



REPUBLIC OF THE PHILIPPINES

Sandiganbayan
Quezon City

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, **SB-15-CRM-0082**
Plaintiff, For: Violation of Sec. 3(e), RA 3019

SB-15-CRM-0083
For: Malversation (Art. 217, RPC)
through Falsification (Art. 171, RPC)

Present

- versus -

RENATO P. MIRANDA, ET AL.,
Accused.

CABOTAJE-TANG, P.J.,
Chairperson
MARTIRES, J. and
FERNANDEZ, J.

Promulgated:

OCTOBER 24, 2016

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RESOLUTION

FERNANDEZ, J.

This resolves the following:

1. Accused Felicisimo C. Millado's *Omnibus Motion (To Quash the Two Information, For Judicial Determination of Probable Cause and to Hold in Abeyance the Issuance of Warrant of Arrest)*;¹ and
2. The prosecution's *Comment and/or Opposition (To Accused Felicisimo C. Millado's Omnibus Motion [To Quash the Two Information, For Judicial Determination of Probable Cause and to Hold in Abeyance the Issuance of Warrant of Arrest] dated 03 February 2016)*.²
3. The prosecution's *Compliance*³ with the Court's *Resolution* dated January 22, 2016.

¹ Dated February 3, 2016; pp. 627-634, Record, Vol. II

² Dated February 12, 2016; pp. 661-667, Record, Vol. II

³ Dated February 18, 2016, pp. 689-698, Record, Vol. II

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Accused Millado's omnibus motion

Accused Felicisimo C. Millado, in his *Omnibus Motion*, prays for the quashal of the Informations. In the alternative, he prays for the dismissal of the same for lack of probable cause. He further prays that the issuance of the warrant of arrest be held in abeyance pending the resolution his motion, or that if already issued, the same be recalled.

Accused Millado invokes the following grounds to support his motion to quash:

1. The Sandiganbayan has no jurisdiction over the present cases because the Informations do not indicate the respective positions of the accused, and merely state that the accused are all "public officers, being then officers of the Philippine Marine Corps (PMC)."

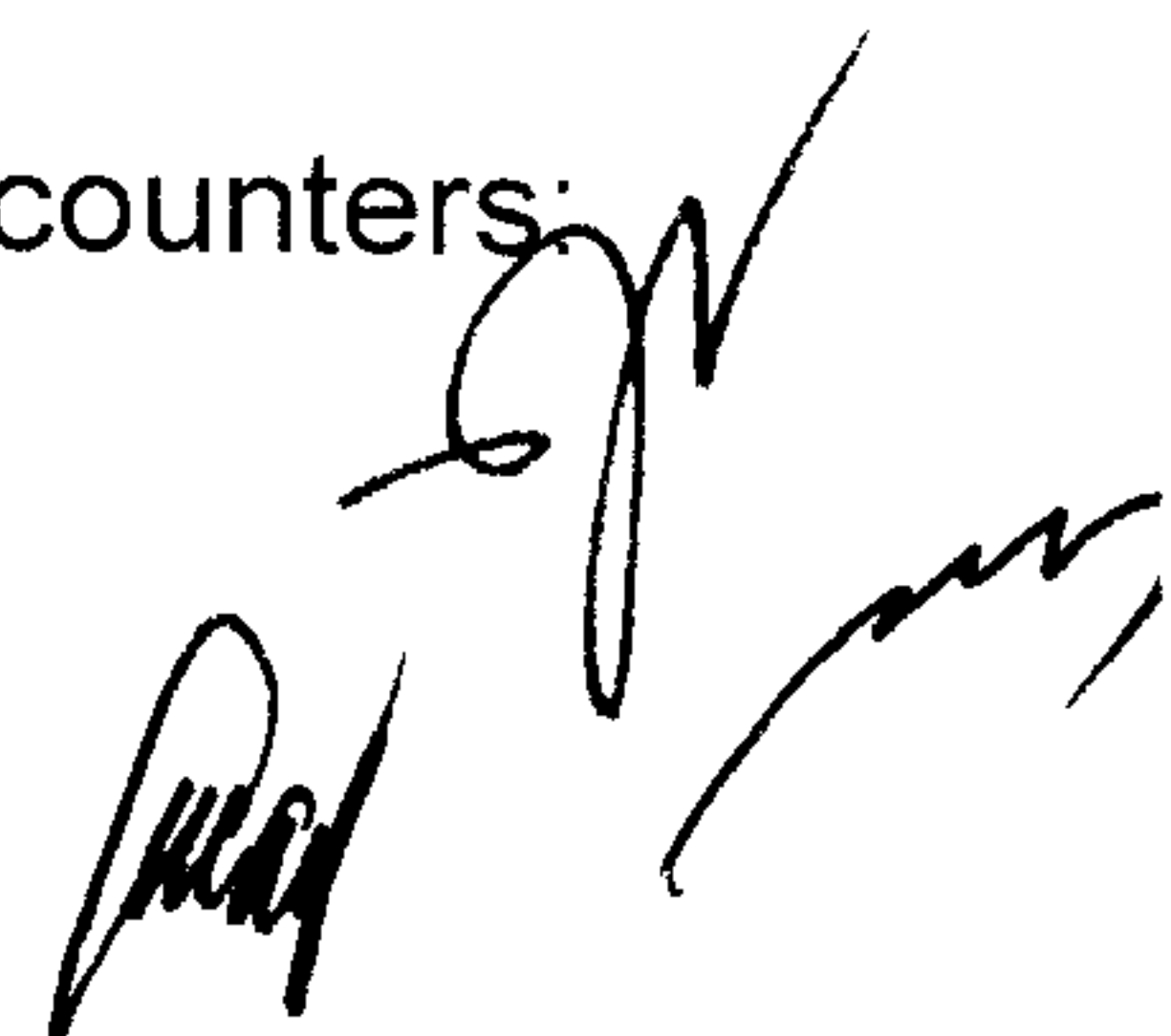
2. The facts charged do not constitute an offense. The Informations do not indicate the respective positions of the accused. Consequently, the allegation that the acts were done by the accused in the performance of their official functions is without basis. Moreover, the Informations do not state the specific documents that were allegedly falsified.

