



REPUBLIC OF THE PHILIPPINES  
**Sandiganbayan**  
 Quezon City

**THIRD DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
 Plaintiff,

**SB-15-CRM-0293**

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

**- versus -**

**SB-15-CRM-0294**

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

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

**SB-15-CRM-0295**

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

*Present:*

**CABOTAJE-TANG, P.J.**

*Chairperson*

**FERNANDEZ, J. and**

**MIRANDA, J.\***

*Promulgated:*

NOVEMBER 10, 2016

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**RESOLUTION**

**FERNANDEZ, J.**

For resolution is the *Motion for Reconsideration (of the Resolution dated July 7 (sic), 2016,<sup>1</sup> For the Accused Wilson T. De Vera).<sup>2</sup>*

\* Per Administrative Order No. 075-2016 dated March 16, 2016.

<sup>1</sup> Should be July 4, 2016. The Resolution was penned by Associate Justice Sarah Jane T. Fernandez, with Presiding Justice Amparo M. Cabotaje-Tang and Associate Justice Karl B. Miranda concurring.

<sup>2</sup> Dated August 10, 2016; filed on August 11, 2016; Record, Vol. III, pp. 294-332.

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Accused De Vera contends that this Honorable Court erred in denying his *Motion for Reinvestigation* dated December 15, 2015.<sup>3</sup> He argues:

1. His *Motion for Reinvestigation* was not rendered moot by the Honorable Court's finding that there is probable cause to issue warrants of arrest against him. A finding of probable cause to place the accused under arrest does not necessarily mean that there is probable cause to charge the accused and hold them for trial.<sup>4</sup>
2. He was not part of any conspiracy not to reveal the relationship of accused Vitangcol and Soriano. Thus, there is no probable cause to charge him for violation of Section 65(c)(1) in relation to Section 47 of R.A. No. 9184.<sup>5</sup>
3. He was not part of any conspiracy in committing violations of Sections 3(e) and (h) of R.A. No. 3019. There is no direct evidence against him. Thus, there is no probable cause to charge him for violation of Sections 3(e) and (h) of R.A. 3019.<sup>6</sup>
4. He is a victim of selective prosecution.<sup>7</sup>
5. The Certification dated August 10, 2016 from the Securities and Exchange Commission stating that no Resolution (relative to a Board meeting supposedly held on August 20, 2012) was submitted to the commission is a newly discovered evidence that would negate conspiracy.<sup>8</sup>

In its *Opposition To Accused Wilson T. De Vera's Motion for Reconsideration Dated 10 August 2016*,<sup>9</sup> the prosecution argued:

<sup>3</sup> Record, Vol. I, pp. 425-451.

<sup>4</sup> Motion for Reconsideration dated August 10, 2016, p. 5; Record, Vol. III, p. 298.

<sup>5</sup> *Id.*, at p. 8; Record, Vol. III, p. 301.

<sup>6</sup> *Id.*, at p. 15; Record, Vol. III, p. 308.

<sup>7</sup> *Id.*, at p. 23; Record, Vol. III, p. 316.

<sup>8</sup> *Id.*, at p. 21; Record, Vol. III, p. 314.

<sup>9</sup> Record, Vol. III, pp. 365-368.

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1. The Sandiganbayan has found probable cause to place the accused in custody and for the accused to stand trial. Hence, there is no more basis for reinvestigation.<sup>10</sup>
2. Accused Vitangcol cannot ask the Sandiganbayan to act as an appellate court for the Ombudsman's finding of probable cause, especially when the Court has made an independent finding and conclusion that probable cause exists for the purpose of issuing warrants of arrest.<sup>11</sup>
3. Accused De Vera's claim that he was not part of the conspiracy has been passed upon by this Court. They are evidentiary and are matters of defense which are better amplified during the trial.<sup>12</sup>

## RULING

The instant *Motion for Reconsideration* is denied for lack of merit.

The Court reiterates its ruling that since it has found probable cause to hold accused for trial and to issue a warrant for his arrest, this conclusion has rendered accused De Vera's Motion for Reinvestigation moot.

