

Republic of the Philippines
SANDIGANBAYAN
Quezon City

Second Division

People of the Philippines,
Plaintiff,

Crim. Case No. SB-17-CRM-1391 to
SB-17-CRM-1392

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

-versus-

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

Enrico R. Echiverri, et al.,
Accused.

Promulgated:

August 23, 2017

X-----X

RESOLUTION

HERRERA, JR., J:

Submitted for resolution of the Court is the ***Urgent Manifestation And Motion***¹ dated July 10, 2017, filed by accused Enrico R. Echiverri (Echiverri), Edna V. Centeno (Centeno) and Jesusa C. Garcia (Garcia) (collectively referred to as the Movants for short), through counsel, praying that the ***Informations*** in these cases be quashed, on the ground that the facts alleged therein do not constitute the offenses charged. The plaintiff, through the Office of the Special Prosecutor, Office of the Ombudsman, filed an ***Opposition (Re: Urgent Manifestation and Motion)***² dated August 3, 2017.

In Criminal Case No. SB-17-CRM-1391, the movants are charged with ***Violation of Section 3(e) of Republic Act (R.A.) No. 3019***, also known as the ***Anti-Graft and Corrupt Practices Act***, under an ***Information***³ dated April 11, 2017.

In Criminal Case No. SB-17-CRM-1392, movants Centeno and Garcia are charged with ***Falsification of Public Document***, defined and

¹ Record of Criminal Case No. SB-17-CRM-1381, pp. 164-206

² Id, pp. 268-277

³ Id, pp. 1-2



penalized under **Article 171, par. 4, of the Revised Penal Code (RPC)**, under an **Information**⁴ also dated April 11, 2017.

After a careful study of the record, the Court rules that the movants' prayer for quashal of the **Informations** is devoid of merit.

It is settled that a motion to quash on the ground that the facts alleged in the information do not constitute an offense should be resolved on the basis alone of said allegations whose truth and veracity are hypothetically admitted.⁵ The fundamental test 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.⁶

Section 3(e) of R.A. 3019, provides:

“Sec. 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 elements⁷ of the offense of **Violation 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

⁴ Record of Criminal Case No. SB-17-CRM-1392, pp. 1-2

⁵ People v. Ferrer, 101 Phil. 234

⁶ Lazarte v. Sandiganbayan, 581 SCRA 432

⁷ Collantes v. Marcelo, 531 SCRA 142



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

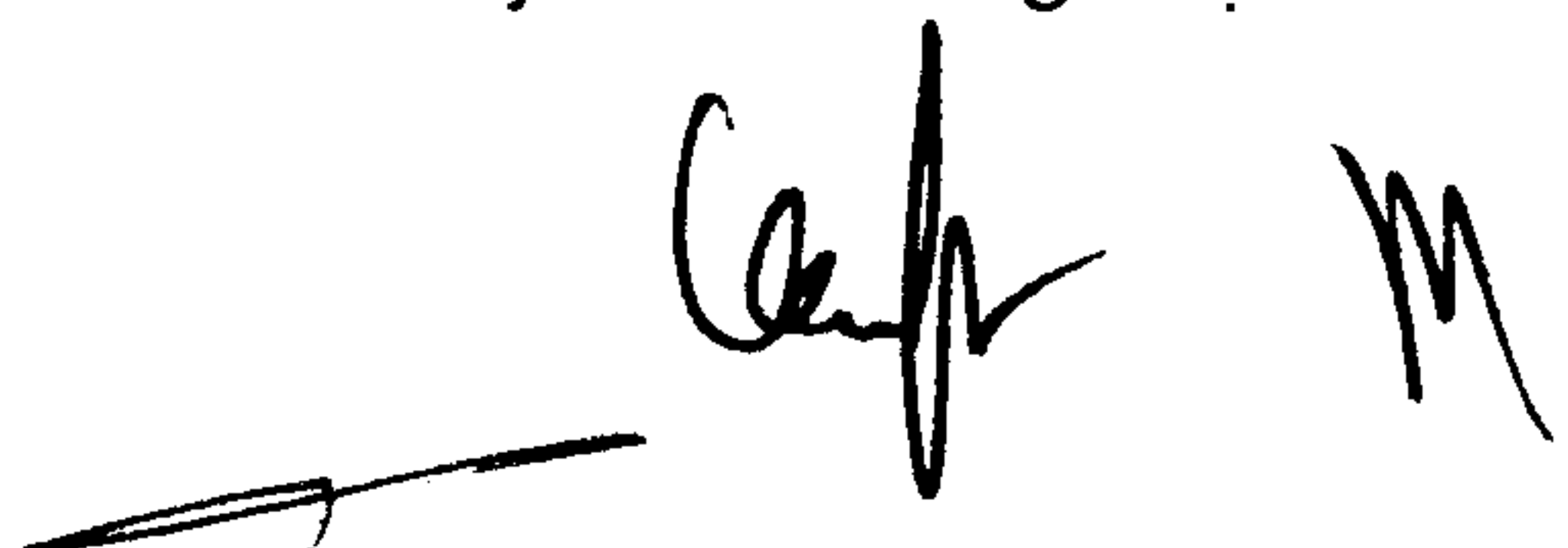
The accusatory portion of the **Information** in Criminal Case No. SB-17-CRM-1391 reads:

“That from the period December 20, 2011 to April 17, 2013, or sometime prior or subsequent thereto, in the City of Caloocan, Philippines, and within this Honorable Court’s jurisdiction, then City Mayor **ENRICO R. ECHIVERRI**, Salary Grade 30, City Accountant **EDNA V. CENTENO**, Salary Grade 27, and City Budget Officer **JESUSA C. GARCIA**, Salary Grade 26, all public officers of the local government of Caloocan City, while in the performance of their administrative and/or official functions, conspiring with one another, acting with manifest partiality, evident bad faith and/or gross inexcusable negligence, did then and there willfully, unlawfully and criminally cause undue injury to the government and give unwarranted benefits, preference, and advantage to St. Gabriel Builders, represented by its proprietor Pascualito Luciano, in the amount of at least **THREE MILLION FIVE HUNDRED FORTY THOUSAND SEVEN HUNDRED EIGHTY TWO PESOS and THIRTY SIX CENTAVOS (PhP3,540,782.36)**, more or less, by awarding to St. Gabriel Builders the contract for “Installation of Streetlights at Barangay 90 and 91, Caloocan City, and paying said amount to St. Gabriel Builders, to the damage and prejudice of the Government.”

The Court finds that the above-quoted averments in the **information** is sufficient. It contains all the elements constituting a **Violation of Section 3(e) of R.A. No. 3019**. The **Information** alleges every fact and circumstance necessary to constitute the offense charged.

Anent the offense of **Falsification of Public Document under Article 171, paragraph 4 of the RPC**, the crime charged against movants Centeno and Garcia in Criminal Case No. SB-17-CRM-1392, the provision reads:

“Art. 171. The penalty of prision mayor and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:



XXX.

4. Making untruthful statements in a narration of facts.”

The elements⁸ of the aforementioned offense are as follows:

1. That the offender is a public officer, employee or notary public;
2. That he takes advantage of his official position;
3. That he falsifies a document by-

XXX.

(d) Making untruthful statements in a narration of facts.

To be liable under sub-paragraph (d) above, the following requisites⁹ must be present:

