



Republic of the Philippines
Sandiganbayan
Quezon City

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-18-CRM-0158,
0159 and 0165

- versus -

JEJOMAR ERWIN S. BINAY, JR., et al
Accused.

Present:
Lagos, J., Chairperson,
Mendoza – Arcega and
Corpus - Mañalac, JJ.

Promulgated:

June 18, 2018 *lal*

X ----- X

RESOLUTION

CORPUS - MAÑALAC, J.:

This resolves the “*Motion to Quash Information and/or Dismiss the Case*” filed by accused Eleno Mendoza, Jr. in **SB-18-CRM-0158** and **0159**, both for violation of RA 3019, Section 3 [e], and in **Crim Case No. SB-18-CRM-0165** for Falsification, as well as the prosecution’s Consolidated Comment/Opposition thereto.

The accusatory portion of the Information in **Crim Case No. SB-18-CRM-0158** alleges:

In July 2011 to August 2012, or thereabout, in Makati City, Philippines, and within the Honorable Court’s jurisdiction, accused **Jejomar C. Binay, Sr.** (Binay, Sr), then City Mayor; **Marjorie A. De Veyra** (DeVeyra), then City Administrator and Chairperson of the Bids and Awards Committee (BAC); **Gerarardo K. San Gabriel** (San Gabriel), then BAC Vice-Chairman; **Pio Kenneth I. Dasal** (Dasal), then City Legal Officer and BAC member; **Lorenza P. Amores** (Amores), then City Budget Officer and BAC Member; **Manolito N. Uyaco** (Uyaco), then BAC Secretary and Head of the BAC Secretariat; **Rodel R. Nayve**, then Head of the BAC Technical Working Group (BAC-TWG); **Cecilio P. Lim III** (Lim) then City Accountant; **Raydes B. Pestano** (Pestano), then Acting City Accountant; **Eleno M. Mendoza, Jr.**, (Mendoza), then Acting City Administrator; **Nelia A. Barlis**, then City Treasurer, **Ralph E. Liberato** (Liberato), then BAC Secretariat member; all public officers of Makati City, while in the performance of their respective administrative and/or official functions and committing the offense in relation to office, conspiring with one another, and with private individuals **Efren M. Canlas** of Hilmarc’s Construction Corporation (Hilmarc’s), acting with manifest partiality, evident bad faith, and/or gross inexcusable negligence,

did then and there willfully, unlawfully and criminally give unwarranted benefits, advantages and preference to Hilmarc's, and cause undue injury to the government, by awarding Hilmarc's the Contract in the amount of Php 394,559,778.00 for Phase V construction of the ten-storey Makati Science High School Building (Science Building) through a simulated public bidding, in violation of RA 9184 and its implementing rules and regulations (IRR), as follows:

- a) Circumvention of the provision of RA 9184 by Binay, Sr., De Veyra, Dasal, Amores, Condes and Nayve by, among other things:
 - 1) falsifying the publication of the Invitation to Apply for Eligibility and to Bid (IAETB) in Balita Newspaper;
 - 2) not posting the IAETB in the official website of Makati City;
 - 3) not complying with the required number of days of the posting of the IAETB in the city's conspicuous places;
 - 4) not including in the IAETB the relevant eligibility criteria by which the bids shall be compared; and
 - 5) preparing and signing the Abstract of Bids and Post-Qualification Report despite knowledge and absence of public bidding;
- b) De Veyra, Dasal, Amores, Uyaco, Nayve, and Liberato collectively making it appear on the BAC Resolution and the Abstract of Bids that Hilmarc's, through Canlas, was the bidder with the Lowest Calculated and Responsive Bid (LCRB), which documents were signed and approved by Binay, Sr., despite knowing the absence of public bidding;
- c) Entering, through Binay, Sr., into the Contract for Phase IV construction of the Science Building with Canlas, on behalf of Hilmarc's and proceeding with the said project despite the glaring violation of R 9184 and its IRR;
- d) Processing and releasing of the payments amounting to Php 382,114,957.48, more or less, to Hilmarc's by De Veyra, Amores, Lim, Pestano, Mendoza, and Barlis, which payments were approved by Binay, Jr., and received by Canlas, despite deficiencies in the required supporting documents.

CONTRARY TO LAW.

