



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-18-CRM-0240**  
Plaintiff, For: Violation of Sec. 3(e)  
of R.A. No. 3019

**SB-18-CRM-0242**  
For: Direct Bribery under  
Art. 210 of the RPC

**SB-18-CRM-0243**  
For: Violation of P.D. No. 46

Present

- versus -

**FERNANDEZ, SJ, J.,**  
Chairperson  
**MIRANDA, J. and**  
**TRESPESES,\* J.**

**AL C. ARGOSINO, ET AL.**  
Accused.

Promulgated:

**NOV 12 2018**

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**RESOLUTION**

**FERNANDEZ, SJ, J.**

This resolves accused Al C. Argosino's *Motion to Quash Informations and/or Dismiss Cases*.<sup>1</sup> In his *Manifestation*,<sup>2</sup> accused Michael B. Robles adopted accused Argosino's Motion.

Accused Argosino, seeking the dismissal of SB-18-CRM-0240,<sup>3</sup> 242<sup>4</sup> and 0243,<sup>5</sup> argues:

\* In view of the inhibition of J. Vivero (Per Administrative Order No. 295-2018 dated May 25, 2018)

<sup>1</sup> Dated October 15, 2018 and filed on October 16, 2018

<sup>2</sup> Dated October 23, 2018 and filed on October 25, 2018

<sup>3</sup> Violation of Sec. 3(e) of R.A. No. 3019

<sup>4</sup> Direct Bribery under Art. 210 of the Revised Penal Code

<sup>5</sup> Violation of P.D. No. 46

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1. Art. III, Sec. 21 of the Constitution provides that "[n]o person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act."
2. His arraignment in SB-18-CRM-0240, 242 and 0243 has placed him in legal jeopardy because the crimes charged are absorbed in the crime of Plunder.
3. The deliberations of Congress would show that Republic Act No. 7080 (R.A. No. 7080)<sup>6</sup> was enacted to obviate the filing of multiple Information against the accused. This was even recognized in *Estrada v. Sandiganbayan*.
4. Art. III, Sec. 21 of the Constitution does not require that there be an acquittal or conviction before legal jeopardy attaches.
5. The *Corpus Juris Secundum* and *People v. Ylagan*<sup>7</sup> support the view that legal jeopardy attaches upon entering a plea.
6. The crime of Plunder absorbed the other predicate crimes under the principle of *delito continuado* and/or *delito complejo*.
  - a. Under Art. 48 of the Revised Penal Code, when an offense is a necessary means for committing another, the penalty for the most serious crime shall be imposed.
  - b. Under the Plunder Law, the means of acquiring ill-gotten wealth are offenses. However, these offenses are not treated as separate crimes, but are lumped into a single offense called Plunder.
  - c. The alleged receipt of money in two (2) instances, but only about three (3) hours apart, constitute only a single criminal act. Said acts were impelled by a single criminal intent, and hence, there should only be one criminal liability.
  - d. The alleged collective receipt of ₱50 million constitutes a single consummated crime of direct bribery, and cannot be considered as a series of overt or criminal acts required under the Plunder Law.
  - e. In Plunder, the accused must have amassed, accumulated or acquired at least ₱50 million in a series or combination of criminal acts. This presupposes that

<sup>6</sup> An Act Defining and Penalizing the Crime of Plunder

<sup>7</sup> G.R. L-38443, November 25, 1933

*W. J. [Signature]*

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the crime has been consummated upon the receipt of money.

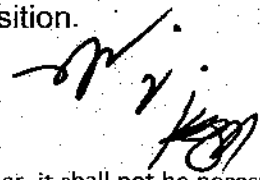
- f. That the crimes charged in SB-18-CRM-0240, 0242 and 0243 are absorbed in Plunder is supported by Sec. 4<sup>8</sup> of R.A. No. 7080, which acknowledges the principle of *delito complejo* or *delito continuado*.

In its *Consolidated Comment/Opposition (To Accused Argosino's Motion to Quash Informations and/or Dismiss Cases dated 15 October 2018 and Accused Robles' Manifestation dated 23 October 2018)*,<sup>9</sup> the prosecution counters:

1. The crimes of violation of Sec. 3(e) of R.A. No. 3019, Direct Bribery, and violation of P.D. No. 46 are not absorbed in Plunder.
  - a. The same set of facts may give rise to two (2) or more separate and distinct offenses. As long as there is a variance between the elements of the offenses charged, no double jeopardy attaches.
  - b. The crimes charged under the Information in the present cases punish different acts.
    - i. Plunder penalizes the amassing, accumulation or acquisition of ill-gotten wealth through a series or combination of overt or criminal acts.
    - ii. Sec. 3(e) of R.A. No. 3019 penalizes the causing of undue injury to any party, or the giving of unwarranted benefits, advantage or preference.
    - iii. Direct Bribery penalizes the act of receiving any gift, present, offer or promise, in consideration of the commission of some crime or any act or omission in relation to the accused' official functions as a public officer.
    - iv. P.D. No. 46 penalizes a public officer's act of receiving any gift, present or valuable thing by reason of said public officer's official position.

<sup>8</sup> *Sec. 4. Rule of Evidence* – For purposes of establishing the crime of plunder, it shall not be necessary to prove each and every criminal act done by the accused in furtherance of the scheme or conspiracy to amass, accumulate or acquire ill-gotten wealth, it being sufficient beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall scheme or conspiracy.

