



SUPREME COURT OF THE PHILIPPINES  
PUBLIC INFORMATION OFFICE  
**RECEIVED**  
SEP 05 2019  
TIME: 9:26

**Republic of the Philippines**  
**Supreme Court**  
**Manila**

**SECOND DIVISION**

**PEOPLE OF THE PHILIPPINES,**

Petitioner,

- versus -

**THE HONORABLE SANDIGANBAYAN (SEVENTH DIVISION) AND JAIME KISON RECIO,**

Respondents.

**G.R. No. 240621**

Present:

CARPIO, J., Chairperson,  
PERLAS-BERNABE,  
CAGUIOA,  
J. REYES, JR., and  
LAZARO-JAVIER, JJ.

Promulgated:

**24 JUL 2019**

*Handwritten signature*

x-----x

**DECISION**

**PERLAS-BERNABE, J.:**

Assailed in this petition for *certiorari*<sup>1</sup> are the Resolutions dated April 27, 2018<sup>2</sup> and May 22, 2018<sup>3</sup> of the Sandiganbayan (SB) in SB-17-CRM-0063 which denied the Motion for Leave of Court to File Amended Information<sup>4</sup> and the subsequent Motion for Reconsideration<sup>5</sup> filed by petitioner People of the Philippines, through the Office of the Ombudsman (Ombudsman), on the ground that the amendment sought is substantial.

<sup>1</sup> Rollo, pp. 129-151.

<sup>2</sup> See Minute Resolution signed by Associate Justices Ma. Theresa Dolores C. Gomez-Estoesta (Chairperson), Zaldy V. Trespeses, and Bayani H. Jacinto; id. at 160-161.

<sup>3</sup> See Minute Resolution; id. at 163-164.

<sup>4</sup> Dated March 27, 2018. Id. at 166-170.

<sup>5</sup> Dated May 3, 2018. Id. at 171-176.

*Handwritten mark*

### The Facts

The instant case stemmed from an Information<sup>6</sup> filed before the SB charging respondent Jaime Kison Recio (Recio) with violation of Section 3 (e) of Republic Act No. (RA) 3019,<sup>7</sup> entitled the “Anti-Graft and Corrupt Practices Act.” Verily, the Information accuses Recio, then Executive Director III of the National Parks and Development Committee (NPDC), of entering into numerous security service contracts with Variance Protective and Security Agency (Variance) from 2002 to 2010 absent the required public bidding, thereby giving the latter unwarranted benefits. The accusatory portion thereof reads:

That on 30 January 2004 to 8 October 2004, or thereabout, in the City of Manila, and within this Honorable Court’s jurisdiction, public officer JAIME K. RECIO, Executive Director III, National Parks Development Committee, City of Manila, while in the performance of his official functions, acting with evident bad faith, manifest partiality, or gross inexcusable negligence, did then and there wilfully, unlawfully and criminally give unwarranted benefits, preference, or advantage to Variance Protective and Security Agency (Variance), a private corporation, when he signed Disbursement Vouchers facilitating the release of payment to Variance for security services purportedly rendered from 1 January 2004 to 15 September 2004, amounting to ₱7,843,54.33, knowing fully well that Variance was not legally entitled thereto considering that the public bidding and other procurement activities required under Republic Act No. 9184 and its implementing rules and regulations were not conducted prior to the procurement of Variance’s security service for said period, to the damage and prejudice of the government.

CONTRARY TO LAW.<sup>8</sup>

During trial and before the prosecution presented its last witness on April 4, 2018, it filed a Motion for Leave of Court to File Amended Information<sup>9</sup> dated March 27, 2018 seeking to amend the amount stated in the Information from ₱7,843,54.33 to ₱7,842,941.60, which is the amount reflected in the disbursement vouchers.<sup>10</sup> In opposition thereto, Recio argued that the amendment is not merely formal but substantial, which would be prejudicial to his right to be informed of the charges against him.<sup>11</sup>

### The SB Ruling

In a Resolution<sup>12</sup> dated April 27, 2018, the SB denied the prosecution’s motion for lack of merit.<sup>13</sup> It ruled that the mistake in the

<sup>6</sup> See *id.* at 136.

