

Republic of the Philippines
SANDIGANBAYAN
Quezon City

Second Division

People of the Philippines,
Plaintiff,

Crim. Cases Nos. SB-16-CRM-0054 to
SB-16-CRM-0056

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

-versus-

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

Eduardo C. Zialcita, et al.,
Accused.

Promulgated:

November 7, 2017 *A*

X-----X

RESOLUTION

HERRERA, JR., J.:

This resolves the **Consolidated Motion To Include Accused Margie T. Luz Within The Coverage Of The Resolution Of Dismissal Of The Above-Entitled Case (Re: Resolution of Dismissal promulgated March 3, 2017)**¹ dated July 10, 2017, filed by accused Margie T. Luz (Movant for short), through counsel, to which the plaintiff, through the Office of the Special Prosecutor, Office of the Ombudsman, filed a **Comment/Opposition (to accused Margie T. Luz Consolidated Motion to Include Accused Margie T. Luz Within the Coverage of the Resolution of Dismissal of the Above-Entitled Case)**² dated August 15, 2017.

Movant is jointly charged with accused Eduardo C. Zialcita, Dennis B. Araullo, Gregorio P. Sangalang and Raymundo E. Brajanza with **Violation of Section 3(e) of Republic Act (R.A.) No. 3019**, also known as

¹ Record, Vol. 2, pp. 42-46

² Id, pp. 69-72

Conf *M*

2.

the **Anti-Graft and Corrupt Practices Act**, in Criminal Case No. SB-16-CRM-0054, and with **Malversation of Public Funds under Article 217 of the Revised Penal Code (RPC)**, in Criminal Case No. SB-16-CRM-0055. She is likewise jointly charged with accused Zialcita, Ma. Cristina J. Viscarra and Bernardo T. Mangubang with **Falsification of Public Documents under Article 171, paragraph 4 of the RPC**, in Criminal Case No. SB-16-CRM-0056.

The above-mentioned charges were filed pursuant to a **Resolution**³ dated June 20, 2013 of the Office of the Ombudsman.

On March 3, 2017, the Court promulgated a **Resolution**⁴ dismissing these cases as against accused Zialcita, Araullo and Braganza, on the ground of violation of their constitutional right to speedy disposition of cases. The dispositive portion of the **Resolution** reads:

"WHEREFORE, finding meritorious the Motion to Dismiss filed by accused Eduardo C. Zialcita, as adopted by accused Dennis B. Araullo and Raymundo E. Braganza, the same is hereby **GRANTED**.

Accordingly, Criminal Cases Nos. SB-16-CRM-0054 to 0056 filed against accused Zialcita, Araullo and Braganza are hereby **DISMISSED**. Let the bail bond posted by the accused for their provisional liberty be ordered cancelled and returned to them subject to the usual accounting and auditing rules and procedures. The hold-departure orders against the accused are also hereby ordered **LIFTED**. Accordingly, let a copy of this resolution be furnished the Bureau of Immigration.

