

REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, **SB-15-CRM-0293**
Plaintiff, For: Violation of Section 3(e),
R.A. No. 3019

- versus -

AL SANCHEZ VITANGCOL III, **SB-15-CRM-0294**
ET AL., For: Violation of Section 3(h),
R.A. No. 3019

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

Present:

CABOTAJE-TANG, P.J.
Chairperson
FERNANDEZ, J. and
TRESPESES, J.*

Promulgated:

OCTOBER 5, 2016

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RESOLUTION

FERNANDEZ, J.:

For resolution is accused Al Sanchez Vitangcol III's *Motion to Quash*¹ on the ground that the Sandiganbayan has no jurisdiction over the case because his right to the equal protection of the laws was violated when his co-respondents government officials were not similarly indicted.

* Per Administrative Order No. 227-2016 dated July 26, 2016.

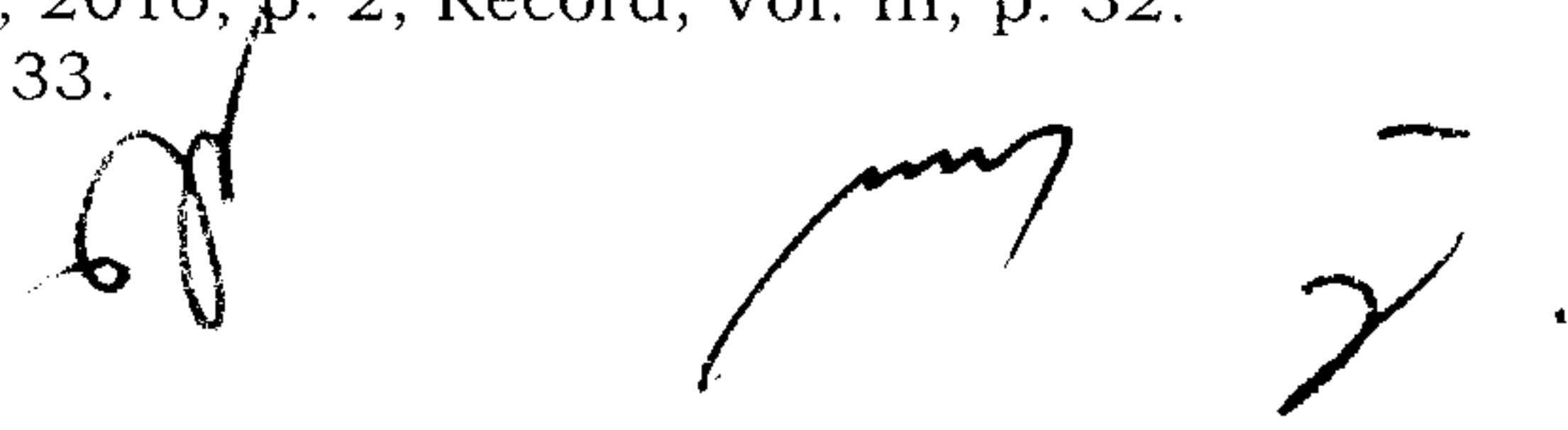
¹ Dated July 7, 2016; Record, Vol. III, pp. 31-194.

Accused Vitangcol raises the following arguments to support his contention that this Court has no jurisdiction over the case:

- a. He is a victim of selective prosecution, and thus, his right to the equal protection of the law was violated as seen from the following:
 - i. The prosecution singled him out even when his co-respondents before the Office of the Ombudsman (OMB) admitted their participation in the subject transaction:
 - a) Joseph Emilio Aguinaldo Abaya was a signatory to the Notice of Award and the Contract for the Interim Maintenance Provider for MRT3.²
 - b) Misael R. Narca, Joel R. Magbanua, Arnel R. Manresa, and, Natividad P. Sansolis, as shown in their Joint Affidavit with Raphael Lavidés, Gina Rodriguez, and Eugene Cecilio, were members of the Task Force that reviewed the draft terms of reference of the Interim Maintenance Contract.
 - c) Atty. Geronimo V. Quintos, Raphael S. Lavidés, Arnel R. Manresa, Misael R. Narca, Natividad P. Sansolis, Gina E. Rodriguez, Joel R. Magbanua, and Eugene R. Cecilio were members of the Negotiating Team for the Interim Maintenance Contract.
 - d) Honorito Diez Chaneco was Officer-in-Charge of MRT3, in which capacity he signed the (i) Notice of Award to PH Trams-CB&T Joint Venture, and; (ii) BAC Resolution for the Extension of Contract for the Interim Maintenance Service.³
 - e) Ildefonso Tiglao Patdu, Jr. was a provisional member of the primary BAC and signed the BAC resolutions: (i) recommending the award of the maintenance contract to PH Trams CB&T Joint Venture; and, (ii)

² Motion to Quash dated July 7, 2016, p. 2; Record, Vol. III, p. 32.

