



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

Fifth Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-18-CRM-0153, 0157
0158 and 0159

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

– versus –

JEJOMAR ERWIN SOMBILLO
BINAY, JR., ET AL.,
Accused.

X-----X

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-18-CRM-0163 to 0165

FOR: *Falsification of
Public Document under
Article 171 of the Revised
Penal Code*

– versus –

JEJOMAR ERWIN SOMBILLO
BINAY, JR., ET AL.
Accused.

Present:

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

Promulgated:

June 18, 2018 *Jal*

X-----X

N / J

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RESOLUTION

LAGOS, J.:

This resolves the following: (1) *Motion to Quash*¹ filed on April 25, 2018 by accused Jejomar Erwin S. Binay, Jr., praying to quash the criminal *Informations* filed against him for violation of Section 3(e) of R.A. 3019 in SB-18-CRM-0153, 0157 to 0159, and Falsification of Public Document under Article 171 of the Revised Penal Code in SB-18-CRM-0163 to 0165; and (2) the *Comment/Opposition*² filed by the prosecution on May 8, 2018 on the said motion of accused Jejomar Erwin S. Binay, Jr.

On May 16, 2018, accused Binay, Jr., by way of supplement, filed a *Motion to Admit Attached Supplement to Motion to Quash* while the prosecution, on the other hand, submitted its *Comment/Opposition* (re: Supplement to Motion to Quash) on May 30, 2018.

Criminal Case Nos. SB-18-CRM-0153, 0157 to 0159
(re: Violation of Section 3(e) of RA 3019)

In his *Motion to Quash*, accused Jejomar Erwin S. Binay, Jr. ("Binay, Jr."), prays that the criminal *Informations* for violation of Section 3(e) of R.A. 3019 in SB-18-CRM-0153, 0157 to 0159 be quashed on the ground that the facts alleged therein do not constitute an offense. He argues that there is no allegation in the *Informations* specific to him that he acted with "manifest partiality, evident bad faith or gross inexcusable negligence": (i) in processing and releasing of payments to Infinity Architectural Works ("Infiniti") for the architectural and engineering works necessary for the Makati Science High School Building (Criminal Case No. SB-18-CRM-0153); and (ii) in entering into contracts with Hilmarc's Construction Corporation ("Hilmarc") for the construction of Phase IV, V and VI of the Makati Science High School Building (SB-18-CRM-0157 to 0159). He asserts that the allegations therein are clear that the pre-procurement activities, the bidding and the post-bidding activities were performed by persons other than him, and he did not have any opportunity to question the award and approval of the contract as, by the time the documents

¹ Records, Vol. 1, p. 479-488.

² Records, Vol. 2, p.202-212.

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reached the Office of the Mayor, all but the signing of the contract was left to be done.

Accused Binay, Jr. further argues that for the *Informations* to be valid, there must be sufficient allegations on the specific participation of the accused that would make him a conspirator in the commission of the offense. The mere allegation of “conspiring with one another and with private individual, x x x” is woefully insufficient.

In countering in its *Comment/Opposition* the contention of accused Binay, Jr. that there should be a particularized allegations against him that he acted with “manifest partiality, evident bad faith or gross inexcusable negligence” in the processing and releasing of payment to Infiniti for architectural and engineering services and in entering into contracts with Hilmarc’s for Phase IV, V and VI constructions of the Makati Science High School Building, the prosecution argues that only the acts constitutive of the offense need to be alleged in the criminal *Informations*.

The prosecution points out that the criminal *Informations* need only state the ultimate facts and that said ultimate facts were substantially laid down in the said *Informations* for violation of Section 3(e) of RA 3019 filed against the accused. The prosecution anchors its argument in the ruling in *Cruz vs. Sandiganbayan*³, that evidentiary facts need not be alleged in the information because these are matters of defense.

Anent the argument of accused Binay, Jr. of the need of sufficient allegations of specific acts of participation of the accused as a conspirator in the commission of the offense charged, the prosecution argues that the Supreme Court in the case of *Lazarte vs. Sandiganbayan*⁴ held that when conspiracy is not charged as a crime in itself but only as the mode of committing the crime, there is less necessity of reciting its particularities in the *Information* because conspiracy is not the gravamen of the offense charged.