The Information in **Crim Case No. SB-18-CRM-0159** is similarly worded as in the foregoing, except for the variance in the following details, to wit:

Case No	Date of Commission	Project Involved	Amount of Damage to Gov.	Amount of Payments to Hilmarc's	Group of accused
SB-18-CRIM-0159	7/2011-8/2012	Phase VI	Php165,264,847.00	Php154,935,794.00	Binay, Jr., Mendoza, Jr, San Gabriel, Dasal, Amores, Badillo, Uyaco, Nayve, Pestaño, Barlis, Liberato, Canlas

On the other hand, the Information in **Crim Case No. SB-18-CRM-0165** alleges:

“On 19 July 2013, or thereabout, in Makati City, Philippines, and within this Honorable Court’s jurisdiction, accused Makati City public officers City Mayor and Head of the Procuring Entity (HOPE) **JEJOMAR ERWIN SOMBILLO BINAY, JR. (Binay, Jr.)**, City Administrator and Chairperson and Chairperson of the Bids and Awards Committee (BAC) **MELENO MONASTERIAL MENDOZA, JR. (Mendoza)**, City Department Head II and BAC Member **GERARDO KANGLEON SAN GABRIEL (San Gabriel)**, City Legal Officer and BAC Member **PIO KENNETH ILANO DASAL (Dasal)**, City Budget Officer and BAC Member **LORENZA P. AMORES (Amores)**, and BAC Secretariat Head **MANOLITO N. UYACO (Uyaco)**, while in the performance and taking advantage of their official functions as such, conspiring with one another, did then and there willfully, unlawfully, and feloniously falsify the 19 July 2013 BAC Resolution, an official document, and its supporting documents, declaring Hilmarc’s Construction Corporation (Hilmarc’s) as the bidder who submitted the Lowest Calculated Responsive Bid, with the recommendation to award it the contract for the Phase VI Construction of the Makati Science High School Building (Science Building), which was approved by **Binay, Jr.** as HOPE, by making it appear therein that a public bidding for the said Phase VI Construction was conducted, compliant with Republic Act (RA) 9184 (Government Procurement Reform Act) and its implementing rules and regulations (IRR), such that:

- a) the Invitation to Bid (ITB) was published in a newspaper of general circulation;
- b) the ITB was posted in the PhilGEPS, in the City’s official website, and in conspicuous places of the City;
- c) the public bidding was participated in solely by Hilmarc’s, which submitted its bid;
- d) Hilmarc’s was found to have submitted the Lowest Calculated Bid; and
- e) After post-qualification, Hilmarc’s was found to have submitted the Lowest Calculated Responsive Bid;

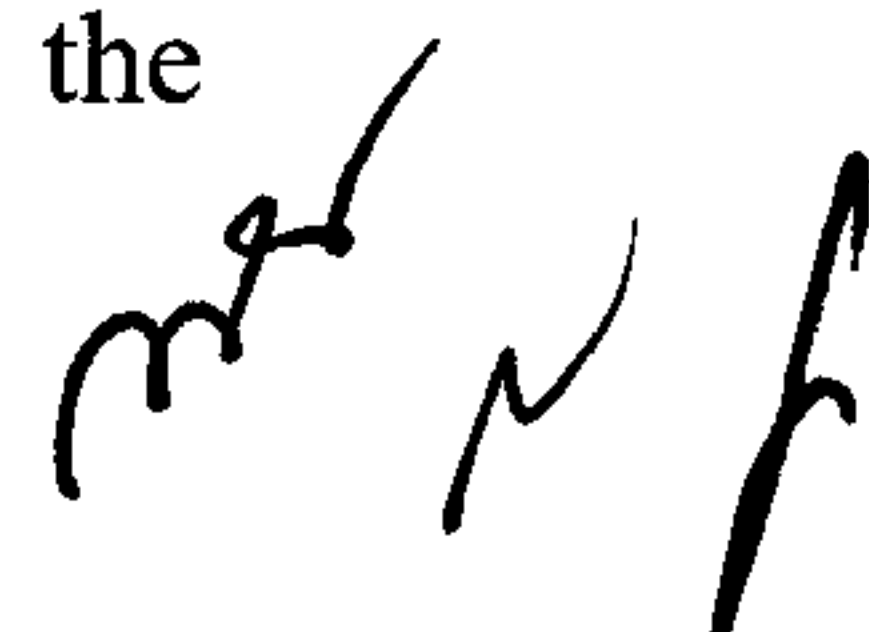
where in truth and fact, as said accused very well knew, they being required to disclose the truth of such facts as required by RA 9184 and its IRR, that there was no such public bidding conducted, there being no newspaper publication of the ITB, no such posting of the ITB, and Hilmarc’s could not have been found to have submitted the Lowest Calculated Responsive Bid for it to be awarded the contract for the Phase IV Construction of the Science Building.