On the other hand, to support his motion to dismiss, accused Millado invokes the following grounds:

1. Accused Millado's right to speedy disposition of cases was violated. It took the Office of the Ombudsman more or less thirteen (13) years to file the case before this Court.

2. There is no probable cause against accused Millado. The existence of conspiracy was not proved. The Office of the Ombudsman merely inferred that there was conspiracy among the accused. Also, the fact that innocent persons such as him might have been swept into the alleged conspiracy was not taken into consideration. Lastly, he merely performed his duties and followed orders of his superiors.

The prosecution, in its *Comment and/or Opposition*, counters:



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1. The respective ranks of the accused are sufficiently indicated in the caption.
2. The respective positions held by the accused can be discerned from the Office of the Ombudsman's *Resolution* dated February 27, 2009. Assuming that it is necessary to indicate the respective positions of the accused in the Informations, the Court can order the amendment thereof.
3. It is not necessary to specifically state the documents alleged to have been falsified. Such are matters of evidence and need not be averred.
4. The other issues raised by accused Millado have already been passed upon by this Court in its *Resolution* dated January 22, 2016.

Determination of the existence of probable cause to issue a warrant of arrest against accused Yurong

In compliance with the Court's *Resolution* dated January 22, 2016, the prosecution submits certain documents to show the alleged participation of accused Edmundo D. Yurong's in making it appear that certain soldiers received their Combat Clothing and Individual Equipment (CCIE) allowance when in fact they did not.

THE COURT'S RULING

Inordinate delay

Accused Millado claims that his right to speedy disposition of cases was violated because it took the Office of the Ombudsman thirteen (13) years before filing the present cases with this Court. His claim does not persuade.

The ruling of the Supreme Court in *Corpuz v. Sandiganbayan*⁴ is instructive in determining if the right of the accused to speedy disposition of cases has been violated. To wit:



⁴ G.R. No. 162214, November 11, 2004

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While justice is administered with dispatch, the essential ingredient is orderly, expeditious and not mere speed. It cannot be definitely said how long is too long in a system where justice is supposed to be swift, but deliberate. It is consistent with delays and depends upon circumstances. It secures rights to the accused, but it does not preclude the rights of public justice. Also, it must be borne in mind that the rights given to the accused by the Constitution and the Rules of Court are shields, not weapons; hence, courts are to give meaning to that intent.

A balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy trial cases on an *ad hoc* basis.

In determining whether the accused has been deprived of his right to a speedy disposition of the case and to a speedy trial, four factors must be considered: (a) length of delay; (b) the reason for the delay; (c) the defendants assertion of his right; and (d) prejudice to the defendant. x x x

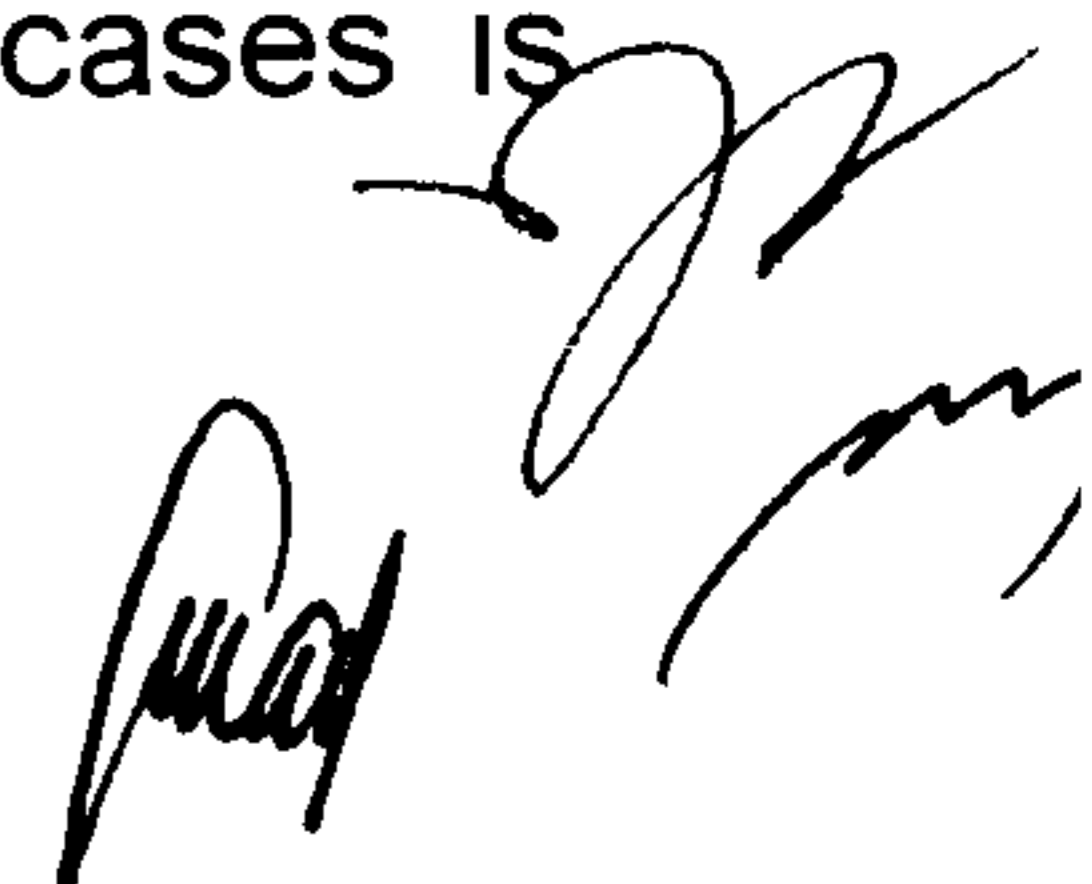
Moreover, the Court already passed upon the matter of inordinate delay in its *Resolution* dated January 22, 2016. To reiterate:

The length of time it took to conduct the preliminary investigation is but one of the considerations to be taken in determining if there is inordinate delay which would violate the right of the accused to speedy disposition of cases. Absent other circumstances that clearly show that the delay was vexatious, capricious or oppressive, the cases cannot be dismissed on the ground of violation of right to speedy disposition of cases.

Accused Miranda and Jandayan's reliance on *Tatad v. Sandiganbayan* is misplaced. It is true that the Supreme Court held therein that "a delay of close to three (3) years cannot be deemed reasonable or justifiable." However, it must be emphasized that the phrase was followed by "in light of the circumstances obtaining in the case at bar," meaning that the period of three (3) years by itself, may or may not be considered reasonable or justifiable, depending on the circumstances surrounding a particular case. It must also be noted that the High Court had the impression that political motivations played a vital role in activating and propelling the prosecutorial process in that case.

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The length of delay is but one of the factors in determining whether or not the accused' right to speedy disposition of cases is



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violated. Other than accused Millado's assertion that it took thirteen (13) years for the Office of the Ombudsman to file the present cases, there is nothing that substantiates his claim of inordinate delay. Thus, the present cases cannot be dismissed on the ground of violation of accused Millado's right to speedy disposition of cases.

Lack of probable cause

The Court, in its *Resolution* dated January 22, 2016, already determined that there is probable cause for the purpose of issuing warrants of arrest against the accused, including accused Millado. Thus, the issue is already moot and academic. Nonetheless, for the sake of clarification, the Court will briefly discuss the basis of its finding of existence of probable cause.

The Office of the Ombudsman's resolution, as well as the records attached thereto show that accused Millado, as disbursing officer, participated in the release of the CCIE funds by signing the checks representing the CCIE allowance. He further participated by encashing the said checks and turning over the proceeds to accused Jandayan. That he was merely following the orders of his superiors is a matter of defense which will be better threshed out during the trial on the merits.

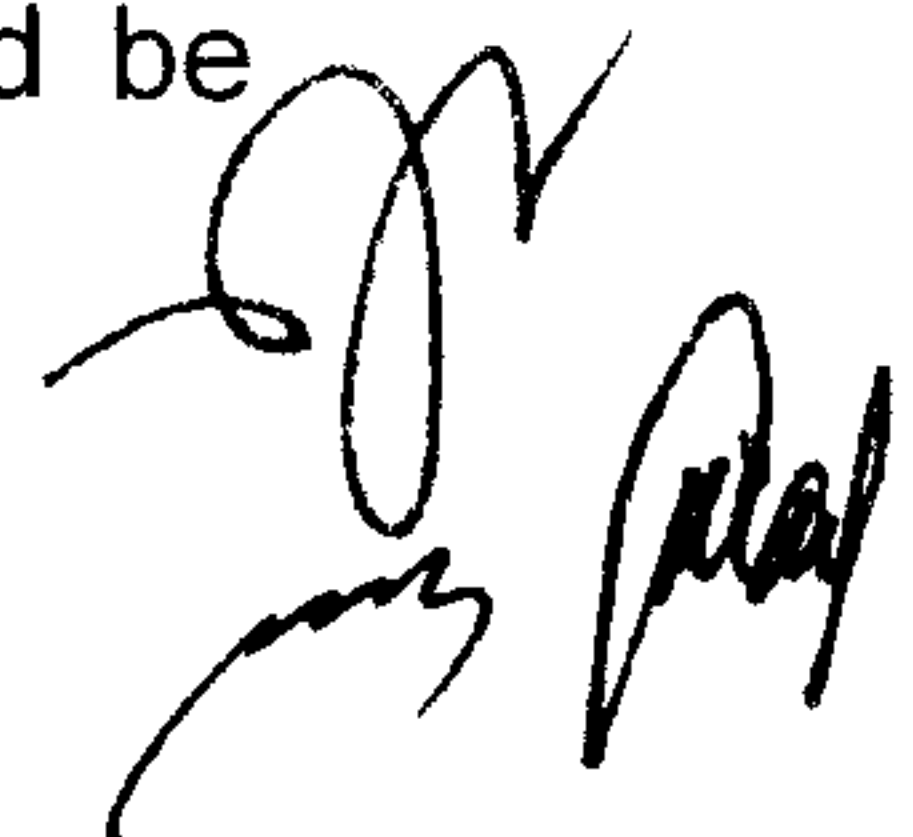
Existence of probable cause to issue a warrant of arrest against accused Yurong

The Court notes the prosecution's *Compliance*.