**Criminal Case Nos. SB-18-CRM-0163 to 0165
(re: Falsification of Public Documents)**

³ G.R. No. 134493, August 16, 2005, citing *Socrates vs. Sandiganbayan and People*, 253 SCRA 773,790 (1996)

⁴ G.R. No. 180122, March 13, 2009

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Accused Binay, Jr. also moves to quash the criminal *Informations* for falsification of public document filed against him in **SB-18-CRM-0163 to 0165** on two (2) grounds:

First, the criminal *Informations* do not conform substantially to the prescribed form, citing Section 3(e), Rule 117 of the Revised Rules of Criminal Procedure ("RRCP"), as the same do not specify which paragraph of Article 171 of the Revised Penal Code (RPC) is being asserted as the means of falsification alleged to have been committed, there being eight (8) different acts by which falsification may be committed, with each act requiring specific elements which must be specifically alleged in the criminal *Informations*.

Second, the facts charged do not constitute an offense, citing Section 3(a), Rule 117 of the RRCP, for, there is no allegation that accused, as City Mayor, had the duty to make or prepare, or otherwise intervene in the preparation of the BAC Resolutions, alleged to have been falsified by him, or that he has the official custody of the document which he supposedly falsifies, citing *Giron vs. Sandiganbayan*⁵, or that the falsification be alleged to have been committed upon an act, certificate or instrument the issuance of which pertains to his office.

In its *Comment/Opposition*, the prosecution contends that contrary to the allegations of the accused Binay, Jr., the three (3) separate *Informations* of falsification of public documents against him are sufficient in form and in substance; that a plain reading of the *Informations* would factually establish that the accused violated Article 171 of the RPC by committing the acts described in paragraph 4 which proviso states that:

"Art. 171. Falsification by public officer, employee or notary or ecclesiastic minister. - The penalty of *prision mayor* and a fine not to exceed P5,000 pesos shall be imposed upon ay public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

XXX

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XXX

⁵ G.R. No. 154886, July 28, 2005

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(4) Making untruthful statements in a narration of facts.”

The prosecution argues that the *Informations* had clearly alleged the elements of the crime of falsification and if the accused is imposing upon the Honorable Court to determine whether Binay, Jr. and the other accused have indeed conspired with each other to commit falsification “while in the performance and taking advantage of their official functions as such”, the Honorable Court must necessarily refer to allegations outside the criminal *Informations* before it, which the Court cannot do so, applying the jurisprudence laid down in *Cruz, Jr. vs. Court of Appeals*⁶. The prosecution points out that a motion to quash is a hypothetical admission of the facts alleged in the information, hence, the court, in resolving the motion cannot consider facts contrary to those alleged in the information or which do not appear on the face of the information.

In his *Supplement to Motion to Quash* anchored on the additional ground that the criminal *Informations* in SB-18-CRM- 0157 to 0159 (violation of Section 3(e) RA 3019) charge more than one offense, accused Binay, Jr. prays that the said *Informations* be quashed, contending that the *Informations* in SB-18-CRM- 154, 155, 157, 158 and 159 charge not only the offense of violation of Section 3(e) of RA 3019, but also the offense of falsification of public document for the very same act alleged as constituting the graft charge (violation of Section 3(e) RA 3019 and worse, the falsification is already charged in SB-18-CRM-163 to 0165.⁷

The prosecution, on the other hand, invokes, *first*, the procedural infirmity of the filing of the *Supplement to the Motion to Quash*, contending that the ground raised is deemed waived under the omnibus motion rule provided under Section 8, Rule 15 of the Rules of Court; *second*, the criminal cases docketed as SB-18-CRM-0153,0157 to 0159 charge the accused of violation of Section 3(e) of RA 3019, while criminal case SB-18-CRM-0163 to 0165 charge the accused with falsification of public document under the RPC; that each *Information* charges accused with only one (1) single offense per relevant criminal *Information*.

⁶ G.R. No. 83754, February 18, 1991.

