



Republic of the Philippines
Sandiganbayan
Quezon City

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-18-CRM-0159

**For: Violation of Section 3(e)
Republic Act (R.A.) 3019**

- versus -

JEJOMAR C. BINAY, JR. ET AL.,
Accused.

Present:

**Lagos, J., Chairperson,
Mendoza – Arcega and
Corpus - Mañalac, JJ.**

Promulgated:

September 10, 2018 *Jal*

X ----- X

RESOLUTION

CORPUS - MAÑALAC, J.:

This refers to the accused Jejomar Erwin S. Binay, Jr.’s “**Omnibus Motion for Reconsideration**”¹ praying for this Court to reconsider its Resolutions promulgated on August 7 and 9, 2018 and in lieu thereof grant herein accused’s Motion to Dismiss the *Information* in SB-18-CRM-0159 dated July 16, 2018. The prosecution filed an “**Opposition**”² thereto on August 24, 2018.

Binay, Jr. anchors his motion on the following grounds:

1. The amendments allowed in SB-18-CRM-0159 as to the (a) extension of the date of commission from “July 2011 to August 2012” to “July 2011 to December 2013”; (b) addition of accused Mendoza, Jr.; and (c) expansion of Mendoza Jr.’s position not only as BAC Chair but also as City Administrator; effectively changed the prosecution’s theory of the case, and thus, not only formal amendments but are substantial in nature;
2. The aforesaid amendments violate the movant’s constitutionally protected rights;

¹Record, Vol. 4, pp.50-74

²Record, Vol. 4, pp. 116-121

3. Being substantial in nature, the amendments even if sought for prior to arraignment, shall not be at the expense of the movant's constitutional rights, and shall not be allowed to circumvent the rules and jurisprudence.

Binay, Jr. avers that the expansion of the period of alleged commission works to the disadvantage of all the accused involved in the case. The amendment as to the date of the commission of the crime considerably expands the period for which the alleged offense took place, specifically, from a period of one (1) year and one (1) month to a period of two (2) years and five (5) months, thus completely changing the prosecution's case theory as its narrative of facts are altered drastically. Similarly, accused Mendoza, Jr.'s inclusion, and the addition of his designation as City Administrator, are likewise substantial amendments, attributing to him, as well as to his co-accused, additional duties and responsibilities which were not formerly contemplated in the original *Information* that totally changes the prosecution's theory of the case.

Citing the case of *Dr. Joel Mendez vs. People of the Philippines*,³ Binay, Jr. alleges that amendments which charge an offense different from that alleged in the original one or alter the prosecution's theory of the case so as to cause surprise to the accused and affect the form of their defense are considered substantial amendments. These amendments change the prosecution's theory that lead to inconsistencies in the logical sequence of facts attributed to the accused. As the accused were charged of having conspired with each other, every variance in the *Information*, affects each one of them as the acts of a co-accused will ultimately be ascribed to all of them.

Movant Binay, Jr. invokes his constitutional right to be informed of the nature and cause of the accusation against him, arguing that the amendments violate his constitutionally protected rights. He cites the ruling in the case of *People vs. Hon. Mencias, et al.*,⁴ that the amendments to the *Information* are substantial in nature, hence, due process demands that a separate finding for probable cause be had before the same may be incorporated into the *Information*. He further asserts that while the prosecution is entitled to amend the information at any time before an accused is arraigned, the same should not come at the expense of his constitutional right to be informed of the charges against him.

In opposition, the prosecution alleges that the arguments of Binay, Jr. are devoid of merit, which have already been discussed and ruled upon in the assailed Resolutions. It maintains that the amendment of the date of commission is merely to correct the apparent discrepancy in the original date and make it conform to evidence. Moreover, the omission of the name of accused Mendoza, Jr. in paragraph (b) of the *Information* was merely due to oversight or inadvertence, as he is one of those involved in approving the Phase VI construction of the Makati Science Building. The inclusion of his designation as City Administrator would not affect

³Dr. Joel Mendez vs. People of the Philippines, G.R. No. 179962, June 11, 2014

⁴ People vs. Hon. Mencias, et al., 150-B Phil. 78, 89-90 (1972)

the theory of the prosecution which does not change the acts imputed to the accused in the Amended Information.

These amendments, allegedly, are in no way violative of the right of the accused to due process.

Finally, the prosecution insists that the Information can be amended at this stage which is a matter of right as long as the accused have not yet entered their plea pursuant to Section 14, Rule 110 of the Revised Rules of Court.

THE RULING OF THE COURT

Foremost, the movant's arguments have been raised, squarely addressed, and found to be without merit in the assailed *Resolutions*. The Court is not inclined to embark on another extended discussion of the same issues again.

As to the amended date of commission, the Court hereby reiterates its *Resolution* in SB-18-CRM-0159 dated August 7, 2018, which ruled:

At any rate the intended change of date does not alter the theory of the prosecution nor deprive the accused of defenses available to them prior to amendment. Said amendment may even be effected during trial to conform to evidence. In *People vs. Rael Delfin*,⁵ citing the cases of *Rocaberte vs. People*⁶ and *U.S. vs. Cardona*,⁷ it was held that:

“Since the date of the commission of the offense is not required with exactitude, the allegation in an Information of a date of commission different from the one eventually established during the trial would not, as a rule, be considered as an error fatal to the Prosecution. In such cases, the erroneous allegation in the Information is just deemed supplanted by the evidence presented during the trial or may even be corrected by a formal amendment of the Information.”

This early, the *Ombudsman Joint Resolution* attached to the records pointed to the transaction for Phase VI of the Science Building which allegedly transpired in 2013. The date of the unnumbered *BAC Resolution* declaring Hilmarc Corporation as the sole bidder issued by the BAC, signed by Mendoza as its Chair, and thereafter approved by Binay, Jr. is July 19, 2013.

Apparently, the intended correction of date by extending the period to December 2013 is merely to add accuracy to the time of alleged commission of the offense that is not prejudicial to the accused. In *Albert vs. Sandiganbayan*,⁸ the Supreme Court elucidated:

“The test as to when the rights of an accused are prejudiced by the amendment of a complaint or information is when a defense under the complaint or information, as it originally stood, would no longer be available after the amendment is made, and when any evidence the accused might have, would be

⁵ G.R. No. 201572, July 9, 2014

⁶ G.R. No. 72994, January 23, 1991, 193 SCRA 152, 156

⁷ 1 Phil. 381, 383 (1902)

⁸ G.R. No. 164015, February 26, 2009

inapplicable to the complaint or information as amended. On the other hand, an amendment which merely states with additional precision something which is already contained in the original information and which, therefore, adds nothing essential for conviction for the crime charged is an amendment to form that can be made at any time."

Whereas, the amendment to include accused Mendoza, Jr. and his additional designation as City Administrator, the Resolution in SB-18-CRM-0159 dated August 9, 2018 ruled:

With respect to the amendment concerning the inclusion of accused Mendoza in paragraph (b) of the Information and his designation not only as BAG 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 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 1, 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 BAG 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.

x 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 VI), 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.

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. X x x x 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.

The amendment effected prior to arraignment is sanctioned by the rules, thus, it is not procedurally infirm. More importantly, it does not violate the accused's right to due process as the theory of the prosecution remains, imputing basically the same acts against the accused.

WHEREFORE, the instant **Omnibus Motion for Reconsideration** is DENIED for lack of merit.

SO ORDERED.


MARYANN E. CORPUS – MAÑALAC
Associate Justice

WE CONCUR:


RAFAEL R. LAGOS
Chairperson
Associate Justice


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice