

REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, SB-15-0293

Plaintiff,

For: Violation of Section 3(e) of R.A.
No. 3019

- versus -

SB-15-0294

For: Violation of Section 3(h), R.A.
No. 3019

**AL SANCHEZ VITANGCOL, III,
ET AL.,**

Accused.

SB-15-0295

For: Violation of Section 65(1), in
relation to Section 47 of R.A. No.
9184

Present:

CABOTAJE-TANG, P.J.

Chairperson

FERNANDEZ, J.,

MIRANDA, J.*

Promulgated:

JULY 4, 2016

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RESOLUTION

FERNANDEZ, J.:

For resolution are:

1. Accused Wilson T. De Vera's *Urgent Omnibus Motion: For Reconsideration (of the Order dated January 7, 2016 denying the Motion for Reinvestigation dated December 15, 2015 filed by the accused Wilson T. De Vera) and For Deferment of Arraignment:*¹

¹ Dated January 19, 2016; filed on January 19, 2016, Record, Vol. II, pp. 13-18.

* Justice Miranda sits in lieu of Justice Martires per A.O. No. 075-2016 dated March 16, 2016.

RESOLUTION

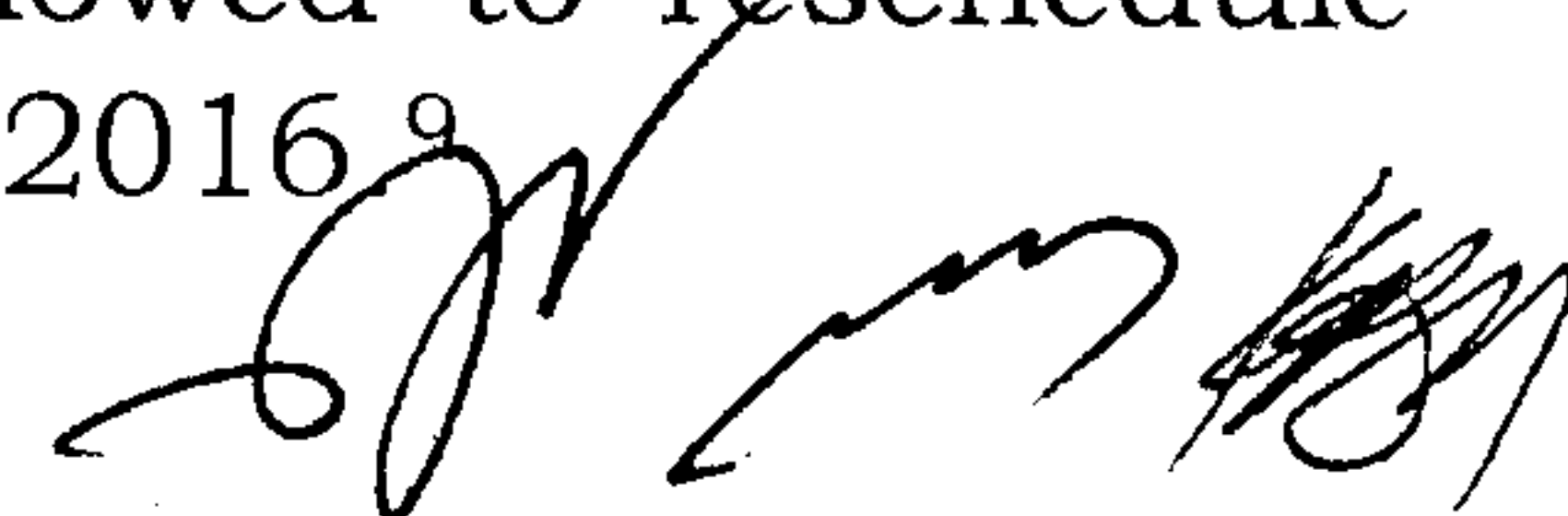
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2. Accused Arturo Soriano's *Entry of Appearance with Motion for Reconsideration*;²
3. Accused Marlo dela Cruz and Manolo Mayo Maralit's *Omnibus Motion for: 1. Reconsideration of the Minute Resolution dated 14 December 2015; and 2. Reinvestigation*;³
4. The prosecution's *Consolidated Opposition Re: 1) Urgent Omnibus Motion for Reconsideration (of the Order dated Jan. 7, 2016 denying the Motion for Reinvestigation dated Dec. 15, 2015 filed by the accused Wilson T. De Vera) and For the Deferment of Arraignment filed by accused Wilson T. De Vera; and, 2) Entry of Appearance with Motion for Reconsideration filed by accused Arturo V. Soriano*;⁴
5. The prosecution's *Comment and/or Opposition (To Accused Marlo Pilapil dela Cruz and Manolo Mayo Maralit's Omnibus Motion for: Reconsideration of the Minute Resolution dated 14 December 2015; and Reinvestigation dated 2 February 2016)*;⁵
6. Accused Soriano's *Reply to Consolidated Opposition*,⁶ and,
7. Accused dela Cruz and Maralit's *Reply (To Comment and/or Opposition dated 17 February 2016)*.⁷

Accused de Vera is asking for a reconsideration of the Order dated January 7, 2016⁸ of this Court which denied his *Motion for Reinvestigation* for his failure to appear during the hearing set on said date. According to him, his counsel, on December 18, 2015, sought and was allowed to reschedule the hearing on the *Motion* to January 14, 2016.⁹



² Dated January 19, 2016; filed on January 20, 2016, Record, Vol. II, pp. 48-68.

³ Dated February 2, 2016; filed on February 2, 2016, Record, Vol. II, pp. 160-182.

⁴ Dated January 27, 2016; filed on January 29, 2016, Record, Vol. II, pp. 109-117.

⁵ Dated February 17, 2016; filed on February 17, 2016, Record, Vol. II, pp. 220-228.

⁶ Dated February 10, 2016; filed on February 16, 2016, Record, Vol. II, pp. 214-219.

⁷ Dated February 29, 2016; filed on March 2, 2016, Record, Vol. II, pp. 307-313.

⁸ Record, Vol. I, p. 504.

⁹ Accused De Vera's Urgent Omnibus Motion: For Reconsideration (Of the Order dated January 7, 2016 denying the Motion for Reinvestigation dated December 15, 2015 filed by the accused Wilson T. De Vera) and For Deferment of Arraignment dated January 19, 2016, pp. 1-3, Record, Vol. II, pp. 13-15.

Accused De Vera asks this Court to direct a reinvestigation of the instant case and, consequently, to defer the scheduled arraignment.¹⁰ He claims that there is no probable cause to charge him for violation of Sections 3(e) and 3(h), Republic Act No. 3019¹¹ and Section 65(c)(1), Republic Act No. 9184.¹² He contends:

- a. He was not part of any conspiracy to give unwarranted benefits to PH TRAMS-CB&T JOINT VENTURE.¹³
- b. There is no evidence to establish conspiracy. He was implicated only on the ground that he is an incorporator of PH TRAMS.¹⁴
- c. He had no participation in the bidding process nor in the implementation of the contract and operations of the Joint Venture relative to the Contract for Provision of Interim Maintenance Services to MRT3.
- d. He is a minority stockholder of PH TRAMS. Accused dela Cruz and Maralit were in control of PH TRAMS and were the ones who represented PH TRAMS in the joint venture with CB&T. CB&T's president Roehl B. Bacar was the one who participated in the bidding for the Interim Maintenance Service Provider Contract for MRT3.
- e. It was accused dela Cruz who executed and submitted the false Affidavit of Disclosure to the DOTC-BAC. Accused de Vera was not aware of the execution and submission of said affidavit until after he received the Complaint in the instant case.
- f. His only participation in the assailed contract was to act as witness to the signing of the Contract for the Interim Maintenance Service Provider for EDSA, MRT3 dated October 19, 2012 after it was awarded to PH TRAMS-CB&T JOINT VENTURE.¹⁵
- g. After the contract was awarded to PH TRAMS-CB&T JOINT VENTURE, he was left out from its operations and other internal corporate affairs of PH TRAMS.¹⁶

¹⁰ *Id.*, at p. 3, Record, Vol. II, p. 15 and Motion for Reinvestigation (For the Accused Wilson T. De Vera) dated December 15, 2015, p. 25, Record, Vol. I, p. 449.

