

JOSELITO RANIERO J. DAAN, PETITIONER, V.S. THE HON. SANDIGANBAYAN (FOURTH DIVISION), RESPONDENT

G.R. Nos. 163972-77. March 28, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Joselito Raniero J. Daan (petitioner), one of the accused in Criminal Cases Nos. 24167-24170, 24195-24196,[1] questions the denial by the Sandiganbayan of his plea bargaining proposal.

The antecedents facts are laid down by Sandiganbayan in its Resolution dated March 25, 2004, as follows:

Said accused,[2]together with accused Benedicto E. Kuizon, were charged before this Court for three counts of malversation of public funds involving the sums of P3,293.00, P1,869.00, and P13,528.00, respectively, which they purportedly tried to conceal by falsifying the time book and payrolls for given period making it appear that some laborers worked on the construction of the new municipal hall building of Bato, Leyte and collected their respective salaries thereon when, in truth and in fact, they did not. Thus, in addition to the charge for malversation, the accused were also indicted before this Court for three counts of falsification of public document by a public officer or employee.

In the falsification cases, the accused offered to withdraw their plea of "not guilty" and substitute the same with a plea of "guilty", provided, the mitigating circumstances of confession or plea of guilt and voluntary surrender will be appreciated in their favor. In the alternative, if such proposal is not acceptable, said accused proposed instead to substitute their plea of "not guilty" to the crime of falsification of public document by a public officer or employee with a plea of "guilty", but to the lesser crime of falsification of a public document by a private individual. On the other hand, in the malversation cases, the accused offered to substitute their plea of "not guilty" thereto with a plea of "guilty", but to the lesser crime of failure of an accountable officer to render accounts.

Insofar as the falsification cases are concerned, the prosecution found as acceptable the proposal of the accused to plead "guilty" to the lesser crime of falsification of public document by a private individual. The prosecution explained:

"With respect to the falsification cases earlier mentioned, it appears that the act of the accused in pleading guilty for a lesser offense of falsification by a private individual defined and penalized under Article 172 of the Revised Penal code will strengthen our cases against the principal accused, Municipal Mayor Benedicto Kuizon, who appears to be the master mind of these criminal acts."

Insofar as the malversation cases are concerned, the prosecution was likewise amenable to the offer of said accused to plead "guilty" to the lesser crime of failure of an accountable officer to render accounts because:

"x x x JOSELITO RANIERO J. DAAN has already restituted the total amount of P18,860.00 as per official receipt issued by the provincial government of Leyte dated February 26, 2002. In short, the damage caused to the government has already been restituted x x x.[3]

The Sandiganbayan, in the herein assailed Resolution,[4] dated March 25, 2004, denied petitioner's Motion to Plea Bargain, despite favorable recommendation by the prosecution, on the main ground that no cogent reason was presented to justify its approval[5]The Sandiganbayan likewise denied petitioner's Motion for Reconsideration in a Resolution dated May 31, 2004.

This compelled petitioner to file the present case for certiorari and prohibition with prayer for the issuance of a temporary restraining order and/ or writ of preliminary injunction under Rule 65 of the Rules of Court.

Petitioner argues that the Sandiganbayan committed grave abuse of discretion in denying his plea bargaining offer on the following grounds: first, petitioner is not an accountable officer and he merely affixed his signature on the payrolls on a "routinary basis," negating any criminal intent; and that the amount involved is only P18,860.00, which he already restituted.[6]

The petition is meritorious.

Plea bargaining in criminal cases is a process whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval. It usually involves the defendant's 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.[7]

Plea bargaining is authorized under Section 2, Rule 116 of the Revised Rules of Criminal Procedure, to wit:

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. (sec. 4, cir. 38-98)

Ordinarily, plea bargaining is made during the pre-trial stage of the proceedings. Sections 1 and 2, Rule 118 of the Rules of Court, require plea bargaining to be considered by the trial court at the pre-trial conference,[8] viz:

SEC. 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.