In *People v. Borje*,⁵ the Supreme Court pointed out the differences between executive and judicial determination of probable cause, *viz.*:

It is well to recall that there are two kinds of determination of probable cause: executive and judicial. On the one hand, executive determination of probable cause ascertains whether a criminal case must be filed in court. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and should be held for trial. On the other hand, judicial determination of probable cause ascertains whether a warrant of arrest should be

⁵ G.R. No. 170046, December 10, 2014



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issued against the accused. It is one made by a judge who must satisfy himself that based on the evidence presented, there is necessity in placing the accused under custody so that the ends of justice will not be frustrated.

The Office of the Ombudsman had already determined that there is probable cause to charge accused Yurong, and that he should be held for trial. The Court's determination of probable cause is only for the purpose of ascertaining whether or not he should be placed under custody.

From the perusal of the Ombudsman's resolution, the records attached thereto, as well as the additional evidence presented, it appears that probable cause exists for the issuance of a warrant of arrest against accused Yurong. The evidence submitted shows that accused Yurong participated in the release of the CCIE funds by issuing certain certifications that were used to support the release of the CCIE funds.

Motion to quash

That the facts charged do not constitute an offense

The first ground cited by accused Millado for his motion to quash is Rule 117, Sec. 3(a), which states:

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;

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The aforementioned section in the Rules of Court pertains to the sufficiency of the averments in the Information. In *People v. Romualdez*,⁶ the Supreme Court held:

The determinative test in appreciating a motion to quash under this rule is the sufficiency of the averments in the information, that is, whether the facts alleged, if hypothetically admitted, would establish the essential elements of the offense as defined by law without considering matters aliunde. As section 6, Rule 117 of the

⁶ G.R. No. 166510, July 23, 2008

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Rules of Criminal Procedure requires, the information only needs to state the ultimate facts; the evidentiary and other details can be provided during the trial.

According to accused Millado, the allegation that the acts were done by the accused in the performance of their official functions is without basis because their respective positions were not indicated. Furthermore, the Informations do not state which specific documents were allegedly falsified. Accused Millado's contention is partly meritorious.

First, the matter of the failure to allege the specific positions of the accused. One of the elements of violation of Sec. 3(e) of R.A. No. 3019 is that the accused must be a public officer discharging administrative, judicial or official functions.⁷ On the other hand, one of the elements of malversation of public funds under Art. 217 of the Revised Penal Code (RPC) is that the offender is a public officer.⁸

The Informations state that the accused, "all public officers, being then officers of the Philippine Marine Corps (PMC)," performed the acts "while in the performance of their official functions."

It is clear from the Informations that accused Millado allegedly received the CCIE funds by reason of his duties as the deputized disbursing officer of the PMC. On the other hand, accused Miranda allegedly approved the disbursement, and accused Jandayan, Millado, Cabatbat and Yurong allegedly submitted the payrolls and made their respective certifications by reason of their duties as officers of the PMC who had control of the CCIE funds. It can be inferred that the accused' involvement in the disbursement of the funds is by reason of the performance of their official functions as officers of the PMC. Their authority to cause the release of the CCIE funds or to issue their respective certifications emanated from their public office.

But with the exception of accused Millado, the Informations do not indicate the positions of the other accused. Hence, while it appears that although the alleged acts were done in relation to the performance of their official functions, the general statement that accused were "officers of the Philippine Marine Corps (PMC)" does

⁷ *Consigna v. People*, G.R. No. 175750-51, April 2, 2014

⁸ *Tello v. People*, G.R. No. 165781, June 5, 2009

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not show the close intimacy between the discharge of official duties and the commission of the offense.

The allegations in the Informations may not have sufficiently informed the accused of the acts they were accused of performing in the discharge of official functions because, except for accused Millado, the specific positions of the accused were not indicated. Nonetheless, such is not a ground for sustaining a motion to quash and the outright dismissal of the cases. Under Sec. 4, Rule 117 of the Rules of Court, if the motion to quash is based on the ground that the facts charged do not constitute an offense, the Court shall give the prosecution an opportunity to amend the information to cure the defect. *viz.*:

Sec. 4. Amendment of complaint or information. – If the motion to quash is based on an alleged defect of the complaint or information which can be cured by amendment, the court shall order that an amendment be made.

If it is based on the ground that the facts charged do not constitute an offense, the prosecution shall be given by the court an opportunity to correct the defect by amendment. The motion shall be granted if the prosecution fails to make the amendment, or the complaint or information still suffers from the same defect despite the amendment.

(underscoring supplied)

Hence, the Court will allow the prosecution to make the necessary amendments to the Informations.

