



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

Third Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Crim. Case No.
SB-17-CRM-2081
*For: Violation of Section
Section 3(e), R.A. No.
3019, as amended*

-versus-

**TOMASA LUGA GUARDO,
ET AL.,**
Accused.

Present:

Cabotaje-Tang, A.M., *PJ,*
Chairperson
Fernandez, B.R., *J.* and
Moreno, R.B. *J.*

PROMULGATED:

FEBRUARY 3, 2021

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RESOLUTION

Moreno, J.:

For resolution are the *Motion (To Enter Into Plea Bargain)*¹ filed by accused Augusto M. Duero, Marilou C. Cosmiano, Ruben A. Liwagon, D U. Pasco, George R. Arreza, Anita L. Paradiang, Reynaldo A. Orpina, Marlyn R. Plaza, Luis A. Daano and Eutemio P. Urbiztondo dated February 4, 2020; and the *Verified Motion (To Allow Accused Ronaldo M. Gruyal to Enter Into*

¹ Record, vol. VII, pp. 523-540.

Plea Bargaining Agreement)² dated February 8, 2020 filed by Ronaldo M. Gruyal. The prosecution (through the Office of the Special Prosecutor) filed its *Consolidated Comment on the Proposed Plea Bargaining*³ on December 2, 2020.

In their Motion, accused Duero, et al. prayed that they be allowed to withdraw their earlier plea of 'not guilty' for the charge of violation of Section 3(e) of Republic Act No. 3019, as amended; and to enter their guilty plea to the lesser offense of *Failure of accountable officer to render accounts* under Article 218 of the Revised Penal Code. Accordingly, they prayed that a fine of only ₱1,000.00 be imposed on them.

Duero, et al. stated that they wanted to save time and valuable resources of this Court and the prosecution. They added that they found it "difficult to sustain the rigors of the trial taking into account their fragile ages, the distance they have to travel from Cantilan, Surigao del Sur to Quezon City, not to mention the expenses they incurred and will be incurring in the process."⁴

To support their motion, Duero, et al. also enumerated several circumstances for the Court's consideration, as follows: that they were all first-time offenders; they voluntarily surrendered after the filing of the Information against them; the amount disallowed in audit (i.e., ₱220,000.00) was only minimal; there is no clear showing of undue injury; lack of proof that the movants benefitted from the disallowed amount; and the accused-movants intended to pay the disallowed amount.

For his part, accused Gruyal prayed in his *Verified Motion* x x x that he be allowed to withdraw his earlier 'not guilty' plea for the charge of violation of Section 3(e) of Republic Act No. 3019, as amended, and enter a plea of guilty to the lesser offense of *Failure of accountable officer to render accounts* under Article 218 of the Revised Penal Code. He also prayed that only a fine (i.e., ₱3,000.00) be imposed on him.

In its *Consolidated Comment* x x x,⁵ the People of the Philippines (through the Office of the Special Prosecutor), on the basis of its approved OSP Memorandum approved by the Ombudsman, stated that "it does not interpose objection to the proposed plea bargaining of the accused movants, subject to the following conditions"⁶:

- All the accused movants will plead guilty to the lesser offense of Frauds Against Public Treasury and Similar

² *Id.* at 564-575.

³ *Id.* at 252-270.

⁴ *Supra*, note 1 at 525.

⁵ Record, vol. VIII, pp. 344-367.

⁶ *Id.* at 363-364.

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Offenses, defined and penalized under paragraph 1 of Article 213 of the Revised Penal Code;

- All the accused movants, including accused Gruyal, will restitute the entire amount of Two Hundred Twenty Thousand Pesos (₱220,000.00), as alleged in the Information, in favor of the government; and
- All the accused movants will be sentenced to suffer the penalty of *prision correccional* in its medium period to *prision mayor* in its maximum period, or a fine ranging from ₱200 to ₱10,000.00, or both.

