exercise of OO’s power.

“In support of the third ground, accused-movant claims that the facts charged in the Information do not constitute an offense because it does not allege that the equipment and materials procured and installed are owned by or property of the Municipality.

“The above-contention is unmeritorious. The accused-movant is charged with violation of Section 3(e) of RA 3019, as amended, which has the following elements:

(1) that the accused is a public officer discharging administrative, judicial or official functions;

(2) that he must have acted with manifest partiality, evident bad faith, or gross inexcusable negligence; and

(3) that his action caused undue injury to any party, including the government, or gave any party any unwarranted benefits, advantage or preference in the discharge of his functions.⁹

“It is settled that a motion to quash is a hypothetical admission of the facts alleged in the information, hence, the court in resolving the motion cannot consider facts contrary to those alleged in the information or which do not appear on the face of the information, except those admitted by the prosecution.¹⁰ The fundamental test in resolving a motion to quash on the ground that the information charges no offense is whether or not the facts alleged in the complaint or information, if hypothetically admitted, would establish the essential elements of the offense charged as defined by law.¹¹ The trial court may not consider a situation contrary to that set forth in the

⁸ Ocampo v. Ombudsman, 225 SCRA 725 [1993].

⁹ Jacinto v. Sandiganbayan, 178 SCRA 254, 259 [1989].

¹⁰ Regalado, Remedial Law Compendium, Vol. II, 10th Rev. Ed., p. 477 citing People v. Navarro, et al., 75 Phil. 516; People v. Cadabis, 97 Phil. 829; People v. Ferrer, 101 Phil. 234; People v. De la Rosa, etc., et al., L-34112, June 25, 1980.

¹¹ Lazarte v. Sandiganbayan, et al., G.R No. 180122, March 13, 2009, 581 SCRA 432.

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*criminal complaint or information. Facts which constitute the defense of the accused against the charge under the information must be proved during the trial. Such facts or circumstances do not constitute proper grounds for a motion to quash the information.*¹²

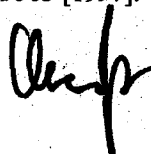
“A reading of the assailed Information shows that it alleges the essential elements of violation of Section 3(e) of R.A. 3091. The Information states that accused-movant, a private individual, General Manager of BENEKO, in conspiracy with his brother-in-law, Kenneth Dale C. Mangaoang (deceased), a public officer, being then the Municipal Mayor of Balbalan, Kalinga Province, who, while in the performance of his official administrative function and by taking advantage of the same, without authority from the Sangguniang Bayan of Balbalan, and in the absence of memorandum of agreement, did then and there, willfully, unlawfully and criminally, through manifest partiality, and evident bad faith, give unwarranted benefit, advantage or preference to BENEKO and/or Verzosa by directly contracting with the same, without the benefit of public bidding under Republic Act No. 9184, the Government Procurement Reform Act, and its implementing rules and regulations, the purchase of equipment/materials for the Municipality of Balbalan’s electrification project, and despite the fact that BENEKO’s line of business does not involve the supply and/or delivery of electrical equipment/materials, to the damage and prejudice of the government.

*“By filing the Motion to Quash, the accused-movant hypothetically admits the foregoing facts alleged in the Information which clearly show a violation of Section 3(e) of RA 3019. Thus, in Cabrera v. Sandiganbayan,¹³ it was held that “the fundamental test in determining the sufficiency of the material averments of an Information is whether or not the facts alleged therein, which are hypothetically admitted, would establish the essential elements of the crime defined by the law. The Court has ruled that evidence *aliunde* or matters extrinsic of the Information are not to be considered:*

*‘Section 3(a) of Rule 117 of the Revised Rules of Court authorizes the quashal of an information when the facts therein averred do not amount to an offense. The fundamental test in reflecting on the viability of a motion to quash under this particular ground is whether or not the facts asseverated, if hypothetically admitted, would establish the essential elements of the crime defined in the law. In this examination, matters *aliunde* are not considered. Anent the sufficiency of the information, Section 6, Rule 110, of the Rules of Court requires, *inter alia*, that the information must state the acts or omissions so complained of as constitutive of the offense.’*

¹² Torres v. Garchitorena, 394 SCRA 494, 503 [2002].

¹³ 441 SCRA 377, 385 citing Ingco v. Sandiganbayan, 272 SCRA 563 [1997].




“Moreover, the issues raised by accused-movant that the Municipality of Balbalan, Kalinga Province cannot legally own and operate the distribution line because under PD 269 all distribution lines within Kalinga Apayao is the property of the Kalinga Apayao Electric Cooperative, Inc. (KAELCO); and whether or not the provisions of R.A. 9184 or the Government Procurement Reform Act is applicable in this case and/or whether the Municipality of Balbalan can legally own and operate a distribution line under PD 269, are matters that could properly be threshed out in a full blown trial and not in this Motion to Quash.

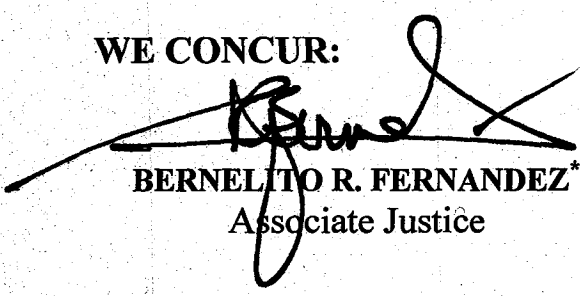
“It must be emphasized, however, that whether or not the accused-movant is guilty of the charge against him for violation of Section 3(e) of R.A. 3019, is subject to the evidence to be presented by the parties in the trial of the case. Of course, it is incumbent upon the prosecution to show the accused-movant’s involvement or participation in the commission of the offense charged in the Information by proof beyond reasonable doubt.”

WHEREFORE, the subject Motion for Reconsideration dated July 25, 2017, of the accused-movant is **DENIED**.

SO ORDERED.


RODOLFO A. PONFERRADA
 Associate Justice
 Chairperson

WE CONCUR:


BERNELITO R. FERNANDEZ*
 Associate Justice


MICHAEL FREDERICK L. MUSNGI**
 Associate Justice

* Special Member in lieu of Justice Karl B. Miranda, per Adm. Order No. 023-2017 dated January 31, 2017.

** Sitting as Special Member of the 6th Division in view of the vacancy therein as per A.O. No. 124-2017 dated April 4, 2017.