



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

Fifth Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

– versus –

SB-18-CRM-0159

For: Violation of Sec. 3(e) of
Rep. Act No. 3019

**JEJOMAR C. BINAY, SR., ET
AL.,**

Accused.

Present:

**LAGOS, J., Chairperson,
MENDOZA-ARCEGA, and
CORPUS-MAÑALAC, JJ.**

Promulgated:

June 21, 2018 fal

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RESOLUTION

LAGOS, J.:

This resolves the Motion to Quash filed by the accused Mario V. Badillo.¹ The prosecution filed its Comment/Opposition thereto.²

As ground for his motion, accused-movant avers that the factual circumstances alleged in the Information do not constitute a criminal offense.

He cites that while the lone Information filed against him alleges that he is a member of the Bids and Awards Committee (BAC), he is charged on matters connected with the publication of the Invitation to

¹ Dated 25 April 2018; Records, Vol. 1, pp. 733-739.

² Dated 04 May 2018; Records, Vol. 2, pp. 240-245.

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Apply for Eligibility and to Bid (IAETB). He argues that it is not the responsibility of a mere BAC member to advertise and/or post bidding opportunities, bidding documents, and notices of awards; it is neither the function nor the duty of a mere BAC member to act as the central channel of communication for the BAC with the end-users, other units of the line agency, other government agencies, provider of goods, infrastructure projects and consulting services, and the general public. Thus, as a mere BAC member, he would not have any control on, much more be responsible for, specific matters concerning the IAETB.

To support his assertions, accused-movant cites Section 14.1(f) and (j) of the Revised Implementing Rules and Regulations (2009) of R.A. 9184, and also attached the Post-Qualification Evaluation Report on Phase VI of the Makati Science High School Building. He points out that he merely "noted" the Post-Qualification Evaluation Report - a ministerial act on his part - and that he had no hand in its preparation and submission. Neither did he certify its contents to be true. He further argues that his "notation" of the subject document merely constituted recognizing the previous acts of preparation of the document and the submission thereof by those who prepared and submitted it.


In its comment, the prosecution opposes the motion and argues that the accused cannot argue beyond the four corners of the criminal Information. Anything outside the four corners of the criminal Information is evidentiary in nature and cannot be considered by the Court. The prosecution asserts that the Information against the accused is sufficient, that there is no need for the Information to state the specific factual allegations of the crime charged, and that the matters raised by the accused in his motion are matters of evidence which can be proved during trial.

DISCUSSION and RULING

The accused-movant, citing section 3(a) of Rule 117 of the Rules of Court, seeks to quash the Information in this case against him. He argues that the facts charged in the Information do not constitute an offense against him.

It is well-settled that a motion to quash assails the validity of an information for defects or defenses apparent on the face of such information.³ In a motion to quash on the ground that the facts charged do not constitute an offense, the fundamental test in

³ Galzote v. Briones, G.R. No. 164682, 14 September 2011.



determining the sufficiency of the material averments of the assailed information is whether the facts alleged therein, which are hypothetically admitted, would establish the essentials elements of the crime defined by law. Evidence *aliunde*, or matters extrinsic to the Information, are not be considered.⁴

The accusatory portion of the Information in SB-18-CRM-0159 reads:

"The undersigned Ombudsman Prosecutor accuses JEJOMAR ERWIN SOMBILLO BINAY, JR., ELENO MONASTERIAL MENDOZA, JR., GERARDO KANGLEON SAN GABRIEL, PIO KENNETH ILANO DASAL, LORENZA PUNZALAN AMORES, MARIO VALENZUELA BADILLO, MANOLITO N. UYACO, RODEL REBUSTILLO NAYVE, RAYDES BARIAS PESTAÑO, NELIA ARAGANA BARLIS, RALPH ENCELA LIBERATO, and EFREN MERCADO CANLAS of violating Section 3 (e) of Republic Act (RA) 3019 (Anti-Graft and Corrupt Practices Act), as amended, committed as follows:

"In July 2011 to August 2012, or thereabout, in Makati City, Philippines, and within this Honorable Court's jurisdiction, accused **JEJOMAR ERWIN S. BINAY, JR.** (Binay, Jr.), then City Mayor; **ELENO M. MENDOZA, JR.** (Mendoza), then Chairman of the Bids and Awards Committee (BAC); **GERARDO SAN GABRIEL** (San Gabriel), then BAC Vice Chairman; **PIO KENNETH I. DASAL** (Dasal), then City Legal Officer and BAC Member; **LORENZO P. AMORES** (Amores), then City Budget Officer and BAC Member; **MARIO BADILLO** (Badillo), then BAC Member; **MANOLITO N. UYACO** (Uyaco), then BAC Secretary and Head of the BAC Secretariat; **RODEL R. NAYVE** (Nayve), then Head of the BAC Technical Working Group (BAC-TWG); **RAYDES B. PESTAÑO** (Pestaño), then Acting City Accountant; then Acting City Administrator; **NELIA A. BARLIS** (Barlis), then City Treasurer; **RALPH E. LIBERATO** (Liberato), then BAC Secretariat Member, all public officers of Makati City, while in the performance of their administrative and/or official functions and committing the offense in relation to office, conspiring with one another and with private individuals **EFREN M. CANLAS** (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 cause undue injury to the government by awarding Hilmarc's the Contract in the amount of Php165,264,847.00 for Phase VI construction of 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 provisions of RA 9184 by Binay Jr., Mendoza, San Gabriel, Dasal, Amores, Badillo, Uyaco, Nayve by, among other things:

⁴ People v. Dumlao, G.R. No. 168918, 02 March 2009.