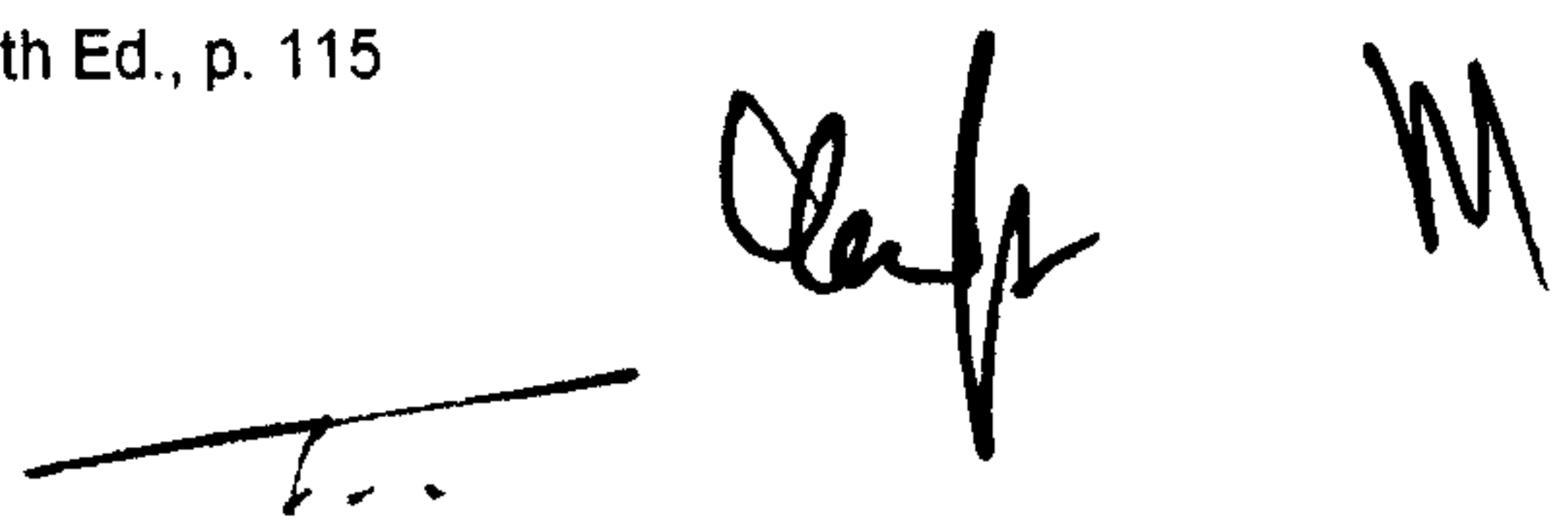
1. That the offender makes in a document statements in a narration of facts;
2. That he has a legal obligation to disclose the truth of the facts narrated by him;
3. That the facts narrated by the offender are absolutely false; and
4. That the perversion of truth in the narration of facts was made with the wrongful intent of injuring a third person.

The accusatory portion of the *Information* in Criminal Case No. SB-17-CRM-1392 reads:

“That on December 20, 2011, or sometime prior or subsequent thereto, in the City of Caloocan, Philippines, and within this Honorable Court’s jurisdiction, City Accountant **EDNA V. CENTENO**, Salary Grade 27 and City Budget Officer **JESUSA C. GARCIA**, Salary Grade 26, both public officers of the local government of Caloocan City, while in the performance of their administrative and/or official functions, conspiring with one another, and taking advantage

⁸ Luis B. Reyes, The Revised Penal Code, Book Two, Fourteenth Ed., p. 115

⁹ Id, p. 116



of their official positions, did then and there willfully, unlawfully and feloniously make false statements in a narration of facts, the truth of which they are legally bound to disclose, by certifying in the Allotment and Obligation Slip (ALOPS) No. 100-11-12-7090 dated December 20, 2011 as to the existence of appropriation for, and as to obligation of allotment, for the "Installation of Streetlights at Barangay 90 and 91, Caloocan City" in the amount of **THREE MILLION EIGHT HUNDRED TWENTY SEVEN THOUSAND PESOS (PhP3,827,000.00)**, more or less, when in truth and in fact, as the accused very well knew, that there was no appropriation for said project for the prejudice of public interest.

