



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY

SPECIAL THIRD DIVISION

PEOPLE OF THE PHILIPPINES,

Plaintiff,

Criminal Case/s Nos. SB-16-CRM-0439 and 0442
For: Violation of Section 3(e) of Republic Act (R. A.) No. 3019, as amended

-versus -

JEJOMAR C. BINAY, SR., et al.,

Accused.

Criminal Case No. SB-16-CRM-0443
For: Malversation of Public Funds

Present:

CABOTAJE-TANG, PJ
FERNANDEZ, B., J. and
TRESPESES, Z.,¹ J.

Promulgated

JUNE 18, 2018

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RESOLUTION

CABOTAJE-TANG, P.J.:

For resolution is accused Jejomar Erwin S. Binay, Jr.'s Motion for Reconsideration (Re: 22 February 2018 Resolution) dated March 5, 2018.²

Accused Binay, Jr. prays for the reconsideration of the Court's Resolution promulgated on February 22, 2018, which

¹ J. Zaldy V. Trespeses is a signatory to the assailed Resolution.

² pp. 213-223, Vol. IV, Record

Resolution

Criminal Case No. SB-16-CRM-0439, 0442, 0443
People vs. Binay, Sr. et. al.

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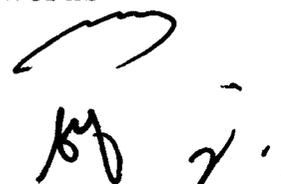
denied his motion to quash *Informations*.³ He argues that there is no basis for the Court to declare that all the elements of the offenses charged are sufficiently alleged in the *Informations* subject of these cases. He claims that the allegations in the *Information* in SB-16-CRM-0439 that an accused must have acted with manifest partiality, evident bad faith or gross inexcusable negligence is contradicted by the allegation therein that he merely approved the release of payments “in 2011 and 2013, based on the Obligation Requests signed by Badillo and Amores and upon recommendation of CPMO Chief Hernandez.” Likewise, the *Information* in SB-16-CRM-0442 does not specifically allege that accused Binay, Jr. acted with manifest partiality, evident bad faith or gross inexcusable negligence in entering into a contract with Hilmarc’s for the Phase III construction of the Parking Building. He contends that, on the contrary, the allegations in the said *Information* show that the pre-procurement activities, the bidding and the post-bidding activities were performed by other persons because by the time he was elected city mayor, the only thing left for him to do was sign the contract. Also, he insists that said *Information* does not allege his specific participation that would make him a conspirator.⁴

Anent the *Information* for malversation of public funds, accused Binay, Jr. argues that the said *Information* does not contain a “specific allegation regarding his custody of public funds.” He claims that “custody of public funds” is not among the powers, duties and function of a mayor under the Local Government Code. Moreover, he claims that the phrase “in custody of public funds” averred in the *Information* for malversation refers to only to accused Barlis:

18. While it is conceded, the *Information* contains the words “in custody of public funds of Makati City during their respective incumbencies, for which funds they are accountable by reason of their office,” it is clear that this phrase refers only to the accused NELIA ARGANA BARLIS. Undeniable is the fact that the Ombudsman used a semi-colon after the phrase “City Mayor for the period 1 July 2010 to 2013” in the *Information*, unquestionably indicating that the words

³ pp. 880-895, Vol. III, Record

⁴ pp. 2-3, Motion for Reconsideration; pp. 214-215, Vol. IV, Record



Resolution

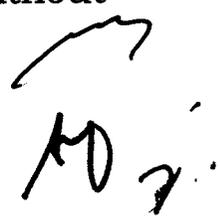
Criminal Case No. SB-16-CRM-0439, 0442, 0443
People vs. Binay, Sr. et. al.
X-----X

“in custody of public funds of Makati City during their respective incumbencies, for which funds they are accountable by reason of their office” merely refer to then City Treasurer, and not the others whose names were mentioned prior to the use of semi-colon.

