



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-15-CRM-0095**
Plaintiff, For: Violation of Sec. 3(e)
of R.A. No. 3019

- versus -

ROLANDO C. ALONZO, ET AL.,
Accused.

Present

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

Promulgated:

June 30, 2021 *[Signature]*

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves the *Motion for Reconsideration*¹ filed by accused Guillermo G. Sy, Alison A. Sy, and Renato C. Ang (accused Sy, et al.), and the prosecution's *Comment/Opposition (In re: Motion for Reconsideration)*.²

In their *Motion for Reconsideration*, accused Sy, et al. pray that the Court set aside its Resolution dated June 9, 2021, and order the immediate dismissal of the present case. They aver:

1. The prosecution's duty is to prove each and every element of the crime charged in the Information to warrant a finding of guilt for that crime, or for any other crime necessarily included therein.
2. The accused are charged under both modes of committing Violation of Sec. 3(e) of R.A. No. 3019, *i.e.*, causing undue injury and giving unwarranted benefit, advantage or preference. Thus,

¹ Dated June 18, 2021 and filed by electronic mail on June 21, 2021

² Dated June 23, 2021 and filed by electronic mail on June 24, 2021

[Handwritten signatures]

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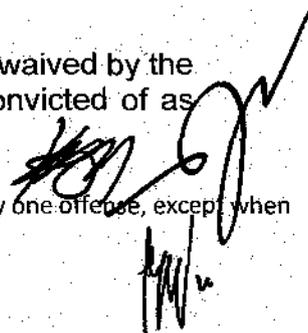
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- the prosecution must establish both "undue injury" and "giving unwarranted benefits, advantage or preference" to convict the accused.
3. If the element of "undue injury" has already been negated, then the accused can no longer be convicted.
 4. In the assailed Resolution, the Court held that even if undue injury is negated, there is still basis to proceed with the prosecution of the case because the accused are also charged with giving unwarranted benefits, advantage or preference. Such reasoning would mean that the accused are charged with two (2) offenses under the *Amended Information*, which is proscribed under Sec. 13,³ Rule 110 of the Revised Rules of Criminal Procedure.
 5. *Suller v. Sandiganbayan* does not apply because said case involved extortion. The present case is similar to *Llorente v. Sandiganbayan*, which involves a claim for payment of a contractual or legal obligation.
 6. In *Llorente*, therein accused was acquitted of Violation of Sec. 3(e) of R.A. No. 3019 because therein private complainant received in full her monetary claims, and there is no more "undue injury" to speak of.
 7. There is basis for the outright dismissal of the present case. Their *Motion to Dismiss* is akin to, and should be treated as, a motion to quash under Sec. 3(g) of Rule 117 of the Revised Rules of Criminal Procedure. Under Sec. 9 of the same Rule, a motion to quash on such ground may be filed after arraignment.

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

1. The case of *Llorente* does not apply because in said case, the private complainant fully received her monetary claims. Here, the amount paid to TIDCORP was less than 12% of the actual liability of the accused-movants.
2. The accused-movants' Motion to Dismiss is not related to a motion to quash. Furthermore, there is no basis for a motion to quash on the ground cited because there is no extinguishment of criminal liability.
3. A duplicitous information is valid if the defect was waived by the accused. In such case, the accused may be convicted of as

³ Sec. 13. *Duplicity of the offense.* – A complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses.



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many offenses as those charged in the information and proved during trial.

THE COURT'S RULING

Accused Sy, et al.'s *Motion for Reconsideration* is bereft of merit and should be denied.

First, accused Sy, et al. contend that because the *Amended Information* charges both causing undue injury and giving unwarranted benefits, the prosecution must prove both. If undue injury is negated, then the accused can no longer be convicted because both must be proved beyond reasonable doubt. Their contention is untenable.

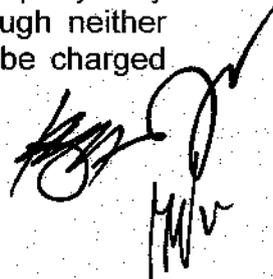
In *Cabrera v. Sandiganbayan*,⁴ which was cited in the assailed Resolution, the Supreme Court held that Sec. 3(e) of R.A. No. 3019 may be violated (a) by causing undue injury, or (b) by giving unwarranted benefit, advantage or preference. An accused may be charged under either mode or both. Either act qualifies as a violation of said provision.

In the later case of *Sison v. People*,⁵ which was also cited by accused Sy, et al. in their *Motion for Reconsideration*, therein accused was charged with **both** causing undue injury to the government, **and also** with having given unwarranted benefit, advantage or preference to private suppliers. Although the prosecution failed to prove that there was undue injury, therein accused's conviction was affirmed because the prosecution was able to prove that unwarranted benefits, advantage or preference were given to private suppliers. The Supreme Court reiterated that an accused may be charged under either mode or both, and held that the presence of one would suffice for conviction. *Viz.:*

The fourth element is likewise present. While it is true that the prosecution was not able to prove any undue injury to the government as a result of the purchases, it should be noted that there are two ways by which Section 3(e) of RA 3019 may be violated—the first, by causing undue injury to any party, including the government, or the second, by giving any private party any unwarranted benefit, advantage or preference. Although neither mode constitutes a distinct offense, an accused may be charged

⁴ G.R. Nos. 162314-17, October 25, 2004

⁵ G.R. Nos. 170339, 170398-403, March 9, 2010



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under *either mode or both*. The use of the disjunctive "or" connotes that the two modes need not be present at the same time. In other words, the presence of one would suffice for conviction.

