

REPUBLIC OF THE PHILIPPINES  
**Sandiganbayan**  
Quezon City

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**FIFTH DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
*Plaintiff,*

**Crim. Case No. SB-18-CRM-0159**  
*For: Vio. of Sec. 3(e), R.A. No. 3019*

- versus -

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

Present:

LAGOS, J., Chairperson  
MENDOZA-ARCEGA, and  
CORPUZ-MAÑALAC, JJ.

Promulgated on:

July 19, 2018 *Jal*

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**RESOLUTION**

**LAGOS, J.:**

This resolves the prosecutions' motion for reconsideration on the Resolution dated June 21, 2018, which granted accused Badillo's motion to quash. Badillo's comment/opposition thereto was filed on July 9, 2018.

Briefly, the prosecution contends that as a BAC member, Badillo signed the BAC Resolution dated July 19, 2013 which awarded Phase VI of the Makati Science High School Project despite the absence of a public bidding. Moreover, as BAC member, Badillo, according to the prosecution, participated in: 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. As such, the prosecution maintains that the allegations in the Information in this case are clear and sufficiently constitute the elements of the offense charged.

Accused Badillo, on the other hand, argues that the functions pertaining to the advertisement and/or posting of bidding opportunities belong to the BAC Secretariat under Sections 14.1(f) and (j) of the Revised IRR (2009) of R.A. 9184, otherwise known as the Procurement Law. Therefore, being merely a BAC member and not belonging to the BAC Secretariat, Badillo maintains that he could not be faulted for the alleged non-posting of the IAETB and the other deficiencies therein. He also argues that since his name was not mentioned in paragraph (b) of

the Information, he could not be part of a “collective” conspiracy together with the other accused.

### DISCUSSION/RULING

At the outset, the Court reiterates its ruling in the questioned June 21, 2018 Resolution, to wit:

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 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 the accused-movant herein was not part of any conspiracy.<sup>1</sup>

Examining further the Joint Resolution<sup>2</sup> of the Ombudsman, it becomes clear that although Badillo was said to have signed the July 19, 2013 BAC Resolution, he never was found out to be at fault with the other accused in signing the same. Excerpts from the Joint Resolution are quoted hereunder:

Despite the flaws, however, none of the members of the BAC, BAC Secretariat and even the BAC TWG, whose members must be from a pool of technical, financial and/or legal excerpts to assist in the procurement process, questioned the defects in the documents or proceedings, thereby indicating their acquiescence to the irregularities. The perpetration of the anomalous conduct in the subject biddings of Phases I, II, IV, V, and VI, the giving of unwarranted benefit, advantage, and preference to Hilmarc’s in violation of Section 3(e) of RA 3019, the untruthfulness of the statements in the BAC Resolutions regarding the publication of IAETBs, and the falsity of the Affidavits of Publication, Publisher’s Affidavit, newspaper editions and bidding documents of a purported bidder which gave rise to the commission of falsification of public documents, could not have been committed without the participation of the following City officials who were involved and should be faulted for the conduct of five “public biddings”:

1. De Veyra, Amores, Dasal, San Gabriel, and Mendoza as BAC members, for signing the BAC Resolutions declaring the LCRB containing untruthful statements on the publication in newspapers of general circulation of the IAETBs for Phases I, II, IV, V and VI and the false representation that JBros participated in the bidding for Phase I.

x x x x

<sup>1</sup> See p. 551, Records, Vol. 2.

