



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-17-CRM-1496**
Plaintiff, For: Violation of Sec. 3(e)
of R.A. No. 3019, as amended

SB-17-CRM-1497
For: Malversation of Public Funds

Present

- versus -

GREGORIO T. IPONG, ET AL., **FERNANDEZ, SJ,* J.,**
Accused. Chairperson
MUSNGI, J. and**
JACINTO,* J.**

Promulgated:

OCT 04 2017 *[Signature]*

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves accused Gregorio T. Ipong's *Omnibus Motion (To Dismiss/To Quash Information)*.¹

Accused Ipong prays for the dismissal of the Information in the present cases on the ground of violation of his right to speedy disposition of cases, his right to due process and his right to be informed of the nature and cause of the accusation against him. He likewise prays for the quashal of said Informations on the ground that the facts charged do not constitute an offense. He argues:

[Signature]

* As per Administrative Order No. 314-2017 dated September 13, 2017; *Revised Internal Rules of the Sandiganbayan*. Rule XII, Sec. 3

** As per Administrative Order No. 124-2017 dated April 4, 2017

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1. His right to due process was violated because the Office of the Ombudsman acted as investigator, complainant and judge. The case should have been acted upon and decided by an impartial tribunal. Because he was denied due process, the Office of the Ombudsman was ousted of jurisdiction to further proceed or act on the case before it.
2. His right to speedy disposition of cases was violated by reason of the inordinate delay in the investigation, filing and prosecution of the case before the Office of the Ombudsman. The violation of such right results in the Ombudsman's loss of jurisdiction and authority to file the Information in the present cases.
 - a. The acts being imputed to him were allegedly committed in 2007, but the Information in the present cases were filed with the Court only in 2017 – ten (10) years later.
 - b. The Office of the Ombudsman failed to explain why it took ten (10) years to file said Informations.
 - c. In *Tatad v. Sandiganbayan*, it was held that a delay of close to three (3) years cannot be deemed reasonable or justifiable in light of the circumstances surrounding that case.
3. He filed a Motion for Reconsideration of the Ombudsman's Resolution. However, without acting on his Motion, the Office of the Ombudsman prematurely filed the Information in the present cases, in violation of his right to due process.
4. The Information for charging him with violation of Sec. 3(e) of R.A. No. 3019, and that charging him with Malversation, are fatally defective, and violate his right to be informed of the nature and cause of the accusation against him. Moreover, the facts charged in said Informations do not constitute any offense.
5. The Information in SB-17-CRM-1496 failed to establish the elements of violation of Sec. 3(e) of R.A. No. 3019.
 - a. The Information only states conclusions of law, without clearly averring the facts showing that he acted with evident bad faith, manifest partiality or gross inexcusable negligence.
 - b. He was not responsible for the accreditation of Aaron Foundation Philippines Inc. (AFPI). His act of endorsing AFPI was part of his duties as a legislator, and was merely recommendatory. After he made his recommendation, the implementation of his priority project was in the

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- c. The subject transaction occurred before the rules and regulations requiring compliance with Republic Act No. 9184 took effect. Penalizing him for a future requirement is tantamount to a violation of his right against an *ex post facto* law.
 - d. He is not guilty of gross negligence because he was not mandated by law to (i) evaluate and accredit NGOs, and (ii) monitor the implementation of his projects.
 - e. TLRC was responsible for monitoring the implementation of his livelihood project.
 - f. He never warranted that AFPI was a bona fide entity.
 - g. The Implementing Rules of R.A. No. 9184 do not provide for a minimum capitalization requirement to be considered a qualified NGO. Said rules only provide that the NGO must participate in a public bidding.
6. The averments in the Information in SB-17-CRM-1497 likewise failed to establish the elements of Malversation of Public Funds.
- a. He does not have custody and control over his Priority Development Assistance Fund (PDAF).
 - b. The ₱4,900,000.00 covered by Special Allotment Release Order (SARO) No. ROCS-07-05416 was released by the Department of Budget and Management (DBM) directly to the TLRC. Said funds never came under his custody.
 - c. His act of sending a single letter endorsing AFPI does not constitute criminal inducement. Neither was it shown that he bribed the concerned officials to make them choose his preferred NGO.
 - d. Monitoring the implementation of the subject project is an executive function, and is not part of his responsibilities as a legislator.
7. The allegations in the Informations fail to establish conspiracy. The Office of the Ombudsman did not allege that the accused came to an agreement concerning the commission of the crime and decided to commit it.
8. The complainant, the Field Investigation Office (FIO) of the Office of the Ombudsman, did not have personal knowledge of the facts