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1. Not posting the IAETB in the official website of Makati City;
 2. Not complying with the required number of days of the posting of the IAETB in the City's conspicuous places;
 3. Not including in the IAETB the relevant eligibility criteria by which the bids shall be compared; and
 4. Preparing and signing the Abstract of Bids and Post-Qualification Report despite knowing the absence of public bidding;
- b) De Veyra, San Gabriel, Dasal, Amores, Uyaco, Nayve and Liberato collectively making it appear in the BAC Resolution and the Abstract of Bids that Hilmarc's, through Canlas, was the Bidder with the Lowest Calculated and Responsive Bid, which documents were signed and approved by Binay, Jr. despite knowing the absence of public bidding.
- c) Entering, through Binay, Jr., into the Contract for the Phase VI construction of the Science Building with Canlas, on behalf of Hilmarc's, and proceeding with the said project despite the glaring violations of RA 9184 and its IRR.
- d) Processing and releasing of the payments amounting to Php 154,935,794.00, more or less to Hilmarc's by Amores, Pestaño and Barlis, which payments were approved by Binay, Jr. and received by Canlas, despite deficiencies in the required supporting documents.

CONTRARY TO LAW."

The accused-movant is thus charged with violation of section 3(e) of Rep. Act No. 3019, in conspiracy with other public officers and certain private individuals. This provision of law provides:

"Section 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 xxx 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.

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The following are the essential elements of this offense:

- (1) the offender is a public officer;
- (2) the act was done in the discharge of the public officer's official, administrative or judicial functions;
- (3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and
- (4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.⁵

The acts attributed to the accused-movant in the commission of the offense charged can be found in paragraph (a) of the Information, which reads:

" X X X X X

- a) **Circumvention of the provisions of RA 9184 by Binay Jr., Mendoza, San Gabriel, Dasal, Amores, Badillo, Uyaco, Nayve by, among other things:**
1. **Not posting the IAETB in the official website of Makati City;**
 2. **Not complying with the required number of days of the posting of the IAETB in the City's conspicuous places;**
 3. **Not including in the IAETB the relevant eligibility criteria by which the bids shall be compared; and**
 4. **Preparing and signing the Abstract of Bids and Post-Qualification Report despite knowing the absence of public bidding;"**

The above-named accused in paragraph (a), all public officers of Makati City, held at that time the following positions:

BINAY, JR.	-	City Mayor
MENDOZA	-	BAC Chairman
SAN GABRIEL	-	BAC Vice-Chairman-
DASAL	-	BAC Member
AMORES	-	BAC Member
BADILLO	-	BAC Member
UYACO	-	BAC Secretariat Head
NAYVE	-	BAC TWG Head

⁵ Ampil v. Office of the Ombudsman, G.R. No. 192685 & 199115, 31 July 2013.

With the exception of Binay, Jr., all the afore-named accused, including accused-movant, are part of the BAC in their respective capacities as Chairman, Vice-Chairman, Member, Secretariat Head, or TWG Head.

Accused-movant's participation is alleged only in paragraph (a) and (b) of the Information. The acts alleged in paragraph (a) can be broken down into two (2) parts, namely:

- (1) Matters relating to the posting and contents of the IAETB;
and
- (2) Preparing and signing the Abstract of Bids and Post Qualification Report.

On the other hand, paragraph (b) of the Information reads:

" x x x x x

(b) De Veyra, San Gabriel, Dasal, Amores, Uyaco, Nayve and Liberato collectively making it appear in the BAC Resolution and the Abstract of Bids that Hilmarcs, through Canlas, was the Bidder with the Lowest Calculated and Responsive Bid, which documents were signed and approved by Binay, Jr. despite knowing the absence of public bidding; "

It is apparent that matters relating to the contents of the IAETB are within the functions of the BAC Secretariat.⁶ Accused-movant is not alleged to be a member of the BAC Secretariat. Therefore, he could not have participated in these matters.

Under paragraph (b), the accused San Gabriel, Dasal, Amores, Uyaco, Nayve and Liberato⁷ are charged with collectively making it appear in the BAC Resolution and the Abstract of Bids that Hilmarc's, through Canlas, was the Bidder with the Lowest Calculated and Responsive Bid, despite the absence of a public bidding.

