



**REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY**

THIRD DIVISION

**PEOPLE OF THE PHILIPPINES,
Plaintiff,**

Criminal Case No. 27256

*For: Violation of Section 3 (e) of
Republic Act No. 3019, as
amended*

- versus -

Present:


**CAPT. WALTER E. BRIONES, et
al.,**

**CABOTAJE-TANG, P.J.,
Chairperson,
FERNANDEZ, B. J. and
MORENO, J.**

Accused.

Promulgated:

x-----x

MAY 15, 2023 

x-----x

RESOLUTION

CABOTAJE-TANG, P.J.:

For resolution is accused Rufino Gonzaga Arias, Jr.'s Omnibus Motion dated January 31, 2023¹, with the following prayer: 1. To dismiss the case; 2. Defer his arraignment; and 3. Defer the marking of exhibits before the Division Clerk of Court.²

I.

THE CASE IN RETROSPECT

In its Joint Decision promulgated on September 16, 2022, in Criminal Cases Nos. 27234-27239, 27241-27264, 27268, 27271-

¹ pp. 60-75, Record, Criminal Case No. 27256

² pp. 1-7, accused Arias, Jr.'s Omnibus Motion at pp. 68-75, Record, Criminal Case No. 27256

27277, 27279-27281, 27285-27290, 27293-27295, 27297-27298, 27300-27305, 27307-27309-27311, 27313-27328, 27330-27361, 27363, 27365, 27367-27368, 27370-27381 and 27383-27429, entitled "*People of the Philippines versus VADM Mariano J. Dumancas, Jr., et al.*," the Court ordered, among others, that Criminal Case No. 27256 case be archived with respect to accused Arias, Jr. who remained at-large, and to be revived upon his arrest.³

In its Resolution adopted on February 02, 2023,⁴ the Court, among others, ordered the revival of Criminal Case No. 27256 with respect to accused Arias, Jr. in view of the Court's Order dated January 25, 2023,⁵ which approved the cash bail bond posted by the said accused in the same Criminal Case No. 27256 thereby allowing his provisional liberty.⁶

II. THE ACCUSED'S SUBMISSIONS

Thereafter, accused Arias, Jr., through counsel, filed the present *Omnibus Motion* anchored on the grounds of alleged violation of his constitutional right to speedy disposition of cases and his right to be informed of the nature and cause of the accusation against him allegedly because he was not furnished copies of the "*new evidence*" against him.⁷

III. THE PROSECUTION'S COMMENT

The prosecution filed its Comment dated March 29, 2023,⁸ on the said *Omnibus Motion* interposing no objection to accused Arias, Jr.'s motion to dismiss, thus:

2. By way of comment, Plaintiff interposes no objection to accused Arias, Jr.'s motion to dismiss there being no basis for the inclusion

³ pp. 543-544, Decision promulgated on September 16, 2022 at pp. 139-140, Record, Vol. 21

⁴ p. 65, Record, Criminal Case No. 27256

⁵ p. 46, Record, Criminal Case No. 27256

⁶ pp. 65-66, *id.*

⁷ pp. 1-7, accused Arias, Jr.'s *Omnibus Motion* at pp. 68-75, Record, Criminal Case No. 27256

⁸ pp. 140-143, Record, Criminal Case No. 27256

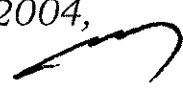
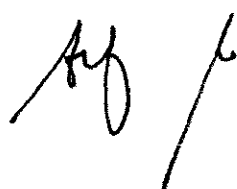
of Arias as an accused in the said Amended Information in Criminal Case 27256.⁹

In its aforesaid comment, the prosecution avers that in the original Information in Criminal Case No. 27256, accused Arias, Jr. was not included as one of the accused. However, in the Amended Information of the said case, accused Arias, Jr. was “*unfortunately included*” as an accused. In the same comment, the prosecution recalled the antecedents that led to the filing of the Amended Information in Criminal Case No. 27256:

a. On 19 March 2002, the Office of the Ombudsman filed a number of cases against certain officers of the Philippine Navy and private individuals docketed as Criminal Cases 27234 to 27429, all entitled People of the Philippines versus Vadm. Mariano J. Dumancas, Jr., et al. Accused Arias was one of the named accused in the body of the original Informations in Criminal Cases 27315, 27318 and 27319 for Violation of Section 3(e), R.A. No. 3019;

b. In a Resolution dated 19 February 2004, the Sandiganbayan ordered the Office of the Special Prosecutor (OSP) to conduct further investigation of the Dumancas cases, which was complied with by the assigned Prosecutor. Thereafter, in a Memorandum dated 11 May 2004, the assigned Prosecutor recommended, among others, that some of the originally named accused be removed or dropped from some cases, among whom was Arias in relation to the Informations in Criminal Cases 27315, 27318, and 27319. He also recommended the correction of the errors in some of the Informations by changing, among others, PD1446 to 1445. Further, in a subsequent Memorandum dated 14 July 2004,

