

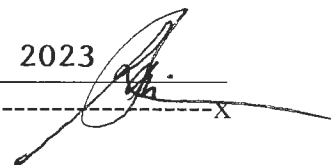
### THIRD DIVISION

**G.R. No. 250979 – PEOPLE OF THE PHILIPPINES, *Petitioner*, v. RENE ESMA y JOVEN, *Respondent*.**

Promulgated:

January 11, 2023

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### DISSENTING OPINION

**SINGH, J.:**

The Court is faced with the issue of the propriety of approving an offer to plea bargain that does not bear the conformity of the public prosecutor. In this case, the accused Rene Esma y Joven (**Esma**) was charged with violation of Sections 5 and 11, Article II of Republic Act (**R.A.**) No. 9165. During trial, Esma filed a Motion to Allow Accused to Plea Bargain (**Motion**), praying that he be allowed to plead to the lower offense contained under Section 12, Article II of RA 9165. The prosecution opposed this Motion, arguing that Department of Justice (**DOJ**) Circular No. 27 provides that the acceptable plea bargain for violation of Section 5, Article II of R.A. No. 9165 is violation of Section 11, Article II of R.A. No. 9165. The Regional Trial Court (**RTC**) approved the plea bargain, subject to the conduct of a drug dependency examination and ordered the re-arraignment of Esma. The Court of Appeals (**CA**) upheld the RTC's approval of Esma's plea bargain.

The *ponencia* affirms the CA Decision, finding that the same is in accord with the relevant circulars and guidelines pertaining to plea bargaining.

With due respect, consistent with my Concurring and Dissenting Opinion in the consolidated cases of *People v. Montierro*,<sup>1</sup> *Baldadera v. People*,<sup>2</sup> *Re: Letter of the Philippine Judges Association Expressing its Concern over the Ramifications of the Decisions*,<sup>3</sup> and *Re: Letter of Associate Justice Diosdado M. Peralta on the Suggested Plea Bargaining Framework Submitted by the Philippine Judges Association*,<sup>4</sup> I disagree with the finding that the conformity of the public prosecutor to a plea bargaining proposal is optional and may be disregarded by the trial courts.

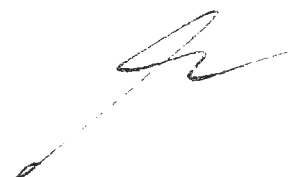
Plea bargaining in criminal cases is a process where the accused and the prosecution work out a mutually satisfactory disposition of the case

<sup>1</sup> G.R. No. 254654, July 26, 2022.

<sup>2</sup> G.R. No. 254974, July 26, 2022.

<sup>3</sup> A.M. No. 21-07-16-SC, July 26, 2022.

<sup>4</sup> A.M. No. 18-03-16-SC, July 26, 2022.



subject to court approval.<sup>5</sup> It usually involves the defendant pleading guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that for the graver charge.<sup>6</sup>

Section 2, Rule 116 of the Rules of Criminal Procedure provides:

SECTION 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.<sup>7</sup>

Based on the foregoing, the basic requisites of plea bargaining are: (a) consent of the offended party; (b) consent of the prosecutor; (c) plea of guilty to a lesser offense which is necessarily included in the offense charged; and (d) approval of the court.<sup>8</sup> The acceptance of an offer to plead guilty to a lesser offense is not demandable by the accused as a matter of right but is a matter addressed entirely to the sound discretion of the trial court.<sup>9</sup> In fact, the provision highlights the need to arrive at a proposal that is mutually acceptable to the offended party and the public prosecutor.

However, as clarified by the Court in *People v. Majingcar*,<sup>10</sup> as there is no private offended party in drugs cases, **the consent of the prosecutor is the operative act which vests discretion upon the court to allow or reject the accused's proposal to plead guilty to a lesser offense.**<sup>11</sup> Thus, where this consent is withheld, no such discretion gets vested in the Court.<sup>12</sup> Stated otherwise, where the prosecution does not consent to the accused's proposal to plea bargain, there is nothing for the trial court to approve. Absent a valid plea bargain, the occasion to exercise its discretion on whether to accept the plea bargaining proposal and whether to render judgment on the basis thereof never arises.