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- a. The FIO merely relied on the documents it gathered in the course of the investigation.
- b. The Informations failed to allege the facts constituting the elements of the crimes because the complainant had no personal knowledge of the subject transaction.

In its *Comment/Opposition (To Accused Ipong's Omnibus Motion)*,² the prosecution counters:

1. Accused Ipong was given the opportunity to refute the allegations against him when he was directed to submit his counter-affidavit and his countervailing evidence.
2. The FIO is the fact-finding arm of the Office of the Ombudsman, which is authorized by the Constitution to investigate any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. That it is a part of the Office of the Ombudsman does not necessarily mean that it was not impartial in the conduct of its investigation.
3. There was no delay in the conduct of the preliminary investigation. The FIO filed the Complaint-Affidavit on May 29, 2015. The respondents were ordered to file their respective counter-affidavits on September 1, 2015. Accused Ipong filed his counter-affidavit on November 3, 2015, after being granted an extension of time to file the same. The Resolution dated September 22, 2016, finding probable cause to indict the accused with violation of Sec. 3(e) of R.A. No. 3019 and Malversation of Public Funds was thereafter issued, and the Information in the present cases were filed with the Court on August 1, 2017.
4. From the date of filing of the Complaint-Affidavit to the filing of the Informations with the Court, a period of only two (2) years and two (2) months passed. Said period cannot be considered unreasonable or unjustified. Thus, accused Ipong's right to speedy disposition of cases was not violated.
5. Indeed, accused Ipong's Motion for Reconsideration of the Ombudsman's Resolution was still unresolved when the Information in the present cases were filed. However, the *Rules of Procedure of the Office of the Ombudsman*³ provides that the filing of such motion is not a bar to the filing of the Information in Court.

² Dated September 12, 2017 and filed on September 13, 2017; Record, pp. 230-235

³ Rule II, Sec. 7. b) The filing of a motion for reconsideration/reinvestigation shall not bar the filing of the

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6. The fundamental test in considering a motion to quash on the ground that the facts charged do not constitute an offense is whether the facts alleged, if hypothetically admitted, will establish the essential elements of the offense as defined in the law. The Information in the present cases sufficiently allege the essential elements of the offenses charged.
7. That the FIO lacks personal knowledge of the facts is a matter of defense which is best passed upon in a full-blown trial.

THE COURT'S RULING

Accused Ipong's Motion is devoid of merit and should be denied.

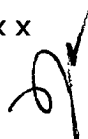
Denial of due process

Because the Office of the Ombudsman acted as investigator, complainant and judge, accused Ipong claims that he was denied due process. According to him, said right was further violated when the Office of the Ombudsman filed the Information in the present cases without resolving his Motion for Reconsideration. The Court is not persuaded.

The first issue was addressed in *Estrada v. Office of the Ombudsman, Field Investigation Office*.⁴ There, the Supreme Court held that preliminary investigation is a statutory right, and not part of the "fundamental and essential requirements" of due process as prescribed in *Ang Tibay v. Court of Industrial Relations*.⁵ Hence, being a mere statutory right, the fact that the preliminary investigation conducted by the Office of the Ombudsman failed to comply with the requirement of an impartial tribunal does not amount to a violation of the constitutional right to due process. To wit:

x x x. Simply put, the *Ang Tibay* guidelines for administrative cases do not apply to preliminary investigations in criminal cases. An application of the *Ang Tibay* guidelines to preliminary investigations will have absurd and disastrous consequences.