³ *Id.*, at p. 3; Record, Vol. III, p. 33.



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recommending the extension of the maintenance service contract.

- f) Jose Perpetuo Mercado Lotilla was chairperson, Rene Katigbak Limcaoco was vice chairperson, and Dante Moren Lantin was a member of the BAC that recommended (i) the cancellation of the bidding/procurement process for the operation of MRT3 and LRT1 (BAC Resolution 2012-06); and, (ii) the approval of the Procurement of Interim Maintenance Provider for MRT3 by Negotiated Procurement through Emergency Purchase (BAC Resolution P-GS-AMP 2012-196).
- g) Rafael Antonio Magat Santos approved the recommendation of BAC P-GS-AMP-2012-196.⁴
- ii. The Field Investigation Office of the Office of the Ombudsman correctly concluded that the award of the contract to PH Trams-CB&T JV is the BAC's collegiate action. Thus, the other respondents must be indicted with accused Vitangcol.⁵
- b. No law was violated in awarding the contract to PH Trams-CE&T Joint Venture.⁶ The Negotiating Team evaluated the proposals based on the criteria indicated in the Terms of Reference.⁷
- c. At the time of the negotiation, evaluation and award of the contract to PH Trams-CB&T JV, Mr. Arturo V. Soriano, an uncle of herein accused' wife, has already divested his shares from PH Trams.⁸
- d. Herein accused never had any pecuniary interest in the PH Trams-CB&T JV.⁹
- e. The award of contract to the PH Trams-CB&T JV proved to be advantageous to the government.¹⁰

⁴ *Id.*, at pp. 3-4; Record, Vol. III, pp. 33-34.

⁵ *Id.*, at p. 5; Record, Vol. III, p. 35.

⁶ *Id.*, at p. 7; Record, Vol. III, p. 37.

⁷ *Id.*

⁸ *Id.*, at p. 8; Record, Vol. III, p. 38.

⁹ *Id.*, at p. 9; Record, Vol. III, p. 39.

¹⁰ *Id.*, at p. 10; Record, Vol. III, p. 40.