CONTRARY TO LAW.”

Mendoza’s Motion in
SB-18-CRM-0158 and 0159

Mendoza moves to quash the *Informations* in both cases on the following arguments:

- (a) the facts charged do not constitute an offense;
- (b) the Information does not conform substantially to the prescribed form;
- (c) the *Informations* filed contain averments which, if true, would constitute a legal justification;
- (d) the evidence on record proves the innocence of the movant.



In challenging the sufficiency of the allegations of the *Information*, he contends that they do not state the facts constituting the offense. They do not likewise conform to the prescribed form since the approximate date of the alleged commission of the offense is not sufficiently stated, which is material to the determination of his guilt, since he was appointed as City Administrator of Makati City only on October 2, 2012 and served as such until October 12, 2015. That since the date alleged “from July 2012 to August 2012” in both SB-18-CRM-0158 and 0159, which is prior to his appointment, he could not have participated in the alleged commission of the offense. He further alleges that the *Informations* also did not state the acts or commission constituting the alleged conspiracy, how it was undertaken, what acts were committed by each of the accused in contribution to conspiracy to commit the crime, thus, depriving him of his right to be informed of the cause of accusation against him.

He contends that the alleged absence of public bidding in the construction of Phases IV and V of the Makati Science High School cannot be imputed to him because as City Administrator, he does not process or release the payments. There is also no allegation that he participated in the bidding process or alleged simulation thereof. That as City Administrator, it is not incumbent upon him to examine each step of the bidding process, scrutinize the bidding documents, the implementation of the project and the propriety of the billings of the contractor; his duty is only to countersign the check which happens only after payment has been approved by the mayor.

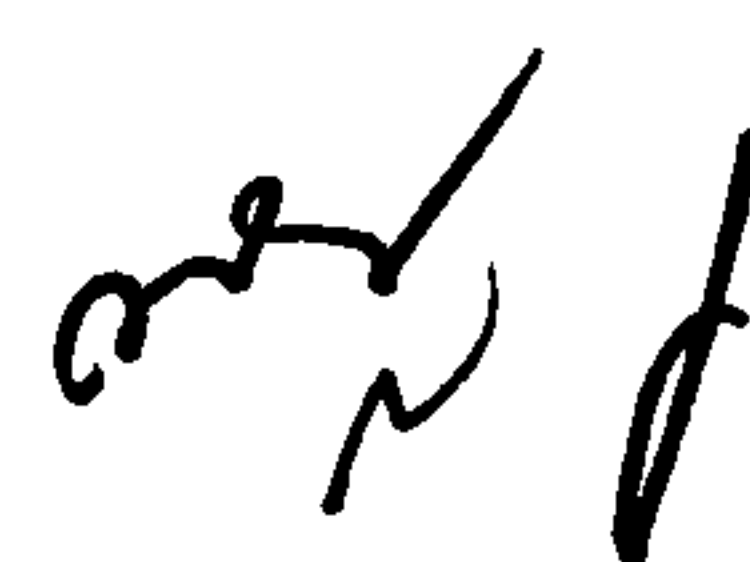
Moreover, he claims that the element of having “acted with manifest partiality, evident bad faith, or gross inexcusable negligence” is not substantiated by allegation of facts from which the same could be deduced. Similarly, the element of “undue injury” to the government has not been satisfied since there is no allegation of “actual damage” but what was alleged is merely a speculative injury.

He likewise claims that the *Informations* contain averments, which if true, constitute justification. Paragraphs [a], [b], [c] of the *Information* allegedly show that there was a competitive bidding as defined in Section 5 [e] of RA 9184 as there was an advertisement of the invitation to bid, opening and evaluation of bids, and post-qualification, there was a bid which was evaluated by BAC and adjudged the lowest calculated and responsive bid to whom the contract was awarded. Hence, the charge of violation of RA 3019 Section 3 [e] anchored on alleged absence of bidding crumbles.