⁹ at p. 1, Prosecution’s Comment dated March 29, 2003; p. 140, Record, Criminal Case No. 27256

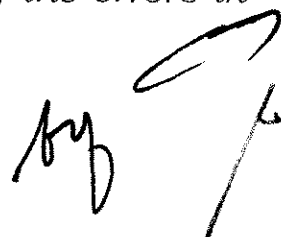



the assigned Prosecutor recommended additional corrections of some of the Informations as to the number of sales invoice and the names of certain suppliers.

c. The Memorandum dated 11 May 2004 was approved by then Ombudsman Simeon Marcelo, as modified by OSP Memorandum dated 14 July 2004. Thus, on 22 September 2004, the prosecution filed with the Sandiganbayan a MANIFESTATION/COMPLIANCE AND MOTION TO REVIVE CASES and 1. To Admit Amended Informations. 2. To Withdraw Informations, 3. To Drop Name(s) of Accused in the Informations; and 4. To Correct Typographical Errors in the Informations, praying among others, that an order be issued “6) removing the names RADM Napoleon G. Baylon and Lt. Rufino Arias mentioned in the body of the Information in Criminal Cases Nos. 27315, 27318 and 27319; 7) correcting the errors contained in some of the Informations by changing PD 1446 to PD 1445; 8) correcting the name of the supplier Joy Hill mentioned in the Informations in Criminal Cases Nos. 27300, 27335, 27336, and 27341 to Joy-Nil.” Notably, there was no recommendation or motion for the inclusion of Arias as an accused in any Amended Information.

d. In its Resolution dated 31 January 2005, the Honorable Court granted, among others, the prayer of the prosecution for the removal of the names RADM Napoleon G. Baylon and Lt. Rufino Arias from the body of the Informations filed in Criminal Cases Nos. 27315, 27318 and 27319.

e. In the same Resolution dated 31 January 2005, the Honorable Court ruled that, “(t)he prayer for the correction of the errors in

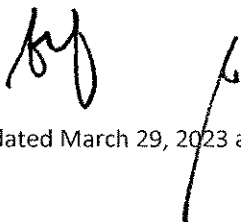
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the Informations by changing PD 1445; by correcting the name of the supplier from Joy Hill to Joy Nil; by changing/correcting check nos. 747831 and 355281 to check nos. 34831 and 355287 can be done only through the amendment of the Information and not by mere motion.”

f. On 18 September 2006, the prosecution filed a Compliance with the Resolution dated January 31, 2005 with Urgent Omnibus Motion 1. To Admit Amended Informations, 2. To revive Crim. Case No. 27279 and to Drop the Names of Asuncion L. Jacinto, Nora S. Guinto, Capt. Gilmer B. Batestil, Lt. Francisco A. Mata, Col. Antonio S. Morga, Capt. Danile S. San Juan, Col. Jose Zurbito, BGen. Salvador P. Flores, LCDR Sebastian Sigaan, Lt. Castor M. Tecio and Ermina L. Castillo herein from the Information, where the prosecution moved for the admission of Amended Informations in several cases, including the Amended Information in Criminal Case 27256 – which unfortunately included Arias as an accused although in the original Information he was not among those charged therein.

g. In an Order dated 20 September 2006, the Sandiganbayan resolved to admit the Amended Informations, including the Amended Information in Criminal Case No. 27256.¹⁰

In other words, the prosecution wants to impress that the name of accused Arias, Jr. was merely erroneously included in the Amended Information in Criminal Case No. 27256; hence, its non-objection to the subject motion.



