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Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

ARTURO O. RADAZA,  
*Petitioner,*

G.R. No. 201380

Present:

versus

PERLAS-BERNABE, *SAJ.*,  
*Chairperson,*  
HERNANDO,  
INTING,  
GAERLAN, and  
ROSARIO, \* *J.J.*

HON. SANDIGANBAYAN and  
PEOPLE OF THE  
PHILIPPINES,  
*Respondents.*

Promulgated:

AUG 04 2021

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[Signature]  
X

DECISION

**HERNANDO, J.:**

This is a Petition for *Certiorari* and Prohibition<sup>1</sup> under Rule 65 of the Rules of Court assailing the November 2, 2011<sup>2</sup> and February 21, 2012<sup>3</sup> Resolutions of the Sandiganbayan in SB-08-CRM-0275.

**The Relevant Antecedents:**

In 2006, the Province of Cebu was designated as the venue for the 12<sup>th</sup> Association of Southeast Asian Nations (ASEAN) Summit that was to be held on January 9-15, 2007.

\* Designated as additional Member per S.O. No. 2835 dated July 15, 2021.  
<sup>1</sup> *Rollo*, Vol. 1, pp. 3-52.  
<sup>2</sup> Id. at 53-57; penned by Associate Justice Rodolfo A. Ponferrada and concurred in by Associate Justices Efren de la Cruz and Rafael R. Lagos.  
<sup>3</sup> Id. at 58-60; penned by Associate Justice Rodolfo A. Ponferrada and concurred in by Associate Justices Efren de la Cruz and Rafael R. Lagos.

Beautification projects then commenced in preparation for the event. Among such projects were the acquisition and installation of street lighting facilities and decorative lampposts in the focal thoroughfares of Cebu, Mandaue, and Lapu-Lapu cities (hereafter, the street lighting project). The Department of Public Works and Highways (DPWH) was the main government agency tapped to facilitate the street lighting project.

On January 9, 2007, *Bagong Alyansang Makabayan* (BAYAN), Central Visayas, *Panaghugpong sa Kabus sa Dakbayan-KADAMAY*, *Kilusang Magbubukid sa Pilipinas*, the *Panaghuisa sa Gagmay'ng Mangingisda sa Sugbo*, and *Alyansa sa Mamumu-o sa Sugbo* wrote the Office of the Ombudsman for the Visayas (Ombudsman-Visayas).<sup>4</sup> Their letter alleged anomalies in pricing and called for the investigation of the transactions entered into by the DPWH in connection to the street lighting project.<sup>5</sup>

On March 23, 2007, the Ombudsman-Visayas acted upon the January 9, 2007 letter and released a Final Evaluation Report<sup>6</sup> (Report) on the matters raised by the above organizations. In the Report, the Ombudsman-Visayas found *prima facie* evidence of overpricing resulting from the purported collusion between the winning bidders, the private contractors, and the City Governments of Mandaue and Lapu-Lapu.

Prompted by its discoveries, the Ombudsman-Visayas recommended the institution of criminal charges and administrative cases against the persons and government officials allegedly involved in the street lighting project irregularities. Among the respondents was herein petitioner Arturo O. Radaza (Radaza), then the City Mayor of Lapu-Lapu City.

He was initially recommended to be indicted for violation of Paragraph (e), Section 3 of Republic Act No. (RA) 3019 or the Anti-Graft and Corrupt Practices Act, as well as for administrative liability for Dishonesty/Grave Misconduct.<sup>7</sup> Upon the April 2, 2007 Order<sup>8</sup> of the Ombudsman-Visayas, Radaza filed his Counter-Affidavit<sup>9</sup> on the said recommendation for criminal and administrative charges against him.

In its January 24, 2008 Resolution,<sup>10</sup> the Ombudsman-Visayas amended the criminal charges against Radaza and his other co-respondents (Radaza, *et al.*) from violation of Section 3(e) to Section 3(g) of RA 3019. The full criminal charges were enflashed in an Information<sup>11</sup> also dated January 24,

<sup>4</sup> Id. at 88; per March 23, 2007 Final Evaluation Report of the Ombudsman-Visayas, p. 1 thereof.

<sup>5</sup> Id., per March 23, 2007 Final Evaluation Report of the Ombudsman-Visayas, p. 1 thereof.

<sup>6</sup> Id. at 88-95.

<sup>7</sup> Id. at 94.

<sup>8</sup> Id. at 102-104.

<sup>9</sup> Id. at 105-114; filed on May 22, 2007.

<sup>10</sup> Id. at 115-144.

<sup>11</sup> Id. at 145-148.

2008 and approved by then Ombudsman Ma. Mercedes N. Gutierrez (Gutierrez).<sup>12</sup> The accusatory portions in the January 24, 2008 Information pertinent to Radaza read:

The undersigned Graft Investigation and Prosecution Officers of the Office of the Ombudsman-Visayas accuse ROBERT G. LALA, GLORIA R. DINDIN, MARLINA S. ALVIZO, PUREZA A. FERNANDEZ, AGUSTINITO P. HERMOSO, LUIS A. GALANG, RESTITUTO R. DIANO, BUENAVENTURA C. PAJO, **ARTURO O. RADAZA**, ISABELO A. BRAZA, of the offense of **VIOLATION OF SECTION 3(g) OF REPUBLIC ACT NO. 3019, AS AMENDED, otherwise known as THE ANTI-GRAFT AND CORRUPT PRACTICES ACT, committed as follows:**

That in or about the month of March 2007, and for some time prior or subsequent thereto, at the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, accused GLORIA R. DINDIN, a public officer, being then the Assistant Regional Director of the Department of Public Works and Highways (DPWH) Regional Office No. VII, Cebu City, with authority to represent the Republic of the Philippines (through the DPWH) in a contract, accused ROBERT G. LALA, and PUREZA A. FERNANDEZ, also public officers being the Regional Director, and OIC Chief, Maintenance Division, respectively, of the DPWH Regional Office No. VII, and **accused ARTURO O. RADAZA**, JULITO H. CUIZON, FERNANDO T. TAGAAN, JR., ROGELIO D. VELOSO, also public officers **being then the City Mayor**, City Engineer, and Engineer IV, of Lapu-Lapu City, and as such officers are **tasked to prepare the Program of Works and Detailed Estimates for infrastructure projects**, and accused MARLINA S. ALVIZO, AGUSTINITO P. HERMOSO, LUIS A. GALANG, RESTITUTO R. DIANO, and BUENAVENTURA C. PAJO, also public officers, being the Chairman and Members, respectively, of the Bids and Awards Committee (BAC) of the DPWH Regional Office No. VII, and as such officers are responsible for ensuring that procurement contracts are awarded in accordance with the standards set forth in R.A. No. 9184, and shall, among others, conduct the evaluation of bids and recommend award of contracts, **in such capacity and committing the offense in relation to office, conniving and confederating together and mutually helping each other and with accused ISABELO A. BRAZA**, a private individual, being the President and Chairman of the Board of FABMIK Construction and Equipment Supply Co., Inc., with deliberate intent, and with intent of gain and to defraud, did then and there willfully, unlawfully and feloniously, on behalf of the Republic of the Philippines, prepare and approve the **Program of Works and Detailed Estimates for the supply and installation of street lighting facilities** consisting of one hundred thirty-nine (139) sets of 7M-single-arm street light poles, costing about Seventy-Two Thousand Five Hundred Pesos (P72,500.00), Philippine Currency, per set; and sixty (60) sets of 9M-double-arm street light poles costing about Eighty-Five Thousand Five Hundred

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<sup>12</sup> Id.