x x x



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The guidelines set forth in *Ang Tibay* are further clarified in *GSIS v. CA (GSIS)*: “what *Ang Tibay* failed to explicitly state was, prescinding from the general principles governing due process, **the requirement of an impartial tribunal** which, needless to say, dictates that one called upon to resolve a dispute may not sit as judge and jury simultaneously, neither may he review his decision on appeal.” The *GSIS* clarification affirms the non-applicability of the *Ang Tibay* guidelines to preliminary investigations in criminal cases: The investigating officer, which is the role that the Office of the Ombudsman plays in the investigation and prosecution of government personnel, will never be the impartial tribunal required in *Ang Tibay*, as amplified in *GSIS*. The purpose of the Office of the Ombudsman in conducting a preliminary investigation, **after conducting its own fact-finding investigation**, is to determine probable cause for filing an information, and not to make a final adjudication of the rights and obligations of the parties under the law, which is the purpose of the guidelines in *Ang Tibay*. The investigating officer investigates, determines probable cause, and prosecutes the criminal case after filing the corresponding information.

The purpose in determining probable cause is to make sure that the courts are not clogged with weak cases that will only be dismissed, as well as to spare a person from the travails of a needless prosecution. The Ombudsman and the prosecution service under the control and supervision of the Secretary of the Department of Justice are inherently the fact-finder, investigator, hearing officer, judge and jury of the respondent in preliminary investigations. Obviously, this procedure cannot comply with *Ang Tibay*, as amplified in *GSIS*. However, there is nothing unconstitutional with this procedure because this is merely an Executive function, a part of the law enforcement process leading to trial in court where the requirements mandated in *Ang Tibay*, as amplified in *GSIS*, will apply. This has been the procedure under the 1935, 1973 and 1987 Constitutions. To now rule that *Ang Tibay*, as amplified in *GSIS*, should apply to preliminary investigations will mean that all past and present preliminary investigations are in gross violation of constitutional due process.

X X X

The rights to due process in administrative cases as prescribed in *Ang Tibay*, as amplified in *GSIS*, are granted by the Constitution; hence, these rights cannot be taken away by mere legislation. On the other hand, as repeatedly reiterated by this Court, the right to a preliminary investigation is merely a statutory right, not part of the “fundamental and essential requirements” of due process as prescribed in *Ang Tibay* and amplified in *GSIS*. Thus, a preliminary investigation may be taken

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him does not apply in preliminary investigation; nor will the absence of a preliminary investigation be an infringement of his right to confront the witnesses against him. A preliminary investigation may be done away with entirely without infringing the constitutional right of an accused under the due process clause to a fair trial.

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It is, moreover, necessary to distinguish between the constitutionally guaranteed rights of an accused and the right to a preliminary investigation. **To treat them the same will lead to absurd and disastrous consequences.**

All pending cases in all courts throughout the country will have to be remanded to the preliminary investigation level because none of these will satisfy *Ang Tibay*, as amplified in *GSIS*. Preliminary investigations are conducted by prosecutors, who are the same officials who will determine probable cause and prosecute the cases in court. The prosecutor is hardly the impartial tribunal contemplated in *Ang Tibay*, as amplified in *GSIS*. A reinvestigation by an investigating officer outside of the prosecution service will be necessary if *Ang Tibay*, as amplified in *GSIS*, were to be applied. This will require a new legislation. In the meantime, all pending criminal cases in all courts will have to be remanded for reinvestigation, to proceed only when a new law is in place. To require *Ang Tibay*, as amplified in *GSIS*, to apply to preliminary investigation will necessarily change the concept of preliminary investigation as we know it now. Applying the constitutional due process in *Ang Tibay*, as amplified in *GSIS*, to preliminary investigation will necessarily require the application of the rights of an accused in Section 14(2), Article III of the 1987 Constitution. This means that the respondent can demand an actual hearing and the right to cross-examine the witnesses against him, rights which are not afforded at present to a respondent in a preliminary investigation.