Second, as to the failure to allege the specific documents falsified, the Informations only need to state the ultimate facts. In *Tantuico v. Republic*,⁹ the Supreme Court differentiated ultimate facts from evidentiary facts. *viz.*:

The rules on pleading speak of two (2) kinds of facts: the first, the "ultimate facts", and the second, the "evidentiary facts." In *Remitere vs. Vda. De Yulo*, the term "ultimate facts was defined and explained as follows:

The term "ultimate facts" as used in Sec. 3, Rule 3 of the Rules of Court, means the essential facts constituting the plaintiffs cause of action. A fact is essential if it cannot be stricken out without leaving the

⁹ G.R. No. 89114, December 2, 1991

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statement of the cause of action insufficient... (Moran, Rules of Court, Vol. 1, 1963 ed., p. 213).

Ultimate facts are important and substantial facts which either directly form the basis of the primary right and duty, or which directly make up the wrongful acts or omissions of the defendant. The term does not refer to the details or probative matter or particulars of evidence by which these material elements are to be established. It refers to principal, determinate, constitutive facts, upon the existence of which, the entire cause of action rests.

While the term "evidentiary fact" has been defined in the following tenor:

Those facts which are necessary for determination of the ultimate facts; they are the premises upon which conclusions of ultimate facts are based. x x x. Facts which furnish evidence of existence of some other fact.

In the present case, the Informations state that the accused "made it appear in the payrolls and related documents x x x that said marine soldiers indeed received their CCIE, x x x." The Court finds that the Informations sufficiently state the ultimate facts. The specific documents allegedly falsified are evidentiary facts which will be proved during the trial on the merits.

That the court trying the case has no jurisdiction over the offense charged

Accused Millado argues that the Court has no jurisdiction over the offense because the respective positions of the accused are not alleged in the Informations. A closer examination of the Informations and related jurisprudence shows that accused Millado's contention has no merit.

As held in *Escobal v. Garchitorena*,¹⁰ the jurisdiction of the court is defined by the Constitution or statute and determined by the allegations in the Information. *viz.:*

The jurisdiction of the court over criminal cases is determined by the allegations in the Information or the Complaint and the statute in effect at the time of the commencement of the action, unless such statute provides for a retroactive application thereof. The jurisdictional requirements must be alleged in the Information. Such jurisdiction of the court acquired at the inception of the case continues until the case is terminated.

¹⁰ G.R. No. 124644, February 5, 2004

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Sec. 4 of Presidential Decree No. 1606 (P.D. No. 1606), as amended, provides for the cases over which the Sandiganbayan has jurisdiction. *viz.:*

Sec. 4. Jurisdiction. – The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:

a. Violation of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

(1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade '27' and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:

x x x

(d. Philippine army and air force colonels, naval captains, and all officers of higher rank;

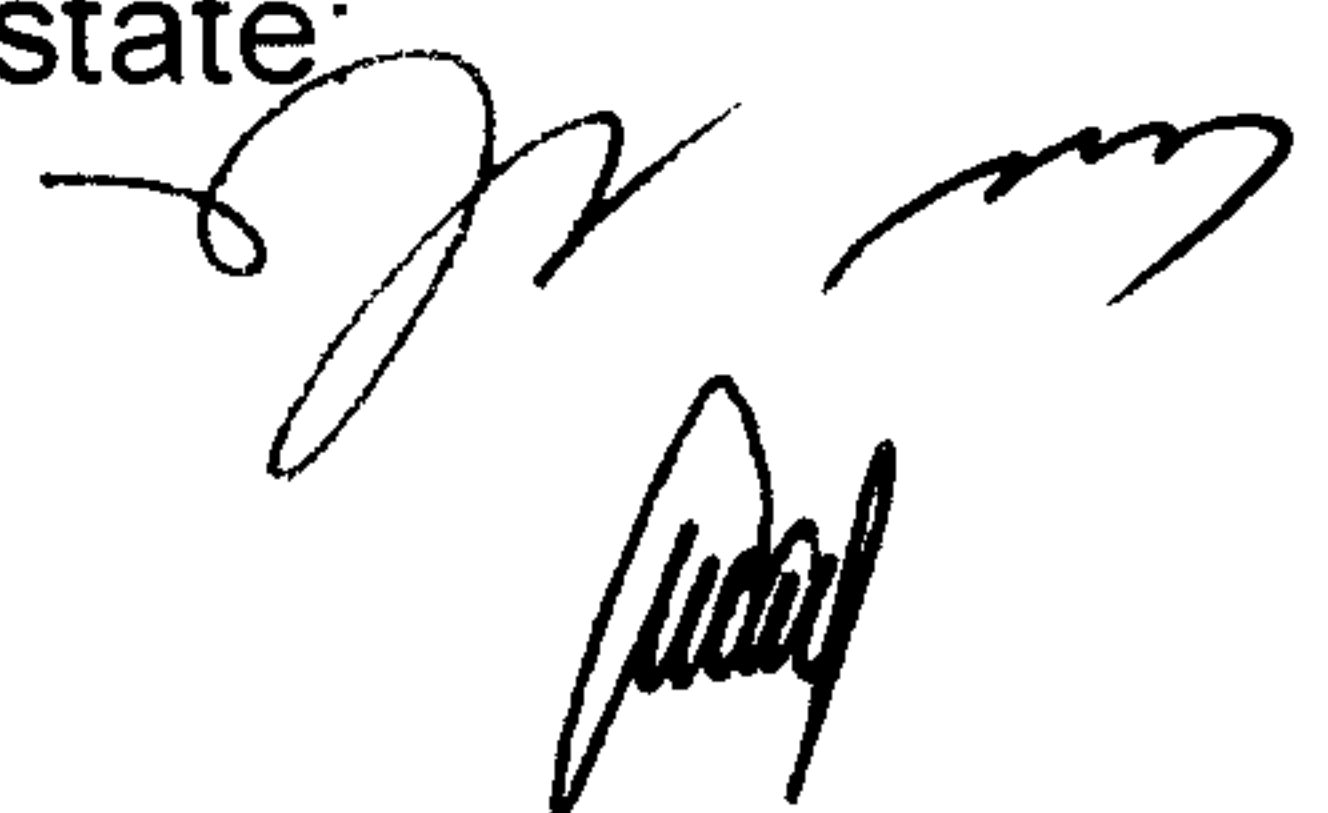
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b. Other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection a. of this section in relation to their office

