



Republic of the Philippines  
**Sandiganbayan**  
Quezon City

**SIXTH DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
*Plaintiff,*

**SB-18-CRM-0526**

For: Violation of Section 3(e) of  
Republic Act No. 3019, as  
amended

**- versus -**

*Present:*

**FERNANDEZ, SJ, J.**

*Chairperson*

**MIRANDA, J. and**

**VIVERO, J.**

**HERMIS CARLO PEREZ,**  
*Accused.*

*Promulgated:*

**MAR 08 2019**

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**RESOLUTION**

**VIVERO, J.:**

This resolves the *Motion for Reconsideration* dated February 12, 2019,<sup>1</sup> which was filed on February 14, 2019 by the accused after receipt of a copy thereof on February 4, 2019.<sup>2</sup> Accused-movant impugns the correctness of this Court's Resolution.<sup>3</sup> He assails this Court's ruling on the following ground, to wit:

<sup>1</sup> Motion for Reconsideration dated February 12, 2019, of H. C. Perez, pp. 1 - b.

<sup>2</sup> *Ibid.*

<sup>3</sup> Resolution dated January 29, 2019, pp. 1 - 14

([http://sb.judiciary.gov.ph/RESOLUTIONS/2019/A\\_Crim\\_SB-18-CRM-0526\\_People%20vs%20Perez\\_01\\_29\\_2019.pdf](http://sb.judiciary.gov.ph/RESOLUTIONS/2019/A_Crim_SB-18-CRM-0526_People%20vs%20Perez_01_29_2019.pdf))

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“ . . . [This Honorable Court erroneously ruled that the instant criminal action has not been extinguished or has not prescribed.”<sup>4</sup>

Accused-movant asserts that:

“ . . . [I]f the date of the commission of the alleged offense is used as the reckoning date, i.e., from **November 12, 2001 to March 25, 2002** as alleged in the Information, then the subject offense has prescribed when the Information was filed on **October 05, 2018**.

“On the other hand, if the date of discovery of the alleged offense is used as the reckoning period, the above quoted ruling (*PCGG v. Carpio-Morales*, G.R. No. 206357, November 12, 2014<sup>5</sup>) of the Supreme Court applies, thus:

**‘3. In determining whether it is the general rule or the exception that should apply in a particular case, the availability or suppression of the information relative to the crime should first be determined.**

**‘If the necessary information, data, or records based on which the crime could be discovered is readily available to the public, the general rule applies. Prescription shall, therefore, run from the date of the commission of the crime.**

“In this case, it appears from the Resolution rendered by the Ombudsman that:

x x x

‘On **12 November 2001**, the Municipality of Biñan, represented by respondent Mayor Perez, and ECCE, represented by respondent Rojo, executed a Memorandum of Agreement (MOA) to obtain and utilize ECCE’s Hydromex Technology for the municipality’s solid waste management program. . . .

<sup>4</sup> Supra, Note 1, at p. 1.

<sup>5</sup> 740 SCRA 368.



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'The MOA was approved by the SB of Biñan x x x

'On 25 March 2002, an amended MOA was executed x x x'

"x x x

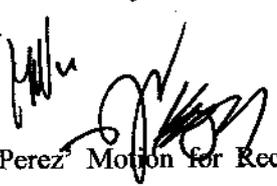
"From these facts, one can readily see that any information relative to the alleged crime were readily available as early as October 1, 2001, when the Sangguniang Bayan of Biñan, Laguna approved the transaction , or as late as March 05, 2002, when the amendment to the subject MOA was done. x x x

"From the foregoing facts, it is moreover clear that there was no concealment of the subject offense from the public x x x.

"Therefore, using the Supreme Court's guideline, as quoted above, that all the necessary information , data or records based on which the alleged crime could have been discovered was already readily available to the public as early ad October 1, 2001 and as late as March 05, 2002, it is humbly submitted that prescription had set in .... x x x." 6

Contrariwise, the prosecution, thru its Comment/Opposition,7 seeks the outright dismissal of accused's motion on both procedural and substantive grounds. Anent the procedural aspect, the prosecution avers that the Motion for Reconsideration was filed out of time.8 With respect to the substantive aspect, the prosecution argues that:

"7. ... [V]iolation of the Anti-Graft and Corrupt Practices Act cannot be discovered until problems arising therefrom become evident. In this case, it was obviously impossible for the State, the aggrieved party, to have known the violations arising from the subject MOA on the very date of the MOA's execution.