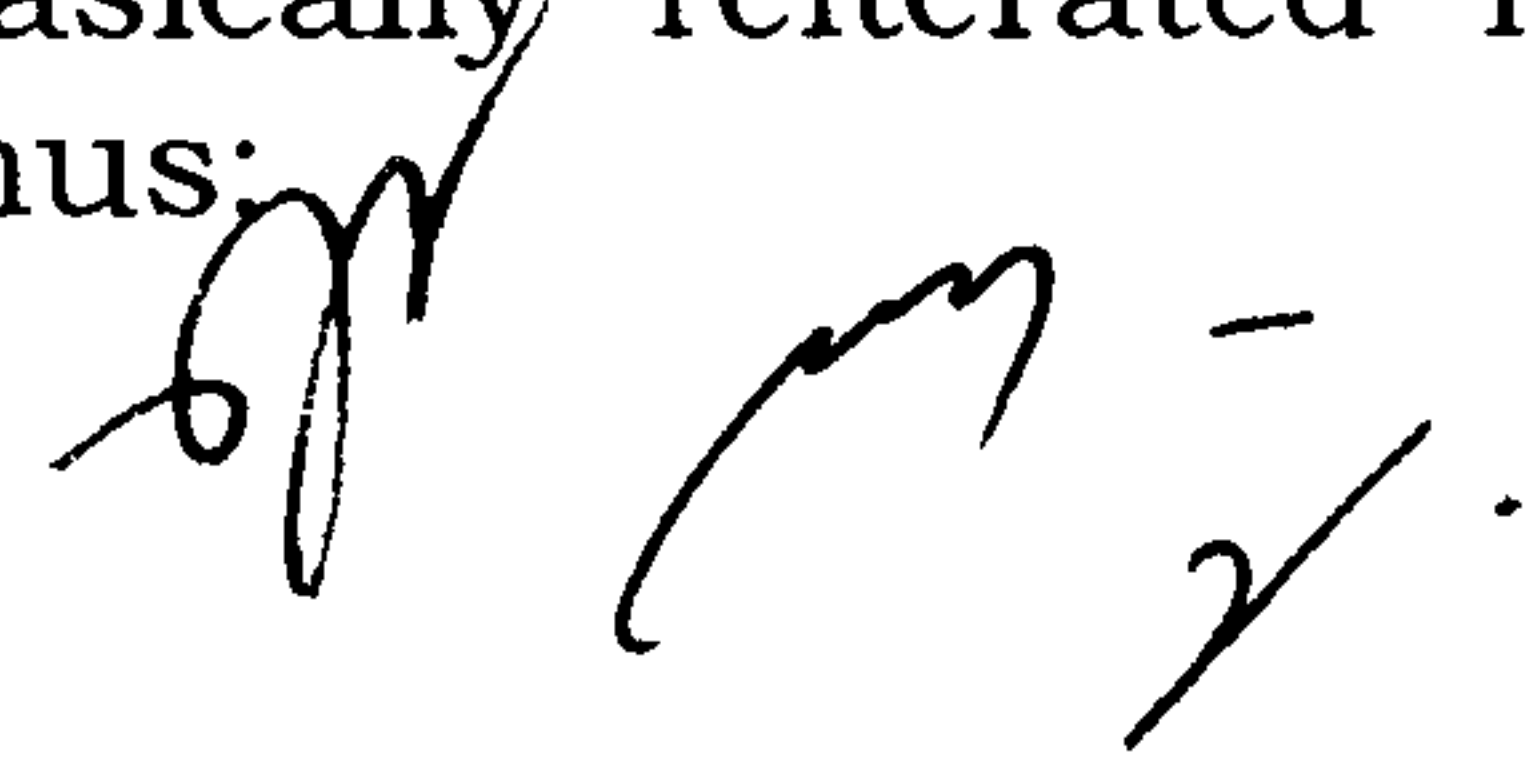
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- f. Respondents, including herein accused, did not act with evident bad faith, manifest partiality, or gross inexcusable negligence in its recommendation, and in entering into an interim maintenance contract with PH Trams and CB&T Joint Venture. Moreso, no unwarranted benefits, advantage, and preference were given to said joint venture.¹¹

In its *Opposition To Accused Al Sanchez Vitangcol III's Motion to Quash dated 07 July 2016*,¹² the prosecution sought the denial of the Motion to Quash and argued:

- a. Accused Vitangcol had already been arraigned.¹³
- b. All the respondents in Ombudsman Case OMB-C-C-14-0308 and 0309 underwent preliminary investigation. They were all given the chance to be heard; and were afforded due process.
- c. The three (3) criminal Information are primarily founded on: (i) accused Vitangcol's relationship with his uncle-in-law accused Arturo Soriano; and (ii) nondisclosure of said circumstance.
- d. Accused Vitangcol and his co-accused who are signatories in the Affidavit of Disclosure know accused Vitangcol's relationship by affinity to accused Soriano.
- e. Accused Vitangcol's reliance on the equal protection of law is misplaced since the circumstance of relationship is unique and exclusive to him. Such being the case, he is not similarly situated as the other respondents in the Ombudsman cases.¹⁴
- f. The issues raised by accused Vitangcol, including each and every respondent's participation or liability, were passed upon by the Ombudsman in its Resolution.¹⁵

In his *Reply To Prosecution's Opposition dated 04 August 2016*,¹⁶ accused Vitangcol basically reiterated his arguments in his Motion to Quash. Thus:



¹¹ *Id.*, at p. 11; Record, Vol. III, p. 41.
¹² Dated August 4, 2016, filed on August 4, 2016; Record, Vol. III, pp. 282-287.
¹³ Opposition dated August 4, 2016, p. 2; Record, Vol. III, p. 283.
¹⁴ *Id.*, at p. 2; Record, Vol. III, p. 283.
¹⁵ *Id.*, at p. 3; Record, Vol. III, p. 284.
¹⁶ Dated August 15, 2016; Record, Vol. III, pp. 338-348.