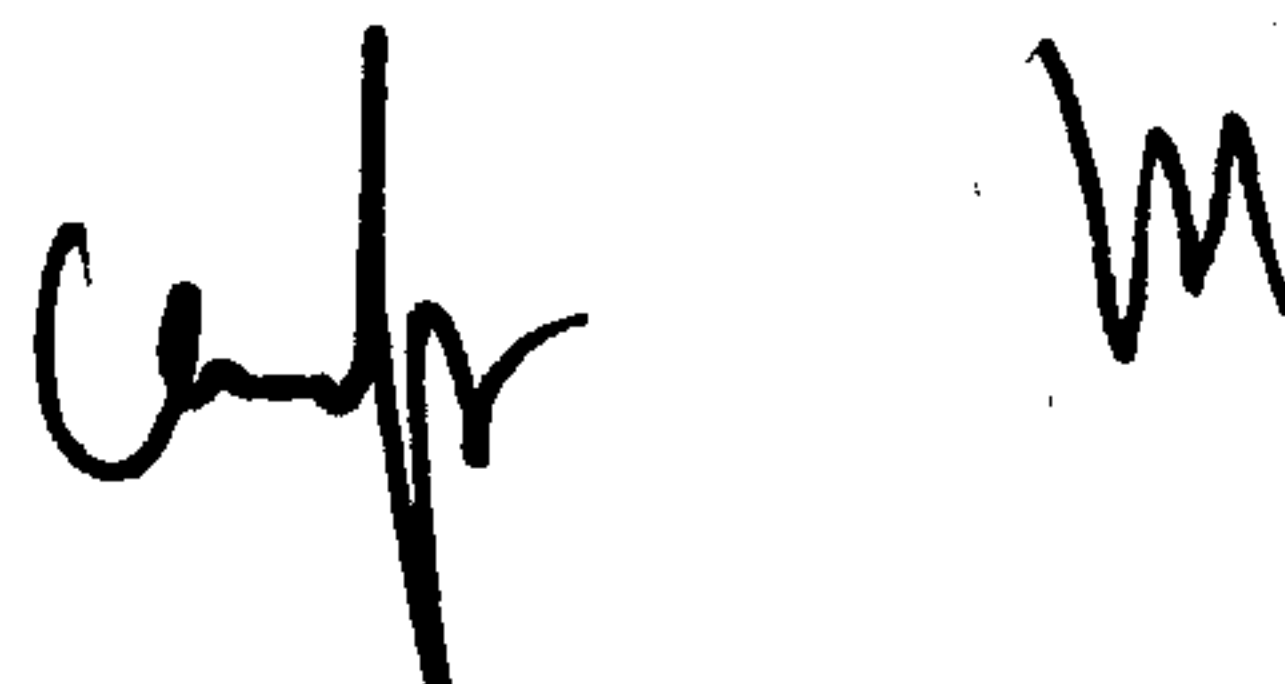
SO ORDERED."⁵

In dismissing the cases as against accused Zialcita, Araullo and Braganza, the Court, in the **Resolution** penned by Hon. Samuel R. Martires, then Chairman of the Second Division, took into account the

³ Record, Vol. 1, pp. 7-24

⁴ Id, pp. 439-447

⁵ Id, p. 447



length of time spent by the Office of the Ombudsman in the investigation of the cases and the filing of the informations in court. Thus, the Court declared, *inter alia*:

“But, as accused Zialcita points out, the fact-finding body of the Office of the Ombudsman, “Field Investigation Office (FIO) – Task Force Abono,” already spent five years in its own fact-finding investigation on the fertilizer scam. Even prior to this, the Commission on Audit had already come up with its own audit investigation and report which the Ombudsman must have duly considered. Meanwhile, the Senate Blue Ribbon Committee also had conducted an investigation into the same matter. In other words, it is safe to say that the substantial facts were already out in the open even before the FIO – Ombudsman initiated its own verification and investigation. Thus, when the Ombudsman, through FIO-Task Force Abono, concluded its fact-finding investigation, it already had a concrete plan of action, and presumably legal theories and bases. As a matter of fact, the FIO, as nominal complainant, initiated the several complaints the one that led to the filing of the present informations. To repeat, at this point, the Ombudsman must have had a fair idea already as to what to encounter during the subsequent proceedings, possible defences of the respondents and all.

It bears repeating that the complaint in these cases was filed on **May 2, 2011** and that the recommendation finding probable cause was issued on **June 20, 2013**, or a period of **one year and 10 months** (excluding the period between the order to submit counter-affidavit and the last counter-affidavit that was filed). However, it was only on **June 3, 2015** that Ombudsman Morales finally approved the above recommendation finding probable cause, or another period of **two years**. Ultimately, the informations were filed on **February 16, 2016**, or **more than four years** from the filing of the complaint.

Already discomfoting to us is the time spent (**almost two years**) in resolving the defences of the respondents, given the already lengthy period (**five years**) that the FIO utilized in the fact-finding investigation and formulation of theory to support the subsequent filing of the complaint. More troubling is the period of another **two years** spent by Ombudsman Morales to personally review the recommendation finding probable cause in these cases. We note that Ombudsman Morales approved the *Resolution* finding probable cause, with nary any modification to the discussion of the legal bases and conclusion.”⁶

⁶ Id, pp. 444-445

Carp

M

In her instant **Consolidated Motion, etc.**, movant contends that she is similarly situated as accused Zialcita, Araullo and Braganza, and thus prays that the **Resolution** of March 3, 2017 be applied to her.

The Court finds movant's contention meritorious.

