



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-17-CRM-1424 and 1425**
Plaintiff, For: Violation of Sec. 3(e) of
R.A. No. 3019

Present

- versus -

FERNANDEZ, SJ,* J.,
Chairperson
MIRANDA, J. and
MUSNGI, J.**

ALFREDO G. GERMAR,
Accused.

Promulgated:

OCT 11 2017 / *[Signature]*

X-----X

RESOLUTION

FERNANDEZ, SJ, J.

This resolves accused Alfredo G. Germar's *Motion to Quash With Motion to Defer Arraignment*.¹

The accused prays that the Information in the present cases be quashed and his arraignment be deferred pending the resolution of his Motion. He avers:

1. The facts charged in the Informations do not constitute an offense, or more particularly, the offense of violation of Sec. 3(e) of Republic Act No. 3019 (R.A. No. 3019).

* J. Fernandez, SJ became the Chairperson of the Sixth Division upon J. Ponferrada's retirement on September 13, 2017. The present incident was submitted for resolution after the filing of the prosecution's *Comment/Opposition* on September 15, 2017 (Per Administrative Order no. 314-2017 dated September 13, 2017; *Revised Internal Rules of the Sandiganbayan*. Rule XII, Sec. 3).

** At the time the present incident was submitted for resolution, J. Musngi was designated as a temporary member of the Sixth Division. in view of the vacancy therein (Per Administrative Order No. 124-2017 dated

RESOLUTION

People. vs. Germar

Criminal Cases No. SB-17-CRM-1424 and 1425

Page 2 of 8

X -----X

2. The Informations allege that he committed violations of Sec. 3(e) of R.A. No. 3019 by entering into contracts for consultancy services without prior authority from the Sangguniang Bayan. Such allegation does not constitute said offense.
3. Sec. 3(e) of R.A. No. 3019 does not specify that it is violated by entering into contracts without securing prior authorizations required by law.
4. Sec. 22(c)² of Republic Act No. 7160 (R.A. No. 7160), otherwise known as the Local Government Code of 1991, indeed, requires prior authority from the Sanggunian before the Municipal Mayor may enter into contracts on behalf of the municipality. However, no criminal liability attaches for failure to comply with such provision.
5. The Information in the present cases do not sufficiently allege facts constituting the element of undue injury.
 - a. The execution of consultancy contracts without prior authority from the Sangguniang Bayan of Norzagaray *per se* is insufficient to constitute the crime of Violation of Sec. 3(e) of R.A. No. 3019. It must also be alleged that:
 - i. The accused caused undue injury to any party, whether the Government or a private party, or that the accused gave unwarranted benefits, advantage or preference to a private party; and
 - ii. In doing so, the accused acted with manifest partiality, evident bad faith or gross inexcusable negligence.
 - b. The Information in the present cases merely allege that his act of signing the consultancy contracts caused undue injury to government. But such allegation does not constitute the element of causing undue injury because there is no specific allegation that despite receiving their salaries, the individuals engaged as consultants did not perform the services required of them under the subject contracts. This is supported by the Supreme Court's ruling in *Joson v. Office of the Ombudsman*.³

² Sec. 22. *Corporate Powers.* – (a) x x x

(c) Unless otherwise provided in this Code, no contract may be entered into by the local chief executive in behalf of the local government unit without prior authorization by the sanggunian concerned. A legible copy of such contract shall be posted at a conspicuous place in the provincial capitol or the city, municipal

