



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 -

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

GERARDO A. NOVERAS,
ET AL.,

Accused.

Promulgated:

MAR 01 2019

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves the Motion for Reconsideration (Re: Resolution
dated 14 January 2019)1 filed by accused Gerardo A. Noveras.

Accused Gerardo A. Noveras seeks the reversal of the
Resolution dated January 14, 2019,2 and prays that a new one granting
his Motion to Quash and Motion for Leave to File and Admit Attached
Motion for Reinvestigation be issued. He argues:

- 1. In several cases, the Supreme Court unqualifiedly declared that
one of the elements of violation of Sec. 3(e) of Republic Act No.
3019 (R.A. No. 3019) is that "such injury is caused by giving
unwarranted benefits, advantage or preference to such parties."

1 Dated January 23, 2019; Record, pp. 407-420

2 Record, pp. 392-400

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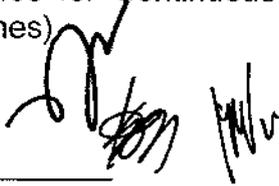
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2. The allegation of unwarranted benefits, advantage or preference to any party is not enough. It must also be alleged that the same must cause undue injury to any party.
3. The varied rulings of the Supreme Court create a doubt, and such doubt should not work to his detriment and prejudice. It is basic in criminal law that doubts should be resolved liberally in favor of the accused and strictly against the government.
4. Assuming that the allegation of unwarranted benefits is sufficient, such unwarranted benefit must be quantified.
5. His *Motion for Leave to File and Admit Attached Motion for Reinvestigation* (Motion for Leave) should not have been denied because it was grounded not only on the credibility of private complainant Rodante A. Tolentino, and his innocence, but it would also negate the Office of the Ombudsman's finding of probable cause.
6. He is entitled to a reinvestigation because the affidavits executed by Engr. Arcega and Mr. Vallejos are in the nature of newly discovered evidence.
7. His Motion for Leave was filed on the same day said affidavits were executed. He could not be expected to file his Motion within the prescribed period because said evidence had not yet existed as of that time.

Accused Ricardo Q. Bautista, Isaias A. Noveras, Jr., Simeon A. De Castro, Norma A. Clemente, Benedicto S. Rojo, and Manding Claro R. Ramos manifested³ that they are adopting the *Motion for Reconsideration* of accused Gerardo A. Noveras as their own.

In its *Comment/Opposition (To Accused Gerardo A. Noveras' Motion for Reconsideration)*,⁴ the prosecution counters:

1. Accused Gerardo A. Noveras' Motion was filed out of time because it was filed a day after the non-extendible five-day period for filing a motion for reconsideration under the *Revised Guidelines for Continuous Trial of Criminal Cases* (Revised Guidelines)



³ *Manifestation and Motion* dated January 24, 2019, Record, pp. 421-423 (accused Bautista, Isaias A. Noveras, Jr., De Castro, Clemente and Rojo); *Manifestation and Motion* dated February 2, 2019, Record, pp. 432-433 (accused Ramos)

⁴ Dated February 7, 2019; Record, pp. 446-452

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2. Likewise, accused Bautista, et al., and accused Ramos' respective Manifestations and Motions were filed one day after the lapse of the non-extendible five-day period.
3. In *Cabrera v. Sandiganbayan*, the Supreme Court *en banc* categorically declared as untenable therein petitioners' contention that the giving of unwarranted benefits, advantage or preference is only a mode of causing undue injury.
4. There are two (2) modes by which Sec. 3(e) of R.A. No. 3019 may be violated. The accused may be charged under either or both. Here, the accused are charged under the second mode, *i.e.*, by giving any private party any unwarranted benefit, advantage or preference.
5. Accused Gerardo A. Noveras' arguments with respect to his Motion for Leave are a mere rehash of his submissions in said Motion for Leave. The Court had already passed upon such arguments and found them to be without merit in the assailed Resolution.

