

Republic of the Philippines
SANDIGANBAYAN
Quezon City

Second Division

People of the Philippines,
Plaintiff,

Crim. Cases Nos. SB-17-CRM-1507 &
SB-17-CRM-1508

*For: Violation of Section 3(e) of
R.A. 3019, as amended*

-versus-

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

Gregorio B. Honasan II, et al.,
Accused.

Promulgated:

October 27, 2017

X-----X

RESOLUTION

HERRERA, JR., J:

For resolution of the Court is a ***Motion To Quash***¹ dated September 19, 2017, filed by accused Mehol K. Sadain, Galay M. Makalinggan and Aurora O. Aragon-Mabang (the Movants for short), through counsel, to which the plaintiff, through the Office of the Ombudsman, filed an ***Opposition To Accused Sadain, Makalinggan and Aragon-Mabang's Motion To Quash***² dated September 26, 2017.

The movants did not specifically cite any of the grounds for motion to quash provided for in ***Section 3, Rule 117 of the Rules of Criminal Procedure***, although they appear to be assailing the sufficiency of the allegations in the ***Information***.

The movants are charged with two (2) counts of ***Violation of Section 3(e) of Republic Act (R.A.) No. 3019***, also known as the ***Anti-***

¹ Record, Vol. 2, pp. 97-99

² Id, pp. 139-144



Graft and Corrupt Practices Act, under two (2) separate **Informations** both dated April 12, 2017.

In determining the sufficiency of the allegations in the information, the fundamental test is whether or not the facts alleged therein, if hypothetically admitted, would establish the elements of the offense charged.³

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.

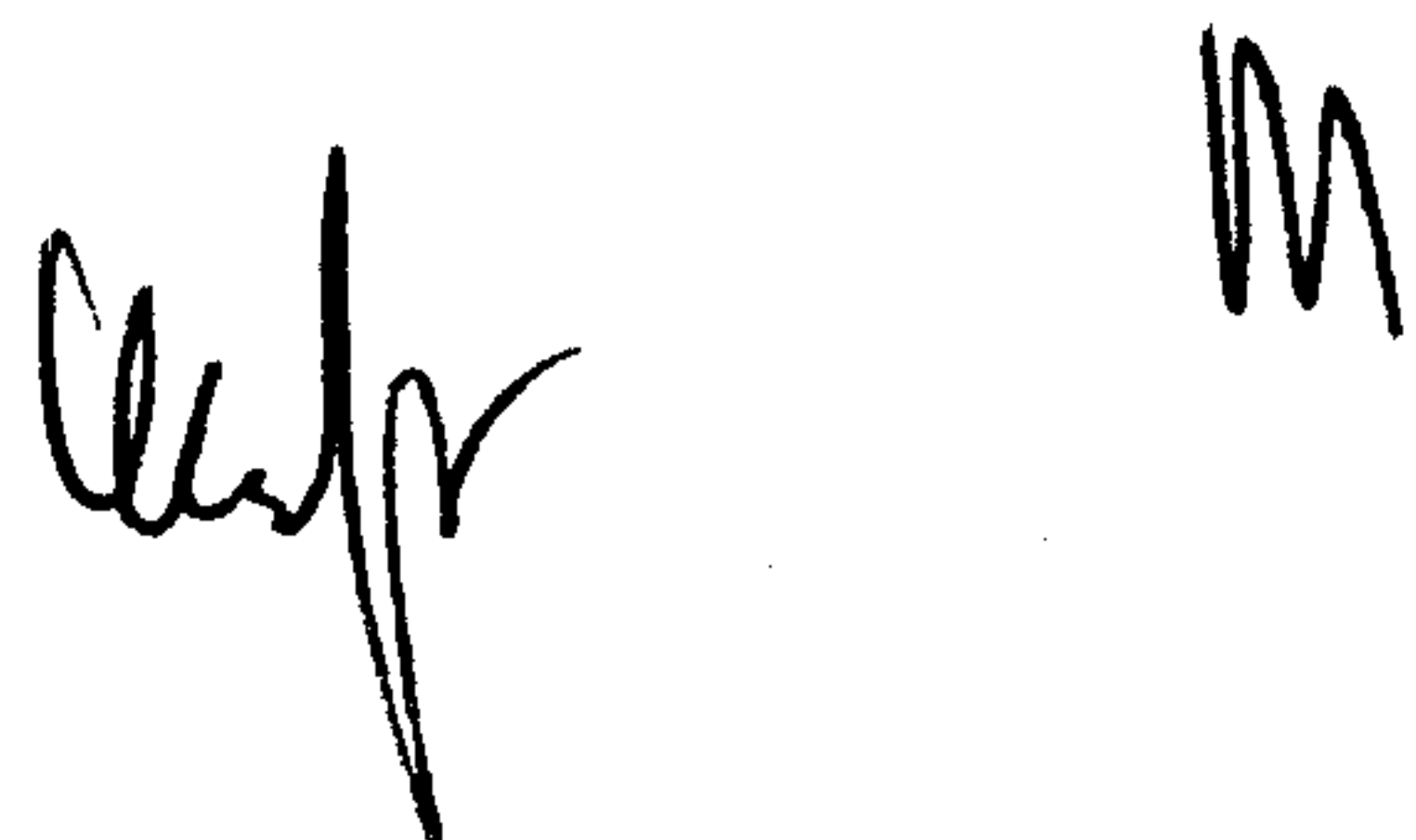
(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.”

