



REPUBLIC OF THE PHILIPPINES

**Sandiganbayan**

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-17-CRM-1407**  
Plaintiff, For: Violation of Sec. 3(e)  
of R.A. No. 3019

**SB-17-CRM-1408**  
For: Falsification of Public Documents

*Present*

- versus -

**FERNANDEZ, SJ, J.,**  
Chairperson  
**MIRANDA, J. and**  
**VICENTE S. PARAGAS, ET AL. VIVERO, J.**  
Accused.

*Promulgated:*

**OCT 16 2018**

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## RESOLUTION

**FERNANDEZ, SJ, J.**

This resolves the following:

1. *Motion for Reconsideration*<sup>1</sup> filed by accused Vicente S. Paragas;
2. *Motion for Reconsideration (With Manifestation)*<sup>2</sup> filed by accused Arnulfo Z. Hernandez;
3. *Motion for Reconsideration (To the Resolution dated September 6, 2018)*<sup>3</sup> filed by accused Wilfredo M. Bautista, Gerry C. Mamigo and Rowena C. Manila-Tercero; and

<sup>1</sup> Dated September 13, 2018; Record, Vol. 5, pp. 115-132

<sup>2</sup> Dated September 17, 2018; Record, Vol. 5, pp. 133-136

<sup>3</sup> Dated September 17, 2018; Record, Vol. 5, pp. 137-147

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4. *Motion for Reconsideration (Re: Resolution dated 6 September 2018)*<sup>4</sup> filed by accused Nelson S. Sikat and Lorna O. Borlongan.

In his *Motion for Reconsideration*, accused Paragas prays that this Court reconsider its Resolution dated September 6, 2018<sup>5</sup> granting the prosecution's *Motion to Amend Information*, and issue a new one denying the prosecution's motion. He avers:

1. The amendment is prohibited because although the offenses charged remain the same, his defense that he did not occupy the position of Regional Executive Director, Natural Water Resources Board on the material dates because there is no government entity known as the "Natural Water Resources Board" will no longer be available to him.
2. The ruling in *Mendez v. People*, on which this Court based the grant of the prosecution's motion to amend, when taken as a whole, actually favors the denial of said motion.

In his *Manifestation*,<sup>6</sup> accused Antonio M. Lacanienta manifested that he is adopting the *Motion for Reconsideration* of accused Paragas.

In his *Motion for Reconsideration*, accused Hernandez also prays that this Court reconsider and set aside the Resolution dated September 6, 2018, and try the accused under the original Informations. He similarly argues that the defense pertaining to the description of his position will no longer be available to him under the amended Informations, and hence, the amendment is substantial in character and cannot be allowed after arraignment.

In their *Motion for Reconsideration*, accused Bautista, Mamigo and Manila-Tercero pray that the Court reverse and set aside the Resolution dated September 6, 2018, and dismiss the present cases for violation of Sec. 14, Rule 110 of the Rules of Court. In addition to the argument that accused Paragas and Hernandez will no longer be able to use the defense that they did not commit the offense as public officials in the respective positions indicated in the original Informations, they argue that the amendment will affect the Sandiganbayan's jurisdiction because the indicated position of accused Hernandez will be downgraded to OIC-PENRO, which has a Salary Grade of 26.

<sup>4</sup> Dated September 17, 2018; Record, Vol. 5, pp. 150-152

<sup>5</sup> Record, Vol. 5, pp. 101-105

<sup>6</sup> Dated September 15, 2018; Record, Vol. 5, p. 153



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In their *Motion for Reconsideration*, accused Nelson S. Sikat and Lorna O. Borlongan pray that the Resolution dated September 6, 2018 be reconsidered and set aside, and the Amended Informations be disallowed, invoking the same arguments as those of accused Bautista, Mamigo and Manila-Tercero. They further contend that the amendment of the Informations after pre-trial and after the setting of trial dates for the prosecution violates their right to speedy disposition of cases.