x x x

Indeed, the Court has jurisdiction over cases involving violations of R.A. No. 3019 and other offenses or felonies committed by certain public officials and employees in relation to their office. Included in the enumeration of public officials and employees are Philippine army and air force colonels, naval captains, and all officers of higher rank.

Next, to determine whether or not the Court has jurisdiction over the present cases, reference must be made to the Informations. The accusatory portion or the bodies of the Informations state:



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In 2000, or thereabout, in Taguig City, Philippines, and within this Honorable Court's jurisdiction, above-named accused **RENATO P. MIRANDA, JESON P. CABATBAT, ADELO B. JANDAYAN, FELICISIMO C. MILLADO,** and **EDMUNDO D. YURONG**, all public officers, being then officers of the Philippine Marine Corps (PMC), while in the performance of their official functions, x x x

There is no question that the respective ranks of the accused are not indicated in the bodies of the Informations. However, the same are indicated in the captions, both of which read:

PEOPLE OF THE PHILIPPINES

Plaintiff,

- versus -

COL. RENATO P. MIRANDA,
LT. COL. JESON P. CABATBAT,
MAJ. ADELO B. JANDAYAN,
CAPT. FELICISIMO C. MILLADO,
CAPT. EDMUNDO D. YURONG

Philippine Marine Corps
Fort Bonifacio, Taguig City

Accused.

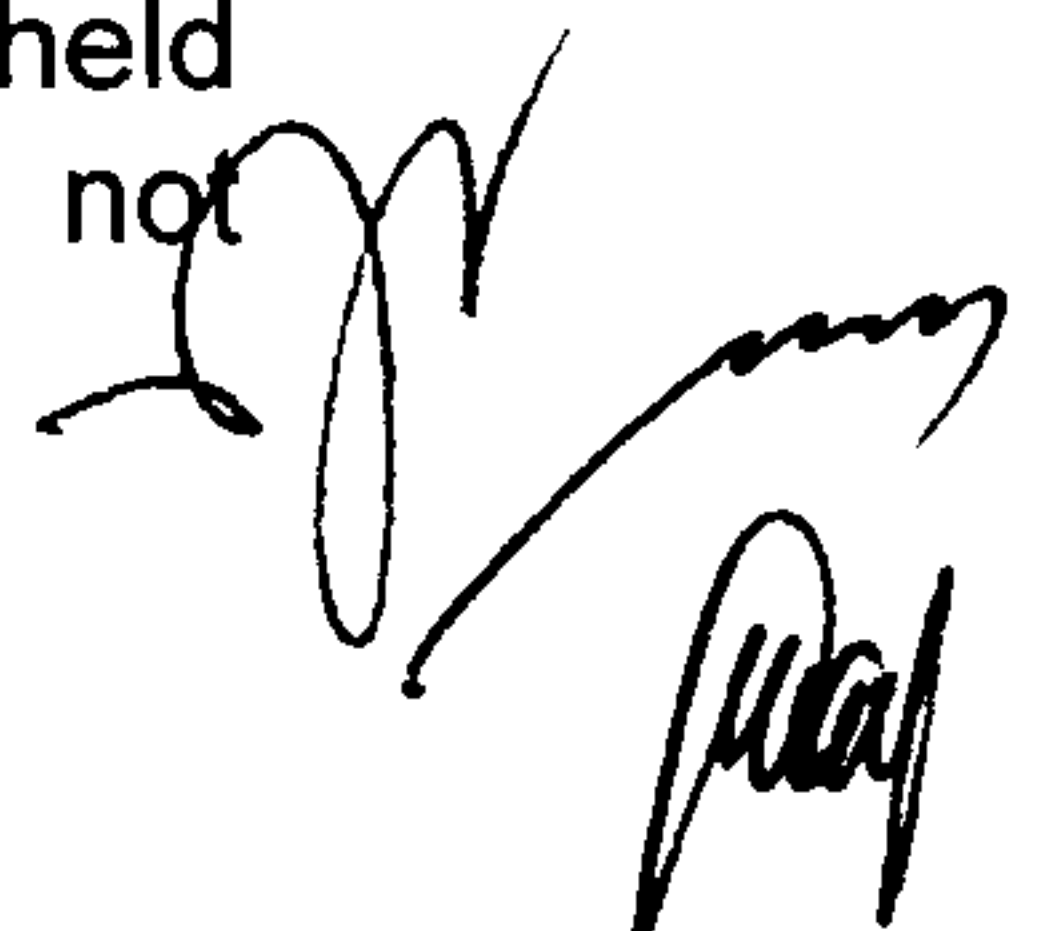
(underscoring supplied)

The issue here is whether or not the failure to indicate the respective ranks of the accused in the bodies of the Informations is a substantial defect which would warrant the dismissal of the present cases. The Court rules in the negative.