The elements⁴ 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
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.

³ Lazarte v. Sandiganbayan, 581 SCRA 432

⁴ Collantes v. Marcelo, 531 SCRA 142

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The accusatory portion of the *Information*⁵ in Criminal Case No. SB-17-CRM-1507 reads:

“That in 2012, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within this Honorable Court’s jurisdiction, accused public officers **GREGORIO B. HONASAN II (Honasan)**, being then a Senator of the Philippines, **MICHAEL L. BENJAMIN (Benjamin)**, being then the Chief, Political Affairs/Project Coordinator, Office of Senator Honasan, Senate of the Philippines, **MEHOL K. SADAIN (Sadain)**, Secretary, **FEDELINA D. ALDANESE (Aldanese)**, Acting Chief Accountant, **OLGA S. GALIDO (Galido)**, Cashier III, all of the National Commission on Muslim Filipinos (NCFM), while in the performance of their administrative and/or official functions, conspiring with one another and with private individuals **GIOVANNI MANUEL C. GAERLAN (G. Gaerlan)**, Former President and **SALVADOR J. GAERLAN (S. Gaerlan)**, President and Former Secretary, both of the Focus on Development Goals Foundation, Inc. (FOCUS), acting with manifest partiality, evident bad faith and/or gross negligence, did then and there willfully, unlawfully, and criminally cause undue injury to the government and/or give unwarranted benefits and advantage to said private individuals in the amount of at least **TWENTY SEVEN MILLION PESOS (Php27,000,000.00)**, through the following acts:

- (a) **Honasan** unilaterally chose and indorsed Focus, a non-government organization operated and/or controlled by **G. Gaerlan** and **S. Gaerlan**, in implementing livelihood projects for the benefit of Muslim Filipinos in various Muslim communities in National Capital Region (NCR) and Zambales, which projects were funded by **Honasan’s** Priority Development Assistance Fund (PDAF) amounting to **THIRTY MILLION PESOS (Php30,000,000.00)** covered by **Special Allotment Release Order (SARO) No. BMB-G-12-T000000851**, despite the absence of a public bidding and violation of Section 53 (j) of the Implementing Rules and Regulations of R.A. 9184 and National Budget Circular No. 476, or in spite of the absence of any appropriation law or ordinance allowing the use of negotiated procurement with Focus pursuant to Government Procurement Policy Board Resolution No. 012-2007, or without complying with Sections 4.1 and 6 to 6.5 of GPPB Resolution No. 012-2007 requiring competitive bidding or negotiated procurement under Section 53 (j) of the IRR when an appropriation law or ordinance specifically earmarks an

⁵ Record, Vol. 1, pp. 2-3



amount for projects to be specifically contracted out to NGOs.

