



REPUBLIC OF THE PHILIPPINES

**Sandiganbayan**

Quezon City

**Fifth Division**

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

**– versus –**

**SB-06-CRM-0469**

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

**ELENITA S. BINAY, ET AL.,  
*Accused.***

**Present:**

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

**Promulgated:**

October 15, 2018 *lag*

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**RESOLUTION**

**LAGOS, J.:**

This resolves the *Motion for Reconsideration (Re: Denial of Motion to Discharge)* filed by the Office of the Special Prosecutor, Office of the Ombudsman, from the Resolution of this Court dated August 22, 2018, which denied the prosecution's *Motion to Discharge Accused Ernesto A. Aspillaga To Be Utilized As State Witness*.<sup>1</sup> Accused Elenita S. Binay filed her *Comment/Opposition* thereto.<sup>2</sup> The

<sup>1</sup> Dated 24 August 2018; Records, Vol. VI, pp. 296-301.

<sup>2</sup> Dated 10 September 2018; Records, Vol. VI, pp. 350-356.

*lag*

other accused did not file any comment/opposition to this motion for reconsideration.

In support of its motion for reconsideration, the prosecution avers that the COA Report pertaining to the subject transaction involving payment of P72,065,037.25 indicates the following observations:

- a) The Invitation to Bid does not indicate the particular floors to which the pieces of office furniture are actually intended;
- b) Two days before the conduct of public bidding or on September 15, 1999, the Committee on Awards issued a Letter to Office Gallery informing them that they won in the public bidding. Such public bidding is supposed to take place on September 17, 1999;
- c) The supplier, Office Gallery, received the same on the same date, September 15, 1999, with a stamped "PAID";
- d) Mayor Elenita Binay in a letter dated September 28, 2000 (Annex 20 COA Report) to Office Gallery International, Inc. invited the latter to submit a proposal for the supply and installation of the same kind and quality of furniture and equipment for floors 7, 8 and 9 "based on the bidded price awarded to you last September 14, 1999 bidding". There was no such bidding on September 14, 1999; and
- e) All the other Bid Proposals were similarly dated with the same quantities of the same sizes of furniture items despite the absence of a furniture lay-out and list of furniture required. Based on the foregoing observations, the COA concluded that there was a rigged bidding.

The prosecution further argues that proof of the irregularities is not dependent solely on a hand-written note of Elenita Binay to accused Aspillaga, but can also be seen from the minutes of bidding (Annex 4 of COA Report), the dates of the purchase order (Annex 1 of COA Report), and the September 15, 1999 letter to Office Gallery International, Inc. (Annex 8 of COA Report).

The prosecution also points out that there were a series of transactions covering the period when accused Binay was the City Mayor, during which there was a pattern of irregularities in procurement practices also involving different city officials occupying key positions.

It is explained that accused Binay is a member of a most powerful clan in Makati City, and for a person to come forward and testify against



her and corroborate the statement of Aspillaga could possibly create dire consequences which an ordinary person would rather avoid.

The prosecution further argues that the sworn affidavit and testimony under oath of accused Aspillaga are sufficient basis to conclude that he has not been convicted of a crime involving moral turpitude. He is bound by such oath, and could not have perjured himself. Moreover, the defense could have cross-examined Aspillaga to test his credibility, but chose not to do so,

In her Comment/Opposition, accused Elenita Binay asserts that the prosecution's motion should be denied for having failed to raise any meritorious argument to warrant the reversal of the denial of the motion for discharge. Accused Binay pointed out that the prosecution still failed to specify or identify how the material points in accused Aspillaga's testimony are corroborated. Moreover, the prosecution did not even cite the specific testimonies of the witnesses that may support Aspillaga's testimony, nor was there an identification of the specific documents that may corroborate the subject testimony in its material points.

It was also pointed out that the prosecution deliberately failed to present Conrado Pamintuan, a person with personal knowledge of the transaction, to either corroborate Aspillaga's testimony or testify for the prosecution, leading to the presumption that Pamintuan's testimony would be adverse to the prosecution.

It was also pointed out that the prosecution failed to establish that Aspillaga has not at any time been convicted of any offense involving moral turpitude.

### DISCUSSION AND RULING

The instant *Motion for Reconsideration* lacks merit.

It is emphasized that the discharge of an accused under Section 17, Rule 119 of the Revised Rules of Criminal Procedure requires that the testimony of the accused sought to be discharged can be corroborated in its material points.

Applied to this case, such corroboration cannot pertain to just any irregularity in the procurement and bidding process. It has to specifically refer to the participation of accused Binay, since the bid-rigging is allegedly initiated with her instruction as to who the winning supplier should be. Without such instruction, the Makati City officials and personnel involved in the bidding process would not have acted to simulate and rig the subject bidding. Without any other evidence, We



cannot take judicial notice of accused Binay's being involved in other irregularities or pattern of irregularities involving other biddings, or that accused Binay belongs to the "most powerful clan in Makati City."

To reiterate, Aspillaga's testimony against Binay rests upon two (2) material factual points, namely:

- (1) The Purchase Request (PR) forwarded to Aspillaga's office came with a handwritten note identifying who will be the winning supplier; and
- (2) The handwritten note came from accused Binay.

To be clear, corroboration of accused Binay's alleged central involvement in the bid-rigging does not rest solely on the handwritten note, or in the production thereof. However, in order to comply with Section 17, Rule 119 of the Revised Rules of Criminal Procedure, it is incumbent upon the prosecution to present corroborating evidence that the bid-rigging was initiated upon the instruction of accused Binay.