To begin with, movant's **Consolidated Motion, etc.** may be, and shall be, treated by the Court as a **Motion To Quash**. Second, movant is indeed similarly situated as accused Zialcita, Araullo and Braganza, having been the subject of the same fact-finding and preliminary investigation conducted by the Office of the Ombudsman, as shown in its **Resolution** dated June 20, 2013. And third, the situation is akin to an accused who did not appeal, but benefits from the judgment of the appellate court which is favorable and applicable to him, as provided for in **Section 11(a), Rule 122 of the Rules of Court** which reads:

"Sec. 11. *Effect of Appeal by any of Several Accused.* --

- (a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable or applicable to the latter."

Finally, it appears that the Court has not acquired jurisdiction over the following accused: 1) Gregorio P. Sangalang, in Criminal Cases Nos. SB-16-CRM-0054 and 0055; 2) Ma. Cristina J. Viscarra and 3) Bernardo T. Mangubang, in Criminal Case No. SB-16-CRM-0056. No warrants of arrest have yet been issued against them, although the Court has already determine the existence of probable cause to hold the accused for trial, as per its **Resolution**⁷ of October 24, 2016.

⁷ Id, pp. 322-325

Conf *ln*

WHEREFORE, premises considered, the Court resolves, as follows:

1) To hereby grant the **Consolidated Motion To Include Accused Margie T. Luz Within The Coverage Of The Resolution Of Dismissal Of The Above-Entitled Case (Re: Resolution of Dismissal promulgated March 3, 2017)** dated July 10, 2017, filed by accused Margie T. Luz, through counsel.

These cases are hereby dismissed as against Margie T. Luz.