Accused De Vera insists that this Court's finding of probable cause does not render his Motion for Reinvestigation moot. Citing *People vs. Andrade*,<sup>13</sup> he claims that "(A) finding of probable cause to place the accused under arrest does not necessarily mean that there is probable cause to charge the accused and hold them for trial."<sup>14</sup>

*Andrade* does not support accused De Vera's legal theory. It is the converse that is supported by the Rules and jurisprudence, *i.e.*, a finding of probable cause to charge the accused does not necessarily mean that there is probable cause to place the

<sup>10</sup> Opposition dated August 30, 2016, p. 2; Record, Vol. III, p. 366.

<sup>11</sup> *Id.* at pp. 2-3; Record, Vol. III, pp. 366-367.

<sup>12</sup> *Id.* at p. 3; Record, Vol. III, p. 367.

<sup>13</sup> 741 SCRA 460 [2014].

<sup>14</sup> Motion for Reconsideration dated August 10, 2016, p. 5; Record, Vol. III, p. 298.

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accused under arrest. As the Rules<sup>15</sup> provide and as jurisprudence<sup>16</sup> repeatedly explained, the trial judge has to personally evaluate the resolution of the prosecution and its supporting evidence. He has to ascertain and satisfy himself that based on the evidence submitted, there is a necessity to place the accused under custody in order not to frustrate the ends of justice.

By distinguishing executive from judicial determination of probable cause, the Supreme Court in *Andrade* did not intend to give the trial judge blanket authority to review the prosecutor's finding of probable cause. On the contrary, the High Court, emphasized that the trial judge does not act as an appellate court of the prosecutor and has no capacity to review the prosecutor's determination of probable cause, viz:

While it is within the trial court's discretion to make an independent assessment of the evidence on hand, it is only for the purpose of determining whether a warrant of arrest should be issued. The judge does not act as an appellate court of the prosecutor and has no capacity to review the prosecutor's determination of probable cause; rather, the judge makes a determination of probable cause independent of the prosecutor's finding.<sup>17</sup>

However, when the trial court finds probable cause to place the accused under arrest, the court has necessarily agreed with the prosecution or the Ombudsman, as the case may be, that there is probable cause to charge the accused. It would be incongruent for this Court to find probable cause to issue a warrant for the arrest of an accused, but conclude that there is no probable cause to charge the accused.

<sup>15</sup> Rule 112, Rules of Court

**Section 5. When warrant of arrest may issue.** — (a) *By the Regional Trial Court.* — Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint of information. (Underscoring supplied.) xxx

<sup>16</sup> People vs. Yecyec, et al., 739 SCRA 719, 731-732 [2014]; Mendoza vs. People, 722 SCRA 647 654-656 [2014].

<sup>17</sup> People vs. Andrade, *Supra*, at p. 472. Underscoring supplied.

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The Court's conclusion finds support in *Balindong vs. Court of Appeals*,<sup>18</sup> where the Supreme Court declared:

The issuance by the trial court of the warrant of arrest upon filing of the information and supporting papers implies the determination of probable cause for the offense charged. It is then superfluous for the accused to seek the judicial determination of probable cause on the pretext that the trial court should still act and proceed independently of the executive determination of probable cause to charge the proper offense.<sup>19</sup>

To be sure, the only ground invoked by accused De Vera, in his Motion for Reinvestigation, was that there is no probable cause to charge him for violations of Section 3(e) and (h) of R.A. No. 3019, nor of Section 65 (c)(1) of R.A. No. 9184. He did not raise any issue on the regularity in the conduct of the preliminary investigation. Neither did he claim therein that he had newly discovered evidence to present before the Ombudsman.

In his Motion for Reconsideration, accused De Vera invoked the ground that he has a newly discovered evidence that could possibly negate the prosecution's finding of conspiracy. He claims to have a newly discovered Certification issued by the SEC on August 10, 2016 stating that the SEC did not receive a copy of PH Trams' Board Resolution or the Secretary's Certificate relative to a meeting held by the Board of Directors on August 20, 2012. Certainly, accused De Vera cannot claim that this Court erred when it did not consider the same in the July 4, 2016 Resolution sought to be reconsidered.

Nonetheless, the certification issued by SEC is a matter of evidence and of defense that is best ferreted out during the trial of the case.

Finally, the other arguments of accused De Vera are mere reiterations of the issues he raised in his *Motion for Reinvestigation*. The arguments pertain to his contention that there is no probable cause to charge him before this Court.