¹¹ *Anti-Graft and Corrupt Practices Act*

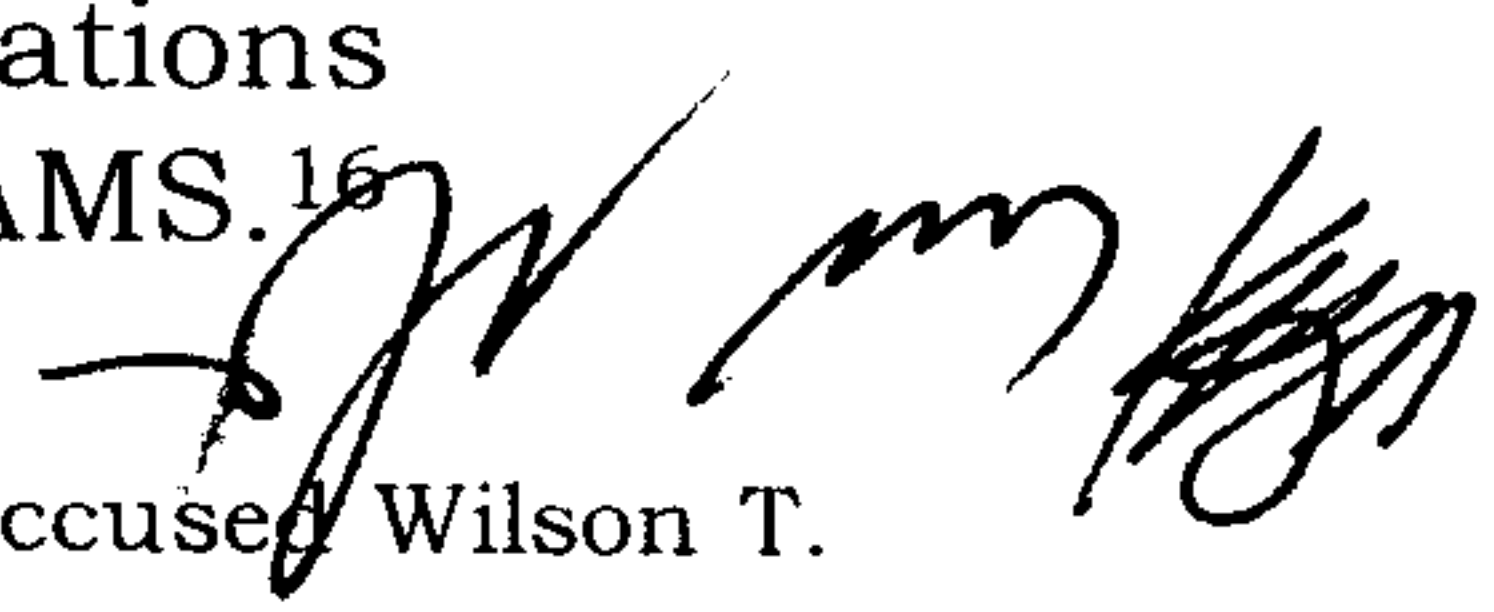
¹² *Government Procurement Reform Act*; Motion for Reinvestigation (For the Accused Wilson T. De Vera) dated December 15, 2015, p. 3, Record, Vol. I, p. 427.

¹³ *Id.*, at p. 4, Record, Vol. I, p. 428.

¹⁴ *Id.*, at p. 5, Record, Vol. I, p. 429.

¹⁵ *Id.*, at pp. 7-8, Record, Vol. I, pp. 431-432.

¹⁶ *Id.*, at p. 10, Record, Vol. I, p. 434.



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He wrote various letters raising the lack of authority of accused dela Cruz to act on behalf of PH TRAMS.¹⁷

Accused Soriano prays that: (1) the Resolution dated December 8, 2015 (finding probable cause for the issuance of a warrant of arrest)¹⁸ be reconsidered; (2) the instant cases be dismissed; and (3) the warrants of arrest against him be recalled.¹⁹ Accused Soriano claims:

- a. There is no evidence to establish conspiracy.²⁰
- b. The Joint Resolution of the Office of the Ombudsman zeroed in on the relationship of Soriano and co-accused Vitangcol. Accused Soriano no longer had any business interest with PH Trams as he relinquished and assigned the same to Marlo dela Cruz as early as September 12, 2012. The negotiated procurement started around October 8, 2012 and the contract was executed on October 19, 2012.²¹
- c. Accused Soriano never participated in the management of PH TRAMS. He had no participation in the execution of the Affidavit of Disclosure, the joint venture agreement with CB&T nor in the Maintenance Contract.
- d. There is no undue injury caused nor any unwarranted benefits, advantage or preference given to any party. The bid of PH Trams-CB&T was considerably lower than that previously paid to Sumitomo. No unwarranted benefit was given to the three competing firms.²²
- e. R.A. No. 9184 does not apply because the Affidavit of Disclosure was submitted by PH Trams to the MRTC a private corporation. At the time of its submission to the MRTC-BAC sometime in October 12, 2012, accused Soriano was no longer a stockholder of PH Trams.²³

¹⁷ *Id.*, at pp. 9-10, Record, Vol. I, pp. 433-434.

¹⁸ Record, Vol. I, pp. 393-394.

¹⁹ Accused Soriano's Entry of Appearance with Motion for Reconsideration dated January 19, 2016, p. 16, Record, Vol. II, p. 63.

²⁰ *Id.*, at pp. 6-7, Record, Vol. II, 53-54.

²¹ *Id.*, at pp. 8-9, Record, Vol. II, pp. 55-56.

²² *Id.*, at pp. 9-12, Record, Vol. II, pp. 56-59.

²³ *Id.*, at p. 15, Record, Vol. II, p. 62.

In its Opposition to accused De Vera's *Motion for Reinvestigation*, the prosecution pointed out:

- a. The Office of the Prosecutor received a copy of the Motion for Reconsideration which set the date of hearing on January 7, 2016 on even date. It received on January 8, 2016 the second copy of the Motion for Reconsideration, this time setting the hearing on January 14, 2016.²⁴
- b. The arguments of accused de Vera in the Motion for Reinvestigation are the same arguments raised in his counter-affidavit which have been passed upon by the Office of the Ombudsman.²⁵

On the other hand, in opposition to accused Soriano's *Motion for Reconsideration*, the prosecution argued:

- a. The Office of the Ombudsman and this Honorable Court, separately, found probable cause against all the accused.²⁶
- b. The elements of Sections 3(e) and 3(h), R.A. No. 3019 and Paragraph c(1), Section 65, R.A. No. 9184 were sufficiently averred in the Information and supporting documents.
- c. Conspiracy was shown through the affidavits of Josef Husef and Josef Rychtar who declared that in meetings held with them, accused Vitangcol and de Vera proposed to the Inekon Group to enter into a joint venture agreement with Vitangcol's people for the maintenance of MRT3.
- d. Accused Soriano's claim that he had divested his shares in PH Trams was belied by his SALN for the year 2012.
- e. All other matters raised by the accused, tending to exculpate them from criminal liability are evidentiary in nature and matters of defense, which are best passed upon after a full-blown trial.²⁷

²⁴ Consolidated Opposition dated January 27, 2016, p. 2, Record, Vol. II, p. 110.

²⁵ *Id.*, at p. 3, Record, Vol. II, p. 111.

²⁶ *Id.*, at p. 4, Record, Vol. II, p. 112.

²⁷ *Id.*, at pp. 5-7, Record, Vol. II, pp. 113-115, citing the prosecution's Opposition (To Accused dela Cruz and Maralit's Urgent Motion to Defer Issuance of Warrant of Arrest and Arraignment Pending Judicial Determination of Probable Cause dated 7 December 2015).