Pesos (P85,500.00), Philippine Currency, per set; **along the Mandaue-Mactan Bridge I to Punta Engaño Section, Lapu-Lapu City (Contract ID No. 06HO0050), conduct the bidding, recommend the award of the contract to FABMIK Construction and Equipment Supply Co., Inc., and afterwards enter into the corresponding contract with accused ISABELO A. BRAZA which contract or transaction was manifestly and grossly disadvantageous to the Republic of the Philippines**, as the said cost of P72,500.00 and P85,500.00 exceeded the prevailing price of only about Six Thousand Pesos (P6,000.00), Philippine Currency, per set of single-arm assembly, and Seven Thousand Five Hundred Pesos (P7,500.00), Philippine Currency, per set of double arm assembly, **to the damage and prejudice of the government.**

CONTRARY TO LAW.

Cebu City (for Quezon City), Philippines, 24 January 2008.

BAIL BOND RECOMMENDED: P30,000.00 (each)<sup>13</sup> (Emphasis supplied.)

The case was docketed as SB-08-CRM-0275 before the Sandiganbayan, First Division (Sandiganbayan).

On May 5, 2008, Radaza filed a Motion for Reconsideration<sup>14</sup> of the January 24, 2008 Ombudsman-Visayas Resolution (Motion for Reconsideration) before the Office of the Ombudsman (Ombudsman-Central). He raised the main issue of whether his mere signature on the Program of Works and Detailed Estimates (POWE) sufficiently established probable cause against him for violation of Section 3(g) of RA 3019.

On May 20, 2008, pending resolution of the Motion for Reconsideration, Radaza filed a Manifestation with Urgent Motion to Defer Issuance of Warrant of Arrest, or to Recall It and/or Hold in Abeyance Its Implementation If Already Issued<sup>15</sup> before the Sandiganbayan (Motion to Defer/Recall/Hold Warrant of Arrest). Radaza likewise put up his bail bond.<sup>16</sup>

Still pending resolution of the Motion for Reconsideration and the Motion to Defer/Recall/Hold Warrant of Arrest, the Sandiganbayan scheduled Radaza's arraignment on June 6, 2008. Anticipating an imminent waiver of his objections to the validity of the Information against him, Radaza filed on June 3, 2008 an Omnibus Motion for Judicial Redetermination of Probable Cause, and for Quashal of Information, or for Reinvestigation with Prayer for Suspension of Further Proceedings Including Arraignment Set on June 6,

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<sup>13</sup> Id. at 146-147.

<sup>14</sup> Id. at 149-159.

<sup>15</sup> Id. at 16.

<sup>16</sup> Id.

2008<sup>17</sup> (Omnibus Motion for Redetermination of Probable Cause) before the Sandiganbayan.

In his Omnibus Motion for Redetermination of Probable Cause, Radaza assailed anew the validity of the January 24, 2008 Information. While admitting the initial finding of probable cause by the Sandiganbayan when it issued the warrants of arrest pertinent to the case, Radaza sought a judicial redetermination due to an allegedly incomplete finding of probable cause effected by the pendency of his Motion for Reconsideration of the January 24, 2008 Resolution before the Ombudsman-Central.

The Sandiganbayan denied Radaza's Omnibus Motion for Redetermination of Probable Cause.<sup>18</sup> It declared in its August 14, 2008 Resolution that to judicially pass upon the issue of probable cause would be redundant and superfluous as it had already issued the warrant for Radaza's arrest.

On September 23, 2008, Radaza was conditionally arraigned as one of the pre-requisites to his Urgent Motion to Travel Abroad.<sup>19</sup>

Upon motion by the Ombudsman-Visayas,<sup>20</sup> however, the January 24, 2008 Information was ordered withdrawn by the Sandiganbayan.<sup>21</sup> In the same vein, the Sandiganbayan reconsidered its August 14, 2008 Resolution. In its November 3, 2008 Order,<sup>22</sup> the Sandiganbayan granted Radaza's Motion for Reconsideration of its August 14, 2008 Resolution<sup>23</sup> and ordered the prosecution to reinvestigate the case.

The Ombudsman-Visayas thus continued with the investigation of the case and issued a Supplemental Resolution<sup>24</sup> thereon dated May 4, 2009. In the Supplemental Resolution, the Ombudsman-Visayas mainly reiterated its earlier findings contained in its January 24, 2008 Resolution, but reverted to its original criminal accusations of violation of Section 3(e) of RA 3019 against Radaza, *et al.*

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<sup>17</sup> Id. at 160-175.

<sup>18</sup> Id. at 187-194; penned by then Sandiganbayan Presiding Justice and former Supreme Court Chief Justice Diosdado M. Peralta, Sandiganbayan Associate Justice Rodolfo A. Ponferrada, and then Sandiganbayan Associate Justice and current Supreme Court Chief Justice Alexander G. Gesmundo.

<sup>19</sup> Records, pp. 228-230.

<sup>20</sup> *Rollo*, Vol. 1, pp. 245-247.

<sup>21</sup> Id. at 251-252; September 30, 2008 Resolution issued by Associate Justices Gregory S. Ong, Jose R. Hernandez and Roland B. Jurado.

<sup>22</sup> *Rollo*, Vol. 1, pp. 253-256.

<sup>23</sup> Id. at 253.

<sup>24</sup> In OMB-V-C-07-0124-C (SB-08-CRM-0273).