⁷ This Resolution does not include SB-18-CRM-0154 and 0155 as Binay, Jr. is not included as one of the accused in the said criminal cases.

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The prosecution, citing *Ramiscal vs. Sandiganbayan*⁸, points out that one may be charged of violation of R.A. 3019 in addition to a felony under the Revised Penal Code (RPC) for the same delictual act, that is, either concurrently or subsequent to being charged with a felony under the RPC. The prosecution argues that the factual averment of falsification in the criminal *Informations* in SB-18-CRM-0157, 0158 and 0159 for violation of Section 3(e) RA 3019 is the delictual act that paved the way to the commission of graft.

DISCUSSION AND RULING

After a thorough consideration of the grounds raised by accused Binay, Jr. in his *Motion to Quash* of the criminal *Informations* against him in the above-captioned two (2) sets of cases, including his *Supplemental Motion to Quash*, and the arguments in support thereof, as well as the respective *Comment/Opposition* thereon by the prosecution, the Court resolves to **DENY** the said motion for lack of merit.

Considering that in both set of cases, accused Binay, Jr. invokes the same ground that *the facts charged do not constitute an offense*, while he argues in his *Supplemental Motion to Quash* in SB-18-CRM-0157 to 0159 the ground that the *Informations charge more than one offense*, the Court will discuss the issues jointly, except for the ground of alleged *defect in form* of the *Informations* in CRM-0163 to 0165 which will be tackled separately at the outset.

**On the issue of defect in form of the
Informations for falsification of public
document in SB-18-CRM-0163 to 0165**

In seeking to quash the *Informations* in SB-18-CRM-0163 to 0165, accused Binay, Jr. invokes the ground that the criminal *Informations* do not conform substantially to the prescribed form as the same merely allege that the Ombudsman Prosecutor accuses him of "*Falsification of Public Document, defined and penalized under Article 171 of the Revised Penal Code*" without specifying which paragraph of Article 171 of the RPC is being asserted as the means of falsification alleged to have been committed.

The argument is devoid of merit.

⁸ G.R. No. 169727-28, August 18, 2006

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It is well-settled that the title of information or designation of the offense is not controlling. It is the actual facts recited in the information that determines the nature of the crime.⁹ The real nature of the offense is to be determined not by its designation or title given by the Fiscal but the facts alleged in the body of the information.

Sections 6, 8 and 9 of Rule 110 of the Revised Rules of Criminal Procedure are instructive on the issue of defect in form of the criminal Information, thus:

Section 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 the offense is committed by more than one person, all of them shall be included in the complaint or information.

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XXX

Section 8. *Designation of the offense.* –The complaint or information shall state the designation of the offense given by the statute, **aver the acts or omissions constituting the offense,** and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

Section 9. *Cause of 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.

The criminal *Informations* in SB-18-CRM-0163 to 0165, on its face, clearly comply with the requirements of designation of the offense committed in accordance with Sections 6, 8, and 9, Rule 110 of the RRCP. The *Informations* state that accused Binay, Jr., et. al.

⁹ Santos vs. People, G.R. No. 77429, January 29, 1990, 181 SCRA 487, People vs. Elesterio, G.R. No. 63971, May 9, 1989, 173 SCRA 243; People vs. Angelina Ramos, G.R. No. 67610, July 31, 1989.

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are being charged of falsifications of public document, defined and penalized under Article 171 of the Revised Penal Code, alleging therein “acts or omissions constituting the offense” as required by Section 8, Rule 117, 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 in compliance with Section 9, Rule 117. The *Information* in SB-18-CRM-0163, for one, states:

“On 08 August 2011, 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.) xxx xxx x x x, 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 08 August 2011 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 recommendation to award it the contract for the Phase IV 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 IV Construction was conducted, compliant with Republic Act (RA 9184) (Government Procurement Act) and its Implementing Rules and Regulations, 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;

when in truth and in 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 such 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

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contract for the Phase IV construction of the Science Building.