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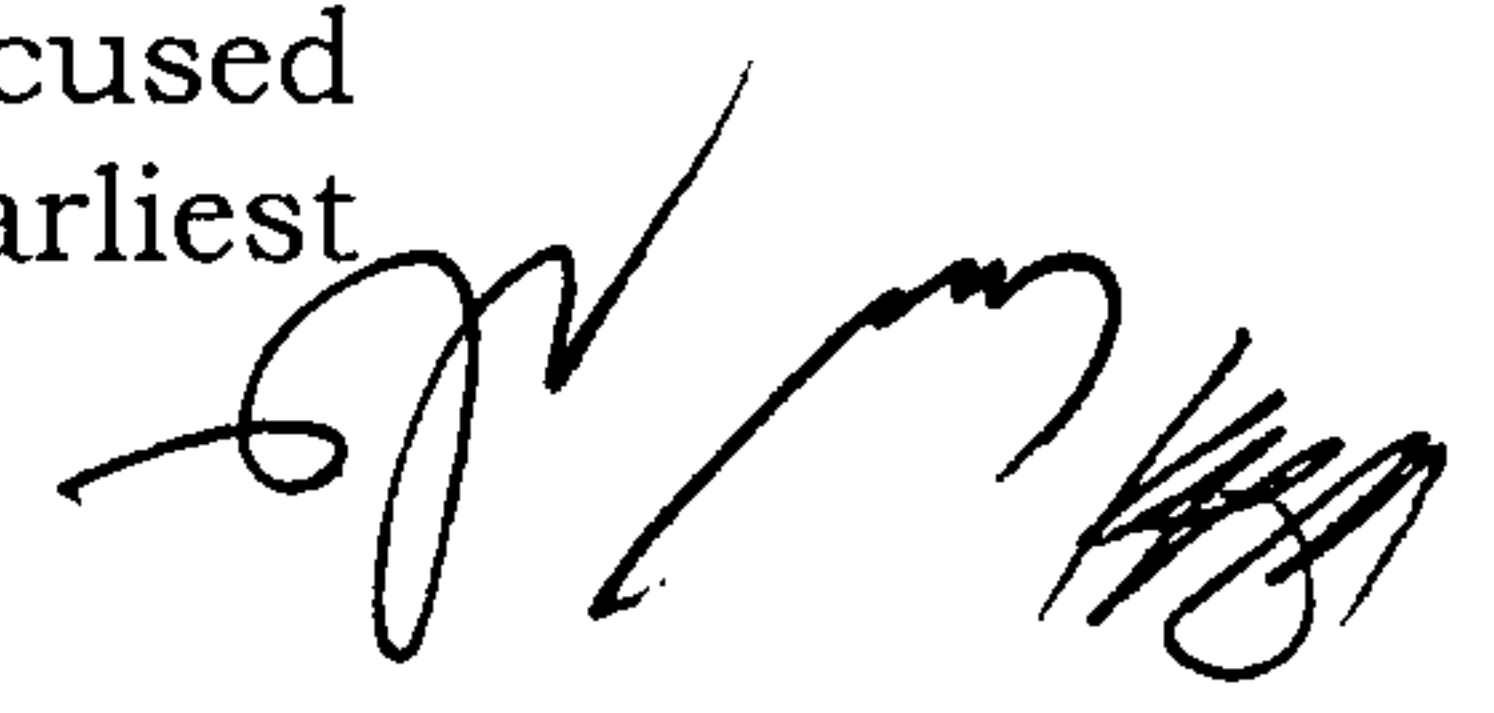
In his *Reply*, accused Soriano reiterated the arguments in his Motion for Reconsideration dated January 19, 2016 and further argued that: a) when the Ombudsman exonerated the other Department of Transportation and Communication officials, she, in effect, negated the existence of conspiracy; and, b) the Ombudsman has ruled that no injury occurred as the transaction was advantageous to the government.²⁸

Accused dela Cruz and Maralit, in their *Omnibus Motion for Reconsideration and for Reinvestigation*, ask this Court to set aside its Minute Resolution dated December 14, 2015²⁹ which merely noted their *Urgent Motion to Defer Issuance of Warrant of Arrest and Arraignment Pending Judicial Determination of Probable Cause*.³⁰ Reiterating the arguments raised in their *Urgent Motion*, they claim that there is lack of probable cause to indict them in the present case and argued:³¹

- a. The Affidavit of Disclosure was originally intended for submission to MRTC (a private entity) on or about August 31, 2012.³²

MRT3 Negotiating Team and BAC were constituted almost two (2) months after the execution of the Affidavit.³³

- b. Accused dela Cruz and Maralit did not know or consent to accused Soriano's inclusion as an incorporator of PH Trams; it was accused de Vera who included Soriano as an incorporator of PH Trams.³⁴
- c. Accused dela Cruz and Maralit had no knowledge of the relationship between accused Vitangcol and Soriano when the Affidavit was executed on August 12, 2012. Accused dela Cruz caused accused Soriano to divest his shares at the earliest



²⁸ Accused Soriano's Reply to Consolidated Opposition dated February 10, 2016, p. 3, Record, Vol. II, p. 216.

²⁹ Record, Vol. I, p. 470.

³⁰ Dated December 7, 2015, Record, Vol. I, pp. 452-469.

³¹ Accused dela Cruz and Maralit's Omnibus Motion for: 1. Reconsideration of the Minute Resolution dated 14 December 2015; and 2. Reinvestigation, pp. 2-3, Record, Vol. II, pp. 161-162.

³² *Id.*, at pp. 5 & 7, Record, Vol. II, pp. 164 & 166.

³³ *Id.*, at p. 10, Record, Vol. II, p. 169.

³⁴ *Id.*, at p. 6, Record, Vol. II, p. 165.

opportunity or before the contract was awarded to PH Trams-CB&T Joint Venture.³⁵

- d. Accused dela Cruz and Maralit had no participation in the submission of the Affidavit of Disclosure to MRT3-DOTC. It was accused de Vera, through Mr. Roehl Bacar, who submitted the Affidavit, together with other pertinent documents, to the MRT3-DOTC.³⁶

On February 17, 2016, the prosecution filed its *Comment and/or Opposition (To Accused Marlo Pilapil dela Cruz and Marolo Mayo Maralit's Omnibus Motion for: Reconsideration of the Minute Resolution dated 14 December 2015; and Reinvestigation dated 2 February 2016)*. It argued:

- a. The contents of the aforesaid motion are mere rehash of accused dela Cruz and Maralit's previous motion,³⁷ which this Court had already passed upon in its Resolution dated December 14, 2015.³⁸
- b. There is probable cause to indict accused dela Cruz and Maralit for violations of Sections 3(e) and 3(h), R.A. No. 3019 and Paragraph c(1), Section 65, R.A. No. 9184.³⁹
- c. That the subject Affidavit was intended to be submitted to DOTC-MRT3 is of no consequence since the MRT3 is considered an end-user unit under the Affidavit.⁴⁰
- d. Accused Soriano's Statement of Assets and Liabilities for calendar year 2012 belies his claim that he divested his shares in PH Trams on September 10, 2012, or prior to the submission of the bid documents (including the subject Affidavit) to the DOTC-MRT3 Negotiating Team.⁴¹

On March 2, 2016, accused dela Cruz and Maralit filed their *Reply (To: Comment and/or Opposition dated 17 February 2016)* and contended:

³⁵ *Id.*, at p. 11, Record, Vol. II, p. 170.

³⁶ *Id.*, at p. 7, Record, Vol. II, p. 166.

³⁷ Urgent Motion to Defer Issuance of Warrant of Arrest and Arraignment Pending Judicial Determination of Probable Cause

³⁸ Comment and/or Opposition dated February 17, 2016, p. 1, Record, Vol. II, p. 220.

³⁹ *Id.*, at pp. 1-2, Record, Vol. II, pp. 220-221.

⁴⁰ *Id.*, at pp. 4-5, Record, Vol. II, pp. 223-224.

⁴¹ *Id.*, at p. 7, Record, Vol. II, p. 226.