¹⁰ pp. 1-3, Prosecution's Comment dated March 29, 2023 at pp. 140-142, Record, Criminal Case No. 27256

IV. THE COURT'S RULING

The Court agrees that the original Information in Criminal Case No. 27256 did not include the name of accused Arias, Jr. as one of the accused therein. In fact, there is absolutely no allegation as to his alleged participation in the commission of the crime charged. However, the Amended Information in this case specifically and categorically alleges the supposed criminal participation of accused Arias, Jr., thus:

*That on or about the period from January 1991 to August 1992, and sometime immediately prior or subsequent thereto, in Manila, Philippines, and within the jurisdiction of this Honorable Court, accused VADM. MARIANO J. DUMANCAS, JR., being then Flag Officer-in-Command (FOI), counter-signatory to checks and approving officer in Box 5 DV; CAPT. WALTER E. BRIONES, JR., being then Commanding Officer (PNFC), Philippine Navy, hence a high ranking public officer and signatory to checks; ERMINA L. CASTILLO, being then SAO, BNS, certified in Box 1, DV, certifying receipts of supplies and property; CAPT. DANILO M. AVELLANOSA, being then Commanding Officer, BNS, certified in Box 3, DV, certifying expenses as necessary, lawful and issued check under his direct supervision; NORA S. GUINTO Chief Accountant, certified in Box 4, DV, as to availability of funds and expenditure as proper; VADM NAPOLEON C. BAYLON, being then AC of NS for Comptrollership or N6, Financial Assessment Section, approving check payment as "PASSED"; **and LT. RUFINO ARIAS, JR., being then Processing Officer, recommending payment as OIC, HPN, FIN, DET,**¹¹ above accused public officers, while in*

¹¹ Emphasis supplied



the performance of their official and administrative duties, taking advantage of their official and administrative duties, taking advantage of their functions as such, conspiring, confederating and mutually helping one another, with intent to defraud, acting with evident bad faith and manifest partiality, did then and there willfully, unlawfully and criminally cause undue injury to the people/government by disbursing and paying Check No. 356323 dated August 12, 1992 in the sum of Php560,400.00, payable to the order of PDP Enterprises, 2447 A. Tindalo, Sta. Cruz, Manila, out of funds obligated under Journal Voucher #3159289 dated December 29, 1985, but unexpended, in violation of Sec. 85, PD 1445 which prohibits payment of a contract (purchase) with no prior appropriation provided therefor, which payment resulted to the damage and prejudice of the people/government in the aforesated sum of Php560,400.00, Philippine Currency and detriment to public service.¹²

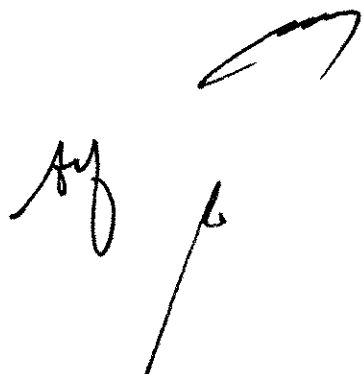
The above-quoted Amended Information plainly negates the claim that the inclusion of accused Arias, Jr. therein was the product of sheer error. On the contrary, it evinces a deliberate intention on the part of the prosecution to include him as an accused therein because the allegation regarding his alleged participation is very specific.

Nonetheless, the Court dismisses, *sua sponte*, the case against accused Arias, Jr. on the ground that the allegations in the subject Amended Information against him do not constitute an offense.

In ***Gomez vs. People***,¹³ the Supreme Court ruled:

¹² pp. 4-5, Record, Criminal Case No. 27256

¹³ G.R. No. 216824, November 10, 2020

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It is settled that both the accused and the State are entitled to due process.¹⁴ For the former, such right includes the right to present evidence for his or her defense;¹⁵ for the latter, such right pertains to a fair opportunity to prosecute and convict.¹⁶ Accordingly, in such context, it becomes reasonable to assume that the Constitution affords not only the accused but also the State with the complete guarantee of procedural due process, especially the opportunity to be heard.

