



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE Criminal Case NO. **SB-19-
PHILIPPINES,** **CRM-0099**
Plaintiff, For: *Violation of Section 3(e),
Republic Act (R.A.) No.
3019, as amended*

- versus -

**ORVILLE FUA Y ANO-OS, ET.
AL.,**

Accused.

Present:

CABOTAJE-TANG, P.J.,
Chairperson,
B. FERNANDEZ, J. and
R. MORENO, J.

Promulgated:

MARCH 5, 2021

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RESOLUTION

CABOTAJE-TANG, P.J.:

For resolution is accused Orville A. Fua, Rose Maria V. Tomogsoc, Ivan Y. Marchan, Natalio B. Jumawan, Jr., and Sue Agnes A. Castillon's *Motion to Allow Accused to Plea Bargain to a Lower Offense* dated February 10, 2021.¹

Accused-movants Fua, *et al.* pray that (1) they be allowed to enter into plea bargaining to the lower offense of Violation of

¹ pp. 153-157, Vol. II, Record

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Section 108, Presidential Decree (P.D.) No. 1445,² (2) the mitigating circumstance of voluntary surrender be appreciated in their favor, and (3) the penalty of fine be imposed upon them.³

The accused-movants claim that upon reflection on the uncertainties of life during the COVID-19 pandemic, they have come to realize that nothing is more precious than living a quiet uncomplicated life. Thus, they wish to put an end to the issues and stress of this case, not to mention the expenses to be incurred in a full-blown litigation. They submit that pleading guilty to a lower offense will work out a mutually satisfactory disposition that serves the ends of the prosecution, the accused, and the Court. Moreover, they pray for the imposition of the penalty of fine only in view of the mitigating circumstance of voluntary surrender.⁴

In its *Opposition* dated February 15, 2021,⁵ the prosecution submits that the accused have no constitutional right to plea bargain and that the prosecutor's duty is to always prosecute the proper offense, not any lesser or graver one, based on what the evidence on hand can sustain.⁶

It further claims that in praying for the imposition of fine only for the proposed lesser offense, the accused-movants are, in effect, imposing upon the Court a conditional plea of guilty. Furthermore, the imposition of the penalty of mere fine will only serve to trivialize the seriousness of the charges against the accused and will set to naught the deterrent value of the laws intended to curb graft and corruption in the government.⁷

² Government Auditing Code of the Philippines

³ p. 156, *Id*

⁴ p. 155, *Id*

⁵ pp. 238-248, *Id*

⁶ p. 240, *Id*

⁷ pp. 241-242, *Id*

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Finally, it submits that there is sufficient evidence to sustain a conviction for violation of Section 3(e) of R.A. No. 3019.

THE RULING OF THE COURT

The Court finds the subject *motion* unmeritorious.

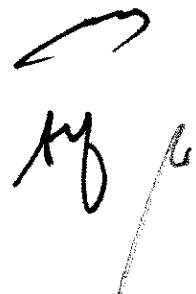
Plea bargaining is governed by Section 2, Rule 116 of the Rules of Court which reads:

Section 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.

Thus, for an accused to be allowed to plead guilty to a lesser offense, the concurrence of the following requirements is required:

1. The plea of guilty to a lesser offense should be with the consent of the offended party and the prosecutor; and
2. The plea of guilt should be to a lesser offense which is necessarily included in the offense charged.⁸

⁸ *Daan v. Sandiganbayan*, 573 Phil. 368-383 (2008)



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A careful evaluation of the record shows that the above requisites are not present in this case.

First. The prosecution has not given its consent to the plea bargaining. In fact, it opposes the accused-movants' motion to be allowed to plead to a lesser offense. It is well-settled that the acceptance of an offer to plead guilty is not a demandable right as the accused has no constitutional right to plea bargain.⁹ In other words, the prosecutor is not duty bound to accept an offer of the accused to plea bargain. As pointed out by the prosecution, its duty is to always prosecute the proper offense, not any lesser or graver one, based on the evidence on hand.

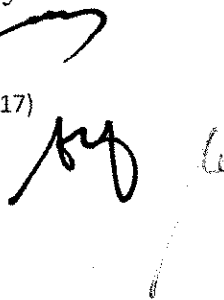
In *Estipona v. Lobrigo*,¹⁰ the Supreme Court explained at length the crux of plea bargaining in our jurisdiction, viz:

In this jurisdiction, 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." There is give-and-take negotiation common in plea bargaining. The essence of the agreement is that both the prosecution and the defense make concessions to avoid potential losses. Properly administered, plea bargaining is to be encouraged because the chief virtues of the system — speed, economy, and finality — can benefit the accused, the offended party, the prosecution, and the court.

Considering the presence of mutuality of advantage, the rules on plea bargaining neither create a right nor take away a vested right. Instead, it operates as a means to implement an existing right by regulating the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for a disregard or infraction of them.

⁹ *Estipona v. Lobrigo*, 816 Phil. 789-820 (2017)

¹⁰ *Id.*



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The decision to plead guilty is often heavily influenced by the defendant's appraisal of the prosecution's case against him and by the apparent likelihood of securing leniency should a guilty plea be offered and accepted. In any case, whether it be to the offense charged or to a lesser crime, a guilty plea is a "serious and sobering occasion" inasmuch as it constitutes a waiver of the fundamental rights to be presumed innocent until the contrary is proved, to be heard by himself and counsel, to meet the witnesses face to face, to bail (except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong), to be convicted by proof beyond reasonable doubt, and not to be compelled to be a witness against himself.

