



REPUBLIC OF THE PHILIPPINES  
**Sandiganbayan**  
QUEZON CITY

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**SEVENTH DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
Plaintiff,

Case No. **SB-14-CRM-0429**

-versus -

**AGUSTIN SARDIDO y Tampipi**  
and **NORMANDIE INES y**  
**Abrajano,<sup>1</sup>**

Accused.

Present:

*Gomez-Estoesta, J., Chairperson*  
*Trespeses, J. and*  
*Hidalgo, J.*

Promulgated:

*September 21, 2018 ip*

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**RESOLUTION**

***GOMEZ-ESTOESTA, J.:***

On the basis of the *Complaint-Affidavit* of Court Administrator Jose Midas P. Marquez,<sup>2</sup> former Presiding Judge Agustin Sardido y Tampipi [“accused”] was charged with Violation of Section 3 (e) of R.A. No. 3019 under an *Information*<sup>3</sup> which alleged:

That in the years 1993-2001, or sometime prior and/or subsequent thereto, in Koronadal City, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused **AGUSTIN TAMPIPI SARDIDO** and **NORMANDIE ABRAJANO INES**, former *Presiding Judge* and former *Clerk of Court* of Municipal Trial Court in Cities (MTCC), Koronadal City, respectively, the latter, having the responsibility for the receipts, deposits, custody, withdrawals and releases of all collections from bailbonds as *Court Fiduciary Fund*, and the former, having the authority to approve, release and withdraw the posted cash bailbonds, were the authorized signatories of the bank deposits and withdrawals of all collections

<sup>1</sup> Deceased; Case-against Normandie Ines y Abrajano was ordered dismissed per Resolution dated March 29, 2017

<sup>2</sup> Records, Volume 1, 21-23

<sup>3</sup> Id., pp. 1-3

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from bailbonds as *Court Fiduciary Fund* pursuant to Supreme Court Circular No. 50-95 dated October 11, 1995, taking advantage of their positions and committing the offense in the performance of their duties and/or in relation thereto, conspiring with and mutually helping one another, did then and there, willfully, unlawfully, and criminally *cause undue injury* to the Government, particularly the Judiciary Department, and several accused who posted cash bailbonds in the MTCC, Koronadal City, in the total sum of NINE HUNDRED FIFTY FIVE THOUSAND TWENTY SIX PESOS (₱955,026.00) posted cash bailbonds in different cases from September 21, 1993 to September 30, 2001 as Court Fiduciary Fund, *and/or give each other and other persons unwarranted benefits, advantage or preference* in the discharge of their respective official, administrative and/or judicial functions through manifest partiality, evident bad faith, or gross inexcusable negligence, in the following manner - - -

Accused INES fraudulently did not issue for several times Official Receipts (ORs) of the collected cash bailbonds in different cases and despite the absence of ORs, accused SARDIDO willfully approved such cash bailbonds, and accused INES and accused SARDIDO intentionally did not deposit in the bank the posted cash bailbonds, with or without issued ORs, until 1997, to facilitate and in fact facilitated the use, taking, appropriation and misappropriation of cash bailbonds by accused INES, for his own personal benefit and/or for the benefit of others, the sum of Three Hundred Seventy Two Thousand Five Hundred Twenty Six Pesos (₱372,526.00), and by accused SARDIDO, for his own personal benefit and/or for the benefit of others, the sum of Five Hundred Eighty Two Thousand Five Hundred Pesos (₱582,500.00).

#### CONTRARY TO LAW.

The charge was an off-shoot of an administrative case under A.M. No. 02-9-233-MTCC entitled *In Re: Report on the Judicial and Financial Audit Conducted in the Municipal Trial Court in Cities, Koronadal City*,<sup>4</sup> which imposed administrative sanctions against the accused.

In addition to the charge, a separate case for *Malversation of Public Funds*<sup>5</sup> was filed against the accused under an *Information* docketed as Case No. **SB-14-CRM-0430** which involved the same amount.

