



Republic of the Philippines

Sandiganbayan

Quezon City

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,

Plaintiff,

-versus-

TITO GUERRERO RAZALAN, *et al.*,

Accused.

SB-18-CRM-0295

For: Violation of Sec. 3(e)

of R.A. No. 3019

Present:

Lagos, *J.*, *Chairperson,*

Mendoza-Arcega and

Corpus-Mañalac, *JJ.*

Promulgated:

August 16, 2018 *Jal*

X

X

RESOLUTION

CORPUS - MAÑALAC, J.:

Submitted for resolution is accused Nilda Salazar's **Motion for Reconsideration**¹ of the June 26, 2018 Resolution² denying her *Motion to Quash the Information*,³ as well as the prosecution's **Comment/Opposition**⁴ thereto.

Salazar implores this Court to revisit the assailed resolution alleging that the findings stated therein "may not be in accord with the extant records, legal principles and jurisprudence on the matter." She anchors her motion on the following arguments:

1. The Information charges two offenses: (a) giving unwarranted benefit to a party, and (b) causing undue injury to the government; the Court's reliance on the case of *Gallego v. Sandiganbayan* in holding against the alleged duplicitous charges is misplaced since in that case the Information alleges only a single prohibited act of 'giving unwarranted benefit' to the examinees;

¹ Record, Vol. 2, pp. 475-483

² Id., pp. 394-398

³ Id., pp. 135-322

⁴ Id., pp. 497-503

Jal
JJ

2. Considering the Information charges duplicitous offenses, it is patently defective as it failed to sufficiently inform accused of the nature and cause of the accusation against her;
3. Accused's constitutional right to the speedy disposition of her case was violated by the Ombudsman's inordinate delay in resolving it.

The prosecution counters that Salazar's motion is a mere rehash or reiteration of arguments in her *Motion to Quash* which have already been passed upon by this Court and therefore, deserves scant consideration. That the case of *Gallego* is in point since it was the accused "who alleged in her Motion to Quash that acting with bad faith, manifest partiality and/or gross inexcusable negligence are 'inconsistent with each other'." It maintains that the allegations of the Information are sufficient to appraise the accused of the nature and cause of the accusation against her pursuant to Section 6, Rule 110, Rules of Court. On the alleged violation of her right to speedy case disposition, the accused allegedly failed to adduce new arguments that would warrant a reversal of the Resolution dated June 26, 2018.

Ruling

**On the alleged duplicitous charges of
(a) giving unwarranted benefit to a party, and
(b) causing undue injury to the government.**

**On the alleged defective Information for
failing to inform the accused of the nature
and cause of the accusation against her arising
from duplicitous charges**

Salazar argues that this Court's reliance on the *Gallego case*⁵ is misplaced because "there is only a single prohibited act contained in the Information" in the said case, i.e. giving unwarranted benefits to the examinees, whereas in the instant case "there are two prohibited acts or offenses imputed against accused," i.e. (1) giving unwarranted benefits to Jose Quiambao De Guzman of JGQ Construction, and (2) causing undue injury to the government in the amount of Php24,783,043.16.

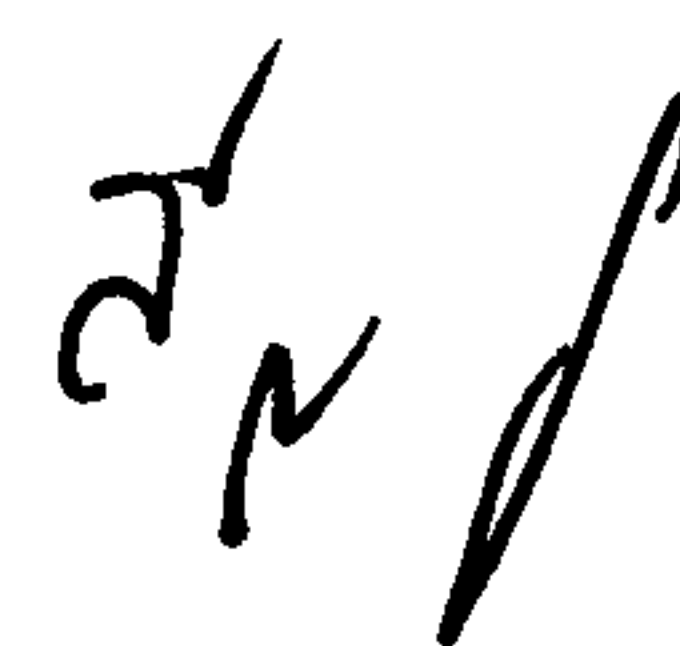
Such contention is untenable.

To reiterate, Salazar is charged for violation of Section 3(e) of Republic Act No. 3019,⁶ which reads:

Sec. 3. Corrupt practices of public officers. - X x x x the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

(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.

⁵ *Gallego v. Sandiganbayan*, G.R. L-57841, July 30, 1982
⁶ Anti-Graft and Corrupt Practices Act



or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence.

In *Jacinto v. Sandiganbayan*,⁷ the Supreme Court enumerated the essential elements of the crime, 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.

As already explained in the assailed Resolution citing the *Gallego* case, jurisprudence holds that “giving unwarranted benefit” and “causing undue injury” are two modes of committing a violation of the above-quoted provision of law. Charging an accused under Section 3(e) alleging both modes as ways of commission thereof does not constitute two distinct offenses. This principle was reiterated later in **Cabrera v. The Honorable Sandiganbayan**,⁸ citing the cases of *Quibal v. Sandiganbayan*,⁹ *Bautista v. Sandiganbayan*,¹⁰ and *Gallego v. Sandiganbayan*,¹¹ which ruled:

There are two (2) ways by which a public official violates Section 3(e) of Rep. Act No. 3019 in the performance of his functions, namely: (a) by causing undue injury to any party, including the Government; or (b) by giving any private party any unwarranted benefit, advantage or preference. The accused may be charged under either mode or under both. In *Quibal v. Sandiganbayan*, the Court held that the use of the disjunctive term **or** connotes that either act qualifies as a violation of Sec. 3(e) of Rep. Act No. 3019.

