



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

Third Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Crim. Case Nos.

SB-16-CRM-0264

*For: Violation of Section
3(e), R.A. No. 3019, as
amended*

SB-16-CRM-0265

*For: Violation of Section
3(g), R.A. No. 3019, as
amended*

-versus-

LEONIDES PLAZA,
ET AL.,
Accused.

Present:

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

PROMULGATED:

APRIL 4, 2023

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RESOLUTION

Moreno, J.:

For resolution are the *Plea Bargaining Proposal*¹ and the *Amended Plea Bargaining Proposal*² filed by accused Lucio D. Lapidez, to which the prosecution filed its respective *Comment with Manifestation*,³ as well as its *Compliance*⁴ and *Supplement x x x*⁵ thereto.

In his *Plea Bargaining Proposal*, Lapidez offered to withdraw his earlier not guilty plea for violation of Sections 3(e) and (g) of Republic Act No. 3019, as amended, and offered to enter a guilty plea to two (2) counts of the lesser offense of *Failure of accountable officer to render accounts* under Article 218 of the Revised Penal Code, as amended. Accordingly, Lapidez prayed that he be sentenced to pay only a ₱6,000.00 fine for each count.

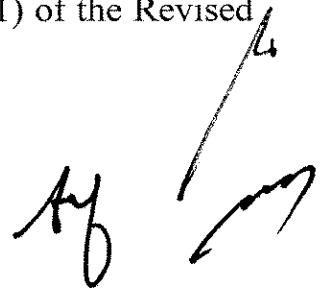
In its Comment, the Office of the Special Prosecutor (OSP) manifested that it is “amenable to the proposal of accused Lapidez for plea bargaining subject to the approval or disapproval of the Honorable Ombudsman x x x as to the terms and conditions stated in the proposal.”⁶

In the *Amended Plea Bargaining Proposal* dated January 18, 2023, Lapidez essentially prayed that: (a) he be allowed to enter his guilty plea to the lesser offense of *Frauds against the public treasury and similar offenses* under Article 213 of the Revised Penal Code, as amended; (b) he be sentenced to pay only a ₱10,000.00 fine for each count; and, (c) the restitution of the civil amount of ₱4,369,629.90 “be dispensed with or waived in his favor.”⁷

In its *Comment with Manifestation*, the plaintiff (through the OSP) manifested that the “proposal of accused Lapidez for plea bargaining is now submitted to the Honorable Ombudsman regarding the terms and conditions in the said amended proposal.”⁸

In its Compliance dated March 1, 2023, the prosecution stated that it is giving its consent to the proposed plea bargaining proposal of Lapidez as regards his intention to enter into a guilty plea to the crime of *frauds against the public treasury and similar offenses* under Article 213(1) of the Revised

¹ Records, pp. 205-219.
² Id. at 256-271.
³ Id. at 239-241.
⁴ Id. at 289-296.
⁵ Id. at 319-329.
⁶ Supra, note 3 at 239.
⁷ Supra, note 2 at 259.
⁸ Supra, note 3 at 282.



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Penal Code. The prosecution nonetheless submitted to this Court's discretion the penalty to be imposed and the matter of restitution of the accused's civil liability.

In its Supplement, the plaintiff submitted to this Court the Memorandum dated February 9, 2023 of the Special Prosecutors of the Office of the Ombudsman indicating the approval of Ombudsman Samuel Martires to their recommendation to the proposed plea bargaining agreement with Lapidez in SB-16-CRM-0264 to 0265.

THE COURT'S RULING:

After due consideration, we grant the amended plea bargaining proposal of accused Lapidez.

Plea bargaining in criminal cases is a process where the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval. It usually involves the defendant pleading guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that for the graver charge.⁹

Plea bargaining is a vital component of restorative justice. In giving preference to working out a mutually satisfactory resolution of the case 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.¹⁰

Ordinarily, plea bargaining is made during the pre-trial stage of the proceedings. However, it may also be made during the trial proper and even after the prosecution has finished presenting its evidence and rested its case.¹¹

At any rate, 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.¹²

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

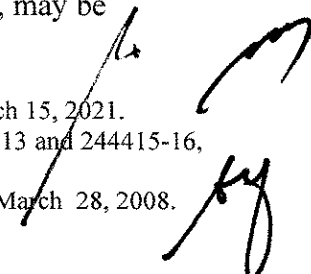
Sec 2. Plea of guilty to a lesser offense. - At arraignment, the accused, with the consent of the offended party and the prosecutor, may be

⁹ See *People of the Philippines v. Naci Borrás y Lascano*, G.R. No. 250295, March 15, 2021.