(underscoring supplied)

Applying the foregoing, the prosecution does not have to prove that the accused's acts both caused undue injury, and gave unwarranted benefits, advantage or preference to any private party. It only has to prove at least one. Therefore, assuming that payment to TIDCORP, indeed, negated undue injury, there would still be basis to proceed with the prosecution of the present case because the accused are also charged with giving unwarranted benefits, advantage or preference to WGI. Should the prosecution prove the same beyond reasonable doubt, it would suffice for the conviction of the accused.

Next, according to accused Sy, et al., *Suller v. Sandiganbayan*⁶ does not apply because said case involved extortion. This contention also deserves scant consideration.

Suller teaches that the offense of Violation of Sec 3(e) of R.A. No. 3019—when committed by causing undue injury—is consummated at the precise moment when undue injury is caused, as a result of the offender's act which was done with manifest partiality, evident bad faith, or gross inexcusable negligence. The subsequent recovery of the money does not affect the offender's criminal liability, but merely extinguishes the civil liability arising from the commission of the crime. Notably, the Supreme Court, in that case, took the time to differentiate *Llorente v. Sandiganbayan*⁷ from said case. Thus:

In the case of *Llorente v. Sandiganbayan*, petitioner was charged with violation of Sec. 3(e), R.A. 3019 for withholding the salaries and allowances of complainant. Petitioner was, however, acquitted because the prosecution failed to specify and prove any other loss or damage sustained by the complainant, other than the amount of the salaries and allowances justifiably withheld by the petitioner for failure of the complainant to comply with the required clearance and which was eventually received by her. Further, the alleged financial stress which complainant suffered was inadequate and largely speculative. The "long period of time" that her emoluments were withheld was not constitutive of "undue injury". In acquitting petitioner, it was held that:

⁶ G.R. No. 153686, July 22, 2003

⁷ G.R. No. 122166, March 11, 1998

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Unlike in actions for torts, undue injury in Sec. 3[e] cannot be presumed even after a wrong or a violation of a right has been established. Its existence must be proven as one of the elements of the crime. In fact, the causing of undue injury or the giving of any unwarranted benefits, advantage or preference through manifest partiality, evident bad faith or gross inexcusable negligence constitutes the very act punished under this section. Thus, it is required that the undue injury be specified, quantified and proven to the point of moral certainty.

Petitioner's reliance in the ruling of the above-entitled case is misplaced. In the case at bar, we find that the undue injury to SPO1 Nicolas was indubitably proved, specified and quantified. SPO1 Nicolas suffered injury to the extent of P2,000.00, the amount he handed over to petitioner. The fact that the money extorted by petitioner was immediately recovered as a consequence of the NBI agents' timely entrapment will not in any way affect his criminal liability. Petitioner gained actual possession of the money and it matters not even if he had no occasion or opportunity to dispose of the same because at the precise moment he received the money and placed it inside his pocket with the evil motive of appropriating it as his own, the offense was already consummated. Thus, the Sandiganbayan was correct in saying that the recovery of the money merely extinguished his civil liability arising from the commission of the crime.

Verily, *Suller* involved extortion committed by therein accused, but there is no reason why the ruling therein should not apply to other cases not involving extortion. That the Supreme Court, in *Suller*, differentiated *Llorente* from said case indicates that had the facts and circumstances been similar, the same principle would have applied. Had the principle been meant to apply only in cases involving extortion, the Supreme Court would have simply ruled that *Llorente* did not apply because it did not involve extortion. Instead, it explained that in *Llorente*, the prosecution failed to prove the undue injury caused, while in *Suller*, the undue injury was indubitably proved, specified and quantified.

Finally, to be sure, a motion to quash on the ground that criminal action or liability has been extinguished⁸ may be filed even after arraignment.⁹ However, the fact remains that accused Sy, et al. did not cite Sec. 3(g), Rule 117 of the Rules of Court in their *Motion to*

⁸ *Rules of Court. Rule 117, Sec. 3. Grounds.* - The accused may move to quash the complaint or information on any of the following grounds: x x x (g) That the criminal action or liability has been extinguished; x x x

⁹ *Rules of Court. Rule 117, Sec. 9. Failure to move to quash or to allege any ground therefor.* - The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g) and (i) of Section 3 of this Rule. (underscoring supplied)

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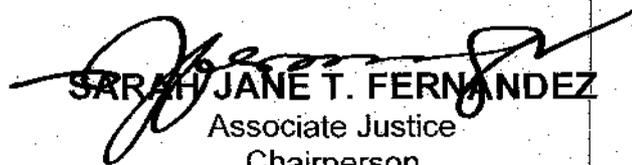
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Dismiss. At any rate, even if they cited said provision in their *Motion to Dismiss*, there would still be no basis for the outright dismissal of the present case because accused Sy, et al. have not shown that the criminal action or their criminal liability had been extinguished.

In fine, accused Sy, et al. have failed to convince this Court that the reversal of the assailed Resolution is warranted.

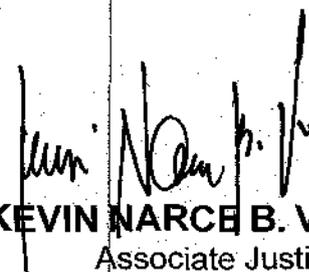
WHEREFORE, the *Motion for Reconsideration* of accused Guillermo G. Sy, Alison A. Sy, and Renato C. Ang, is hereby **DENIED** for lack of merit.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA
Associate Justice


KEVIN NARCEB B. VIVERO
Associate Justice