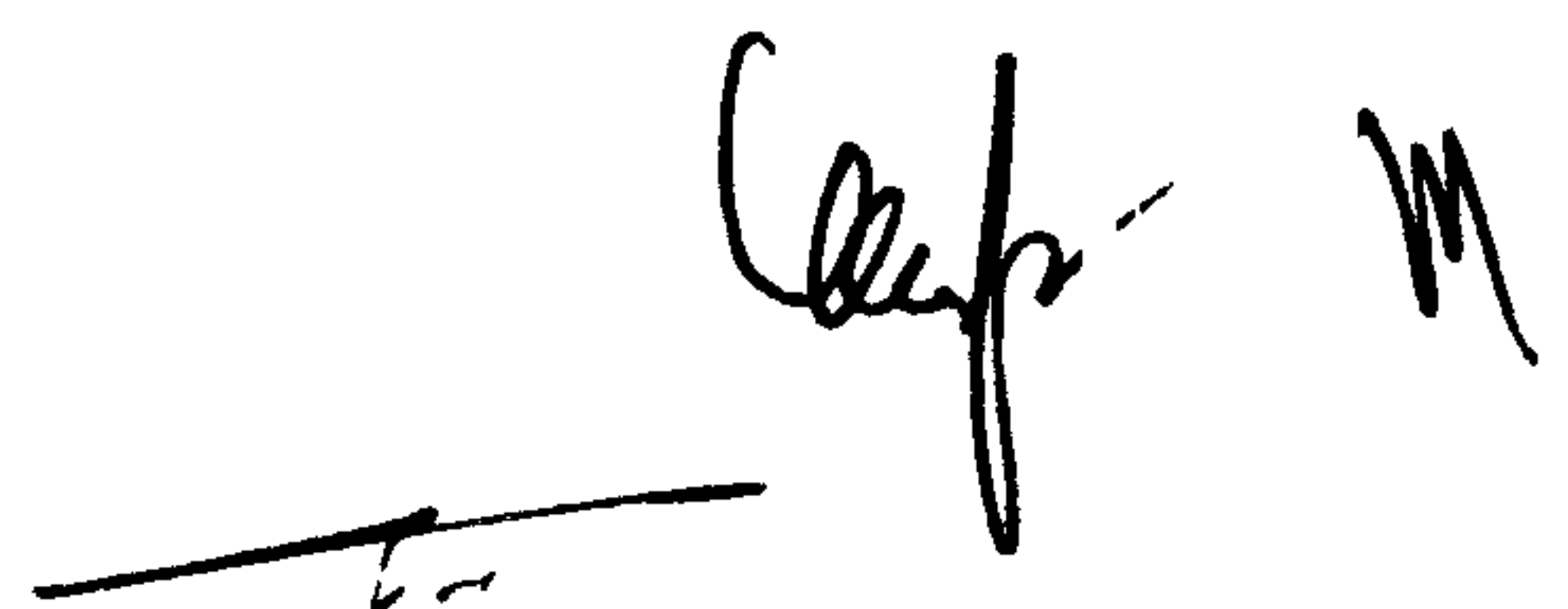
CONTRARY TO LAW."

The above-quoted averments in the *Information* is sufficient to constitute the offense of *Falsification of Public Document*, defined and penalized under *Article 171, paragraph 4 of the RPC*. It contains all the elements of the offense charged.

In their *Urgent Manifestation and Motion*, the movants contend that the absence of prior authorization from the Sangguniang Panlungsod of Caloocan City (SPCC) in awarding to St. Gabriel Builders the contract for "Installation of Streetlights at Barangay 90 and 91, Caloocan City", referred to in the *Informations* filed in these cases, has already been cured by the passage in May 14, 2012 by SPCC of *Sangguniang Panlungsod (SP) Resolution No. 1985 S. 2012*. Said *SP Resolution* is entitled "*Clarifying, Confirming and Ratifying All Contracts Entered into by Caloocan City for the Implementation of Projects Sourced from the Lump Sum Appropriation for Special Activities Fund (SAF), Statutory And Contractual Obligations for 20% Development Projects, Maintenance and Other Operating Expenses (MOOE) of the 2011 Annual Budget embodied in Ordinance No. 0468 S. 2010 and the 2011 Supplemental Budget No. 1 embodied in Ordinance No. 0478 S. 2011 of the Caloocan City Government.*"¹⁰

The movants further contend that the Commission Proper of the Commission on Audit (COA) rendered a *Decision* dated June 15, 2017

¹⁰ Record of Criminal Case No. SB-17-CRM-1392, pp. 165-172

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granting a petition for review and lifting the **Notice of Disallowance No. 13-002-100-(11-13)** (20% DF 2011) on the payment of various projects implemented under the 20% Development Fund which purportedly include the contract subject of these cases. The movants argue that although the transaction had no prior SP authorization, the same has already been ratified by the passage of **SP Resolution No. 1985 S. 2012**. They claim that the implementation of the project was an *ultra vires* act that is merely voidable but susceptible of ratification.¹¹

The aforementioned contentions of the movants are off tangent as they are clearly matters of defense.

