



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

Fifth Division

PEOPLE OF THE PHILIPPINES, SB-18-CRM-0159

Plaintiff,

– versus –

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

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

Accused.

Present:

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

Promulgated:

August 09, 2018 *lad*

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RESOLUTION

LAGOS, J.:

For resolution is the Prosecution's *Compliance with Motion to Admit Amended Information* in this case. On July 18, 2018, accused Jejomar Erwin S. Binay, Jr. filed an opposition to this motion of the prosecution, with prayer for the Court to dismiss the case. Accused Badillo filed his opposition to the prosecution's motion on July 16, 2018.

Briefly, the prosecution asserts that considering that none of the accused had been arraigned, the Information can be amended as a matter of right. The amendments cover correction of paragraph (b) of the Information in that it should be accused Eleno Monasterial Mendoza, Jr. instead of accused De Veyra which should appear in said paragraph considering that Mendoza was the one being charged in SB-18-CRM-0159 and was the City Administrator and Bids and Awards Committee (BAC) Chairman during the Phase VI construction of the Makati Science High School Building. Also, accused Mario V.

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Badillo's name should also appear in paragraph (b) of the Information in SB-18-CRM-0159 considering that he participated in the Phase VI construction of the Science Building as BAC Member.

Accused Binay, Jr. counters that the Prosecution did not in fact comply with the Court's Resolution dated June 18, 2018 because instead of indicating accused De Veyra in paragraph (b), the Prosecution now names accused Mendoza and Badillo in said paragraph. According to Binay, Jr., the charges sought by the Prosecution are not only substantial amendments but amounts to a total alteration of the Prosecution's theory of the case. The amendments, according to Binay, Jr., are an obvious substitution of the original Information and it must be denied.

Accused Badillo opposes the instant motion on the ground that it is illegal for the Prosecution to include his name in paragraph (b) of the Information as there is no prior resolution authorizing the Prosecution to do the same.

DISCUSSION and RULING

The Rules of Court provide that:

"Section 14. Amendment of substitution. A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused."¹

Accused Eleno M. Mendoza, Jr.

With respect to the amendment concerning the inclusion of accused Mendoza in paragraph (b) of the Information and his designation not only as BAC Chairman but also as City Administrator, the Court believes that such an amendment may be given due course considering that the Joint Resolution of the Ombudsman dated July 10, 2017 named him as one of those who should be held liable for approving Phase VI of the Contract and one of those who committed falsification. Clearly, accused Mendoza should have been named in paragraph (b) instead of accused De Veyra, because of the finding of the Ombudsman that:

"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

¹ Sec. 14, Rule 110 of the Revised Rules of Court.

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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 publications 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.

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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.²

Accused De Veyra's participation, as found by the Ombudsman, was limited to Phases I, II, IV and V of the Contract. Mendoza's participation covered Phase VI of the Contract. It is therefore only through oversight or inadvertence that Mendoza's name was not included in paragraph (b) of the Information. The correction of the date, i.e., from "July 2011 to August 2012" to "July 2012 to December 2013", of the alleged commission of the offense has been already granted by the Court in its Resolution dated August 7, 2018. As to his additional designation as City Administrator, the Court finds this proposed amendment to be only a formal one. Considering that accused Mendoza has not yet been arraigned, the amendments as to him may be allowed.

Accused Mario V. Badillo

Accused Badillo filed a *Motion to Quash* and this was granted by the Court on June 21, 2018. The Prosecution moved for a

² See Joint Resolution dated July 10, 2017, pp. 111 & 134, Records, Vol. I.

reconsideration of this Court's resolution but the same was denied on July 19, 2018 on the following grounds:

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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).

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 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 acts 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 those signed by Badillo. 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.³

Contrasted with accused Mendoza's name being omitted in paragraph (b) of the Information, which appears to have been caused by mere oversight or inadvertence, Badillo's name was not included in the said paragraph because the findings of the Ombudsman's Joint Resolution clearly excluded him from any conspiratorial participation in recommending the award of Phase VI of the Contract to the "winning bidder." Badillo in fact was not charged for falsification. The Ombudsman's findings, cited above, negate any probable cause finding against Badillo and as such, it cannot be cured by any amendment, whether formal or substantial, even if Badillo has not been arraigned. To do so will necessarily alter or be inconsistent with the Ombudsman's own findings resulting to a total overhaul of the

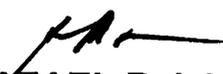
³ See Resolution on the Prosecution's *Motion for Reconsideration* promulgated on July 19, 2018, pp. 2-4.

Prosecution's theory of the case with respect to accused Badillo. Stated otherwise, the inclusion of Badillo's name, as an amendment, will not cure the lack of probable cause finding mentioned by the Court in its Resolution dated June 21, 2018 and July 19, 2018. Moreover, the Prosecution had earlier filed a *Motion to Correct Information* in this case as early as May 24, 2018 but in the aforesaid motion, it never asked for the inclusion of Badillo in paragraph (b) of the Information. Nor did the Prosecution ask the same from the Court when it moved for a reconsideration of the granting of Badillo's *Motion to Quash*.

WHEREFORE, premises considered, the Prosecution's Motion to Admit Amended Information is hereby **PARTIALLY GRANTED**. The Information is ordered amended to include accused Eleno M. Mendoza, Jr.'s name in paragraph (b) thereof and his designation as City Administrator in paragraph 1 of the said Information. Consequently, the Information against accused De Veyra is ordered **QUASHED**. With respect to the amendment involving accused Badillo, the same is **DENIED**, and this case against him is **DISMISSED**.

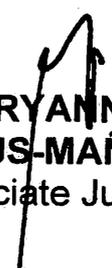
As to accused Binay, Jr.'s *Motion to Dismiss*, the same is only **PARTIALLY GRANTED**, for the same reasons stated above, only as to accused Badillo. The Prosecution is given five (5) days, from receipt, to file an Amended Information in accordance with this Resolution.

SO ORDERED.


RAFAEL R. LAGOS
Chairperson
Associate Justice

WE CONCUR:


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


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