Accordingly, in cases involving the quashal of an Information, Sec. 1, Rule 117 of the Rules of Court provides:

Section 1. *Time to move to quash. — At any time before entering his plea, the accused may move to quash the complaint or information.*

The application of such provision as to who may initiate the quashal was clarified by the Court in People v. Hon. Nitafan¹⁷ (Nitafan) as follows:

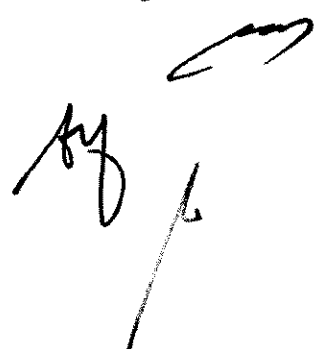
*It is also clear from Section 1 that **the right to file a motion to quash belongs only to the accused. There is nothing in the rules which authorizes the court or judge to motu proprio initiate a motion to quash if no such motion was filed by the accused.** A motion contemplates an initial action originating from the accused. It is the latter who is in the best position to know on what ground/s he will base his objection to the information. Otherwise, if the judge initiates the motion to quash, then he is not only pre-judging the case of the prosecution but also takes side with the accused. This would violate the right to a*

¹⁴ citing People v. Tampal, 314 Phil. 35 (1995)

¹⁵ citing People v. Yambot, 397 Phil. 23 (2000)

¹⁶ citing Valencia v. Sandiganbayan, 520 Phil. 70 (2005)

¹⁷ 362 Phil. 58 (1999)

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hearing before an independent and impartial tribunal. Such independence and impartiality cannot be expected from a magistrate, such as herein respondent judge, who in his show cause orders, orders dismissing the charges and order denying the motions for reconsideration stated and even expounded in a lengthy disquisition with citation of authorities, the grounds and justifications to support his action. Certainly, in compliance with the orders, the prosecution has no choice but to present arguments contradicting that of respondent judge. Obviously, however, it cannot be expected from respondent judge to overturn the reasons he relied upon in his different orders without contradicting himself. To allow a judge to initiate such motion even under the guise of a show cause order would result in a situation where a magistrate who is supposed to be neutral, in effect, acts as counsel for the accused and judge as well. **A combination of these two personalities in one person is violative of due process which is a fundamental right not only of the accused but also of the prosecution.** (emphases supplied)

The rule is clear that only an accused may move to quash a Complaint or Information. **However, for the guidance of the Bench and the Bar, the Court deems it imperative to clarify that Nitafan does not apply to paragraphs (a), (b), (g) and (i), Sec. 3 of Rule 117. It is obvious that proceeding to trial after arraignment would be utterly pointless if: (1) the Information alleges facts that do not constitute an offense;** (2) the trial court has no power and authority to take cognizance of the offense being charged against the accused; (3) the accused cannot anymore be made to stand charges because the criminal action or liability had been extinguished



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*under Art. 89 of the RPC or some other special law; or (4) the accused would be placed in double jeopardy. **In these instances, the trial court is allowed to act sua sponte provided that it shall first conduct a preliminary hearing to verify the existence of facts supporting any of such grounds. Should the trial court find these facts to be adequately supported by evidence, the case shall be dismissed without proceeding to trial. Doing so would unburden both the parties and the courts from having to undergo the rigmarole of participating in a void proceeding.***¹⁸

In this case, the Court already acquitted accused Arias, Jr.'s co-accused because the allegations in the *Amended Information* do not constitute an offense. Thus:

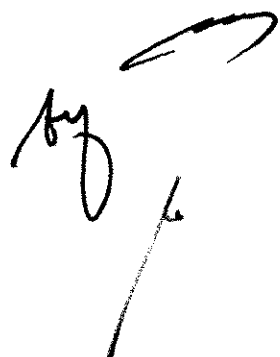
*Clearly, the first and second elements of the subject offenses are present in these cases. However, the other equally important element of violation of Section 3 (e) of R.A. No. 3019, as amended, which is, the undue injury caused to the government is not present. In a prosecution for Violation of Section 3 (e) of the Anti-Graft Law, that is, "causing undue injury to any party, including the government," the government prosecutors must prove "actual" injury to the offended party; speculative or incidental injury is not sufficient.*¹⁹

*The accused is said to have caused undue injury to the government or any party when the latter sustains actual loss or damage, which must exist as a fact and cannot be based on speculations or conjectures. The loss or damage need not be proven with actual certainty. However, there must be "some reasonable basis by which the court can measure it." Aside from this, loss or damage must be substantial. It must be more than necessary, excessive, improper or illegal.*²⁰

¹⁸ emphases ours

¹⁹ citing *Llorente v. Sandiganbayan*, 287 SCRA 382 (1998)

²⁰ citing *Abubakar v. People*, G.R. Nos. 202408, 20249 and 202412, June 27, 2018



