



Republic of the Philippines
Sandiganbayan
Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on 2 May 2018.

Present:

Justice MA. THERESA DOLORES C. GOMEZ-ESTOESTA----- Chairperson
Justice ZALDY V. TRESPESES----- Member
Justice REYNALDO P. CRUZ----- Member*

The following resolution was adopted:

Crim. Case No. SB-18-CRM-0006 - People vs. FAUSTINO ALANDY SILANG, et al.

This resolves the following:

1. Accused Hector Oabel, Josefina Perez, Gilbert Oabel, Nelson Colladilla and Rolando Olivar's "MOTION TO QUASH" dated February 26, 2018;¹
2. The prosecution's "OPPOSITION" dated March 21, 2018.²
3. Accused Hector Oabel, Josefina Perez, Gilbert Oabel, Nelson Colladilla and Rolando Olivar's "REPLY (To the Opposition to the Motion to Quash)" dated April 13, 2018.³

This resolves the Motion to Quash filed by accused Hector Doncillio Oabel, Josefina Oabel Perez, Gilbert Tabernilla Oabel, Nelson Valencia Colladilla and Rolado Zagala Olivar, the prosecution's Opposition thereto, and accused movant's Reply.

ACCUSED'S MOTION

Accused movants seek the quashal of the Information on the ground that the Court does not have jurisdiction over their person. They invoke Sec. 4 of R.A. No. 10660, which provides that:

SEC. 4. *Jurisdiction.* – The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:

*Sitting as Special Member per Administrative Order No. 175-A-2018 dated 26 March 2018.

¹ *Rollo*, pp. 295-300.

² *Id.* at 316-324.

³ *Id.* at 338-340.

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"a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

"(1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade '27' and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:

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Accused movants allege that their respective salary grades are as follows: Hector Oabel with SG 25; Josefina Perez with SG 25; Gilbert Oabel with SG 25; Nelson Colladilla with SG 11; and Rolando Olivar with SG 8.

They contend that not one of them occupies a position with salary grade 27 and higher at the time of the incident, except for accused Mayor Faustino Alandy Silang who holds a position with a salary grade of 30. Applying the above-cited provision, only accused Mayor Faustino Alandy Silang, falls within the jurisdiction of Sandiganbayan.

Accused movants further allege that a charge of conspiracy must be indicated in the Information for the Court to acquire jurisdiction over them. However, a reading of the Information shows that there was no charge of conspiracy between accused mayor and the rest of the accused. Absent the allegation of conspiracy, the Sandiganbayan does not have jurisdiction over accused movants whose salary grades are below SG 27.

Moreover, since the Information does not indicate that accused conspired with one another, they cannot know the acts committed by each one of them in the Information.

PROSECUTION'S OPPOSITION

In its Opposition, the prosecution avers that failure to allege conspiracy is not among the grounds for quashal of a criminal information.

The prosecution also argues that accused movants erroneously invoked R.A. No. 10660 considering that its application is prospective, that is, only in cases filed after its enactment or after 28 July 2014.

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The prosecution invokes Sec. 4 of R.A. No. 8249 which provides that the Sandiganbayan has jurisdiction for violations of R.A. No. 3019 “*where one or more of the accused are officials occupying the following positions in the government whether in a permanent, acting or interim capacity, at the time of the commission of the offense.*” It alleges that as long as government officials below salary grade 27 are charged along with a public official holding a position with salary grade 27, the Sandiganbayan has jurisdiction over the case and over them.

The prosecution then shifted to another point, and avers that an amendment in the Information to include the allegation of conspiracy may be made prior to arraignment or even after an accused has entered his plea since such is deemed to be a mere formal amendment. In this case, an amendment of the Information to include the allegation of conspiracy will not change the nature of the case.

ACCUSED’S REPLY

In their Reply, accused movants reiterate their arguments in their motion to quash.

In addition, they allege that the Information does not show the individual acts committed by each accused. Thus, an amendment of the Information changing the theory from individual acts to a conspiracy charge would definitely be changing the entire nature of the charge in the Information.

OUR RULING

The motion is impressed with merit.

