SECOND DIVISION

G.R. No. 257733 – JAMES BILLOSO *y* OBLIGAR, Petitioner, **v. PEOPLE OF THE PHILIPPINES,** Respondent.

Promulgated:

JAN 11 2023

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SEPARATE CONCURRING OPINION

LEONEN, *J.*:

I concur with the *ponencia's* denial of the Petition and would like to offer the following as additional basis for the *ponencia's* ruling.

As aptly phrased by my esteemed colleague Associate Justice Antonio T. Kho Jr., the plea-bargaining process is "an interplay of the powers of the Judiciary and the Executive,"[1] with the prosecutor representing the State in the prosecution of the criminal case and the trial court overseeing the criminal proceedings. In light of the different functions at play, it is crucial to identify the powers exercised by the branch of government involved to ensure that no overreaching or encroaching occurs.

Plea bargaining is the process where both the accused and the prosecution agree to "a mutually satisfactory disposition of the case subject to court approval."[2] As a rule of procedure, plea bargaining falls within this Court's exclusive rule-making power and is provided for in Rule 116, Section 2 of the Rules of Court:

> 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.

Rule 118, Section 1(a) of the Rules of Court also mandates the courts to consider plea bargaining during pre-trial:

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1 J. Kho, Jr., Concurring and Dissenting Opinion, in *Billoso v. People*, G.R. No. 257733, p. 2.

2 *People v. Villarama, Jr.*, 285 Phil. 723, 730 (1992) [Per J. Medialdea, First Division], *citing* BLACK'S LAW DICTIONARY, 1037, (5th ed.1979).

> SECTION 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:
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> (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. (Emphasis supplied)

However, the Rules of Court do not direct the prosecutor to consent to a plea deal. Neither is the court empowered to override the parties' mutual agreement or impose a plea bargain deal, despite the prosecutor's objections. This tacit recognition of the separation of powers between the Executive and the Judiciary was explained in a separate opinion in *Sayre v. Xenos*:[3]

> A plain reading of [Rule 116, Section 2 of the Rules of Court] shows only one (1) part of the plea bargaining process: the plea of the lesser offense before the court. This presupposes that the courts only participate in the plea bargaining process once the accused has presented [their] offer and the prosecution and the private offended party has consented to the offer.
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> . . . .
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> The mandate *to consider* plea bargaining after arraignment does not necessarily mean that the accused must always plead guilty to the lesser offense in all criminal cases. It simply means that if the accused and the prosecution come to court with a plea bargain deal during pre-trial, the court must consider the plea bargain deal.
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> *There is, thus, a part of the plea bargaining process that is solely within the realm of prosecutorial discretion.*[4] (Emphasis supplied)

The power to prosecute is purely an Executive function, and the prosecutor, as the State's representative, has a wide discretion of "whether, what[,] and whom to charge"[5] due to the range of variables present when pursuing a criminal case.[6] While jurisdiction over a criminal case is transferred to the Judiciary once a prosecutor files information with a trial court, court action is generally limited to remedial measures that may occur

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3 G.R. Nos. 244413, 244415-16, February 18, 2020, [Per. J. Carandang, *En Banc*].
4 J. Leonen, Concurring Opinion in *Sayre v. Xenos*, G.R. Nos. 244413, 244415-16, February 18, 2020, [Per. J. Carandang, *En Banc*].
5 *Webb v. De Leon*, 317 Phil 758, 800 (1995) [Per J. Puno, Second Division].
6 *Id.*

during trial.[7] The prosecutor is still the one who directly steers the criminal case.[8]

Judicial deference of prosecutorial discretion in the plea bargaining process was also emphasized in *Estipona Jr. v. Lobrigo*,[9] where this Court stated:

> 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.
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> > [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."[10] (Citations omitted)

In *People v. Montierro*,[11] this Court stressed its power to promulgate the rules on plea bargaining but still nonetheless recognized the prosecution's exclusive mandate of steering the criminal proceeding:

> Furthermore, and lest it be mistaken, the exclusivity of the power to promulgate rules on plea bargaining only recognizes the role of the judiciary under our Constitutional framework as the ***impartial tribunals***

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7 *Rural Bank of Mabitac, Laguna, Inc. v. Canicon*, 834 Phil. 346, 365 (2018) [Per J. Jardeleza, First Division].