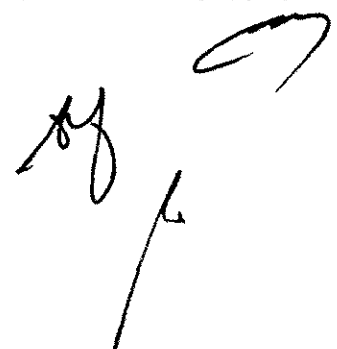
In the subject cases, allegation of undue injury is solely predicated on the acts of the accused in disbursing and paying the obligations incurred by the PN from the funds coming from JV No. 3159289. While the said disbursement and payment were duly established by the prosecution, the Court does not find them per se as amounting to undue injury. To be sure, prosecution witness Lagunda made nary an explanation on how the same resulted in undue injury to the government.

Notably, the Informations and Amended Informations do not allege non-delivery of the items subject of the procurements. Moreover, not one of the prosecution witnesses testified that there was non-delivery of the items or goods subject of the same procurements. In fact, there are separate Informations and Amended Informations against accused Batestil, Castillo and Gianan for the items that were not delivered to the PN.

Also, accused Agustin, upon question of the Court, replied that the items subject of the various procurements were actually purchased and delivered to his office.²¹

If at all, failure of the accused to comply with the basic government auditing principle that no money shall be paid out of any public treasury or depositary bank, except in pursuance of an appropriation law or other specific statutory authority, is simply part of the proof of the element of manifest partiality or evident bad faith but does not automatically translate to undue injury. The absence of the element of any undue injury caused to the government by the use of the subject fund does not meet the requirements of Section 3 (e) of R.A. No. 3019, as amended. Such a

²¹ p. 45, TSN, January 18, 2016



violation would only amount to an administrative liability.

Parenthetically, there are two (2) ways by which Section 3 (e) of R.A. No. 3019 may be violated - the first, by causing undue injury to any party, including the government, and the second, by giving any private party any unwarranted benefit, advantage or preference. Although neither mode constitutes a distinct offenses,²² an accused may be charged under either mode or both.²³ The use of the disjunctive "or" connotes that the two (2) modes need not be present at the same time. In other words, the presence of one would suffice for conviction.²⁴

The word "unwarranted" means lacking adequate or official support; unjustified; unauthorized²⁵" or without justification or adequate reason.²⁶ "Advantage" means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action.²⁷ "Preference" signifies priority or higher evaluation or desirability; choice or estimation above another.²⁸

To be found guilty under the second mode, it suffices that the accused has given unjustified favor or benefit to another, in the exercise of his official, administrative or judicial functions.²⁹

Here, the facts show that the accused involved in these cases gave unwarranted benefit to the indicated suppliers in the subject DVs given that there was no appropriation for the said transactions as testified to by prosecution witness Lagunda. The funds used for the

²² Sison v. People, supra citing Santiago v. Garchitorena, 228 SCRA 214 (1993)

²³ Sison v. People, supra citing Cabrera v. Sandiganbayan, 441 SCRA 377 (2004)

²⁴ Sison v. People, supra citing Quibal v. Sandiganbayan, 244 SCRA 224 (1995)

²⁵ Sison v. People, supra citing Webster, Third International Dictionary (Unabridged); p. 2514

²⁶ Sison v. People, supra citing Words and Phrases (Permanent Edition), Vol. 43-A (1978), Cumulative Pocket Part, p. 19

²⁷ Sison v. People, supra citing Webster, Third International Dictionary (Unabridged); p. 30

²⁸ Sison v. People, supra citing Webster, Third International Dictionary (Unabridged); p. 1787

²⁹ People v. Sison, supra

payment of the items were sourced from JV No. 3159289 which constituted a patent violation of Section 33 of P.D. No. 1177.

Furthermore, there was no public bidding in the subject case as the procurement was justified through the use of certificates of emergency.

In fact, accused Ebro admitted that he knew that the procurement was supposedly to be through public bidding. However, no public bidding was conducted because when he signed the subject DVs, the certificate of emergency was one the supporting documents; hence, the absence of public bidding.³⁰

The accused's failure to comply with the prescribed procedure in the procurement of the items in issue gave the subject suppliers unwarranted benefit, preference and advantage because the accused purchased the medicines and medical supplies from suppliers without obtaining price quotations from other suppliers. It clearly shows their manifest bias or preference for the subject suppliers over the other suppliers.³¹