Accused Eleuterio V. Recile manifested<sup>7</sup> that he does not intend to file a motion for reconsideration of the assailed Resolution.

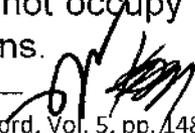
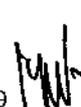
In its *Consolidated Comment/Opposition*,<sup>8</sup> the prosecution counters:

1. The amendments in the Informations are merely formal. They only state with precision something already contained in the original Informations, and do not charge offenses different from those charged in the original Informations, or alter its theory of the case so as to cause surprise to the accused, nor affect whatever defense they originally may have.
2. The change in the description of accused Hernandez' position does not affect the Court's jurisdiction because the accused are charged to have conspired with a public official with Salary Grade 27.
3. The respective motions of the accused are nothing but a dilatory procedural tactic.

THE COURT'S RULING

The respective *Motions for Reconsideration* of the accused are devoid of merit and should be denied.

Said Motions are primarily grounded on the argument that the amendments to the original Informations are substantial in nature because accused Paragas and Hernandez can no longer avail of the defense that they did not occupy the respective positions indicated in the original Informations.

   
<sup>7</sup> Dated September 17, 2018; Record, Vol. 5, pp. 148-149

<sup>8</sup> Dated September 18, 2018; Record, Vol. 5, pp. 154-163; in its *Manifestation* dated September 27, 2018, the prosecution adopted its *Comment/Opposition* dated September 18, 2018 to oppose the *Motion for Reconsideration* of accused Hernandez.

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This is a mere reiteration or rehash of the accused' argument in their respective oppositions to the prosecution's *Motion to Amend Information*. This Court had already considered such argument, and found the same to be without merit in the assailed Resolution. Thus, there is no need to discuss the same anew.

In *Mendoza-Ong v. Sandiganbayan*,<sup>9</sup> it was held:

Concerning the first ground abovesited, the Court notes that the motion contains merely a reiteration or rehash of arguments already submitted to the Court and found to be without merit. Petitioner fails to raise any new and substantial arguments, and no cogent reason exists to warrant a reconsideration of the Court's Resolution. It would be a useless ritual for the Court to reiterate itself.

The pertinent portion<sup>10</sup> of the assailed Resolution is hereunder quoted for convenience:

Changing the descriptions of the respective positions held by accused Paragas and Hernandez will not change the offenses charged. The accused are still charged with Violation of Sec. 3(e) of Republic Act No. 3019 (R.A. No. 3019) in Crim. Case No. SB-17-CRM-1407, and with Falsification of Public Documents under Art. 171 of the Revised Penal Code (RPC) in Crim. Case No. SB-17-CRM-1408.

Neither will the proposed changes alter the theory of the prosecution. In Crim. Case No. SB-17-CRM-1407, the acts attributed to the accused remain to be, in the performance of their administrative and/or official functions, awarding the subject contract to A.M. Lacanienta Surveying Office without the conduct of public bidding, and causing the payment of ₱5,250,000.00 to accused Lacanienta despite non-accomplishment of the survey and mapping services. On the other hand, in Crim. Case No. SB-17-CRM-1408, the act allegedly committed by the accused will still be taking advantage of their official positions to falsify public documents to support the payment of the contract cost to accused Lacanienta.

Next, accused Paragas argues that the change in the description of the position he held will cause prejudice because he will no longer be able to use the defense that he did not commit the charges as "Regional Executive Director, Natural Water Resource Board." Such argument does not persuade.

<sup>9</sup> G.R. Nos. 146368-69, October 18, 2004

<sup>10</sup> Resolution dated September 6, 2018, pp. 4-5; Record, Vol. 5, pp. 104-105

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In *Mendez*, the Supreme Court held that, indeed, a defendant may be prejudiced by an amendment if the same defense available under the original information will no longer be available after the amendment. However, this must be read together with the characteristic thread of formal amendments. viz.:

To be sure, the jurisprudential test on whether a defendant is prejudiced by the amendment of an information pertains to the availability of the same defense and evidence that the accused previously had under the original information. This test, however, must be read together with the characteristic thread of formal amendments, which is to maintain the nature of the crime or the essence of the offense charged.

