



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

Fifth Division

PEOPLE OF THE PHILIPPINES, SB-18-CRM-0153 to 0156
Plaintiff,

– versus –

For: Violations of sec. 3(e) of
Rep. Act No. 3019

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

SB-18-CRM-0160 to 0162

For: Violations of article 171 of
the Revised Penal Code

Present:

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

Promulgated:

August 02, 2018 Jal

X-----X

RESOLUTION

LAGOS, J.:

This disposes of accused Jejomar C. Binay, Sr.'s *Motion for Reconsideration Ex Abundante Cautela*¹ of the Court's resolution dated 18 June 2018 which denied his motion to quash. The prosecution filed its written *Opposition*.²

The accused-movant contends that the Court erred in sustaining the validity of the Informations in these cases. He avers that the allegation of conspiracy in the Informations is invalid for

¹ Dated 27 June 2018.

² Dated 4 July 2018.

N/A

failing to establish the overt acts committed by the accused in furtherance of such conspiracy.

He claims that his alleged acts of signing the Bids and Awards Committee (BAC) resolutions and disbursement vouchers have no causal relationship to the crimes charged. He suggests that this is not a valid overt act that might constitute the alleged conspiracy. He considers these acts to be official acts which he was duty-bound to perform.

He then asserts that the acts attributed to him cannot constitute violations of section 3(e) of Republic Act No. 3019 and violations of Article 171 of the Revised Penal Code.

He claims that with respect to the approval of the BAC resolutions, it was not alleged that such subject BAC resolutions were null and void on its face; he invokes the *Arias* doctrine as he believes that irregularities pertaining to these were due to actions of other people and that he cannot ascertain these irregularities just by examining the resolutions and the supporting documents. His prerogative as head of the procuring entity (HOPE), under the law, to refuse the BAC recommendation requires a justifiable ground, and he must have known of irregularities in the BAC resolution to do so. He points out that the Informations do not allege that he had not known of such irregularities. To him, these fail to establish the elements of violating section 3(e) of Republic Act No. 3019.

He notes a variance in the allegation in SB-18-CRM-0153 and in the FIO complaint-affidavit. In the former, accused-movant is alleged to have given instruction to accused Flores with regard to the falsification of bid proposals, while in the latter, it was the BAC that was claimed to have given such instruction.

He also claims that he has no duty to prepare or intervene in the preparation of BAC resolutions, which are alleged to have been falsified, or have custody of the same. Thus, he argues that he could not have abused his position to facilitate any falsification. He then argues that his approval of the BAC resolutions cannot be considered his overt act in falsifying any document. He asserts that his act and the act of other accused cannot be lumped together. He thus concludes that the Informations charging falsification of documents should also be quashed.

He ends by claiming that his right to be informed of the nature and cause of the accusation against him was violated. He bases this on his view that the allegations against him are defective or insufficient.

In its opposition, the prosecution stresses that the test for the ground relied upon for quashal is if the essential elements of the crime charged will be established when the facts alleged are hypothetically admitted. It adds that matters *aliunde* are not considered.

It claims that the accused-movant's arguments call for matters *aliunde*. They are evidentiary and should be dealt with during trial. It also treats the allegations of conspiracy as evidentiary in nature, and the individual acts need not even be alleged.

It also says that the presumption of regularity in the performance of official function can be rebutted by evidence, which it claims to have and will present.

DISCUSSION and RULING

The motion for reconsideration lacks merit.

The accused-movant's arguments have already been passed upon in the questioned resolution. He has not raised any argument or reason to warrant a reversal of the denial of his motion to quash. He restates arguments which call for an assessment of evidentiary matters, which is not proper in a motion to quash.

Anent the allegation of conspiracy, the Court explained how a conspiracy, as a mode of commission of crimes, is alleged:³

At the outset, it should be highlighted that the Informations allege that the accused-movant acted in conspiracy with other accused. In alleging conspiracy as a mode of commission of an offense, the Supreme Court explained:

"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

³ Citing *Enrile v. Sandiganbayan*, G.R. No. 213455, 11 August 2015.

accused to competently enter a plea to a subsequent indictment based on the same facts.”

These two ways are present in the Informations of these cases. The allegation of conspiracy is explicitly stated, and the allegation constituting the conspiracy are also clearly stated. The individual acts attributed to each of the accused are properly alleged.

The accused-movant considers the allegations of acts he committed as insufficient to sustain the allegation of conspiracy. While he does not deny that there are acts imputed to him, he nevertheless claims that these acts were done in good faith and are regular performance of his functions.

His explanations cannot be considered at this point.

As explained, in a motion to quash on the ground that the facts charged do not constitute an offense, the fundamental test in 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 accused-movant's claim of good faith and regular performance of his functions are matters which are extrinsic to the Informations. These are evidentiary matters that should be threshed in the trial of these cases. Therefore, they cannot be considered for the purpose of assessing the textual sufficiency of the factual allegations in the Informations.

His reliance on *Macapagal-Arroyo v. Sandiganbayan*⁵ is also misplaced. The Informations in these cases have validly alleged conspiracy among the accused by explicitly alleging such conspiracy and alleging the conspiratorial acts of each accused.

The ruling in that case that the signature approval was not enough to establish conspiracy was made after an assessment of the evidence which were presented during the trial of the case. In this case, whether the accused really acted in concert with each other is a factual issue that cannot be ascertained at this point.

Similarly, his invocation of the *Arias* doctrine and his claim of non-participation in or possession of the falsified documents cannot be considered; these are undoubtedly extrinsic to the Information.

⁴ People v. Dumlao, G.R. No. 168918, 2 March 2009.

⁵ G.R. No. 220598, 19 July 2016.

In the cases for violation of section 3(e) of Republic Act No. 3019, there is no need to specifically allege that he acted with knowledge of the BAC anomalies. It is clear that he is alleged to have acted irregularly and in conspiracy with others to commit the offense. To require more factual allegations would be to require the addition of evidentiary facts.

In the falsification cases, it is of no moment that he is not alleged to have caused the falsification as it is also clear that he is alleged to have conspired with others to falsify the subject documents. The documents allegedly falsified and the projects to which they pertain were identified.

None of the Informations in these cases have been found to be defective. They are compliant with the standards set under specific provisions of the rules.⁶ The Court therefore finds no violation of the accused-movant's right to be informed of the nature and cause of the accusation against him.

The accused-movant can even definitively identify the acts he allegedly committed. This shows that he is aware of the acts imputed to him as stated in the Informations. He even offers explanations or defenses for these acts. This only lends credence to the conclusion that there is no violation of his right to be informed and his claimed violation of such right is unfounded.

A hypothetical admission of all the facts alleged in the Informations of these cases would establish all the elements of the crimes charged therein. The allegations of conspiracy in each are not only plainly stated but the participation of each accused is also detailed. These were extensively discussed in the questioned resolution.

In fine, the accused-movant has still not shown any defect or infirmity apparent on the faces of the Informations. His arguments are based mainly on evidentiary matters that are extrinsic to the Informations which cannot be considered at this point.

WHEREFORE, the motion for reconsideration is hereby **DENIED**.

SO ORDERED.

⁶ Rule 110, sections 6-12.



RAFAEL R. LAGOS
Chairperson
Associate Justice

WE CONCUR:



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



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