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- a. His right to equal protection was violated when the Ombudsman treated him differently from the rest of the respondents¹⁷ as manifested through the following:
 - i. The Ombudsman accepted the defenses of the other officials of the Department of Transportation and Communication as the gospel truth—insofar as these officials are concerned, but turned a blind eye on the same defenses if these would be favorable to the herein accused.¹⁸
 - ii. The Ombudsman acted as a lawyer for the other officials by siding with them and misapplying jurisprudence to advance the cause of these officials.¹⁹
 - iii. The Ombudsman “invented” non-existing evidence in order to pin down and prosecute accused Vitangcol, clearly upon the orders of the previous Administration, to use him as scapegoat during the electoral campaign of 2016.²⁰
- b. Although he had been arraigned, a violation of a fundamental constitutional right of the accused deprives the court of jurisdiction.
- c. He is innocent. He did not violate any of the provisions of Republic Act No. 9184 or any other law.²¹ The elements of the crime charged are not present in this case.²²

Discussion

The *Motion to Quash* filed by accused Vitangcol is without merit.

First, the Motion to Quash can be denied outright as it was filed after the accused has been arraigned.²³ Accused Vitangcol’s failure to file a Motion to Quash prior to his

¹⁷ *Id.*, at p. 2; Record, Vol. III, p. 339.

¹⁸ *Id.*, at p. 3; Record, Vol. III, p. 340.

¹⁹ *Id.*, at p. 4; Record, Vol. III, p. 341.

²⁰ *Id.*, at p. 6; Record, Vol. III, p. 343.

²¹ *Id.*, at p. 8; Record, Vol. III, p. 345.

²² *Id.*, at pp. 8-9; Record, Vol. III, pp. 345-346.

²³ **Rule 117, Section 1.** *Time to move to quash.* — At any time before entering his plea, the accused may move to quash the complaint or information.

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arraignment constitutes a waiver of any objections, except those based on the grounds provided for in Rule 117, Section 3, paragraphs (a) that the facts charged do not constitute an offense; (b) that the court trying the case has no jurisdiction over the offense charged; (g) that the criminal action or liability has been extinguished; and, (i) that the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent.²⁴ The ground raised, *i.e.*, the court has no jurisdiction over the case because accused' right to equal protection was violated, does not fall under any of the above exceptions.

Second, in *Pilapil vs. Sandiganbayan*,²⁵ the Supreme Court explained that the lack of jurisdiction contemplated in Section 3(b), Rule 117 of the Rules of Court refers to the lack of any law conferring upon the court the power to inquire into the facts, to apply the law and to declare the punishment for an offense in a regular course of judicial proceeding, *viz*:

We are not persuaded. The lack of jurisdiction contemplated in Section 3(b), Rule 117 of the Revised Rules of Court refers to the lack of any law conferring upon the court the power to inquire into the facts, to apply the law and to declare the punishment for an offense in a regular course of judicial proceeding. When the court has jurisdiction, as in this case, any irregularity in the exercise of that power is not a ground for a motion to quash. Reason is not wanting for this view. Lack of jurisdiction is not waivable but absence of preliminary investigation is waivable. In fact, it is frequently waived.²⁶

The present case falls squarely within the jurisdiction of the Sandiganbayan. Accused Vitangcol was a public official with a salary grade of 27 at the time of the alleged commission of the offense.²⁷ The Information charge him of committing the acts in the discharge of his official functions as the General Manager of the MRT3, Head of the

²⁴ **Section 9. Failure to move to quash or to allege any ground therefor.** — The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections based on the grounds provided for in paragraphs (a), (b), (g), and (i) of section 3 of this Rule.

²⁵ 221 SCRA 349 [1993].

²⁶ *Id.*, at p. 356. Underscoring supplied.

²⁷ SB-15-CRM-0293: Information, pp. 1-2; Record, Vol. I, pp. 1-2; SB-15-CRM-0294: Information, pp. 1-2; Folder No. 2, pp. 1-2; and, SB-15-CRM-0295: Information, pp. 1-2; Folder No. 3, pp. 1-2.