Accused Binay, Jr. also argues that the averment that the accused “consent[ed] to the misappropriation by MANA, through Mateo, of said public funds in the total amount of P11,011,294.77, more or less...” does not satisfy the requirement of sufficiency of alleging acts constituting malversation. Accused Binay, Jr., submits *that the acts of “appropriation,” “taking,” and “misappropriation” constitutive of the crime of malversation refers to the accused as the actor or the person charged with having “appropriated,” “taken,” or “misappropriated.”* In contrast, *insofar as one may be liable for “consenting” or “permitting,” the same applies only when it is another person who “takes” public funds or property.* Thus, he concludes that the allegation that accused Binay, Jr. “consented” to the “misappropriation” of public funds by MANA is woefully insufficient to constitute the offense of malversation as charged.⁵

The prosecution opposed the subject motion. It contends that there is absolutely no reason to reconsider the assailed Resolution purportedly because “there are actually no new arguments offered by accused Binay, Jr.” At any rate, it claims that accused Binay, Jr. “*failed to articulate how and why the allegation of acting with manifest partiality, evident bad faith or gross inexcusable negligence runs contrary to the allegation that he approved the release of payments in 2011 and 2013 based on the Obligation Requests signed by Badillo and Amores and upon recommendation of CPMO Chief Hernandez.*” It further claims that accused Binay, Jr. tries to downplay his part by simply saying that his participation was merely to approve the payment but forgets that his signature showed his discretion as a mayor and signified his acquiescence and complicity to the blatant disregard of the requirements of the law. It stresses that the *Information* for violation of Section 3(e) of R.A. No. 3019 avers that the processing and releasing of payments was done without

⁵ pp. 4-9, Motion for Reconsideration; pp. 216-221, Vol. IV, Record

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Resolution

Criminal Case No. SB-16-CRM-0439, 0442, 0443

People vs. Binay, Sr.*et. al.*

X-----X

the required documents.⁶ It also cites **People vs. Pantaleon**,⁷ to remind accused Binay, Jr. of his accountability for public funds as a mayor of Makati.⁸

On the issue of the sufficiency of the allegation of conspiracy in the *Informations*, the prosecution argues that it is enough to allege conspiracy as a mode in the commission of an offense by the use of the word “conspire” or any term synonymous therewith. It adds that the proper time to present evidence that will support the allegation of conspiracy shall be during the trial and not during this stage when only the sufficiency of the *Information* is in issue. It claims that as correctly held by the Court, the arguments raised by accused Binay, Jr. are evidentiary in nature.⁹

Finally, the prosecution contends that it is evident from the repetitive arguments of accused Binay, Jr. that the subject motion was filed in an attempt to postpone his scheduled arraignment on March 9, 2018. At any rate, it claims that the arguments had been thoroughly ruled upon by the Court in its previous Resolutions “*that to go through each and every issue is a total waste of the Honorable Court’s time.*”¹⁰

The Court finds the motion for reconsideration devoid of merit.

An examination of the subject motion for reconsideration shows that accused Binay, Jr. has not raised any cogent reason that would warrant a reversal of this Court’s Resolution promulgated on February 22, 2018. Accused Binay, Jr. merely raises the same arguments he invoked in his motion to quash *Informations* which the Court had squarely passed upon, *i.e.*, whether all the elements of the offense charged are alleged in the *Information*.

As ruled by the Court in its assailed Resolution, the *Informations* sufficiently allege all the elements of the crimes charged, to wit:¹¹

⁶ pp. 2-3, Opposition; pp. 241-242, Vol. IV, Record

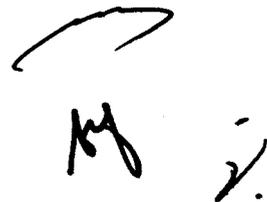
⁷ G.R. No. 158694, March 13, 2009

⁸ p. 5, Opposition; p; 244, Vol. IV, Record

⁹ pp. 4-6, Opposition; pp/ 243-245, Vol. IV, Record

¹⁰ p. 6, Opposition; p. 245, Vol. IV, Record

¹¹ pp. 3-12, Resolution promulgated on February 22, 2018; pp. 882-891, Vol. IV, Record; citations omitted

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Resolution

Criminal Case No. SB-16-CRM-0439, 0442, 0443
People vs. Binay, Sr.*et. al.*

X-----X

I. The Informations charging accused Binay, Jr. with the crimes of malversation of public funds and violation of Section 3 (e) of R.A. No. 3019 sufficiently allege the constitutive elements of the said crimes.