The importance of the public prosecutor's conformity to the proposal to plea bargain was previously highlighted by the Court in *Estipona v. Lobrigo (Estipona)*,<sup>13</sup> where the Court explained that the accused does not have any vested right to compel the prosecution to accept the plea bargain. And even when the prosecution conforms to the plea bargaining proposal, the trial court

<sup>5</sup> *People v. Borrás*, G.R. No. 250295, March 15, 2021.

<sup>6</sup> *Id.*

<sup>7</sup> RULES OF COURT, Rule 116, Sec. 2; emphasis and underscoring supplied.

<sup>8</sup> *People v. Reafor*, G.R. No. 247575, November 16, 2020.

<sup>9</sup> *Sayre v. Hon. Xenos*, G.R. Nos. 244413 & 244415-16, February 18, 2020.

<sup>10</sup> G.R. No. 249629, March 15, 2021.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> 816 Phil. 789 (2017).

is not automatically bound by such consent and is given wide discretion to approve or disapprove the plea bargain. *Estipona* extensively discussed nature and essence of the plea bargaining process as follows:

In this jurisdiction, plea bargaining has been defined as “a process whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval.” **There is give-and-take negotiation common in plea bargaining. The essence of the agreement is that both the prosecution and the defense make concessions to avoid potential losses. Properly administered, plea bargaining is to be encouraged because the chief virtues of the system - speed, economy, and finality - can benefit the accused, the offended party, the prosecution, and the court.**

**Considering the presence of mutuality of advantage, the rules on plea bargaining neither create a right nor take away a vested right.** Instead, it operates as a means to implement an existing right by regulating the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for a disregard or infraction of them.

The decision to plead guilty is often heavily influenced by the defendant's appraisal of the prosecution's case against him and by the apparent likelihood of securing leniency should a guilty plea be offered and accepted. In any case, whether it be to the offense charged or to a lesser crime, a guilty plea is a “serious and sobering occasion” inasmuch as it constitutes a waiver of the fundamental rights to be presumed innocent until the contrary is proved, to be heard by himself and counsel, to meet the witnesses face to face, to bail (except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong), to be convicted by proof beyond reasonable doubt, and not to be compelled to be a witness against himself.

**Yet a defendant has no constitutional right to plea bargain.** No basic rights are infringed by trying him rather than accepting a plea of guilty; the prosecutor need not do so if he prefers to go to trial. **Under the present Rules, the acceptance of an offer to plead guilty is not a demandable right but depends on the consent of the offended party and the prosecutor, which is a condition precedent to a valid plea of guilty to a lesser offense that is necessarily included in the offense charged. The reason for this is that the prosecutor has full control of the prosecution of criminal actions; his duty is to always prosecute the proper offense, not any lesser or graver one, based on what the evidence on hand can sustain.**<sup>14</sup>

In relation thereto, it must be clarified that the power to prosecute crimes chiefly pertains to the Executive Department of the Government, and

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<sup>14</sup>

*Id.*



that the prosecution is given a wide latitude to determine which cases to charge against whom:

The prosecution of crimes pertains to the Executive Department of the Government whose principal power and responsibility are to see to it that our laws are faithfully executed. A necessary component of the power to execute our laws is the right to prosecute their violators. **The right to prosecute vests the public prosecutors with a wide range of discretion – the discretion of what and whom to charge, the exercise of which depends on a smorgasbord of factors that are best appreciated by the public prosecutors.**

The public prosecutors are solely responsible for the determination of the amount of evidence sufficient to establish probable cause to justify the filing of appropriate criminal charges against a respondent. **Theirs is also the quasi-judicial discretion to determine whether or not criminal cases should be filed in court.**<sup>15</sup>

While it is true that plea bargaining in criminal cases is a rule of procedure which falls within the Court's exclusive domain,<sup>16</sup> the Court must strike a balance between the exercise of its judicial power and exhibiting deference towards the exercise of prosecutorial discretion. Prosecutorial discretion must necessarily include autonomy to decide whether to consent to a plea bargain. As explained by the Court in *Estipona*:

[Courts] normally must defer to prosecutorial decisions as to whom to prosecute. The reasons for judicial deference are well known. Prosecutorial charging decisions are rarely simple. **In addition to assessing the strength and importance of a case, prosecutors also must consider other tangible and intangible factors, such as government enforcement priorities. Finally, they also must decide how best to allocate the scarce resources of a criminal justice system that simply cannot accommodate the litigation of every serious criminal charge.** Because these decisions "are not readily susceptible to the kind of analysis the courts are competent to undertake," we have been "properly hesitant to examine the decision whether to prosecute."