Consequently, also on May 4, 2009,<sup>25</sup> the prosecution filed its Manifestation and Motion to Admit Attached Amended Information<sup>26</sup> charging Radaza, *et al.* accordingly under Section 3(e) of RA 3019. The Amended Information,<sup>27</sup> also approved by Ombudsman Gutierrez, made the following accusations as regards Radaza:

The undersigned Deputy Ombudsman for the Visayas accuses ROBERT G. LALA, GLORIA R. DINDIN, MARLINA S. ALVIZO, PUREZA A. FERNANDEZ, CRESENCIO T. BAGOLOR, AGUSTINITO P. HERMOSO, LUIS A. GALANG, RESTITUTO R. DIANO, AYAON S. MANGGIS, MARILYN A. OJEDA, TERESA B. BERNIDO, **ARTURO O. RADAZA**, JULITO H. CUIZON, FERNANDO T. TAGAAN, JR., ROGELIO D. VELOSO and ISABELO A. BRAZA, of the offense of **VIOLATION OF SECTION 3(e), R.A. 3019, AS AMENDED, otherwise known as THE ANTI-GRAFT AND CORRUPT PRACTICES ACT, committed as follows:**

That on or about 6 February 2007 and for sometime prior or subsequent thereto, at the City of Cebu, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, ROBERT G. LALA, GLORIA R. DINDIN, MARLINA S. ALVIZO, PUREZA A. FERNANDEZ, CRESENCIO T. BAGOLOR, AGUSTINITO P. HERMOSO, LUIS A. GALANG, RESTITUTO R. DIANO, AYAON S. MANGGIS, MARILYN A. OJEDA, TERESA B. BERNIDO, **ARTURO O. RADAZA**, JULITO H. CUIZON, FERNANDO T. TAGAAN, JR., ROGELIO D. VELOSO, public officers, being the Regional Director, Assistant Regional Director, Assistant Regional Director and Chairperson, Bids and Awards Committee [BAC], Officer-In-Charge Chief, Maintenance Division and BAC Member, Officer-In-Charge Assistant Chief Maintenance Division and BAC Technical Working Group [TWG] Member, Regional Legal Officer and BAC Member, Chief, Planning and Design Division and BAC-Member, Chief, Administrative Division and BAC Member, and BAC-TWG Members, all of the Department of Public Works and Highways [DPWH]-VII, respectively, **City Mayor**, City Engineer, Assistant City Engineer and Engineer IV, respectively, all of Lapu-Lapu City, Province of Cebu, **in such capacity and committing the offense in relation to office, conniving and confederating together and mutually helping with each other, and with ISABELO A. BRAZA, a private individual, in his capacity as President and Chairman of the Board, FABMIK Construction and Equipment Supply Co., Inc., with deliberate intent, manifest partiality or evident bad faith, did then and there willfully, unlawfully and criminally cause the award of Contract ID No. 06HO0050 for the SUPPLY AND INSTALLATION OF STREET LIGHTING FACILITIES (consisting of 1.0 LOT or 139 units of Single Arm Poles and 60 units of Double Arm Poles, or a total of 199 units), MANDAUE-MACTAN BRIDGE 1 TO PUNTA ENGAÑO SECTION, LAPU-LAPU CITY, executed by and between**

<sup>25</sup> Also mentioned as May 7, 2009 in some parts of the records.

<sup>26</sup> *Rollo*, Vol. 1, p. 393.

<sup>27</sup> *Id.* at 387-392.

GLORIA R. DINDIN (in her capacity as DPWH-VII Assistant Regional Director) and accused ISABELO A. BRAZA (President and Chairman of FABMIK Construction and Equipment Supply Company, Inc.), for EIGHTY THREE MILLION NINE HUNDRED THIRTY FIVE THOUSAND PESOS (P83,935,000.00), **by preparing the Program of Works and Estimates [POWE], Approved Budget for the Contract [ABC] and other related documents, and conducting the procurement process, despite absence of legal requirements for a valid procurement process under Republic Act 9184, otherwise known as *Government Procurement Reform Act*, aside from awarding and implementing the project at an excessive price of P83,935,000.00 which is in excess by EIGHTEEN MILLION FORTY FIVE THOUSAND EIGHT HUNDRED NINETY PESOS [P18,045,890.00] using the allegedly falsified invoices, or in excess by THIRTEEN MILLION NINETY TWO THOUSAND NINETY PESOS AND 85/100 (P13,092,090.85) using the allegedly genuine invoices, as against the Ombudsman [OMB] computation of SIXTY FIVE MILLION EIGHT HUNDRED EIGHTY NINE THOUSAND ONE HUNDRED NINE PESOS AND 99/100 [P65,889,109.99], which in either computation is excessive as it is beyond the ten percent [10%] allowable price variance under *COA Circular No. 85-55A*, thereby giving unwarranted benefits, advantage or preference to the contractor, FABMIK Construction and Equipment Supply Company, Inc. to the damage and prejudice of the government.**

CONTRARY TO LAW.

Cebu City [for Quezon City], Philippines, 04 May 2009.

BAIL BOND RECOMMENDED: P30,000.00 each.<sup>28</sup> Emphasis supplied.)

On October 12, 2009, the Sandiganbayan issued a Resolution<sup>29</sup> admitting the Amended Information.

Radaza filed an Omnibus Motion for Clarification and Reiteration of Reinvestigation.<sup>30</sup> He claimed that, while not disputing the fact that a reinvestigation was conducted, the Office of the Special Prosecutor should have been the one conducting the reinvestigation, but the task was delegated to the Ombudsman-Visayas. Thus, Radaza opined that he was deprived of his right to participate in the reinvestigation. He believed that he was not accorded due process and that the findings in the Supplemental Resolution and the accusations in the Amended Information shall not bind him. He also reiterated his request for reinvestigation.

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<sup>28</sup> Id. at 388-390.

<sup>29</sup> Id. at 418-428.

<sup>30</sup> Id. at 429-432.

On October 22, 2010, the Sandiganbayan granted Radaza's Omnibus Motion for Clarification and Reiteration of Reinvestigation.<sup>31</sup> Pertinent part thereof is hereunder quoted:

**WHEREFORE**, in light of all the foregoing, the separate omnibus motions of accused-movant Radaza and accused-movants Bernido, Manggis and Ojeda, insofar as the sought preliminary investigation is concerned is **GRANTED**.

Accordingly, this case is hereby remanded to the Office of the Ombudsman/Special Prosecutor for preliminary investigation of violation of Section 3(e) of RA 3019. The said office/s are hereby ordered to complete the said preliminary investigation and to submit to the Court the result of the said investigation within sixty (60) days from notice.

x x x x

SO ORDERED.<sup>32</sup>

Despite the grant, Radaza filed a Manifestation with Motion to Stop the Office of the Deputy Ombudsman for Visayas from Conducting the Preliminary Investigation.<sup>33</sup> He questioned the Office of the Special Prosecutor, who, instead of conducting the reinvestigation itself, turned over the duty to the Ombudsman-Visayas. He ascribed bias upon the Ombudsman-Visayas as it issued consistently-adverse findings against him, and that its conduct of reinvestigation shall simply be *moro-moro*.

Nonetheless, the Ombudsman-Visayas proceeded to issue its Joint Resolution<sup>34</sup> dated April 14, 2011 directing the filing of an information against Radaza, among other respondents and other additional persons, for violation of Section 3(e) of RA 3019. The Joint Resolution was approved by then Acting Ombudsman Orlando C. Casimiro (Casimiro).