Finally, he argues that the evidence on record proves his innocence, and that nothing in Rule 117 of the Rules of Court prohibits the Court to consider evidence beyond the allegations of the *Information*.

Mendoza’s Motion in
SB-18-CRM-0165

Mendoza basically alleges in his motion that the facts alleged in the *Information* do not constitute an offense because none of the facts in the 19 July 2013 BAC Resolution alleged to have been falsified is false.



For *one*, he claims the Invitation to Bid was published in the Daily Tribune as certified to by its publisher; *Second*, the Invitation to Bid was posted in PhilGeps as shown by the certified true copy of the printout from Philgeps, and posted in the official website of, and in the conspicuous places of Makati City; *Third*, the allegation that the bidding was participated solely by Hilmarc's is not false, as in fact it was the sole bidder that submitted its proposal. *Fourth*, being the sole bidder, Hilmarc's was logically the lowest calculated bid; *Fifth*, the allegation that after post-qualification Hilmarc's was found to have submitted the lowest calculated bid is not false; *Sixth*, there was public bidding for the construction of Phase VI of the project.

The circumstances allegedly not only warrant the quashal of the *Information* but also dismissal of the case as to Mendoza because the facts would prove that there is no false statement in the 19 July 2013 BAC Resolution or its supporting documents. Invoking AM-15-06-10 [Revised Guidelines on Continuous Trial of Criminal Cases] under III.2[c]v thereof, he alleges that a motion to quash on the ground that the facts charged do not constitute an offense is one of the "meritorious motions."

The Prosecution's Consolidated Comment/Opposition

In its Consolidated Comment/Opposition to the foregoing, the prosecution avers that the *Information* shall allege only the ultimate facts establishing the elements of the crime charged; that the fundamental test in determining the sufficiency of the material averments thereof is whether or not the facts alleged, which if hypothetically admitted, would establish the essential elements of the crime charged, whereas evidence aliunde or matters extrinsic of the information are not to be considered, citing the case of *Antone vs. Beronilla*.¹ These, allegedly, were sufficiently complied with in the instant cases.

It also argues that the alleged variance in the date of the commission of the offense as alleged does not invalidate the *Information*. That Mendoza is charged in his capacity as Acting City Administrator so that it is immaterial if he was designated City Administrator only on October 22, 2012. On the other hand, Section 6, Rule 110 of the Rules of Court only requires to allege "the approximate date of the commission of the offense" and that the precise time need not be alleged.

Finally, it was averred that Mendoza is misguided in his line of reasoning that the *Information* contain allegations which, if true, would negate the prosecution's basic allegation that there was no public bidding. That on the contrary, the allegations in the *Information* that the accused circumvented the provisions of RA 9184 in ways enumerated therein, crystalize the fact that there was no public bidding conducted in Phases IV and V of the construction project. The prosecution ended its arguments by stating that the Court shall not entertain a Motion to Quash based on grounds not stated in Section 3 of Rule 117 of the Rules of Court.

¹ GR No. 183824, December 8, 2010, 637 SCRA 615.

The Court's Ruling

The test for the correctness of the ground that the “facts charged do not constitute an offense” is the sufficiency of the averments in the Information, i.e., if hypothetically admitted, constitute the elements of the offense.² In *People v. Dimaano*,³ cited in *People vs. PO2 Valdez, et. al.*,⁴ the Supreme Court explained:

For complaint or information to be sufficient, it must state the name of the accused; the designation of the offense given 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. What is controlling is not the title of the complaint, nor the designation of the offense charged or the particular law or part thereof allegedly violated, these being mere conclusions of law made by the prosecutor, but the description of the crime charged and the particular facts therein recited. The acts or omissions complained of 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 pronounce proper judgment. No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged. **Every element of the offense must be stated in the information. What facts and circumstances are necessary to be included therein must be determined by reference to the definitions and essentials of the specified crimes. The requirement of alleging the elements of a crime in the information is to inform the accused of the nature of the accusation against him so as to enable him to suitably prepare his defense. The presumption is that the accused has no independent knowledge of the facts that constitute the offense.** [emphasis supplied]

Going over the *Informations* in **SB-18-CRM-1058 and 0159**, the elements of the offense charged,⁵ i.e., violation of RA 3019 Section 3 (e) were stated in the subject Charge Sheets, viz:

1. The accused must be a public officer discharging administrative functions;
2. He must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and
3. That his action caused any injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.