As earlier pointed out, settled in our jurisprudence is that the fundamental test to resolve a motion to quash on the ground that the facts charged do not constitute an offense is whether the facts alleged in the information, if hypothetically admitted, would establish the essential elements of the offense charged as defined by law.¹² Evidence *aliunde* or matters extrinsic of the **Informations** are not to be considered. Facts which constitute the defense of the accused against the charge in the information must be established during the trial. Such facts and circumstances do not constitute proper grounds for a motion to quash the information.¹³

In **Soriano v. People**,¹⁴ the Supreme Court stressed:

“The trial court may not consider a situation contrary to that set forth in the criminal complaint or information. Facts that constitute the defense of the petitioners against the charge under the information must be proved by them during the trial. Such facts or circumstances do not constitute proper grounds for a motion to quash on the ground that the material averments do not constitute an offense.”

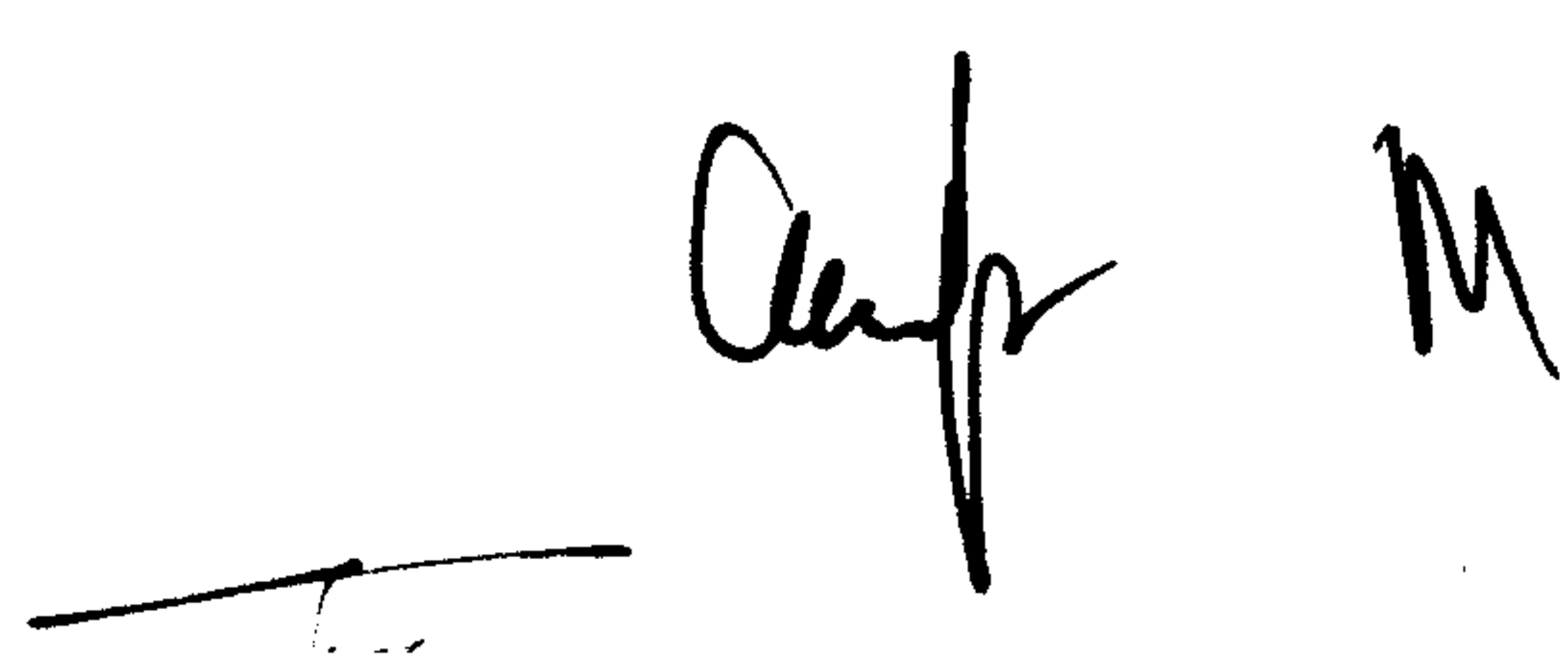
WHEREFORE, premises considered, the **Urgent Manifestation and Motion** dated July 10, 2017, filed by accused Enrico F. Echiverri,