6 Supra, Note 1 at pp. 3 – 5.

7 Comment/ Opposition (On accused Hermis Carlo Perez' Motion for Reconsideration dated February 12, 2019), pp. 1 – 6.

8 Ibid..

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"8. Clearly, the prescriptive period for the offense charged should be computed from the discovery of the commission thereof and not from the day of such commission. In the instant case, the prescriptive period for violation of Section 3(e) of Republic Act No. 3019 should be computed from the date of discovery of the irregularities surrounding the execution of the MOA, i.e. absence of public bidding, lack or (sic) recommendation and/or approval of the Bids and Awards Committee, failure to conduct due diligence and background check on the financial qualification and technical capability of ECCE to undertake the project.

"x x x

"12. ... The filing of the Complaint-Affidavit of the private complainants, Lucia L. Salustiano and Jocelyn H. Alfonso, before the Office of the Ombudsman last April 27, 2016 already stopped the running of the period of prescription."<sup>9</sup> (Emphasis and Underscoring Supplied.)

The Court now resolves.

The Motion for Reconsideration was filed beyond the reglementary period. A.M. No. 15-06-10-SC, otherwise known as the Revised Guidelines for Continuous Trial of Criminal Cases<sup>10</sup> strictly provide:

"III. Procedure

"1. x x x

"2. Motions

"(a) x x x

"(b) x x x

<sup>9</sup> Supra, Note 7 at pp. 2, 6.

<sup>10</sup> These Guidelines took effect on September 1, 2017.

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“(c) **Meritorious Motions.** - x x x

“x x x

**“The motion for reconsideration of the resolution of a meritorious motion shall be filed within a non-extendible period of five (5) calendar days from receipt of such resolution,** and the adverse party shall be given an equal period of five (5) calendar days from receipt of the motion for reconsideration within which to submit its comment. x x x

**“Motions that do not conform to the requirements stated above shall be considered unmeritorious and shall be denied outright.**

“(d) x x x

“x x x.” (Emphasis and Underscoring Supplied.)

Conformably with the strictures of the Guidelines quoted above and this Court’s recent ruling in *People v. Arthur C. Yap, et al.*, **SB-18-CRM-0004, February 27, 2019**, this fatal, albeit procedural, infirmity warrants the outright denial of accused’s motion.

Assuming, however, that the *Motion for Reconsideration* was filed on time, it is still DENIED for lack of merit.

Notably, while the *Motion to Quash*<sup>11</sup> filed by accused sought the outright dismissal of the instant case on the two grounds: (1) prescription; and (2) violation of the right of the accused to speedy disposition of cases,<sup>12</sup> the instant *Motion for Reconsideration* is confined solely to the nagging question of whether or not this case is time-barred.

Irrefragably, the 15-year prescriptive period had *not* set in in favor of the accused-movant.

  
<sup>11</sup> Motion to Quash dated October 30, 2018, pp. 1–12 (Record, pp. 159–170).

<sup>12</sup> *Id.*, pp. 1–11.

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In *People v. Pacificador*,<sup>13</sup> the Supreme Court held that Section 2 of Act No. 3326<sup>14</sup> governs the computation of prescriptive period of offenses defined and penalized by special laws. Accordingly, in *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*,<sup>15</sup> the Court ruled that since the law involved, Republic Act No. 3019, is a special law, the applicable rule in the computation of the prescriptive period is that provided in Section 2 of Act No. 3326, to wit:

**Section 2.** Prescription shall begin to run from the day of the commission of the violation of the law, and **IF THE SAME BE NOT KNOWN AT THE TIME, FROM THE DISCOVERY THEREOF AND THE INSTITUTION OF JUDICIAL PROCEEDINGS FOR ITS INVESTIGATION** and punishment.

**THE PRESCRIPTION SHALL BE INTERRUPTED WHEN PROCEEDINGS ARE INSTITUTED AGAINST THE GUILTY PERSON**, and shall begin to run again if the proceedings are dismissed for reasons not constituting double jeopardy. (Capitalization Supplied.)

In this connection, although the Revised Penal Code (RPC) expressly states in Article 10 thereof that “[o]ffenses which are or in the future may be punishable under special laws are not subject to the provisions of [the RPC],” it likewise provides that “the RPC shall be supplementary to such laws, unless the latter should specially provide the contrary.” Verily, in a long line of court decisions,<sup>16</sup> provisions of the RPC have been applied suppletorily to

<sup>13</sup> G.R. No. 139405. March 13, 2001 (406 Phil. 774).

<sup>14</sup> An Act To Establish Periods of Prescription for Violations Penalized by Special Acts and Municipal Ordinances and To Provide When Prescription Shall Begin To Run.

