

QUINTIN B. SALUDAGA AND SPO2 FIEL E. GENIO, PETITIONERS, VS. THE HONORABLE SANDIGANBAYAN, 4TH DIVISION AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 184537. April 23, 2010

Ponente: MENDOZA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-184537/>

MENDOZA, J.:

This is a petition for certiorari, prohibition and mandamus under Rule 65 of the 1997 Rules on Civil Procedure with a prayer for the issuance of a writ of preliminary injunction and temporary restraining order assailing the July 14, 2008 Resolution[1] of the Sandiganbayan in Criminal Case No. SB-08 CRM 0263, denying the Motion for Preliminary Investigation filed by the petitioners who were charged with a violation of Section 3(e) of Republic Act No. 3019, and the denial of their Motion for Reconsideration done in open court on August 13, 2008.

An Information[2] dated September 13, 2000 charging both petitioners with having violated Section 3(e) of Republic Act No. 3019, by causing undue injury to the government, reads:

The undersigned Graft Investigation Officer of the Office of the Ombudsman-Visayas, accuses QUINTIN B. SALUDAGA and SPO2 FIEL E. GENIO, for VIOLATION OF SECTION 3(e) OF REPUBLIC ACT NO. 3019, AS AMENDED (THE ANTI-GRAFT AND CORRUPT PRACTICES ACT), committed as follows:

That in or about the months of November and December, 1997, at the Municipality of Lavezares, Province of Northern Samar, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, public officials, being the Municipal Mayor and PNP Member of Lavezares, Northern Samar in such capacity and committing the offense in relation to office, conniving, confederating and mutually helping with one another, and with the late Limpio Legua, a private individual, with deliberate intent, with evident bad faith and manifest partiality, did then and there willfully, unlawfully and feloniously enter into a Pakyaw Contract for the Construction of Barangay Day Care Centers for Barangays Mac-arthur and Urdaneta, Lavezares, Northern Samar, each in the amount of FORTY-EIGHT THOUSAND FIVE HUNDRED PESOS (P48,500.00), Philippine Currency, or a total amount of NINETY-SEVEN THOUSAND PESOS (P97,000.00), Philippine Currency, without conducting a competitive public bidding, thus depriving the government the chance to obtain the best, if not, the most reasonable price, and thereby awarding said contracts to Olimpio Legua, a non-license contractor and non-accredited NGO, in violation of Sec. 356 of Republic Act No. 7160 (The Local Government Code) and COA Circular No. 91-368, to the damage and prejudice of the government.

CONTRARY TO LAW.

This case was initially raffled to the Third Division of Sandiganbayan and was docketed as Criminal Case No. 26319.

In a Resolution[3] promulgated on June 14, 2002, the Third Division granted petitioners' Motion to Quash and dismissed the information "for failure of the prosecution to allege and prove the amount of actual damages caused the government, an essential element of the crime charged."

In a Memorandum[4] dated July 1, 2003, the Ombudsman directed the Office of the Special Prosecutor (OSP) to study the possibility of having the information amended and re-filed with the Sandiganbayan.

Thus, the OSP re-filed the Information[5] dated August 17, 2007, this time, docketed as Criminal Case No. SB-08 CRM 0263, with the Fourth Division of the Sandiganbayan, charging the petitioners for violation of Section 3(e) of R.A. No. 3019, by giving unwarranted benefit to a private person, to the prejudice of the government.

The information, subject of the petition, now reads:

The undersigned Prosecutor of the Office of the Special Prosecutor/Office of the Ombudsman, hereby accuses, MAYOR QUINTIN B. SALUDAGA and SPO2 FIEL E. GENIO, for the violation of Section 3(e) of Republic Act 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, committed as follows:

That in or about the months of November and December, 1997 at the Municipality of Lavezares, Province of Northern Samar, Philippines, and within the jurisdiction of this Honorable Court, accused QUINTIN B. SALUDAGA, a high ranking public official being then the Mayor of Lavezares, Northern Samar, and committing the crime herein charged while in the discharge of his official administrative function, conspiring and conniving with accused SPO2 FIEL B. GENIO, a member of Lavezares Police Force (PNP) and with the late OLIMPIO LEGUA, a private individual, with deliberate intent, did then and there willfully, unlawfully and criminally give unwarranted benefit or advantage to the late Olimpio Legua, a non-license contractor and non-accredited NGO, through evident bad faith and manifest partiality by then and there entering into a Pakyaw Contract with the latter for the Construction of Barangay Day Care Centers for barangays Mac-Arthur and Urdaneta, Lavezares, Northern Samar, in the amount of FORTY EIGHT THOUSAND FIVE HUNDRED PESOS (P48,500.00) each or a total of NINETY SEVEN THOUSAND PESOS (P97,000.00) Philippine Currency, without the benefit of a competitive public bidding to the prejudice of the Government and public interest.