“CONTRARY TO LAW”

On the issue that the facts charged do not constitute an offense

Accused Binay, Jr. also seeks to quash the *Informations* filed against him for violation of Section 3(e), R.A. 3019 in both sets of cases, SB-18-CRM No. 0153, 0157 to 0159 and for falsification of public documents under Article 171 of the RPC in SB-18-CRM -0163 to 0165, on the ground that ***the facts charged do not constitute an offense*** when the same failed to allege particular acts specific to him constitutive of the elements of the offenses charged. In both sets of criminal cases against him, accused Binay, Jr. also assails the *Informations* for failure of the prosecution to sufficiently allege the specific acts of participation of the accused that would make him a conspirator in the commission of the offenses charged.

The arguments are erroneous.

It is a fundamental constitutional right of any person who stands charged in a criminal prosecution to be informed of the nature and cause of the accusation against him. When an information is filed in court charging a person for a commission of an offense, its main purpose is to ensure that an accused is formally informed of the facts and the acts constituting the offense charged.¹⁰ When the allegations in the information are insufficient, an accused can file a motion to have the information against him quashed and/or dismissed before he enters his plea.¹¹

A motion to quash information is the mode by which an accused assails the validity of a criminal complaint or information filed against for insufficiency on its face in point of law, or for defects which are apparent in the face of the information. It is a hypothetical admission of the facts alleged in the information. It simply means that when a motion to quash an information is filed on the ground that the ***facts charged do not constitute an offense***, the motion should be resolved on the basis of the allegations in information whose truth and veracity are hypothetically admitted.¹²

¹⁰ *People vs. Arnault*, G.R. No. L-4288, 92 Phil. 252 (1952)

¹¹ Section 1, Rule 117, Revised Rules of Criminal Procedure

¹² *People vs. De la Rosa*, G.R. No. L-34112, June 25, 1980, 89 SCRA 190.

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The fundamental test in determining the sufficiency of the material averments in the Information is whether or not the facts alleged therein, which are hypothetically admitted, would establish the essential elements of the crime defined by law. Evidence *aliunde* or matters extrinsic of the Information are not to be considered.¹³ In resolving the issue of sufficiency of the material allegations in the *Informations*, the courts must look into there(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.¹⁴

Violation of Section 3(e) of Republic Act No. 3019

Accused Binay, Jr. and the other co-accused are charged with violation of Section 3(e) of R.A. 3019 in SB-18-CRM-0153, 0157 to 0159, the elements of which 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) That his action cause any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.¹⁵

The First Element of Section 3(e) RA 3019

The subject *Information* in SB-18-CRM-0153 alleged that accused Binay, Jr. was the City Mayor of Makati City, and the other co-accused are all public officers of Makati City, Philippines, while in the performance of their administrative and/or official functions and committing the offense in relation to their office at the time relevant to the present case:

“In September 2007 to March 2012, or thereabout, in Makati City, Philippines, and within this Honorable Court’s jurisdiction x x x,
JEJOMAR ERWIN S. BINAY, JR. (Binay, Jr.), City Mayor for the

¹³ *People vs. Balao*, G.R. No. 176819, January 26, 2011, 640 SCRA 565, 573; *Go vs. the 5th Division, Sandiganbayan*, G.R. No. 172602, April 13, 2007

¹⁴ *People vs. Sandiganbayan (4th Division)*, Jessie Castillo, et. al., G.R. No. 160619, September 9, 2015

¹⁵ *Uybuco vs. People*, G.R. No. 211703, December 10, 2014, 744 SCRA 688 (2014), citing *Uriarte vs. People*, G.R. No. 107110-20, April 17, 1996, 256 SCRA 242, 265

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period 2010 to 2013, x x x x x , **all public officers of Makati City, Philippines, while in the performance of their administrative and/or official functions and committing the offense in relation to their office x x x x**” [Emphasis supplied]

The subject *Informations* in SB-18-CRM-0157 to 0159, on the other hand, identically alleged that accused Binay, Jr. was the then City Mayor of Makati City, and the other co-accused are all public officers of Makati City, Philippines, while in the performance of their administrative and/or official functions and committing the offense in relation to their office at the time relevant to the present case:

“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.)**, City Mayor for the period 2010 to 2013, x x x , **all public officers of Makati City, Philippines, while in the performance of their administrative and/or official functions and committing the offense in relation to their office x x x x**” [Emphasis supplied]