¹¹ Id, pp. 173-175

¹² Lazarte v. Sandiganbayan, 581 SCRA 432

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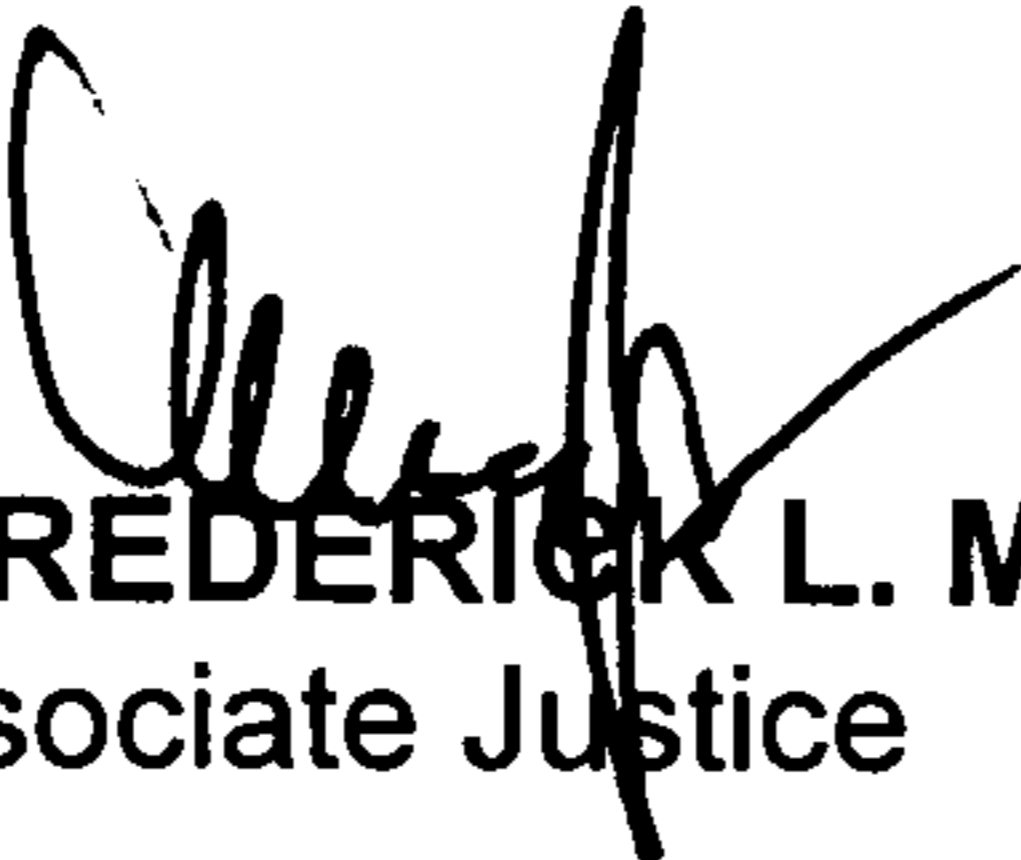
¹⁴ 591 SCRA 257-258

