G.R. No. 220598 – GLORIA MACAPAGAL-ARROYO, Petitioner **v. PEOPLE OF THE PHILIPPINES and the SANDIGANBAYAN (FIRST DIVISION),** Respondents.

G.R. No. 220953 – BENIGNO B. AGUAS, Petitioner **v. SANDIGANBAYAN (FIRST DIVISION),** Respondent.

Promulgated:

July 19, 2016

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SEPARATE CONCURRING AND DISSENTING OPINION

PERLAS-BERNABE, *J.*:

The primordial issue in this case is whether or not respondent the Sandiganbayan gravely abused its discretion in denying the demurrers to evidence of petitioners Gloria Macapagal-Arroyo (Arroyo) and Benigno B. Aguas (Aguas).

The instant petitions stemmed from an Information[1] charging Arroyo and Aguas (petitioners), along several others, of the crime of Plunder, defined by and penalized under Section 2 of Republic Act No. (RA) 7080[2] or the "Plunder Law," as amended by RA 7659,[3] filed before the Sandiganbayan and docketed as Criminal Case No. SB-12-CRM-0174. The charge revolved around a series of anomalous transactions with respect to the release of the Confidential and Intelligence Fund (CIF) of the Philippine Charity Sweepstakes Office (PCSO), through which petitioners and other co-accused, all public officers, allegedly conspired to amass, accumulate, or acquire ill-gotten wealth in the aggregate amount of ₱365,997,915.00.[4] After the Sandiganbayan acquired jurisdiction over the persons of petitioners, the latter filed their respective petitions for bail which were, however, denied on the ground that the evidence of guilt against them was strong.[5] Thereafter, trial on the merits ensued.

After the prosecution concluded its presentation of evidence, various co-accused, including petitioners, filed, with leave of court, their respective

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1 The Information is reproduced in the *ponencia*, pp. 2-3.

2 Entitled "AN ACT DEFINING AND PENALIZING THE CRIME OF PLUNDER," approved on July 12, 1991.

3 Entitled "AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL LAWS, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES," approved on December 13, 1993.

4 See *ponencia*, p. 3.

5 Id. at 3-4.

demurrers to evidence, asserting that there was no sufficient evidence to establish a case of Plunder against them.[6]

In a Resolution[7] dated April 6, 2015, the Sandiganbayan denied the demurrers to evidence of petitioners. With respect to Arroyo's demurrer, the Sandiganbayan held that: (*a*) her repeated "OK" notations in PCSO General Manager Rosario C. Uriarte's (Uriarte) multiple letter-requests[8] did not only signify her unqualified approval to Uriarte's requests for additional CIF funds, but also amounted to an authorization of the use thereof; (*b*) despite the absence of full details on the specific purposes for which the additional CIF funds were to be spent for, Arroyo never questioned Uriarte's requests and still approved them in violation of Letter of Instructions No. 1282,[9] series of 1983 (LOI 1282) and Commission on Audit (COA) Circular Nos. 92-385[10] and 2003-002[11]; and (*c*) such acts resulted in Uriarte illegally amassing, acquiring, or accumulating CIF funds amounting to more than ₱50 Million. As for Aguas's demurrer, the Sandiganbayan ratiocinated that it was through his certifications in the disbursement vouchers – which all turned out to be false – that Uriarte was able to amass, acquire, or accumulate ill-gotten wealth amounting to more than ₱50 Million. In view of the foregoing, the Sandiganbayan concluded that petitioners' respective participations as co-conspirators of Uriarte in the plunder of public funds were established by sufficient evidence.[12]

Aggrieved, petitioners separately moved for reconsideration,[13] but were, however, denied in a Resolution[14] dated September 10, 2015; hence, the instant petitions for *certiorari*.

At the outset, the *ponencia* found no procedural infirmity in the *certiorari* petitions filed by petitioners against the Sandiganbayan Resolutions denying their respective demurrers, emphasizing that the said orders are interlocutory in nature and, hence, subject to the Court's *certiorari* jurisdiction. In this relation, it added that the Court has "the duty to strike down grave abuse of discretion whenever and wherever it is committed."[15]

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6 Id. at 19. See also Sandiganbayan Resolution dated April 6, 2015, pp. 3-28.

7 See *rollo* (G.R. No. 220598), Vol. I, pp. 139-194. Penned by Associate Justice Rafael R. Lagos with Associate Justices Efren N. De La Cruz and Napoleon E. Inotura. Associate Justices Rodolfo A. Ponferrada and Alex L. Quiroz submitted their respective concurring and dissenting opinion.