The averments of the *informations* in SB-18-CRM-0158 and 0159 properly satisfy the foregoing elements. *Firstly*, Mendoza were therein accused as “public officers of Makati City,” respectively being “then Acting City Administrator” [SB-18-CRM-0158] and “then Chairman of the Bids and Awards Committee (BAC)” [SB-18-CRM-0159] performing “administrative and/or official functions.”

² Florenz D. Regalado, Remedial Law Compendium, Vol. II (2008 ed.), p. 581, citing *People vs. Supnad*, L-18747, March 30, 1963

³ G.R. No. 168168, September 14, 2005, 469 SCRA 647, 666-667.

⁴ G.R. 175602, January 18, 2012

⁵ *Bautista vs. Sandiganbayan*, 332 SCRA 126 (2000); *Uriarte v. People*, G.R. No. 169251, December 20, 2006, 511 SCRA 471, 486, citing *Santos v. People*, G.R. No. 161877, March 23, 2006, 485 SCRA 185, 194; *Cabrera v. Sandiganbayan*, G.R. Nos. 162314-17, October 25, 2004, 441 SCRA 377, 386; and *Jacinto v. Sandiganbayan*, G.R. No. 84571, October 2, 1989, 178 SCRA 254, 259.

Secondly, said accused is clearly charged in both cases of “acting with manifest partiality, evident bad faith, and/or gross inexcusable negligence” and “committing the offense in relation to office.” And **thirdly**, it was sufficiently averred that the accused “willfully, unlawfully and criminally give unwarranted benefits, advantages and preference to Hilmarc’s,” and “cause undue injury to the government by awarding Hilmarc’s the Contract amount of Php349,559,778.00 [SB-18-CRM-0158] and Php165,264,847.00 [SB-18-CRM-0159] involving Phases IV and V, respectively, of the subject construction project through a simulated bidding.

Similarly, the facts constituting the elements⁶ of Falsification of Public Documents under Article 171 of the Revised Penal Code with which Mendoza is charged in **SB-18-CRIM-0161**, are as follows:

- 1) The offender is a public officer, employee or notary public;
- 2) He takes advantage of his official position;
- 3) He falsifies a document by committing any of the acts enumerated under Article 171 of the Revised Penal Code.

In this regard, the Information for Falsification in the said case sufficiently alleges that: **Firstly**, Mendoza is a “public officer,” then being the “City Administrator and Chairperson of the Bids and Awards Committee (BAC)”; **Secondly**, that accused “tak[e] advantage of their official functions as such,” and **thirdly**, that accused “did then and there willfully, unlawfully and feloniously falsify the 19 July 2013 Resolution, an official document, and its supporting documents.” Contrary to the allegations of Mendoza, these averments in the respective *Informations* were followed by specific allegations of the manner and circumstances of commission of the said offenses in alleged “conspiracy” with his co-accused. It should not be difficult to see that the facts constituting their alleged commission of the offense were sufficiently alleged to inform the accused of the nature and cause of accusation against him. Jurisprudence dictates that, for as long as the **ultimate facts** constituting the offense have been alleged, an Information charging a violation of Section 3(e) of R.A. No. 3019 need not state the finer details of why and how the crime was committed.⁷

On the other hand, the statement of the approximate time and date of the alleged commission of the offense in the *Informations* satisfies the requirement of the rules, clear enough to enable the accused to prepare for his defense. As aptly argued by the prosecution, the rules do not require the *Informations* to state the precise and accurate time when the crime was allegedly committed, but only the approximation thereof suffices.