<sup>2</sup> Joint Resolution in OMB-C-C-15-0172-77, dated July 10, 2017, pp. 64-140, Records, Vol. 1.



x x x x

By issuing and signing the five BAC Resolutions Declaring LCRB and Recommending Approval required under RA 1984, the BAC members composed of De Veyra (Phases I, II, IV, and V), Dasal and Amores (Phases I, II, IV, V and VI), San Gabriel (Phases IV, V and VI), and Mendoza (Phase VI), took advantage of their official positions in making untruthful statements in a narration of facts, thus committing the crime of Falsification of Public Documents.<sup>3</sup> (Underscoring supplied)

x x x x

From the above findings made by the Ombudsman itself, it is crystal clear that although Badillo was a BAC member, he was not included by the Ombudsman as among those to be faulted for the alleged rigged bidding covering Phase VI of the contract. In fact, Badillo was not found to have taken advantage of his official position in making untruthful statements in a narration of facts, despite his being a BAC member for Phase VI of the contract. All the other BAC members who signed the BAC Resolution Declaring LCRB and Recommending Approval for Phase VI, namely: Mendoza, San Gabriel, Dasal, Amores and Binay, Jr. were charged for Falsification of Public Documents. Badillo was not charged for falsification despite him being a BAC member. The only conclusion therefore is that he was not found by the Ombudsman to be part of the conspiracy.

While it is true that Badillo is charged in this case for a Section 3(e) RA 3019 violation, these findings of the Ombudsman in its Joint Resolution with respect to who among the accused should also be charged for falsification, is quite relevant with respect to Badillo's alleged conspiracy with the other BAC members. The alleged falsification was a means to attain the giving of unwarranted benefits or advantage to the preferred contractor. The Joint Resolution thus further stated:

It is the BAC's function, with the assistance of the BAC Secretariat, to cause the publication of the IAETBs. In fact, the IAETBs allegedly published in the newspapers appear to have come from the "Bids and Awards Committee Head Secretariat" since they bear such markings. Being the ones in possession and who made use of the above documents, respondent BAC members and BAC Secretariat Heads are presumed to be the authors of the falsification, in conspiracy with the BAC TWG Head Nayve (Phase I), Flores (Phase I), Binay, Jr. (Phases I and II) and Binay, Jr. (Phases IV, V and VI).<sup>4</sup> (Underscoring supplied)

As already stated above, since Badillo was not charged for falsification, despite being a BAC member, he cannot also be presumed to be one of the authors of the falsification, in conspiracy with the other BAC members and Binay, Jr. for Phase VI of the contract. Moreover, the above finding of the Ombudsman highlights the fact that it was the BAC Secretariat which was primarily tasked to take care of the publication of IAETBs. This is because the Ombudsman categorically stated that the

<sup>3</sup> Id, p. 111 and p. 134.

<sup>4</sup> Id., p. 135.

“IAETBs allegedly published in the newspapers appear to have come from the “Bids and Awards Committee Head Secretariat”. This confirms that the BAC Secretariat only lived up to its mandate as it was tasked to oversee the advertisement and posting of bid invitations, as required by the Revised IRR of R.A. 9184. The BAC itself, and its members, were not principally tasked to do this.

It is, therefore, clear that Badillo’s not being included in paragraph (b) of the Information herein was not a result of a mere inadvertence, but was consistent with and based on the clear findings of the Ombudsman in its Joint Resolution, as quoted above. These findings fall under the realm of “admitted facts” which the Court can consider in resolving a motion to quash. Badillo cannot therefore be regarded as a “collective” conspirator, even if he did sign the BAC Resolution dated July 19, 2013. The same goes with the allegation that he conspired with the other BAC members in the execution of the Abstract of Bids.

To be considered part of a conspiracy, each of the accused must be shown to have performed at least one overt act in pursuance of the conspiracy. The overt act alleged to have been committed by Badillo is his signing the BAC Resolution of July 19, 2013, the Post Qualification Report and the Abstract of Bids. However, as already discussed above, his signing the BAC Resolution was not found to be irregular or illegal as he was not charged for falsification. He did not sign the Post Qualification Report as he simply “Noted” the same. The Joint Resolution in fact does not include this document as one of the those signed by Badillo<sup>5</sup>. As to the Abstract of Bids, the allegation of his signing the same is contradicted by his name not being mentioned in paragraph (b) of the Information. For conspiracy to exist, it is essential that there must be a conscious design to commit an offense. Conspiracy is not the product of negligence but of intention of the cohorts.