The prosecution has failed to present such corroborating evidence.

On the requirement that the prosecution should establish that Aspillaga has not been convicted of an offense involving moral turpitude, the Court has found Aspillaga's sworn Affidavit of 16 July 2015, and his affirmation of his non-conviction of such an offense, to be insufficient.

Aspillaga executed an earlier Counter-Affidavit dated 21 May 2004, where he denied any irregularity as regards the procurement of supplies for the Makati City Building. Since he reversed his position in his subsequent Affidavit, it is only logical that Aspillaga's later sworn declaration cannot be relied upon and just be accepted to be the truth on the matter, but rather, is subject to the prosecution's presentation of evidence to support such declaration.

After a careful consideration, and in view of the foregoing, the Court finds that the prosecution failed to raise any substantial argument or any compelling reason to warrant a reversal or reconsideration of the Court's Resolution of 22 August 2018.

**WHEREFORE**, the *Motion for Reconsideration (Re: Denial of Motion to Discharge)* filed by the Office of the Special Prosecutor, Office of the Ombudsman, is hereby **DENIED** for lack of merit. Considering that the Prosecution has manifested in open court that it no longer has any witnesses to present, the Court directs the

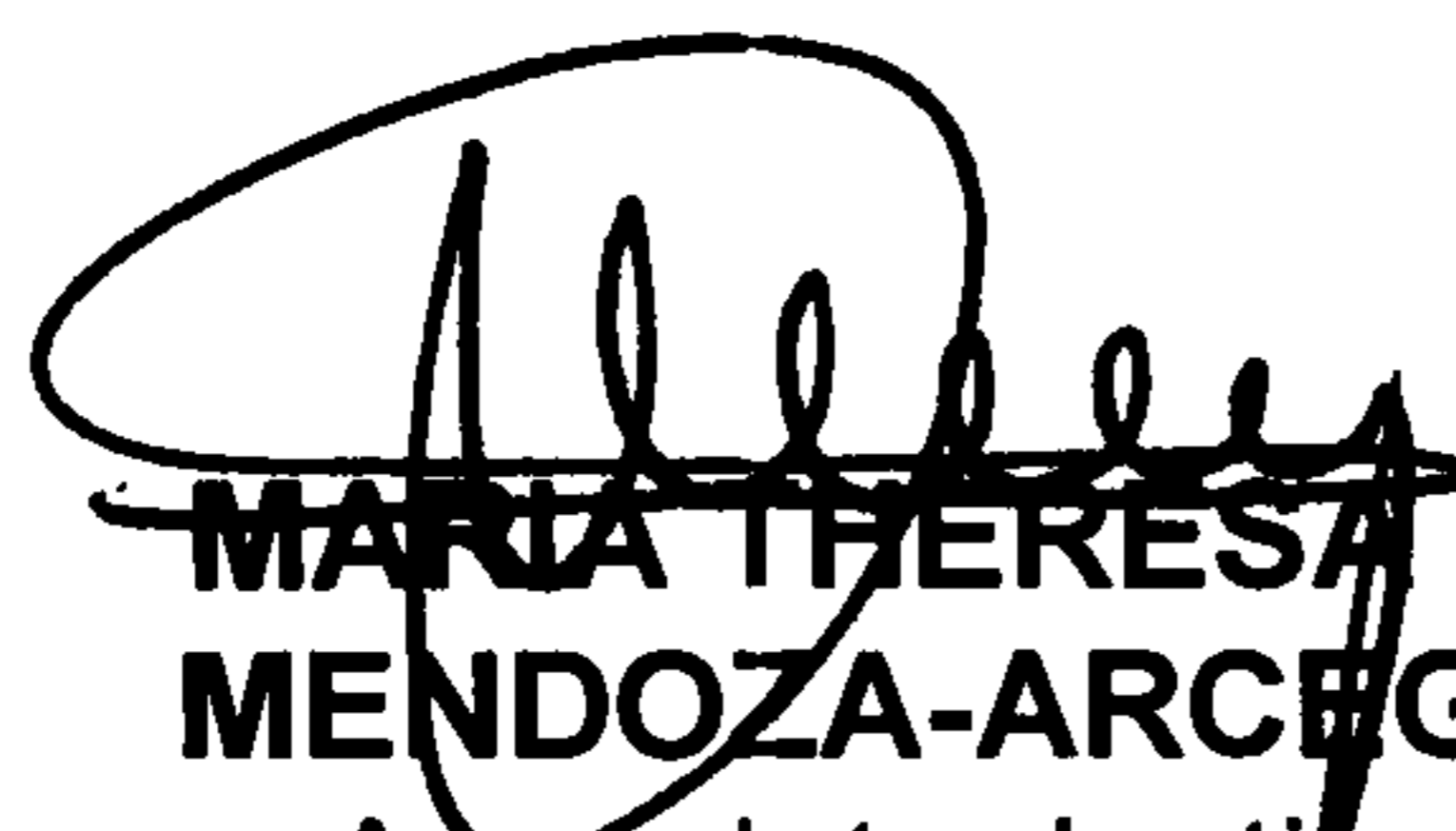


Prosecution to file its formal offer of evidence within fifteen (15) days from receipt of this resolution. The accused is given the same period of fifteen (15) days to file its comment/opposition thereto.

**SO ORDERED.**

  
**RAFAEL R. LAGOS**  
Chairperson  
Associate Justice

**WE CONCUR:**

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

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