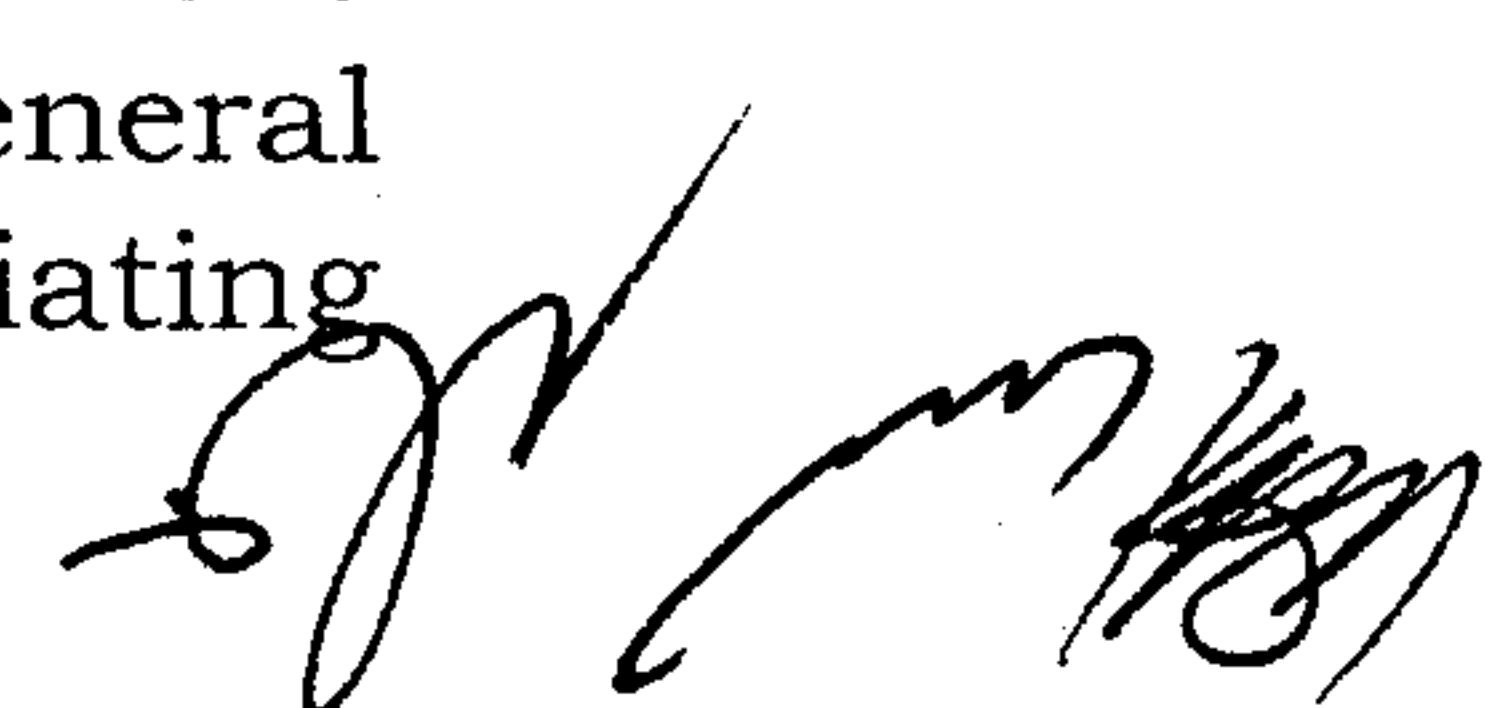
- a. Their *Urgent Motion to Defer Issuance of Warrant of Arrest and Arraignment Pending Judicial Determination of Probable Cause* was not resolved by this Court on the merits; said motion was only “noted” by this Court. They were not given their full day in court because the Sandiganbayan issued the Minute Resolution even before their Urgent Motion was to be heard in the hearing scheduled on December 11, 2015.⁴²
- b. There is no legal or factual basis for the finding that they acted in conspiracy with the rest of the accused in the present case.
- c. The fact that they are incorporators of PH Trams does not automatically make them liable for the offenses charged.⁴³

The Court’s Resolution

This Court denies the Motions for Reconsideration of its Resolution dated December 8, 2015, which declared that there is probable cause for the issuance of warrants of arrest against all the accused, and Resolution dated December 14, 2015 which noted the Urgent Motion to Defer Issuance of Warrant of Arrest and Arraignment Pending Judicial Determination of Probable Cause. The Court likewise denies the Motions for Reinvestigation.

The record shows the following:

- a. Accused Vitangcol and Soriano admit that they are related to each other by affinity within the third civil degree. Accused Soriano is accused Vitangcol’s uncle-in-law being the brother of Vitangcol’s mother-in-law.⁴⁴
- b. At the time of the alleged commission of the offense, accused Vitangcol was the General Manager of the MRT3, head of the Negotiating



⁴² Reply dated February 29, 2016, pp. 2-4, Record, Vol. II, pp. 308-310.

⁴³ *Id.*, pp. 4-5, Record, Vol. II, pp. 310-311.

⁴⁴ Accused Soriano’s Counter-Affidavit dated November 4, 2014, pp. 1 & 2, Record, Vol. I, pp. 233 & 234; Accused Soriano’s Entry of Appearance with Motion for Reconsideration dated January 19, 2016, p. 3, Record, Vol. II, p. 50 and Accused Vitangcol’s Counter-Affidavit dated October 23, 2014, pp. 2 & 24, Record, Vol. I, pp. 164 & 186.

Team and member of the Bids and Awards Committee.⁴⁵

- c. Accused Soriano, De Vera, dela Cruz and Maralit are all directors, incorporators and stockholders of record of PH Trams at the time of the alleged commission of the offense.⁴⁶
- d. The Negotiating Team, which was constituted upon the recommendation of the DOTC-MRT3, conducted a negotiated procurement. PH Trams CB&T JV ranked first among the three invited firms which participated in the negotiations. Hence, the contract for the interim maintenance service of MRT3 was awarded to PH Trams CB&T JV.⁴⁷
- e. The records do not bear any document which showed that any of the accused disclosed the relationship of accused Vitangcol and accused Soriano.
- f. The *Affidavit of Disclosure* executed by accused dela Cruz stating that "none of the officers, directors and controlling stockholders of PHILIPPINE TRANS RAIL MANAGEMENT AND SERVICE CORPORATION is related to the Head of the Procuring Entity, members of the Bids and Awards Committee (BAC), the Technical Working Group, and the BAC Secretariat, the head of the Project Management Office or the end-user unit, and the project consultants by consanguinity or affinity up to the third civil degree," was submitted to the DOTC-MRT3.⁴⁸

Section 47 of R.A. No. 9184 and of its Implementing Rules and Regulations (IRR) mandate the disclosure of relations by requiring the bidder(s) to execute a sworn affidavit that he/she or any officer of their corporation is not related to the head of the procuring entity by consanguinity

⁴⁵ Accused Vitangcol's Counter-Affidavit dated October 23, 2014, pp. 4 & 17, Record, Vol. I, pp. 166 & 179 and BAC Resolution No. P-GS-AMP-2012-196, p. 3, Record, Vol. I, p. 76.

⁴⁶ *Id.*, at pp. 32 & 34, Record, Vol. I, pp. 40 & 42 and Articles of Incorporation of PH Trams, pp. 2-3, Record, Vol. I, pp. 104-105.

⁴⁷ Memorandum dated October 12, 2012, Record, Vol. I, pp. 80-81; BAC Resolution No. P-GS-AMP-2012-196-A, Record, Vol. I, pp. 84-86; and Contract for the Interim Maintenance Service Provider for EDSA Metro Rail Transit (MRT) 3 dated October 19, 2012, Record, Vol. I, pp. 88-92.

⁴⁸ Affidavit dated August 12, 2012, p. 1, Record, Vol. I, p. 144.

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or affinity up to the third civil degree. Section 47 of the IRR of R.A. No. 9184 further provides that relationship to the head of the procuring entity, members of the Bids and Awards Committee, the Technical Working Group, and the BAC Secretariat, the head of the Project Management Office or the end-user unit, and the project consultants within the third civil degree of consanguinity or affinity shall automatically disqualify the bidder from participating in the procurement of contracts of the procuring entity. The pertinent provisions read:

R.A. No. 9184

Section 47. Disclosure of Relations. - In addition to the proposed contents of the Invitation to Bid as mentioned under Section 21 of this Act, all bidding documents shall be accompanied by a sworn affidavit of the bidder that he or she or any officer of their corporation is not related to the Head of the Procuring Entity by consanguinity or affinity up to the third civil degree. Failure to comply with the aforementioned provision shall be a ground for the automatic disqualification of the bid in consonance with Section 30 of this Act.

