



Republic of the Philippines  
*Sandiganbayan*  
 Quezon City  
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**SEVENTH DIVISION**

*MINUTES of the proceedings held on 5 September 2017.*

*Present:*

*Justice MA. THERESA DOLORES C. GOMEZ-ESTOESTA -- Chairperson*  
*Justice ZALDY V. TRESPESES ----- Member*  
*Justice BAYANI H. JACINTO\* ----- Member*

*The following resolution was adopted:*

***Crim. Case Nos. SB-17-CRM-0201 to 0218 - People vs. THOMAS DE LARA DUMPIT, JR., ET AL.,***

This resolves the following:

1. Accused Elsie Walican's undated "MOTION FOR RECONSIDERATION (Of the Resolution dated June 21, 2017)";<sup>1</sup>
2. The prosecution's "OPPOSITION (RE: ACCUSED ELSIE WALICAN'S MOTION FOR RECONSIDERATION Of the Resolution dated June 21, 2017)" dated August 1, 2017;<sup>2</sup>
3. Accused Thomas De Lara Dumpit, Jr.'s "MANIFESTATION AND OMNIBUS MOTION: 1. FOR RECONSIDERATION OF THE JUNE 21, 2017 RESOLUTION REITERATING MOTION FOR REINVESTIGATION WITH LEAVE OF COURT; 2. FOR BILL OF PARTICULARS; 3. AND IN THE ALTERNATIVE, FOR JUDICIAL NOTICE AND APPLICATION OF THE DELITO CONTINUADO PRINCIPLE" dated July 21, 2017;<sup>3</sup>
4. The prosecution's "COMMENT/OPPOSITION TO ACCUSED DUMPIT'S MANIFESTATION AND OMNIBUS MOTION: 1. FOR RECONSIDERATION OF THE JUNE 21, 2017 RESOLUTION REITERATING MOTION FOR REINVESTIGATION WITH LEAVE OF COURT; 2. FOR BILL OF PARTICULARS; 3. AND IN THE ALTERNATIVE, FOR JUDICIAL NOTICE AND APPLICATION OF THE DELITO CONTINUADO PRINCIPLE" dated August 7, 2017;<sup>4</sup>
5. Accused Thomas De Lara Dumpit, Jr.'s "REPLY (To Prosecution's Comment/Opposition)" dated August 14, 2017.<sup>5</sup>

\*Sitting as Special Member per Administrative Order No. 284-2017 dated 18 August 2017.

<sup>1</sup> *Rollo*, Vol. 5, pp. 175-180.

<sup>2</sup> *Id.* at 233-235.

<sup>3</sup> *Id.* at 181-204.

<sup>4</sup> *Id.* at 243-247.

<sup>5</sup> *Id.* at 248-252.

*J.*  
*MH*

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This resolves the Motion for Reconsideration filed by accused Elsie Walican and the Manifestation and Omnibus Motion: *a.* For Reconsideration of the June 21, 2017 Resolution Reiterating Motion for Reinvestigation with Leave of Court; *b.* For Bill of Particulars; *c.* And in the Alternative, for Judicial Notice and Application of the Delito Continuado Principle filed by accused Thomas De Lara Dumpit, Jr.

**ACCUSED WALICAN'S MOTION FOR RECONSIDERATION**

Accused Walican moves for reconsideration of the Resolution dated 21 June 2017 alleging that as a low-ranking employee, she cannot enter into the kind of contract attributed to her. Accused also alleges that assuming for the sake of argument that she could have done so, she could not have refused her boss from entering into such contract of services.

Even supposing she did enter into such contract of services, accused contends that there was nothing illegal in the said contracts. The alleged contracts purportedly signed by her became illegal and unlawful only when the services were not delivered and somebody used the money for their own benefit, which resulted in undue injury to the government.

Finally, accused Walican claims that only those who benefited and the brains of anomalous transactions should be tried and punished.

**THE PROSECUTION'S OPPOSITION TO ACCUSED WALICAN'S  
MOTION FOR RECONSIDERATION**

The prosecution counters that the arguments raised by accused Walican are matters of defense which, just like her defense of forgery in her motion to dismiss, should be passed upon during trial.

The prosecution points out that there are at least 13 pieces of documents, which established her participation in the irregular and illegal disbursement of PDAF. Also, the allegation that her signatures in some of the Priority Development Assistance Fund (PDAF) documents were forged is yet to be established and remains a matter of defense that should be threshed out during a full-blown trial.