On Mendoza’s arguments in SB-18-CRM-0158 and 0159 that: (1) it could not have been possible for him to commit the crime which allegedly took place prior to his appointment as City Administrator; (b) he does not process or release the payments; (3) he does not participate in the bidding process or alleged simulation thereof; (4) as City Administrator, it is not incumbent upon him to examine each step of the bidding process, scrutinize the bidding documents, the implementation of the

⁶ Luis B. Reyes, *The Revised Penal Code Annotated*, Book II (17th ed.), 2008, p. 215

⁷ See *Lazarte v. Sandiganbayan*, G.R. No. 180122, March 13, 2009, 581 SCRA 431; *People v. Romualdez*, G.R. No. 166510, July 23, 2008, 559 SCRA 492; *Go v. Bangko Sentral ng Pilipinas*, G.R. No. 178429, October 23, 2009, 604 SCRA 322, cited in *People vs. Castillo, et. al.*, G.R. No. 160619, September 09, 2015

project and the propriety of the billings of the contractor; and (5) his duty is only to countersign the check which happens only after payment has been approved by the mayor; all these are matters of evidence best addressed during trial. They are not generally to be considered in a Motion to Quash. Similarly, his argument in SB-18-CRM-0165 that and none of the facts in the 19 July 2013 BAC Resolution and its alleged supporting documents alleged to have been falsified is false, is evidentiary, thus, based on the principle that evidence *aliunde* or extrinsic matters need no consideration in a motion to quash,⁸ the same should rather be threshed out in a full blown litigation.

Misplaced is Mendoza's argument that the *Information* for Falsification contains averments, particularly paragraphs [a], [b], [c] thereof, which if true, show that there was a competitive bidding defined in Section 5[e] of RA 9184, thus, they constitute justification that merits dismissal of the charge. On the contrary, the allegations of the *Information* taken in its entirety, rather clearly charges falsification of the July 19, 2013 BAC Resolution, "*by making it appear therein that a public bidding for the said Phase VI Construction was conducted,*" while the accused allegedly "*very well knew,*" and "*they being required to disclose the truth of such facts*" that "*there was no such public bidding conducted, there being no newspaper publication of the ITB, no such posting of the ITB, and Hilmarc's could not have been found to have submitted the Lowest Calculated Responsive Bid.*"

It is also important to note that all the accused in these cases, Mendoza included, were charged of "conspiracy." Jurisprudence dictates that in conspiracy charge, "the precise extent of or modality of participation of each of the alleged conspirator becomes secondary, because all of them are principals in the accomplishment of the alleged common design,⁹ which in this case is allegedly to give advantage to Hilmarc's to the damage and prejudice to the government. In *People vs. Quitlong*,¹⁰ it was held that an accused must know from the *Information* whether he faces a criminal responsibility not only for his acts but also for the acts of his co-accused as well. The Supreme Court in the said case stated:

A conspiracy indictment need not, of course, aver all the components of conspiracy or allege all the details thereof, like the part that each of the parties therein have performed, the evidence proving the common design or the facts connecting all the accused with one another in the web of the conspiracy. Neither is it necessary to describe conspiracy with the same degree of particularity required in describing a substantive offense. It is enough that the indictment contains a statement of facts relied upon to be constitutive of the offense in ordinary and concise language, with as much certainty as the nature of the case will admit, in a manner that can enable a person of common understanding to know what is intended, and with such precision that the accused may plead his acquittal or conviction to a subsequent indictment based on the same facts. X x x x x x

⁸ *People v. Balao*, G.R. No. 176819, January 26, 2011, 640 SCRA 565, 573; *Go v. The Fifth Division, Sandiganbayan*, 549 Phil. 783, 805 (2007), cited in *People vs. Odtuhan*, G.R. No. 191566, July 17, 2013

⁹ *People vs. Dollendo*, GR No. 181701, January 18, 2012

¹⁰ 354 Phil 372

Similarly, in *Enrile vs. People*,¹¹ it was held:

We point out that conspiracy in the present case is not charged as a crime by itself but only as the mode of committing the crime. Thus, there is no absolute necessity of reciting its particulars in the Information because conspiracy is not the gravamen of the offense charged.

It is enough to allege conspiracy as a mode in the commission of an offense in either of the following manner: (1) by use of the word “conspire,” or its derivatives or synonyms, such as confederate, connive, collude; 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 the nature of the crime charged will admit, to enable the accused to competently enter a plea to a subsequent indictment based on the same facts.

On the foregoing considerations, therefore, the Court finds no meritorious reason to grant the motions.

WHEREFORE, the Motions to Quash Information and/or Dismiss the Case filed by accused Eleno Mendoza, Jr. in **SB-18-CRM-0158 to 0159** and **0165** are hereby **DENIED**.

