



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-18-CRM-0536**
Plaintiff, For: Violation of Sec. 3(e)
of R.A. No. 3019

Present

- versus -

GERARDO A. NOVERAS,
ET AL,

FERNANDEZ, SJ, J.,
Chairperson
MIRANDA, J. and
VIVERO, J.

Accused.

Promulgated:

JAN 14 2019 *prof*

X-----X

RESOLUTION

FERNANDEZ, SJ, J.

This resolves the following:

1. *Entry of Appearance with Motion to Quash and Motion for Leave to File and Admit Attached Motion for Reinvestigation*¹ filed by accused Gerardo A. Noveras;
2. *Manifestation*² filed by accused Manding Claro R. Ramos; and
3. *Manifestation and Motion*³ filed by accused Ricardo Q. Bautista, Isaias A. Noveras, Jr., Simeon A. De Castro, Norma A. Clemente and Benedicto S. Rojo.

¹ Dated November 12, 2018; Record, pp. 289-315

² Dated November 19, 2018; Record, pp. 336-338

³ Dated November 19, 2018; Record, pp. 339-342

RESOLUTION

People vs. Noveras, et al.
Criminal Case No. SB-18-CRM-0536

Page 2 of 9

X-----X

Accused Gerardo A. Noveras prays that this Court (1) quash the Information, and dismiss the present case; and (2) grant him leave to file and admit the attached Motion for Reinvestigation; and remand the case to the Office of the Ombudsman for reinvestigation. He avers:

1. The facts charged in the Information do not constitute an offense because the Information did not allege the element of undue injury. Neither was it alleged that such undue injury was caused by giving unwarranted benefits, advantage or preference.
2. A reinvestigation should be conducted.
 - a. He received a copy of the Office of the Ombudsman's Consolidated Resolution dated April 3, 2018 on June 5, 2018.
 - b. On June 8, 2018, he filed his Motion for Reconsideration of said Consolidated Resolution. His Motion for Reconsideration was denied in the Order dated June 28, 2018.
 - c. The Information was filed on October 5, 2018.
 - d. In the meantime, he was made aware that his constituents in the Province of Aurora are willing to testify on the circumstances surrounding the subject road repair project.
 - e. There is no probable cause to indict him of the crime charged.
 - i. He merely signed documents pertaining to the repair of the Casiguran-Dilasag Provincial Road.
 - ii. He was the head of the procuring entity, and not a member of the Bids and Awards Committee.
 - f. Under Sec. 7 of the Rules of Procedure of the Office of the Ombudsman, leave of court is required where the Information has already been filed in court.

Attached to accused Gerardo A. Noveras' *Manifestation*⁴ were the *Sworn Statement* dated November 12, 2018 of Engr. Galicano P. Arcega, and the *Sinumpaang Salaysay* dated November 12, 2018 of Patricio De Leña Vallejos. According to him, the documents were not attached to his Motion for Reinvestigation because of the distance

⁴ Dated November 14, 2018; Record, pp. 316-327

RESOLUTION

People vs. Noveras, et al.
Criminal Case No. SB-18-CRM-0536

Page 3 of 9

X-----X

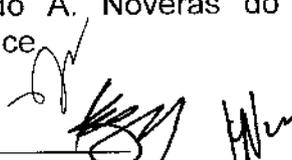
involved, said sworn statements having been executed in the Province of Aurora.

Accused Ramos manifested that he is adopting as his own the Motion of accused Gerardo A. Noveras.

Accused Bautista, Isaias A. Noveras, Jr., De Castro, Clemente and Rojo, likewise manifested that they are adopting as their own the Motion of accused Gerardo A. Noveras. They further argue that even without the newly discovered evidence proffered by accused Gerardo A. Noveras, the Office of the Ombudsman committed grave error in indicting them in court because no crime was committed.