CONTRARY TO LAW.

Petitioners filed a Motion for Preliminary Investigation[6] dated June 4, 2008 which was strongly opposed by the prosecution in its Opposition[7] dated June 18, 2008.

Petitioners contend that the failure of the prosecution to conduct a new preliminary investigation before the filing of the second Information constituted a violation of the law because the latter charged a different offense-that is, violation of Section 3(e) by giving unwarranted benefit to private parties. Hence, there was a substitution of the first Information. They argue that assuming that no substitution took place, at the very least, there was a substantial amendment in the new information and that its submission should have been preceded by a new preliminary investigation. Further, they claim that newly discovered evidence mandates re-examination of the finding of a prima facie cause to file the case.

On July 14, 2008, the Sandiganbayan Fourth Division issued the assailed Resolution denying the petitioners' motion for preliminary investigation. The graft court found that there is no substituted information or substantial amendment that would warrant the conduct of a new preliminary investigation. It gave the following ratiocination:

The re-filed information did not change the nature of the offense charged, but merely modified the mode by which accused committed the offense. The substance of such modification is not such as to necessitate the conduct of another preliminary investigation.

Moreover, no new allegations were made, nor was the criminal liability of the accused upgraded in the re-filed information. Thus, new preliminary investigation is not in order.

The dispositive portion of the Resolution states:

Finding the arguments of accused-movants indefensible, the sufficiency of the information must be sustained.

WHEREFORE, having established the sufficiency of the Information, the motion under consideration is hereby DENIED for lack of merit. Accordingly, the arraignment of both accused shall proceed as scheduled.[8]

Petitioners filed a Motion for Reconsideration[9] dated August 6, 2008, submitting that the two Informations substantially charged different offenses, such that the present information constituted a substitution that should have been preceded by a new preliminary investigation.

On August 13, 2008, in a hearing for the arraignment of petitioners, the Sandiganbayan denied the Motion[10] in open court.

Hence, petitioners interpose the present petition for certiorari, prohibition and mandamus with prayer for the issuance of a writ of preliminary injunction and temporary restraining order under Rule 65 of the Rules of Court anchored on the following grounds:

I

THE HONORABLE SANDIGANBAYAN ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT REFUSED TO ORDER THE PRELIMINARY INVESTIGATION OF THE CASE A QUO, WHEN THE SECOND INFORMATION IN THE INSTANT CASE CONSTITUTED SUBSTITUTED INFORMATION WHOSE SUBMISSION REQUIRED THE CONDUCT OF PRELIMINARY INVESTIGATION.

II

THE HONORABLE SANDIGANBAYAN ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT REFUSED TO ORDER THE CONDUCT OF A PRELIMINARY INVESTIGATION OF THE CASE A QUO, SINCE THE SECOND INFORMATION THEREIN CONTAINED SUBSTANTIAL AMENDMENTS WHOSE SUBMISSION REQUIRED THE CONDUCT OF PRELIMINARY INVESTIGATION.

III

THE HONORABLE SANDIGANBAYAN ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT REFUSED TO ORDER THE PRELIMINARY INVESTIGATION OF THE CASE A QUO, ALTHOUGH THE NEWLY DISCOVERED EVIDENCE MANDATES DUE RE-EXAMINATION OF THE FINDING THAT PRIMA FACIE CAUSE EXISTED TO FILE THE CASE A QUO.[11]

From the arguments raised by petitioners, the core issue is whether or not the two (2) ways of violating section 3(e) of Republic Act 3019, namely: (a) by causing undue injury to any party, including the Government; or (b) by giving any private party any unwarranted benefit, advantage or preference constitute two distinct and separate offenses that would warrant a new or another preliminary investigation.

In its Comment[12] dated January 12, 2009, respondent People of the Philippines, represented by the Office of the Special Prosecutor, counters that there is no substituted information in contemplation of law and jurisprudence that would require the conduct of another preliminary investigation. There is no newly-discovered evidence that would lead to a different determination should there be another preliminary investigation conducted.