THE COURT'S RULING

This Court finds that accused Gerardo A. Noveras' *Motion for Reconsideration* was timely filed, contrary to the prosecution's claim. Said accused received a copy of the assailed Resolution on January 18, 2019, and he filed his Motion on January 23, 2019.⁵

Regardless of the timeliness of the filing of the accused' respective Motions and Manifestations, this Court resolves to deny the accused' *Motion for Reconsideration* for being bereft of merit.

Accused Gerardo A. Noveras insists that the only mode by which Sec. 3(e) of R.A. No. 3019 may be violated is by causing undue injury, with the giving of unwarranted benefits, advantage or preference merely being a mode of causing undue injury. He further argues that assuming that the allegation of the giving of unwarranted benefits, advantage or preference is sufficient, the same must be quantified. This Court is not persuaded.

The matter has already been long settled in *Cabrera v. Sandiganbayan*.⁶ In that case, the Supreme Court *en banc*

⁵ Record, p. 407

⁶ G.R. Nos. 162314-17, October 25, 2004

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categorically declared that there are two (2) ways by which a public official violates Sec. 3(e) of R.A. No. 3019, and that the accused may be charged under either mode or both, as connoted by the disjunctive term "or." It then rejected therein petitioners' argument—which is the very same argument being raised by accused Gerardo A. Noveras—that Sec. 3(e) of R.A. No. 3019 may be committed only by causing undue injury. The pertinent portion of the High Court's Decision reads:

There are two (2) ways by which a public official violates Section 3(e) of Rep. Act No. 3019 in the performance of his functions, namely: (a) by causing undue injury to any party, including the Government; or (b) by giving any private party any unwarranted benefit, advantage or preference. The accused may be charged under either mode or both. In Quibal v. Sandiganbayan, the Court held that the use of the disjunctive term "or" connotes that either act qualifies as a violation of Sec. 3(e) of Rep. Act No. 3019.

In fine, the delictual act of the accused may give rise to or cause either an undue injury to any party, including the government; or the giving to any private party unwarranted benefits, advantage or preference, or both undue injury and unwarranted benefits, advantage or preference. As explained by the Court in *Bautista v. Sandiganbayan*:

x x x

We note that, as pointed out by the petitioners, the Court held in *Mendoza-Arce* and other cases that the essential elements for violation of Section 3(e) of Rep. Act No. 3019 are the following:

x x x

- 4. Such undue injury is caused by giving unwarranted benefits, advantage or preference to such parties; and

x x x

The petitioners posit that, as gleaned from the enumerations by the Court of the essential elements of the crime, the only mode by which a public officer may commit a crime for violation of Section 3(e) of Rep. Act No. 3019 is by causing undue injury to any party, both the government or private party, the giving of unwarranted benefits, advantage or preference to such party being only a mode of causing such undue injury, which is inconsistent with the rulings of this Court in *Jacinto, Santiago, Bautista* and other cases.

We find the contention of the petitioners to be untenable. For one thing, we have reviewed the rulings of the Court in *Mendoza-Arce* and kindred cases and find that the issue of whether or not

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violation of Section 3(e) of Rep. Act No. 3019 may be committed only by causing undue injury to the government or to a private individual, the giving of unwarranted benefits, advantage or preference being only a mode of causing undue injury to the government or to a private party had not been raised therein, nor resolved by the Court. In any event, the ruling in this case has categorized any perceived inconsistencies spawned by the rulings of the Court in Mendoza-Arce and other cases and those in Jacinto, Santiago, Evangelista, Quibal and Bautista.