In the meantime, the Sandiganbayan denied<sup>35</sup> Radaza's Manifestation with Motion to Stop the Office of the Deputy Ombudsman for Visayas from Conducting the Preliminary Investigation.

For its part, the Ombudsman-Visayas filed a Compliance and Motion for Summary Amendment of the Information<sup>36</sup> (Motion for Summary Amendment). The Ombudsman-Visayas moved to summarily re-amend the

<sup>31</sup> Id. at 444-463; penned by Sandiganbayan Associate Justice Efren De la Cruz and concurred in by Sandiganbayan Associate Justice Rodolfo Ponferrada and former Sandiganbayan Associate Justice and incumbent Supreme Court Justice Alexander Gesmundo.

<sup>32</sup> Id. at 463.

<sup>33</sup> Id. at 465-469.

<sup>34</sup> Id. at 485-648.

<sup>35</sup> *Rollo*, Vol. II, pp. 656-663; penned by Associate Justice Rafael R. Lagos and concurred in by Associate Justices Efren N. De la Cruz and Rodolfo A. Ponferrada.

<sup>36</sup> Id. at 672-679.



Amended Information to modify the accused persons therein and to set their arraignment for Criminal Cases Nos. SB-08-CRM-0275 and SB-08-CRM-0270.

Radaza, however, filed a Comment/Opposition with Motion to Quash Amended Information (Motion to Quash Amended Information).<sup>37</sup> He pointed out that, as the prosecution itself had declared, the final approving authority of the Joint Resolution was not Acting Ombudsman Casimiro, but the then newly-appointed Ombudsman Hon. Conchita Carpio-Morales.

He moved to quash the Amended Information, which allegedly was the result of the reinvestigation concluded by the Ombudsman-Visayas in its May 4, 2009 Supplemental Resolution of the original charge for violation of Section 3(g) of RA 3019. Radaza theorizes that the Amended Information cannot be issued ahead of the Joint Resolution, which contained the preliminary investigation conducted on the charge of Section 3(e) of RA 3019 against him.

### **The Assailed Sandiganbayan Rulings:**

The Sandiganbayan resolved Radaza's Motion to Quash Amended Information in the negative. It held that the absence or lack of preliminary investigation is not a ground to quash the Amended Information charging Radaza with violation of Section 3(e) of RA 3019, nor does it render the Amended Information defective as to affect jurisdiction over the same which the Sandiganbayan has already assumed. The Sandiganbayan so declared in its November 2, 2011 Resolution:<sup>38</sup>

**WHEREFORE**, accused-movant Arturo Radaza's Opposition and Motion to Quash Amended Information dated September 22, 2011, and Prosecution's Motion for the Summary Amendment of the Information are **DENIED**. The Prosecution's Compliance dated September 5, 2011, is hereby considered sufficient compliance with the Resolution of the Court of August 25, 2011.

Let the arraignment of the accused in this case be set on November 24, 2011, at 8:30 in the morning.

SO ORDERED.<sup>39</sup>

The Sandiganbayan likewise denied Radaza's Motion for Reconsideration<sup>40</sup> in its February 21, 2012 Resolution<sup>41</sup> in the following wise:

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<sup>37</sup> Id. at 683-689.

<sup>38</sup> *Rollo*, Vol. 1, pp. 53-57.

<sup>39</sup> Id. at 57.

<sup>40</sup> *Rollo*, Vol. II, pp. 702-709.

<sup>41</sup> *Rollo*, Vol. 1, pp. 58-60.

**WHEREFORE**, accused-movant Arturo Radaza's subject Motion for Reconsideration is **DENIED** and the Court's assailed Resolution of November 2, 2011, is reiterated. x x x

SO ORDERED.<sup>42</sup>

Thus, this Petition for *Certiorari* before this Court.

### Issues

Petitioner Arturo O. Radaza raises the following questions:

A.

x x x [The Sandiganbayan] committed grave abuse of discretion when it denied petitioner's Motion to Quash the Amended Information. The Amended Information having been filed pursuant to the [Ombudsman-Visayas' May 4, 2009 Supplemental Resolution] signed by then [Ombudsman] Gutierrez and which pertained to a different supply contract, the same did not bear the approval of the new Ombudsman at the time it was submitted to the [Sandiganbayan on August 24, 2011] to accompany the Joint Resolution approved by acting Ombudsman Casimiro on [July 18, 2011. x x x [An] Information may not be filed by an officer who has no authority to do so. Then [Ombudsman] Gutierrez's authority on the Amended Information having become *functus officio* when [Ombudsman] Carpio-Morales was appointed on [July 26, 2011], the Sandiganbayan could not have acquired jurisdiction over the Amended Information and arraign herein petitioner pursuant thereto. Quashal thereof is thereof in order.

B.

Had respondent People, through the [OSG], performed its commitment as well as obligation to allow [Ombudsman] Carpio-Morales to review and approve the Joint Resolution, then she would have known that, even without the benefit of trial, there is no probable cause to indict herein petitioner under either Section 3(e) or Section 3(g) of [RA 3019]. Lack of probable cause is a ground to quash the Amended Information.<sup>43</sup>

### Our Ruling

The Petition must be dismissed.

**Denials of a motion to quash are improper subjects of a petition for *certiorari* before the Supreme Court.**

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<sup>42</sup> Id. at 59.

<sup>43</sup> Id. at 33.

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In the present Petition for *Certiorari*, Radaza assails the Resolutions of the Sandiganbayan denying his Opposition and Motion to Quash Amended Information. On technical grounds alone, the Court finds no reason to sustain Radaza.

Foremost in our rules of criminal procedure is that motions to quash are interlocutory orders that are generally unreviewable by appeal or by *certiorari*.<sup>44</sup> If the motion to quash is denied, it means that the criminal Information remains pending with the court, which then must proceed with the trial to determine whether the accused is innocent or guilty of the crime charged against him.<sup>45</sup> Only when the court promulgates a final judgment of conviction can the accused question the deficiencies of the Information by raising them as errors by the trial court and as an additional ground for his exoneration in his appeal.<sup>46</sup>

Jurisprudence explains the reason for the rule:

The reason of the law in permitting appeal only from a final order or judgment, and not from interlocutory or incidental one, is to avoid multiplicity of appeals in a single action, which must necessarily suspend the hearing and decision on the merits of the case during the pendency of the appeal. If such appeal were allowed, the trial on the merits of the case should necessarily be delayed for a considerable length of time, and compel the adverse party to incur unnecessary expenses; for one of the parties may interpose as many appeals as incidental questions may be raised by him and interlocutory orders rendered or issued by the lower court.<sup>47</sup>

More importantly, *certiorari* is a remedy of last resort. The special civil action of *certiorari* will not lie unless its petitioner has no other plain, speedy, or adequate remedy in the ordinary course of law. The fact that another remedy – to proceed to trial – is ready, available, and at the full disposal of the accused herein post-denial of his motion to quash already bars his remedial refuge in *certiorari*.