In its *Comment/Opposition*,⁵ the prosecution counters:

1. The third element of violation of Sec. 3(e) of Republic Act No. 3019 (R.A. No. 3019), *i.e.*, that the accused' 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 or her functions, is sufficiently alleged in the Information.
2. The accused are charged with committing violation of Sec. 3(e) of R.A. No. 3019 under the second mode, where damage is not required.
3. Although there may be instances where both concur, the act of "giving any private party any unwarranted benefit, advantage or preference" is not an indispensable element of "causing any undue injury to any party."
4. Only the ultimate facts constituting the offense must be alleged in the Information.
5. The filing of the Motion for Reinvestigation is beyond the period prescribed, and contrary to the one-motion rule under Rule II, Sec. 7 of the Rules of Procedure of the Office of the Ombudsman.
6. The sworn statements attached to the *Manifestation* of accused Gerardo A. Noveras do not qualify as newly discovered evidence.


⁵ Dated November 23, 2018; Record, pp. 349-358; The prosecution adopted its *Comment/Opposition* as its comment on the *Manifestation and Motion* filed by accused Bautista, Isaias A. Noveras, Jr., De Castro, Clemente and Rojo (*Manifestation* dated and filed on December 3, 2018)

RESOLUTION

People vs. Noveras, et al.
Criminal Case No. SB-18-CRM-0536

Page 4 of 9

X-----X

- a. It was not shown that Engr. Arcega and Mr. Vallejos were not available during the conduct of the preliminary investigation.
- b. Said sworn statements merely corroborate the defense raised by the accused in their respective counter-affidavits.

THE COURT'S RULING

The Motions to Quash, and for Leave to File and Admit the attached Motion for Reinvestigation of the accused should be denied for being devoid of merit.

A. Motion for Reinvestigation

This Court denies the accused' Motion for leave to file the attached Motion for Reinvestigation because such Motion for Reinvestigation is a prohibited motion. The pertinent provision of the *Revised Guidelines for Continuous Trial of Criminal Cases*⁶ (Revised Guidelines) reads:

III. Procedure

x x x

2. Motions

x x x

(b) *Prohibited Motions.* – Prohibited motions shall be denied outright before the scheduled arraignment without need of comment and/or opposition.

The following motions are prohibited:

x x x

iii. Motion for reinvestigation of the prosecutor recommending the filing of information once the information has been filed before the court (1) if the motion is filed without prior leave of court; (2) when preliminary investigation is not required under Sec. 8, Rule 112; and (3) when the regular preliminary investigation is required and has been actually conducted.

⁶ A.M. No. 15-06-10-SC

RESOLUTION

People vs. Noveras, et al.
Criminal Case No. SB-18-CRM-0536

Page 5 of 9

X-----X

and the grounds relied upon in the motion are not meritorious, such as issues of credibility, admissibility of evidence, innocence of the accused, or lack of due process when the accused was actually notified, among others.

(underscoring supplied)

In the attached Motion for Reinvestigation, accused Gerardo A. Noveras assails the credibility of Engr. Rodante A. Tolentino, who filed the *Complaint-Affidavit* dated December 10, 2015 against certain officials of the Province of Aurora, including the accused. Accused Gerardo A. Noveras further insists that he did not commit any crime. Clearly, the attached Motion for Reinvestigation is grounded on issues of credibility, and on his innocence. A preliminary investigation has actually been conducted, and hence, the motion sought to be filed and admitted is prohibited.

Even if such motion for reinvestigation is not prohibited under the Revised Guidelines, it must nevertheless be denied because, as pointed out by the prosecution, it was filed beyond the prescribed period for filing the same. Rule II, Sec. 7 of the *Rules of Procedure of the Office of the Ombudsman*⁷ provides:

Section 7. Motion for reconsideration –

a) Only one motion for reconsideration or reinvestigation of an approved order or resolution shall be allowed, the same to be filed within five (5) days from notice thereof with the Office of the Ombudsman, or the proper Deputy Ombudsman as the case may be, with corresponding leave of court in cases where information has already been filed in court;

x x x

Here, accused Gerardo A. Noveras received a copy of the Consolidated Resolution dated April 3, 2018 on June 5, 2018.⁸ He had five (5) days from said date within which to file his motion for reconsideration or reinvestigation. Obviously, the period for filing a motion for reinvestigation had already lapsed. At any rate, it appears that the accused had already filed their respective motions for reconsideration of said Consolidated Resolution,⁹ and that their