As this Court found, the proposed amendments will not alter the nature or essence of the offenses charged. The defenses available to the accused under the original Informations will remain available to them under the amended Informations.

Accused Paragas then avers that *Mendez v. People*,<sup>11</sup> taken as a whole, favors the denial of the prosecution's *Motion to Amend Information*. However, aside from cherry-picking portions of said High Court's Decision and harping on about the amendments to the Informations being substantial in nature, accused Paragas does not even make any attempt to elaborate on how *Mendez* and the other cases he cites—*Teehankee v. Madayag*<sup>12</sup> and *Poblete v. Sandoval*<sup>13</sup>—favor the denial of the prosecution's motion, considering that in the three (3) aforementioned cases, the Supreme Court consistently held that the amendments were merely of form because they did not change the nature or essence of the offenses charged, and accordingly allowed the said amendments.

Finally, the amendments to the Informations have no effect on this Court's jurisdiction over the present cases. Sec. 4 of Presidential Decree No. 1606 (P.D. No. 1606), as amended by Republic Act No. 8249 (R.A. No. 8249) provides:

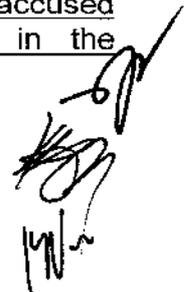
**Sec. 4. Jurisdiction.** – The *Sandiganbayan* shall exercise original jurisdiction in all cases involving:

- 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

<sup>11</sup> G.R. No. 179962, June 11, 2014

<sup>12</sup> G.R. No. 103102, March 6, 1992

<sup>13</sup> G.R. No. 150610, March 25, 2004



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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 position 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:

x x x

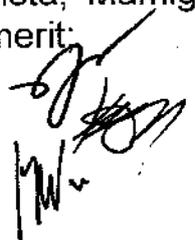
- b. Other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection a. of this section in relation to their office.

(emphasis and underscoring supplied)

Under Sec. 4, the Sandiganbayan exercises original jurisdiction in cases involving the enumerated offenses where **at least one** accused occupied the enumerated positions at the time of the commission of the offense. Here, the original and amended Informations allege that accused Paragas occupied the position of Regional Executive Director with Salary Grade 27, and that the accused public officers conspired with accused Lacanienta in the commission of the offenses charged. There being at least one public officer who occupied a position enumerated in Sec. 4 of P.D. No. 1606, this Court retains jurisdiction over the present cases.

**WHEREFORE**, the Court rules as follows:

1. Accused Recile's *Manifestation* is hereby NOTED;
2. The *Motion for Reconsideration* of accused Paragas is hereby DENIED for lack of merit;
3. The *Motion for Reconsideration* of accused Hernandez is hereby DENIED for lack of merit;
4. The *Motion for Reconsideration* of accused Bautista, Mamigo and Manila-Tercero is hereby DENIED for lack of merit;



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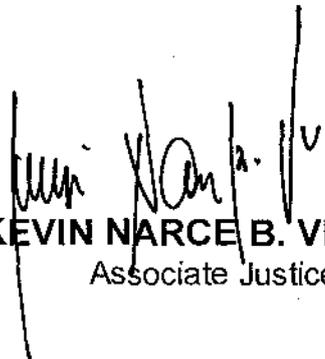
5. The *Motion for Reconsideration* of accused Sikat and Borlongan is hereby DENIED for lack of merit; and
6. The *Motion for Reconsideration* of accused Lacanienta is hereby DENIED for lack of merit.

SO ORDERED.

  
SARAH JANE T. FERNANDEZ  
Associate Justice  
Chairperson

**We Concur:**

  
KARL B. MIRANDA  
Associate Justice

  
KEVIN NARCE B. VIVERO  
Associate Justice