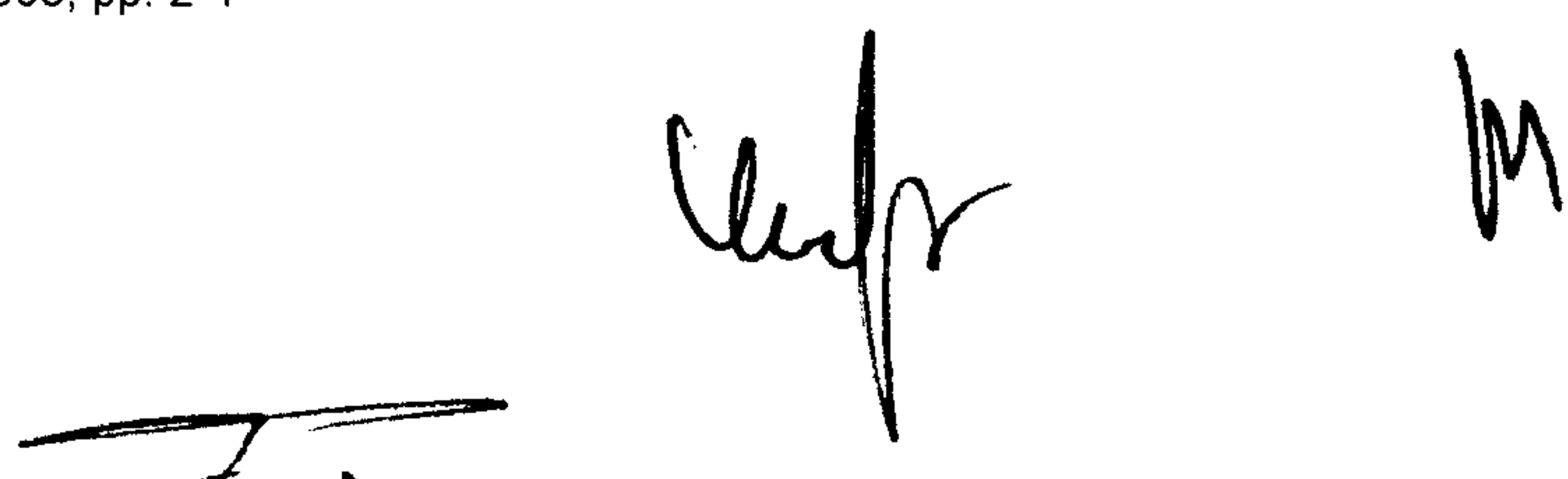
- (b) NCMF's **Sadain** then entered into a Memorandum of Agreement (MOA) with **Honasan**, represented by **Benjamin**, and Focus, represented by **G. Gaerlan**, on the purported implementation of **Honasan's** PDAF-funded projects;
- (c) **Sadain**, **Aldanese** and **Galido** facilitated and processed the disbursement of the subject PDAF release by approving (**Sadain**) for payment of the expenditure of Php27,000,000.00 covered by an unnumbered Disbursement Voucher (DV) and certifying (**Aldanese**) that the supporting documents are complete and proper; cash available, subject to ADA, as well as signing and issuing (**Galido**) the corresponding Landbank Check No. 445724 dated 30 May 2012 for said amount to Focus, with unusual accommodation and haste;
- (d) **S. Gaerlan**, acting for and in behalf of Focus, received the Landbank Check No. 445724 from NCMF and issued the corresponding Official Receipt No. 51; and
- (e) The above acts of the accused public officials of failing to follow the requirements of R.A. 9184 as well as its implementing rules and regulations, GPPB regulations and national budget circulars shows that unwarranted benefit, advantage or preference was given to private individuals without the benefit of a fair system for determining the best possible offer for the Government. Focus, as endorsed by **Honasan**, unduly profited from the questionable transactions, to the damage and prejudice of the Republic of the Philippines.

CONTRARY TO LAW.”

The accusatory portion of the **Information**⁶ in Criminal Case No. SB-17-CRM-1508 is similarly worded as that of Criminal Case No. SB-17-CRM-1507, quoted above, except only for details like the Disbursement Voucher No., the amount involved and the checks issued.

The Court finds that the averments in the two (2) **Informations** are sufficient in that they contain all the elements constituting a **Violation of**

⁶ Record of Crim. Case No. SB-17-CRM-1508, pp. 2-4

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Section 3(e) of R.A. 3019. The *Informations* allege every fact and circumstance necessary to constitute the offense charged.