8 See Omnibus Opposition (to the Demurrer to Evidence by accused Arroyo, Valencia, Morato, Roquero, Taruc V, Aguas, and Villar) filed by the Official of the Special Prosecutor dated September 14, 2014, pp. 73-78, attached as Annex "R" of Arroyo's Petition in G.R. No. 220598.

9 Dated January 12, 1983.

10 Subject: Restatement with Amendments of COA Issuances on the Audit of Intelligence and/or Confidential Funds dated October 1, 1992.

11 Subject: Audit and Liquidation of Intelligence and Confidential Funds for National and Corporate Sectors dated July 30, 2003.

12 See discussions in the April 6, 2015 Sandiganbayan Resolution, pp. 30-36.

13 The respective motions for reconsideration of petitioners were both dated April 22, 2015. See *rollo* (G.R. No. 220598), Vol. I, p. 195.

14 Id. at 195-211.

15 *Ponencia*, p. 28.

On the merits, the *ponencia* proposed to grant petitioners' demurrers to evidence, dismiss Criminal Case No. SB-12-CRM-0174 as against them, and order their release from detention.[16] In so ruling, the *ponencia* held that the Sandiganbayan gravely abused its discretion in denying said demurrers, considering that the prosecution failed to: (*a*) properly allege and prove the existence of conspiracy among Arroyo, Aguas, and Uriarte[17]; (*b*) prove that the co-accused amassed, acquired, or accumulated ill-gotten wealth in the amount of at least ₱50 Million[18]; and (*c*) prove the existence of the predicate act of raiding the public treasury.[19]

On the insufficiency of the charge, the *ponencia* observed that the "identification of the main plunderer was not only necessary because the law required such identification[,] but also because it was essential in safeguarding the rights of the accused to be properly informed of the charges they were being made answerable for."[20] Thus, it concluded that "the [p]rosecution's failure to properly allege the main plunderer should be fatal to the cause of the State against the [petitioners]."[21]

Further, the *ponencia* held that the prosecution failed to prove any overt acts from petitioners that would establish their respective participations in the conspiracy to commit Plunder, reasoning that: (*a*) Arroyo's mere unqualified approval of Uriarte's requests for additional CIF funds – which was not by any means irregular or illegal – did not make her part of the design to raid the public treasury and thereby amass, acquire, or accumulate ill-gotten wealth[22]; and (*b*) Aguas's certifications and signatures on the disbursement vouchers were insufficient bases to conclude that he was involved in any conspiracy to commit Plunder as those would not have meant anything had Arroyo not authorized the release of additional CIF funds.[23]

Finally, anent the predicate act of raiding the public treasury, the *ponencia* theorized that a "raid on the public treasury" under Section 1 (d) (1)[24] of the Plunder Law "requires the raider to use property taken impliedly for his personal benefit"[25] in line with the principle of *noscitur a sociis*, or

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16 Id. at 47.
17 Id. at 28.
18 Id. at 41.
19 Id. at 43.
20 Id. at 35.
21 Id. at 36.
22 Id.
23 Id. at 40.
24 SECTION 1. Definition of Terms. — As used in this Act, the term —

x x x x

d) Ill-gotten wealth means any asset, property, business enterprise or material possession of any person within the purview of Section Two (2) hereof, acquired by him directly or indirectly through dummies, nominees, agents, subordinates and/or business associates by any combination or series of the following means or similar schemes:

1) Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury[.]

25 *Ponencia*, p. 45.

"the doctrine of associated words," which postulates that "where a particular word or phrase in a statement is ambiguous in itself or is equally susceptible of various meanings, its true meaning may be made clear and specific by considering the company in which it is found or with which it is associated."[26] In this regard, it was pointed out that the term "raid on the public treasury" was accompanied by the words "misappropriation," "conversion," and "misuse or malversation" of public funds, all of which – according to the *ponencia* – are concepts which require the use of the property taken.[27] Thus, in view of the prosecution's failure to prove that personal benefit was derived by any of the co-accused from the use of CIF funds, it ruled that the existence of the aforesaid predicate act was not proven.[28]

I partly agree with the *ponencia*'s findings.

I.

I first address the matters of procedure.

A petition for *certiorari* is generally prohibited to assail an order denying a demurrer to evidence. Section 23, Rule 119 of the Revised Rules of Criminal Procedure states:

> Section 23. *Demurrer to evidence.* — x x x.
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> x x x x
>
> The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by *certiorari* before judgment.