The Second Element of Section 3(e) RA 3019

The subject *Information* in SB-18-CRM-0153 alleged that accused Binay, Jr. acted with manifest partiality, evident bad faith, and/or gross inexcusable negligence when he, in conspiracy with the other co-accused therein, awards the Architectural and Engineering Contract for the Ten-Storey Makati Science High School with Four-Storey Dormitory to Infiniti , in violation of RA 9184 (Government Procurement Reform Act) and its implementing rules and regulations, causes payment of said amount to Infiniti, through the schemes enumerated in the said *Information*:

“x x x **acting with manifest partiality, evident bad faith, and/or gross inexcusable negligence, did then and there willfully, unlawfully, and criminally** x x x x x x, by awarding the Architectural and Engineering Contract for the Ten-Storey Makati Science High School with Four-Storey Dormitory to Infiniti, in violation of RA 9184(Government Procurement Reform Act) and its implementing rules and regulations, causing payment of said amount to Infiniti, through the following scheme:

- a) Ensuring that the contract was awarded to Infiniti through the resort to negotiated procurement or limited source bidding by the BAC composed of De Veyra, Dasal

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and Amores, without complying with the conditions for such under RA 9184 and its IRR, and without the required posting of the Invitation to Apply for Eligibility and to Bid (IAETB) in the official website and in conspicuous places of Makati City and in the Philippines Government Electronic Procurement System, among other things;

- b) Falsification by Flores, as instructed by Binay, Sr. and accused BAC members, of bid proposals for the Contract to make it appear that Infiniti was the most qualified proponent;
- c) Entering through Binay, Sr. into the said Contract with Garcia, as representative of Infiniti, despite the glaring flaws in the procurement process;
- d) Processing and releasing of payment by Querijero and 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 payment were approved by Binay, Sr. (in 2008) and Binay, Jr. (in 2012) and accepted by Garcia, on behalf of Infiniti in the aforesaid sum, despite the lack of required documents and non-compliance with the requirements under RA 9184 and its IRR.”¹⁶

The subject *Informations* in SB-18-CRM-0157 to 0159, on the other hand, alleged that accused Binay, Jr. acted with manifest partiality, evident bad faith, and/or gross inexcusable negligence when he, in conspiracy with the other co-accused therein, awarded to Hilmarc's the Contract in the amount of P394,140,442.66 for the construction of Phase IV, P349,559,778.00 for Phase V, P165,264,847.00 for Phase VI of the Ten-storey Makati Science High School Building (Science Building) through a simulated public bidding, in violation of RA9184 and its implementing rules and regulations (IRR). Stating identical allegations, except the alleged cost of construction of the three (3) phases of construction, the relevant portion of the subject *Information* in SB-18-CRM-0157, for one, reads:

“x x x acting with manifest partiality, evident bad faith, and/or gross inexcusable negligence, did then and there willfully, unlawfully, and criminally x x x x x, by awarding Hilmarc's Contract in the amount of P394,140,442.66 for Phase IV 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:

¹⁶ Records, SB-18-CRM-0153, pp. 1-3.

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- a) Circumvention of the provisions of RA 9184 by Binay, Jr., De Veyra, San Gabriel, Dasal, Amores, Uyaco, 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 knowing the absence of public bidding;
- b) Binay, Jr., 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 Lowest Calculated Responsive Bid, which documents were signed and approved by Binay, Jr., despite knowing the absence of public bidding;
- c) Entering, through Binay, Jr. into 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 violations of RA 9184 and its IRR;
- d) Processing and releasing of the payments amounting to PhP 382,425,110.67, more or less, to Hilmarc's by De Veyra, Amores, Lim, Barlis, which payments were approved by Binay, Jr. and received by Canlas, despite deficiencies in the required supporting documents."¹⁷

The Third Element of Section 3(e) of RA 3019

The subject *Information* in SB-18-CRM-0153 alleged that accused Binay, Jr., conspiring with the other co-accused therein, criminally caused undue injury to the government of the City of Manila and gave unwarranted benefits, advantage and preference to Infiniti, through Garcia, in the amount of P17,372,000.00, more or less, by awarding the Architectural and Engineering Contract for the Ten-Storey Makati Science High School with Four-Storey Dormitory to Infiniti, in violation of RA 9184 (Government Procurement Reform

¹⁷ Records, SB-18-CRM -0157, pp.1-3.