#### ANTECEDENTS

The initial assessment of the records of the present charge revealed that probable cause was found to exist for a warrant of arrest to issue against the accused.<sup>6</sup>

Accused, however, voluntarily surrendered at the Sulop Police Station in Digos City, Davao del Sur, on January 14, 2015. Immediately, he posted

<sup>4</sup> Id., pp. 24-128

<sup>5</sup> Records of SB-14-CRM-0430, pp. 1-4

<sup>6</sup> Resolution dated January 5, 2015 issued by the Fifth Division where the charge was originally raffled; *γ*  
Records, Volume 1, p. 129-A

the required bail of ₱30,000.00 before the Office of the Executive Judge of the Regional Trial Court of Digos City and obtained his release. The warrant was thus ordered recalled and accused's arraignment was set on March 18, 2015 at 8:30 in the morning.<sup>7</sup>

On March 18, 2015, accused filed a *Motion to Quash Informations*<sup>8</sup> on ground of inordinate delay which allegedly violated his constitutional right to speedy disposition. In this Court's Resolution dated June 8, 2015,<sup>9</sup> the "radical relief" sought by the accused was denied. Likewise, accused's *Motion for Reconsideration*<sup>10</sup> was denied in the subsequent Resolution dated September 11, 2015.<sup>11</sup>

Despite the elevation of said Resolutions to the Supreme Court via a petition for certiorari,<sup>12</sup> the arraignment of the accused ensued on January 25, 2016. He entered a plea of *not guilty* for the two (2) charges, having been assisted by own counsel, Atty. Flor H. Sardido, who happens to be his daughter.<sup>13</sup> Later, the Supreme Court dismissed the petition for certiorari in its Minute Resolution dated December 7, 2015.<sup>14</sup>

In the interim, the instant case which was originally raffled to the Fifth Division was unloaded to the Seventh Division pursuant to R.A. No. 10660.<sup>15</sup>

Meantime, the ongoing proposal of the accused to plea bargain in SB-14-CRM-0430 was considered during pre-trial which necessitated several re-settings. Since none materialized, pre-trial was ordered terminated by Order dated July 3, 2017.<sup>16</sup>

The presentation of evidence on the part of the prosecution, however, was always deflected in view of the pending approval of the Ombudsman on accused's proposal to plea bargain.

During the hearing of August 24, 2018, and as part of his plea bargaining, accused, this time, moved to withdraw his former plea of *not guilty* in **SB-14-CRM-0430** to be able to plead *guilty* to the lesser offense of *Failure of Accountable Officer to Render Accounts*, an offense necessarily included in the charge of *Malversation*. The Prosecution did not object thereto.

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<sup>7</sup> Records, Volume 1, pp. 135-146

<sup>8</sup> Id., pp. 199-205

<sup>9</sup> Id., pp. 248-261

<sup>10</sup> Id., pp. 269-278

<sup>11</sup> Id., pp. 290-295

<sup>12</sup> Id., pp. 312-514

<sup>13</sup> Records, Volume 2, pp. 8, 11

<sup>14</sup> Id., p. 16; Entry of Judgment issued on March 4, 2016

<sup>15</sup> Id., pp. 24, 33

<sup>16</sup> Id., p. 95

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After his re-arraignment to the lesser offense of *Failure of Accountable Officer to Render Accounts*, accused entered a plea of *guilty* and was thus imposed the penalty of fine of Six Thousand Pesos (₱6,000.00). The penalty of fine was thereafter paid per Official Receipt No. 8888020 C.<sup>17</sup>

It was at this instance that on August 30, 2018, the Prosecution filed its *Motion to Withdraw Information*<sup>18</sup> in SB-14-CRM-0429.

### **THE MOTION TO WITHDRAW INFORMATION**

In its *Motion*, the Prosecution alleged that Ombudsman Conchita Carpio Morales approved the recommendation of the Office of the Special Prosecutor to withdraw the Information for Violation of Section 3(e) of R.A. 3019 “*should accused Sardido enter a plea of guilty in SB-14-CRM-0430.*” Since a plea of guilty was already made albeit to the lesser offense of *Failure of Accountable Officer to Render Accounts* in **SB-14-CRM-0430**, a motion to withdraw the Information was thus made in **SB-14-CRM-0429**.