However, case law has recognized certain exceptions to this rule. For instance, in *Nicolas v. Sandiganbayan*,[29] this Court had the occasion to explain:

> On whether *certiorari* is the proper remedy in the consolidated petitions, the general rule prevailing is that it does not lie to review an order denying a demurrer to evidence, which is equivalent to a motion to dismiss, filed after the prosecution has presented its evidence and rested its case.
>
> Such order, being merely interlocutory, is not appealable; **neither can it be the subject of a petition for *certiorari*. The rule admits of exceptions, however**. Action on a demurrer or on a motion to dismiss rests on the sound exercise of judicial discretion. In *Tadeo v. People* [(360 Phil. 914, 919 [1998]), this Court declared that ***certiorari* may be availed**

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[26] *Aisporna v. Court of Appeals*, 198 Phil. 838, 847 (1982).
[27] *Ponencia*, pp. 44-45.
[28] See id. at 46.
[29] 568 Phil. 297 (2008).

of when the denial of a demurrer to evidence is tainted with "grave abuse of discretion or excess of jurisdiction, or oppressive exercise of judicial authority." And so it did declare in *Choa v. Choa* [(441 Phil. 175, 182-183 [2002]) **where the denial is patently erroneous**.

Indeed, resort to *certiorari* is expressly recognized and allowed under Rules 41 and 65 of the Rules of Court, *viz.*:

> Rule 41:
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> SEC. 1. Subject of appeal. – x x x
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> No appeal may be taken from:
>
> x x x x
>
> (c) An interlocutory order;
>
> x x x x
>
> In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.
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> Rule 65:
>
> SEC. 1. *Petition for certiorari* – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.[30] (Emphases and underscoring supplied)

As case law shows, despite the prohibition foisted in Section 23, Rule 119 of the Revised Rules of Criminal Procedure, the Court may take cognizance of the petitions for *certiorari* against orders denying demurrers to evidence if only to correct an "oppressive exercise of judicial authority" which is manifested by patent errors in the assailed ruling amounting to grave abuse of discretion.

Meanwhile, on a separate procedural matter, it is my view that the Information against petitioners, including their co-accused, sufficiently apprised them of the nature and cause of the accusation against them. In order for the accused to be sufficiently apprised of the charge of Plunder, it

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[30] Id. at 309-310.

is essential that the ultimate facts constitutive of the crime's elements be stated in the Information with reasonable particularity. Plunder, as defined in RA 7080, as amended by RA 7659, has the following elements: **first**, that the offender is a **public officer**; **second**, that he **amasses, accumulates or acquires ill-gotten wealth** through a **combination or series**[31] **of overt or criminal acts** described in Section 1 (d); and **third**, that the aggregate amount or total **value of the ill-gotten wealth is at least ₱50,000,000.00**.[32]

The Information in this case clearly alleged the imputed crime of Plunder against all the accused, as well as the fact that they had conspired to commit the same. On its face, the Information states that: (1) petitioners are all public officers; (2) they conspired with each other and the other accused to willfully, unlawfully and criminally amass, accumulate and/or acquire ill-gotten wealth in the amount of at least ₱50 Million (*i.e.*, ₱365,997,915.00); and (3) they did so through any or a combination or a series of overt or criminal acts, or similar schemes and means, described as follows: "(*a*) diverting in several instances, funds from the operating budget of [the] PCSO to its Confidential/Intelligence Fund that could be accessed and withdrawn at any time with minimal restrictions, and converting, misusing, and/or illegally conveying or transferring the proceeds drawn from said fund in the aforementioned sum, also in several instances, to themselves, in the guise of fictitious expenditures, for their personal gain and benefit"; (*b*) "raiding the public treasury by withdrawing and receiving, in several instances, the above-mentioned amount from the Confidential/Intelligence Fund from PCSO's accounts, and/or unlawfully transferring or conveying the same into their possession and control through irregularly issued disbursement vouchers and fictitious expenditures"; and (*c*) "taking advantage of their respective official positions, authority, relationships, connections or influence, in several instances, to unjustly enrich themselves in the aforementioned sum, at the expense of, and the damage and prejudice of the Filipino people and the Republic of the Philippines."[33]

At this juncture, let me express that it is of no moment that the main plunderer was not identified on the face of the Information. Contrary to the *ponencia*'s stand,[34] the identification of a main plunderer is not a constitutive element of the crime of Plunder. In fact, the charge in this case is hinged on an allegation of conspiracy, which connotes that all had

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31 In *Estrada v. Sandiganbayan* [421 Phil. 290, 351 (2001)], it was explained:

Combination – the result or product of combining; the act or process of combining. To *combine* is to bring into such close relationship as to obscure individual characters.