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Accused Binay, Jr. moves to quash the *Informations* charging him with the crimes of malversation of public funds and violation of Section 3 (e) of R.A. No. 3019. According to him, "a close scrutiny of the said *Informations* would reveal that the allegations of the essential elements of the crimes charged therein are clearly and absolutely wanting. Accordingly, the same ought to be quashed not just pursuant to the dictates of the Rules of the Court but, more importantly, because they violate Accused Binay, Jr.'s constitutional right."

A motion to quash an *Information* on the ground that the facts charged do not constitute an offense should be resolved on the basis of the allegations in the *Information* whose truth and veracity are hypothetically admitted. The question that must be answered is whether such allegations are sufficient to establish the elements of the crime charged without considering matters *aliunde*. In proceeding to resolve this issue, courts must look into three (3) matters: [1] what must be alleged in a valid *Information*; [2] what the elements of the crime charged are; and [3] whether these elements are sufficiently stated in the *Information*.

Section 6, Rule 110 of the Rules of Court provides that a complaint or information is sufficient if it states the name of the accused, the designation of the offense by the statute, the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed. When an offense is committed by more than one person, all of them shall be included in the complaint or information.

To determine the sufficiency of the allegations in the *Informations*, the acts or omissions complained of

Resolution

Criminal Case No. SB-16-CRM-0439, 0442, 0443

People vs. Binay, Sr.*et. al.*

X-----x

must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged and enable the court to know the proper judgment. The *Information* must allege clearly and accurately the elements of the crime charged. What facts and circumstances are necessary to be included therein must be determined by reference to the definition and elements of the specific crimes.

The test is whether the crime is described in intelligible terms with such particularity as to apprise the accused, with reasonable certainty, of the offense charged. The purpose of the rule is to enable the accused to suitably prepare his defense. Another purpose is to enable accused, if found guilty, to plead his conviction in a subsequent prosecution for the same offense. The use of derivatives or synonyms or allegations of basic facts constituting the offense charged is sufficient.

With the aforesaid precepts as guide, the Court shall now examine the allegations in the subject *Informations* to determine the merit of accused Binay, Jr.'s assertions.

A.

Malversation of Public Funds

The *Information* in **SB-16-CRM-0443** charging accused Binay, Jr., together with the accused public officials of the City of Makati, with the crime of malversation of public funds under Article 217 of the Revised Penal Code reads:

... ..

The elements of the crime of malversation under Article 217 of the Revised Penal Code are: (1) that the offender is a public officer; (2) that he had the custody or control of funds or property by reason of the duties of his office; (3) that those funds or property were public funds or property for which he was accountable; and (4) that he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another

Resolution

Criminal Case No. SB-16-CRM-0439, 0442, 0443
People vs. Binay, Sr.*et. al.*

-7-

X-----X

person to take them.

All the aforesaid elements are sufficiently alleged in the subject *Information*.

First. Accused Binay, Jr. was a public officer at the time material to this case being the Mayor of the City of Makati from July 1, 2010 up to 2013.

Second. The *Information* alleges that as the City Mayor of Makati, he had in his custody, together with the accused City Treasurer, public funds of Makati City for which they were accountable by reason of their office.

Third. The amount of P11,011,294.77 are public funds which were paid by the City of Makati to MANA without the latter being able to give its deliverables under its contract.

Fourth. Accused Binay, Jr., in conspiracy with the other accused public officers of the City of Makati, consented to the misappropriation by MANA, through Mateo, of said public funds in the total amount of P11,011,294.77, more or less, by causing the payment of the said amount to MANA without receiving MANA's deliverables under the contract for the architectural design and engineering services for the construction of the Makati City Hall Parking Building, to the damage and prejudice of Makati City, through the following acts: (a) ensuring that the Contract was awarded to MANA by dispensing with public bidding and resorting by the BAC composed of De Veyra, Dasal and Amores, as approved by Binay, Sr., to enter into a negotiated contract, in violation of R.A. No. 9184 and its Implementing Rules and Regulations [IRR]; (b) entering through Binay, Sr. into the said Contract with Mateo, as representative of MANA, despite the glaring flaws in the procurement process; (c) processing and releasing of payments, without the complete required documents, to MANA by Pestaño, Querijero, Lim, acting as City Accountant on different occasions, De Veyra, as City Administrator, Amores as City Budget Officer, Barlis as City Treasurer, which release of payments were approved in 2008 and 2009 by Binay, Sr. and in 2011 and 2013, based on the Obligation Requests signed by Badillo and Amores and upon the recommendation of CPMO Chief Hernandez, by Binay, Jr. and accepted by Mateo, on behalf of MANA in



Resolution

Criminal Case No. SB-16-CRM-0439, 0442, 0443

People vs. Binay, Sr. et. al.