As with any general rule, Radaza's erroneous understanding of criminal procedure may be overlooked and his Petition can be treated as an exception if his circumstances should fall under any of the following: (1) when the court issued the order without or in excess of jurisdiction or with grave abuse of discretion; (2) when the interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief; (3) in the interest of a more enlightened and substantial justice; (4) to promote public welfare and public policy; and (5) when the cases have attracted nationwide

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<sup>44</sup> *Miranda v. Sandiganbayan*, 815 Phil. 123, 139 (2017).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*, citing *Yee v. Bernabe*, 521 Phil. 514, 520 (2006).

attention, making it essential to proceed with dispatch in the consideration thereof.<sup>48</sup> Under these instances, appeal is considered an inadequate remedy for a denied motion to quash and *certiorari* may be allowed instead. Radaza's case, however, certainly does not fit in any of the aforesaid jurisprudential exceptions, thus deserving the least application of liberality.

Even if the Petition for *Certiorari* would be so allowed, it appears to have transgressed upon another vital rule of procedure.

***Certiorari* corrects errors of jurisdiction, not errors of judgment.**

Radaza ascribes grave abuse of discretion against the Sandiganbayan in issuing the assailed Resolutions and seeks their reversal. His grounds therefor, however, are thoroughly misplaced.

The Court shall not tire in calling out the usual propensity of some litigants in confounding errors of judgment for errors of jurisdiction. An error of judgment is an error committed by a court *within* its jurisdiction that is reviewable by appeal. Mere allegations of wrongful conclusions based on the facts and the law or supposed misappreciation of evidence do not, by themselves, rise to the level of grave abuse of discretion against the trial court.<sup>49</sup> This is since –

The rationale of this rule is that, when a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error is committed. Otherwise, every mistake made by a court will deprive it of its jurisdiction and every erroneous judgment will be a void judgment.<sup>50</sup>

On the other hand, errors of jurisdiction are those done *outside and in excess* of a trial court's jurisdiction and committed *in grave abuse* of discretion that are properly reversible by *certiorari*. The abuse of discretion should clearly be *grave*, following the definition long-formulated by jurisprudence:

An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and

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<sup>48</sup> Id. at 139-140.

<sup>49</sup> Id. at 142 citing *Ysidoro v. Justice Leonardo-de Castro*, 681 Phil. 550 (2013).

<sup>50</sup> Id., citing *Candelaria v. Regional Trial Court, Branch 42, City of San Fernando, Pampanga*, 739 Phil. 1, 8 (2014).

despotic manner by reason of passion and hostility.” Furthermore, the use of a petition for *certiorari* is restricted only to “truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void.” From the foregoing definition, it is clear that the special civil action of *certiorari* under Rule 65 can only strike an act down for having been done with grave abuse of discretion if the petitioner could manifestly show that such act was patent and gross.<sup>51</sup>

Radaza may have introduced his arguments with a generic accusation of grave abuse of discretion. However, a plain reading of the issues raised and discussions he propounded in his present Petition reveals that his objections pertained to the Sandiganbayan appreciation of the evidence and application of the law in disposing his Opposition and Motion to Quash Amended Information. An attack against the correctness of a court’s judgment, without any real demonstration of its utter randomness and whimsicality, if any, is not the grave abuse of discretion contemplated by *certiorari* proceedings. Radaza even seeks a review of the facts and the case records in his attempt to justify the quashal of the Amended Information against him. Such is a prayer that is easily beyond the bounds of *certiorari* that is limited to an evaluation of whether a tribunal’s exercise of judicial discretion sufficiently amounted to lack or excess of jurisdiction.

**Lack of authority of an officer to file an Information, while a ground for quashal, is not a jurisdictional defect.**

A moot and academic review of the facts and the applicable law will not merit the quashal of the Amended Information as lobbied for by Radaza in his instant Petition.

Radaza’s Petition for *Certiorari* first assails the Amended Information for lack of the written authority or approval of the incumbent Ombudsman at the time the Amended Information was filed before the Sandiganbayan. Radaza claims that while the Amended Information was approved to be filed by then Ombudsman Gutierrez in the Supplemental Resolution, there was no such approval on the Joint Resolution by former Supreme Court Associate Justice Carpio-Morales, who was the incumbent Ombudsman at the time the Joint Resolution was issued. Radaza posits that this fact prevented the Sandiganbayan from acquiring jurisdiction over the offense charged under the Amended Information and over his person as the accused thereunder. Hence, his motion to quash should have been granted.

The Court finds no reason in law or in fact to agree with Radaza.

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<sup>51</sup> Id. at 141 citing *Dycoco v. Court of Appeals*, 715 Phil. 550, 563 (2013).

Rule 117 of the Rules of Court spells out the grounds to quash a criminal complaint or information, Section 3(d) of which is the crux of this case:

SEC. 3. *Grounds.* – The accused may move to quash the complaint or information on any of the following grounds:

- (a) That the facts charged do not constitute an offense;
- (b) That the court trying the case has no jurisdiction over the offense charged;
- (c) That the court trying the case has no jurisdiction over the person of the accused;
- (d) That the officer who filed the information had no authority to do so;**
- (e) That it does not conform substantially to the prescribed form;
- (f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law;
- (g) That the criminal action or liability has been extinguished;
- (h) That it contains averments which, if true, would constitute a legal excuse or justification; and
- (i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent.

(Emphasis supplied.)

This is read in conjunction with the principle laid down in the third paragraph of Section 4, Rule 112 of the Rules of Court:

SEC. 4. *Resolution of investigating prosecutor and its review.* x x x

x x x x

**No complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy.** (Emphasis supplied.)

Section 4(g), Rule II of the Rules of Procedure of the Office of the Ombudsman echoes the immediately-preceding provision with more specificity:

## Rule II

## PROCEDURE IN CRIMINAL CASES

x x x x

Section 4. *Procedure* – The preliminary investigation of cases falling under the jurisdiction of the Sandiganbayan and Regional Trial Courts shall be conducted in the manner prescribed in Section 3, Rule 112 of the Rules of Court, subject to the following provisions:

x x x x

g) x x x

**No information may be filed and no complaint may be dismissed without the written authority or approval of the Ombudsman in cases falling within the jurisdiction of the Sandiganbayan x x x** (Emphasis supplied.)

Earlier jurisprudence<sup>52</sup> had viewed the lack of authority by the officer filing the Information under paragraph (d) of Section 3, Rule 117 of the Rules of Court as a non-waivable ground additional to paragraphs (a), (b), (g), and (i) of the same provision. It was the prevailing principle that an Information filed by an officer who had no authority to do so shall be considered jurisdictionally infirm for lack of jurisdiction over the person of the accused and over the subject matter or the offense. The *ratio* underlying this principle was that an Information filed without such proper authorization was a defective Information, and a defective Information can never be the basis of a valid conviction.

