

Republic of the Philippines
SANDIGANBAYAN
Quezon City

Second Division

People of the Philippines,
Plaintiff,

Crim. Case No. SB-16-CRM-0631 to
SB-16-CRM-0632

For: Violation of Section 3(e) of
R.A. 3019

-versus-

Present:
Herrera, Jr., J. *Chairperson*
Musngi, J. &
Pahimna, J.

Haber Amin Asarul, et al.,
Accused.

Promulgated:

May 26, 2017

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RESOLUTION

HERRERA, JR., J:

For resolution of the Court in these cases are the following:

1. ***Motion For Reduction Of Bail With Formal Entry Of Appearance***¹ dated September 15, 2016, filed by accused Habel Amin Asarul. Camlian P. Borjal and Marad A. Abdulkarim (hereinafter referred to as the Movants), through counsel;

- and -

2. ***Omnibus Motion To Quash And To Defer Further Proceedings***² dated September 19, 2016, filed by the movants, through counsel;

In connection with the aforementioned motions, the following were also filed: ***Consolidated Comment/Opposition Re: 1) Motion for Reduction of Bail with Formal Entry of Appearance*** dated September 15, 2016; ***Omnibus Motion to Quash and to Defer Further Proceedings***³ dated September 19, 2016 filed by the plaintiff People of the Philippines, through the Office of the Special Prosecutor, Office of the

¹ Record, Vol. 1, pp. 93-94

² Id, pp. 95-102

³ Id, pp. 111-113

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Ombudsman; **Reply (To Prosecution's Consolidated Comment/Opposition)**⁴ filed by the movants, through counsel; and **Rejoinder Re: Accused's Reply [to Consolidated Comment/Opposition On The Omnibus Motion To Quash And To Defer Further Proceedings]**⁵ dated October 29, 2016, filed by the plaintiff, through the Office of the Special Prosecutor, Office of the Ombudsman.

The movants are jointly charged with **Violation of Section 3(e) of Republic Act (R.A.) No. 3019**, also known as the **Anti-Graft and Corrupt Practices Act**, in Criminal Case No. SB-16-CRM-0631; and with **Violation of Section 89(a)(5) of R.A. 7160**, also known as the **Local Government Code of 1991** in Criminal Case No. SB-16-CRM-0632.

In seeking a reduction of the bail of P30,000 for each one of them in each of the two (2) cases filed, the movants contend that the amount should be in accordance with the three-fold rule, ostensibly referring to **Article 70 of the Revised Penal Code (RPC)** which reads:

"Art. 70. *Successive service of sentence.* — When the culprit has to serve two or more penalties, he shall serve them simultaneously if the nature of the penalties will so permit; otherwise, the following rules shall be observed:

In the imposition of the penalties, the order of their respective severity shall be followed so that they may be executed successively or as nearly as may be possible, should a pardon have been granted as to the penalty or penalties first imposed, or should they have been served out.

For the purpose of applying the provisions of the next preceding paragraph the respective severity of the penalties shall be determined in accordance with the following scale:

1. Death,
2. Reclusion perpetua,
3. Reclusion temporal,
4. Prision mayor,
5. Prision correccional,
6. Arresto mayor,

⁴ Id, pp. 124-130

⁵ Id, pp. 133-141

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7. Arresto menor,
8. Destierro,
9. Perpetual absolute disqualification,
- 10 Temporal absolute disqualification.
11. Suspension from public office, the right to vote and
be voted for, the right to follow a profession or calling,
and
12. Public censure

Notwithstanding the provisions of the rule next preceding, the maximum duration of the convict's sentence shall not be more than three-fold the length of time corresponding to the most severe of the penalties imposed upon him. No other penalty to which he may be liable shall be inflicted after the sum total of those imposed equals the same maximum period.

Such maximum period shall in no case exceed forty years.