SEC. 2. Pre-trial agreement. - All agreements or admissions made or entered during the pre-trial conference shall be reduced in writing and signed by the accused and counsel, otherwise, they cannot be used against the accused. The agreements covering the matters referred to in section 1 of this Rule shall be approved by the court. (Emphasis supplied)

But it may also be made during the trial proper and even after the prosecution has finished presenting its evidence

and rested its case. Thus, the Court has held that it is immaterial that plea bargaining was not made during the pre-trial stage or that it was made only after the prosecution already presented several witnesses.[9]

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,[10] 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.[11] Trial courts are exhorted to keep in mind that a plea of guilty for a lighter offense than that actually charged is not supposed to be allowed as a matter of bargaining or compromise for the convenience of the accused.[12]

In *People of the Philippines v. Villarama*,[13] the Court ruled that 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 that is addressed entirely to the sound discretion of the trial court,[14] viz:

x x x In such situation, jurisprudence has provided the trial court and the Office of the Prosecutor with a yardstick within which their discretion may be properly exercised. Thus, in *People v. Kayanan* (L-39355, May 31, 1978, 83 SCRA 437, 450), We held that the rules allow such a plea only when the prosecution does not have sufficient evidence to establish the guilt of the crime charged. In his concurring opinion in *People v. Parohinog* (G.R. No. L-47462, February 28, 1980, 96 SCRA 373, 377), then Justice Antonio Barredo explained clearly and tersely the rationale or the law:

x x x (A)fter the prosecution had already rested, the only basis on which the fiscal and the court could rightfully act in allowing the appellant to change his former plea of not guilty to murder to guilty to the lesser crime of homicide could be nothing more nothing less than the evidence already in the record. The reason for this being that Section 4 of Rule 118 (now Section 2, Rule 116) under which a plea for a lesser offense is allowed was not and could not have been intended as a procedure for compromise, much less bargaining.[15](Emphasis supplied)

However, *Villarama* involved plea bargaining after the prosecution had already rested its case.

As regards plea bargaining during the pre-trial stage, as in the present case, the trial court's exercise of its discretion should neither be arbitrary nor should it amount to a capricious and whimsical exercise of discretion. Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility; and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined by law, or to act at all in contemplation of law.[16]

In the present case, the Sandiganbayan rejected petitioner's plea offer on the ground that petitioner and the prosecution failed to demonstrate that the proposal would redound to the benefit of the public. The Sandiganbayan believes that approving the proposal would "only serve to trivialize the seriousness of the charges against them and send the wrong signal to potential grafters in public office that the penalties they are likely to face would be lighter than what their criminal acts would have merited or that the economic benefits they are likely to derive from their criminal activities far outweigh the risks they face in committing them; thus, setting to naught the deterrent value of the laws intended to curb graft and corruption in government." [17]

Apparently, the Sandiganbayan has proffered valid reasons in rejecting petitioner's plea offer. However, subsequent events and higher interests of justice and fair play dictate that petitioner's plea offer should be accepted. The present case calls for the judicious exercise of this Court's equity jurisdiction -

Equity as the complement of legal jurisdiction seeks to reach and do complete justice where courts of law,

through the inflexibility of their rules and want of power to adapt their judgments to the special circumstances of cases, are incompetent so to do. Equity regards the spirit of and not the letter, the intent and not the form, the substance rather than the circumstance, as it is variously expressed by different courts.[18]

and of its power of control and supervision over the proceedings of lower courts,[19] in order to afford equal justice to petitioner.