However, this legal maxim set by jurisprudence has already been rendered old and obsolete with the advent of *Gomez v. People*.<sup>53</sup> It was therein held that a handling prosecutor's lack of prior written authority from the head prosecutor in the filing of an Information does not affect a trial court's acquisition of jurisdiction over the subject matter or the person of the accused.<sup>54</sup> Such handling prosecutor who filed an unauthorized Information but without bad faith or criminal intent is considered as a *de facto* officer coated with a color of authority to exercise acts that remain valid and official.<sup>55</sup>

If the unauthorized filing was done with malice, the erring officer may be held criminally or administratively liable for usurpation of official

<sup>52</sup> *Gomez v. People*, G.R. No. 216824, November 10, 2020; citing *Villa v. Ibañez*, 88 Phil. 402 (1951); *People v. Garfin*, 470 Phil. 211 (2004); *Turingan v. Garfin*, 549 Phil. 903 (2007); *Tolentino v. Paqueo, Jr.*, 551 Phil. 355 (2007); *Quisay v. People*, 778 Phil. 481 (2016); and *Maximo v. Villapando, Jr.*, 809 Phil. 843 (2017).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

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functions at most.<sup>56</sup> Intentional or not, this deficiency remains formal, non-jurisdictional, and curable at any stage of the criminal proceedings.<sup>57</sup> As it always is, jurisdiction springs from substantive law, whereas a government officer's authority to sue is a matter of mere form and procedure. Purely technical infirmities are never determinative of a court's jurisdiction. In no case shall it prevent the court from acquiring jurisdiction over the offense or the person of the accused.<sup>58</sup>

The same goes with a criminal prosecution that nonetheless proceeds in the absence of a preliminary investigation – the accused's right thereto is not a constitutionally-guaranteed right but one of mere statutory privilege.<sup>59</sup> Even if there was no preliminary investigation, such fact neither affects the court's jurisdiction over the case nor does it impair the validity or completeness of an Information. As the lack of a preliminary investigation is not even one of the listed grounds for quashal of an Information, it is more so that the lack or prior written authority or approval on the part of the handling prosecutor is inconsequential in terms of jurisdiction and efficacy of the Information filed against the accused.<sup>60</sup>

**The Sandiganbayan acquired jurisdiction over the offenses charged and over the person of Radaza as an accused.**

A deeper probe into the case records shall only work against Radaza.

First, the factual issues raised by Radaza require analysis of evidence that is already beyond the limited coverage of a preliminary investigation inquiry.

In a preliminary investigation, the public prosecutors do not decide whether there is evidence beyond reasonable doubt of the guilt of the person charged.<sup>61</sup> They merely determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof, and should be held for trial.<sup>62</sup>

The gist of Radaza's continuing objections to the Informations and the preliminary investigations was that his mere signature on the POWE should not make him criminally liable as a conspirator in the alleged violation of RA 3019. Such arguments already constitute as his full defenses against the criminal accusations against him that cannot be entirely and fairly weighed in

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<sup>56</sup> Id.

<sup>57</sup> Id.

<sup>58</sup> Id.

<sup>59</sup> Id.

<sup>60</sup> Id.

<sup>61</sup> *Maza v. Hon. Turla*, 805 Phil. 736, 758 (2017) citing *People v. Castillo*, 607 Phil. 754, 767 (2009).

<sup>62</sup> Id.



a preliminary investigation proceeding. It cannot be expected that upon the filing of an Information in court, the prosecutor would have already considered all the evidence necessary to secure a conviction of the accused.<sup>63</sup> This is a matter of evidence that is within the province of a full-blown trial and indeterminable in a preliminary investigation.

Next, the changes in the words and phrasings of the Sandiganbayan issuances and of the reinvestigation findings pertained only to the participation of the other accused. The allegations against Radaza and the acts imputed upon him remained unmodified for him to decry that he had been deprived of due process or of his right to preliminary investigation. The Ombudsman-Visayas found occasion to mention this early on in its disputed Joint Resolution, which the Court finds sound:

For emphasis, let it be highlighted that right **from the very start, the charge that respondents were made to answer was for Violation of Section 3(e), Anti-Graft and Corrupt Practices Act (Republic Act 3019), as amended.** The fact-finding investigation conducted by the PACPO-Ombudsman (Visayas), resulted in the issuance of Final Evaluation Report dated 23 March 2007. This Final Evaluation Report of PACPO, which served as the complaint, was for the upgrading of the complaint to a criminal case for Violation of Section 3(e), Anti-Graft and Corrupt Practices Act (Republic Act 3019), as amended. Thus, **the first preliminary investigation conducted by this Office was already for Violation of Section 3(e), Anti-Graft and Corrupt Practices Act (Republic Act 3019), as amended for which respondents have already been made to answer or which issues have supposedly been met by them already.** Additionally, while as a result of the “reinvestigation”, the Amended Information was filed for Violation of Section 3(e), Anti-Graft and Corrupt Practices Act (Republic Act 3019), and not for Violation of Section 3(g), it is not that respondents were not given due process or opportunity to answer anew the same charges (involving the same parties, transactions, acts complained of/issues, subject matter and evidences). As it was a reinvestigation of the entire case, all respondents, including the BAC-TWG Members (Manggis, Bernido and Ojeda) were indeed required again to submit their Counter-Affidavits, Supplemental Affidavits for those who have already submitted their Counter-Affidavits, Comments and/or additional controverting evidences. Moreover, all respondents were furnished with and have received the copies of all the additional documents/papers received by this Office during the reinvestigation. Hence, it is not that the Amended Information for Violation of Section 3(e), Anti-Graft and Corrupt Practices Act (Republic Act 3019) was just filed sans all respondents having been given the sufficient opportunity to refute and/or answer the charge. Reiteratingly, **the parties, transactions, subject matter, acts complained of/issues, documents/papers for this (third) preliminary investigation and the second (reinvestigation) preliminary investigation are exactly the same.**<sup>64</sup> (Emphasis supplied.)

Moreover, the Court finds Radaza to have already submitted his person as an accused to the jurisdiction of the Sandiganbayan. Multiple pleadings,

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<sup>63</sup> Id. at 759.

<sup>64</sup> *Rollo*, pp. 529-530.

motions, and remedies had been signed, filed, and prayed for under his name throughout the proceedings of this case. Radaza invoked the processes of the Sandiganbayan in moving for a judicial re-determination of probable cause.<sup>65</sup> He had even applied for bail before the anti-graft court and was granted provisional liberty thereon. Settled is the rule that an accused is deemed to have yielded himself to the jurisdiction of the court upon seeking before it the grant of affirmative reliefs.<sup>66</sup>

Likewise, the legal repercussions of the conditional arraignment bargained for by Radaza cannot be discounted.