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Negotiating Team (DOTC-MRT3), and, Member of the Bids and Awards Committee.²⁸

Third, the Supreme Court, in *Santos vs. People*,²⁹ rejected a similar attempt of therein petitioner (accused) to quash the Information against her on the ground of violation of her right to equal protection of the laws because the Office of the State Prosecutor, in another case, dismissed the charges against another respondent who was allegedly similarly situated as her. The Supreme Court explained that a Motion to Quash should be based on a defect in the Information which is evident on its face. The High Court noted that therein petitioner's claim that the Information was filed in violation of her constitutional rights to due process and equal protection of the laws is not evident on the face thereof. *Viz:*

First, a motion to quash should be based on a defect in the information which is evident on its face. The same cannot be said herein. The Information against petitioner appears valid on its face; and that it was filed in violation of her constitutional rights to due process and equal protection of the laws is not evident on the face thereof. As pointed out by the CTA First Division in its 11 May 2006 Resolution, the more appropriate recourse petitioner should have taken, given the dismissal of similar charges against Velasquez, was to appeal the Resolution dated 21 October 2005 of the Office of the State Prosecutor recommending the filing of an information against her with the DOJ Secretary.³⁰

Similarly, the Information herein appear to be valid on its face. There is nothing in the Information that would indicate that the same were filed in violation of accused Vitangcol's right to equal protection of the law.

Fourth, that the other respondent government officials³¹ were not similarly indicted does not necessarily mean that accused Vitangcol's right to equal protection of the laws was violated

²⁸ SB-15-CRM-0293: Information, p. 2; Record, Vol. I, p. 2; SB-15-CRM-0294: Information, p. 2; Folder No. 2, p. 2; and, SB-15-CRM-0295: Information, p. 2; Folder No. 3, p. 2.

²⁹ 563 SCRA 341 [2008].

³⁰ *Id.*, at pp. 368-369. Underscoring supplied.

³¹ In OMB-C-C-14-0309

In *Santos vs. People*,³² the Supreme Court, citing *People vs. Dela Piedra*,³³ said that the prosecution of one guilty person while others equally guilty are not prosecuted, is not, by itself, a denial of the equal protection of the laws. The Supreme Court explained:

The equal protection clause exists to prevent undue favor or privilege. It is intended to eliminate discrimination and oppression based on inequality. Recognizing the existence of real differences among men, the equal protection clause does not demand absolute equality. It merely requires that all persons shall be treated alike, under like circumstances and conditions, both as to the privileges conferred and liabilities enforced.

Petitioner was not able to duly establish to the satisfaction of this Court that she and Velasquez were indeed similarly situated, i.e., that they committed identical acts for which they were charged with the violation of the same provisions of the NIRC; and that they presented similar arguments and evidence in their defense - yet, they were treated differently.

Furthermore, that the Prosecution Attorney dismissed what were supposedly similar charges against Velasquez did not compel Prosecution Attorney Torrevillas to rule the same way on the charges against petitioner. In *People v. Dela Piedra*, this Court explained that:

The prosecution of one guilty person while others equally guilty are not prosecuted, however, is not, by itself, a denial of the equal protection of the laws. Where the official action purports to be in conformity to the statutory classification, an erroneous or mistaken performance of the statutory duty, although a violation of the statute, is not without more a denial of the equal protection of the laws. The unlawful administration by officers of a statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination. This may appear on the face of the action taken with respect to a particular class or person, or it may only be shown by extrinsic evidence showing a discriminatory design over another not to be inferred from the action itself. **But a discriminatory purpose is not presumed, there**

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Supra.

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403 Phil 31; 350 SCRA 163 [2001].

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must be a showing of "clear and intentional discrimination." Appellant has failed to show that, in charging appellant in court, that there was a "clear and intentional discrimination" on the part of the prosecuting officials.

The discretion of who to prosecute depends on the prosecution's sound assessment whether the evidence before it can justify a reasonable belief that a person has committed an offense. **The presumption is that the prosecuting officers regularly performed their duties, and this presumption can be overcome only by proof to the contrary, not by mere speculation.** Indeed, appellant has not presented any evidence to overcome this presumption. The mere allegation that appellant, a Cebuana, was charged with the commission of a crime, while a Zamboanguena, the guilty party in appellant's eyes, was not, is insufficient to support a conclusion that the prosecution officers denied appellant equal protection of the laws.