**The plea is further addressed to the sound discretion of the trial court, which may allow the accused to plead guilty to a lesser offense which is necessarily included in the offense charged. The word may denotes an exercise of discretion upon the trial court on whether to allow the accused to make such plea.** 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.<sup>17</sup>

<sup>15</sup> *Ampatuan, Jr. v. De Lima*, 708 Phil. 153 (2013).

<sup>16</sup> *See People v. Montierro*, G.R. No. 254654, July 26, 2022 and *Estipona v. Lobrigo*, 816 Phil. 789 (2017).

<sup>17</sup> *Supra* note 13.



Where the prosecution does not consent to the proposal to plea bargain, the Court in *Sayre v. Hon. Xenos*<sup>18</sup> clarified that the same shall be treated as a continuing objection that must be resolved by the trial court.<sup>19</sup>

**“Nonetheless, a plea bargain still requires mutual agreement of the parties and remains subject to the approval of the court.** The acceptance of an offer to plead guilty to a lesser offense is not demandable by the accused as a matter of right but is a matter addressed entirely to the sound discretion of the trial court.

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The use of the word ‘may’ signifies that the trial court has discretion whether to allow the accused to make a plea of guilty to a lesser offense. Moreover, **plea bargaining requires the consent of the accused, offended party, and the prosecutor.** It is also essential that the lesser offense is necessarily included in the offense charged.

Taking into consideration the requirements in pleading guilty to a lesser offense, We find it proper to treat **the refusal of the prosecution to adopt the acceptable plea bargain for the charge of Illegal Sale of Dangerous Drugs provided in A.M. No. 18-03-16-SC as a continuing objection that should be resolved by the RTC.** This harmonizes the constitutional provision on the rule-making power of the Court under the Constitution and the nature of plea bargaining in Dangerous Drugs cases. DOJ Circular No. 27 did not repeal, alter, or modify the Plea Bargaining Framework in A.M. No. 18-03-16-SC.”<sup>20</sup>

The indispensable nature of the prosecution’s conformity to the accused’s proposal for a plea bargain cannot be overemphasized. If a mutual agreement between the prosecutor and the accused cannot be reached, a valid proposal to plea bargain cannot be submitted for resolution of the court. Absent a valid plea bargain, the issue of whether the plea bargaining proposal must be accepted and whether judgment should be rendered on the basis thereof never arises. The Court thus remains bound to resolve the issues presented prior to the filing of the offer of plea bargain, and the continuation of the trial proceedings is imperative.

In this case, there was no valid plea bargain presented for approval of the trial court. Esma’s plea of guilt to a lesser offense was strongly opposed by the prosecution. As discussed above, the consent of **both** the public prosecutor and the offended party is a condition precedent to a valid plea of guilty to a lesser offense. Without the prosecution’s conformity, the offer of plea bargain is void. Accordingly, the judgment made by the RTC approving the void plea bargain is also void *ab initio* and could not have attained finality.

<sup>18</sup> Supra note 9.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* Emphasis and underscoring supplied; citations omitted.

Necessarily, the judgment of conviction rendered against Esma must be vacated, and the criminal case must be remanded to the RTC for further proceedings, in consideration of the of the issues presented prior to the filing of the offer of plea bargain, without violating Esma's right to double jeopardy.

In view of the foregoing, I respectfully **DISSENT** from the ponencia's resolution to deny the Petition for Review on *Certiorari*, assailing the Consolidated Decision, dated November 22, 2019, of the CA, which affirmed the Joint Order, dated July 30, 2018, of the RTC, approving Esma's plea bargain to a lower offense.

I respectfully submit that the Petition for Review on *Certiorari* should be **GRANTED** and given due course. The Consolidated Decision, dated November 22, 2019 of the Court of Appeals in CA-G.R. CEB SP No. 12227 must be **REVERSED**. The Joint Order, dated July 30, 2018, must also be **ANNULLED**. Accordingly, Criminal Case No. R-TAC-15-00331-CR and Criminal Case No. R-TAC-15-00332-CR must both be remanded to Branch 8, Regional Trial Court, Tacloban City for further proceedings, as indicated herein.



**MARIA FILOMENA D. SINGH**  
Associate Justice