X-----x

the total amount of P11,011,294.77, net of tax, despite violation of R.A. No. 9184 and its IRR and MANA's failure to deliver the approved plans and specifications for the construction of the Makati City Hall Parking Building.

Plainly, the subject *Information* sufficiently complies with the requirements of Section 6, Rule 110 of the Revised Rules of Court, as it contains the material allegations constituting the elements of the crime of malversation of public funds; hence, it is not a proper subject of a motion to quash.

B.

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

The *Informations* in **SB-16-CRM-0439** and **SB-16-CRM-0442**, charging accused Binay, Jr. with the crime of violation of Section 3 (e) of R.A. No. 3019 respectively read:

... ..

Jurisprudence teaches that the elements of the crime of violation of Section 3 (e) of R.A. No. 3019 are the following:

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

A simple perusal of the allegations in the above-quoted *Informations* readily shows that they comply with

Resolution

Criminal Case No. SB-16-CRM-0439, 0442, 0443

People vs. Binay, Sr.*et. al.*

X-----X

-9-

the requirements of Section 6, Rule 110 of the Rules of Court considering that all the constitutive elements of the said crime are alleged therein.

The subject *Informations* accurately allege that accused Binay, Jr., as the former Mayor of the City of Makati from July 1, 2010 to 2013, together with his co-accused public officials of the City of Makati, in such official capacity, acting with manifest partiality, evident bad faith, and/or gross inexcusable negligence, conspiring with one another and with the accused private individuals (Mateo and Canlas), willfully, unlawfully and criminally give unwarranted benefits, advantage and preference to MANA and Hilmarc by: (1) awarding the contract for the architectural design and engineering services for the Makati City Hall Parking Building to MANA, in disregard of the requirements under R.A. No. 9184 and its IRR, and cause undue injury to the government of Makati City in the amount of PhP11,011,249.77, more or less, after they caused the payment of said amount to MANA despite the latter's failure to deliver the approved plans and specifications under the subject contract, and (2) awarding to Hilmarc the contract in connection with the Phase III construction of the Makati City Hall Parking Building through purported simulated public bidding and which act allegedly caused "*undue injury to the government by depriving Makati City of the opportunity to obtain the most advantageous offer for the project.*"

Likewise, all the other issues, *i.e.*, sufficiency of the allegation of the custody of public funds in the Information for malversation, accused Binay, Jr. being an accountable officer, his participation in the crimes being charged and the sufficiency of the allegation of conspiracy, have been considered and thoroughly passed upon by the Court in its assailed Resolution. Consider:¹²

Accused Binay, Jr., however, argues that the aforesaid *Informations* should be quashed based on the following arguments:



¹² pp. 12-16, Resolution promulgated on February 22, 2018; pp 891-895, Vol. IV, Record; citations omitted

Resolution

Criminal Case No. SB-16-CRM-0439, 0442, 0443

People vs. Binay, Sr.*et. al.*

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1. The *Information* charging him with the crime of malversation of public funds "*miserably failed to sufficiently allege the facts leading to the conclusion that Accused has the custody or control of the subject funds or property by reason of the duties of his office.*"

1.1 There has been no allegation of fact in the *Information* that he actually received public funds in the course of events leading to the present case, that would allow an asportation of public funds, akin to the taking of another's property in theft.

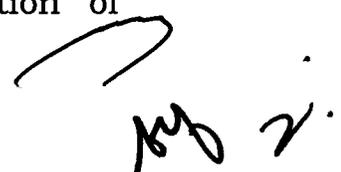
1.2 His position as Mayor of the City of Makati does not actually give him physical access to the subject funds. As such, there is no scenario where accused Binay, Jr. could be considered an accountable officer who can be made liable for malversation of public funds under Article 217 of the Revised Penal Code.