In *People of the Philippines v. Estrada*,[20] the Sandiganbayan, in its Resolution dated March 14, 2007, approved the Plea Bargaining Agreement entered into by the prosecution and one of the accused, Charlie "Atong" Ang. The agreement provided that the accused undertakes to assist in the prosecution of the case and promises to return the amount of P25,000,000.00. In approving the Plea Bargaining Agreement, the Sandiganbayan took into consideration the timeliness of the plea bargaining and whether the agreement complied with the requirements of Section 2, Rule 116 of the Rules of Court. The Sandiganbayan noted that the accused had already withdrawn his earlier plea of "not guilty"; and that the prosecution consented to the plea of guilt to a lesser offense; and the lesser offense, which is Corruption of Public Officials in relation to Indirect Bribery, is necessarily included in the offense charged, which is Plunder.[21]

The Court sees no reason why the standards applied by the Sandiganbayan to Estrada should not be applied to the present case. Records show that there was a favorable recommendation by the Office of the Special Prosecutor to approve petitioner's motion to plea bargain. Thus, in its Memorandum dated August 16, 2002, the Office of the Special Prosecutor rationalized:

In the cases at bar, there is no dispute that JOSELITO RANIERO J. DAAN has already restituted the total amount of P18,860.00 as per official receipt issued by the provincial government of Leyte dated February 26, 2002. In short, the damage caused to the government has already been restituted by the accused.

There is also no dispute that accused DAAN voluntarily surrendered in the instant cases. Moreover, the accused is also willing to plead guilty to a lesser offense which to our mind, merits consideration.

With respect to the falsification cases earlier mentioned, it appears that the act of the accused in pleading guilty for a lesser offense of falsification by private individual defined and penalized under Article 172 of the Revised Penal Code will strengthen our cases against the principal accused, the Municipal Mayor Benedicto Kuizon, who appears to be the master mind of these criminal acts. After all, the movants herein JOSELITO RANIERO J. DAAN was merely designated as draftsman detailed as foreman/timekeeper of the Municipality of Bato, Leyte.[22]

Moreover, the lesser offenses of Falsification by Private Individuals and Failure to Render Account by an Accountable Officer are necessarily included in the crimes of Falsification of Public Documents and Malversation of Public Funds, respectively, with which petitioner was originally charged.

Under Article 171, paragraph 4 of the Revised Penal Code, for the crime of Falsification of Public Documents through an untruthful narration of facts to be established, the following elements must concur: (a) the offender makes in a document untruthful statements in a narration of facts; (b) the offender has a legal obligation to disclose the truth of the facts narrated; (c) the facts narrated by the offender are absolutely false; and (d) the perversion of truth in the narration of facts was made with the wrongful intent of injuring a third person.[23] On the other hand, Falsification by Private Individuals penalized under Article 172, paragraph 1 of the Revised Penal Code has the following elements: (a) the offender is a private individual or a public officer or employee who did not take advantage

of his official position; (b) the offender committed any of the acts of falsification enumerated under Article 171 of the Revised Penal Code; and (c) the falsification was committed in a public or official or commercial

document.[24]

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 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.[25] Article 217 also provides that the failure of the public officer to have duly forthcoming such public funds or property, upon demand by a duly authorized officer, "shall be prima facie evidence that he has put such missing funds or property to personal use." In this regard, it has been ruled that once such presumption is rebutted, then it is completely destroyed; in fact, the presumption is never deemed to have existed at all.[26]

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.[27]

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

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.[28]

In this case, the allegations in the Informations filed against petitioner are sufficient to hold petitioner liable for the lesser offenses. Thus, in the charge for Falsification of Public Documents, petitioner may plead guilty to the lesser offense of Falsification by Private Individuals inasmuch as it does not appear that petitioner took advantage of his official position in allegedly falsifying the timebook and payroll of the Municipality of Bato, Leyte. 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.

Finally, as propounded by petitioner, indeed, he is not an accountable officer in that the nature of his duty as foreman/timekeeper does not permit or require possession or custody of local government funds,[29]not to mention that petitioner has already restituted the amount of P18,860.00 involved in this case. Unlike Estrada which involves a crime punishable by reclusion perpetua to death,[30]and a whopping P25,000,000.00 taken from the public coffers, this case tremendously pales in comparison.

Under the peculiar circumstances of the present case, where gross inequity will result in a discriminatory

dispensation of justice, the Court will not hesitate to intervene in order to equalize the imbalance.

