

Republic of the Philippines
SANDIGANBAYAN
Quezon City

Second Division

People of the Philippines,
Plaintiff,

Crim. Case No. SB-17-CRM-0937 to
SB-17-CRM-0938

For: Violation of Section 3(e)
of R.A. No. 3019 and Falsification
of Public Documents

-versus-

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

Enrico R. Echiverri, et al.,
Accused.

Promulgated:

September 6, 2017

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RESOLUTION

HERRERA, JR., J:

This resolves the ***Appearance and Urgent Motion To Quash***¹ dated June 28, 2017, filed by accused Enrico R. Echiverri (Echiverri), Edna V. Centeno (Centeno) and Jesusa C. Garcia (Garcia) (collectively referred to herein as the Movants), through counsel, praying that the ***Informations*** filed in these cases be quashed, on the ground that the facts alleged therein do not constitute an offense. The plaintiff, through the Office of the Special Prosecutor, Office of the Ombudsman, filed an ***Opposition (Re: Appearance and Urgent Motion)***² dated August 3, 2017.

In Criminal Case No. SB-17-CRM-0937, 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 July 29, 2016.

In Criminal Case No. SB-17-CRM-0938, movants Centeno and Garcia are charged with ***Falsification of Public Document***, defined and

¹ Record of Criminal Case No. SB-17-CRM-0937, pp. 213-253

² Id, pp. 277-286

³ Id, pp. 1-3

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penalized under **Article 171, paragraph 4, of the Revised Penal Code (RPC)**, under an **Information** ⁴ also dated July 29, 2016.

The Court finds the movants' prayer for quashal of the **Informations** 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 elements ⁷ 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-0938, pp.1-3

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-0937, charging the movants with *Violation of Section 3(e) of R.A. 3019*, reads:




“That from July 6, 2012 to November 19, 2012, or sometime prior or subsequent thereto, in the City of Caloocan, Philippines, and within this Honorable Court’s jurisdiction, then City Mayor **ENRICO REANTILLO ECHIVERRI**, City Accountant **EDNA V. CENTENO**, and City Budget Officer **JESUSA C. GARCIA**, 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 and advantage to Tuchar Construction (Tuchar), represented by its Proprietress, Rosario A. Tusit, in the amount of at least **THREE MILLION SIX HUNDRED EIGHT THOUSAND THREE HUNDRED FORTY ONE AND 19/100 PESOS (Php3,608,341.19)** more or less, by awarding and entering into a contract with Tuchar for the Concreting of Cherry Blossom St., Rose St., and Ilang-ilang St., Barangay 187, Caloocan City, without prior authorization from the Sangguniang Panlungsod of Caloocan City, and disbursing said amount to Tuchar, to the damage and prejudice of the government.

CONTRARY TO LAW.”

The above-quoted averments are sufficient to constitute the offense charged. They contain all the elements of *Violation of Section 3(e) of R.A. 3019*.

With regard to 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-0938, 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 elements ⁸ 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.