Unlike regular trial courts, the Sandiganbayan sanctions conditional arraignment of the accused. Section 2, Rule VIII of the 2018 Revised Internal Rules of the Sandiganbayan so states:

*Sec 2. Conditional Arraignment.* – Where an accused **seeks to travel outside the Philippines** prior to arraignment, the Sandiganbayan, in its discretion, may arraign the accused under the following conditions:

(a) That if the information is not subsequently amended or re-filed, the conditional arraignment shall be considered a regular arraignment and the case may proceed even in the absence of the accused;

(b) That if the Information be subsequently amended or re-filed, the accused shall be deemed to have waived the right against double jeopardy and the accused shall be arraigned under the amended or new information;

(c) **That the accused will not lose the right under the rules to question in a motion to quash the amended or new information filed subsequent to the conditional arraignment;** and

(d) That in case the Information be subsequently quashed or withdrawn, the arraignment shall be considered of no force and effect and/or shall not be used as ground to invoke the right against double jeopardy;

The order issued at the arraignment shall state that the above conditions were explained to the accused in unmistakable terms, and that the accused clearly understood and expressly accepted the terms and conditions. (Emphasis supplied.)

A person criminally charged before the Sandiganbayan may be permitted to travel outside the Philippines, subject to certain conditions set by the above provision. Paragraph (c) thereof is of particular relevance to the case at hand: an accused conditionally arraigned under the first Information will not lose the right to question in a motion to quash the amended or new Information filed after the conditional arraignment.

<sup>65</sup> See *David v. Agbay*, 756 Phil. 278, 293 (2015).

<sup>66</sup> *Id.*

A clarification of the grounds to quash an information that is amended after the conditional arraignment under Section 2, Rule VIII of the 2018 Revised Internal Rules of the Sandiganbayan is now imperative.

Paragraph (c) thereof indeed secures the right to question in a motion to quash the amended or new information filed subsequent to the conditional arraignment, which may rest upon the grounds enumerated under Section 3, Rule 113 of the Rules of Court. However, the accused shall now be proscribed from assailing the amended or new information against him *for lack of jurisdiction over his person*, as originally available to him under Paragraph (c), Section 3, Rule 113 of the Rules of Court. An accused who travels abroad with the provisional conformity of the Sandiganbayan is considered to have positively invoked and already validated the same judicial power that permitted his travel outside the Philippines during the pendency of the criminal proceedings. By the principle of estoppel, the accused's own actuations countered and nullified any dispute on the jurisdiction of the Sandiganbayan over the person of such accused.

Radaza prayed that he be allowed to travel to USA to visit his brother, then terminally ill and confined in a hospital in California.<sup>67</sup> On September 23, 2008, the Sandiganbayan granted his Urgent Motion for Permit to Travel and he was arraigned under the original Information charging him with violation of Section 3(g) of RA 3019.<sup>68</sup> As such, Radaza is deemed to have acquiesced to the Sandiganbayan's jurisdiction over his person in the case before the anti-graft court. He should not be permitted to assail the very authority that indulged in his personal privileges that ordinarily are unavailable to an accused such as himself.

At this point, Radaza is now deemed a proper subject under the jurisdiction of the Sandiganbayan as an accused. He had benefitted far too much from the positive reliefs that he had sought from and granted by the Sandiganbayan. Whether in civil or criminal actions, prayers for affirmative reliefs constitute a waiver of the defense of lack of jurisdiction over the person of the defending party, as by doing so the latter is then deemed to have voluntarily appeared and submitted himself to the jurisdiction of the court.<sup>69</sup>

More importantly, the accusations against Radaza, whether in the original Information or in the Amended Information, both yield a *prima facie* case of violation of RA 3019, effectively placing the subject offenses under the jurisdiction of the Sandiganbayan and rendering Radaza indictable under Section 3(e) or 3(g).

Sections 3(e) and (g) of RA 3019 state:

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<sup>67</sup> Records, Vol. III, pp. 228-230.

<sup>68</sup> Id. at 231-236.

<sup>69</sup> *Miranda v. Tuliao*, 520 Phil. 907, 920 (2006).

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 x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefit, 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 of offices or government corporations charged with the grant of licenses or permits or other concessions;

x x x x

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

The elements of violation of Section 3(e) of RA 3019 are:

(a) That the accused must be a public officer discharging administrative, judicial, or official functions, or a private individual acting in conspiracy with such public officers;

(b) That he acted with manifest partiality, evident bad faith, or inexcusable negligence; and

(c) 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.<sup>70</sup>

On the other hand, Section 3(g) of RA 3019 requires the concurrence of the following requisites:

(1) that the accused is a public officer;

(2) that he or she entered into a contract or transaction on behalf of the government; and

(3) that such contract or transaction is grossly and manifestly disadvantageous to the government.<sup>71</sup>

<sup>70</sup> *People v. Naciongayo*, G.R. No. 243897, June 8, 2020.

<sup>71</sup> *Go v. Fifth Division, Sandiganbayan*, 549 Phil. 783, 799 (2007).

Jurisdiction of a court over the criminal case is determined by the allegations in the complaint or information.<sup>72</sup> Correlatively, the law vests upon the Sandiganbayan the power to hear and decide violations of RA 3019, among other offenses, committed by a city mayor, among other public officials specifically enumerated therein.<sup>73</sup>

By the wordings of the assailed Informations, the Court finds all elements for both offenses properly alleged by the prosecution against Radaza. The Informations are hereafter laid out side-by-side for a clearer perspective:

*Original Information for  
Section 3(g):*

The undersigned Graft Investigation and Prosecution Officers of the Office of the Ombudsman-Visayas accuse x x x ARTURO O. RADAZA x x x of the offense of VIOLATION OF SECTION 3(g) OF REPUBLIC ACT NO. 3019, AS AMENDED, otherwise known as THE ANTI-GRAFT AND CORRUPT PRACTICES ACT, committed as follows:

That in or about the month of March 2007, and for sometime prior or subsequent thereto, at the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, x x x **accused ARTURO O. RADAZA**, x x x public officers, **being then the City Mayor**, x x x and as such [officer is] tasked to prepare the Program of Works and Detailed Estimates for infrastructure projects x x x in such capacity and committing the offense in relation to office, **conniving and confederating together and mutually helping each other and with accused ISABELO A. BRAZA**, a **private individual**, being the President and Chairman of the

*Amended Information for  
Section 3(e):*

The undersigned Deputy Ombudsman for the Visayas accuses x x x ARTURO O. RADAZA x x x of the offense of VIOLATION OF SECTION 3(e), R.A. 3019, AS AMENDED, otherwise known as THE ANTI-GRAFT AND CORRUPT PRACTICES ACT, committed as follows:

That on or about 6 February 2007 and for sometime prior or subsequent thereto, at the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, x x x **ARTURO O. RADAZA**, x x x **public [officer]**, being the x x x **City Mayor** x x x of Lapu-Lapu City, Province of Cebu, in such capacity and committing the offense in relation to office, **conniving and confederating together and mutually helping with each other, and with ISABELO A. BRAZA**, a **private individual**, in his capacity as President and Chairman of the Board, FABMIK Construction and Equipment Supply Co., Inc., **with deliberate intent, manifest partiality or evident bad faith**, did then and there willfully, unlawfully and

<sup>72</sup> *Cabral v. Bracamonte*, G.R. No. 233174, January 23, 2019.