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**ACCUSED DUMPIT, JR.'S MANIFESTATION  
AND OMNIBUS MOTION**

Accused Dumpit, Jr. alleges that all the Informations (for Violation of Sec. 3(e) of R.A. No. 3019, Malversation of Public Funds and Malversation of Public Funds through Falsification of Public Documents) merely state "*in disregard of the appropriation law and its implementing rules.*" Accused now moves for the prosecution to state the particular facts of the following:

- a. The item indicating a specific amount appropriated, in the GAA for FY 2009-2010 and its implementing rules representing the PDAF allocation in the name of accused Dumpit, Jr.<sup>6</sup>
- b. The particular item or sections or articles in the said GAA for FY 2009-2010 and its implementing rules giving authority, control and supervision to accused Dumpit, Jr. in the disbursement of said PDAF allocation.<sup>7</sup>

Accused avers that the law allegedly violated was the General Appropriation Act (GAA) for FY 2009-2010 and its implementing rules which was very broad. Therefore, the prosecution must provide clear and specific facts to support its allegations.

Accused also alleges that there is a need to review and clarify the official duties and functions of parties/accused involved in order to pinpoint the basis of finding probable cause against each accused.

Being then a member of the Legislative Department, accused Dumpit, Jr.'s duties were confined to legislation. On the other hand, NLDC, a government owned and controlled corporation, is under the Executive Department. It is responsible for the implementation of projects financed by the government. The Executive and Legislative departments have distinct and separate duties which should not overlap.

However, accused Dumpit, Jr. claims that in these cases, he is made to appear as if he personally owned the PDAF allocation; that he had control and custody over it; and that he was the implementor of the project.

Accused further states that there is a need for reinvestigation as the Ombudsman's Consolidated Resolution, which led to the filing of the instant cases, were actually an adoption in its entirety of the affidavit complaint of

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<sup>6</sup> Rollo, Vol. 5, p. 191.

<sup>7</sup> Id.

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the Fact Finding and Investigation Bureau of the Deputy Ombudsman for the Military and Other Law Enforcement Offices (FFIB-MOLEO).

Finally, accused maintains that the *delito continuado* principle should have been applied in these cases because he only made one act of requesting the release of his PDAF allocation for his congressional district.

#### PROSECUTION'S COMMENT/OPPOSITION

The prosecution in its Comment/Opposition alleges that accused failed to pinpoint errors committed by the Court in its Resolution, and instead raised errors of facts and law supposed to have been committed by the OMB in the preliminary investigation. It maintains that these grounds should have been properly raised during the preliminary investigation stage; either in their counter-affidavit or in a motion for reconsideration before the OMB.

The prosecution claims that the filing of a bill of particulars is unnecessary. The Informations sufficiently described the offenses with particularity to apprise accused of the charges against him. The specific amount in the GAA for FY 2009-2010 representing the PDAF allocation in the name of accused or the particular items or section or articles in the said GAA and its implementing rules, which accused wants to be clarified do not constitute the elements of the offense charged. It is enough that the Information identified the Special Allotment Release Order (SARO) that covers the PDAF of accused.

#### ACCUSED DUMPIT, JR.'S REPLY

Accused adds that the Information is defective. The General Appropriation Act (GAA) is a law that has many provisions. When the prosecution alleged that accused violated the general appropriation law and its implementing rules, it is as if accused violated all the provisions contained in the GAA.

Accused also claims that prosecution will not be able to prove the amounts alleged in the Informations when the basis for said amounts has not been specified or alleged.

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## RULING

We **deny** accused Walican's and Dumpit, Jr.'s motions for lack of merit.

*On accused Walican's  
motion for reconsideration*

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After a careful perusal of the arguments raised by accused Walican, the Court finds no valid reason to disturb its earlier findings. Accused failed to raise material allegations that would warrant a reversal or reconsideration of the assailed resolution.

As aptly pointed out by the prosecution, the various arguments advanced by accused – that she is a low-ranking employee and thus cannot enter into contract of services; that assuming she can enter into such contract, as low-ranking employee, she cannot refuse her boss; and that assuming she was capacitated to enter into such contract, there was nothing illegal in the said contract of services – are all *matters of defense*.

Whether accused Walican is in fact, guilty in entering into the alleged contract of services and in conspiring with the other accused in committing the offense as charged in the Informations is a different matter, which must be properly determined in a full-blown trial on the merits of these cases.

*On accused Dumpit, Jr.'s  
omnibus motion*

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Accused Dumpit, Jr.'s motion for reconsideration reiterating his motion for reinvestigation with leave of court also deserves scant consideration.

The Court sustains the prosecution argument that indeed, accused Dumpit, Jr. anchored his motion not on errors committed by this Court in issuing the assailed resolution. Instead, he raised alleged errors of facts and laws in the conduct of the investigation committed by the OMB, which was prejudicial to his interest.