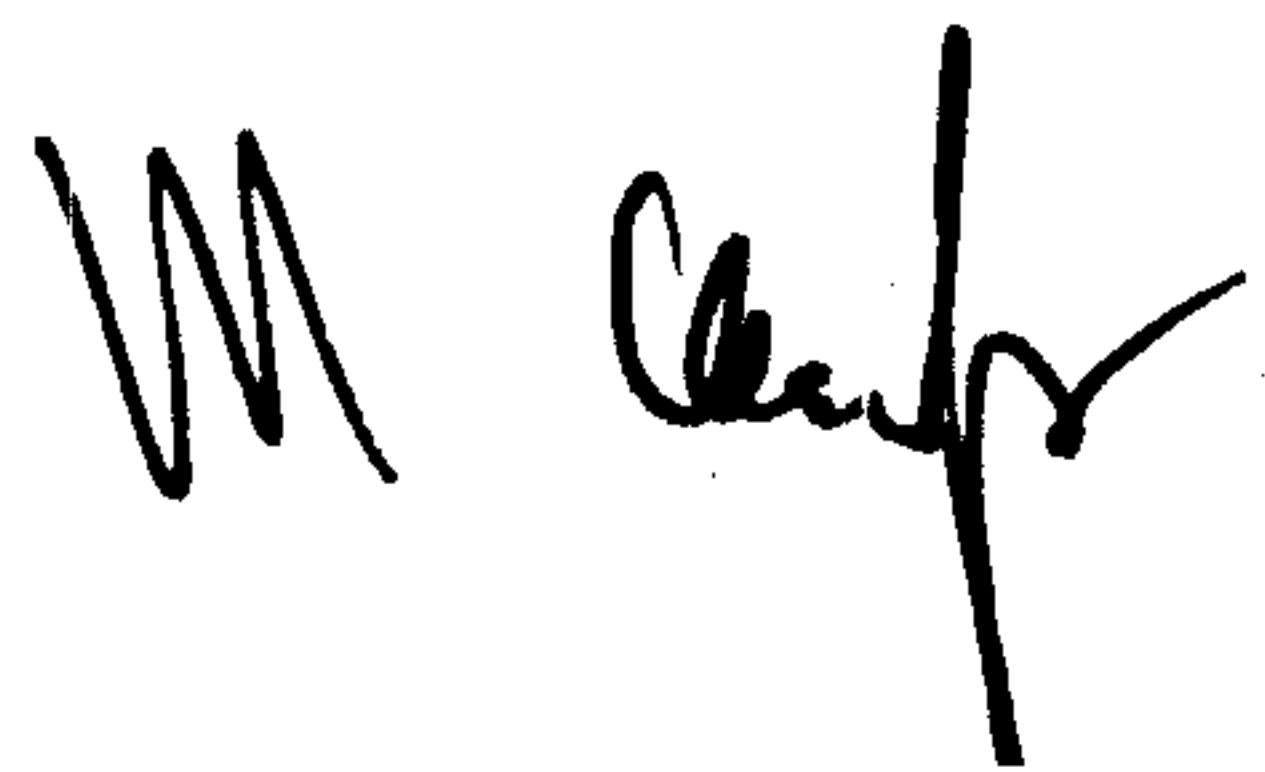
In applying the provisions of this rule the duration of perpetual penalties (*penal perpetua*) shall be computed at thirty years."

The three-fold rule, as enunciated in the aforequoted provision, is not applicable in fixing the amount of bail because it is a rule on the duration of service of sentence of a convict who has to serve at least four (4) sentences.⁶ The factors to consider are the guidelines set forth in **Section 9, Rule 114 of the Rules of Criminal Procedure**. In any event, record shows that the three (3) accused have already made cash deposits of P60,000 each as bail for their provisional liberty in two (2) cases. In view thereof, the Court rules that the matter has become moot and academic.

Anent the **Omnibus Motion To Quash And To Defer Further Proceedings**, the movants raise two (2) grounds for dismissal of the **Informations**, namely: 1) The facts charged do not constitute an offense; and 2) The Court has no jurisdiction over the offenses charged.

After a careful study, the Court finds the **Omnibus Motion, etc.** bereft of merit.

⁶ Communications Insurance Co., Inc. v. Villaruz, 99 SCRA 492



The Court will deal first with the facts charged in the *Informations* filed.