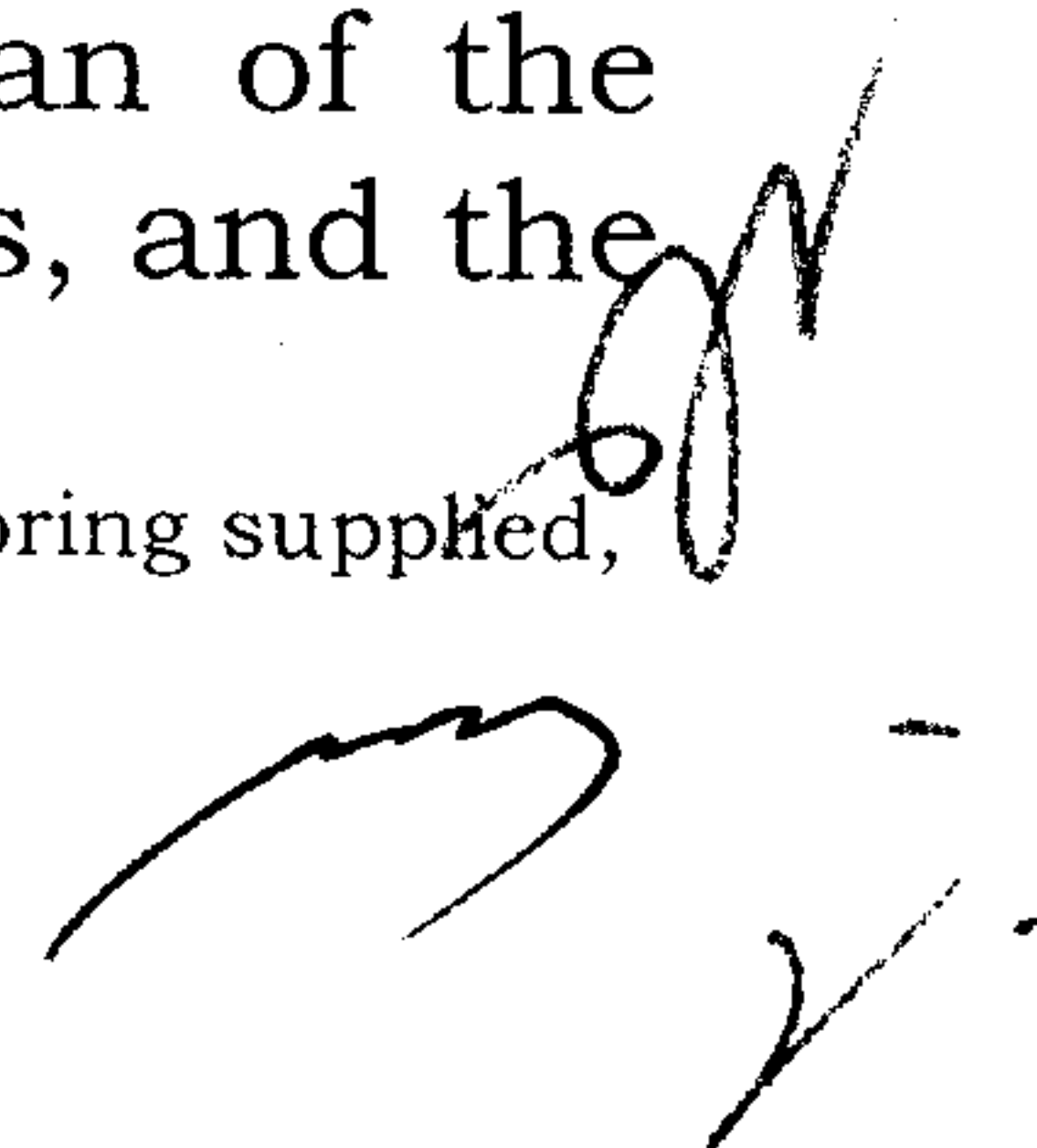
There is also common sense practicality in sustaining appellant's prosecution.

While all persons accused of crime are to be treated on a basis of equality before the law, it does not follow that they are to be protected in the commission of crime. It would be unconscionable, for instance, to excuse a defendant guilty of murder because others have murdered with impunity. **The remedy for unequal enforcement of the law in such instances does not lie in the exoneration of the guilty at the expense of society x x x.** Protection of the law will be extended to all persons equally in the pursuit of their lawful occupations, but no person has the right to demand protection of the law in the commission of a crime.

