



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

Fifth Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-18-CRM-0153, 0157
0158, and 0159
FOR: *Violation of Section
3(e) of R.A. No. 3019*

– versus –

JEJOMAR ERWIN SOMBILLO
BINAY, JR., ET. AL.,
Accused.

X-----X

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-18-CRM-0163 to 0165

FOR: *Falsification of
Public Document under
Article 171 of the Revised
Penal Code*

– versus –

JEJOMAR ERWIN SOMBILLO
BINAY, JR., ET. AL.
Accused.

Present:

LAGOS, J., *Chairperson*
MENDOZA-ARCEGA, and
CORPUS- MAÑALAC, JJ.

Promulgated:

August 02, 2018 *Jal*

X-----X

M/2018

RESOLUTION

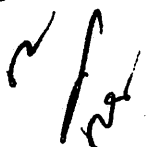
LAGOS, J.:

This resolves the *Motion for Reconsideration* filed by accused Binay, Jr. on July 6, 2018, of the Resolution promulgated by the Court on June 18, 2018 which denied his *Motion to Quash* and *Supplemental Motion to Quash* the criminal *Informations* filed against him in the above-captioned cases. The prosecution filed its Comment and/or Opposition on July 6, 2018.

Accused Binay, Jr. ("accused-movant") seeks to reconsider the Court's Resolution of June 18, 2018 and in lieu thereof issue a resolution quashing the criminal *Informations* in these cases on the grounds which, may be synthesize as follows: (a) the *Informations* filed against him do not substantially conform to the prescribed form required by law as they do not contain all the necessary elements of the crimes charged therein nor do the facts charged constitute an offense; (b) the allegations as to conspiracy in the *Informations* were not sufficient as the details as to how conspiracy as a mode exists were not alleged in the *Informations* with such precision so that the accused may properly plead his acquittal or conviction; (c) the charges against the accused for violation of Section 3(e) of R.A. 3019 and for falsification of public document under Article 171 of the Revised Penal Code will give rise to double jeopardy.

Invoking his right to be informed of the nature and cause of the accusation against him to enable him to prepare his defense, accused-movant contends, as his **first ground** of the *Motion for Reconsideration*, that the prosecution failed to accurately and clearly alleged the elements of the crime charged, as it merely designated the crime of falsification as the crime committed under Article 171 of the Revised Penal Code ("RPC") without specifying the mode of commission by which accused-movant allegedly committed the subject falsification. A plain and cursory reading of the *Informations* for falsification, according to him, would necessarily lead to different interpretations and in turn bewilder him and his co-accused as to what kind of defense they must prepare.

Accused-movant explains further that in both crimes charged against him (falsification under Article 171, RPC and violation of Section 3(e) of R.A. 3019), there is no specific factual allegations that would indicate the close intimacy between the discharge of the offender's official duties and the commission of the offense charged in order to qualify the crime as having been committed in relation to



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public office. In the *Informations* for falsification, he contends that there is no allegation that it was the duty of the accused to make or to prepare or otherwise intervene in the preparation of the document nor is there any mention that the alleged falsification has been committed upon an act, certificate or instrument, the issuance of which pertains to his office. While in the *Information* for violation of Section 3(e) of R.A. 3019, he points out that he will be left to guess which particular function from the enumeration in Section 444 of Local Government Code of 1991 the prosecution might be referring to when it mentions accused-movant "while in the performance and taking advantage of his official function" or "while in the performance of their administrative and/or official functions and committing the offense in relation to office".

As to the **second ground** of his *Motion for Reconsideration*, accused-movant assails the sufficiency of the allegations of conspiracy in the *Informations*, specifically as to the degree of his participation in the crimes charged against him, alleging, that none of the *Informations* in these cases specifically and clearly allege any unity of purpose which tie accused-movant to his co-accused's alleged acts. He explains that by the time he is to take actions, the so-called acts of falsification, as well as acts of manifest partiality, evident bad faith or gross inexcusable negligence have already come to pass, leaving him with no opportunity to question the award and approval of the subject contracts, and by the time the documents have reached the Office of the Mayor, all but the signing of the subject contracts were left to be done. In short, accused-movant rhetorically asks how he, as a third person to the negotiation process, may become a conspirator to the same when the *Informations* themselves indicate that he was not involved in the progress of the transaction.