<sup>7</sup> Approved on August 17, 1960.

<sup>8</sup> See *rollo*, p. 136.

<sup>9</sup> *Id.* at 166-170.

<sup>10</sup> See *id.* at 137. See also *id.* at 166.

<sup>11</sup> See *id.* at 160.

<sup>12</sup> *Id.* at 160-161.

amount of the *alleged undue injury* stated in the Information is too substantial to have been left uncorrected for more than a year, during which time evidence to prove the allegations in the Information had already been presented. Moreover, it held that the alleged difference could not be ruled out as a mere typographical error, especially considering that the amount involved was only alleged numerically and had not been spelled out in words where the difference would have been readily apparent.<sup>14</sup>

Dissatisfied, the Ombudsman moved for reconsideration,<sup>15</sup> which the SB denied in a Resolution<sup>16</sup> dated May 22, 2018. Hence, this petition.<sup>17</sup>

### **The Issue Before the Court**

The essential issue for the Court's resolution is whether or not the SB gravely abused its discretion in denying the Ombudsman's Motion for Leave of Court to File Amended Information.

### **The Court's Ruling**

The petition is meritorious.

At the outset, it must be stressed that to justify the grant of the extraordinary remedy of *certiorari*, petitioners must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes judgment exercised in a capricious and whimsical manner that is tantamount to lack of jurisdiction. To be considered "grave," discretion must be exercised in a despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.<sup>18</sup> There is grave abuse of discretion when: (1) an act is done contrary to the Constitution, the law, or jurisprudence; or (2) it is executed whimsically, capriciously, or arbitrarily out of malice, ill-will, or personal bias.<sup>19</sup>

Guided by the foregoing considerations and as will be shown below, the SB gravely abused its discretion when it denied the Ombudsman's Motion for Leave of Court to File Amended Information despite the absence of any resulting prejudice to the rights of the accused.

---

<sup>13</sup> Id. at 161.

<sup>14</sup> See id. at 160-161.

<sup>15</sup> See motion for reconsideration dated May 3, 2018; id. at 171-176.

<sup>16</sup> Id. at 163-164.

<sup>17</sup> Id. at 129-151.

<sup>18</sup> *Gadia v. Sykes Asia, Inc.*, 752 Phil. 413, 420-421 (2015), citing *Omni Hauling Services, Inc. v. Bon*, 742 Phil. 335, 342 (2014).

<sup>19</sup> See *Information Technology Foundation of the Philippines v. Commission on Elections*, 464 Phil. 173, 190 (2004); citations omitted.

✓

The proper procedure for the amendment of an Information is governed by Section 14, Rule 110 of the Revised Rules of Criminal Procedure, *viz.*:

Section 14. *Amendment or Substitution.* – **A complaint or information may be amended**, in form or in substance, without leave of court, at any time before the accused enters his plea. **After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.**

However, any amendment before plea, which downgrades the nature of the offense charged in or excludes any accused from the complaint or information, can be made only upon motion by the prosecutor, with notice to the offended party and with leave of court. The court shall state its reasons in resolving the motion and copies of its order shall be furnished all parties, especially the offended party. (Emphases and underscoring supplied)

Under this provision, the prosecution is given the right to amend the information, regardless of its nature, so long as the amendment is sought before the accused enters his plea, subject to the qualification under the second paragraph thereof. However, once the accused enters his plea during arraignment, the prosecution is already prohibited from seeking a substantial amendment, particularly citing those that may prejudice the rights of the accused. One of these rights is the constitutional right of the accused to be informed of the nature and cause of accusation against him, a right which is given life during the arraignment of the accused. The theory in law is that since the accused officially begins to prepare his defense against the accusation on the basis of the recitals in the information read to him during arraignment, then the prosecution must establish its case on the basis of the same information.<sup>20</sup>