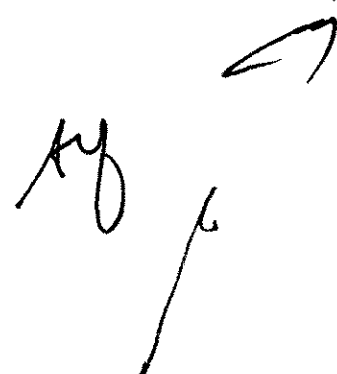
The payments for the transactions that were charged against JV No. 3159289 were made possible by the signatures of accused Dumancas, who was the FOIC of the PN, and accused Briones, who was the Commanding Officer of the PN, appearing on the subject checks. Accused Batestil was the Naval Procurement Officer at the time material to these cases. Accused Castillo, Cobarrubias, Durian, Gob and Ortega admitted their duties as alleged in the Informations and Amended Informations. Accused Castillo and Cobarrubias admitted that they certified the receipt of the subject supplies,³² accused Quines was then the Commander of the Naval Shipyard³³ - accused Durian,

³⁰ pp. 26-28, TSN, February 22, 2016

³¹ Cabrera and Cabrera v. People, G.R. No. 191611-14, July 19, 2019

³² pp. 29-66, TSN, August 02, 2010

³³ pp. 23-26, TSN, August 03, 2010

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was then the commander of the PN, accused Advincula was then the commanding Officer of the BNS; accused Gob was then the commander of the Naval Supplies Centre; accused Fajardo was then the commander of the Philippine Fleet and accused Garcia was the commander of the 5CGG during the time material to these cases.³⁴ Their signatures on the POs and DVs made possible the release of the checks to the suppliers and corresponding payment thereof. Without their signatures on the said documents, payments would not have been possible.

However, the above facts are not alleged in the subject Informations and Amended Informations. To convict the accused based on the allegations on the said Informations and Amended Informations would violate their constitutional right to be informed of the nature and cause of the accusations against them.³⁵

With the above ruling, the Court finds that the case against accused Arias, Jr., for Violation of Section 3 (e) of R.A. No. 3019, as amended, should be dismissed. In view of this, there is no more practical need to discuss the other grounds raised by accused Arias, Jr. in his *Omnibus Motion* praying for the dismissal of this case.

WHEREFORE, the Court (1) **GRANTS** accused Rufino Gonzaga Arias, Jr.'s *Omnibus Motion* praying for the dismissal of Criminal Case No. 27256 insofar as he is concerned since the allegations in the subject *Amended Information* do not constitute an offense; (2) **DISMISSES** Criminal Case No. 27256 insofar as accused Rufino Gonzaga Arias, Jr. is concerned; and (3) **DECLARES MOOT and ACADEMIC** accused Arias, Jr.'s prayer for the deferment of his arraignment and marking of exhibits.


³⁴ pp. 23-29, TSN, November 22, 2010

³⁵ pp. 490-494, Decision promulgated on September 16, 2022; emphases ours

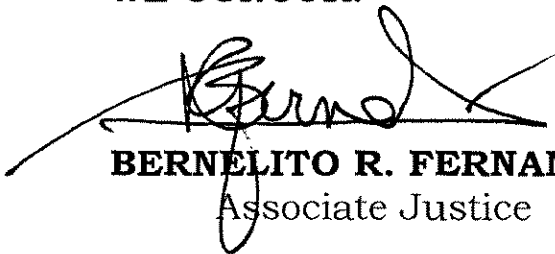
Resolution
Criminal Case No. 27256
People vs. Capt. Walter E. Briones, et al.
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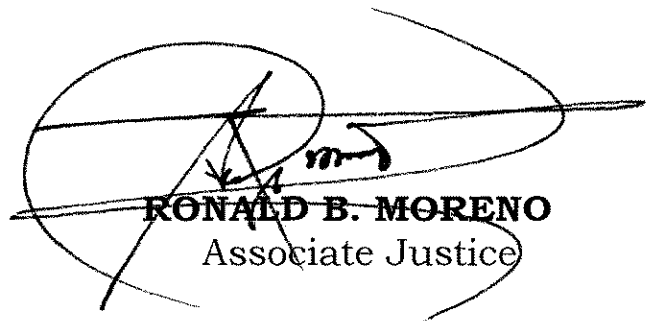
SO ORDERED.

Quezon City, Metro Manila


AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson

WE CONCUR:


BERNELITO R. FERNANDEZ
Associate Justice


RONALD B. MORENO
Associate Justice