Whether the *Information* in SB-14-CRM-0429 can be withdrawn should be based on a complete and independent assessment to be made by this Court. As held in *Yambot v. Armovit*:<sup>19</sup>

*Crespo v. Mogul* instructs in a very clear manner that once a complaint or information is filed in court, any disposition of the case as to its dismissal, or the conviction or acquittal of the accused, rests on the sound discretion of the said court, as it is the best and sole judge of what to do with the case before it. While the resolution of the prosecutorial arm is persuasive, it is not binding on the court. **It may therefore grant or deny at its option a motion to dismiss or to withdraw the information based on its own assessment of the records of the preliminary investigation submitted to it, in the faithful exercise of judicial discretion and prerogative, and not out of subservience to the prosecutor.** While it is imperative on the part of a trial judge to state his/her assessment and reasons in resolving the motion before him/her, he/she need not state with specificity or make a lengthy exposition of the factual and legal foundation relied upon to arrive at the decision. [Emphasis supplied]

Verily, this Court must itself be convinced that there was indeed no sufficient evidence against the accused, and this conclusion can be arrived at only after an assessment of the evidence in the possession of the prosecution.<sup>20</sup>

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<sup>17</sup> *Id.*, p. 226

<sup>18</sup> *Id.*, pp. 231-242

<sup>19</sup> G.R. No. 172677, September 12, 2008, as reiterated in *Torres v. Perez, et al.*, G.R. No. 188225, November 28, 2012

<sup>20</sup> *Martinez v. Court of Appeals*, G.R. No. 112387, October 13, 1994; *Marcelo v. Court of Appeals*, G.R. No. 131803, April 14, 1999

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## THE COURT'S RULING

We resolve to grant the withdrawal of the *Information* in **SB-14-CRM-0429**.

The essential elements<sup>21</sup> for the commission of graft and corrupt practices under Section 3 (e) of RA 3019, are:

- (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.

The Prosecution did not even strive to present evidence at this instance. No testimonial nor documentary evidence was offered. Hence, none can be considered for the Court to weigh the existence or concurrence of the elements of the offense charged.

Notably, however, the full restitution by the accused of the amount of ₱582,500.00 subject of the Information is a fact not denied by the Prosecution. This has a material impact in disproving the third element of the offense charged. As readily conceded in the internal Office Memorandum dated September 18, 2017 of Acting Director Leni Bajo-Padaca and Assistant Special Prosecutor II Ryan Rey S. Quilala:

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**Then again, since the amount of ₱582,500.00 mentioned in the Information was already remitted by accused Sardido to the Supreme Court, then there can be no injury caused to the government, making the third element of the crime, i.e., caused undue injury to any party, whether the Government or a private person, lacking. [Emphasis supplied]**

In addition, the fourth (such injury was caused by giving unwarranted benefits, advantage or preference to such parties) and fifth (the public officers acted with manifest partiality, evident bad faith or gross inexcusable negligence) elements of the crime, as well as the charge of conspiracy may no longer [be] viable due to the death of co-accused Ines.

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<sup>21</sup> *Enrile v. People*, G.R. No. 213455, August 11, 2015

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At this stage, therefore, a withdrawal of the *Information* would not harm public interest considering the seeming paucity in the evidence yet to be made by the Prosecution.

In *Gonzales III v. Office of the President*,<sup>22</sup> it was held that:

X X X . [T]he court's determination of the propriety of a plea bargain is on the basis of the existing prosecution evidence on record.  
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Plea bargaining is a process in criminal cases whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval. The essence of a plea bargaining agreement is the allowance of an accused to plead guilty to a lesser offense than that charged against him. Section 2, Rule 116 of the Revised Rules of Criminal Procedure provides the procedure therefor, to wit:

SEC. 2. Plea of guilty to a lesser offense. —

At arraignment, the accused, with the consent of the offended party and the prosecutor, may be allowed by the trial court to plead guilty to a lesser offense which is necessarily included in the offense charged. After arraignment but before trial, the accused may still be allowed to plead guilty to said lesser offense after withdrawing his plea of not guilty. No amendment of the complaint or information is necessary. (Sec. 4, Cir. 38-98)

**Plea bargaining is allowable when the prosecution does not have sufficient evidence to establish the guilt of the accused of the crime charged. x x x. [Emphasis supplied].**

It is without question, therefore, that accused's plea bargaining be entertained; part of which was to withdraw the instant charge.

As the case of *Daan v. Sandiganbayan* cited by the Prosecution in its *Motion* significantly reiterated:

Plea bargaining in criminal cases is a process whereby the accused and the prosecution work out a **mutually satisfactory disposition** of the case subject to court approval. It usually involves the defendant's pleading guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that for the graver charge.