<sup>18</sup> 773 SCRA 27 [2015].

<sup>19</sup> At pp. 29-30. Underscoring supplied.

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In the assailed Resolution dated July 4, 2016, this Court, in denying the *Motions for Reconsideration*<sup>20</sup> of its Resolution dated December 8, 2015<sup>21</sup> and the Resolution dated December 14, 2015,<sup>22</sup> explained in detail the bases for its conclusion that probable cause exists to issue warrants of arrest against all the accused, including accused De Vera, for violations of Sections 3(e) and 3(h) of R.A. No. 3019 and of Section 65, Paragraph (c)(1) in relation to Section 47 of R.A. No. 9184. This Court declared:

Probable Cause for the Issuance of a Warrant of Arrest

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

Since accused Soriano, one of the incorporators, directors and stockholders of PH Trams, is a relative by affinity within the

<sup>20</sup> Filed by accused Arturo Soriano, Marlo dela Cruz and Manolo Mayo Maralit; Record, Vol. II, pp. 48-68 and pp. 160-182.  
<sup>21</sup> Finding probable cause for the issuance of warrants of arrest against the accused; Record, Vol. I, pp. 393-394.  
<sup>22</sup> Which merely noted accused dela Cruz and Maralit's Urgent Motion to Defer Issuance of Warrant of Arrest and Arraignment Pending Judicial Determination of Probable Cause dated December 7, 2015; Record, Vol. I, p. 470.

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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.

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

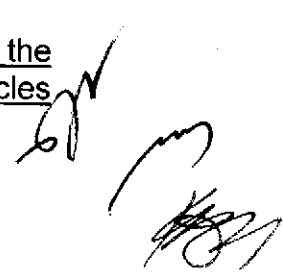
### *Conspiracy*

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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* 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." 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, 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.

Accused Maralit and dela Cruz point to De Vera as the person responsible for including accused Soriano in the Articles



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of Incorporation of PH Trams and for the submission of the false Affidavit of Disclosure to DOTC-MRT3.

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

**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.

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

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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



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procurement of 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. In fact, accused Vitangcol was one of the signatories in the contract for the interim service provider awarded to PH Trams-CB&T JV.

- 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.**

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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;
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.

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



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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.

In *Republic vs. Tuvera*, 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.

In *Domingo vs. Sandiganbayan*, 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.

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. The failure to disclose this relationship and the statement of Ambassador 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*"

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*their connection and partnership (Mr. Vitangcol and Mr. Rodriguez) cannot be broken and they are acting as one unity,"* 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.

### *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.

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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* 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

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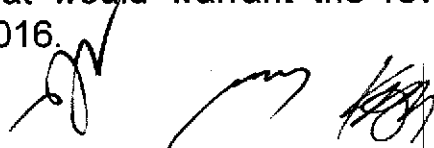
the Project Management Office or the end-user unit, and the project consultants by consanguinity or affinity up to the third civil degree." Said affidavit was submitted as part of the bid documents of the PH Tram-CB&T JV.

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.

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. 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." While accused De Vera denies knowledge of the Affidavit of Disclosure executed by accused dela Cruz in behalf of PH Trams, 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.<sup>23</sup>

There is nothing in the present Motion for Reconsideration that would warrant the reversal of the Resolution dated July 4, 2016.



<sup>23</sup>

Resolution promulgated on July 4, 2016, pp. 11-21; Record, Vol. III, pp. 19-24. Underscoring supplied.

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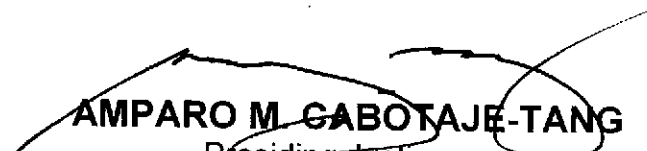
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**WHEREFORE**, for lack of merit, the *Motion for Reconsideration (Of the Resolution dated July 7 (sic), 2016, For the Accused Wilson T. De Vera)* is **DENIED**.

**SO ORDERED.**

  
**SARAH JANE T. FERNANDEZ**  
Associate Justice

**WE CONCUR:**

  
**AMPARO M. GABOTAJE-TANG**  
Presiding Justice  
Chairperson

  
**KARL B. MIRANDA**  
Associate Justice