IRR of R.A. 9184

Section 47. Disclosure of Relations. All bids shall be accompanied by a sworn affidavit of the bidder that it is not related to the Head of the Procuring Entity, members of the BAC, the TWG, and the BAC Secretariat, the head of the PMO or the end-user unit, and the project consultants, by consanguinity or affinity up to the third civil degree. Failure to comply with the aforementioned provision shall be a ground for the automatic disqualification of the bid in consonance with Section 30 of this IRR. For this reason, relation to the aforementioned persons within the third civil degree of consanguinity or affinity shall automatically disqualify the bidder from participating in the procurement of contracts of the procuring entity. On the part of the bidder, this provision shall apply to the following persons: a) If the bidder is an individual or a sole proprietorship, to the bidder himself; b) If the bidder is a partnership, to all its officers and members; c) If the bidder is a corporation, to all its officers, directors, and controlling stockholders; and d) If the bidder is a joint venture, the provisions of items (a), (b), or (c) of this Section shall correspondingly apply to



each of the members of the said joint venture, as may be appropriate.⁴⁹

Probable Cause for the Issuance of a Warrant of Arrest.

In its Order dated December 8, 2015, this Court declared:

After a careful review of the records of these cases, the Court finds that probable cause exists against all the accused, namely: Al Sánchez Vitangcol, III, Arturo Vallo Soriano, Wilson Tigno De Vera, Marlo Pilapil Dela Cruz, Manolo Mayo Maralit, and Federico F. Remo in all the charges against them.⁵⁰

Accordingly, this Court issued warrants of arrest against the above-named accused, with the exception of Vitangcol and De Vera as both had posted a cash bond.⁵¹

SB-15-CRM-0295: Violation of Section 65, Paragraph C(1) in relation to Section 47, R.A. No. 9184

Section 65, R.A. No. 9184 penalizes the act of submitting eligibility requirements that contain false information or falsified documents calculated to influence the outcome of the eligibility screening process or conceal such information in the eligibility requirements when the information will lead to a declaration of ineligibility from participating in public bidding, *viz*:

Section 65. Offenses and Penalties. - xxx

(c) Private individuals who commit any of the following acts, and any public officer conspiring with them, shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but more than fifteen (15) years:

1. Submit eligibility requirements of whatever kind and nature that contain false information or falsified documents calculated to influence the outcome of the eligibility screening process or conceal such information in the eligibility requirements when the

⁴⁹ Underscoring supplied.

⁵⁰ Resolution dated December 8, 2015, pp. 1-2, Record, Vol. I, pp. 393-394.

⁵¹ *Id.*

information will lead to a declaration of ineligibility from participating in public bidding.⁵²

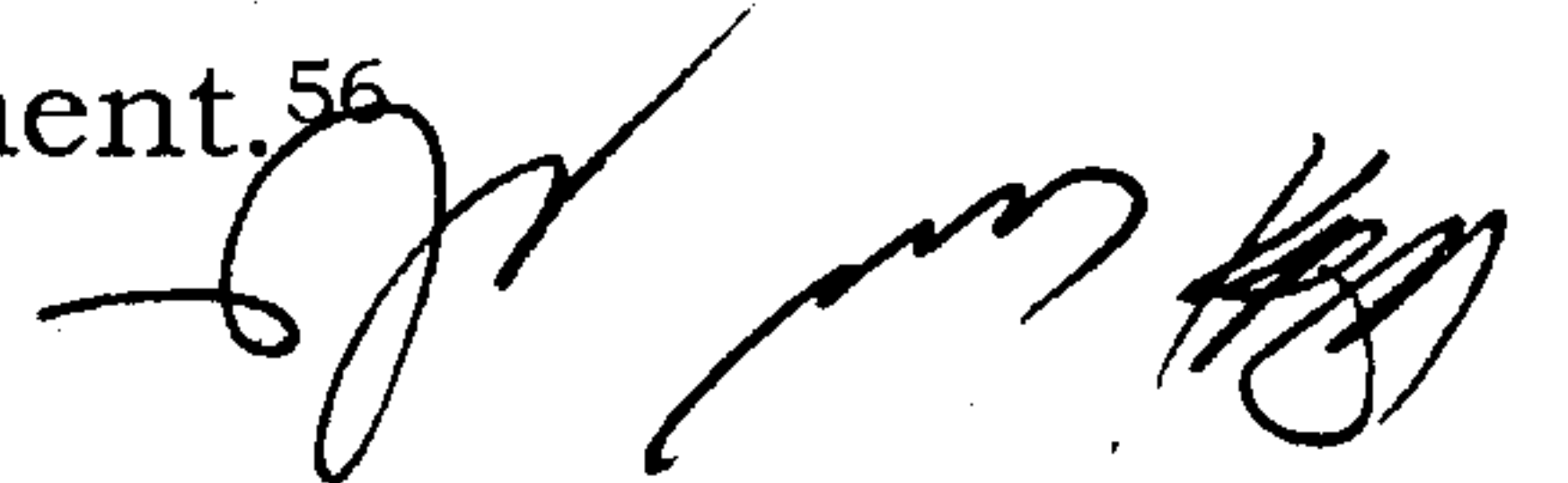
Since accused Soriano, one of the incorporators, directors and stockholders of PH Trams, is a relative by affinity within the third degree of accused Vitangcol, the *Affidavit of Disclosure* submitted by PH Trams-CB&T JV appears to be false.

Had PH Trams disclosed that accused Soriano is the uncle-in-law of accused Vitangcol, it would have affected the outcome of the eligibility screening process because PH Trams-CB&T JV would have been automatically disqualified from being considered in the negotiated procurement for the provision of interim maintenance services to MRT3. Instead, the contract for the provision of interim maintenance services between DOTC-MRT3 and PH Trams-CB&T JV was even extended three times subsequent to the expiration of the original contract entered into on October 19, 2012, since the public bidding for a regular maintenance provider was not completed on time.⁵³

Hence, the submission of the *Affidavit of Disclosure* violates Section 65, R.A. No. 9184.

Conspiracy

There is conspiracy when two or more persons agree to commit a felony and decide to commit it.⁵⁴ In *Zapanta vs. People*,⁵⁵ the Supreme Court emphasized that conspiracy may be implied if it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent of each other, were, in fact, connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment.⁵⁶



⁵² Emphasis and underscoring supplied.

⁵³ BAC Resolution No. P-GS-AMP-2013-26, Record, Vol. I, pp. 94; BAC Resolution No. S-GS-AMP-2013-81, Record, Vol. I, pp. 95-96; and BAC Resolution No. P-GS-AMP-2013-193, Record, Vol. I, pp. 98-99.

⁵⁴ *Zapanta vs. People*, 757 SCRA 172 [2015].

⁵⁵ *Supra*, citing *People vs. Bautista*, 636 Phil. 535 [2010].

⁵⁶ *Id.*, at p. 192.

Here, the acts of accused point to a common criminal design not to reveal the relationship of accused Vitangcol and Soriano, which circumstance would have disqualified PH Trams-CB&T JV from participating in the negotiated procurement for the provision of interim maintenance services to MRT3, to allow PH Trams to secure a contract with DOTC-MRT3 for the MRT's interim maintenance services.

Dela Cruz, who is the authorized representative of PH Trams, expressly stated in the *Affidavit of Disclosure*⁵⁷ that "none of the officers, directors and controlling stockholders of PHILIPPINE TRANS RAIL MANAGEMENT AND SERVICE CORPORATION is related to the Head of the Procuring Entity, members of the Bids and Awards Committee (BAC), the Technical Working Group, and the BAC Secretariat, the head of the Project Management Office or the end-user unit, and the project consultants by consanguinity or affinity up to the third civil degree."⁵⁸ On the other hand, while both accused Vitangcol and Soriano admitted that they are related to each other by affinity within the third civil degree,⁵⁹ it appears that neither of them disclosed such fact at any point during the negotiations between the DOTC-MRT3 and PH Trams-CB&T JV. Accused Maralit's participation in the conspiracy is shown by his active participation in the management of PH Trams, including the execution of the Joint Venture Agreement with CB&T.⁶⁰

Accused Maralit and dela Cruz point to De Vera as the person responsible for including accused Soriano in the Articles of Incorporation of PH Trams⁶¹ and for the submission of the false *Affidavit of Disclosure* to DOTC-MRT3.⁶²

There is, thus, probable cause to issue a warrant of arrest against the accused in SB-15-CRM-0295.

⁵⁷ Dated August 12, 2012, Record, Vol. I, pp. 144-145.

⁵⁸ Affidavit dated August 12, 2012, p. 1, Record, Vol. I, p. 144.

