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

**SEVENTH DIVISION**

*MINUTES of the proceedings held on 6 October 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 No. SB-17-CRM-1179 - People vs. DIOMEDIO P. VILANUEVA, ET AL.,***

This resolves the following:

1. The prosecution's "MOTION FOR RECONSIDERATION" dated September 5, 2017;[1]

2. Accused Diomedio P. Villanueva's "COMMENT/OPPOSITION [ON THE MOTION FOR RECONSIDERATION]" dated September 18, 2017;[2] and

3. The prosecution's "MANIFESTATION" dated September 26, 2017.[3]

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This resolves the Motion for Reconsideration filed by the Prosecution and the Comment/Opposition thereto filed by accused Diomedio P. Villanueva, through counsel.

In its motion, the prosecution alleges that it is "somewhat erratic"[4] that the Court dismissed the instant case and at the same time denied accused Villanueva's motion for judicial determination of probable cause. It avers that when the court denied the motion for judicial determination of probable cause, in effect, there was indeed probable cause to indict herein accused.

The prosecution further avers that the Court should not have dismissed the case outright, and the precious time of the court could have been saved

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* Sitting as Special Member per Administrative Order No. 284-2017 dated 18 August 2017.
[1] *Rollo*, pp. 371-379.
[2] Id. at pp. 394-419.
[3] Id. at pp. 420-421.
[4] Id. at p. 371.

had the Information been amended accordingly. The prosecution insists on the application of Sec. 4 Rule 117 of the Revised Rules of Criminal Procedure, which provides that if the facts charged do not constitute an offense, the prosecution shall be given by the Court an opportunity to correct the defect by amendment. Hence, the court erred in dismissing the case.

Further, the prosecution argues that the factual backdrop of the *Dela Chica case*[5] is different from this case. In *Dela Chica*, the accused had already been arraigned when they questioned the sufficiency of the Information, while in this instant case, accused were not yet arraigned. Also, in this case, the alleged lacking element had been thoroughly "factualized" and included in the Information. Thus, accused was sufficiently informed of the accusation against him.

Accused Villanueva filed his Comment/Opposition and alleges that in a long line of cases, the Supreme Court has held that when the essential allegations have not been alleged, the court may dismiss the case on the ground that the Information did not allege facts sufficient to constitute an offense. In *Dela Chica*, and as reiterated in *People vs. Cilot*,[6] the rule requires that every element constituting the offense must be alleged in the Information.[7]

Accused Villanueva further alleges that the prosecution was in fact not denied of the reasonable opportunity to amend the Information.[8] It had all the opportunity after it had been placed on notice of the supposed defect but adamantly refused to do so. Hence, the prosecution has to suffer the consequence of its omission.

The fact that the accused in *Dela Chica* had already been arraigned is inconsequential. What is essential is that the flaw in both cases, i.e. the failure to allege the mode how violation of Sec. 3(e) of RA 3019 was committed, was fatal to the extent that it could not be cured by mere amendment.[9]

Accused further claims that the instant case should have also been dismissed on the grounds of violation of rights to due process and inordinate delay in the disposition of the case against him.[10]

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[5] 462 Phil. 712-723 (2003).
[6] G.R. No. 208410, 19 October 2016.
[7] *Rollo*, p. 400
[8] Id. at 406.
[9] Id. at 408.
[10] Id. at 411.

## RULING

The prosecution's motion for reconsideration is hereby denied for lack of merit.

At the outset, this Court points out that the dismissal of the case is not inconsistent with its ruling denying accused's motion for judicial determination of probable cause.

It should be noted that in the assailed Resolution promulgated on 24 August 2017,[11] this Court declared that the conduct of judicial determination of probable cause is a mere superfluity. This Court further held that the duty to determine probable cause rests with the prosecutor, who has the discretion in the conduct of preliminary investigation.

Thus, consistent with the policy of non-interference in the prosecutor's exercise of discretion, this Court declined to review the exercise of the prosecution's discretion of finding probable cause against herein accused. Hence, accused's motion for judicial determination of probable cause was denied.

The prosecution argues that the denial of the motion for judicial determination of probable cause necessarily means that there is already probable cause to indict accused.

We disagree with the position taken by the prosecution.

The court's duty in determining probable cause is only for purposes of the issuance of warrant of arrest. It is true that the issuance by the court of the arrest warrant upon filing of the Information and supporting papers implies the determination of probable cause for the offense charged.[12] However, it should be stressed that no warrant of arrest has been issued in this case prior to its dismissal.

However, the dismissal of the case due to insufficiency of the Information is another matter.

In *Zapanta v. People*[13] citing the case of *Ampil v. Office of the Ombudsman*,[14] *Consigna v. People, et al.*,[15] and in *Coloma, Jr. v.*

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[11] *Rollo*, pp. 353-365.
[12] *Balindong v. Court of Appeals*, G.R. Nos. 177600 & 178684, 19 October 2015.
[13] G.R. Nos. 192698-99, 22 April 2015.
[14] G.R. No. 192685, 31 July 2013.
[15] G.R. Nos. 175750-51, 2 April 2014.

*Sandiganbayan*,[16] the Supreme Court enumerated the essential elements of the offense falling under Sec. 3(e) of RA No. 3019:

> 1. The accused must be a public officer discharging administrative, judicial or official functions;
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> 2. He must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and
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> 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.