RESOLUTION

People. vs. Germar

Criminal Cases No. SB-17-CRM-1424 and 1425

Page 3 of 8

x -----x

- c. The practice of engaging consultants is recognized by laws such as Republic Act No. 9184. There is nothing inherently illegal in entering into such contracts. The allegation of the mere act of entering into such contracts does not amount to causing undue injury to the government.
 - d. The Office of the Ombudsman, in the Resolution finding probable cause to indict him for violation of Sec. 3(e) of R.A. No. 3019, found that the subject contracts were not grossly disadvantageous. Thus, the Information in the present cases can never allege undue injury to the government.
 - e. Assuming that the subject consultancy contracts are invalid for being entered into without prior authority from the Sanggunian, it does not necessarily follow that the government suffered undue injury, considering that the consultants were paid for services rendered.
6. The Informations do not sufficiently allege the element of giving unwarranted benefits, advantage or preference to a private party.
- a. Entering into contracts with private individuals for consultancy services is not illegal.
 - b. The Informations do not show that the government was defrauded. It was not alleged that the consultants received salaries without performing the services they were engaged to provide.
 - c. The Sanggunian's power to authorize the local chief executive to enter into contracts is not the power to approve contracts with specific parties, but the power to give prior authorization for contracts yet to be executed. Since the Sanggunian does not select or veto the choice of contracting parties, there is no connection between the lack of prior authorization and the choice of individuals named in the Informations as consultants.
7. The Informations do not allege the element of manifest partiality, evident bad faith or gross inexcusable negligence on his part.
- a. The acts of entering into consultancy contracts in behalf of the Municipality of Norzagaray, and paying them for services rendered, *per se*, are not illegal, and do not constitute the element of acting with manifest partiality,

RESOLUTION

People. vs. Germar

Criminal Cases No. SB-17-CRM-1424 and 1425

Page 4 of 8

X -----X

- b. Failing to secure prior authority from the Sanggunian does not amount to acting with manifest partiality, evident bad faith or gross inexcusable negligence because the contracts are not inherently illegal.
- c. In *Dela Chica v. Sandiganbayan*, the Information alleged that the accused performed an unauthorized act that caused undue injury to the government. It was held that the mere allegation of lack of authority for a certain action does not suffice for a charge of violation of Sec. 3(e) of R.A. No. 3019.

In its *Comment/Opposition (To the Accused's Motion to Quash With Motion to Defer Arraignment)*,⁴ the prosecution counters that:

1. The Informations sufficiently allege the facts constituting the crime of violation of Sec. 3(e) of R.A. No. 3019.
 - a. The specific acts committed by the accused through evident bad faith, manifest partiality and/or gross inexcusable negligence were alleged in the Informations.
 - b. The presence of unwarranted benefit and preference given to the engaged consultants, as well as the undue injury to the government, were also alleged therein.
2. The accused' arguments are matters of defense, which cannot be raised in a motion to quash.
3. The accused' Motion is a mere dilatory procedural tactic.

THE COURT'S RULING

The Court resolves to deny the Motion of the accused.

A motion to quash on the ground of Rule 117, Sec. 3(a)⁵ of the Rules of Court should be resolved solely on the basis of the allegations in the Information. The fundamental test in considering a motion to quash on such ground is whether the facts alleged, if hypothetically admitted, will establish the essential elements of the offense as defined

⁴ Dated September 13, 2017 and filed on September 15, 2017; Record, pp. 140-144

⁵ **Rule 117, Sec. 3. Grounds.** – The accused may move to quash the complaint or information on any of the

RESOLUTION

People. vs. Germar

Criminal Cases No. SB-17-CRM-1424 and 1425

Page 5 of 8

X -----X

in the law.⁶ In *People v. Sandiganbayan*,⁷ it was held that the Court must consider three (3) matters. To wit:

A motion to quash an information on the ground that the facts charged do not constitute an offense should be resolved on the basis of the allegations in the information whose truth and veracity are hypothetically admitted. The question that must be answered is whether such allegations are sufficient to establish the elements of the crime charged without considering matters *aliunde*. In proceeding to resolve the issue, courts must look into three matters: (1) what must be alleged in a valid information; (2) what the elements of the crime charged are; and (3) whether these elements are sufficiently stated in the Information.

(underscoring supplied)

The Court finds that the Information in the present cases sufficiently allege the elements of violation of Sec. 3(e) of R.A. No. 3019.

An Information is sufficient if it complies with Rule 110, Sec. 6⁸ of the Rules of Court. The Information must aver the ultimate facts constituting the offense, not the details of why and how the alleged illegal acts amount to the elements of the offense, such being matters of defense, which are appropriate for the trial.⁹

The following are the essential elements of violation of Sec. 3(e) of R.A. No. 3019:¹⁰

1. The accused is a public officer discharging administrative, judicial or official functions;
2. The accused must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and
3. Such act caused any undue injury to any party, including the government, or gave any private party unwarranted benefits

⁶ *Antone v. Beronilla*, G.R. No. 183824, December 8, 2010, citing *Cruz, Jr. v. Court of Appeals*, G.R. No. 83754, February 18, 1991

⁷ G.R. No. 160619, September 9, 2015

⁸ **Rule 110, Sec. 6. Sufficiency of complaint or information.** – A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed. x x x (underscoring supplied)

RESOLUTION

People. vs. Germar

Criminal Cases No. SB-17-CRM-1424 and 1425

Page 6 of 8

X -----X

advantage or preference in the discharge of the accused' functions.