R.A. No. 8249 is the applicable law in the instant case

Generally, the jurisdiction of a court to try a criminal case is to be determined by the law in force at the time of the institution of the action, not at the time of the commission of the crime.⁴

In this case, the Information was filed on 12 January 2018, or after the effectivity of R.A. No. 10660. However, Sec. 5 of R.A. No. 10660⁵ in its

⁴ *Inding v. Sandiganbayan*, 478 Phil 506-527 (2004).

⁵ Enacted as law on 16 April 2015.

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Transitory Provision states that the rule on jurisdiction “shall apply to cases arising from offenses *committed after the effectivity of this Act.*”

A reading of the Information shows that the subject transaction took place sometime in May 2009. Therefore, the applicable law is R.A. No. 8249.

***The provision of R.A No. 8249
implies the presence of conspiracy***

Sec. 4 of R.A. No. 8249 provides that the Sandiganbayan shall have jurisdiction over the following:

"a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

"(1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade '27' and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:

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To be sure, this Court is of the opinion that when the law states that the Sandiganbayan has jurisdiction over violations of R.A. No. 3019, R.A. No. 1379, and Chapter II, Section 2, Title VII, Book II of the RPC, “where one or more of the accused are officials occupying the following positions in the government,” the same connotes the presence of conspiracy.

In *Barriga v. Sandiganbayan*,⁶ Informations for malversation and illegal use of public funds or property were filed against accused Mayor Virgilio Villamor and Municipal Accountant Dinah Barriga. In the said case, Barriga moved to quash the Information and raised among others that the Sandiganbayan has no jurisdiction since her position is classified as salary grade 24. The Supreme Court held:

We agree with the ruling of the Sandiganbayan that the public office of the accused Municipal Mayor Virginio E. Villamor is a constituent element of malversation and illegal use of public funds or property. Accused mayor's position is classified as SG 27. Since the Amended Informations alleged that

⁶ G.R. Nos. 161784-86, 26 April 2005.

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the petitioner conspired with her co-accused, the municipal mayor, in committing the said felonies, the fact that her position as municipal accountant is classified as SG 24 and as such is not an accountable officer is of no moment; the Sandiganbayan still has exclusive original jurisdiction over the cases lodged against her. ***It must be stressed that a public officer who is not in charge of public funds or property by virtue of her official position, or even a private individual, may be liable for malversation or illegal use of public funds or property if such public officer or private individual conspires with an accountable public officer to commit malversation or illegal use of public funds or property.*** (Emphasis supplied)

The ruling in *Barriga* was reiterated in *Zoleta v. Sandiganbayan*.⁷ Thus, it is only when private individuals and public officials with SG 26 and below conspire with a public official (with SG 27) that said private individuals/public officials come within the jurisdiction of the Sandiganbayan.

The circumstance of conspiracy must be alleged in the Information for the Sandiganbayan to have jurisdiction over public officials below salary grade 27

It is the view of the prosecution that the Sandiganbayan has exclusive jurisdiction over a case charging several accused, as long as one of the accused occupies a position with a salary grade of 27. The prosecution wants to imply to this Court that since accused mayor Silang holds a position with a salary grade of 27, conspiracy need not be alleged in the Information for the Court to acquire jurisdiction over other accused whose salary grades fall below salary grade 27.

We disagree.

Article III, Section 14, of the 1987 Constitution,⁸ in particular, mandates that no person shall be held answerable for a criminal offense

⁷ G.R. No. 185224, 29 July 2015.

⁸ Article III, Section 14.

1. No person shall be held to answer for a criminal offense without due process of law.
 2. In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused: Provided, that he has been duly notified and his failure to appear is unjustifiable.
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without due process of law and that in all criminal prosecutions the accused shall first be informed of the nature and cause of the accusation against him.