The Information failed to specifically allege one of the essential elements of violation of Sec. 3(e) of RA No. 3019; that accused acted with "manifest partiality," "evident bad faith" and/or "gross inexcusable negligence." These are modes of committing the alleged offense and the importance of this element was explained by the Supreme Court in *Sison v. People*,[17] thus:

> Section 3 (e) of RA 3019 provides:
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> Section 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
>
> xxxx
>
> (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest impartiality, evident bad faith or gross inexcusable negligence.....
>
> To be found guilty under said provision, the following elements must concur:
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> (1) the offender is a public officer;
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> (2) the act was done in the discharge of the public officer's official, administrative or judicial functions;
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> (3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and

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[16] G.R. No. 205561, 24 September 2014.
[17] 628 Phil. 573-586 (2010).

> (4) the public officer caused ány undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.
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> It is undisputed that the first two elements are present in the case at bar. The only question left is whether the third and fourth elements are likewise present. We hold that they are.
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> The third element of Section 3 (e) of RA 3019 may be committed in three ways, i.e., through manifest partiality, evident bad faith or gross inexcusable negligence. Proof of any of these three in connection with the prohibited acts mentioned in Section 3 (e) of RA 3019 is enough to convict.
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> Explaining what "partiality," "bad faith" and "gross negligence" mean, we held:
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> > "Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." "Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property." (citations omitted)

It is fundamental that every element of which the offense is composed must be alleged in the information. No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged.[18] Further, an Information is fatally defective when an essential element of the crime has not been sufficiently alleged.[19]

In fact, the Supreme Court cited *Dela Chica* in its recent ruling in *Maximo v. Villapando*,[20] when it said that there is no point in proceeding under a defective Information that could never be the basis of a valid conviction. As such, the Court finds no cogent reason to reverse its assailed resolution that dismissed the Information.

Moreover, the defect in the Information is so glaring to have escaped the prosecution's attention; considering that it is faced with numerous cases involving violation of Sec. 3(e) of RA No. 3019. Still, the prosecution did not

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[18] Supra note 5.
[19] *People v. Posada y Urbano*, 684 Phil. 20-47 (2012).
[20] G.R. Nos. 214925 & 214965, 26 April 2017.

even bother to explain this defect. Instead, it wants this Court to have a "cerebral and juxtaposed"[21] reading of the Information in the instant case and in *Dela Chica* to cure the glaring defect.

The Court is perplexed by the objective of the prosecution in filing its strongly worded motion for reconsideration. On one hand, prosecution is seeking for the reversal or reconsideration of the resolution dismissing the case. It further avers that the court should have ordered for the amendment of the Information instead of dismissing outright. On the other hand, it believes and still insists that the Information is valid and does not suffer any infirmity.

This misplaced belief on the part of the prosecution is apparently the reason why to this date, it has not filed any amended information or specifically prayed for its amendment. Record shows that the apparent defect in the Information was initially raised during accused's motion for judicial determination of probable cause[22] and thereafter, in his Reply to Prosecution's Comment.[23] Such hints should have made the prosecution examine its Information and hopefully, rectified the error at a stage when amending one is still a matter of right.

To stress, the Court has not prevented the prosecution from filing any motion to correct the defect in the Information. After the prosecution was put on notice of the said defect, the least it could have done was to ask for the amendment of the Information or even just filed one. This, the prosecution failed to do.

It should be noted that the court cannot dictate or instruct the prosecution on what to do or what to file because it is the latter who has the discretion and control of how to prosecute a criminal case. To do otherwise would give rise to suspicion of partiality on the part of the court in the minds of the opposing party.

Instead of belaboring its misplaced position that the Information is valid, the prosecution could have "cerebrally" read the ruling of this Court and could have amended the Information to supply what was lacking; given that it is still indeed its right to amend it at this stage of the proceedings even without further orders from this Court. There is nothing precipitous or an intention to deny justice to anyone when the Court dismissed the instant case based on a defective Information.

Moreover, it should have been obvious to the prosecution that the ruling of this Court dismissing the instant case was without prejudice to its filing of a new Information. It behooves them to have amended the Information by

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[21] *Rollo*, p. 376
[22] Id. at 205-235.
[23] Id. at 313-347.

supplying the sufficiency, instead of going through the rigmarole of filing a motion for reconsideration when the defect was simple and obvious, based on latest jurisprudence and complain of wasted time.[24]

Finally, this Court notes the intemperate, abrasive and unseemly language and tone used by the prosecution in its motion for reconsideration. Such were neither warranted nor necessary in stressing its point. The prosecution may not agree with the findings or rulings of the court but it does not justify the use of words that are offensive and disrespectful to it. The prosecution may passionately plea for a reconsideration every time it disagrees with the rulings of the Court. However, such zeal and passion must be tempered with courtesy and due deference.

We understand that the adversarial nature of our legal system has tempted members of the bar to use strong language in pursuit of their duty to advance the interests of their clients.[25] However, while a lawyer is entitled to present his case with vigor and courage, such enthusiasm does not justify the use of offensive and abusive language. Language abounds with countless possibilities for one to be emphatic but respectful, convincing but not derogatory, illuminating but not offensive.[26]

A lawyer's language may be forceful and emphatic, it should always be dignified and respectful, befitting the dignity of the legal profession. The use of intemperate language and unkind ascriptions has no place in the dignity of judicial forum.[27]

**WHEREFORE,** premises considered, the prosecution's Motion for Reconsideration dated 5 September 2017 is **DENIED** for lack of merit.

**SO ORDERED.**

*Approved:*

**GOMEZ-ESTOESTA, J. Chairperson** _____

**TRESPESES, J.** _____

**JACINTO, J.** _____

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[24] *Rollo*, p. 372 (Prosecution's Motion for Reconsideration).
[25] *Jose C. Saberon v. Atty. Fernando T. Larong*, 574 Phil. 510-520 (2008).
[26] Id.
[27] *Spouses Nuezca v. Villagarcia*, A.C. No. 8210 (Resolution), 8 August 2016.