In the *Motion To Quash*, the movants contend:

- “3. The facts cited in the two informations, however, **do not show that the government or any party was unduly injured, or how any party could have been unduly injured by the alleged acts of accused Sadain, Makalinggan and Aragon-Mabang.** The acts of accrediting the concerned non-government organization, entering into a memorandum of agreement and processing the pertinent vouchers after the required documents are submitted are all part of the official functions of herein accused. The two informations filed by the Office of the Ombudsman **do not show any audit undertaken or any determination whatsoever indicating that the alleged release and disbursement of the amount of Php Twenty Seven Million caused undue injury to the government or any party for that matter.**
4. **Neither do the two informations mention the nature or character of the alleged “undue benefits and advantage”** that herein accused could have given to “said private individuals” Giovanni Manuel C. Gaerlan and Salvador J. Gaerlan. **The absence of a public bidding alone does not necessarily and conclusively point to “undue benefits or advantage” because there are other means under the law for securing the services of an implementing non-government or people’s organization (NGO or PO).**
5. In addition, aside from the bare assertion of “acting with manifest partiality, evident bad faith or gross inexcusable negligence”, **no acts on the part of herein accused are also presented that will constitute manifest partiality, or evident bad faith or gross inexcusable negligence.** As earlier stated, the acts of accrediting the NGO, entering into a Memorandum of Agreement, facilitating and processing the subject PDAF funds, are **all part of the regular functions of herein accused, for which they can also be held liable for non-feasance if not undertaken under the circumstances.**
6. Finally, the allegation in the first paragraph on page 2 of both informations of the accused allegedly “CONSPIRING WITH ONE ANOTHER AND WITH PRIVATE INDIVIDUALS” while in the performance of

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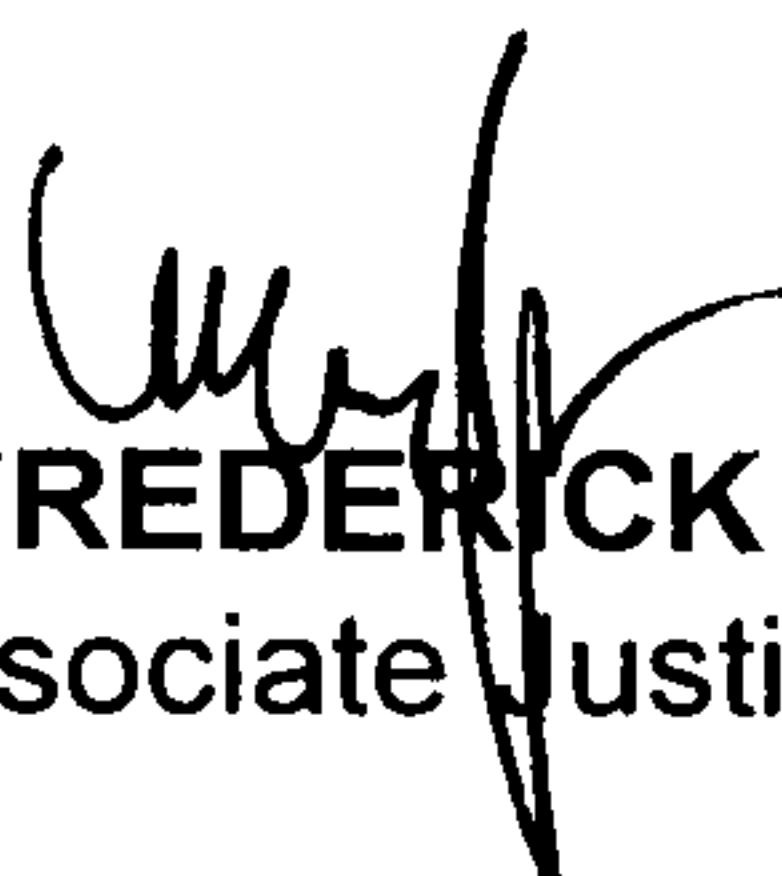
their administrative and/or official functions, is likewise not borne or supported by any statement in both informations. **There is nothing in each information to show what these conspiratorial acts are, or how they were committed by all the accused, as in fact, NO SUCH CONSPIRACY ever existed between and among the accused.**⁷