Plea bargaining is authorized under Section 2, Rule 116 of the Revised Rules of Criminal Procedure, to wit:

SEC. 2. *Plea of guilty to a lesser offense.* At arraignment, the accused, with the consent of the offended party and the prosecutor, may be allowed by the trial court to plead guilty to a lesser offense which is necessarily included in the offense charged.

<sup>22</sup> G.R. No. 196231, September 4, 2012

After arraignment but before trial, the accused may still be allowed to plead guilty to said lesser offense after withdrawing his plea of not guilty. No amendment of the complaint or information is necessary. (sec. 4, cir. 38-98)

Ordinarily, plea bargaining is made during the pre-trial stage of the proceedings. Sections 1 and 2, Rule 118 of the Rules of Court, require plea bargaining to be considered by the trial court at the pre-trial conference, viz:

SEC. 1. *Pre-trial; mandatory in criminal cases.* In all criminal cases cognizable by the *Sandiganbayan*, Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court and Municipal Circuit Trial Court, the court shall, after arraignment and within thirty (30) days from the date the court acquires jurisdiction over the person of the accused, unless a shorter period is provided for in special laws or circulars of the Supreme Court, order a pre-trial conference to consider the following:

- (a) plea bargaining;
- (b) stipulation of facts;
- (c) marking for identification of evidence of the parties;
- (d) waiver of objections to admissibility of evidence;
- (e) modification of the order of trial if the accused admits the charge but interposes a lawful defense; and
- (f) such matters as will promote a fair and expeditious trial of the criminal and civil aspects of the case.

SEC. 2. *Pre-trial agreement.* All agreements or admissions made or entered during the pre-trial conference shall be reduced in writing and signed by the accused and counsel, otherwise, they cannot be used against the accused. The agreements covering the matters referred to in section 1 of this Rule shall be approved by the court. (Emphasis supplied)

But it may also be made during the trial proper and even after the prosecution has finished presenting its evidence and rested its case. **Thus, the Court has held that it is immaterial that plea bargaining was not made during the pre-trial stage or that it was made only after the prosecution already presented several witnesses.** [Emphasis supplied]

It thus appeared that the Prosecution was ostensibly better off in striking a plea bargaining agreement with the accused rather than proceed to a full blown trial. Accused was thus allowed to plead guilty to a lesser offense in the Malversation case for the twin charge of Violation of Section 3(e) of R.A. 3019 to be withdrawn.

Clearly, this Court cannot compel the Prosecution to continue prosecuting the case in face of the evidence that is gravely insufficient to arrive at a judgment of conviction.<sup>23</sup>

WHEREFORE, the *Motion to Withdraw Information* filed by the Prosecution in Case No. SB-14-CRM-0429 is **GRANTED**.

<sup>23</sup> *Bernardo v. Tan*, G.R. No. 185491, July 11, 2012

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Accordingly, let the *Information* for Violation of Section 3 (e) of R.A. No. 3019 be ordered **WITHDRAWN**, and the charge against Agustin Sardido y Tampipi **DISMISSED**.

The cash bond posted by the accused in the amount of ₱30,000.00 under Official Receipt No. in SB-14-CRM-0429 and, concomitantly, the cash bond in the amount of ₱200,000.00 under Official Receipt No. in SB-14-CRM-0430 are thus ordered released subject to the usual accounting procedures.

The Hold Departure Order issued by this Court on July 18, 2016 is set aside, and the Order issued by the Bureau of Immigration incorporating the name of the accused in the Hold Departure List is ordered recalled and cancelled.

This case is now considered **CLOSED** and **TERMINATED**.

**SO ORDERED.**

  
**MA. THERESA DOLORES C. GOMEZ-ESTOESTA**  
*Associate Justice, Chairperson*

**WE CONCUR:**

  
**ZALDY V. TRESPES**  
*Associate Justice*

  
**GEORGINA D. HIDALGO**  
*Associate Justice*

### **A T T E S T A T I O N**

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MA. THERESA DOLORES C. GOMEZ-ESTOESTA**  
*Associate Justice, Chairperson*



## CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**AMPARO M. CABOTAJE-TANG**  
*Presiding Justice*