It should be stressed that the courts do not interfere with the prosecutor's conduct of a preliminary investigation. The prosecutor's determination of probable cause is solely within his or her discretion. Prosecutors are given a wide latitude of discretion to determine whether an

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information should be filed in court or whether the complaint should be dismissed.<sup>8</sup> As explained in *People v. Castillo*:

The executive determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. ***Whether or not that function has been correctly discharged by the public prosecutor, i.e., whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.***<sup>9</sup> (Emphasis added.)

Also, it must be emphasized that a preliminary investigation is merely preparatory to a trial. It is not a trial on the merits. An accused's right to a preliminary investigation is merely statutory; it is not a right guaranteed by the Constitution. Hence, any alleged irregularity in an investigation's conduct does not render the information void nor impair its validity.<sup>10</sup>

Therefore, this Court defers to the prosecutor's finding and determination of probable cause, since the determination of the existence of probable cause is his function. What matters is that a preliminary investigation was conducted, and accused was afforded due process. This was not denied by accused Dumpit, Jr.

As to accused's motion for bill of particulars, the Court finds it unmeritorious.

It is settled that the purpose of a bill of particulars is to supply vague facts or allegations in the complaint or information to enable the accused to properly plead and prepare for trial. It presupposes a valid Information, one that presents all the elements of the crime charged, although under vague terms. Notably, the specifications that a bill of particulars may supply are only formal amendments to the complaint or Information.<sup>11</sup>

It is not the function of the bill to furnish the accused with the evidence of the prosecution. Thus, the prosecutor shall not be required to include in the bill of particulars matters of evidence relating to how the people intend to prove the elements of the offense charged or how the people intend to prove any item of factual information included in the bill of particulars.<sup>12</sup>

<sup>8</sup> *De Lima v. Reyes*, G.R. No. 209330, 11 January 2016.

<sup>9</sup> 607 Phil. 754-768 (2009).

<sup>10</sup> *De Lima v. Reyes*, G.R. No. 209330, 11 January 2016, citing *Lozada v. Fernando*, 92 Phil. 1051 (1953).

<sup>11</sup> *Enrile v. People*, G.R. No. 213455, 11 August 2015.

<sup>12</sup> *Id.*

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In the instant case, accused Dumpit, Jr. moves for a bill of particulars and argues that the Informations failed to state the following:

- a. The item indicating a specific amount appropriated, in the GAA for FY 2009-2010 and its implementing rules representing the PDAF allocation in the name of accused Dumpit, Jr.
- b. The particular item or sections or articles in the said GAA for FY 2009-2010 and its implementing rules giving authority, control and supervision to accused Dumpit, Jr. in the disbursement of said PDAF allocation.

The argument is bereft of merit.

As borne by the records, accused Dumpit, Jr. was charged with three (3) distinct offenses: Violation of Sec. 3(e) of R.A. No. 3019; Malversation of Public Funds and Malversation of Public Funds through Falsification of Public Documents.

The essential elements of Violation of Sec. 3(e) of R.A. No. 3019 are as follows:

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 inexcusable negligence; and
3. That his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions

On the other hand, Malversation of Public Funds is penalized under Art. 217 of the Revised Penal Code (RPC), which has the following elements:

1. That the offender is a public officer;
2. That he had the custody or control of funds or property by reason of the duties of his office;
3. That those funds or property were public funds or property for which he was accountable; and

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4. That he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.

While Falsification of Documents under paragraph 2, Article 171 of the RPC, which is a necessary means to commit the crime of malversation, has the following elements:

1. The offender is a public officer, employee or notary public;
2. That he takes advantage of his official position
3. He falsifies a document by causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate.

It should be stressed that an Information only needs to state the ultimate facts constituting the offense. In this case, the Court finds that the Informations have sufficiently alleged all the essential or ultimate facts constituting the elements of the offenses charged against accused.

The Informations for **Violation of Sec. 3(e) of R.A. No. 3019**<sup>13</sup> allege that accused public officers, discharging official functions, conspired with one another and with private individuals, in causing undue injury to the government and giving unwarranted benefit and advantage to other accused private individuals, through manifest partiality evident bad faith and/or gross inexcusable negligence. It was alleged that accused Dumpit, Jr. requested for the issuance of SARO covering a portion of his PDAF for the implementation of livelihood projects in his congressional district, which turned out to be non-existent, allowing private individuals to divert the PDAF allocation for personal use.

The Informations for **Malversation of Public Funds**<sup>14</sup> allege that accused, who were accountable public officers conspired with one another, and with accused private individuals, took, misappropriated or converted or through abandonment or negligence allow accused private individuals to take misappropriate or convert the PDAF drawn public funds (allocated to accused Dumpit, Jr. for the years 2008-2010) for their personal use and benefit.