Likewise, [i]f the failure of prosecutors to enforce the criminal laws as to some persons should be converted into a defense for others charged with crime, the result would be that the trial of the district attorney for nonfeasance would become an issue in the trial of many persons charged with heinous crimes and the enforcement of law would suffer a complete breakdown.³⁴

Here, the mere dismissal by the Ombudsman of the charges against accused Vitangcol's co-respondents, and the

³⁴ *Santos vs. People*, at pp. 369-371. Original emphasis retained; underscoring supplied, citations omitted.



filing of the Information against accused Vitangcol involving the same transaction, *i.e.*, negotiated procurement of interim maintenance services for MRT3, is not sufficient to impute arbitrariness or caprice on her part.³⁵

The Ombudsman, in its Joint Resolution dated June 26, 2015 dismissing the complaint in OMB-C-C-14-0309 against Abaya, et al., found that: a) The DOTC-BAC's resolution authorizing the resort to negotiated procurement was warranted under the circumstances;³⁶ b) Both PH Trams and CB&T submitted the required legal eligibility documents, *i.e.*, valid Mayor's permit and SEC Certificate of Registration;³⁷ c) CB&T submitted technical and financial eligibility documents; its paid up capital for the last three years was Nine Million Pesos (PhP9,000,000.00); it had a total of 17 completed projects for the last three years; it had a credit line certificate of Fifty Million Pesos (Php50,000,000.00) issued by Banco de Oro; and, it was not among the blacklisted contractors; on the bases of the foregoing, it was found to be technically and financially capable to undertake the obligations under the interim maintenance contract;³⁸ d) Under the Implementing Rules and Regulations of R.A. No. 9184, compliance of a partner in the joint venture would suffice;³⁹ e) On its face, the omnibus sworn statement of PH Trams was compliant with the required Affidavit of Disclosure under Section 47, IRR, RA No. 9184;⁴⁰ f) There is no intimation that the negotiating team had foreknowledge of the relationship between accused Vitangcol and Soriano;⁴¹ g) There is not enough evidence to support the allegation that respondents Abaya, et al., acted with a community of design to favor the joint venture.⁴²

The present charges against accused Vitangcol, for violation of Sections 3(e) and 3(h), R.A. No. 3019 and Section 65, Paragraph 1(c) in relation to Section 47, R.A. No. 9184, are all premised on his relationship by affinity within the third civil degree with accused Soriano, an incorporator

³⁵ See Gallardo vs. People, 456 SCRA 494, 505 [2005].

³⁶ Joint Resolution of the Ombudsman dated June 26, 2015, p. 25; Record, Vol. I, p. 33.

³⁷ *Id.*, at p. 27; Record, Vol. I, p. 35.

³⁸ *Id.*, at pp. 27-28; Record, Vol. II, pp. 35-36.

³⁹ *Id.*

⁴⁰ *Id.*, at p. 28; Record, Vol. I, p. 36.

⁴¹ *Id.*, at p. 29; Record, Vol. I, p. 37.

⁴² *Id.*, at p. 28; Record, Vol. I, p. 36.