In their Reply,[13] dated April 24, 2009, petitioners insist that the offenses charged in the first and second Information are not the same, and what transpired was a substitution of Information that required prior conduct of preliminary investigation. Even assuming there was no substitution, substantial amendments were made in the

second Information, and that its submission should have been preceded by a new preliminary investigation.

We find no merit in this petition.

Petitioners were charged with a violation of Section 3(e) of R.A. No. 3019 or the Anti-Graft and Corrupt Practices Act which reads:

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 are hereby declared to be Unlawful:

x x x

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

The essential elements of the offense are as follows:

- The accused must be a public officer discharging administrative, judicial or official functions;
- He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and
- That his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions. [14]

In a string of decisions, the Court has consistently ruled:

R.A. 3019, Section 3, paragraph (e), as amended, provides as one of its elements that the public officer should have acted by causing any undue injury to any party, including the Government, or by giving any private party unwarranted benefits, advantage or preference in the discharge of his functions. The use of the disjunctive term "or" connotes that either act qualifies as a violation of Section 3 paragraph (e), or as aptly held in Santiago, as two (2) different modes of committing the offense. This does not however indicate that each mode constitutes a distinct offense, but rather, that an accused may be charged under either mode or under both.[15]

The afore-stated ruling is consistent with the well-entrenched principle of statutory construction that "The word or is a disjunctive term signifying disassociation and independence of one thing from the other things enumerated; it should, as a rule, be construed in the sense in which it ordinarily implies, as a disjunctive word." [16]

Contrary to the argument of petitioners, there is no substituted information. The Information dated August 17, 2007 filed in Criminal Case No. SB-08 CRM 0263 charged the same offense, that is, violation of Section 3(e) of Republic Act No. 3019. Only the mode of commission was modified. While jurisprudence, the most recent being Talaga, Jr. v. Sandiganbayan,[17] provides that there are two (2) acts or modes of committing the offense, thus: a) by causing any undue injury to any party, including the government; or b) by giving any private party any unwarranted benefit, advantage or preference, it does not mean that each act or mode constitutes a distinct offense. An accused may be charged under either mode[18] or under both should both modes concur.[19]

Petitioners' reliance on the Teehankee v. Madayag,[20] ruling that, "in substitution of information another preliminary investigation is entailed and that the accused has to plead anew to the new information" is not applicable to the present case because, as already stated, there is no substitution of information there being no change in the nature of the offense charged.

Consequently, petitioners cannot invoke the principle enunciated in Villaflor v. Vivar, [21] that failure to conduct

a new preliminary investigation is tantamount to a violation of their rights. While it is true that preliminary investigation is a statutory and substantive right accorded to the accused before trial, the denial of petitioners' claim for a new investigation, however, did not deprive them of their right to due process. An examination of the records of the case discloses that there was a full-blown preliminary investigation wherein both petitioners actively participated.

Anent the contention of petitioners that the information contained substantial amendments warranting a new preliminary investigation, the same must likewise fail.

Petitioners erroneously concluded that giving undue injury, as alleged in the first Information, and conferring unwarranted benefits, alleged in the second Information, are two distinct violations of, or two distinct ways of violating Section 3(e) of Republic Act No. 3019, and that such shift from giving undue injury to conferring unwarranted benefit constituted, at the very least, a substantial amendment. It should be noted that the Information is founded on the same transaction as the first Information, that of entering into a Pakyaw Contract for the construction of barangay day care centers for barangays Mac-Arthur and Urdaneta, Lavezares, Northern Samar. Thus, the evidentiary requirements for the prosecution and defense remain the same.

To bolster their claim for a reinvestigation of the offense, petitioners cited the case of *Matalam v. Sandiganbayan*. [22] The same is inapplicable to petitioners' case. In *Matalam*, there was indeed a substantial amendment which entitled the accused to another preliminary investigation. The recital of facts constituting the offense charged therein was definitely altered. In the original information, the prohibited act allegedly committed by the petitioner was the illegal and unjustifiable refusal to pay the monetary claims of the private complainants, whereas in the amended information, it is the illegal dismissal from the service of the private complainants. In the case at bar, there is no substantial amendment to speak of. As discussed previously, the Information in Criminal Case No. 26319 was already dismissed by the Third Division of the Sandiganbayan in view of the petitioners' Motion to Quash. As such, there is nothing more to be amended.