⁷ Administrative Order No. 07

⁸ Accused Gerardo A. Noveras' Motion, p. 7 (Record, p. 295)

⁹ Record, p. 24

RESOLUTION

People vs. Noveras, et al.
Criminal Case No. SB-18-CRM-0536

Page 6 of 9

X-----X

motions for reconsideration had been denied in the Order dated June 28, 2018.¹⁰

B. Motion to Quash

A motion to quash on the ground that the facts charged do not constitute an offense¹¹ is resolved on the basis of the allegations in the information whose truth and veracity are hypothetically admitted. The Court need not look into matters beyond the four corners of the Information. In *People v. Sandiganbayan*,¹² the Supreme Court laid down the matters that the Court must consider:

A motion to quash an Information on the ground that the facts charged do not constitute an offense should be resolved on the basis of the allegations in the Information whose truth and veracity are hypothetically admitted. The question that must be answered is whether such allegations are sufficient to establish the elements of the crime charged without considering matters aliunde. In proceeding to resolve this issue, courts must look into three matters: (1) what must be alleged in a valid information; (2) what the elements of the crime charged are; and (3) whether these elements are sufficiently stated in the Information.

Rule 110, Sec. 6 of the Rules of Court provides for what a sufficient Information must contain. To wit:

Sec. 6. Insufficiency of complaint or information. – A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting 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.

When an offense is committed by more than one person, all of them shall be included in the complaint or information.

The Information must allege the acts or omissions complained of as constituting the offense. Moreover, the Information need only state the ultimate facts constituting the offense and not the finer details of why and how the crime was committed.¹³

¹⁰ Record, pp. 24-28

¹¹ Rules of Court. Rule 117, Sec. 3(a)

¹² G.R. No. 160619, September 9, 2015

¹³ *Ibid.*

RESOLUTION

People vs. Noveras, et al.
Criminal Case No. SB-18-CRM-0536

Page 7 of 9

x-----x

The elements of violation of Sec. 3(e) of R.A. No. 3019 are as follows:

1. The accused must be a public officer discharging administrative, judicial, or official functions (or a private individual acting in conspiracy with such public officers);
2. The accused acted with manifest partiality, evident bad faith, or inexcusable negligence; and
3. The accused' 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 or her functions.¹⁴

The allegations in the Information are as follows:

1. x x x, accused **GERARDO A. NOVERAS, SIMEON A. DE CASTRO, PAZ L. TORREGOSA, RICARDO Q. BAUTISTA, BENEDICTO S. ROJO, ISAIAS A. NOVERAS, JR., NORMA R. CLEMENTE**, all public officers, being then the Provincial Governor, Provincial Administrator/Chairman, Bids and Awards Committee (BAC), Provincial Legal Officer/Member, BAC, Provincial General Services Officer/Vice Chairman, BAC, Assistant Provincial engineer/Member, BAC, Executive Assistant IV/Member, BAC and Provincial Budget Officer/Member, BAC, respectively, all of the Provincial Government of Aurora, while in the performance of their respective administrative and/or official functions and committing the crime in relation to office, taking advantage of their official positions, conspiring and confederating with one another and with private individual **MANDING CLARO R. RAMOS** (Ramos), of RMCR Construction, x x x
2. x x x, acting with evident bad faith, manifest partiality and/or gross inexcusable negligence, x x x by failing to conduct a competitive public bidding when accused rigged the bidding process for the said transactions when RMCR had implemented and almost completed the construction or repair projects even before the procurement process was concluded, as evidenced by, among others, the fact that the Notices to Proceed were issued to RMCR Construction only on 15 August 2017, and in three (3) days after the issuance of the Notices to Proceed, it was reported that the projects were already 100% completed, when per the Individual Programs of Work, the estimated duration of the Road Section of the Casiguran-Dilasag Provincial Road alone would take 30 calendar days to finish, to the damage and prejudice of the government.