In their *Manifestation*,⁷ accused Duero, et al. expressed their conformity to the prosecution's recommendations, "subject to the additional plea that the penalty to be imposed shall be a fine of ₱1,000 each, with subsidiary penalty in case of insolvency, in accordance with the ruling of this Court in *People of the Philippines v. Espitacion Encallado, et al.* x x x, taking into account the spirit of Christmas and that all of them are first-time offenders."⁸

In his *Verified Manifestation*,⁹ Gruyal likewise expressed his consent to plead guilty to the lesser offense of Frauds against the public treasury and similar offenses under Article 213 of the Revised Penal Code. Gruyal reiterated his prayer that he be meted out with a penalty of fine only (in the amount of ₱3,000.00 or such amount that this Court deems appropriate), but asked that he be excluded from restituting the entire amount of ₱220,000.00.¹⁰

THE COURT'S RULING:

After due consideration, we **GRANT** the motions of the accused-movants to enter into a plea bargaining agreement.

Plea bargaining has been defined as a process whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval. The essence of the agreement is that both the prosecution and the defense make concessions to avoid potential losses.¹¹

Plea bargaining is a vital component of restorative justice. In giving preference to working out a mutually satisfactory resolution of the case

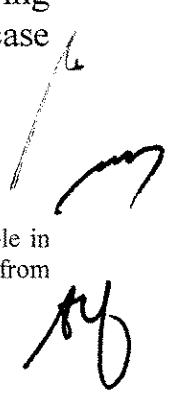
⁷ Dated December 7, 2020; Record, vol. VIII, pp. 392-399.

⁸ *Id.* at 393.

⁹ *Id.* at 400-403.

¹⁰ Gruyal stated that he was not one of those declared by the COA as among the persons liable in COA Decision No. 2012-121 for the disallowed amount; and that the Court of Appeals absolved him from liability on the transaction subject of the present case.

¹¹ See *Estipona, Jr. v. Hon. Lobrigo*, G.R. No. 226679, August 15, 2017.



sanctioned by the court over lengthy and protracted trial, both the state and the accused benefit. The plea bargaining mechanism affords speedy disposal and cost efficiency which significantly contribute to the restorative justice process.¹²

Nonetheless, a plea bargain still requires mutual agreement of the parties and remains subject to the approval of the court. The acceptance of an offer to plead guilty to a lesser offense is not demandable by the accused as a matter of right but is a matter addressed entirely to the sound discretion of the trial court.¹³

Section 2, Rule 116 of the Rules of Court expressly states:

Sec 2. Plea of guilty to a lesser offense. - At arraignment, the accused, with the consent of the offended party and the prosecutor, may be allowed by the trial court to plead guilty to a lesser offense which is necessarily included in the offense charged. After arraignment but before trial, the accused may still be allowed to plead guilty to said lesser offense after withdrawing his plea of not guilty. No amendment of the complaint or information is necessary.

Section 2, Rule 116 of the Rules of Court presents the basic requisites upon which plea bargaining may be made, *i.e.*, that it should be with the consent of the offended party and the prosecutor, and that the plea of guilt should be to a lesser offense which is necessarily included in the offense charged. The rules however use the word *may* in the second sentence of Section 2, denoting an exercise of discretion upon the trial court on whether to allow the accused to make such plea. Trial courts are exhorted to keep in mind that a plea of guilty for a lighter offense than that actually charged is not supposed to be allowed as a matter of bargaining or compromise for the convenience of the accused.¹⁴

Section 5, Rule 120 of the Rules of Court states when an offense includes or is included in the other, as follows:

SEC. 5. When an offense includes or is included in another. -- An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter.

An offense may be said to necessarily include another when some of the essential elements or ingredients of the former as alleged in the complaint or information constitute the latter. And vice versa, an offense

¹² See *Nurullaje Sayre y Malampad v. Hon. Dax Gonzaga Xenos*, G.R. Nos. 244413 and 244415-16, February 18, 2020.