The Court is not unaware of the case of *People v. Lacson*, [23] where it was written:

The case may be revived by the State within the time-bar either by the refiling of the Information or by the filing of a new Information for the same offense or an offense necessarily included therein. There would be no need of a new preliminary investigation. However, in a case wherein after the provisional dismissal of a criminal case, the original witnesses of the prosecution or some of them may have recanted their testimonies or may have died or may no longer be available and new witnesses for the State have emerged, a new preliminary investigation must be conducted before an Information is refiled or a new Information is filed. A new preliminary investigation is also required if aside from the original accused, other persons are charged under a new criminal complaint for the same offense or necessarily included therein; or if under a new criminal complaint, the original charge has been upgraded; or if under a new criminal complaint, the criminal liability of the accused is upgraded from that as an accessory to that as a principal. The accused must be accorded the right to submit counter-affidavits and evidence.

No such circumstance is obtaining in this case, because there was no modification in the nature of the charged offense. Consequently, a new preliminary investigation is unnecessary and cannot be demanded by the petitioners.

Finally, the third assigned error, that newly discovered evidence mandates due re-examination of the finding of prima facie cause to file the case, deserves scant consideration. For petitioners, it is necessary that a new investigation be conducted to consider newly discovered evidence, in particular, the Affidavit of COA Auditor Carlos G. Pornelos, author of the audit report. We are not convinced.

Under Section 2, Rule 121 of the Rules of Court, the requisites for newly discovered evidence are: (a) the

evidence was discovered after trial (in this case, after investigation); (b) such evidence could not have been discovered and produced at the trial with reasonable diligence; and (c) that it is material, not merely cumulative, corroborative or impeaching, and is of such weight that, if admitted, will probably change the judgment.[24]

The Pornelos affidavit, which petitioners claim as newly-discovered, was executed by affiant way back in November 29, 2000, as correctly found by the Sandiganbayan. Clearly, it cannot be considered as newly found evidence because it was already in existence prior to the re-filing of the case. In fact, such sworn affidavit was among the documents considered during the preliminary investigation. It was the sole annexed document to petitioners' Supplement to Motion for Reinvestigation,[25] offered to dispute the charge that no public bidding was conducted prior to the execution of the subject project.

More important is the prosecution's statement in its Memorandum that, "after a careful re-evaluation of the documentary evidence available to the prosecution at the time of the filing of the initial Information, and at the time of the re-filing of the Information, the prosecution insists on the finding of probable cause, an exercise within the exclusive province of the Office of the Ombudsman." [26]

Worthy of note is the case of Soriano v. Marcelo,[27] viz:

Case law has it that the determination of probable cause against those in public office during a preliminary investigation is a function that belongs to the Office of the Ombudsman. The Ombudsman has the discretion to determine whether a criminal case, given its attendant facts and circumstances, should be filed or not. It is basically his call.

Without good and compelling reasons, the Court cannot interfere in the exercise by the Office of the Ombudsman of its investigatory and prosecutory powers.[28] The only ground upon which it may entertain a review of the Office of the Ombudsman's action is grave abuse of discretion.[29]

Grave abuse of discretion is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism.[30]

The special civil action for certiorari under Rule 65 of the Rules of Court is intended to correct errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. The writ of certiorari is directed against a tribunal, board or officer exercising judicial or quasi-judicial function that acted without or in excess of its or his jurisdiction or with grave abuse of discretion. Grave abuse of discretion means such capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. To justify the issuance of the writ of certiorari, the abuse of discretion must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act at all, in contemplation of law, as to be equivalent to having acted without jurisdiction.[31]

The case at bench discloses no evident indication that respondent Sandiganbayan acted with arbitrariness, whim or caprice. It committed no error in refusing to order the conduct of another preliminary investigation. As sufficiently explained by the prosecution, a new preliminary investigation is not necessary as there was neither a modification of the nature of the offense charged nor a new allegation. Such conduct of preliminary investigation anew will only delay the resolution of the case and would be an exercise in futility in as much as there was a complete preliminary investigation actively participated by both petitioners.

In view of the foregoing, we hold that the public respondent committed no grave abuse of discretion in issuing its Resolution of July 14, 2008, denying petitioners' motion for preliminary investigation in Criminal Case No.

SB-08 CRM 0263.

WHEREFORE, the petition is DENIED.

SO ORDERED.

Carpio, (Chairperson), Velasco, Jr., Nachura, and Peralta, JJ., concur.