It is settled that a motion to quash on the ground that the allegations of the information do not constitute the offense charged should be resolved on the basis alone of said allegations whose truth and veracity are hypothetically admitted.⁷ The fundamental test in resolving the motion to quash is whether or not the facts alleged in the information, if hypothetically admitted, would establish the essential elements of the offense charged as defined by law.⁸

Section 3(e) of R.A. 3019, which the movants allegedly violated as charged in Criminal Case No. SB-16-CRM-0631, reads:

"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.

(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."

The essential elements⁹ of **Section 3(e) of R.A. 3019** are as follows:

- 1) The accused must be a public officer discharging administrative, judicial or official functions;
- 2) He must have acted with manifest partiality, evident bad faith or gross inexcusable negligence, and

⁷ Domingo v. Sandiganbayan, 322 SCRA 656

⁸ Soriano v. People, 591 SCRA 257

⁹ Cabrera v. Sandiganbayan, 441 SCRA 377

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- 3) His action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.

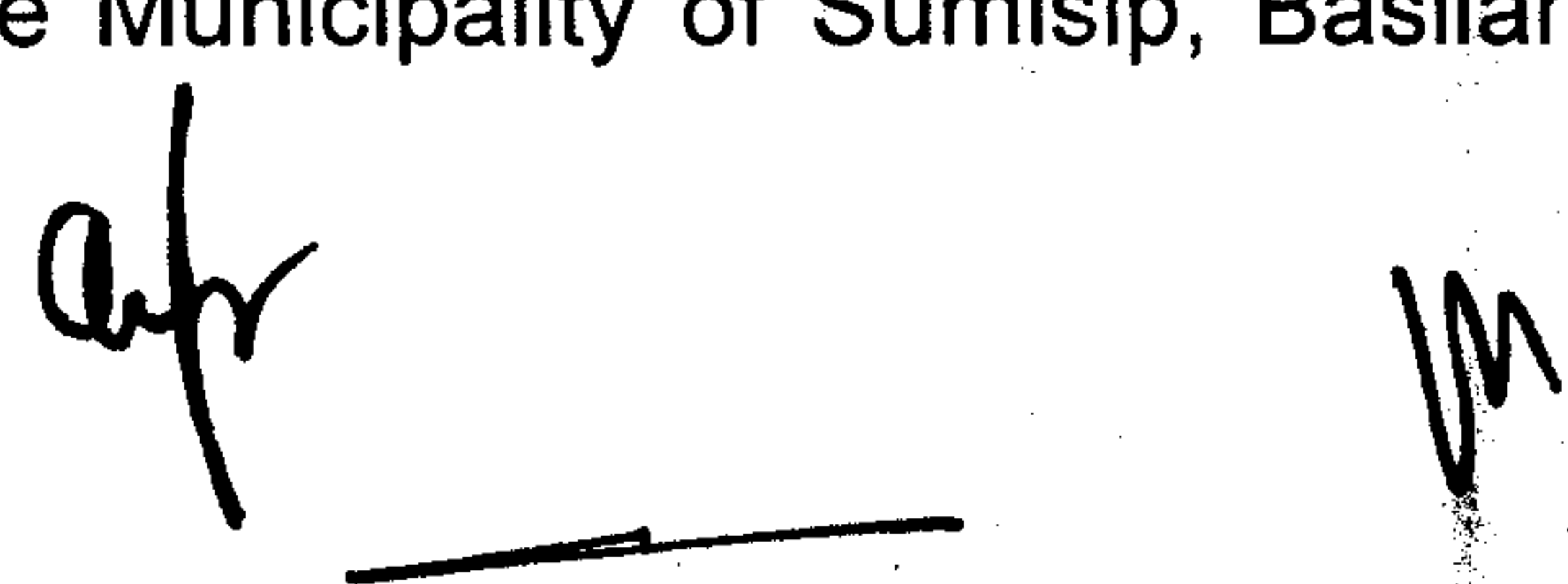
The *Information*¹⁰ dated June 28, 2016 filed in Criminal Case No. SB-16-CRM-0631 reads:

“That on October 11, 2010, or for sometime prior or subsequent thereto, in Zamboanga City, Zamboanga del Sur, Philippines, within the jurisdiction of this Honorable Court, the above-named accused HABER AMIN ASARUL, CAMLIAN PAJIJI BORJAL and MARAD AYATAL ABDULKARIM, all public officers, being then the Mayor (Salary Grade 27), Officer-in-Charge (OIC) Treasurer (Salary Grade 24), and OIC Accountant (Salary Grade 15), respectively, of the Municipality of Sumisip, Basilan, did then and there, wilfully, unlawfully and criminally, with evident bad faith, conspiring with one another, taking advantage of their official positions and in the discharge of their official and/or administrative functions as such, use the Municipality of Sumisip’s funds as security for a personal loan that they contracted from Al-Mashour A. Alibasa in Zamboanga City in the amount of PhP2,000,000.00 for which they issued, as such public officers, to Al-Mashour A. Alibasa two (2) Land Bank of the Philippines (LBP) Checks Nos. 183471 and 183473, both postdated November 11, 2010, in the amount of PhP1,100,000.00 per check chargeable against the Municipality of Sumisip’s Land Bank Account No. 1222-1070-63 in Land Bank, Basilan Branch, and the corresponding two (2) Municipal Accountant’s Advice of Local Check Disbursements, the issuance thereof could not have been done without their respective official positions, knowing fully well that the account belongs to the Municipality of Sumisip, and fail to pay back the loan amount and the monthly interest as the LBP checks were refused payment, thereby causing undue injury to Al-Mashour A. Alibasa in the amount of PhP2,000,000.00 plus the ten (10%) percent monthly interest, and give themselves, in their private capacity as debtors or borrowers, an unwarranted benefit and advantage in the form of a granted loan and in the amount of PhP2,000,000.00.

CONTRARY TO LAW.”

Hence, the *Information* essentially alleges that the three (3) accused, with evident bad faith, taking advantage of their official positions and in the discharge of their official/administrative functions, issued checks chargeable to the account of the Municipality of Sumisip, Basilan

¹⁰ Record, Vol. 1, pp. 1-3

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as security for the personal loan obtained from the Al-Mashour Alibasa, causing undue injury to Mr. Alibasa, and giving themselves, in their private capacity as debtors or borrowers, as unwarranted benefit and advantage in the form of a granted loan.

Clearly, the allegations in the *Information* yield that it sufficiently charges a **Violation of Section 3(e) of R.A. 3019**, The allegations include all the elements of the offense charged.

Upon the other hand, **Section 89, paragraph (a), sub-paragraph (5) of R.A. 7160**, the offense charged in Criminal Case No. SB-16-CRM-0632, provides:

“Sec. 89. Prohibited Business and Pecuniary Interest.

(a) It shall be unlawful for any local government official or employee, directly or indirectly, to:

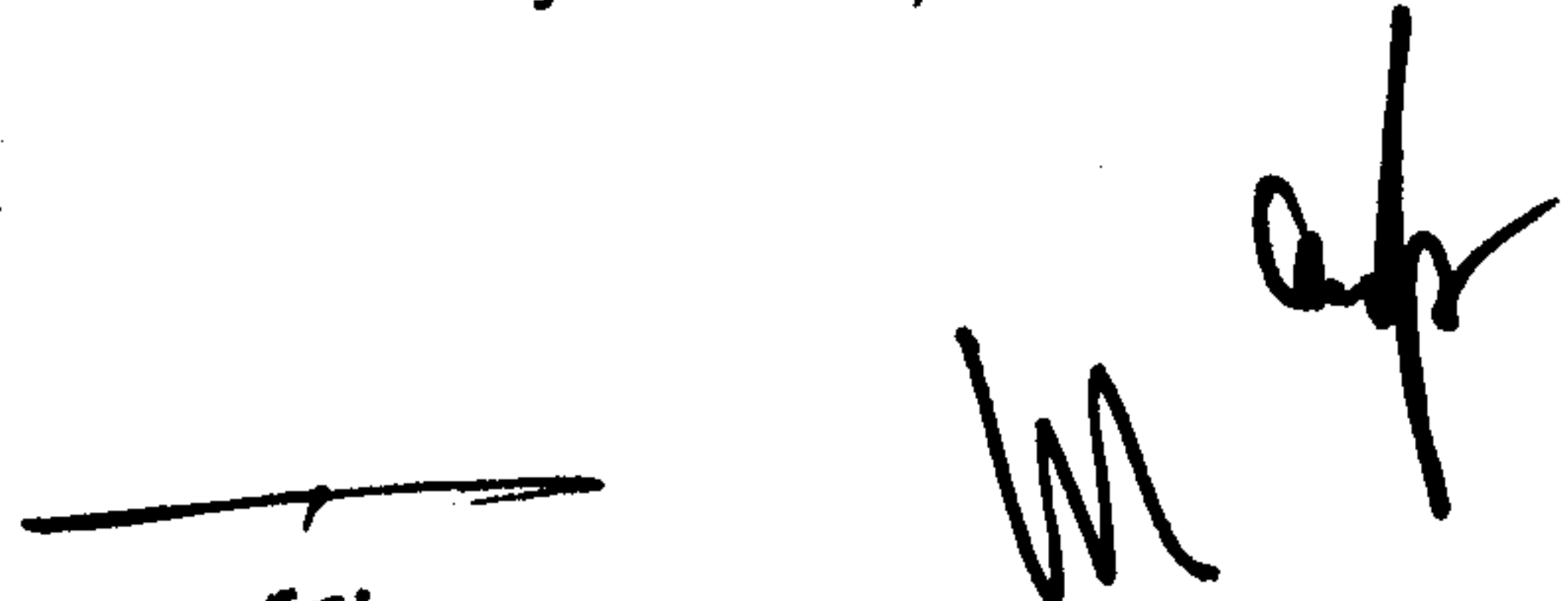
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(5) Possess or use any public property of the local government unit for private purposes.”

The *Information*,¹¹ also dated June 28, 2016, in Criminal Case No. SB-16-CRM-0632, reads:

“That on October 11, 2010, or for sometime prior or subsequent thereto, in Zamboanga City, Zamboanga del Sur, Philippines, within the jurisdiction of this Honorable Court, the above-named accused HABER AMIN ASARUL, CAMLIAN PAJJI BORJAL and MARAD AYATAL ABDULKARIM, all public officers, being then the Mayor (Salary Grade 27), Officer-in-Charge (OIC) Treasurer (Salary Grade 24), and OIC Accountant (Salary Grade 15), respectively, of the Municipality of Sumisip, Basilan, did then and there, wilfully, unlawfully and criminally, conspiring with one another, taking advantage of their official positions and committing the offense in relation to their respective offices, use, directly or indirectly, the Municipality of Sumisip’s public property for a private purpose by using the municipality’s funds as security for a personal loan that they contracted from Al-Mashour A. Alibasa in Zamboanga City in the amount of PhP2,000,000.00 for which they issued, as such

¹¹ Record of Crim. Case No. SB-16-CRM-0632, pp. 1-3



public officers, to Al-Mashour A. Alibasa two (2) Land Bank of the Philippines (LBP) Checks Nos. 183471 and 183473, both postdated November 11, 2010, in the amount of PhP1,100,000.00 per check chargeable against the Municipality of Sumisip's Land Bank Account No. 1222-1070-63 in Land Bank, Basilan Branch, and the corresponding two (2) Municipal Accountant's Advice of Local Check Disbursements, knowing fully well that the account belongs to the Municipality of Sumisip and the issuance of said LBP checks and Municipal Accountant's Advice of Local Check Disbursements could not have been done without their respective official positions.

CONTRARY TO LAW."