1.3 He cannot be said to have committed the unlawful act of malversation of public funds considering that all he did was pay the obligation already incurred by the City of Makati under a contract that was entered into even before he became a mayor, which was valid and subsisting during his term.

2. The *Informations* charging him with the crime of violation of Section 3 (e) of R.A. No. 3019 do not allege "*ultimate facts to support the conclusion that there was an act done by accused Binay, Jr. himself through manifest partiality, evident bad faith, or gross inexcusable negligence or that he caused any undue injury to any party, including the government, or gave any unwarranted benefits or advantage or preference.*"

2.1 There is nothing in the "*subject Informations which would clearly and transparently show the specific actions actually performed by Accused Binay, Jr. that were conducted with a dishonest purpose, or some moral obliquity and conscious doing of a wrong; or a breach of some duty through some motive or intent or ill will. The allegations made therein are mere generalizations which render the Informations defective or susceptible of quashal.*"

2.2 The allegations that accused Binay, Jr. signed pertinent documents related to the construction of

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Resolution

-11-

Criminal Case No. SB-16-CRM-0439, 0442, 0443
People vs. Binay, Sr. et. al.

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Makati City Hall Building II, without more, cannot be considered sufficient to show that he acted with any degree of partiality, bad faith or gross negligence.

3. Conspiracy cannot be established in these cases because the *Informations* "miserably failed to state any act in particular that would tend to show any common design between accused Binay, Jr. and his co-accused or that he was even aware of the irregularities in their acts."

3.1 Other than the plain, baseless and hollow allegation that accused Binay, Jr. conspired with his co-accused, there is nothing on the face of the said *Informations* which specifically points out to any act of conspiracy. Accused Binay, Jr. is merely concluded to have been involved in the supposed conspiracy on the basis of his signature on pertinent documents. This clearly cannot give rise to an inference of conspiracy.

The Court finds the said arguments devoid of merit.

It is settled that an *Information* only needs to state the *ultimate facts* constituting the offense; the evidentiary and other details (*i.e.*, the facts supporting the ultimate facts) can be provided during the trial.

Ultimate facts are defined as "those facts which the expected evidence will support. The term does not refer to the details of probative matter or particulars of evidence by which these material elements are to be established." **It refers to the facts that the evidence will prove at the trial.** Ultimate facts have also been defined as the principal, determinative, and constitutive facts on whose existence the cause of action rests; they are also the essential and determining facts on which the court's conclusion rests and without which the judgment would lack support in essential particulars.

Evidentiary facts, on the other hand, are the facts necessary to establish the ultimate facts; they are the premises that lead to the ultimate facts as conclusion. **They are facts supporting the existence of some other alleged and unproven fact.**

Applying the aforesaid precepts to these cases, it is undeniable that the matters raised by accused Binay, Jr. in his motion to quash the *Informations*, *i.e.*, there are



Resolution

Criminal Case No. SB-16-CRM-0439, 0442, 0443
People vs. Binay, Sr. et. al.

X-----x

allegedly no facts showing that he had custody or control of the subject funds by reason of his office which would allow him to take the same, that the allegations in the *Informations* charging him with the crime of violation of Section 3 (e) of R.A. No. 3019 do not support the conclusion that there was an act done by him through manifest partiality, evident bad faith or gross inexcusable negligence or that he caused any undue injury to any party, including the government, or gave any unwarranted benefits or advantage or preference, there is nothing in the subject *Informations* showing the specific actions actually performed by him that were conducted with a dishonest purpose, or some moral obliquity and conscious doing of a wrong; or a breach of some duty through some motive or intent or ill will, are unquestionably **evidentiary facts** which need not be alleged in the subject *Informations*.

To reiterate, only ultimate facts should be alleged in a criminal *Information*. As extensively discussed above, the *Informations* charging accused Binay, Jr. with the crimes of malversation of public funds and violation of Section 3 (e) of R.A. No. 3019 sufficiently allege the ultimate facts required by the Rules of Court for a valid indictment for the said crimes.