Lastly, the prosecution’s failure to include in its motion for reconsideration a prayer for the amendment of the Information to include Badillo in paragraph (b) of the Information despite its insistence that he signed the July 19, 2013 BAC Resolution, militates against its stance that Badillo was part of the conspiracy. To reiterate, the prosecution’s failure to properly allege Badillo’s conspiratorial acts results to not only a defective Information, but to a finding of lack of probable cause.

**WHEREFORE**, premises considered, the prosecution’s motion for reconsideration is **DENIED**.

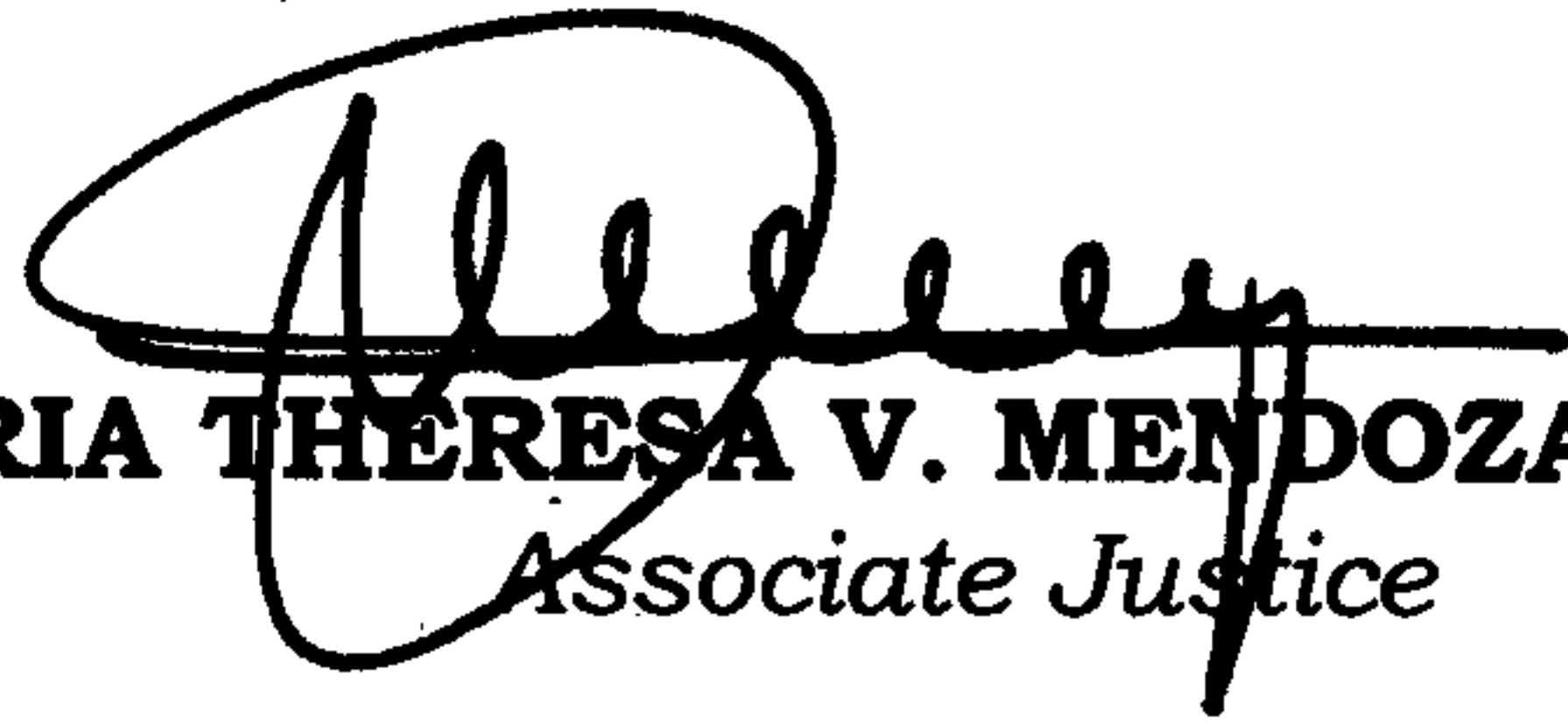
SO ORDERED.