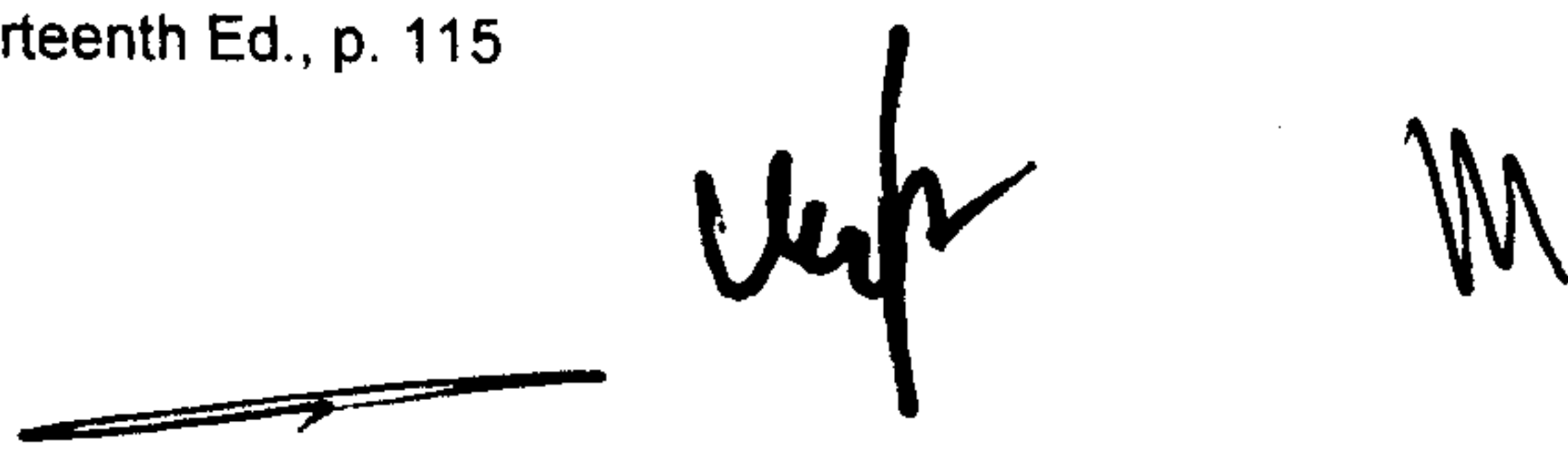
To be liable under sub-paragraph (d) above, the following requisites ⁹ must be present:

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-0938 reads:

“That on June 7, 2012, 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 (SG) 27, and City Budget Officer **JESUSA C. GARCIA**, Salary Grade (SG) 26, both public

⁸ Luis B. Reyes, The Revised Penal Code, Book Two, Fourteenth Ed., p. 115
⁹ Id, p. 116

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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 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 (AL OBS) No. 100-12-062765 dated June 7, 2012 as to the existence of appropriation for, and as to obligation of allotment, for the Concreting of Cherry Blossom St., Rose St., and Ilang-ilang St., Barangay 187, Caloocan City, in the amount of **THREE MILLION NINE HUNDRED NINE THOUSAND TWO HUNDRED PESOS (Php3,909,200.00)**, more or less, when in truth and in fact, as the accused very well knew that there was neither a specific appropriation for the said project nor a prior authorization from the Sangguniang Panlungsod, to the prejudice of public interest.

CONTRARY TO LAW.”

The above-quoted averments are sufficient to constitute the offense of **Falsification of Public Document**, as defined and penalized under **Article 171, paragraph 4 of the RPC**. The averments contain all the elements of the offense charged.

In seeking the quashal of the **Informations**, the movants contend that the Commission on Audit (COA) rendered a **Decision** dated June 15, 2017, granting a petition for review and lifting the Notice of Disallowance No. 13-002-100 (11-13) (20% DF 2011) on the payment of the various projects implemented under the 20% Development Fund, which include the contract subject of these cases.¹⁰ The movants argue that the alleged lack of prior authorization from the Sangguniang Panlungsod of Caloocan City (SPCC) has been cured by the aforesaid COA Decision. The movants claim that with said COA Decision, the averments in the Informations no longer have any basis.¹¹

The above contention of the movants is incorrect.

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

¹⁰ Id, p. 219

¹¹ Id, p. 220

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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 prayer for the quashal of the **Informations** in these cases contained in the **Appearance and Urgent Motion To Quash** dated June 28, 2017, filed by accused Enrico R. Echiverri, Edna V. Centeno and Jesusa C. Garcia, through counsel, is hereby denied.

SO ORDERED.


OSCAR C. HERRERA, JR.
Chairperson

We concur:


MICHAEL FREDERICK L. MUSNGI
Associate Justice


LORIFEL L. PAHIMNA
Associate Justice

¹² Lazarte v. Sandiganbayan, 581 SCRA 432

¹³ Cabrera v. Sandiganbayan, 441 SCRA 377, 385

¹⁴ 591 SCRA 257-258