⁵⁹ Accused Soriano's Counter-Affidavit dated November 4, 2014, pp. 1 & 2, Record, Vol. I, pp. 233 & 234; Accused Soriano's Entry of Appearance with Motion for Reconsideration dated January 19, 2016, p. 3, Record, Vol. II, p. 50 and Accused Vitangcol's Counter-Affidavit dated October 23, 2014, pp. 2 & 24, Record, Vol. I, pp. 164 & 186.

⁶⁰ Annex D of accused De Vera's undated Counter-Affidavit submitted to the Office of the Ombudsman, Record, Vol. I, p. 328.

⁶¹ Accused dela Cruz and Maralit's Omnibus Motion for: 1. Reconsideration of the Minute Resolution dated 14 December 2015; and 2. Reinvestigation dated February 2, 2016, p. 6, Record, Vol. II, p. 155.

⁶² *Id.*, at p. 7, Record, Vol. II, p. 166.

SB-15-CRM-0293: Violation of Section 3(e), R.A. No. 3019.

There is, likewise, probable cause for the issuance of warrants of arrest against all accused in SB-15-CRM-0293 and SB-15-CRM-0294.

Section 3(e), R.A. No. 3019 states:

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:

xxx xxx xxx

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

xxx xxx xxx

The elements of violation of Section 3(e), R.A. No. 3019 are:

1. The accused must be a public officer discharging administrative, judicial or official functions, or a private person charged in conspiracy with him;⁶³
2. He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and,
3. His action caused any undue injury to any party, including the government, or giving any

⁶³ Lazarte, Jr. vs. Sandiganbayan, 581 SCRA 431, 447 [2009].

private party unwarranted benefits, advantage or preference in the discharge of his functions.⁶⁴

- 1) Accused is a public officer. The private individuals were charged in conspiracy with the public officer.

Accused Vitangcol was a public officer at the time of the alleged commission of the offense. He was then the General Manager of the MRT3.⁶⁵ Accused De Vera, Soriano, dela Cruz and Maralit are private individuals charged to have acted in conspiracy with accused Vitangcol.

- 2) He acted with manifest partiality, evident bad faith or inexcusable negligence.

In *Ampil vs. Office of the Ombudsman*,⁶⁶ the Supreme Court explained the concepts of partiality, bad faith and gross negligence, to wit:

Partiality is synonymous with bias which excites a disposition to see and report matters as they are wished for rather than as they are. Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud. Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property.⁶⁷

In the present case, it appears that accused Vitangcol acted in bad faith and with manifest partiality when he, despite his knowledge that his uncle-in-law, accused Soriano, is one of the incorporators, directors and stockholders of record of PH Trams, did not disclose such relationship nor declare that the *Affidavit of Disclosure* submitted by PH Trams is false; when he allowed PH Trams-CB&T JV to participate in the negotiated procurement of

⁶⁴ *Consigna vs. People*, 720 SCRA 350, 366 [2014].

⁶⁵ *Id.*, at p. 10, Record, Vol. I, p. 18 and BAC Resolution No. P-GS-AMP-2012-196, p. 3, Record Vol. I, p. 76.

⁶⁶ 703 SCRA 1 [2013].

⁶⁷ *Id.*, at p. 27.

interim maintenance services for MRT3 and entered into a contract with said joint venture. Accused Vitangcol's relationship with accused Soriano should have led to the disqualification of PH Trams from the negotiated procurement.

Accused Vitangcol, in his capacity as General Manager of the MRT3, was head of the Negotiating Team, and member of the BAC, in the selection of the interim maintenance provider for the MRT3.⁶⁸ In fact, accused Vitangcol was one of the signatories in the contract for the interim service provider awarded to PH Trams-CB&T JV.⁶⁹

- 3) Unwarranted benefit, advantage or preference in the discharge of the public official's functions.

By his failure to disclose that accused Soriano, one of the incorporators, directors and stockholders of PH Trams, is related by affinity within the third civil degree to him and that the *Affidavit of Disclosure* submitted by PH Trams is false; by his failure to disqualify PH Trams from participating in the negotiated procurement; and by his act of awarding and executing the contract of interim maintenance services with PH Trams-CB&T JV, accused Vitangcol gave unwarranted benefit, advantage and preference in favor of a disqualified bidder, PH Trams-CB&T JV.

SB-15-CRM-0294: Violation of Section 3(h), R.A. No. 3019.

Section 3(h), R.A. No. 3019 provides:

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:

xxx xxx xxx

- (h) Directly or indirectly having financial or pecuniary interest in any

⁶⁸ Memorandum dated October 12, 2012, Record, Vol. I, pp. 80-81; Result of the Preliminary Negotiations with Prospective Maintenance Providers dated October 11, 2012, Record, Vol. I, pp. 82-83; and BAC Resolution No. P-GS-AMP-2012-196-A, Record, Vol. I, pp. 84-86.

⁶⁹ Contract for the Interim Maintenance Service Provider for EDSA Metro Rails Transit (MRT) 3 dated October 19, 2012, p. 4, Record, Vol. I, p. 91.

business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.

xxx xxx xxx

Thus, the elements of violation of Section 3(h), R.A. No. 3019 are:

1. The accused is a public officer, or private persons, when acting in conspiracy with public officers;⁷⁰
2. He has a direct or indirect financial or pecuniary interest in any business, contract or transaction; and,
3. He either: a) intervenes or takes part in his official capacity in connection with such interest, or b) is prohibited from having such interest by the Constitution or by law.

There are two modes by which a public officer who has a direct or indirect financial or pecuniary interest in any business, contract, or transaction may violate Section 3(h) of R.A. 3019: (1) when the public officer intervenes or takes part in his official capacity in connection with his financial or pecuniary interest in any business, contract, or transaction, and, (2) when he is prohibited from having such an interest by the Constitution or by law.⁷¹

- 1) Accused is a public officer. The private individuals acted in conspiracy with the public officer.

As discussed above, accused Vitangcol was a public officer at the time of the alleged commission of the offense. Accused De Vera, Soriano, dela Cruz and Maralit are private individuals charged to have acted in conspiracy with accused Vitangcol.

- 2) He has direct or indirect financial or pecuniary interest in any business, contract or transaction.

⁷⁰ See *Go vs. Fifth Division, Sandiganbayan*, 521 SCRA 270, 286-287 [2007].

⁷¹ *Teves vs. COMELEC*, 587 SCRA 1, 10-11 [2009].

In *Republic vs. Tuvera*,⁷² the Supreme Court held that the fact that the principal stockholder of Twin Peaks was the son of Presidential Executive Assistant Juan Tuvera establishes Juan Tuvera's indirect pecuniary interest in the transaction he appears to have intervened in. The Supreme Court said that the circumstance of kinship alone may not be enough to disqualify Juan Tuvera's son, Victor, from seeking a timber license agreement. However, the legal principle of *delicadeza* embodied in the provisions of R.A. No. 3019, specifically in paragraphs (a) and (h), should have dissuaded Juan Tuvera from any official or unofficial participation or intervention in behalf of Twin Peaks' request for a timber license.⁷³

In *Domingo vs. Sandiganbayan*,⁷⁴ the Supreme Court upheld the Sandiganbayan's decision finding petitioners Domingo (Mayor) and Garcia (private person) guilty for conspiring to commit violation of Section 3(h), R.A. No. 3019. The Supreme Court affirmed the findings of the Sandiganbayan that several circumstances, *i.e.*, Domingo fabricated documents in order to conceal his business transactions with his municipality; he was the co-drawer of the two questioned checks for which he was also the payee; Domingo owned the trucks used to deliver the gravel and sand to the different barangays; Garcia was asked to sign the affidavit admitting that he was the contractor for the supply and delivery of gravel and sand to the barangays, etc., pointed to Domingo's pecuniary interest in the assailed transaction; and that Garcia was a mere dummy for Domingo. The Supreme Court incidentally noted that Garcia is the godson of Domingo in marriage.⁷⁵

Here, accused Vitangcol and accused Soriano are related to each other by affinity within the third civil degree. Accused Soriano is accused Vitangcol's uncle-in-law being the brother of Vitangcol's mother-in-law.⁷⁶ The failure to disclose this relationship and the statement of Ambassador

⁷² 516 SCRA 113 [2007].

⁷³ *Id.*, at pp. 145-148.