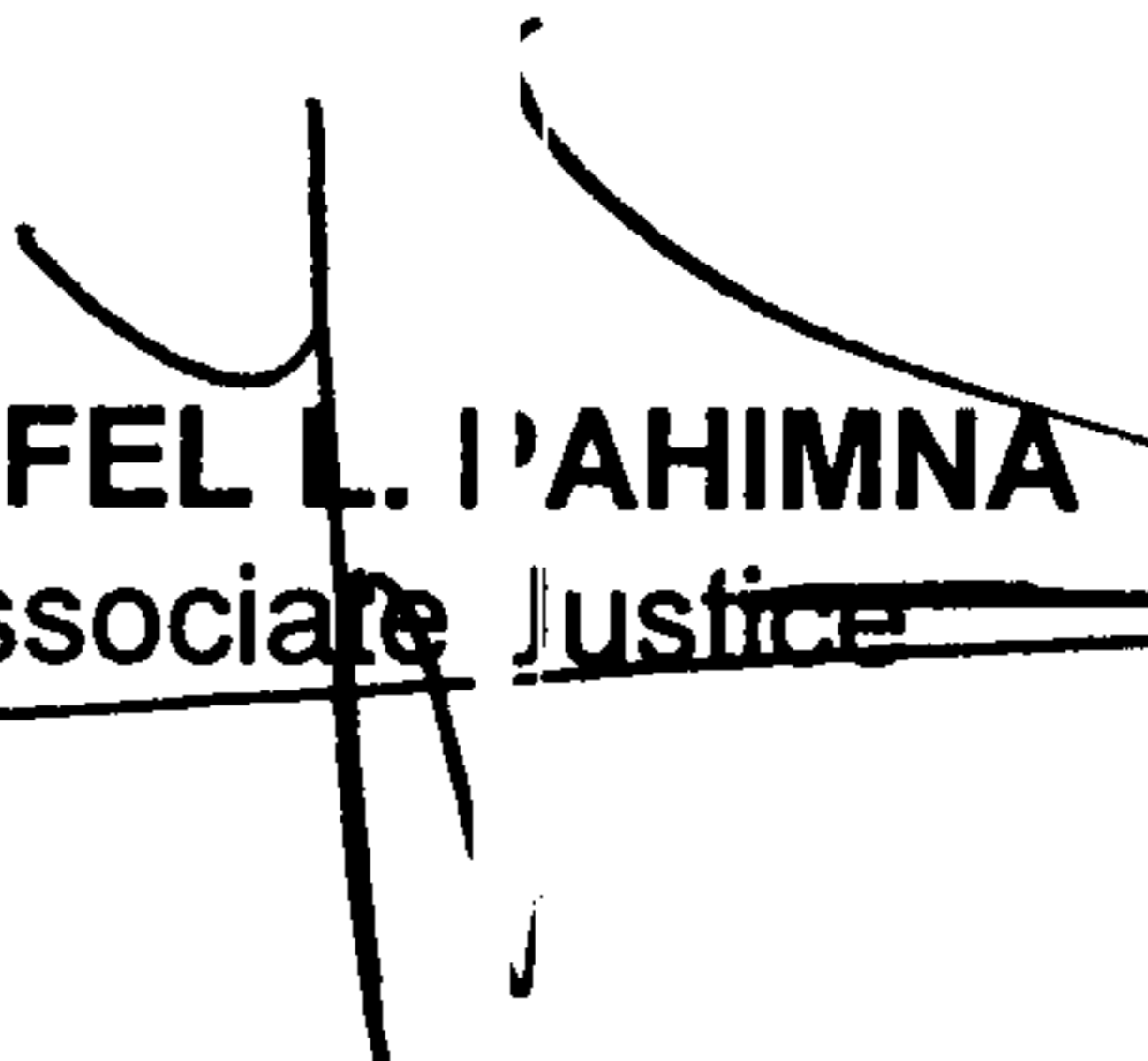


Edna V. Centeno and Jesusa C. Garcia, through counsel, praying for the quashal of the *Informations* in these cases, is hereby denied.


OSCAR C. HERRERA, JR.
Chairperson

We concur:


MICHAEL FREDERICK L. MUSNGI
Associate Justice


LORIFEL L. PAHIMNA
Associate Justice