Moreover, the other issues raised by accused Binay, Jr., *i.e.*, his position as Mayor of the City of Makati does not make him an accountable officer who can be made liable for malversation of public funds under Article 217 of the Revised Penal Code, he could not have committed an unlawful act since all he did was pay the obligation already incurred by the City of Makati under a contract that was entered into even before he became a Mayor, which was valid and subsisting during his term, and his act of signing pertinent documents related to the construction of Makati City Hall Building II, without more, cannot be considered sufficient to show that he acted with any degree of partiality, bad faith or gross negligence, are clearly not proper subjects of a motion to quash. Evidently, these are matters of defenses which are better ventilated and threshed out during the trial of these criminal cases.

Finally, in ***Estrada vs. Sandiganbayan***, the Supreme Court explained that it is enough to allege conspiracy as a mode in the commission of an offense in

Resolution

Criminal Case No. SB-16-CRM-0439, 0442, 0443
People vs. Binay, Sr. *et. al.*

-13-

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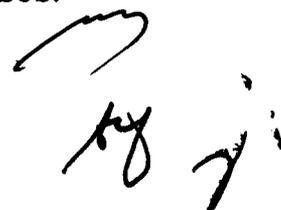
either of the following manner: (1) **by use of the word conspire, or its derivatives or synonyms, such as confederate, connive, collude, etc.**; or (2) by allegations of basic facts constituting the conspiracy in a manner that a person of common understanding would know what is intended, and with such precision as would enable the accused to competently enter a plea to a subsequent indictment based on the same facts.

Here, the *Informations* in **SB-16-CRM-0439, SB-16-CRM-0442, and SB-16-CRM-0443** uniformly allege that the accused public officials of the City of Makati, "**conspire[ed] with one another xxx.**" Thus, pursuant to the teachings of the Supreme Court in **Estrada**, this is a sufficient allegation of conspiracy among accused Canlas and the accused local public officials of the City of Makati.

Since there is a proper allegation of conspiracy, accused Binay, Jr. cannot validly move to quash the subject *Informations*. In fact, by filing the subject motions to quash, he already hypothetically admitted the allegations therein, including the allegation that he conspired with the accused local government officials in committing the offenses charged.

Indeed, a motion to quash an *Information* is the mode by which an accused assails the validity of a criminal complaint or *Information* filed against him for insufficiency on its face in point of law, or for defects which are apparent in the face of the *Information*. This motion is a **hypothetical admission of the facts alleged in the Information, for which reason, the court cannot consider allegations contrary to those appearing on the face of the information.**

To be sure, accused Binay, Jr.'s insistence that conspiracy "*must be proved as convincingly as the criminal act itself,*" is true only during the **trial of the case** and not as to the manner of alleging the same in the criminal *Information*. The determination of whether conspiracy indeed attended the commission of the complained acts is a matter that should be established during the trial of these criminal cases.



Resolution

-14-

Criminal Case No. SB-16-CRM-0439, 0442, 0443

People vs. Binay, Sr.*et. al.*

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In sum, the Court finds that accused Binay, Jr. has failed to present any sound reason for the Court to overturn its Resolution promulgated on February 22, 2018.

WHEREFORE, the Court **DENIES** the *Motion For Reconsideration (Re: 22 February 2018 Resolution)* dated March 5, 2018, filed by accused Jejomar Erwin S. Binay, Jr., for being *pro forma* and for lack of merit.

SO ORDERED.

Quezon City, Metro Manila.

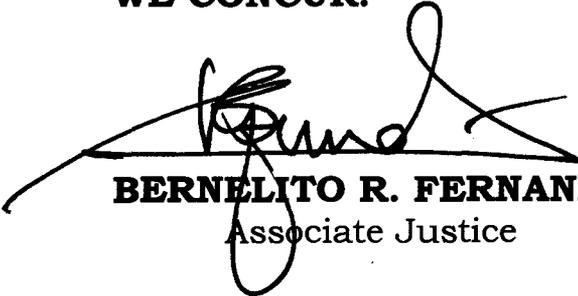


AMPARO M. CABOTAJE-TANG

Presiding Justice

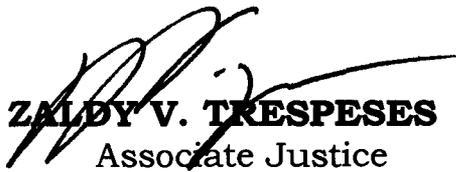
Chairperson

WE CONCUR:



BERNELITO R. FERNANDEZ

Associate Justice



ZALDY V. TRESPESES

Associate Justice