In *People v. Rodriguez*,¹¹ the Supreme Court discussed what is considered to be a sufficient allegation. It held that to be considered sufficiently alleged, the fact must appear not only in the preamble or caption of the information, but must appear in the body narrating the acts or omissions constituting the offense. To wit:

Mary Ann's age at the time of filing of the complaint appears in the caption or preamble of the complaint as a description of the victim. Her age at the time the rape was committed, however, is not specified in the body of the complaint narrating the act or omission constituting the offense. In **People v. Bali-balita**, we held that the relationship of the victim with the accused was not

¹¹ G.R. No. 138987, February 6, 2002



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sufficiently alleged in the information as it appeared only in the preamble or caption of the information. viz:

"What is controlling is the description of the criminal act and not, as in this case, the description of the identity of the accused. It has been held that **'the real nature of the criminal charge is determined not from the caption or the preamble of the information nor from the specification of the provision of law alleged to have been violated... But from the actual recital of the facts as alleged in the body of the information.'** (Buhat v. Court of Appeals, 265 SCRA 701 at 716-717 [1996]. In this case (,) the information upon which the appellant was arraigned does not state in the specification of the acts constitutive of the offense that he is charged as the live-in partner of the mother of the alleged victim. This insufficiency prevents a judgment of conviction for qualified rape and thus, the death penalty cannot be imposed."
(emphasis supplied)

X X X

If the aforesaid ruling is applied to the present cases, then the failure to indicate the respective ranks of the accused in the bodies of the Informations would constitute a failure to allege the same. Since jurisdiction is determined by the allegations in the Information, then this Court will necessarily have no jurisdiction.

However, the ruling in *Rodriguez* cannot be applied to the present cases. There, the issue was the nature of charge against the accused. The fact that the victim was a minor, which was omitted from the body of the Information therein, but which appeared elsewhere, determined the nature of the charge, as well as the penalty to be imposed on the accused. Convicting the accused of a graver offense despite the failure to allege a fact that would qualify the offense will result in the violation of the accused' right to be informed of the nature and cause of the accusation against him. There, the failure to allege the fact was prejudicial to the accused.

Here, the issue is the jurisdiction of the Court. The allegation of the respective ranks of the accused will determine whether or not the Court has jurisdiction. While not alleged in the bodies of the Informations, it could readily be determined from a cursory reading of the Informations that the Court has jurisdiction because the ranks are indicated in the captions. Furthermore, the Informations, as they are, clearly state the acts allegedly committed by the accused. The omission of the ranks of the accused in the bodies of the Informations will, at most, be considered as a formal defect which does not tend to prejudice the substantial rights of the accused. Such formal defects can be cured by amending the Informations.



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Furthermore, an order sustaining a motion to quash is not a bar to another prosecution for the same offense.¹² Dismissing the present cases solely on the basis that the ranks of the accused are not indicated in the bodies, and instead, appear in the captions of the Informations, will serve no useful purpose but to delay the administration of justice.