In his **third ground** raised in the *Motion for Reconsideration*, accused-movant contends that the acts charged under the criminal *Informations* for violation of Section 3(e) of R.A. 3019 in SB-18-CRM-0153, SB-18-CRM-0157, SB-18-CRM-0158, and SB-18-CRM-0159, respectively, are exactly the same acts of falsification of public document under SB-18-CRM-0163, SB-18-CRM-0164 and SB-18-CRM-0165 which would violate his right against double jeopardy as they fail the test as provided under Section 7 Rule 117 of the Rules of Court.¹

¹ Section 7 of Rule 117 of the Rules of Court provides:

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The prosecution counters in its *Comment and/or Opposition* that the arguments of the accused-movant are mere repetitions of his *Motion to Quash* and *Supplemental Motion to Quash* which the Honorable Court has duly and fully considered in the assailed Resolution, hence, absent any new or substantial arguments, the same may no longer be reconsidered.

Given the above-stated stance of the prosecution, the Office of the Special Prosecutor thus reiterates that the fundamental test in determining the adequacy of the averments in the *Information* is whether the facts alleged, if hypothetically admitted, would establish the essential elements of the crime. It adds that matters extrinsic or evidence *aliunde* should not be considered.

The prosecution also reiterates that a plain reading of the *Informations* in SB-18-CRM-0163, CRM-0164 and CRM- 0165 will apprise the accused-movant that he is being charged for falsification under Article 171, paragraph 4 of the RPC where the body of said *Informations* alleged the acts or omissions constituting the offense, in the language sufficient to enable a person of common understanding to know what the offense is charged contrary to accused-movant's argument that the same do not substantially conform to the prescribed form required by law. For one, it cites that in SB-18-CRM-0163, the *Information* states:

"x x x accused Makati City public officers City Mayor and Head of the Procuring entity (HOPE), JEJOMAR ERWIN SOMBILLO BINAY, JR. (Binay, Jr.) xxx xxx x x x, did then and there willfully, unlawfully and feloniously falsify the 08 August 2011 BAC Resolution, an official document, and its supporting documents, xxx xxx xxx by making it appear therein that a public bidding for the said Phase IV Construction was conducted, x x x when in truth and in fact, as said accused very well knew, they being required to disclose the truth of such facts as required by RA 9184 and its IRR, that there was no such public bidding conducted x x x x x x "

"SEC.7. *Former conviction or acquittal; double jeopardy.* – When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which is necessarily includes or is necessarily included in the offense charged in the former complaint or information." xxx xxx

xxx

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The prosecution asserts that it was clearly alleged in the *Informations* that the accused was the Head of the Procuring Entity ("HOPE") which factual allegation indicates the close close intimacy between the discharge of the offender's official duties and the commission of the offense charged. It further explains that the accused, as HOPE, the entire procurement process was under his control and supervision, hence, it was his duty to make or prepare or otherwise intervene in the preparation of the document.

Further, the prosecution claims that the violation of Anti-Graft law (R.A. 3019) does not preclude the prosecution of felonies penalized under the RPC. To stress its point that the same will not constitute double jeopardy, it explains that under the graft charges, the falsification describes how the accused willfully, unlawfully and criminally give unwarranted benefits, while the charges under the RPC, it is the act of falsification in itself that is being penalized.

The prosecution thus concludes that there is no basis to quash the challenged *Informations* as all of them show that accused-movant is reasonably and sufficiently informed of the accusations against him in an ordinary and concise language that is understandable to a person of common understanding, allowing him to properly prepare his defense. It points out that the *Informations* clearly alleged the ultimate facts and that they are complete and sufficient to hold him liable for both violations under Section 3(e) of R.A. 3019 and Article 171 of the Revised Penal Code.

DISCUSSION AND RULING

The instant *Motion for Reconsideration* lacks merit.

A close examination of the arguments and counter-arguments in support of and in opposition to the instant motion reveals that the same raises the same issues and arguments which he earlier raised in his *Motion to Quash* and its *Supplemental Motion*. All these issues and arguments have been considered and thoroughly passed upon by the Court in the assailed Resolution. No new matters have been raised by the accused which would warrant reconsideration of the resolution rendered in this case. Being mere reiterations and rehashed version, the motion failed to convince the Court to reconsider or vacate the assailed *Resolution*.