Yet a defendant has no constitutional right to plea bargain. No basic rights are infringed by trying him rather than accepting a plea of guilty; the prosecutor need not do so if he prefers to go to trial. Under the present Rules, the acceptance of an offer to plead guilty is not a demandable right but depends on the consent of the offended party and the prosecutor, which is a condition precedent to a valid plea of guilty to a lesser offense that is necessarily included in the offense charged. The reason for this is that the prosecutor has full control of the prosecution of criminal actions; his duty is to always prosecute the proper offense, not any lesser or graver one, based on what the evidence on hand can sustain.

The plea is further addressed to the sound discretion of the trial court, which *may* allow the accused to plead guilty to a lesser offense which is necessarily included in the offense charged. The word *may* denotes 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

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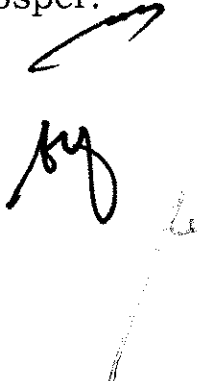
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matter of bargaining or compromise for the convenience of the accused.

Plea bargaining is allowed during the arraignment, the pre-trial, or even up to the point when the prosecution already rested its case. As regards plea bargaining during the pre-trial stage, the trial court's exercise of discretion should not amount to a grave abuse thereof. [...]

If the accused moved to plead guilty to a lesser offense subsequent to a bail hearing or after the prosecution rested its case, the rules allow such a plea only when the prosecution does not have sufficient evidence to establish the guilt of the crime charged. The only basis on which the prosecutor and the court could rightfully act in allowing change in the former plea of not guilty could be nothing more and nothing less than the evidence on record. As soon as the prosecutor has submitted a comment whether for or against said motion, it behooves the trial court to assiduously study the prosecution's evidence as well as all the circumstances upon which the accused made his change of plea to the end that the interests of justice and of the public will be served. The ruling on the motion must disclose the strength or weakness of the prosecution's evidence. Absent any finding on the weight of the evidence on hand, the judge's acceptance of the defendant's change of plea is improper and irregular.¹¹

Prescinding therefrom, it is clear that the prosecutor's consent is a condition precedent to a valid plea of guilt to a lesser offense. Without such consent, a plea bargain offer from the accused will not prosper.



¹¹ Emphasis supplied

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Second. The lesser offense to which the accused wish to plead guilty to is not an offense necessarily included in the offense charged.

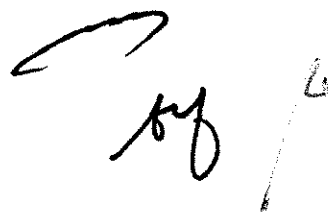
Section 5, Rule 120 of the Rules of Court explains when an offense includes or is included in another offense, viz:

Section. 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.

In this case, the accused-movants are charged with Violation of Section 3(e) of R.A. No. 3019, to wit:

Section 3. *Corrupt practices of public officers.* In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and hereby declared to be unlawful:

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government

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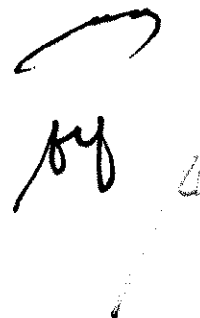
corporations charged with the grant of licenses or permits or other concessions.

On the other hand, Section 108 of P.D. No. 1445, to which the accused wish to plead guilty to, reads as follows:

Section 108. *Prohibition against pecuniary interest.*
No accountable or responsible officer shall be pecuniary [sic] interested, directly or indirectly, in any contract or transaction of the agency in which he is such an officer.

Applying the provisions of Section 5, Rule 120 of the Rules of Court, it is evident that the some of the essential elements of the crime charged, violation of Section 3(e), R.A. No. 3019, do not constitute a violation of Section 108, P.D. No. 1445. Neither do the elements of the latter offense constitute or form part of the former offense.

Section 108 of P.D. No. 1445 punishes the act of having pecuniary interest in a contract or transaction of the agency in which the accused in an officer. On the other hand, Section 3(e) of R.A. No. 3019 punishes the act of causing undue injury to the government or any party or giving a private party unwarranted benefits or advantage. It is not required under the latter law that the accused public officer has a pecuniary interest in the contract or transaction entered into. In fact, the act of having pecuniary interest in any contract or transaction is punished under different sections of R.A. No. 3019, i.e. Sections 3(h) or 3(i). More importantly, the Information does not allege that any of the accused-movants had any pecuniary interest in the contract or transaction of the agency, subject matter of this case, in which they were officers.

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WHEREFORE, accused Orville A. Fua, Rose Maria V. Tomogsoc, Ivan Y. Marchan, Natalio B. Jumawan, Jr., and Sue Agnes A. Castillon's *Motion to Allow Accused to Plea Bargain* is **DENIED** for lack of merit.

SO ORDERED.

Quezon City, Metro Manila


AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson

WE CONCUR:


BERNELITO R. FERNANDEZ
Associate Justice


RONALD B. MORENO
Associate Justice