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Act) and its implementing rules and regulations, causing payment of said amount to Infiniti through schemes enumerated therein:

“xxxx while in the performance of their administrative and/or official functions and committing the offense in relation to their office, conspiring with one another and with private individual VIRGINIA P. GARCIA (Garcia), representative of Infiniti Architectural Works (Infiniti), acting with manifest partiality, evident bad faith, and/or gross inexcusable negligence, did then and there willfully, unlawfully, and criminally **cause undue injury to the government of the City of Manila and give unwarranted benefits, advantage and preference to Infiniti, through Garcia, in the amount of P17,372,000.00, more or less, by awarding the Architectural and Engineering Contract for the Ten-Storey Makati Science High School with Four-Storey Dormitory to Infiniti, in violation of RA 9184(Government Procurement Reform Act) and its Implementing rules and regulations, causing payment of said amount to Infiniti, through the following scheme¹⁸:**

The subject *Informations* in SB-18-CRM-0157 to 0159, on the other hand, alleged that accused Binay, Jr., conspiring with the other co-accused therein, criminally gave unwarranted benefits, advantage and preference to Hilmarc’s, and cause undue injury to the government by awarding Hilmarc’s Contract in the amount of P394,140,442.66 for the construction of Phase IV, P349,559,778.00 for Phase V, and P165,264,847.00 for Phase VI 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). Stating identical allegations, except the alleged cost of construction of the three (3) phases of construction, the relevant portion of the subject *Information*, for one (SB-18-CRM-0157), reads:

“xxxx while in the performance of their administrative and/or official functions and committing the offense in relation to their office, conspiring with one another and with private individual 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 criminally give unwarranted benefits, advantage and preference to Hilmarc’s, and cause undue injury to the government by awarding Hilmarc’s Contract in the amount of P394,140,442.66 for Phase IV construction of the Ten-Storey Makati Science High School Building (Science**

¹⁸ See enumerated schemes in Note 16

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Building) through a simulated public bidding, in violation of RA 9184 and its implementing rules and regulations (IRR).

Clearly, the four (4) *Informations* in SB-18- CRM-0153, 0157, 0158 and 0159, quoted in its relevant portion, sufficiently alleged the elements of the crime of violation of Section 3(e) of RA 3019 as required under Section 6 in relation to Section 8 and 9 of Rule 110 of the RRCP. Jurisprudence dictates 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.¹⁹ The Supreme Court has consistently and repeatedly held in a number of cases that an *Information* needs only state the ultimate facts constituting the offense and not the finer details of why and how the crime was committed.²⁰

Given that the ultimate facts, i.e. the principal, determinative, and constitutive facts on whose existence the cause of action rests²¹, have been sufficiency alleged in the subject *Informations*, accused Binay, Jr.'s contention that the *Informations* charging him with Section 3(e) of RA 3019 do not allege facts to support the conclusion that there was a specific act done by him through manifest partiality, evident bad faith, or gross or gross inexcusable negligence or that he caused undue injury to any party, including the government, or gave unwarranted benefits or advantage or preference in SB-18-CRM-0153, 057 to 0159, fail to persuade the Court. The issue as to whether he indeed committed any of the acts mentioned in the said *Informations* are clearly matters of evidence which are to be properly threshed out during the trial of these criminal cases.

Falsification of Public Documents

Accused Binay, Jr. and the other co-accused are charged in SB-18-CRM-0163 to 0165 with falsification of public documents under Article 171 of the Revised Penal Code which reads, thus:

Art. 171. Falsification by public officer, employee or notary or ecclesiastic minister. The penalty of *prision mayor* and a fine not to exceed 5,000 pesos shall be imposed upon any public officer,

¹⁹ *Enrile vs. People*, G.R. No. 213455, August 11, 2015, citing *People vs. Romualdez, et. al.*, G.R. No. 166510, July 23, 2008

²⁰ *Lazarte vs. Sandiganbayan*, G.R. No. 180122, March 13, 2009, 581 SCRA 431; *People vs. Romualdez*, G.R. No. 166510, July 23, 2008, 559 SCRA 492; *Go vs. Bangko Sentral ng Pilipinas*, G.R. No 178429, October 23, 2009, 604 SCRA 322.