¹³ *Id.*, citing *Daan v. Sandiganbayan*, 573 Phil. 368, 377 (2008).

¹⁴ See *Joselito Raniera Daan v. Hon. Sandiganbayan*, G.R. Nos. 163972-77, March 28, 2008.

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may be said to be necessarily included in another when the essential ingredients of the former constitute or form part of those constituting the latter.¹⁵

For purposes of plea bargaining, Section 2 of Rule 116 does not require that the existence of the elements be met exactly; it would suffice that some or few of its elements be included.

In the present case, the accused had been charged with violation of Section 3(e) of R.A. No. 3019, as amended. A violation under this provision requires that: (1) the accused is a public officer discharging administrative, judicial or official functions; (2) the accused acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (3) the accused caused undue injury to any party including the Government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.¹⁶

On the other hand, Article 213 of the Revised Penal Code (to which the accused consented to enter a plea of guilty to) reads:

Art. 213. *Frauds against the public treasury and similar offenses.*—The penalty of *prision correccional* in its medium period to *prision mayor* in its minimum period, or a fine ranging from 200 to 10,000 pesos, or both, shall be imposed upon any public officer who:

In his official capacity, in dealing with any person with regard to furnishing supplies, the making of contracts, or the adjustment or settlement of accounts relating to public property or funds, shall enter into an agreement with any interested party or speculator or make use of any other scheme, to defraud the Government;

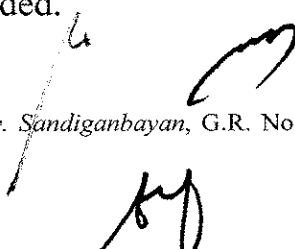
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The elements of frauds against public treasury are as follows: (a) that the offender be a public officer; (b) that he should have taken advantage of his office, that is, he intervened in the transaction in his official capacity; (c) that he entered into an agreement with any interested party or speculator or made use of any other scheme with regard to furnishing supplies, making of contracts or the adjustment or settlement of accounts relating to public property or funds; and (d) that the accused had intent to defraud the government.

A reading of the aforementioned elements would lead to no other conclusion that the crime of frauds against public treasury under Article 213 of the RPC is necessarily included in the offense charged, that is, violation of Section 3(e) of R.A. No. 3019, as amended.

¹⁵ Ibid.

¹⁶ See *Danilo O. Garcia and Joven SD. Brizuela v. Sandiganbayan*, G.R. No. 197204, March 26, 2014.



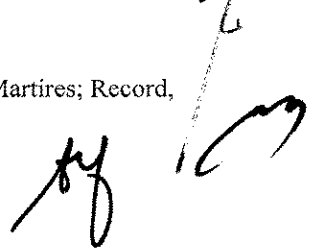
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We recall that the Amended Information alleged that the accused Municipal officials, as public officers, acting with manifest partiality, evident bad faith or gross inexcusable negligence, conspired with the President of Golden Harvest Global Corporation (accused Joseph Sy) by awarding the contract for the purchase of one (1) unit 65 horsepower farm tractor, and causing the payment of ₱2.2 million despite various irregularities in the bidding process, and causing injury to the Government in the amount of ₱220,000.00. Verily, the allegations in the Information filed are sufficient to hold the accused-movants liable for the lesser offense, *viz*:

1. The herein accused are all public officers of the Municipality of Cantillan, Surigao del Sur x x x x
2. The herein accused took advantage of their respective official positions, that is, they intervened in the transaction in their official capacities by facilitating the purchase of one unit 65 horsepower farm tractor by the LGU Cantilan from Golden Harvest Global Corporation in the discharge of their respective official functions;
3. The herein accused awarded the contract to Golden Harvest Global Corporation, and entered into an agreement with the latter thru its President, accused Joseph Sy, for the purchase of one unit 65 horsepower (HP) farm tractor and caused payment to the said corporation in the amount of x x x P2,200,000.00);
4. The herein accused had intent to defraud the government considering the following attendant irregularities in the purchase of the subject 65 horsepower (HP) farm tractor, thus: (a) failing to conduct a post-qualification prior to the declaration of the winning bidder in violation of the provision of Republic Act No. 9184 x x x ; (b) entrusting the custody of the second envelope of Golden Harvest Global Corporation pending resolution of its motion for reconsideration to the Assistant Municipal Treasurer who is not a BAC member in violation of Section 30.3 Rule IX of the IRR of R.A. No. 9184; and (c) accepting the 65 hp farm tractor delivered by accused JOSEPH SY and certifying that it complied with the required specifications of 18 forward and 2 reverse transmission gears and 1972 kg. lifting capacity, when in fact, the 65 hp farm tractor delivered by Golden Harvest Global Corporation has only 8 forward and 2 reverse transmission gears and 1372 kg. lifting capacity, thereby defrauding the government in the amount of Two Hundred and Twenty Thousand Pesos x x x as computed by the Commission on Audit.¹⁷

In light of the conformity of the prosecution to the movants' motion, and the corresponding agreement of the latter to the crime to which they

¹⁷ See Memorandum dated July 30, 2020, approved by Ombudsman Samuel R. Martires; Record, vol. VIII, pp. 350-365.

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would enter a guilty plea to, we approve the motions to enter into a plea bargaining agreement.

We highlight that the prosecution's agreement on the withdrawal on Gruyal's guilty plea includes with it the recommendation that he be included in the restitution of ₱220,000.00. We reiterate that the acceptance of an offer to plead guilty to a lesser offense is a matter addressed entirely to the sound discretion of the trial court. Corollarily, this Court is not bound by the findings of the COA or the CA on his supposed non-liability on the disallowed amount. Since the prosecution's conformity to Gruyal's motion to enter into a plea bargaining agreement is also conditioned on his inclusion in the restitution, Gruyal's would-be plea of guilty to the lesser offense will necessarily have to include this particular condition.

WHEREFORE, premises considered, the *Motion (To Enter Into Plea Bargain)* filed by accused Augusto M. Duero, Marilou C. Cosmiano, Ruben A. Liwagon, D U. Pasco, George R. Arreza, Anita L. Paradiang, Reynaldo A. Orpina, Marlyn R. Plaza, Luis A. Daano and Eutemio P. Urbiztondo dated February 4, 2020; and the *Verified Motion (To Allow Accused Ronaldo M. Gruyal to Enter Into Plea Bargaining Agreement)*¹⁸ dated February 8, 2020 filed by Ronaldo M. Gruyal are hereby **GRANTED**.

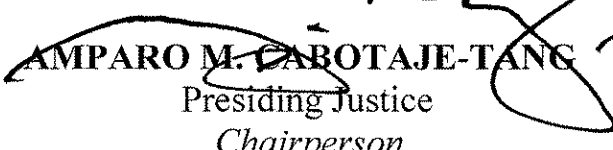
Set the re-arraignment of accused-movants on February 26, 2021 at 8:30 a.m., at the 3rd Division Court Room, Sandiganbayan Centennial Building, Quezon City.

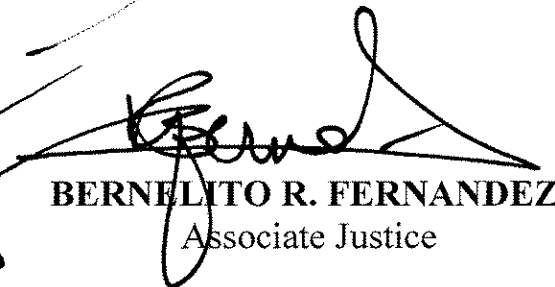
SO ORDERED.

Quezon City, Philippines.


RONALD B. MORENO
Associate Justice

WE CONCUR:


AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson


BERNELITO R. FERNANDEZ
Associate Justice

¹⁸ *Id.* at 564-575.