<sup>73</sup> PRESIDENTIAL DECREE NO. 1606, as amended by REPUBLIC ACT NO. 10660, Section 4(a)(1)(b).

Board of FABMIK Construction and Equipment Supply Co., Inc., **with deliberate intent, and with intent of gain and to defraud**, did then and there willfully, unlawfully and feloniously, **on behalf of the Republic of the Philippines, prepare and approve the Program of Works and Detailed Estimates** for the supply and installation of street lighting facilities consisting of one hundred thirty-nine (139) sets of 7M-single-arm street light poles, costing about Seventy-Two Thousand Five Hundred Pesos (P72,500.00), Philippine Currency, per set; and sixty (60) sets of 9M-double-arm street light poles costing about Eighty-Five Thousand Five Hundred Pesos (P85,500.00), Philippine Currency, per set; along the Mandaue-Mactan Bridge I to Punta Engaño Section, Lapu-Lapu City (Contract ID No. 06HO0050), **conduct the bidding, recommend the award of the contract to FABMIK Construction and Equipment Supply Co., Inc., and afterwards enter into the corresponding contract with accused ISABELO A. BRAZA which contract or transaction was manifestly and grossly disadvantageous to the Republic of the Philippines**, as the said cost of P72,500.00 and P85,500.00 exceeded the prevailing price of only about Six Thousand Pesos (P6,000.00), Philippine Currency, per set of single-arm assembly, and Seven Thousand Five Hundred Pesos (P7,500.00), Philippine Currency, per set of double arm assembly, **to the damage and prejudice of the government.**

CONTRARY TO LAW.<sup>74</sup>

criminally cause the award of Contract ID No. 06HO0050 for the SUPPLY AND INSTALLATION OF STREET LIGHTING FACILITIES (consisting of 1.0 LOT or 139 units of Single Arm Poles and 60 units of Double Arm Poles, or a total of 199 units), MANDAUE-MACTAN BRIDGE 1 TO PUNTA ENGAÑO SECTION, LAPU-LAPU CITY, x x x for EIGHTY THREE MILLION NINE HUNDRED THIRTY FIVE THOUSAND PESOS (P83,935,000.00), by **preparing the Program of Works and Estimates, Approved Budget for the Contract [ABC] and other related documents, and conducting the procurement process, despite absence of legal requirements for a valid procurement process** under Republic Act 9184, otherwise known as *Government Procurement Reform Act*, **aside from awarding and implementing the project at an excessive price** of P83,935,000.00 which is in excess by EIGHTEEN MILLION FORTY FIVE THOUSAND EIGHT HUNDRED NINETY PESOS [P18,045,890.00] x x x, or in excess by THIRTEEN MILLION NINETY TWO THOUSAND NINETY PESOS AND 85/100 (P13,092,090.85) x x x, as against the Ombudsman [OMB] computation of SIXTY FIVE MILLION EIGHT HUNDRED EIGHTY NINE THOUSAND ONE HUNDRED NINE PESOS AND 99/100 [P65,889,109.99], which in either computation is excessive as it is beyond the ten percent [10%] allowable price variance under *COA Circular No. 85-55A*, **thereby giving**

<sup>74</sup> *Rollo*, Vol. 1, pp. 145-148.

**unwarranted benefits,  
advantage or preference to the  
contractor, FABMIK  
Construction and Equipment  
Supply Company, Inc. to the  
damage and prejudice of the  
government.**

CONTRARY TO LAW.<sup>75</sup>

Radaza, being then the City Mayor of Lapu-Lapu City, had likewise never disputed the fact that he affixed his signature on the POWE relative to the street lighting project. He denied, though, that his signature had implicated him for any criminal offense, or that he colluded with the other participants in the irregularities discovered. The prosecution, of course, states otherwise. The issues having been joined, the imperative now is for the prosecution to present proof beyond reasonable doubt against Radaza, and the latter as the accused is given the opportunity, although not an obligation, to debunk the evidence against him. Such elaborate presentation of evidence has no place in a preliminary investigation.

Again, jurisprudence has declared that matters that are evidentiary in nature are better threshed out in a full-blown trial on the merits. In the same vein, there is no contest that the Informations that Radaza have labored for so much to quash have adequately charged the offenses charged thereunder. Jurisdiction over the offenses of violation of RA 3019, whether under Section 3(e) or 3(g), has already attached to the Sandiganbayan.

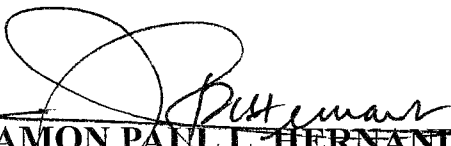
All said, Radaza may be indicted therefor. His arguments are too trivial to merit the quashal of the Information, and too vacuous to justify the delay in the prosecution of this criminal case. This has fermented in the preliminary investigation stage for thirteen long years. While unnecessary, this Court indulged in a wordy discourse on the baselessness of Radaza's prolonged saga against the Informations and Resolutions filed by the Ombudsman, all for the purpose of finally ending the same. The Sandiganbayan is hereafter enjoined to fully dispose of the case with dispatch and without tolerance for further needless delays.

**WHEREFORE**, the Petition for *Certiorari* is **DISMISSED**. The November 2, 2011 and February 21, 2012 Resolutions of the Sandiganbayan in SB-08-CRM-0275 denying Arturo O. Radaza's Opposition and Motion to Quash Amended Information dated September 22, 2011 are **AFFIRMED**. The anti-graft court is hereby **DIRECTED** to proceed with the arraignment of Arturo O. Radaza.


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<sup>75</sup> Id. at 388-390.


**SO ORDERED.**

  
**RAMON PAUL L. HERNANDO**  
Associate Justice

WE CONCUR:

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

  
**HENRI JEAN PAUL B. INTING**  
Associate Justice


  
**SAMUEL H. GAERLAN**  
Associate Justice

  
**RICARDO R. ROSARIO**  
Associate Justice



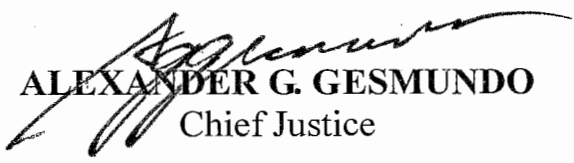
**ATTESTATION**

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

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

**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 were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ALEXANDER G. GESMUNDO**  
Chief Justice