¹⁰ See *Nurullaje Sayre y Malampad v. Hon. Dax Gonzaga Xenos*, G.R. Nos. 244413 and 244415-16, February 18, 2020.

¹¹ See *Daan v. The Hon. Sandiganbayan (Fourth Division)*, G.R. Nos. 16372-77, March 28, 2008.

¹² *Id.*



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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.

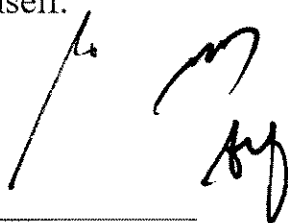
Section 2, Rule 116 of the Rules of Court presents the basic requisites upon which plea bargaining may be made, *i.e.*, that it should be with the consent of the offended party and the prosecutor, and that the plea of guilt should be to a lesser offense which is necessarily included in the offense charged. The rules however use 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.¹³

The prosecutorial discretion inherent in a plea bargaining agreement is further emphasized in Rule 118, Section 1(a) of the Revised Rules of Criminal Procedure which mandates courts, including the Sandiganbayan, to consider plea bargaining during pre-trial:

SECTION 1. Pre-trial; Mandatory in Criminal Cases. — In all criminal cases cognizable by the Sandiganbayan, Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court and Municipal Circuit Trial Court, the court shall, after arraignment and within thirty (30) days from the date the court acquires jurisdiction over the person of the accused, unless a shorter period is provided for in special laws or circulars of the Supreme Court, order a pre-trial conference to consider the following:

- (a) **plea bargaining;**
- (b) stipulation of facts;
- (c) marking for identification of evidence of the parties;
- (d) waiver of objections to admissibility of evidence;
- (e) modification of the order of trial if the accused admits the charge but interposes a lawful defense; and
- (f) such matters as will promote a fair and expeditious trial of the criminal and civil aspects of the case.¹⁴

We have carefully examined the proposed Plea Bargaining Agreement, and found nothing objectionable to it. In the prosecution's Compliance filed on March 2, 2023, it expressly gave its consent to Lapidez' plea bargaining proposal. The prosecution even submitted via its Supplement the approved Memorandum containing its recommendation to the plea bargaining proposal of Lapidez. Significantly, the recommendation was approved by Ombudsman Martires himself.



¹³ See *Joselito Raniera Daan v. Hon. Sandiganbayan*, G.R. Nos. 163972-77, March 28, 2008.

¹⁴ See *Republic of the Philippines v. Sandiganbayan (Special Second Division)*, G.R. Nos. 207340 and 207349, September 16, 2020.

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Corollarily, 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 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 the present case, the accused had been charged with violation of Sections 3(e) and (g) of R.A. No. 3019, as amended. A violation under Section 3(e) 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 giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.¹⁵

On the other hand, the elements of Section 3(g) are: first, the accused is a public officer; second, that he or she entered into a contract or transaction on behalf of the government; and third, that the contract or transaction is grossly and manifestly disadvantageous to the government.¹⁶

Article 213 of the RPC, meanwhile, reads:

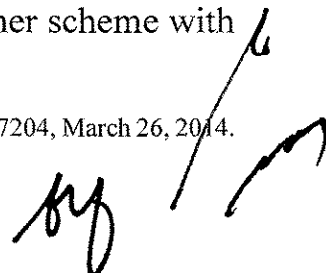
Article 213. *Frauds Against the Public Treasury and Similar Offenses.*
- The penalty of *prision correccional* in its medium period to *prision mayor* in its minimum period, or a fine ranging from 200 to 10,000 pesos, or both, shall be imposed upon any public officer who:

1. 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

The elements of this crime are: (a) that the offender is 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

¹⁵ See *Danilo O. Garcia and Joven SD. Brizuela v. Sandiganbayan*, G.R. No. 197204, March 26, 2014.

¹⁶ *Garcia-Diaz v. Sandiganbayan*, G.R. No. 193236, September 17, 2018.



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regard to (1) furnishing supplies, (2) the making of contracts, or (3) the adjustment or settlement of accounts relating to public property or funds; and (d) that the accused had intent to defraud the Government.¹⁷

An examination of the elements of both offenses showed that the crime of frauds against the public treasury and similar offense is necessarily included in the offenses charged, i.e, violation of Sections 3(e) and (g) of R.A. No. 3019, as amended.