²¹ *Philippine Bank of Communications vs. Trazo*, G.R. No. 165500, 531 Phil. 636, 653 (2006)

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employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

1. Counterfeiting or imitating any handwriting, signature or rubric;
2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;
3. Attributing to persons who have participated in any act or proceeding statements other than those in fact made by them;
4. Making untruthful statement in a narration of facts;
5. Altering true dates;
6. Making any alteration or intercalation in a genuine document which changes its meaning;
7. Issuing in an authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such a copy a statement contrary to, or different from, that of the genuine original; or
8. Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book.

The same penalty shall be imposed upon any ecclesiastical minister who shall commit any of the offenses enumerated in the preceding paragraphs of this article, with respect to any record or document of such character that its falsification may affect the civil status of persons.”

The elements of the crime of falsification of a public document under the above-quoted provision of the RPC are the following:

- (1)The offender is a public officer, employee, or notary public;
- (2)He takes advantage of his official position; and
- (3) He falsifies a document by committing any of the aforementioned acts.²²

The First and Second Element of Falsification of Public Document

In all three(3) counts of the crime charged of falsification of public document against accused Binay, Jr., except for the different dates of the alleged commission of the crime and the specific construction phases of Makati Science High School Building, the subject *Informations* in SB-18-CRM-0163 to 0165 identically alleged that accused Binay, Jr., was the City Mayor and Head of the

²² Regidor, Jr. vs. People, G.R. Nos. 166086-92, February 13, 2009, 579 SCRA 244, 263 (2009)

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Procuring Entity (HOPE) and the other co-accused are all public officers of Makati City at the time relevant to the present case²³ and he and the other co-accused took advantage of their official functions. The relevant portion of the subject *Information* in SB-18-CRM-0163, for one, reads:

“On 03 September 2012, or thereabout, in Makati City, Philippines, and within this Honorable Court’s jurisdiction, accused Makati City public offices **City Mayor and Head of the Procuring Entity (HOPE)**, x x x x x x, while in the performance and **taking advantage of their official functions** as such, conspiring with one another x x x”. [Emphasis supplied]

The Third Element of Falsification of Public Document

Similarly, in all three(3) counts of the crime charged of falsification of public document against accused Binay, Jr., except for the different dates²⁴ of the alleged falsification of BAC Resolution and the specific construction phases of the Makati Science High School Building²⁵, the subject *Informations* SB-18-CRM-0163 to 0165 identically alleged that accused Binay, Jr. and the other co-accused willfully, unlawfully and feloniously falsify the BAC Resolution (stating the specific the dates therein), an official document, and its supporting documents, stating therein the ultimate facts and circumstances constituting the offense of falsification of public document under Article 171 of the RPC. The relevant portion of the subject *Information* in SB-18-CRM-0163, for one, reads:

“x x x **willfully, unlawfully and feloniously falsify the 08 August 2011 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 recommendation to award it the contract for the Phase IV 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 IV Construction was conducted, compliant with Republic Act (RA 9184) (Government Procurement Act) and its Implementing Rules and Regulations, such that:

²³ The alleged date of commission of the crime charged: (i) August 8, 2011, or thereabout in CRM-0163; (ii) September 3, 2012, or thereabout in CRM-0164; (ii) July 19, 2013, or thereabout in CRM-0165.

²⁴ The alleged dates of the document allegedly falsified, the BAC Resolution, are identical with the alleged dates of the commission of the crime charged, See Note 23

²⁵ The alleged construction phases of the Makati Science High School Building stated in the subject *Informations* are as follows: (i) Phase IV in CRM-0163; (ii) Phase V in CRM-0164; and (iii) Phase VI in CRM-0165.