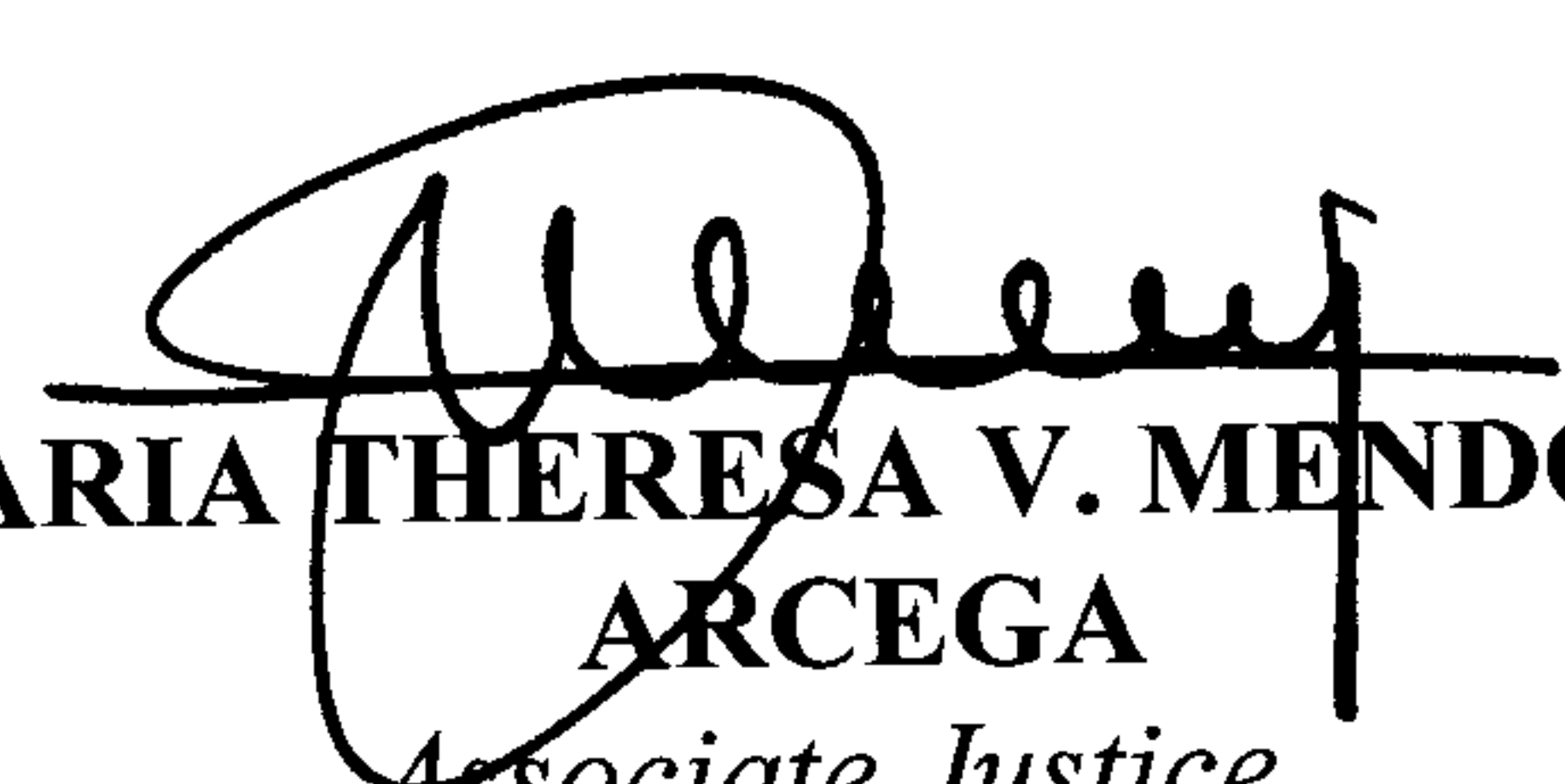
So Ordered.


MARYANN E. CORPUS – MAÑALAC
 Associate Justice

WE CONCUR:


RAFAEL R. LAGOS

Associate Justice
Chairperson


MARIA THERESA V. MENDOZA –
ARCEGA
Associate Justice

¹¹ **G.R. No. 213455, August 11, 2015** citing *Estrada v. Sandiganbayan*, 427 Phil. 820, 860 (2002).