The Informations for **Malversation of Public Funds through Falsification of Public Documents**<sup>15</sup> allege that accused accountable public officers took advantage their official positions and conspired with one

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<sup>13</sup> *Rollo*, Vol. 2, pp. 1-36.

<sup>14</sup> *Id.* at 37-51.

<sup>15</sup> *Id.* at 52-84.



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another and with accused private individuals, falsified documents in connection with the PDAF allocated to accused Dumpit, Jr. They made it appear that the PDAF funded projects were implemented prompting the release of subsequent tranches of payments when in truth they were inexistent. The use of said falsified documents allowed accused private individuals to take, misappropriate and convert the PDAF drawn funds for their personal use and benefit.

On the other hand, the details sought by accused Dumpit, Jr. to be stated with particularity are similar to that in *Enrile v. People*<sup>16</sup> which are considered evidentiary. It is basic that matters of evidence need not be stated in the Information. In the said case, petitioner therein filed a motion for bill of particulars and demanded for details on several questions, including:

- e. For each of the years 2004-2010, under *what law* or *official document* is a portion of the "Priority Development Assistance Fund" identified as that of a member of Congress, in this instance, as ENRILE's, to be found? In what *amount* for each year is ENRILE's Priority Development Assistance Fund?

The Supreme Court held that "(t)hese matters will simply establish and support the ultimate fact that Enrile's PDAF was used to fund fictitious or nonexistent projects. Whether a discretionary fund (in the form of PDAF) had indeed been made available to Enrile as a member of the Philippine Congress and in what amounts are *evidentiary matters* that do not need to be reflected with particularity in the Information, and may be passed upon at the full-blown trial on the merits of the case."<sup>17</sup>

Finally, on the matter of the Court taking judicial notice and application of the *delito continuado* principle, accused Dumpit, Jr. failed to present any substantial argument that would warrant the Court to reconsider its ruling.

The Court has expressed its view on the matter raised, and maintains its earlier ruling. We reproduce the pertinent portion of our ruling in the assailed Resolution, as follows:

The prosecution correctly pointed out that the issue was tackled by the Supreme Court in *Ramiscal, Jr. v. Sandiganbayan*.<sup>18</sup> In said case, Ramiscal claims that he should be charged with only one count of estafa through falsification of public documents, instead of five separate charges. He asserts that the charges filed against him constitute only one crime of

<sup>16</sup> G.R. No. 213455, 11 August 2015.

<sup>17</sup> Id.

<sup>18</sup> 530 Phil. 773-802 (2006).

estafa through falsification of public document in the nature of *delito continuado*, or a series of repetition of acts arising from one and the same criminal intent. As such, he cannot be held criminally liable for each deed of sale executed.

The Supreme Court addressed the issue in *Ramiscal* as follows:

Indeed, the determination of what charges to file and who are to be charged are matters addressed to the discretion of the Ombudsman, including the matter of whether the crime perpetrated by petitioner and his co-accused under the Informations pending in the Divisions of the Sandiganbayan constitute *delito continuado* or classified as *concurso de delitos*; or involve separate crimes under the category of *concurso real delito* involve factual issues. Such factual issues should be resolved after trial on the merits, and not in this case. The Court is being tasked to determine whether the several sales contracts executed by petitioner and his co-accused were set afoot or triggered by a single impulse and operated by an uninterrupted force however long a time it may occupy, which, however, is a matter best left to the determination of the trial court, in this case, the Sandiganbayan.<sup>19</sup>

In sum, this Court finds no cogent reason to justify the reconsideration of the assailed Resolution, nor to require a bill of particulars, or to take judicial notice and apply the *delito continuado* principle as prayed for by accused Dumpit, Jr.

**WHEREFORE**, premises considered, the Court hereby **DENIES** for lack of merit the following:

- 1.) MOTION FOR RECONSIDERATION filed by accused Elsie Walican; and
- 2.) OMNIBUS MOTION: 1. FOR RECONSIDERATION OF THE JUNE 21, 2017 RESOLUTION REITERATING MOTION FOR REINVESTIGATION WITH LEAVE OF COURT; 2. FOR BILL OF PARTICULARS; 3. AND IN THE ALTERNATIVE, FOR JUDICIAL NOTICE AND APPLICATION OF THE DELITO CONTINUADO PRINCIPLE filed by accused Thomas De Lara Dumpit, Jr.

**SO ORDERED.**

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<sup>19</sup> Rollo, Vol.4, pp. 157-177.

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*Approved:*

**GOMEZ-ESTOESTA, J. Chairperson** \_\_\_\_\_   
**TRESPESES, J.** \_\_\_\_\_   
**JACINTO, J.** \_\_\_\_\_ 