The Court, however, finds it appropriate to stress the legal principles and applicable decisional doctrines applied in the resolution of the *Motion to Quash*, more particularly on accused-movant's

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arguments on conspiracy, duplicity of offenses and double jeopardy, in the instant cases.

In a motion to quash predicated on the ground that the facts charged do not constitute an offense, the fundamental test in determining the adequacy of the averments in the *Information* is whether the facts alleged, if hypothetically admitted, would establish the essential elements of the crime.² Matters extrinsic or evidence *aliunde* should not be considered. Simply put, facts that constitute the defense of the accused against the charge under the information must be proved by them during trial.³

In the instant cases, the accused-movant's claim of invalidity of the *Informations* predicated on the ground of insufficiency of allegations of acts he committed manifesting a unity of purpose that tie him to his co-accused's alleged acts or that would make him a conspirator in the commission of the crime charged are matters which are extrinsic to the *Informations*. They are evidentiary facts which need not be alleged in the information because these are matters of defense.

In conspiracy, the act of one is the act of all. It is well-settled that the precise extent or modality of participation of each of the alleged conspirator becomes secondary, because all of them are principals in the accomplishment of the alleged common design.⁴ The details of the participatory acts or specific acts of accused-movant in the alleged conspiracy which he required the prosecution to be alleged in the *Informations* are matters of evidence best raised and addressed during the trial.

Jurisprudence dictates that, for as long as the *ultimate facts* constituting the offense have been alleged, an information charging a violation of Section 3(e) of R.A. 3019, on one hand, and falsification of public document under Article 171 of the RPC, on the other, need not state the finer details of why and how the crime was committed.⁵

² People v. Balao, G.R. No. 176819, January 26, 2011, 640 SCRA 565, 573; Caballero v. Sandiganbayan, G.R. No. 137355-58, September 25, 2007, 534 SCRA 30, 43; Go v. The Fifth Division, Sandiganbayan, G.R. No. 172602, April 13, 2007; Cabrera v. Sandiganbayan, G.R. Nos. 162314-17, October 24, 2004, 441 SCRA 377

³ People vs. Dumlao, G.R. No. 168918, March 2, 2009

⁴ People vs. Dollendo, G.R. No. 181701, January 18, 2012

⁵ Lazarte vs. Sandiganbayan, G.R. No. 180122, March 13, 2009, 581 SCRA 431; People vs. Romuladez, G.R. No. 166510, July 23, 2008, 559 SCRA 492; Go vs. Bangko Sentral ng Pilipinas, G.R. No. 178429, October 23, 2009, 604 SCRA 322

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The Supreme Court had occasion to distinguish *ultimate facts* from *evidentiary facts* in relation to a particular criminal case of violation of Batas Pambansa Blg. 22 in *Bautista vs. Court of Appeals*⁶, cited in *Enrile vs. People*,⁷ thus:

“The distinction between the elements of the offense and the evidence of these elements is analogous or akin to the difference between ultimate facts and evidentiary facts in civil cases. **Ultimate facts are the essential and substantial facts which either form the basis of the primary right and duty or which directly make up the wrongful acts or omission of the defendant, while evidentiary facts are those which tend to prove or establish said ultimate facts xxx**” [Emphasis supplied]

On his *third ground*, i.e. *charging accused-movant more than one(1) offense which allegedly placed him under double jeopardy*, accused-movant insists that the same is a proper ground for his *Motion to Quash* as he painstakingly makes a comparison between the two(2) sets of criminal *Informations*, alleging, that in the *Informations* in SB-18-CRM-0153, CRM-0157, CRM-0158, CRM-0159 for violation of Section 3(e) of R.A. 3019, the essential element of graft as laid out in paragraph (b) regarding the falsification of the BAC Resolution, is exactly the same act of falsification of BAC Resolution, as dated in the respective *Informations*⁸ in SB-18-CRM-0163 to CRM-0165, constituting the charge of falsification of public document.