<sup>9</sup> Dated and filed on November 5, 2018



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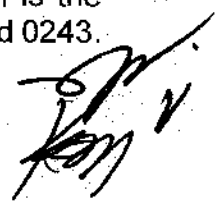
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- c. In Plunder, the threshold amount of ₱50 million should be met. The other offenses charged have no such requirement.
  - d. The doctrine of absorption of crimes generally applies to crimes punished by the same statute. The subject offenses, penalized under R.A. No. 3019, Art. 210 of the Revised Penal Code, and P.D No. 46, are not absorbed in Plunder, which is penalized under R.A. No. 7080.
  - e. Sec. 3 of R.A. No. 3019 expressly provides that the corrupt practices, as defined therein, are "in addition to acts or omissions of public officers already penalized by existing law."
  - f. The Supreme Court, in *Estrada v. Sandiganbayan*, merely recounted the history of the Plunder Law. The Plunder Law was intended to broaden, not restrict, the exercise of prosecutorial discretion. It gave prosecutors the option of filing one Information for Plunder, rather than filing multiple Informations for separate acts or omissions.
  - g. Accused Argosino's resort to legislative intent is misplaced. When the language of the statute is clear and unambiguous, the law must be applied according to its express terms. There is no ambiguity in the Plunder Law. Thus, there is no need for further interpretation.
2. No double jeopardy has attached because not all requisites are present.
  3. None of the present cases have been dismissed or otherwise terminated without the accused' express consent.
  4. The discussions in *Corpus Juris Secundum* and in the concurring and dissenting opinion of Justice Regalado in *People v. Pineda* refer to the existence of a first jeopardy, and not of double jeopardy.
  5. The principle of complex crime proper cannot apply to the present cases. Aside from having different elements, the penalties for the subject crimes did not adopt the nomenclature, duration, correlation and legal effects of the Revised Penal Code.
  6. The principle of continuing crime or *delito continuado* is misleading. The subject of accused Argosino's Motion is the quashal of the Information in SB-18-CRM-0240, 0242 and 0243.



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However, accused Argosino's Motion actually assails the Information in SB-18-CRM-0241 for Plunder.

THE COURT'S RULING

The Court resolves to deny the Motion of accused Argosino and Robles.

According to accused Argosino, SB-18-CRM-0240, 0242 and 0243 should be dismissed on the ground of double jeopardy because the crimes charged therein are absorbed in Plunder. However, double jeopardy has not yet set in. In *Cerezo v. People*,<sup>10</sup> it was held that double jeopardy exists when the following requisites are present:

x x x. Double jeopardy exists when the following requisites are present: (1) a first jeopardy attached prior to the second; (2) the first jeopardy has been validly terminated; and (3) a second jeopardy is for the same offense as in the first. A first jeopardy attaches only (a) after a valid indictment; (b) before a competent court; (c) after arraignment; (d) when a valid plea has been entered; and (e) when the accused has been acquitted or convicted, or the case dismissed or otherwise terminated without his express consent.

The requisite of "a first jeopardy attached prior to the second" is lacking because the accused has not yet been acquitted or convicted of Plunder. Neither has SB-18-CRM-0241 been dismissed or otherwise terminated without their consent. Thus, it is unnecessary to determine whether the offenses charged in SB-18-CRM-0240, 0242 and 0243 are absorbed in Plunder.

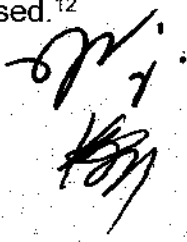
Accused Argosino's reliance on *People v. Ylagan*<sup>11</sup> is likewise misplaced. The Supreme Court's discussion therein, on legal jeopardy, was based on Sec. 28 of the Code of Criminal Procedure, which reads:

A person cannot be tried for an offense, nor for any attempt to commit the same or frustration thereof, for which he has been previously brought to trial in a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction, after issue properly joined, when the case is dismissed or otherwise terminated before judgment without the consent of the accused.<sup>12</sup>

<sup>10</sup> G.R. No. 185230, June 1, 2011.

<sup>11</sup> *Supra*. Note 7.

<sup>12</sup> Quoted in the Supreme Court's Decision



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The current governing provision on double jeopardy is Rule 117, Sec. 7 of the Rules of Court, which reads:

**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 a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

x x x

(underscoring supplied)

Under Rule 117, Sec. 7, it is the conviction or acquittal of the accused, or the dismissal of the case, which acts as a bar to another prosecution for the offense charged, or for any offense necessarily included in the offense charged in the former complaint or information.

The other argument of accused Argosino, *i.e.*, that the alleged receipt of money in two (2) instances constitutes a single criminal act, purports to be in support of his argument that the offenses charged in SB-18-CRM-0240, 0242 and 0243 are absorbed in Plunder. However, it is nothing but a reiteration or rehash of his previous arguments in SB-18-CRM-0241, which he had repeatedly raised in his previous motions, his petition for bail, and his motion for reconsideration of this Court's Resolution denying bail. This Court had already considered and passed upon such argument, and hence, there is no need to discuss it anew. More important, accused Argosino seeks the dismissal of SB-18-CRM-0240, 0242 and 0243. The element of amassing, accumulating or acquiring ill-gotten wealth through a series or combination of overt or criminal acts is not an element in any of the offenses charged in those cases.

**WHEREFORE**, accused Argosino and Robles' *Motion to Quash Informations and/or Dismiss Cases* is hereby DENIED for lack of merit.

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**SO ORDERED.**



**SARAH JANE T. FERNANDEZ**

Associate Justice  
Chairperson

**We Concur:**



**KARL B. MIRANDA**

Associate Justice



**ZALDY V. TRESPESSES**

Associate Justice