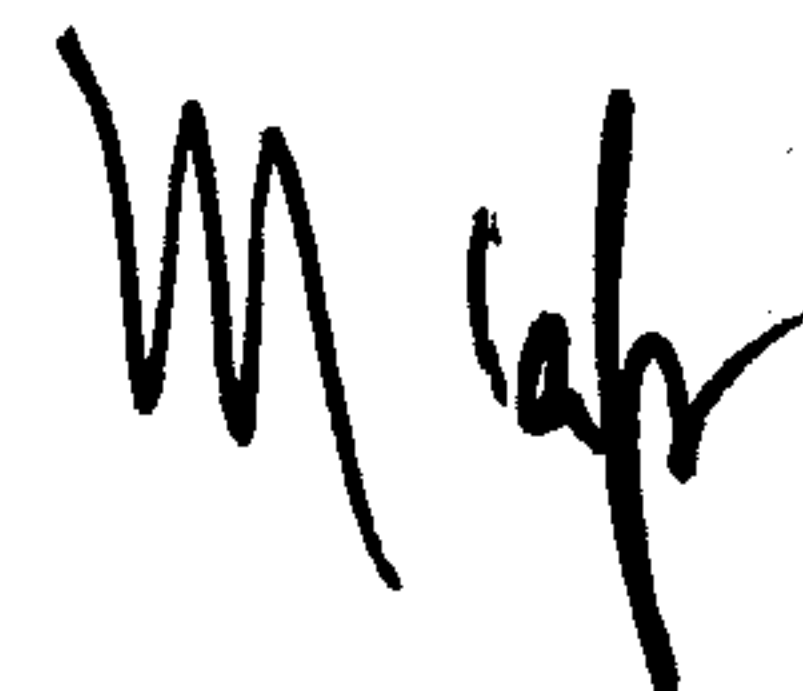
Essentially, the *Information* alleges that the movants, taking advantage of their official positions, used funds of the Municipality of Sumisip, Basilan as security for a personal loan they contracted from Al-Mashour Alibasa, thereby using public property of a local government unit for a private purpose. Undoubtedly, the facts alleged in the information constitute the offense charged.

In their *Omnibus Motion To Quash*, the movants aver that the loan obligation to Mr. Alibasa has already been settled and the latter has executed an *Affidavit of Desistance* dated December 7, 2015. With this development, the movants contend that there was no injury to Mr. Alibasa as well as the government, so that the cases should be dismissed.¹²

The contention is incorrect. The alleged absence of injury to Mr. Alibasa or to the government is a matter of defense which is evidentiary in character. In resolving a motion to quash on the ground that the facts charged do not constitute an offense, the trial court may not consider a situation contrary to that set forth in the information. Facts which constitute the defense of the accused against the charge under the information must be proved during the trial. Such facts or circumstances do not constitute proper grounds for a motion to quash.¹³

¹² Record, Vol. 1, pp. 98-99

¹³ Torres v. Garchitorena, 394 SCRA 494



Finally, on the issue of jurisdiction, the movants assert that the **Informations** filed do not clearly and specifically allege any damage to the government in the amount of more than P1,000,000.00. They contend that the Court has no jurisdiction over these cases, citing **Section 4 of Republic Act (R.A.) No. 10660**, to wit:

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

XXX.
XXX.

Provided, That the Regional Trial Court shall have exclusive original jurisdiction where the information; (a) does not allege any damage to the government or any bribery; or (b) alleges damage to the government or bribery arising from the same or closely related transactions or acts in an amount not exceeding One million pesos (P1,000,000.00).”

The contention is also not correct. **Section 2 of R.A. 10660**, entitled **An Act Strengthening Further The Functional And Structural Organization Of The Sandiganbayan, etc.** amended **Section 4 of Presidential Decree (PD 1606)**. The amended provision is the one above-quoted and it provides that the Regional Trial Court shall have jurisdiction where the information “(a) does not allege any damage to the government or any bribery; or (b) alleges damage to the government or bribery arising from the same or closely related transactions or acts in an amount not exceeding One million pesos (P1,000,000).” This provision, however, is subject to the **Transitory Provision of Section 5 of RA 10660** which, in turn, provides that the amendment vesting jurisdiction in the RTC shall apply only to cases arising from offenses committed after the effectivity of **R.A. 10660**.