By charging him for more than one (1) offense for the same act, accused-movant argues that the same violates his right against double jeopardy. He further insists that Section 3 of R.A. 3019 which allows prosecution for violation of R.A. 3019 in addition to a felony under the Revised Penal Code does not apply in the instant case as doing so would yield to double jeopardy.

The argument is misplaced.

A careful reading of accused-movant's argument show that what he is actually questioning is that the allegations in the *Informations* for violation of Section 3(e) of R.A. 3019 and in the *Informations* of falsification of public document under Article 171 of the RPC arose from the same act or incident.

⁶ G.R. No. 143375, July 6, 2001, 413 Phil 159 (2001), citing *Tantuico, Jr. v. Republic*, G.R. No. 89114, 2 December 1991, 204 SCRA 428.

⁷ G.R. No. 213455, August 11, 2015.

⁸ SB-18-CRM-0163 (BAC Resolution dated August 8, 2011); SB-18-CRM-0164 (BAC Resolution dated September 3, 2012); SB-18-CRM0165 (BAC Resolution dated July 19, 2013).

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However, it is abundantly clear from the pronouncements of the Supreme Court in numerous cases that a single act or incident might offend two (2) or more entirely distinct and unrelated provisions of law, thus, justifying the filing of several charges against the accused.⁹

Notably, accused-movant in the instant case is faced not with one information charging more than one offense, but with more than one information, each set of *Informations* charging a different offense - violation of Section 3(e) of R.A. 3019 in SB-18-CRM-0153, CRM-0157, CRM-0158 and CRM-0159, on one hand, and falsification of public document in SB-18-CRM-0163, CRM-0164 and CRM-0165), on the other. Thus, accused-movant erroneously invoke duplicity of charges as a ground to quash the *Informations*.

Unmindful of the existing jurisprudence on duplicity of charges as a ground to quash an information cited above, accused-movant nonetheless appears to insist that the elements of the two (2) offenses charged are identical or one offense necessarily includes or is in fact included in the other, hence, he argues that double jeopardy attaches in the instant cases when he was charged for both offenses.

The issue whether or not the charge of falsification of a public document is necessarily inclusive of or included in the other case for violation of Section 3(e) of R.A. 3019 (involving identical accused, public documents involved and questioned transaction) was resolved in the negative in the case of *Suero vs. People*.¹⁰

The case involves two (2) separate criminal Informations concurrently filed against the same accused¹¹ before two (2) different courts arising from the same public document pertaining to the purchase and delivery of furniture to the Department of Education, Culture and Sports (DECS) of Region XI: one, for *falsification of public document* (undated Inspection Report) before the RTC of Davao City, and the other, for *violation of Section 3(e) of R.A. 3019* before the Sandiganbayan. The falsification case before the RTC, upon motion of the accused, was eventually dismissed without prejudice, while the case for violation of Section 3(e) of R.A. 3019 before the Sandiganbayan was decided, acquitting the accused.

⁹ Soriano vs. People, 591 SCRA 244 (2009), citing Loney v. People, G.R. No. 152644, February 10, 2006, 482 SCRA 194, 209; Nierras v. Dacuycuy, G.R. Nos. 59568-76, 11 January 1990, 181 SCRA 1; People v. Doriquez, 133 Phil. 295 (1968); People v. Alvarez, 45 Phil. 472 (1923); People v. Cabrera, 43 Phil. 64 (1922); United States v. Capurro, et al., 7 Phil. 24 (1906).

¹⁰ G.R. No. 156408, January 31, 2005

¹¹ Andres S. Suero and one Aquilina B. Granada

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When the prosecution refiled a new Information for falsification before the RTC, the accused moved to quash the refiled of the Information on the ground of violation of his right against double jeopardy. Unable to obtain a favorable ruling, the issue was eventually elevated to the Supreme Court where it was ruled that the refiled of new Information for falsification of public document is not barred by the acquittal of the accused by the Sandiganbayan of the charge of violation of Section 3(e) of R.A. 3019. It was held in *Suero* that no double jeopardy attaches as long as there is variance between the elements for the two (2) offenses; what is forbidden is another prosecution for the same offense. The constitutional right against double jeopardy protects from the second prosecution for the same offense¹², not for a different one, thus:

“We hold that the instant case does not constitute double jeopardy, for which the following requisites must concur: (1) the first jeopardy must have attached prior to the second; (2) the first jeopardy must have been validly terminated; and (3) the second jeopardy must be for the same offense as that in the first.

