



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
 Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-11-CRM-0456**
 Plaintiff, For: Violation of Sec. 3(e)
 of R.A. No. 3019

SB-11-CRM-0457
 For: Malversation of Public Funds

Present

- versus -

CESAR MATAS CAGANG,
ET AL.

FERNANDEZ, SJ, J.,
 Chairperson
FERNANDEZ, B,* J. and
VIVERO, J.

Accused.

Promulgated:

SEP 28 2021

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves the following:

1. Accused Hadji Moner C. Mangelen's *Motion to Enter Into a Plea of Guilty to a Lesser Offense*;¹
2. Accused Umbra Adam Macagalat's *Motion to Enter Into Plea Bargaining*;² and,
3. The prosecution's *Manifestation and Motion (Re: Plea-Bargaining Agreement dated July 7, 2021)*.³

* In view of the inhibition of J. Miranda (Per Administrative Order No. 350-2017 dated September 27, 2017)

¹ Dated March 19, 2021 and filed by electronic mail on March 30, 2021

² Dated April 5, 2021 and filed by electronic mail on April 8, 2021

³ Dated September 1, 2021 and filed by electronic mail on even date

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RESOLUTION

People vs. Cagang, et al.
SB-11-CRM-0456 and 0457
(Plea Bargaining)

Page 2 of 5

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After entering their pleas of "Not Guilty" to Informations in the present cases,⁴ accused Hadji Moner C. Mangelen and Umbra Adam Macagalat explored the possibility of entering into a plea bargaining agreement.

In their instant *Motions*, accused Mangelen and Macagalat pray that they be allowed to enter into a plea bargaining agreement. In its *Manifestation and Motion*, the prosecution similarly prays that the Court approve the *Plea-Bargaining Agreement* dated July 7, 2021⁵ between the prosecution and the said accused.

THE COURT'S RULING

The Court resolves to grant the parties' respective *Motions*.

Sec. 2, Rule 116 of the *Rules of Court* provides:

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.

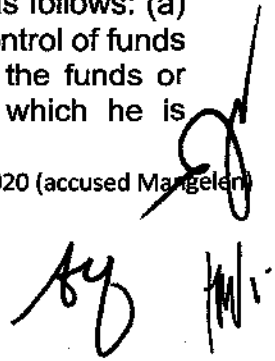
In *Daan v. Sandiganbayan (Fourth Division)*,⁶ the Supreme Court held that the lesser offense of *Failure of Accountable Officer to Render Accounts* under Art. 218 of the Revised Penal Code is necessarily included in *Malversation of Public Funds or Property* under Art. 217 of the *Revised Penal Code*. *Viz.:*

As regards the crime of Malversation of Public Funds defined and penalized under Article 217 of the Revised Penal Code, with which petitioner was also charged, the elements are as follows: (a) the offender is a public officer; (b) he has custody or control of funds or property by reason of the duties of his office; (c) the funds or property involved are public funds or property for which he is

⁴ Order dated July 29, 2019 (accused Macagalat); Order dated November 27, 2020 (accused Mangelen)

⁵ Filed by the prosecution through electronic mail on September 1, 2021

⁶ G.R. Nos. 163972-77, March 28, 2008



RESOLUTION

People vs. Cagang, et al.
SB-11-CRM-0456 and 0457
(Plea Bargaining)

Page 3 of 5

x-----x

accountable; and (d) he has appropriated, taken or misappropriated, or has consented to, or through abandonment or negligence permitted, the taking by another person of such funds or property.xxx

Meanwhile, under Article 218 of the Revised Penal Code, Failure to Render Account by an Accountable Officer, the lesser offense which petitioner seeks to plead guilty of, the following elements must concur: (a) the offender is a public officer; (b) the offender must be an accountable officer for public funds or property; (c) the offender is required by law or regulation to render accounts to the COA or to a provincial auditor; and (d) the offender fails to render an account for a period of two months after such accounts should be rendered.

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

x x x

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 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.

In this case, the allegations in the Informations filed against petitioner are sufficient to hold petitioner liable for the lesser offenses. x x x. In the same vein, with regard to the crime of Malversation of Public Funds, while the Informations contain allegations which make out a case for Malversation against petitioner, nevertheless, absent the element of conversion, theoretically, petitioner may still be held liable for Failure to Render Account by an Accountable Officer if it is shown that the failure to render account was in violation of a law or regulation that requires him to render such an accounting within the prescribed period.

Given, therefore, that some of the essential elements of offenses charged in this case likewise constitute the lesser offenses, then petitioner may plead guilty to such lesser offenses.

The Ombudsman and the Special Prosecutor have given their consent,⁷ in accordance with Sec. 2, Rule 116 of the Rules of Court. In SB-11-CRM-0457, accused Mangelen and Macagalat may be allowed to plead guilty to the lesser offense of *Failure of Accountable*

⁷ Plea-Bargaining Agreement dated July 7, 2021, pp. 3-4

RESOLUTION

People vs. Cagang, et al.
SB-11-CRM-0456 and 0457
(Plea Bargaining)

Page 4 of 5

x-----x

Officer to Render Accounts under Art. 218 of the *Revised Penal Code*, which is necessarily included in the offense charged, *i.e.*, *Malversation of Public Funds or Property* under Art. 217 of the *Revised Penal Code*.

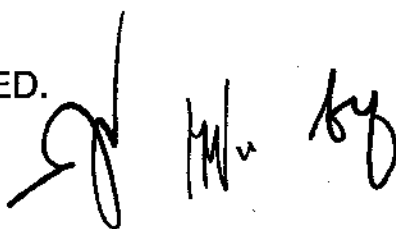
WHEREFORE, the respective *Motions* of accused Mangelen, accused Macagalat, and the prosecution, are hereby **GRANTED**. The Court hereby **APPROVES** the following proposed terms stated in the *Plea-Bargaining Agreement*:

- a. In SB-11-CRM-0457, accused Mangelen and Macagalat will be allowed to withdraw their plea of "Not Guilty" for the offense of *Malversation of Public Funds or Property* under Article 217 of the *Revised Penal Code* and to plead guilty to the lesser offense of *Failure of Accountable Officer to Render Accounts* under Article 218 of the *Revised Penal Code*;
- b. In consideration of the plea of guilty to the lesser offense of *Failure of Accountable Officer to Render Accounts* under Article 218 of the *Revised Penal Code* in SB-11-CRM-0457, the prosecution will move for the withdrawal of the Information, in SB-11-CRM-0456, for *Violation of Sec. 3(e) of Republic Act No. 3019*;
- c. Accused Mangelen and Macagalat, solidarily, shall fully reconstitute the government through the cashier of the Sandiganbayan, the amount of Three Hundred Fifty Thousand Pesos (P350,000.00), as alleged in the Information, before they can be allowed to proceed with paragraphs (a) and (b) hereof.

The parties are directed to be present, *via* videoconference, on September 30, 2021, at 1:30 p.m., for the re-arraignment of accused Mangelen and accused Macagalat.

Accused Mangelen and Macagalat are directed to submit, at least two (2) days before the scheduled date of re-arraignment, proof of full restitution of the amount of Three Hundred Fifty Thousand Pesos (P350,000.00).

SO ORDERED.



RESOLUTION

People vs. Cagang, et al.
SB-11-CRM-0456 and 0457
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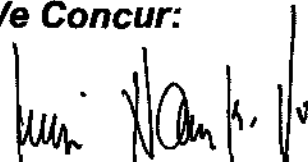
Page 5 of 5

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SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:



KEVIN NARCE B. VIVERO
Associate Justice



BERNELITO R. FERNANDEZ
Associate Justice