(citations omitted, underscoring supplied)

Now, the second issue. As discussed above, preliminary investigation is a statutory right. Section 27⁶ of Republic Act No. 6770 (R.A. No. 6770), otherwise known as *The Ombudsman Act of 1989* allows the filing of a motion for reconsideration of any order, directive

⁶ Sec. 27. *Effectivity and Finality of Decisions.* – (1) All provisional orders of the Office of the Ombudsman are immediately effective and executory.

A motion for reconsideration of any order, directive or decision of the Office of the Ombudsman must be filed within five (5) days after receipt of written notice and shall be entertained only on any of the following grounds: x x x

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or decision of the Office of the Ombudsman. Section 18 (1)⁷ of the same law mandates the Office of the Ombudsman to promulgate its rules of procedure.

Section 7 of Administrative Order No. 07⁸ provides for the procedure in filing a motion for reconsideration. The provision reads:

Section 7. Motion for reconsideration –

- a) Only one motion for reconsideration or reinvestigation of an approved order or resolution shall be allowed, the same to be filed within five (5) days from notice thereof with the Office of the Ombudsman, or the proper Deputy Ombudsman as the case may be, with corresponding leave of court in cases where information has already been filed in court;
- b) The filing of a motion for reconsideration/reinvestigation shall not bar the filing of the corresponding information in Court on the basis of the finding of probable cause in the resolution subject of the motion.

It is clear that the Office of the Ombudsman may file the Information in the present cases with the Court even before resolving accused Ipong's Motion for Reconsideration. In fact, under Section 7 (a), the accused may file a Motion for Reconsideration even after the filing of the Information, provided that such motion is filed within the five (5) day period, and with the corresponding leave of court. Thus, the dismissal of the Information in the present cases on the ground of denial of due process finds no support in law or jurisprudence.

Inordinate delay

The Constitution guarantees that all persons shall have the right to a speedy disposition of their cases. Art. III, Sec. 16 reads:

Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

This right was designed to prevent oppression by holding criminal prosecution suspended over the citizen for an indefinite time. Such right is violated only when the proceedings are attended by

⁷ Sec. 18. *Rules of Procedure.* – (1) The Office of the Ombudsman shall promulgate its rules of procedure

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vexatious, capricious and oppressive delays. In determining if there is a violation of such right, several factors must be considered. In *Corpuz v. Sandiganbayan*,⁹ the Supreme Court held:

The right of the accused to a speedy trial and to a speedy disposition of the case against him was designed to prevent the oppression of the citizen by holding criminal prosecution suspended over him for an indefinite time, and to prevent delays in the administration of justice by mandating the courts to proceed with reasonable dispatch in the trial of criminal cases. Such right to a speedy trial and a speedy disposition of a case is violated only when the proceeding is attended by vexatious, capricious and oppressive delays. The inquiry as to whether or not an accused has been denied such right is not susceptible by precise qualification. The concept of a speedy disposition is a relative term and must necessarily be a flexible concept.

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A balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy trial cases on an *ad hoc* basis.

In determining whether the accused has been deprived of his right to a speedy disposition of the case and to a speedy trial, four factors must be considered: (a) length of delay; (b) the reason for the delay; (c) the defendant's assertion of his right; and (d) prejudice to the defendant. x x x

It appears that the FIO filed the Complaint-Affidavit dated April 22, 2015¹⁰ on May 29, 2015. The respondents were then directed to submit their respective counter-affidavits. Accused Jover filed her Counter-Affidavit dated September 28, 2015 on September 29, 2015¹¹ and Accused Ipong filed his Counter-Affidavit dated October 30, 2015 on November 3, 2015.¹² Thereafter, the Ombudsman approved the Resolution finding probable cause to indict the accused for violation of Sec. 3(e) of R.A. No. 3019 and Malversation of Public Funds on March 7, 2017.¹³ Accused Ipong and Jover filed their respective Motions for Reconsideration. Accused Jover's Motion for Reconsideration was denied in the Order dated May 4, 2017, approved on May 29, 2017.¹⁴

⁹ G.R. No. 162214, November 11, 2004

¹⁰ Record, p. 44

¹¹ Record, p. 108

¹² Record, p. 90

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Without acting on accused Ipong's Motion for Reconsideration,¹⁵ the Office of the Ombudsman filed the Information in the present cases on August 1, 2017.