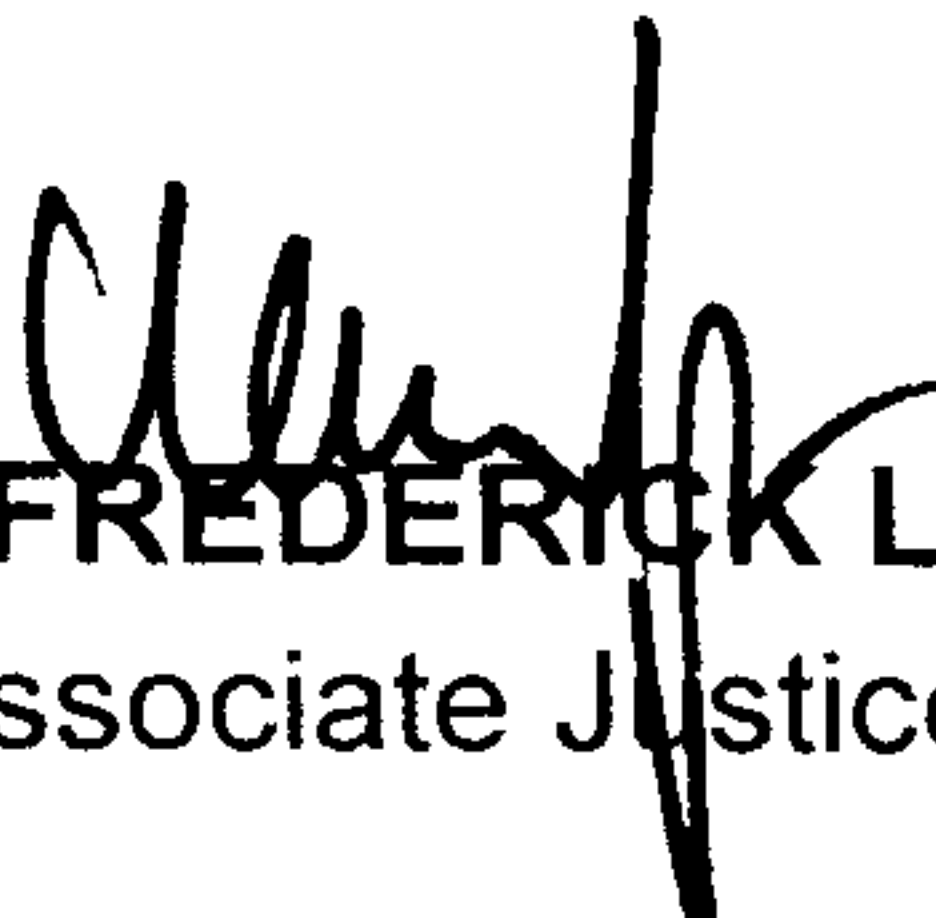
-and-

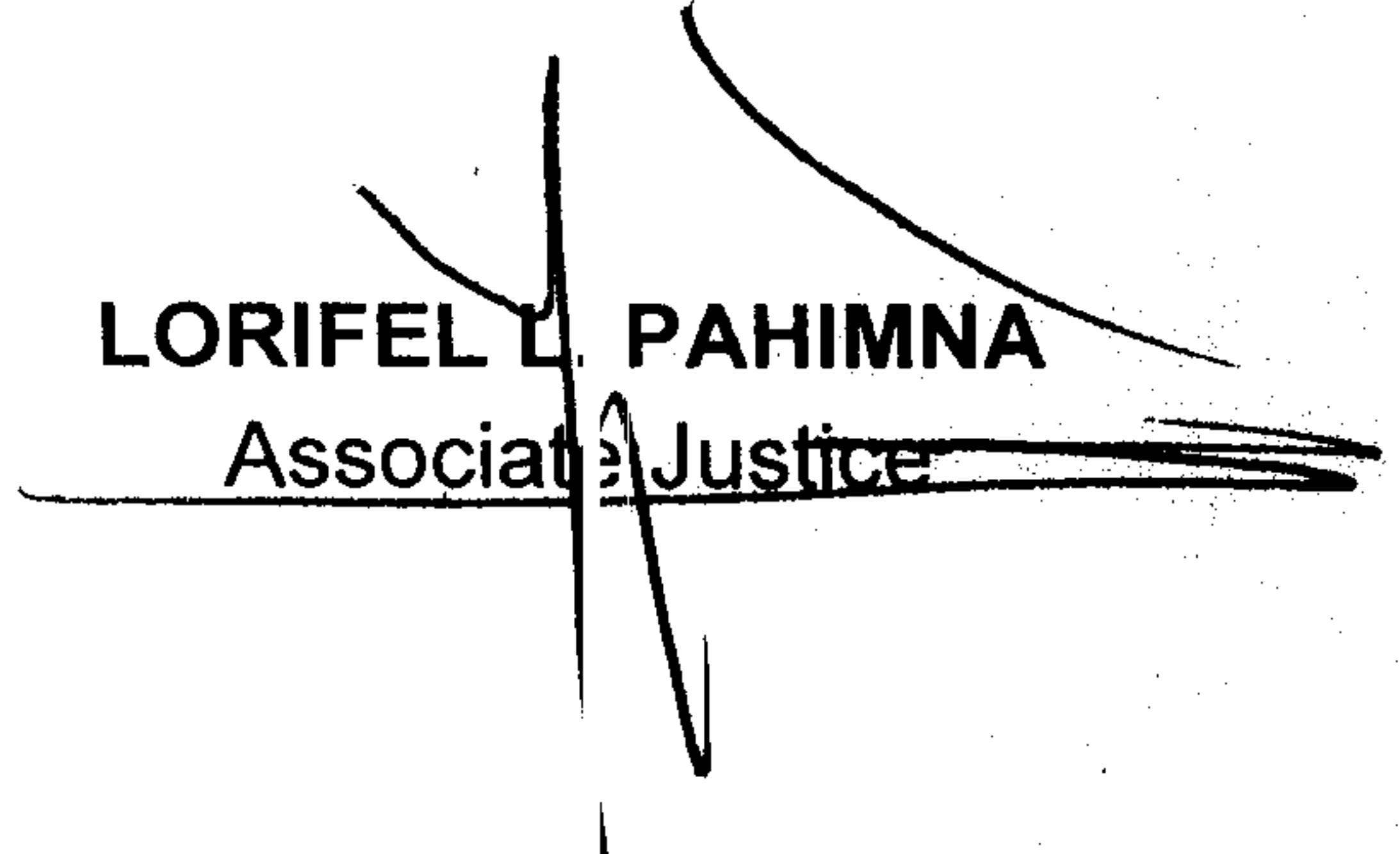
2) To hereby direct the issuance of warrants of arrest against accused Gregorio P. Sangalang, in Criminal Cases Nos. SB-16-CRM-0054 and 0055, and Ma. Cristina J. Viscarra and Bernardo T. Mangubang in Criminal Case No. SB-16-CRM-0056.

SO ORDERED.


OSCAR C. HERRERA, JR.
Chairperson

We concur:


MICHAEL FREDERICK L. MUSNGI
Associate Justice


LORIFEL L. PAHIMNA
Associate Justice