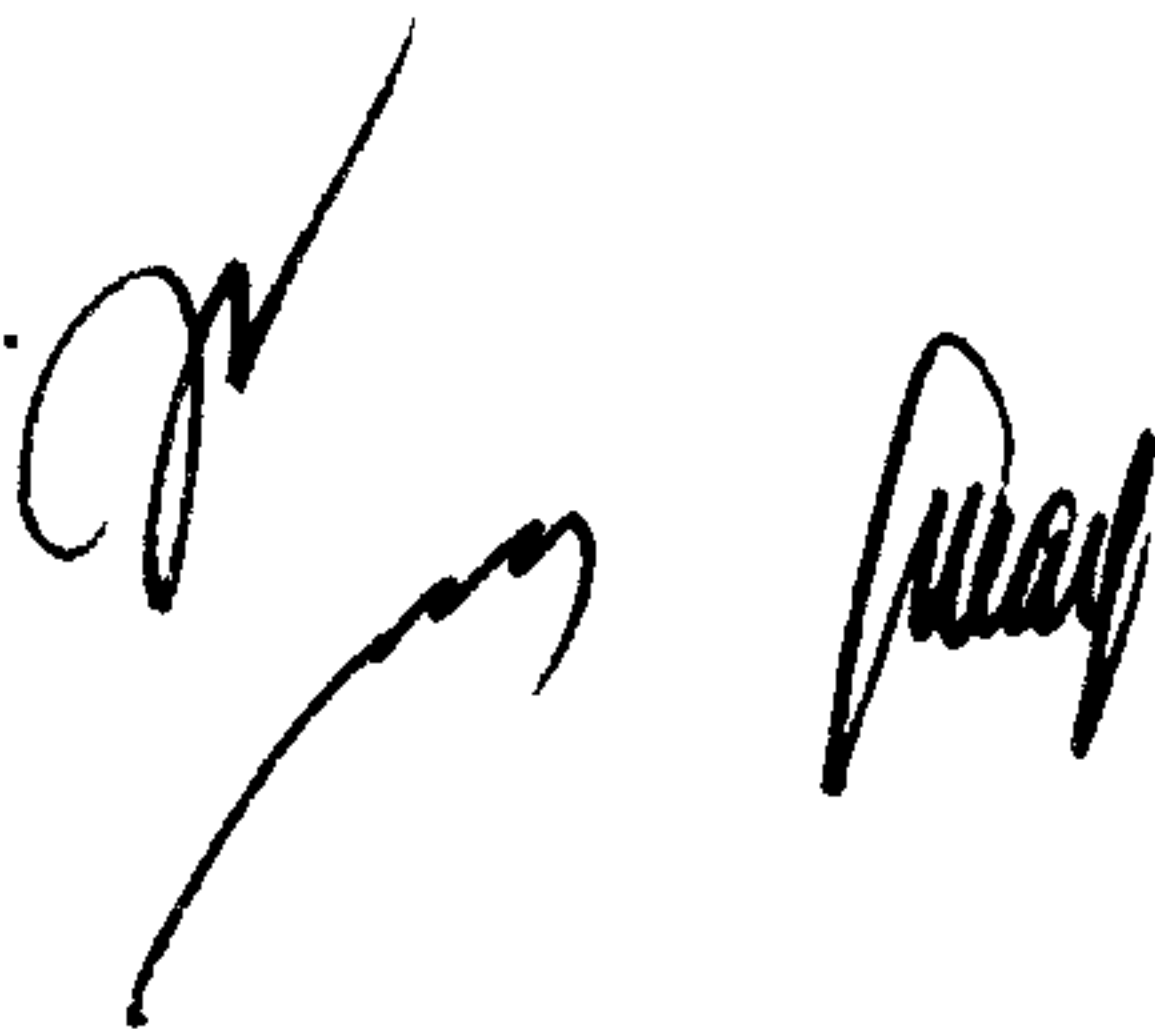
From the Informations, it can be gleaned that the accused are charged with the offenses of violation of Sec. 3(e) of R.A. No. 3019 and malversation through falsification, the latter being a felony committed by a public officer in relation to their office. One of the accused—accused Miranda—is a colonel in the Philippine Marine Corps, which is authorized to use the Ground and Air Forces rank designation.¹³ Under Sec. 4 of P.D. No. 1606, as amended, if the crime charged and the position of at least one of the accused is included in the enumeration, the Sandiganbayan has jurisdiction. Thus, from the foregoing, it is clear that the Court has jurisdiction over the offenses in the present cases.

WHEREFORE, the Court rules as follows:

1. Accused Felicisimo C. Millado's *Omnibus Motion* is hereby **DENIED**. However, the prosecution is **DIRECTED** to amend the Informations to correct the defects therein, within fifteen (15) days from receipt of this Resolution.

2. Let a warrant of arrest be issued against accused **EDMUNDO D. YURONG**.

SO ORDERED.



¹² *Rules of Court*, Rule 117, Sec. 5

¹³ *P.D. No. 1392. Section 1.* All Philippine Navy officers while assigned with the Philippine Marines are hereby authorized to use the Ground and Air Forces rank designation; x x x

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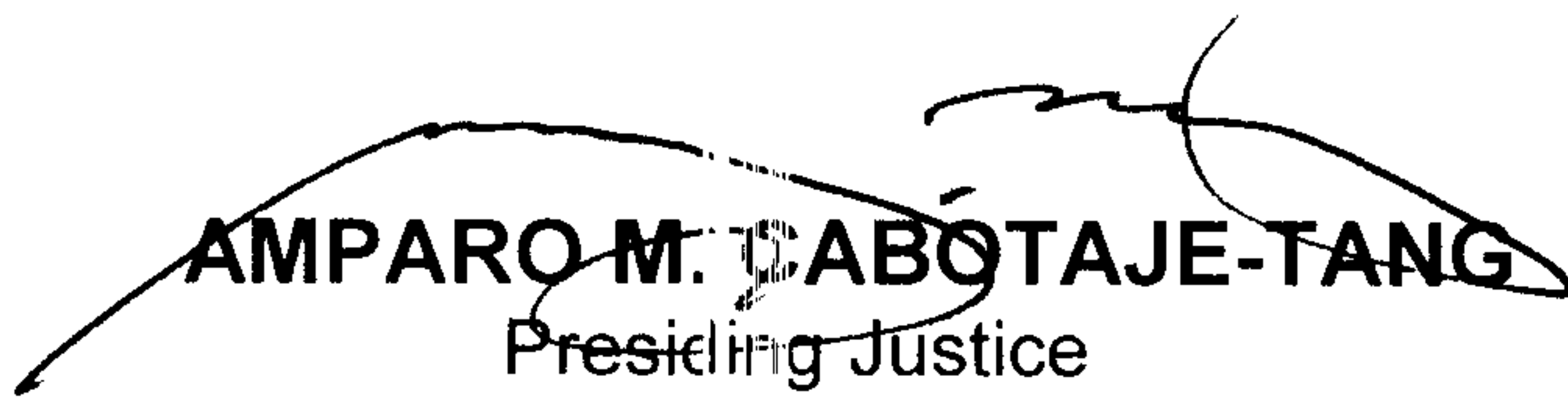
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SARAH JANE T. FERNANDEZ
Associate Justice

WE CONCUR:


AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson


SAMUEL R. MARTIRES
Associate Justice