⁷⁴ 474 SCRA 203 [2005].

⁷⁵ *Id.*, at pp. 206 & 215-217.

⁷⁶ Accused Soriano's Counter-Affidavit dated November 4, 2014, pp. 1 & 2, Record, Vol. I, pp. 233 & 234; Accused Soriano's Entry of Appearance with Motion for Reconsideration dated January 19, 2016, p. 3, Record, Vol. II, p. 50 and Accused Vitangcol's Counter-Affidavit dated October 23, 2014, pp. 2 & 24, Record, Vol. I, pp. 164 & 186.

of Czechoslovakia Josef Rychtar that, *“They [accused Vitangcol and Mr. Rodriguez] were openly talking about Inekon having no chance to get the deal since the maintenance contract was already given to the CB&T PH Trams joint venture (where Mr. Rodriguez was the president) and they would also strive for the supply contract for the new coaches. They said openly that their connection and partnership (Mr. Vitangcol and Mr. Rodriguez) cannot be broken and they are acting as one unity,”*⁷⁷ point to accused Vitangcol’s direct or indirect financial or pecuniary interest in PH Trams and in the transaction.

- 3) Accused either: a) intervenes or takes part in his official capacity in connection with such interest, or b) is prohibited from having such interest by the Constitution or by law.

Accused Vitangcol actively took part in the negotiation and awarding of contract in favor of PH Trams-CB&T JV for the interim maintenance service of the MRT3.⁷⁸

Conspiracy

In Criminal Case Nos. SB-15-CRM-0293 and SB-15-CRM-0294, accused private individuals De Vera, Soriano, dela Cruz and Maralit are charged for conspiring with accused Vitangcol in committing violation of Sections 3(e) and (h), respectively.

Conspiracy is deemed present when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy need not be proven by direct evidence of prior agreement to commit the crime. In criminal law, where the quantum of evidence required is proof beyond reasonable doubt, direct proof is not essential to show conspiracy—it may be deduced from the mode, method, and manner by which the offense was perpetrated, or inferred from the acts of the accused themselves when such acts point to a

⁷⁷ Ambassador Rychtar’s Sworn Statement dated October 7, 2013, p. 4, Record, Vol. I, p. 132. Underscoring supplied.

⁷⁸ Memorandum dated October 12, 2012, Record, Vol. I, pp. 80-81; Result of the Preliminary Negotiations with Prospective Maintenance Providers dated October 11, 2012, Record, Vol. I, pp. 82-83; BAC Resolution No. P-GS-AMP-2012-196-A, Record, Vol. I, pp. 84-86; Contract for the Interim Maintenance Service Provider for EDSA Metro Rails Transit (MRT) 3 dated October 19, 2012, p. 4, Record, Vol. I, p. 91.

joint purpose and design, concerted action, and community of interest.⁷⁹

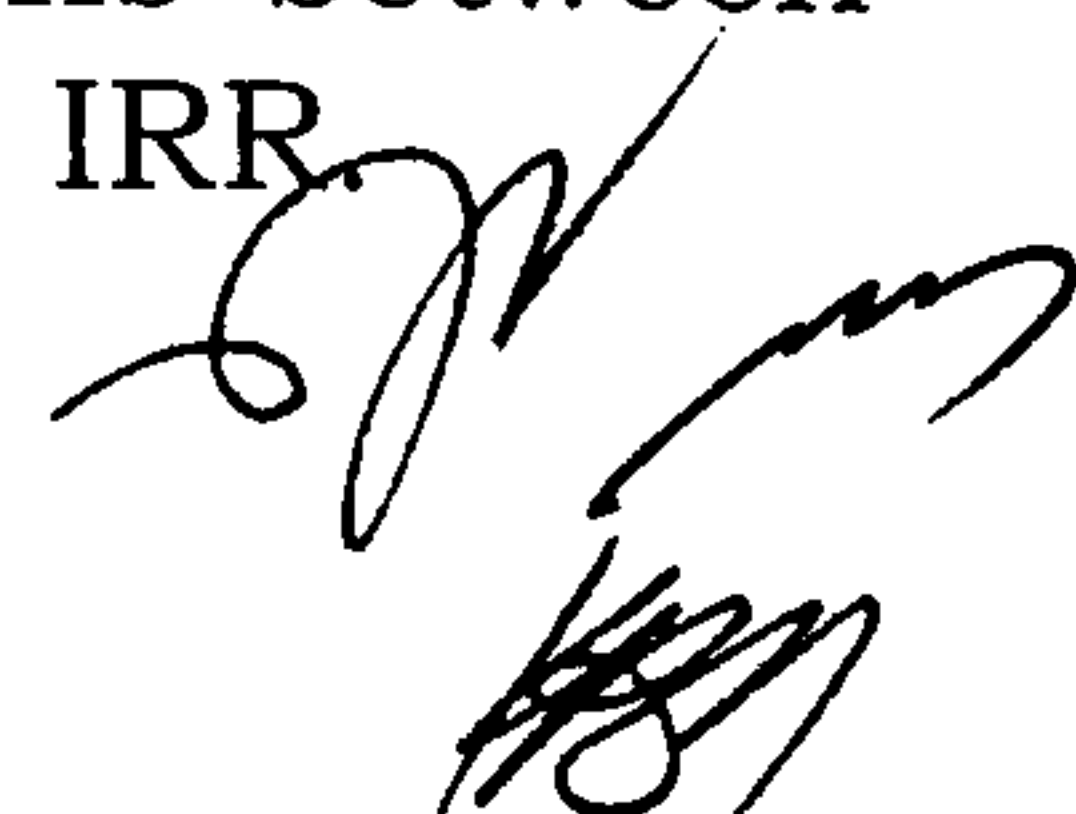
Here, accused' overt acts showed their complicity to the conspiracy.

Accused Vitangcol, despite knowing that his relationship with accused Soriano is a ground for disqualification of PH Trams-CB&T JV, concealed said fact and allowed the joint venture, wherein his uncle-in-law (accused Soriano) is an incorporator, director and stockholder of record, to participate in the negotiated procurement.

On the other hand, PH Trams, through its incorporators, directors and stockholders (accused Soriano, De Vera, Maralit and dela Cruz) did not disclose the fact that one of its incorporators, directors and stockholders is a relative by affinity of accused Vitangcol. Due to said non-disclosure, PH Trams-CB&T JV benefitted from accused Vitangcol's preferential treatment, and award of the contract for the provision of interim maintenance services.

Accused dela Cruz, the authorized representative of PH Trams, executed an *Affidavit of Disclosure*⁸⁰ expressly stating that "none of the officers, directors and controlling stockholders of PHILIPPINE TRANS RAIL MANAGEMENT AND SERVICE CORPORATION is related to the Head of the Procuring Entity, members of the Bids and Awards Committee (BAC), the Technical Working Group, and the BAC Secretariat, the head of the Project Management Office or the end-user unit, and the project consultants by consanguinity or affinity up to the third civil degree."⁸¹ Said affidavit was submitted as part of the bid documents of the PH Tram-CB&T JV.

Bad faith attended dela Cruz' execution of the *Affidavit of Disclosure* and submission of the same as it contained a patent misrepresentation on the absence of relations between the persons enumerated in R.A. No. 9184 and in its IRR.



⁷⁹ Aquino vs. Paiste, 555 SCRA 255, 271-272 [2008].

⁸⁰ Dated August 12, 2012.

⁸¹ *Id.*, at p. 1, Record, Vol. I, p. 144.

Accused Maralit also appears to be part of the conspiracy to ensure that the contract for the provision of interim maintenance services be awarded to PH Trams despite PH Trams's disqualification as he actively took part in the management of PH Trams.