“The test for the third element is whether one offense is identical with the other or is an attempt to commit it or a frustration thereof; or whether one offense necessarily includes or is necessarily included in the other, as provided in Section 7 of Rule 117 of the Rules of Court.

X X X X X X X X X

“A comparison of the elements of the crime of falsification of a public document, provided for in Article 171 of the Revised Penal Code, and those of violation of Section 3(e) of RA 3019 shows that there is neither identity nor exclusive inclusion between the offenses. For falsification of a public document to be established, the following elements must concur:

1. That the offender is a public officer, employee, or notary public;
2. That he takes advantage of his official position;
3. That he falsifies a document by committing any of the following acts: X X X X X X X X X

“On the other hand, to hold a person criminally liable under Section 3(e) of RA 3019, the following elements must be present:

¹² The *ponencia* cited *People vs. Reyes*, 228 SCRA 13, November 18, 1993 (citing *Nierras vs. Dacuycuy*, 181 SCRA 1, January 11, 1990); *People vs. Deunida*, 231 SCRA 520, March 28, 1994 (citing *People vs. Tac-an*, 182 SCRA 601, February 26, 1990).

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1. That the accused are public officers or private persons charged in conspiracy with them;
2. That said public officers commit the prohibited acts during the performance of their duties or in relation to their public positions;
3. That they cause undue injury to any party, whether the Government or a private party;
4. That such injury is caused by giving unwarranted benefits, advantage or preference to such parties; and
5. That the public officers have acted with manifest partiality, evident bad faith or gross inexcusable negligence.

x x x

x x x

x x x

"Indeed, the crime under Section 3(e) of RA 3019 shares two common elements with the felony under Article 171 of the Revised Penal Code—that the offender is a public officer and that the act is related to the public officer's public position. However, the latter offense is not necessarily inclusive of the former. The essential elements of each are not included among or do not form part of those enumerated in the former. For there to be double jeopardy, the elements of one offense should—like the ribs of an umbrella—ideally encompass those of the other. The elements of a violation of Section 3(e) of RA 3019 fall outside the realm of those falsification of a public document and vice versa. At most, the two offenses may be considered as two conjoined umbrellas with one or two common ribs. Clearly, one offense does not include the other.

x x x

x x x

x x x

"The differences between the elements needed to establish the commission of the two charges imply that the evidence required to prove the guilt or the innocence of the accused would likewise differ in each case. Since both charges stemmed from the same transaction, the same documents may be relevant to both cases. However, the degree of materiality of these documents in relation to proving the commission of the offense would necessarily vary."
(Citations omitted)

Even assuming *in gratia argumenti* that in the instant cases the two(2) sets of offenses are identical, or the charge of falsification of a public document is necessarily inclusive of or included in the charge for violation of Section 3(e) of R.A. 3019, the accused-movant cannot complain in a *Motion to Quash* that he is being placed in jeopardy twice for the same offense, for the simple reason that the first

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jeopardy has not yet set in by a previous conviction, acquittal or termination of the case without the consent of the accused.¹³

In the instant cases, the first jeopardy had not yet been completed or even began as there was no arraignment yet of the accused-movant. In order for the first jeopardy to attach, the plea of the accused to the charge must be coupled with either conviction, acquittal, or termination of the previous case without his express consent.¹⁴


WHEREFORE, in view of the foregoing, the accused-movant's *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.


RAFAEL R. LAGOS
Chairperson
Associate Justice

WE CONCUR:


**MARIA THERESA V.
MENDOZA-ARCEGA**
Associate Justice


**MARYANN E.
CORPUS-MAÑALAC**
Associate Justice

¹³ *People vs. Miraflores*, 115 SCRA 586 [1982]; *Nierras vs. Dacuycuy*, 181 SCRA 8 (1990)
¹⁴ *People vs. Consulta*, L-41251, March 31, 1976, 70 SCRA 277; *Tolentino vs. De la Costa*, 66 Phil. 97 (1938); *People vs. Ylagan*, 58 Phil. 851, 853