  
**RAFAEL R. LAGOS**  
*Associate Justice/Chairperson*

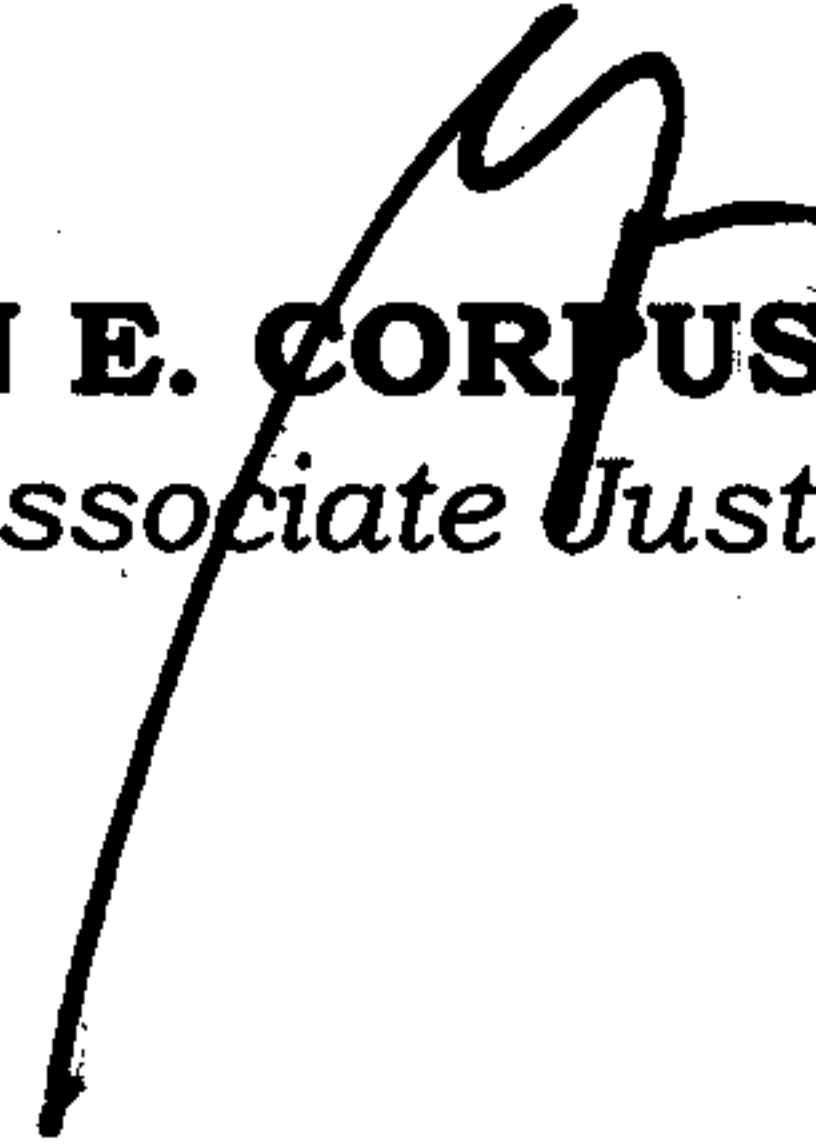
<sup>5</sup> The Joint Resolution only states that Badillo signed the July 19, 2013 BAC Resolution and Abstract of Bids. See p. 132, Records Vol. 1.



WE CONCUR:



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



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