WHEREFORE, the petition is GRANTED. The Resolutions dated March 25, 2004 and May 31, 2004 are SET ASIDE. The Sandiganbayan is hereby ORDERED to grant petitioner's Motion to Plea Bargain. Let records of this case be REMANDED to the Sandiganbayan for further proceedings in accordance with this Decision.

SO ORDERED.

Tinga, Chico-Nazario, Nachura, and Reyes., JJ., concur.

* In lieu of Justice Consuelo Ynares-Santiago, per Special Order No. 497 dated March 14, 2008.

[1]Entitled, "People of the Philippines, Plaintiff, v. Benedicto E. Kuizon, et al."

[2]Herein petitioner and Rosalina T. Tulibas.

[3]Rollo, pp. 15-18.

[4]Penned by Associate Justice Gregory S. Ong with the concurrence of Associate Justices Norberto Y. Geraldez and Efren N. de la Cruz.

[5]Rollo, p. 26.

[6]Rollo, pp. 8-10.

[7]People of the Philippines v. Villarama, Jr., G.R. No. 99287, June 23, 1992, 210 SCRA 246, 251-252.

[8]Ladino v. Garcia, 333 Phil. 254, 258 (1996); see also A.M. No. 03-1-09-SC dated July 13, 2004 (RE: PROPOSED RULE ON GUIDELINES TO BE OBSERVED BY TRIAL COURT JUDGES AND CLERKS OF COURT IN THE CONDUCT OF PRE-TRIAL AND USE OF DEPOSITION-DISCOVERY MEASURES).

[9]People of the Philippines v. Mamarion, 459 Phil. 51, 75 (2003).

[10]People of the Philippines v. Dawaton, 437 Phil. 861, 871 (2002).

[11]People of the Philippines v. Besonia, 466 Phil. 822, 833 (2004).

[12]People of the Philippines v. Judge Kayanan, 172 Phil. 728, 739 (1978).

[13]G.R. No. 99287, June 23, 1992, 210 SCRA 246.

[14]Id. at 252.

[15] Id. at 252-253.

[16]People of the Philippines v. Court of Appeals, G.R. No. 159261, February 21, 2007, 516 SCRA 383, 398.

[17]Rollo, pp. 20-21.

[18]Poso v. Judge Mijares, 436 Phil. 295, 324 (2002).

[19]Madrigal Transport, Inc. v. Lapanday Holdings Corporation, G.R. No. 156067, August 11, 2004, 436 SCRA 123, 134-135.

[20]Sandiganbayan Criminal Case No. 26558.

[21]Id. at 10-13.

[22]Rollo, pp. 42-43.

[23]Enemecio v. Office of the Ombudsman, 464 Phil. 102, 114 (2004); Lumancas v. Intas, 400 Phil. 785, 798 (2000); Lecaroz v. Sandiganbayan, 364 Phil. 890, 909 (1999).

[24] Reyes,Luis B., The Revised Penal Code (1981); see also Adaza v. Sandiganbayan, G.R. No. 154886, July 28, 2005, 464 SCRA 460, 472.

[25]Revised Penal Code, Article 217; see Rueda, Jr. v. Sandiganbayan, 400 Phil. 142, 153-154 (2000).

[26] Agullo v. Sandiganbayan, 414 Phil. 86, 98 (2001).

[27] Revised Penal Code, Article 218; see Campomanes v. People of the Philippines, G.R. No. 161950, December 19, 2006, 511 SCRA 285, 295.

[28]Pecho v. Sandiganbayan, G.R. No. 111399, November 14, 1994, 238 SCRA 116, 136; Teehankee, Jr. v. Madayag, G.R. No. 103102, March 6, 1992, 207 SCRA 134, 141.

[29]Local Government Code, Section 340; see Frias, Sr. v. People of the Philippines, G.R. No. 171437, October 4, 2007, 534 SCRA 654, 662.

[30]Republic Act No. 7080 (1991), Sec. 2. (An Act Defining and Penalizing the Crime of Plunder), as amended by Republic Act No. 7659 (1993).

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