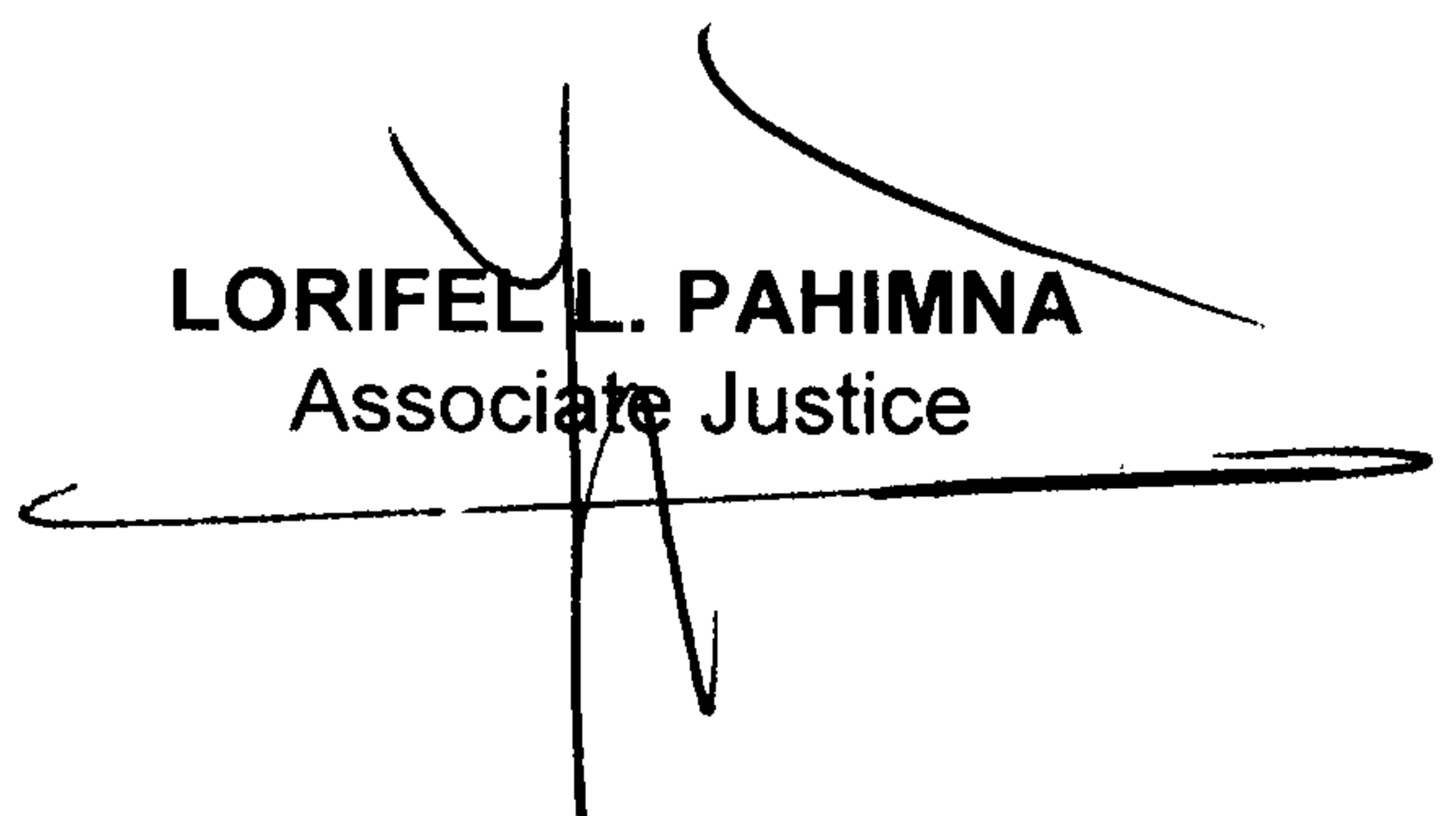
Suffice it to emphasize that facts which constitute the defense of the accused against the charge in the information must be established during the trial. Such facts and circumstances do not constitute proper ground for a motion to quash.⁸

WHEREFORE, premises considered, the ***Motion To Quash*** dated September 19, 2017, filed by accused Mehol K. Sadain, Galay M. Makalinggan and Aurora O. Aragon-Mabang, through counsel, is hereby denied.


OSCAR C. HERRERA, JR.
Chairperson

We concur:


MICHAEL FREDERICK L. MUSNGI
Associate Justice


LORIFEL L. PAHIMNA
Associate Justice

⁷ Record, Vol. 2, pp. 97-98

⁸ Soriano v. People, 591 SCRA 257-258