Section 5 reads:

“Sec. 5. *Transitory Provision.* – This Act shall apply to all cases pending in the Sandiganbayan over which trial has not begun; **Provided, That: (a) Section 2, amending Section 4 of Presidential Decree No. 1606, as amended, on “Jurisdiction”;** and (b) Section 3, amending Section 5 of

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the Presidential Decree No. 1606, as amended on "Proceedings, How Conducted; Decision by Majority Vote" **shall apply to cases arising from offenses committed after the effectivity of this Act."**

The offense charged against the movants were purportedly committed "on October 11, 2010, or for sometime prior or subsequent thereto."¹⁴ On the other hand, **R.A. 10660** took effect on May 5, 2015. Since the offenses charged were committed prior to the effectivity of **RA 10660**, the jurisdiction of the RTC provided for in the amendment introduced by **Section 2** of said law does not apply.

WHEREFORE, premises considered, the Court resolves:

1) To deny the **Motion For Reduction Of Bail, etc.** dated September 15, 2016 filed by accused Haber Amin Asarul, Camilian P. Borjal and Marad A. Abdulkarim, through counsel;

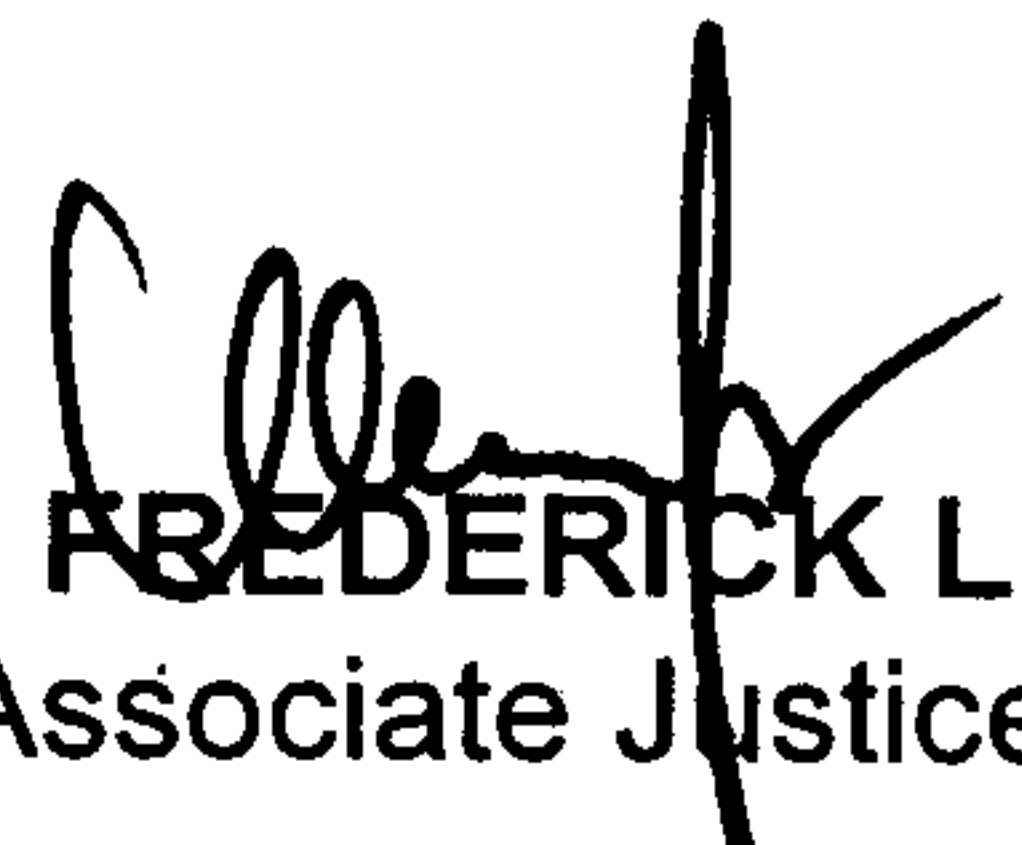
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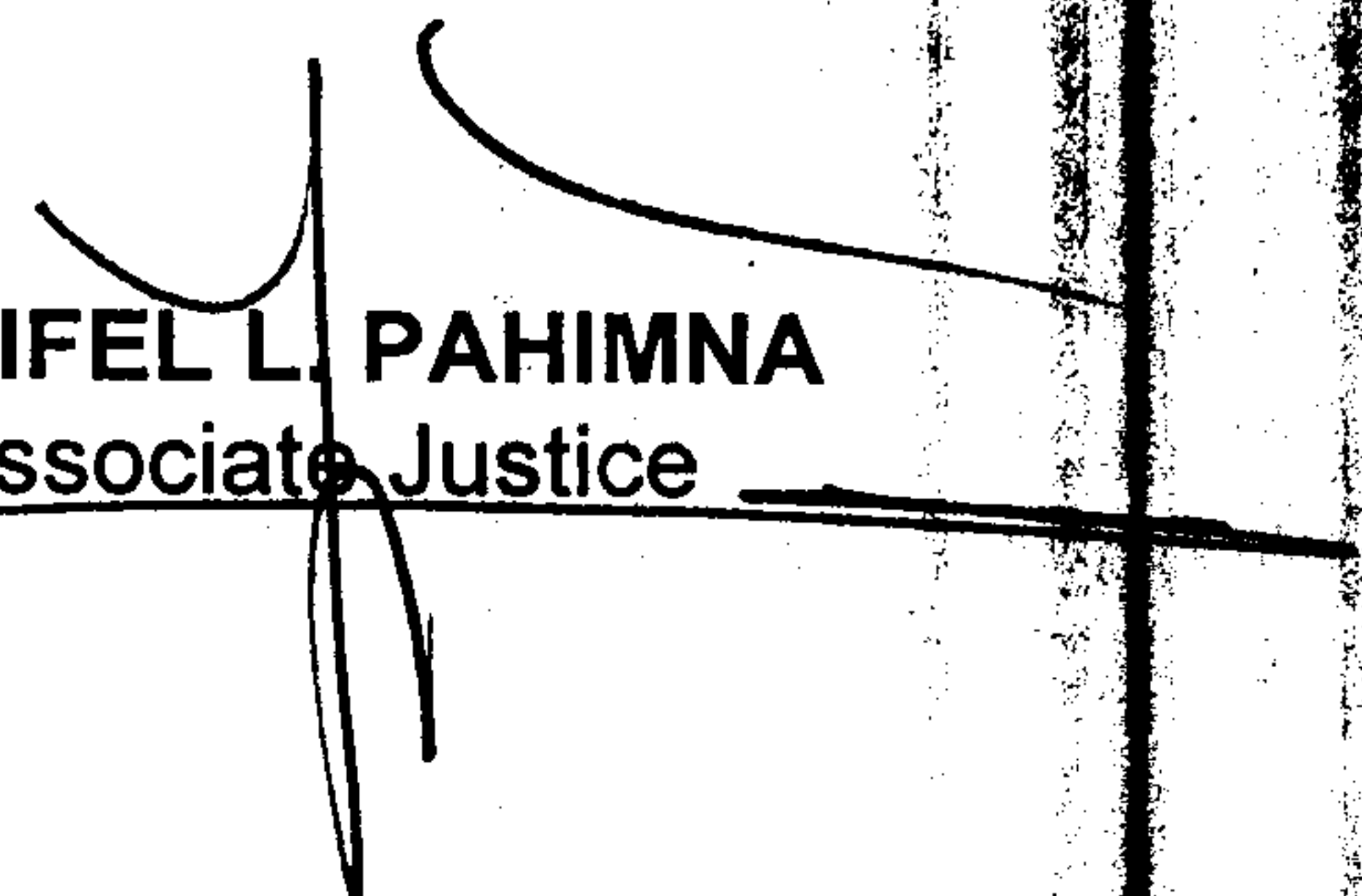
2) To deny the **Omnibus Motion To Quash And To Defer Further Proceedings** dated September 19, 2016 filed by the accused, through counsel.

SO ORDERED.


OSCAR C. HERRERA, JR.
Chairperson

We concur:


MICHAEL FREDERICK L. MUSNGI
Associate Justice


LORIFEL L. PAHIMNA
Associate Justice

¹⁴ see Informations in Crim. Cases Nos. SB-16-CRM-0631 and 0632.