In *Estrada v. Sandiganbayan*⁹ citing the case of *Quitliong*, the Supreme Court details the specific allegations that an Information should contain, as follows:

An information, in order to ensure that the constitutional right of the accused to be informed of the nature and cause of his accusation is not violated, must state the name of the accused; the designation given to the offense by the statute; a statement of the acts or omissions so complained of as constituting the offense; the name of the offended party; the approximate time and date of the commission of the offense; and the place where the offense has been committed. In embodying the essential elements of the crime charged, *the information must set forth the facts and circumstances that have a bearing on the culpability and liability of the accused* so that the accused can properly prepare for and undertake his defense. (Emphasis supplied)

Thus, in order to embody the essential elements of the crime charged, the Information must set forth the facts and circumstances that have a bearing on the culpability and liability of accused so that the accused can properly prepare for and undertake his defense.¹⁰ *This includes the allegation of the circumstance of conspiracy*, because an accused must know from the Information whether he faces a criminal liability only for his acts or also for the acts of his co-accused.

The rule is that *conspiracy must be alleged, not merely inferred*, in the information.¹¹ Absent of a particular statement in the accusatory portion of the Information concerning any definitive act constituting conspiracy renders the indictment insufficient to hold one accused liable for the individual acts of his co-accused. As such, each of them would be held accountable only for their respective participation in the commission of the offense.¹² Provided, however, that their individual acts as alleged in the Information satisfies all the elements of the offense charged.¹³

In the instant case, the words “conspired”, “confederated”, or any other words synonymous thereto does not appear in the indictment. To reiterate, conspiracy must be alleged and not merely inferred. Thus, each accused may only be held liable for his own acts. The question now arises: What is the participation of each accused in the transaction? Because the

⁹ G.R. No. 148965, 26 February 2002.

¹⁰ *People v. Biala*, G.R. No. 217975, 23 November 2015.

¹¹ *Francisco v. People*, G.R. Nos. 177430 & 178935, 14 July 2009.

¹² *People v. Galvez*, 30 March 2007, citing the case of *People v. Tampis*, G.R. No. 148725, 31 July 2003.

¹³ *People v. Tampis*, G.R. No. 148725, 31 July 2003.

Information does not allege in detail their respective participation or the specific act they committed in the alleged anomalous transaction. Also, are their separate acts sufficient to constitute the elements of violation of Sec. 3(e) of R.A. No. 3019?

Apparently, the lack of allegation of conspiracy creates ambiguity in the Information. To the mind of the Court, the absence of the words "conspired" or its derivatives, and the failure to allege in detail the overt acts imputed to each of the accused, creates the presumption that all accused movants committed or performed all the acts constituting violation of Sec. 3(e), R.A. No. 3019 in the narration of facts. If that is the case and if the prosecution would still insist, since accused movants' salary grade falls below 27, then the Sandiganbayan has no jurisdiction over them.

***Quashal of the Information filed
against accused movants, proper***

When the Information is being challenged pursuant to Rule 117 of the Revised Rules of Criminal Procedure, the Court has the option either to quash the Information or to deny the motion to quash.

The prosecution contends that failure to allege conspiracy is not a ground for the quashal of the Information. While it is true that such is not one of the grounds enumerated in Section 3 of Rule 117 of the Revised Rules on Criminal Procedure, it is the effect of such omission however that renders the Information vulnerable to quashal. It should be noted that the allegation of conspiracy operates to vest the Sandiganbayan with jurisdiction over accused movants whose salary grades are below 27. The lack of it would mean that the Court has no jurisdiction over them and therefore, the Information may be challenged via a motion to quash on the ground that the Court has no jurisdiction over accused movants.

It appearing from the Information that the circumstance of conspiracy, which would vest the Court with jurisdiction over accused movants was not alleged, the Information **should be quashed** insofar as accused movants are concerned. This is warranted under Sec. 3 of Rule 117 of the Revised Rules of Criminal Procedure. Otherwise, it would be detrimental to the administration of justice and prejudicial to the rights of accused movants to proceed to trial knowing that the Court has no jurisdiction over them.

Lastly, the Court now addresses the argument raised by the prosecution that it has "absolute discretion" in amending the questioned

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Information before arraignment.¹⁴ It invokes Sec. 14 of Rule 110 which provides, that:

SECTION 14. *Amendment or Substitution.* — A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.