Accused San Gabriel was the BAC Vice-Chairman; Dasal and Amores were BAC Members; Uyaco was the BAC Secretariat Head; Nayve was the BAC TWG Head; and Liberato was a BAC Secretariat Member. Evidently, these named accused have been charged under paragraph (b) of the Information in relation to their work as part of the BAC.

⁶ "The 2016 Revised Implementing Rules and Regulations of the Government Procurement Reform Act," The Official Gazette. <http://www.officialgazette.gov.ph/images/uploads/20160826-IRR-RA-9184-procurement-reform.pdf> (accessed 14 June 2018).

⁷ The name of De Veyra does not appear in the first part of the Information.

Notably, the name of accused-movant Badillo does not appear in paragraph (b), notwithstanding the fact that he was a BAC Member. Furthermore, under paragraph (a) of the Information, accused-movant is only charged with having prepared and signed the Abstract of Bids and the Post Qualification Report. He is not alleged to have signed any BAC Resolution concerning Phase VI of the questioned contract. The accused in paragraph (b) are also charged in relation to the preparation and signing of the Abstract of Bids, yet the accused-movant was not included among the accused therein. This only means that the prosecution admits that accused-movant herein was not part of any conspiracy.

The Joint Resolution of the Ombudsman also did not include accused-movant as one of those BAC members who issued and signed the BAC Resolution declaring LCRB and Recommending Approval for Phase VI of the questioned contract.⁸

In *People v. Albano*, the Supreme Court stated that the trial court should have limited its inquiry to (1) the averments in the informations, as hypothetically admitted, (2) facts admitted by the prosecution, and (3) indubitable facts.⁹ Here, by not including accused-movant as one of those who "collectively" made it to appear in the BAC Resolution and the Abstract of Bids that Hilmarc is the lowest responsive bidder, despite the alleged absence of bidding, the prosecution has admitted that Badillo was not part of the conspiracy. For the same reason, the allegation that he signed the Abstract of Bids must fail. These contradicting allegations in the Information do not only amount to a defective Information but to a finding of lack of probable cause. Conspiracy as an element of the offense with respect to Badillo was not properly alleged.

Examination of the Post-Qualification Evaluation Report on the bidding for Phase VI of the Makati City Science High School Building readily shows that the document was prepared by Rodel R. Nayve as Head of the TWG, and submitted by Manolito N. Uyaco as BAC Secretariat. The accused-movant, in his capacity as representative of the Implementing Office, merely noted the subject Report.

While the list of acts in paragraph (a) of the Information includes the act of preparing and signing the Post-Qualification Report, the subject document does not show that the accused-movant approved the same. He only "noted" the same. In its plain and ordinary meaning, and taken in context, to "note" simply means that the preparation and submission of the Report was seen and

⁸ See Records, Vol. 1, p. 134.

⁹ G.R. No. L-45376-77, 26 July 1988.

acknowledged by the accused-movant. He did not participate in the preparation of said report nor did he approve it. By itself, and taken together with the material inconsistencies found in the Information, such cannot constitute a valid basis to charge the accused-movant with an offense.

The main purpose of an Information is to ensure that an accused is formally informed of the facts and the acts constituting the offense charged. Where insufficient, an accused in a criminal case can file a motion to have the Information against him quashed and/or dismissed before he enters his plea. A motion to quash challenges the efficacy of an Information and compels the court to determine whether the Information suffices to require an accused to endure the rigors of a trial. Where the Information is insufficient and thus cannot be the basis of any valid conviction, the court must drop the case immediately and save an accused from the anxiety and convenience of a useless trial.¹⁰

Sections 6 and 9 of Rule 110 of the Rules of Court state:

Sec. 6. Sufficiency of complaint or information. - A complaint or information is sufficient if it states 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 date of the commission of the offense; and the place where 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.

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Sec. 9. Cause of the accusation. - The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and 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 as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.**

*Lazarte v. Sandiganbayan*¹¹ explained the two important purposes underlying the afore-cited rule. First, it enables the accused to suitably prepare his defense. Second, it allows the accused, if found guilty, to plead his conviction in a subsequent prosecution for the same offense. Thus, it was held that the true test in ascertaining the validity and sufficiency of an Information is "whether the crime is

¹⁰ People vs. Sandiganbayan, et al.; G.R. No. 160619, 09 September 2015.

¹¹ G.R. No. 180122, 13 March 2009.

described in intelligible terms with such particularity as to apprise the accused, with reasonable certainty, of the offense charged."


After a careful consideration of all the foregoing, the Court finds the Information to be deficient and defective insofar as the allegations against the accused-movant are concerned. In particular, and in view of the material inconsistencies in the Information, the facts charged and alleged in the Information against the accused-movant do not constitute an offense. Thus, the accused-movant's Motion to Quash has to be granted.

WHEREFORE, accused Badillo's Motion to Quash is hereby **GRANTED**.

SO ORDERED.


RAFAEL R. LAGOS
Chairperson
Associate Justice

WE CONCUR:


**MARIA THERESA V.
MENDOZA-ARCEGA**
Associate Justice


**MARYANN E.
CORPUS-MAÑALAC**
Associate Justice