Further, this Court notes that, even though dela Cruz was the lone signatory in the *Affidavit of Disclosure* which contained the false information, the Affidavit expressly states that: 1) dela Cruz is the duly authorized and designated representative of Philippine Trans Rail Management and Service Corporation; and, 2) he is granted full power and authority to do, execute and perform any and all acts necessary and/or to represent Philippine Trans Rail Management and Service Corporation.⁸² The Secretary's Certificate dated August 20, 2012 confirms the authority given to him by the Board of Directors of PH Trams "to execute, sign bid documents and to transact business with the METRO RAIL TRANSIT CORPORATION (MRTC) relative to the bidding and perform any and all acts necessary and/or to represent Philippines Transit Rail Management And Services Corp. in the bidding xxx."⁸³ While accused De Vera denies knowledge of the *Affidavit of Disclosure* executed by accused dela Cruz in behalf of PH Trams,⁸⁴ dela Cruz and Maralit claim that De Vera was the one who submitted the assailed Affidavit to MRT3 in compliance with the requirements for the negotiated procurement.⁸⁵

This Court sees no reason to depart from its Resolution dated December 8, 2015 finding that probable cause exists for the issuance of warrants of arrest against the accused De Vera, Soriano, dela Cruz and Maralit for violation of Sections 3(e) and 3(h), R.A. No. 3019 and of Section 65, Paragraph c(1) in relation to Section 47, R.A. No. 9184.

The arguments posited by accused involve matters of defense which are best dealt with during the trial of the case. The determination of probable cause does not depend on the validity or merits of a party's accusation or defense or on the

⁸² *Id.*

⁸³ Annex C of accused De Vera's undated Counter-Affidavit submitted to the Office of the Ombudsman, Record Vol. I, p. 322.

⁸⁴ Motion for Reinvestigation (For the Accused Wilson T. De Vera) dated December 15, 2015, p. 19, Record, Vol. I, p. 443.

⁸⁵ Accused dela Cruz and Maralit's Omnibus Motion for: 1. Reconsideration of the Minute Resolution dated 14 December 2015; and 2. Reinvestigation, at p. 7, Record, Vol. II, p. 166.

admissibility or veracity of testimonies presented. As previously discussed, these matters are better ventilated during the trial of the case.⁸⁶

The Motions for Reinvestigation.

The Motions for Reinvestigation are mooted by this Court's finding that there is probable cause to issue warrants of arrest against the accused. Since the Court, on the basis of the records of the case, has found probable cause to place the accused under arrest, it follows that there is probable cause to charge the accused and to hold them for trial.

WHEREFORE, this Court resolves to:

1. **DENY** for lack of merit accused De Vera's *Motion for Reconsideration (of the Order dated January 7, 2016 denying the Motion for Reinvestigation dated December 15, 2015 filed by the accused Wilson T. De Vera)*;⁸⁷
2. **DENY** for lack of merit the *Motion for Reinvestigation (For the Accused Wilson T. De Vera)*;⁸⁸
3. **AFFIRM** the Order dated January 7, 2016;
4. **DENY** for lack of merit accused Soriano's *Motion for Reconsideration*;⁸⁹
5. **DENY** for lack of merit accused dela Cruz and Maralit's *Omnibus Motion for: 1. Reconsideration of the Minute Resolution dated 14 December 2015; and 2. Reinvestigation*;⁹⁰
6. **AFFIRM** the Resolutions dated December 8, 2015 and December 14, 2015; and

⁸⁶ Unilever Philippines vs. Tan, 715 SCRA 36, 50 [2014].

⁸⁷ Urgent Omnibus Motion: For Reconsideration (Of the Order dated January 7, 2016 denying the Motion for Reinvestigation dated December 15, 2015 filed by the accused Wilson T. De Vera) and For Deferment of Arraignment dated January 19, 2016.

⁸⁸ Dated December 15, 2015.

⁸⁹ Entry of Appearance with Motion for Reconsideration dated January 19, 2016.

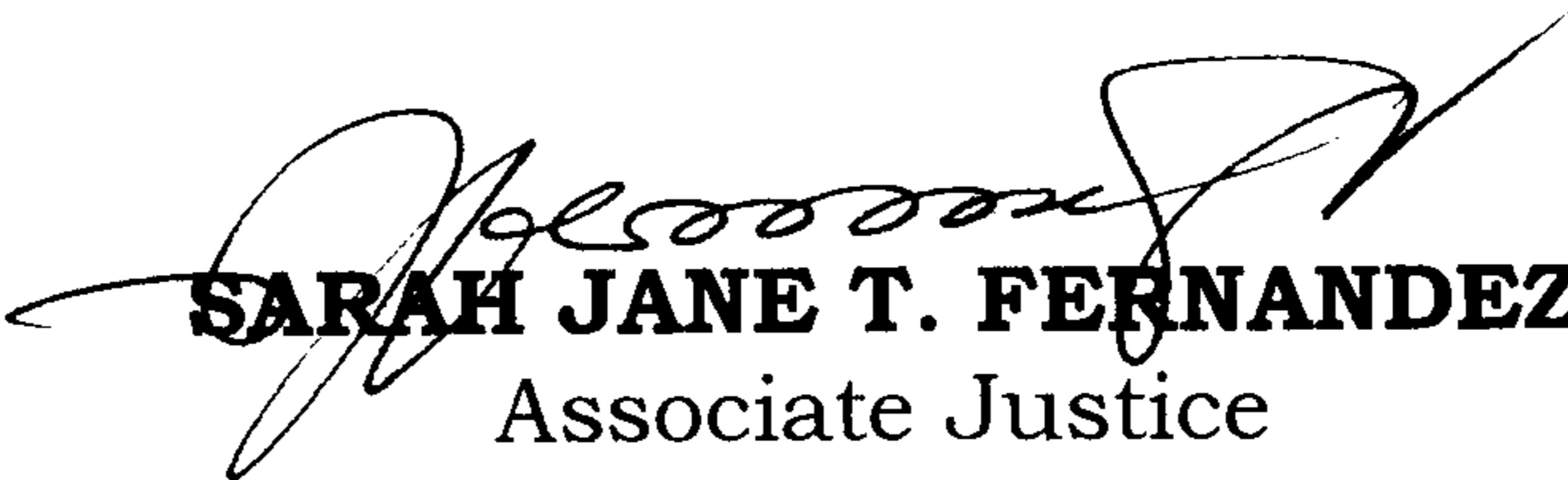
⁹⁰ Dated February 2, 2016.

7. **DENY**, for being moot and academic, accused De Vera's *Motion for Deferment of Arraignment*.⁹¹

The *Entry of Appearance*⁹² of Chaves Hechanova & Lim Law Offices as counsel for accused Soriano is **NOTED**.

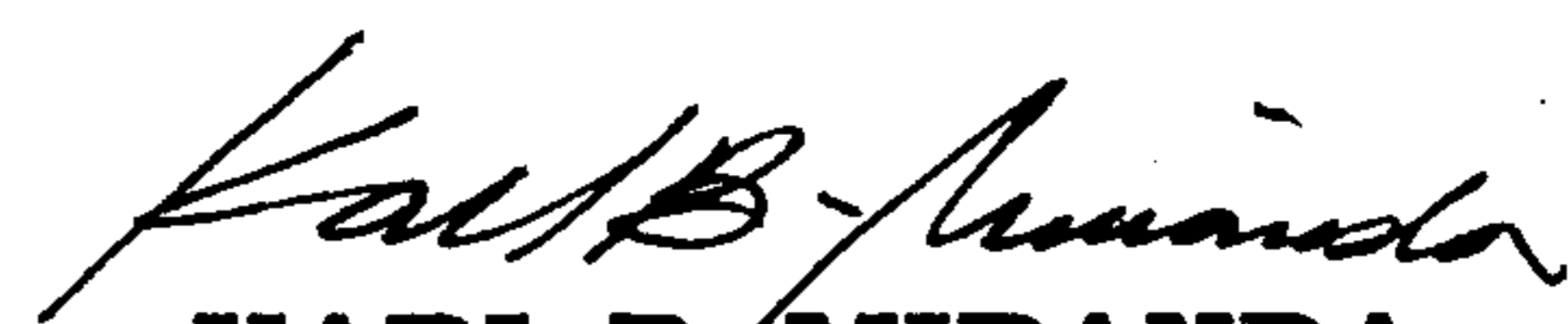
SO ORDERED.

Quezon City, Metro Manila.


SARAH JANE T. FERNANDEZ
Associate Justice

WE CONCUR:


AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson


KARL B. MIRANDA
Associate Justice

⁹¹ Urgent Omnibus Motion: For Reconsideration (Of the Order dated January 7, 2016 denying the Motion for Reinvestigation dated December 15, 2015 filed by the accused Wilson T. De Vera) and For Deferment of Arraignment dated January 19, 2016.

⁹² Entry of Appearance with Motion for Reconsideration dated January 19, 2016.