<sup>15</sup> *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, G.R. No. 130817, August 22, 2001 (363 SCRA 489, 493; 415 Phil. 723, 729).

<sup>16</sup> In *People v. Parel* [44 Phil. 437 (1923)], Article 22 of the RPC, which concerns the retroactive effect of penal laws if they favor the accused, was applied suppletorily by the Court to violations of Act No. 3030, the Election Law; In *U.S. v. Ponte* [20 Phil. 379 (1911)], Article 17 of the RPC, regarding the participation of principals in the commission of a crime, was applied suppletorily in the case of misappropriation of public funds as defined and penalized under Act No. 1740; In *U.S. v. Bruhez* [28 Phil. 305 (1914)], Article 45 of the RPC, which concerns the confiscation of the instruments used in a crime, was applied in the case for violation of Act No. 1461, the Opium Law; In *People v. Moreno* [60 Phil. 712 (1934)], the Court applied suppletorily Article 39 of the RPC on subsidiary penalty to cases of violations of Act No. 3992, or the Revised Motor Vehicle Law; In *People v. Li Wai Cheung* [G.R. Nos.

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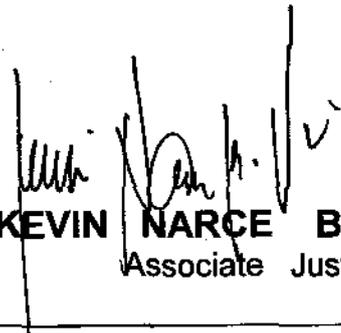
resolve cases where special laws are silent on the matters in issue. The law on the applicability of Article 10 of the RPC is thus well-settled. To be sure, however, the instant case does not call for the suppletory application of Article 91 of the RPC.

No new legal issues have been raised herein. Also, the averments in the motion for reconsideration consist mainly of a reiteration or rehash of arguments already submitted to and pronounced without merit by this Court in its assailed Resolution. For these reasons, the Court sees no need to belabor the issue any further.

All told, after a second hard look at the issue raised by the accused-movant, this Court sees no substantial and compelling reason to warrant the reversal of the assailed Resolution.

**WHEREFORE**, the instant motion is **DENIED** for lack of merit. This Court's Resolution dated January 29, 2019, is hereby **AFFIRMED IN TOTO**.

**SO ORDERED.**

  
**KEVIN NARCE B. VIVERO**  
Associate Justice

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90440-42, 13 October 1992, 214 SCRA 504], the Court applied suppletorily the rules on the service of sentences provided in Article 70 of the RPC in favor of the accused who was found guilty of multiple violations of R.A. No. 6425, or the Dangerous Drugs Act of 1972; In *People v. Chowdury* [382 Phil. 459 (2000)], the Court applied suppletorily Articles 17, 18 and 19 of the RPC to define the words principal, accomplices and accessories under R.A. No. 8042, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995, because said words were not defined therein, although the special law referred to the same terms in enumerating the persons liable for the crime of illegal recruitment; In *Yu v. People* [G.R. No. 134172, 20 September 2004, 438 SCRA 431], the Court applied suppletorily the provisions on subsidiary imprisonment under Article 39 of the RPC to *Batas Pambansa (B.P.) Blg. 22*, otherwise known as the Bouncing Checks Law; In *Ladonga v. People* [G.R. No. 141066, 17 February 2005, 451 SCRA 673], the Court applied suppletorily the principle of conspiracy under Article 8 of the RPC to *B.P. Blg. 22* in the absence of a contrary provision therein; In the more recent case of *Go-Tan v. Tan* [G.R. No. 168852, 30 September 2008], the principle of conspiracy under Article 8 of the RPC was applied suppletorily to Republic Act No. 9262, otherwise known as the Anti-Violence Against Women and Their Children Act of 2004.



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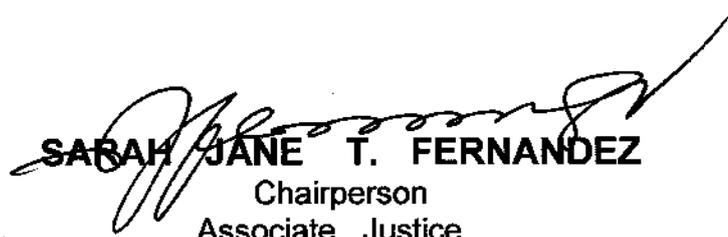
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**We concur:**

  
**SARAH JANE T. FERNANDEZ**  
Chairperson  
Associate Justice

  
**KARL B. MIRANDA**  
Associate Justice