[1] Penned by Associate Justice Gregory S. Ong, with Associate Justices Jose R. Hernandez and Samuel R. Martires (sitting as Special Member per Administrative Order No. 154-2007 dated December 21, 2007) concurring.

[2] Annex B, Petition; Rollo, pp. 33-34

[3] Annex C, id. at 35-37.

[4] Annex 5 of the Comment; id. at 112.

[5] Annex D, Petition; id. at 38-39.

[6] Annex E, id. 41-52.

[7] Annex 8 of the Comment, id. at 139-144.

[8] Annex F, Petition, id. at 55-56.

[9] Annex G, id. at 58-64.

[10] Annex A, id. at 24-31.

[11] Rollo, p. 8.

[12] Id. at 84.

[13] Id. at 226-231.

[14] *Albert v. Sandiganbayan*, G.R. No. 164015, February 26, 2009; *Collantes v. Marcelo*, G.R. Nos. 167006-07, August 14, 2007, 530 SCRA 142; *Cabrera v. Sandiganbayan*, G.R. No. 162314, October 25, 2004, 441 SCRA 377 citing *Jacinto v. Sandiganbayan*, G.R. No. 84571, October 2, 1989, 178 SCRA 254.

[15] *Santiago v. Garchitorena*, G.R. No. 109266, December 2, 1993, 228 SCRA 214; *Bautista v. Sandiganbayan*, G.R. No. 136082, May 12, 2000, 332 SCRA 126; *Evangelista v. People*, G.R. Nos. 108135-36, August 14, 2000, 337 SCRA 671; *Cabrera v. Sandiganbayan*, G.R. Nos. 162314-17, October 25, 2004, 441 SCRA 377.

[16] *AGPALO, STATUTORY CONSTRUCTION*, 2003, p. 204; see also *The Heirs of George Poe v. Malayan Insurance Company, Inc.*, G.R. No. 156302, April 7, 2009

[17] G.R. No. 169888, November 11, 2008, 570 SCRA 622.

[18] *Constantino v. Sandiganbayan*, G.R. No. 140656, September 13, 2007, 533 SCRA 205 citing *Pilapil v. Sandiganbayan*, G.R. No. 101978, April 7, 1993, 221 SCRA 349.

[19] *Constantino v. Sandiganbayan*, G.R. No. 140656, September 13, 2007, 533 SCRA 205 citing *Pareño v. Sandiganbayan*, G.R. Nos. 107110-20, April 17, 1996, 256 SCRA 242.

[20] G.R. No. 103102, March 6, 1992, 207 SCRA 134.

- [21] G.R. No. 134744, January 16, 2001, 349 SCRA 194.
- [22] G.R. No. 165751, April 12, 2005, 455 SCRA 736.
- [23] G.R. No. 149453, April 1, 2003, 400 SCRA 267.
- [24] Amarillo et al. v. Sandiganbayan, G.R. Nos. 145007-08, January 28, 2003, 396 SCRA 434 citing *Amper v. Sandiganbayan*, G.R. No. 120391, September 24, 1997, 279 SCRA 434.
- [25] Annex 15 of Comment, Rollo pp. 181-183.
- [26] Respondent's Memorandum dated September 22, 2009, id. at 325.
- [27] G.R. No. 160772, July 13, 2009 citing *Presidential Commission on Good Government v. Desierto*, G.R. No. 139296, November 23, 2007, 538 SCRA 207.
- [28] *Peralta v. Desierto*, G.R. No. 153152, October 19, 2005, 473 SCRA 322 citing *Knecht v. Desierto*, G.R. No. 121916, June 26, 1998, 291 SCRA 292; *Tirol, Jr. v. COA*, G.R. No. 133954, August 3, 2000, 337 SCRA 198.
- [29] *Peralta v. Desierto*, G.R. No. 153152, October 19, 2005, 473 SCRA 322 citing *PCGG v. Desierto*, G.R. No. 132120, February 10, 2003, 397 SCRA 171.
- [30] *Ferrer v. Office of the Ombudsman, et al.*, G.R. No. 129036, August 6, 2008, 561 SCRA 51 citing *Galvante v. Casimiro et al.*, G.R. No. 162808, April 22, 2008, 552 SCRA 304.
- [31] *Julie's Franchise Corp. et al. v. Ruiz et al.*, G.R. No. 180988, August 28, 2009.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.