However, any amendment before plea, which downgrades the nature of the offense charged in or excludes any accused from the complaint or information, can be made only upon motion by the prosecutor, with notice to the offended party and with leave of court. The court shall state its reasons in resolving the motion and copies of its order shall be furnished all parties, especially the offended party. (n)

If it appears at any time before judgment that a mistake has been made in charging the proper offense, the court shall dismiss the original complaint or information upon the filing of a new one charging the proper offense in accordance with Section 19, Rule 119, provided the accused shall not be placed in double jeopardy. The court may require the witnesses to give bail for their appearance at the trial.¹⁵

Further, it cited *People v. CA*,¹⁶ where the Supreme Court granted the petition for review (treated as special civil action in said case) and allowed the amendment sought by the prosecution because those were merely formal in nature. We find that the cited case does not fall squarely in the case at bar.

In several cases,¹⁷ the Supreme Court has held that an Information cannot be amended to vest jurisdiction upon the Court. In here, if the Information will be amended to include the allegation of conspiracy between accused mayor and accused movants whose salary grade are below 27, the Sandiganbayan will have jurisdiction over the latter.

In *Dio v. People*,¹⁸ it was held that defective informations cannot be amended even before arraignment. In the said case, the Supreme Court analyzed the different cases which prohibits the amendment of the Information for purposes of vesting jurisdiction, and alleged that none of the cited cases involved the amendment of an information *before arraignment*. The Supreme Court made a comparison of the following cases, thus:

¹⁴ *Rollo*, p. 318.

¹⁵ Revised Rules of Criminal Procedure, A.M. No. 00-5-03-SC, 3 October 2000.

¹⁶ 206 Phil. 637-643 (1983).

¹⁷ *Leviste v. Hon. Alameda*, 640 Phil. 620 (2010); *Agustin v. Pamintuan*, 505 Phil. 103 (2005); *Agbayani v. Sayo*, 178 Phil. 574 (1979).

¹⁸ G.R. No. 208146 8 June 2016.

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In *Agustin*, the accused in the criminal case was already arraigned under a defective information that failed to establish venue. The Court of Appeals held that the defect in the information was merely formal and, consequently, could be amended even after plea, with leave of court. Thus, this Court held:

We do not agree with the ruling of the CA that the defects in the Informations are merely formal. Indeed, the absence of any allegations in the Informations that the offended party was actually residing in Baguio City, where the crimes charged were allegedly committed, is a substantial defect. Indeed, the amendments of the Informations to vest jurisdiction upon the court cannot be allowed.

In turn, *Agustin* cited *Agbayani v. Sayo*. However, *Agbayani* does not involve the amendment of a defective information before or after arraignment. Subsequent cases have cited *Agustin* as basis that amendment of an information to vest jurisdiction in the trial court is impermissible. Thus, in *Leviste*, this Court cited *Agustin* and stated that certain amendments are impermissible even before arraignment:

It must be clarified though that not all defects in an information are curable by amendment prior to entry of plea. An information which is void ab initio cannot be amended to obviate a ground for quashal. **An amendment which operates to vest jurisdiction upon the trial court is likewise impermissible.**

It may appear that *Leviste* supports petitioner's contention that an amendment operating to vest jurisdiction in the trial court is impermissible. However, the statement in *Leviste* was *obiter dictum*. It cites only *Agustin*, which did not involve the amendment of an information before arraignment. (Emphasis supplied.)

Thus, in the instant case, the Information being clearly defective, its defect cannot be cured by an amendment to vest jurisdiction even before arraignment.

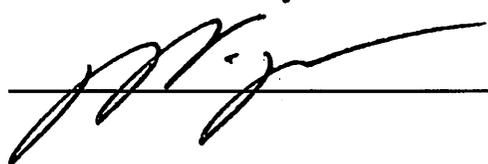
WHEREFORE, premises considered, accused movants' Motion to Quash is **GRANTED** and the Information insofar as accused movants are concerned is hereby quashed.

SO ORDERED.

GOMEZ-ESTOESTA, J. Chairperson _____



TRESPESES, J. _____



CRUZ, J. _____