To be sure, the amended Information in SB-16-CRM-0264 essentially alleged that the accused public officers, in conspiracy with herein accused Lapidez as the representative of Feshan Philippines, Inc., acting with evident bad faith, manifest partiality or gross inexcusable negligence, gave Feshan Philippines, Inc. and/or Lapidez unwarranted benefit, advantage or preference by purchasing 3,333 bottles of Bio Nature Liquid Organic Fertilizer for ₱4,865,413.65 without public bidding thereby causing undue injury to the City Government of Butuan in the said amount.

In like manner, the amended Information in SB-16-CRM-0265 alleged that Mayor Leonides Theresa B. Plaza of Butuan City conspired with Lapidez and entered into a contract or transaction in behalf of the government for the procurement of 3, 333 bottles of Bio Nature Liquid Organic Fertilizer despite the existence of other similar liquid fertilizers locally available at lower prices, resulting in the disbursement of public funds, and which contract or transaction is manifestly and grossly disadvantageous to the City Government of Butuan.

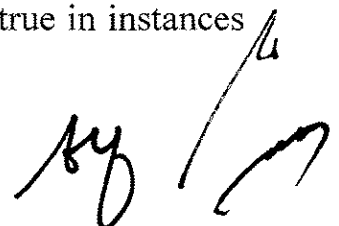
As worded, herein accused was being indicted for *conspiring* with the other accused officials to give unwarranted benefit, advantage or preference to Feshan which caused injury to the City Government of Butuan. Verily, some of the essential elements of the crimes charged also constitute the lesser offense. We thus see nothing objectionable to accused pleading to the lesser offense under Article 213 of the RPC. Corollarily, the ₱10,000.00 fine being prayed for was also *within* the penalty prescribed under Article 213.

With regard to the prayer of Lapidez to dispense with the restitution of the civil amount of ₱4,369,629.90, its bears pointing out that this Court has already convicted her co-accused, Mayor Plaza, in SB-16-CRM-0265 per our Decision¹⁸ dated November 29, 2019. In the said Decision, we ordered Mayor Plaza to pay ₱4,503,716.25 to the City of Butuan.

It is important to emphasize that while a defendant has no constitutional right to plea bargain, the Court must defer to prosecutorial decisions with regard to whom to prosecute in relation to the giving of consent to plea bargaining proposals. This pronouncement hold even more true in instances

¹⁷ Luis Reyes, The Revised Penal Code Book Two, 19th ed., p. 436.

¹⁸ On appeal before the Supreme Court



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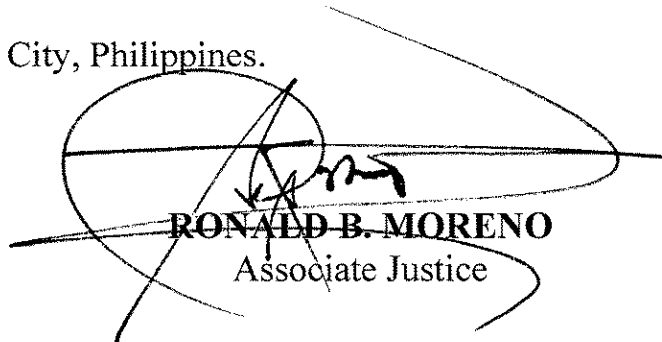
where there was no showing that the plea bargaining agreement had been attended with ill-motive or bad faith, as in this case. In addition, this Court cannot compel the prosecution to continue prosecuting the case by virtue of its categorical consent to accused Lapidez' proposal to plea bargain to a lesser offense.

WHEREFORE, premises considered, the Amended Plea Bargaining Proposal filed by accused Lucio D. Lapidez is **GRANTED** and **APPROVED**.

Set the re-arraignment of accused Lucio D. Lapidez on May 5, 2023 at 8:30 a.m.

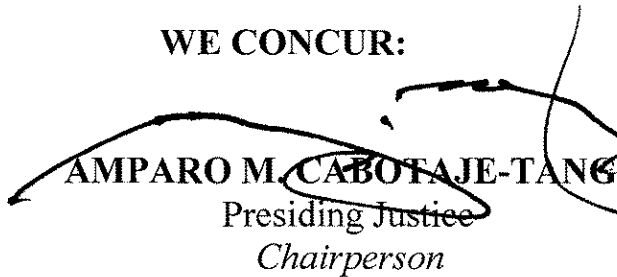
SO ORDERED.

Quezon City, Philippines.



RONALD B. MORENO
Associate Justice

WE CONCUR:



AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson



BERNELITO R. FERNANDEZ
Associate Justice