While there is no precise definition under the Revised Rules on Criminal Procedure of what should be deemed as a substantial amendment, case law instructs that substantial amendments consist of the recital of facts constituting the offense charged and determinative of the jurisdiction of the court.<sup>21</sup> On the other hand, formal amendments which can be made at any time do not alter the nature of the crime, affect the essence of the offense, surprise, or divest the accused of an opportunity to meet the new accusation. Verily, they are amendments which merely state with additional precision something which is already contained in the original Information, and which, therefore, adds nothing essential for conviction of the crime charged.<sup>22</sup> Hence, the following are considered as mere formal amendments: (a) new allegations which relate only to the range of the penalty that the

<sup>20</sup> See *Mendez v. People*, 736 Phil. 181, 192 (2014); citations omitted.

<sup>21</sup> See *Corpus, Jr. v. Pamular*, G.R. No. 186403, September 5, 2018, citing *Teehankee, Jr. v. Madayag*, 283 Phil. 956, 966 (1992). See also *Mendez v. People*, *id.*, citing *Almeda v. Villaluz*, 160 Phil. 750, 757 (1975).

<sup>22</sup> See *id.*; citations omitted.

court might impose in the event of conviction; (b) an amendment which does not charge another offense different or distinct from that charged in the original one; (c) additional allegations which do not alter the prosecution's theory of the case so as to cause surprise to the accused and affect the form of defense he has or will assume; and (d) an amendment which does not adversely affect any substantial right of the accused, such as his right to invoke prescription.<sup>23</sup>

In this case, the Court finds that the amendment of the Information sought by the prosecution is one of form, and not of substance, as it adds nothing essential for Recio's conviction of the crime charged nor does it seek to amend the Information's recital of facts constituting the offense charged. On the contrary, the amendment simply sought to correct the total amount of the disbursement vouchers<sup>24</sup> reflected in the Information to make it conform to the evidence on record. Moreover, a plain reading of the amount stated, *i.e.*, **P7,843,54.33** cannot but convince the Court that the same is erroneous and mathematically inexistent, and therefore, cannot be proved. A basic rule in writing figures consisting of four (4) or more digits requires the use of commas to separate thousands; thus, to place the first comma, count three (3) spaces or digits to the left of the decimal point, and continue doing so after every three digits.<sup>25</sup> Here, the comma was written immediately to the left of the second digit from the decimal point. In other words, the Information obviously bears a typographical error as the error in the amount is apparent to the naked eye.

More importantly, the Court has observed that the Information charged Recio and his co-accused with violation of Section 3 (e) of RA 3019 when, through their actions characterized by manifest partiality, Variance was given unwarranted benefit, advantage, and preference. In *Ampil v. Ombudsman*,<sup>26</sup> the Court discussed the modes of committing the aforesaid crime, to wit:

[I]t 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 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.**

<sup>23</sup> See *id.*; citing *Teehankee, Jr. v. Madayag*, *supra* note 21.

<sup>24</sup> See copies of Disbursement Vouchers dated January 30, 2004 to October 8, 2004; *rollo*, pp. 204-230.

<sup>25</sup> See <https://www.grammarbook.com/numbers/numbers.asp>, <https://grammar.yourdictionary.com/grammar-rules-and-tips/rules-for-writing-numbers.html>, and <https://www.englishgrammar.org/rules-writing-numbers> (visited July 10, 2019). Note that the International System of Units does not recommend the use of commas or periods, and instead recommends the use of space to separate groups of three digits (see <https://www.englishgrammar.org/rules-writing-numbers> [visited July 10, 2019]).

<sup>26</sup> 715 Phil. 733 (2013).

x x x Under the second mode, damage is not required.<sup>27</sup>  
(Emphases and underscoring supplied)

Hence, regardless of which is the correct amount – either the clearly erroneous ₱7,843,54.33 which is stated in the Information, or ₱7,842,941.60, the amount which the Ombudsman sought to reflect in the Information via an amendment thereof – the same is not a necessary element for a violation of Section 3 (e) of RA 3019 under the second mode.