8 RULES OF COURT, Rule 110, sec. 5 provides:
SECTION 5. *Who must prosecute criminal action.* – All criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of a public prosecutor. In case of heavy work schedule of the public prosecutor or in the event of lack of public prosecutors, the private prosecutor may be authorized in writing by the Chief of the Prosecution Office or the Regional State Prosecutor to prosecute the case subject to the approval of the court. Once so authorized to prosecute the criminal action, the private prosecutor shall continue to prosecute the case up to end of the trial even in the absence of a public prosecutor, unless the authority is revoked or otherwise withdrawn.

9 816 Phil 789 (2017) [Per J. Peralta, *En Banc*].

10 *Id.* at 814–815.

11 G.R. No. 254564, July 26, 2022 [Per J. Caguioa, *En Banc*].

> that try to balance the right of the State to prosecute offenders of its laws, on the one hand, and the right of individuals to be presumed innocent until proven guilty, on the other. This in no way undermines the prosecutorial power of the DOJ, which has the mandate to prosecute suspected criminals to the full extent of the law. In discharging this role, the prosecutor, representing one of the parties to the negotiation, cannot thus be expected to fully see the "middle ground." It is here where the courts are therefore in the best position to determine what is fair and reasonable under the circumstances. Ultimately, it is the Court which has the power to promulgate the rules on plea bargaining.[12] (Emphasis in the original)

Thus, the trial court's participation in the plea bargaining process only comes about after the parties have agreed to a plea deal, with the court ensuring the mutual agreement of the parties and that all legal requirements are met.[13]

The mutual acceptance of the plea deal by the parties as a condition precedent, but subject to the court's sound discretion, was likewise emphasized in *Montierro* where this Court stated:

> Indeed, Section 2 [Rule 116 of the Rules of Court] requires the mutuality of agreement of the parties because consent of the prosecution and the offended party must be obtained in order for the accused to successfully plead guilty to a lesser offense. However, it should not be overlooked that Section 2 also uses the word "may," which signifies discretion on the part of the trial court on whether to allow the accused to make such plea. As such, while plea bargaining requires the consent of the parties, the approval of a plea bargaining proposal is ultimately subject to the sound discretion of the court.
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> To be sure, jurisprudence had since emphasized the extent of the trial court's discretion in approving a plea bargain.
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> In the case of *People v. Villarama, Jr. (Villarama)*, while it was expressed that the consent of the Fiscal and the offended party is a condition precedent for a valid plea of guilty to a lesser offense because "[t]he Fiscal has full control of the prosecution of criminal actions," the Court also underscored that acceptance of an offer to plead guilty to a lesser offense is **a matter addressed entirely to the sound discretion of the trial court**. Underscoring the trial court's duty to review the circumstances of a case before it may act on an application to plea bargain[.][14] (Emphasis in the original, citations omitted)

Here, the prosecution's objection to the accused's plea bargaining proposal was based on: (1) the directive in Department of Justice Circular No. 027-18 only to consider a plea bargain involving a violation of Section 5 in relation to Section 26 of Republic Act No. 9165; and (2) sufficiency of

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12 *People v. Montierro,* G.R. No. 254564, July 26, 2022 [Per J. Caguioa, En Banc].

13 J. Leonen Separate Concurring Opinion in *People of the Philippines v. Montierro,* G.R. No. 254564, July 26, 2022 [Per J. Caguioa, En Banc].

14 *People of the Philippines v. Montierro,* G.R. No. 254564, July 26, 2022 [Per J. Caguioa, En Banc].

evidence to convict accused of violation of Section 5 in relation to Section 26 and Section 11 of Republic Act No. 9165.[15]

The *ponencia* correctly pointed out that any objection based on Department of Justice Circular No. 027-18 has effectively been withdrawn with the issuance of Department of Justice Circular No. 018-22.[16] However, the second objection based on the supposed sufficiency of evidence still needs to be proven, with the trial court obligated to look into and weigh the prosecution's evidence and decide if the accused is qualified to enter a plea bargain.[17]

Considering the foregoing, I concur with the *ponencia's* remand of the case to the court of origin to resolve the plea bargaining proposal based on evidence.

ACCORDINGLY, I vote to **DENY** the Petition for lack of merit and to **REMAND** the case to the court of origin.

MARVIC M.V. F. LEONEN
Senior Associate Justice

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15 *Ponencia*, p. 5.
16 *Id.* at 6.
17 *Id. at* 7–8.