In fine, the delictual act of the accused may give rise to or cause either an undue injury to any party, including the government; or the giving to any private party unwarranted benefits, advantage or preference, or both undue injury and warranted benefits, advantage or preference. As explained by the Court in *Bautista v. Sandiganbayan*:

Indeed, Sec. 3, par. (e), RA 3019, as amended, provides as one of its elements that the public officer should have acted by causing any undue injury to any party, including the government, or by giving any private party unwarranted benefits, advantage or preference in the discharge of his functions. The use of the disjunctive term “or” connotes that either act qualifies as a violation of Sec. 3, par. (e), or as aptly held in *Santiago*, as two (2) different modes of committing the offense. This does not, however, indicate that each mode constitutes a distinct offense, but rather, that an accused may be charged under *either* mode or under *both*.

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⁷ 178 SCRA 254 (1989)

⁸ G.R. Nos. 162314-17. October 25, 2004

⁹ 244 SCRA 224 (1995)

¹⁰ 332 SCRA 126 (2000)

¹¹ GR No. 126814, March 2, 2000

By analogy, *Gallego v. Sandiganbayan* finds application in the instant case. There, petitioners claimed that the Information charged the accused with three (3) distinct offenses, to wit: (a) the giving of "unwarranted" benefits through manifest partiality; (b) the giving of "unwarranted" benefits through evident bad faith; and, (c) the giving of "unwarranted" benefits through gross inexcusable negligence while in the discharge of their official and/or administrative functions; and thus moved for the quashal of the Information. The Sandiganbayan denied the motion to quash and held that the phrases "manifest partiality," "evident bad faith" and "gross inexcusable negligence" merely described the different modes by which the offense penalized in Sec. 3, par. (e), of RA 3019, as amended, could be committed, and the use of all these phrases in the same Information did not mean that the indictment charged three (3) distinct offenses.

Thus, Salazar's alleged acts of (1) giving unwarranted benefits to Jose Quiambao De Guzman of JGQ Construction, and (2) causing undue injury to the government in the amount of Php24,783,043.16, as indicated in the *Information*, **do not constitute two distinct offenses, but are modes of committing the violation under Sec. 3, par. (e) of RA 3019**, wherein an accused may be charged under either mode or under both. At any rate, as explained by the prosecution, the allegation of both modes can be reconciled with the use of the word "*thereby*" preceding the phrase "*causing undue injury to the government*," which indicates that the giving of unwarranted benefits caused undue injury to the government.

Necessarily from the forgoing, the accused was fairly informed of the nature and cause of accusation against her, there being no duplicitous charges alleged against her in the Information. Reiterating the assailed Resolution, thus:

Rather, the allegations of the *Information* sufficiently inform the accused of the charge against her compliant with the requirements of Section 6, Rule 110 of the Revised Rules of Criminal Procedures, *viz*: it states the name of the accused; the designation of 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. *Informations* need only state the ultimate facts; the reasons therefor could be proved during the trial.

On accused's constitutional right to the speedy disposition of her case

This Court has already passed upon and resolved the same issue in the assailed Resolution, *viz*:

xxx

Reviewing the chronology of events that transpired in the investigation of this case, the Court is not persuaded to hold that there was inordinate delay in the disposition thereof.

As regards the length of time, the fact-finding process involved a period of only about two (2) years, from the receipt of the complaint on April 27, 2012 up to the formal preliminary investigation which commenced on August 18, 2014 when the Order to file counter-

affidavit was issued. The preliminary investigation was terminated only a year thereafter upon submission of the Consolidated Resolution dated November 10, 2015, although the same was approved by the Ombudsman on February 14, 2017 considering the layers of authority necessary to review the recommendation. It has to be noted that within this period of investigation, accused Salazar along with co-accused Razalan and Corpuz, filed a Joint Motion for Extension of Time to File Counter Affidavit, as well as a Motion for Reconsideration of the Consolidated Resolution, which altogether contributed to the perceived delay in the filing of *Information* in Court.

From the records, the time consumed in the investigation of the case was not vexatious, which rather appeared to have arisen from the regular course of action of the Office of the Ombudsman. The time needed to gather documents during the fact-finding, and the time necessary for the corresponding evaluation thereof during the preliminary investigation, inclusive of the time given for the respondents to refute the charges and avail of the remedy of reconsideration from the adverse resolution, have to be considered in determining if the delay was inordinate. Here, there is reason to justify the perceived delay in investigation. It is not oppressive or capricious.

Among the ends of a motion for reconsideration is to convince the Court that its ruling is erroneous and improper, contrary to the law or the evidence, and in doing so, the movant has to dwell of necessity upon the issues passed upon by the court.”¹² It behooves accused Salazar to convince that certain findings or conclusions in the assailed Resolution are contrary to law. Here, Salazar fails, thus, compelling the Court to reiterate the same ruling on the repetitious issues she raises in her Motion for Reconsideration.

WHEREFORE, the instant **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED.


MARYANN E. CORPUS – MAÑALAC
Associate Justice

WE CONCUR:


RAFAEL R. LAGOS
Associate Justice
Chairperson


MARIA THERESA V. MENDOZA – ARCEGA
Associate Justice

¹² Coquilla v. The Hon. Commission on Elections, G.R. No. 151914. July 31, 2002