Accused Ipong now argues that his right to speedy disposition of cases was violated because it took the Office of the Ombudsman almost ten (10) years from the alleged commission of the crimes to file the Information in the present cases. His argument fails to convince.

In *Tatad v. Sandiganbayan*,¹⁶ it was held that a delay of close to three (3) years cannot be deemed reasonable or justifiable in view of the circumstances obtaining in that case. It bears stressing that the Supreme Court, in that case, found that the prosecution was politically motivated, and that there was a blatant departure from the established procedure on the part of the prosecution.

The same cannot be said in the present cases. Here, the Informations were filed around two (2) years and two (2) months after the filing of the Complaint-Affidavit. Such period cannot be said to be unreasonable, and thus, it is unnecessary to determine if there is justification for the time it took to complete the preliminary investigation. There being no inordinate delay in the conduct of the preliminary investigation, this Court finds that there was no violation of accused Ipong's right to speedy disposition of cases.

Motion to quash

Accused Ipong contends that the Informations for violation of Sec. 3(e) of R.A. No. 3019 and for Malversation of Public funds should be quashed for the failure of the facts charged to constitute the respective offenses. This ground is embodied in Rule 117, Sec. 3(a), which reads:

Section 3. Grounds. – The accused may move to quash the complaint or information on any of the following grounds:

- (a) That the facts charged do not constitute an offense;

In a motion to quash based on this ground, the Court need not consider facts outside the four corners of the Information. Moreover, the Information only needs to state the ultimate facts constituting the offense, not the finer details of why and how such acts alleged

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amounted to the language used in the statute, such being evidentiary matters. The Supreme Court's discussion in *Go v. Bangko Sentral ng Pilipinas*¹⁷ is instructive. To wit:

Under the Constitution, a person who stands charged of a criminal offense has the right to be informed of the nature and cause of the accusation against him. The Rules of Court, in implementing the right, specifically require that the acts or omissions complained of as constituting the offense, including the qualifying and aggravating circumstances, must be stated in ordinary and concise language, not necessarily in the language used in the statute, but in terms sufficient to enable a person of common understanding to know what offense is being charged and the attendant qualifying and aggravating circumstances present, so that the accused can properly defend himself and the court can pronounce judgment. To broaden the scope of the right, the Rules authorize the quashal, upon motion of the accused, of an Information that fails to allege the acts constituting the offense. Jurisprudence has laid down the fundamental test in appreciating a motion to quash an Information grounded on the insufficiency of the facts alleged therein. We stated in *People v. Romualdez* that:

The determinative test in appreciating a motion to quash xxx is the sufficiency of the averments in the information, that is, whether the facts alleged, if hypothetically admitted, would establish the essential elements of the offense as defined by law without considering matters *aliunde*. As Section 6, Rule 110 of the Rules of Criminal Procedure requires, **the information only needs to state the ultimate facts; the evidentiary and other details can be provided during the trial.**

To restate the rule, **an Information only needs to state the ultimate facts constituting the offense, not the finer details of why and how the illegal acts alleged amounted to undue injury or damage** – matters that are appropriate for the trial.

The facts and circumstances necessary to be included in the Information are determined by reference to the definition and elements of the specific crimes. **The Information must allege clearly and accurately the elements of the crime charged.**

(citations omitted, underscoring supplied)

The elements of violation of Sec. 3(e) of R.A. No. 3019 are as follows:¹⁸



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1. The accused must be a public officer discharging administrative, judicial or official functions, or a private person acting in conspiracy with accused public officer(s);¹⁹
2. The accused must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and
3. Such 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 in SB-17-CRM-1496 alleges:

1. Accused Ipong, Antonio Y. Ortiz, Dennis L. Cunanan and Marivic V. Jover are public officers, acting in the performance of their administrative and/or official functions.
2. Accused Alfredo A. Ronquillo is a private individual.
3. Accused public officers conspired with one another, and with accused Ronquillo.
4. The accused acted with manifest partiality, evident bad faith and/or gross inexcusable negligence when they performed the following acts:
 - a. Accused Ipong unilaterally chose and indorsed AFPI as project partner in implementing his PDAF-funded livelihood projects, in disregard of R.A. No. 9184 and its implementing rules and regulations.
 - b. Accused Ipong and Ortiz entered into a Memorandum of Agreement with AFPI for the implementation of said projects.
 - c. Accused Ortiz, Jover and Cunanan caused the issuance of Land Bank Check No. 399418 in the amount of ₱4,900,000.00, sourced from accused Ipong's PDAF. Accused Ortiz approved Disbursement Voucher (DV) No. 012007050821 and signed the check. Accused Jover and Cunanan failed to carefully examine and verify the accreditation and qualifications of AFPI, and the supporting documents attached to said DV.
 - d. Accused Ronquillo, on behalf of AFPI, received said check.
 - e. The acts of accused public officers allowed accused Ronquillo to take possession of said PDAF. The projects, being non-existent, were not implemented.

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5. Undue injury in the amount of ₱4,900,000.00 was caused to the government. The acts of the accused also caused the giving of unwarranted benefits and advantage to accused Ronquillo.

On the other hand, the elements of Malversation of Public Funds, as defined and penalized by Art. 217 of the Revised Penal Code, are as follows:²⁰

1. The offender is a public officer;
2. The offender had custody or control of funds or property by reason of the duties of his/her office;
3. Said funds or property were public funds or property for which the offender was accountable; and
4. The offender appropriated, took, misappropriated or consented, or through abandonment or negligence, permitted another person to take them.

The Information in SB-17-CRM-1497 alleges:

1. Accused Ipong, Antonio Y. Ortiz, Dennis L. Cunanan and Marivic V. Jover are public officers, acting in the performance of their administrative and/or official functions.
2. Accused Alfredo A. Ronquillo is a private individual.
3. Accused public officers conspired with one another, and with accused Ronquillo.
4. Accused Ipong is accountable for, and exercises control over the PDAF allocated to him. The subject funds are public funds.
5. The accused allowed AFPI to take said public funds through a scheme involving the following acts:
 - a. Accused Ipong unilaterally chose and indorsed AFPI as project partner in implementing his PDAF-funded livelihood projects, in disregard of R.A. No. 9184 and its implementing rules and regulations. Said PDAF allocation was covered by SARO No. ROCS-07-05416.

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- b. Accused Ipong and Ortiz entered into a Memorandum of Agreement with AFPI for the implementation of said projects.
- c. Accused Ortiz, Jover and Cunanan caused the issuance of Land Bank Check No. 399418 in the amount of ₱4,900,000.00, sourced from accused Ipong's PDAF. Accused Ortiz approved Disbursement Voucher (DV) No. 012007050821 and signed the check. Accused Jover and Cunanan failed to carefully examine and verify the accreditation and qualifications of AFPI, and the supporting documents attached to said DV.
- d. Accused Ronquillo, on behalf of AFPI, received said check.
- e. The acts of accused public officers allowed accused Ronquillo to take possession of said PDAF-drawn public funds. The projects, being non-existent, were not implemented.

The Court finds that both Informations sufficiently allege acts constituting the essential elements of the crimes charged. The other issues raised by accused Ipong are matters of defense, which are better threshed out during the trial on the merits.

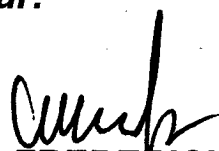
WHEREFORE, Accused Ipong's Motion is hereby **DENIED** for lack of merit.

The Office of the Ombudsman, through the Office of the Special Prosecutor, is hereby **DIRECTED** to resolve accused Ipong's Motion for Reconsideration, and report to this Court the result within ten (10) days from receipt of this Resolution.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


MICHAEL FREDERICK L. MUSNGI
Associate Justice


BAYANI H. JACINTO
Associate Justice