First element

The Information in the present cases, which are similarly worded, both allege that the accused, at the time of the alleged commission of the offense, was the Mayor of the Municipality of Norzagaray, Bulacan, and that he committed the alleged acts in his capacity as Municipal Mayor, taking advantage of such position, and in relation to such office.

Second element

Indeed, *Dela Chica v. Sandiganbayan*,¹¹ which the accused cites, also involved an alleged unauthorized act. It was held that the Information was fatally defective because it failed to allege the essential element that the act was done through manifest partiality, evident bad faith or gross inexcusable negligence. However, it must be differentiated from the present cases. In holding that the information failed to sufficiently allege the facts constituting the elements of violation of Sec. 3(e) of R.A. No. 3019, the Supreme Court explained:

Evidently, the information failed to allege that petitioners, in causing undue injury to the government by revising the completion of the municipal building without prior approval of the proper authorities, did the same through "manifest partiality, evident bad faith or gross inexcusable negligence," an essential element of the crime charged. Neither did the information embody the words which would have characterized the elements, such as "partiality," or bias which excites a disposition to see and report matters as they are wished for rather than as they are; "bad faith," which connotes not only bad judgment or negligence but also a dishonest purpose or conscious wrongdoing; or "gross negligence," which is negligence characterized by the want of even slight care, or acting or omitting to act in a situation where there is a duty to act willfully and intentionally, with a conscious indifference to consequences as far as other persons are concerned.

(underscoring supplied)

Here, a reading of the Informations would show that both clearly allege that the accused acted with evident bad faith, manifest partiality

RESOLUTION

People. vs. Germar

Criminal Cases No. SB-17-CRM-1424 and 1425

Page 7 of 8

X -----X

and/or gross inexcusable negligence in entering into contracts of service with Mamerto Manahan, Danilo Leonardo, Edilberto Guballa, Rodolfo Santos, Epifanio Payumo and Enrique Boticario by appointing or designating them as consultants of the Municipality of Norzagaray, without prior authority from the Sangguniang Bayan of Norzagaray.

Furthermore, it must be emphasized that the accused is not being charged with entering into contracts of service *per se*. Rather, the accused is charged with acting with evident bad faith, manifest partiality or gross inexcusable negligence in entering into contracts of service *without the required prior authorization* from the Sangguniang Bayan of Norzagaray.

Third element

The Informations must allege that the act of the accused, done with manifest partiality, evident bad faith or gross inexcusable negligence, caused either (1) undue injury to any party, including the government, or (2) the giving to any private party unwarranted benefits, advantage or preference. The accused may be charged under either mode or both. The use of the disjunctive "or" connotes that the two modes need not be present at the same time.¹²

Here, it is alleged that the act of the accused caused the disbursement of the amount of ₱55,178.50 for each count of violation of Sec. 3(e) of R.A. No. 3019. Such amount was paid to, and received by the aforementioned consultants, and constitute undue injury to the government. It is likewise alleged that the same act caused the giving of unwarranted benefits, advantage or preference to said consultants.

WHEREFORE, the Motion of the accused is hereby **DENIED** for lack of merit.

SO ORDERED



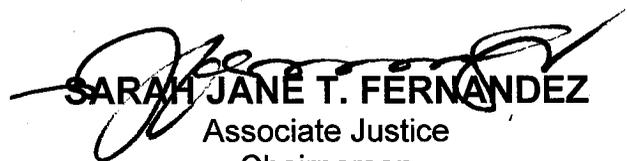
RESOLUTION

People. vs. Gernar

Criminal Cases No. SB-17-CRM-1424 and 1425

Page 8 of 8

X-----X


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA
Associate Justice


MICHAEL FREDERICK L. MUSNGI
Associate Justice