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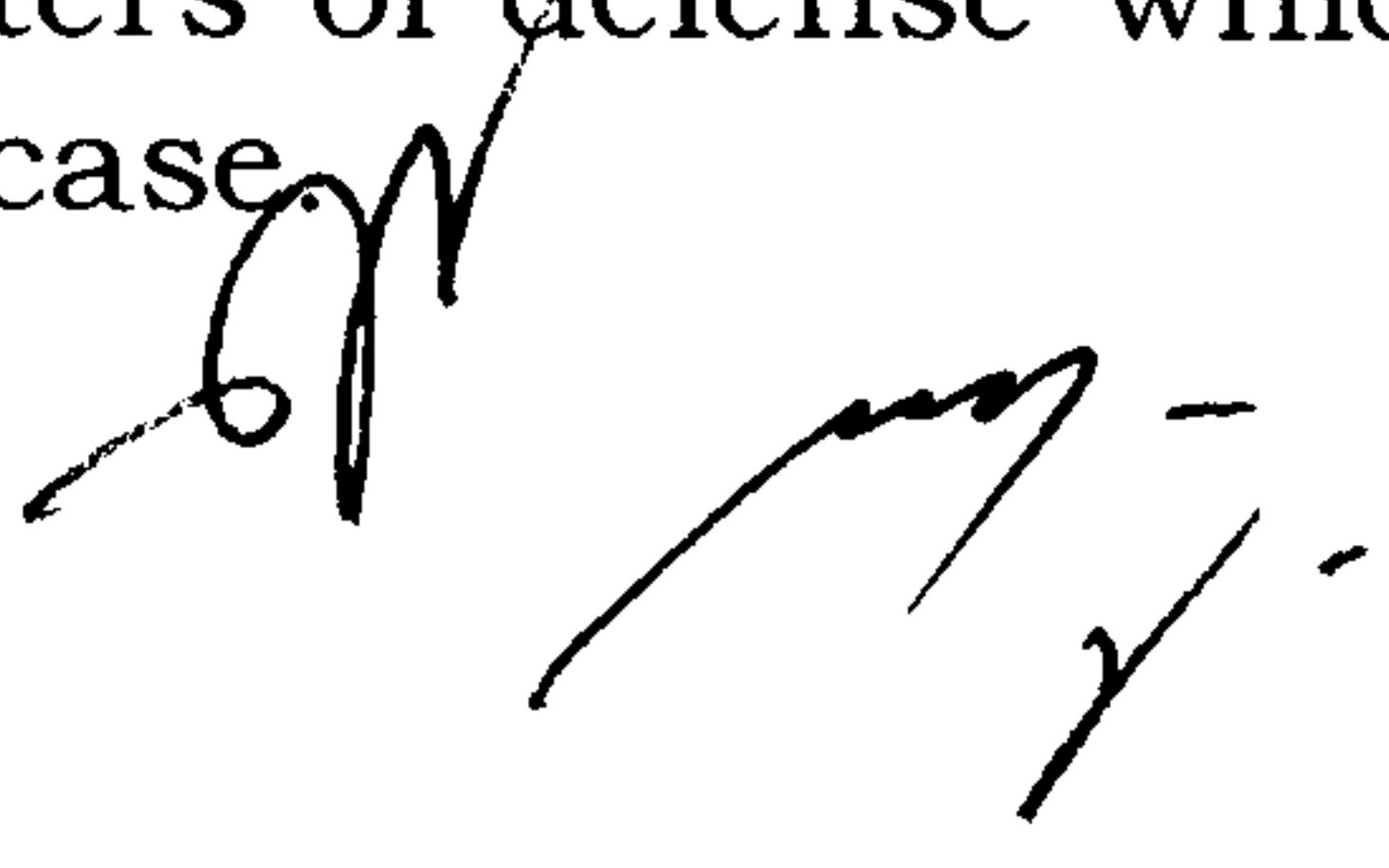
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and stockholder of a bidder --PH Trams; his concealment and failure to disclose such relationship which would have disqualified PH Trams-CB&T JV; and the submission of a false affidavit by the representatives of PH Trams. Accused Vitangcol was not able to demonstrate, and the extant records do not show, that accused Vitangcol and his co-respondents government officials are similarly situated. The records do not show, and accused Vitangcol does not claim, that Abaya, et al., were aware of accused Vitangcol's relationship with accused Soriano, to find them to have acted in conspiracy with him.

Clearly, the regularity of the resort to negotiated procurement and the qualifications of PH Trams are not the subjects of the present Information. What is in issue is the disqualification of PH Trams resulting from the relationship of accused Vitangcol and accused Soriano, and the alleged failure to disclose, or alleged intentional concealment of, such relationship. Accused Vitangcol's enumeration of his co-respondents' participation in the approval and award of the contract to the PH Trams-CB&T JV is irrelevant to the present case.

Finally, the arguments of accused Vitangcol that: (a) no law was violated when the interim maintenance service contract was awarded;⁴³ (b) accused Soriano had already divested his shares at PH Trams at the time of the negotiation, evaluation and award of the contract;⁴⁴ (c) accused Vitangcol never had any pecuniary interest in PH Trams-CB&T JV;⁴⁵ (d) the award of the contract to PH Trams-CB&T JV was advantageous to the government;⁴⁶ and, (e) accused did not act with evident bad faith, manifest partiality, or gross inexcusable negligence,⁴⁷ are matters of defense which are best dealt with during the trial of the case.



⁴³ Motion to Quash dated July 7, 2016, p. 7; Record, Vol. III, p. 37.

⁴⁴ *Id.*, at p. 8; Record, Vol. III, p. 38.

⁴⁵ *Id.*, at p. 9; Record, Vol. III, p. 39.


⁴⁶ *Id.*, at p. 10; Record, Vol. III, p. 40.

⁴⁷ *Id.*, at p. 11; Record, Vol. III, p. 41.


WHEREFORE, the Motion to Quash dated July 7, 2016 filed by accused Al Sanchez Vitangcol III is **DENIED** for lack of merit.

SO ORDERED.

Quezon City, Metro Manila.


SARAH JANE T. FERNANDEZ
Associate Justice

WE CONCUR:


AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson


ZALDY V. TRESPESES
Associate Justice