(underscoring supplied)

Next, accused Gerardo A. Noveras' contention that the Information is insufficient because it does not allege the quantification of the unwarranted benefit is similarly untenable. First, what must be specified, quantified and proven to the point of moral certainty is "undue injury."⁷ Second, even assuming that the unwarranted benefits, advantage or preference must be "specified, quantified and proven to the point of moral certainty," the prosecution is not required to do so at this stage of the proceedings. In *People v. Sandiganbayan*,⁸ the Supreme Court clarified that this has to be done during the trial. It ratiocinated:

Indeed, this Court held in *Llorente* that the "undue injury must be specified, quantified and proven to the point of moral certainty." The validity and sufficiency of the Information, however, was not an issue in *Llorente*. The import of the ruling therein is that proof of undue injury must be established by the prosecution **during the trial** and not when the Information is filed. Nowhere in *Llorente* did we require that undue injury be specified, quantified and proved to the point of moral certainty at the time of the filing of the Information. Such an interpretation would effectively require the prosecution to include all the relevant evidence in the Information and to present such evidence of undue injury even prior to arraignment. Moreover, under the Sandiganbayan's interpretation of *Llorente*, the accused would be required to face (and even rebut) the evidence as soon as the Information is filed and even before he pleads. This runs counter to the function of a motion to quash as a remedy afforded an accused *before he proceeds to trial*.

Further, such an interpretation would undermine the value of the Information as a tool for an accused to understand the crime for which he is being charged as it requires that the Information already contain a long and detailed list of other matters not necessary in informing the accused of the charge. It will also be prejudicial to the

⁷ Please see *Llorente v. Sandiganbayan*, G.R. No. 122166, March 11, 1998

⁸ G.R. No. 160619, September 9, 2015

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prosecution who will then be forced to present evidence even before the trial proper. This interpretation cannot be countenanced.

(underscoring supplied)

The rest of accused Gerardo A. Noveras' arguments are nothing but a reiteration or rehash of those in his Motion for Leave. This Court had already considered such arguments and found them to be without merit in the assailed Resolution. Thus, it is unnecessary to discuss them anew.

In *Komatsu Industries (Phils.) Inc. v. Court of Appeals*,⁹ it was held:

In the same manner, we readily found that, despite the lengthy and repetitious submissions of petitioner in its pleadings filed with this Court as earlier enumerated, all the arguments therein are also mere rehashed versions of what it posited before respondent court. We have patiently given petitioner's postulates the corresponding thorough and objective review but, on the real and proper issues so completely and competently discussed and resolved by respondent court, petitioner's obvious convolutions of the same arguments are evidently unavailing. x x x

The pertinent portion¹⁰ of the assailed Resolution is hereunder quoted for convenience:

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* (Revised Guidelines) reads:

III. Procedure

x x x

2. Motions

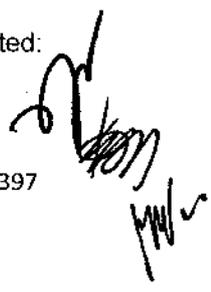
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(b) *Prohibited Motions.* – Prohibited motions shall be denied outright before the scheduled arraignment without need of comment and/or opposition.

The following motions are prohibited:

⁹ G.R. No. 127682, April 24, 1998

¹⁰ Resolution dated January 14, 2019, pp. 4-6; Record, pp. 395-397



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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, 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* provides:

x x x

Here, accused Gerardo A. Noveras received a copy of the Consolidated Resolution dated April 3, 2018 on June 5, 2018. 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, and that their motions for reconsideration had been denied in the Order dated June 28, 2018.

In fine, this Court finds no justification for the reversal or modification of the assailed Resolution.

A handwritten signature in black ink, appearing to be a stylized name, possibly 'M. Tolentino', written over the bottom right portion of the text.

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WHEREFORE, the Court rules as follows:

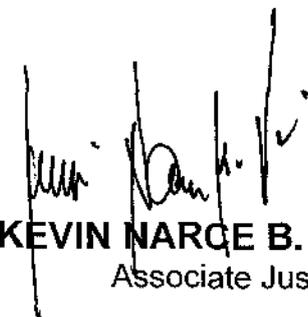
1. The *Motion for Reconsideration* of accused Gerardo A. Noveras is hereby DENIED for lack of merit.
2. The *Motion for Reconsideration* of accused Bautista, Isaias A. Noveras, Jr., De Castro, Clemente and Rojo is hereby DENIED for lack of merit.
3. The *Motion for Reconsideration* of accused Ramos 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