The Court also notes that Recio was well aware of the amount of ₱7,842,941.60 even during the early stages of the preliminary investigation as he was given a copy of the complaint<sup>28</sup> and the disbursement vouchers indicating said amount. Furthermore, the Joint Resolution<sup>29</sup> dated January 21, 2016 of the Ombudsman which resolved to indict Recio of the aforesaid crime clearly enumerates, in tabulated form,<sup>30</sup> the specific amount of, including the period covered by, the disbursement vouchers signed by him, which is sufficient to inform him of the total amount thereof. Clearly, Recio will not be prejudiced by the amendment sought considering that the same did not involve a completely new fact or matter previously unknown to him and thereby deprive him of an opportunity to meet the same, nor require him to undergo a material change or modification in his defense.

Finally, the Court observes that copies of the complaint, disbursement vouchers, and the January 21, 2016 Joint Resolution of the Ombudsman were part of the records of this case before the SB, and that the prosecution had specifically argued that the amendment sought would only reflect the total amount stated in the aforementioned documents. Under these circumstances, the SB should have been more circumspect and compared the amount indicated in the Information with the available documents especially considering the apparent and glaring error in the amount stated in the Information.

All told, the amendment sought by the Ombudsman in this case involves mere matters of form that are allowed under Section 14, Rule 110 of the Revised Rules of Criminal Procedure. Accordingly, the Court finds the SB to have gravely abused its discretion in denying the Motion for Leave of Court to File Amended Information.

**WHEREFORE**, the petition for *certiorari* is **GRANTED**. The Resolutions dated April 27, 2018 and May 22, 2018 of the Sandiganbayan in SB-17-CRM-0063 are **ANNULLED** and **SET ASIDE**. The prosecution is hereby granted the necessary leave of Court to file the amended Information.

<sup>27</sup> Id. at 758-759; citing *Sison v. People*, 628 Phil. 573, 584-585 (2010).


<sup>28</sup> Dated October 7, 2013. *Rollo*, pp. 177-182.

<sup>29</sup> See id. at 184-203. Approved by Ombudsman Conchita Carpio Morales.


<sup>30</sup> See id. at 194-199.

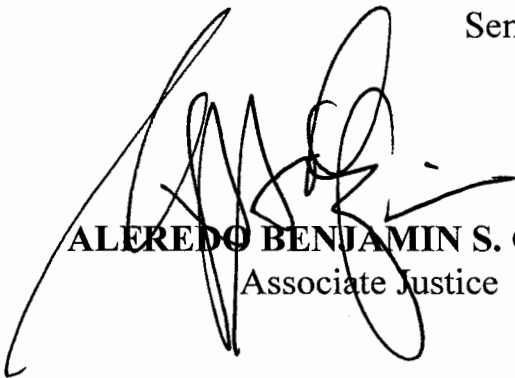
M

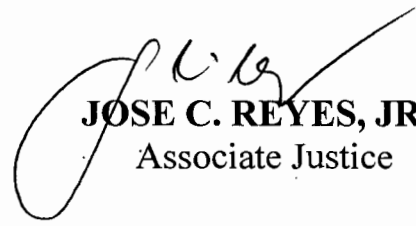
**SO ORDERED.**

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

**WE CONCUR:**

  
**ANTONIO T. CARPIO**  
Senior Associate Justice  
Chairperson


  
**ALREDO BENJAMIN S. CAGUIOA**  
Associate Justice

  
**JOSE C. REYES, JR.**  
Associate Justice

  
**AMY C. LAZARO-JAVIER**  
Associate Justice

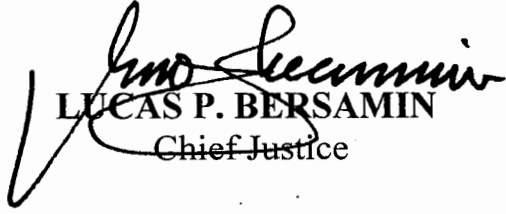
**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ANTONIO T. CARPIO**  
Senior Associate Justice  
Chairperson, Second Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**LUCAS P. BERSAMIN**  
Chief Justice