¹⁴ *Fuentes v. People*, G.R. No. 186421, April 17, 2017

RESOLUTION

People vs. Noveras, et al.
Criminal Case No. SB-18-CRM-0536

Page 8 of 9

X-----X

3. x x x, did then and there willfully, unlawfully and criminally give RMCR and/or Ramos unwarranted benefit, advantage or preference
x x x

A cursory reading of the Information would show that all the elements of violation of Sec. 3(e) of R.A. No. 3019 are sufficiently alleged.

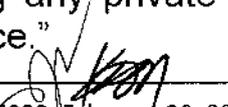
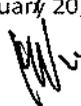
Accused Gerardo A. Noveras argues that the Information is insufficient because it does not allege the element of causing undue injury to any party, including the government. The Court disagrees.

In *Braza v. Sandiganbayan*,¹⁵ the Supreme Court explained that there are two (2) ways by which Sec. 3(e) of R.A. No. 3019 may be violated, and that the accused may be charged under either mode or under both. viz.:

In a catena of cases, this Court has held that there are two (2) ways by which a public official violates Section 3(e) of R.A. No. 3019 in the performance of his functions, namely: (1) by causing undue injury to any party, including the Government; or (2) by giving any private party any unwarranted benefit, advantage or preference. The accused may be charged under either mode or under both. The disjunctive term "or" connotes that either act qualifies as a violation of Section 3(e) of R.A. No. 3019. In other words, the presence of one would suffice for conviction.

It must be emphasized that Braza was indicted for violation of Section 3(e) of R.A. No. 3019 under the second mode. "To be found guilty under the second mode, it suffices that the accused has given unjustified favor or benefit to another, in the exercise of his official, administrative and judicial functions." The element of damage is not required for violation of Section 3(e) under the second mode.

Similarly, herein accused are charged with violation of Sec. 3(e) of R.A. No. 3019 under the second mode. Specifically, the Information alleges that the accused public officers gave RMCR and/or accused private individual Ramos unwarranted benefit, advantage or preference by ensuring the award of the subject contract in favor of RMCR Construction, in the performance of their respective administrative and/or official functions. The Information need not allege "causing undue injury to any party" in addition to the allegation of "giving any private party any unwarranted benefit, advantage or preference."


¹⁵ G.R. No. 195032, February 20, 2013


RESOLUTION

People vs. Noveras, et al.
Criminal Case No. SB-18-CRM-0536

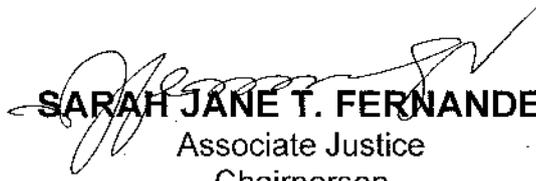
Page 9 of 9

x-----x

WHEREFORE, the Court rules as follows:

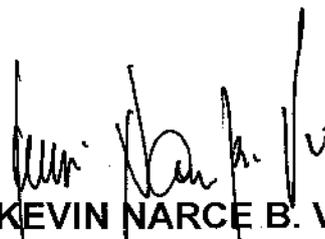
1. The Entry of Appearance of the Medialdea Ata Bello & Suarez law firm; and the respective *Manifestations* of accused Gerardo A. Noveras; of accused Ramos; and of accused Bautista, Isaias A. Noveras, Jr., De Castro, Clemente and Rojo, are hereby NOTED.
2. The *Motion to Quash and Motion for Leave to File and Admit Attached Motion for Reinvestigation* of accused Gerardo A. Noveras, and as adopted by accused Ramos, Bautista, Isaias A. Noveras, Jr. De Castro, Clemente and Rojo, 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