Series – a number of things or events of the same class coming one after another in spatial and temporal succession.

That Congress intended the words "combination" and "series" to be understood in their popular meanings is pristinely evident from the legislative deliberations on the bill which eventually became RA 7080 or the Plunder Law[.]

32 See Section 12 of RA 7659, amending Section 2 of RA 7080.

33 See portions of the Information as reproduced in the *ponencia*, pp. 2-3.

34 See id. at 34-36.

participated in the criminal design. Under the Revised Rules of Criminal Procedure, to be considered as valid and sufficient, an Information must state the name of the accused; the designation of the offense given by the statute; **the acts or omissions complained of as constituting the offense**; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.[35] All that should appear in the Information are the ultimate facts reflecting the elements of the crime charged, and not the evidentiary facts from which the conclusion of who was the main plunderer or who actually amassed, acquired, or accumulated the subject ill-gotten wealth may be drawn. Verily, the degree of particularity required for an Information to be sufficient is only based on the gauge of reasonable certainty – that is, whether the accused is informed in intelligible terms of the offense charged, as in this case.

That being said, I shall now proceed to a discussion on the substantive merits of the case.

II.

In concept, a demurrer to evidence is "an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. **The party demurring challenges the sufficiency of the whole evidence to sustain a verdict**. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt. x x x **Sufficient evidence for purposes of frustrating a demurrer thereto is such evidence in character, weight or amount as will legally justify the judicial or official action demanded according to the circumstances**. To be considered sufficient therefore, the evidence must prove: (*a*) the commission of the crime, and (*b*) the precise degree of participation therein by the accused. Thus, when the accused files a demurrer, the court must evaluate whether the prosecution evidence is sufficient enough to warrant the conviction of the accused beyond reasonable doubt."[36]

After a careful study of this case, it is my view that the Sandiganbayan gravely abused its discretion in denying Arroyo's demurrer to evidence on account of lack of sufficient evidence to prove her complicity in the alleged Plunder of CIF funds.

To recall, the Sandiganbayan found that there was sufficient evidence to prove Arroyo's participation as a co-conspirator in the Plunder of CIF

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[35] *People v. Cinco*, 622 Phil. 858, 866-867 (2009), citing Section 6, Rule 110 of the Revised Rules of Criminal Procedure.

[36] *People v. Go*, G.R. No. 191015, August 6, 2014, 732 SCRA 216, 237-238; citations omitted.

funds because of her unqualified "OK" notations in Uriarte's multiple letter-requests for additional CIF funds. From its point of view, these notations violated LOI 1282 and COA Circular Nos. 92-385 and 2003-002. Accordingly, the Sandiganbayan denied her demurer to evidence.

I disagree with the Sandiganbayan's findings.

For a conspiracy charge to prosper, it is important to show that the accused had prior knowledge of the criminal design; otherwise, it would hardly be the case that his alleged participation would be in furtherance of such design. In theory, conspiracy exists when two (2) or more persons come to an agreement concerning the commission of a felony and decide to commit it. To prove conspiracy, the prosecution must establish the following requisites: (1) two or more persons came to an agreement; (2) the agreement concerned the commission of a crime; and (3) the execution of the felony was decided upon.[37] "***Prior agreement or assent is usually inferred from the acts of the accused showing concerted action, common design and objective, actual cooperation, and concurrence of sentiments or community of interests***."[38]

In this case, I am hard-pressed to find that Arroyo's periodic approvals of Uriarte's multiple letter-requests for additional CIF funds – which was the sole justification behind the Sandiganbayan ruling under present scrutiny – amount to sufficient evidence which would prove her complicity in the Plunder of CIF funds. While she may have approved the use of CIF funds which would be the determinative act for which Uriarte was able to amass, acquire, or accumulate the questioned funds, the prosecution failed to satisfactorily establish any overt act on Arroyo's part that would clearly show that she knew that the funds she had approved for release was intended to further the alleged criminal design. In other words, while Arroyo's approval was an indispensable act in ultimately realizing the objective of the scheme or pattern of criminal acts alleged in the Plunder Information, there is no sufficient evidence – whether direct or circumstantial – to prove that she had knowledge of such objective, and hence, could have given her assent thereto. Without knowledge, there can be no agreement, which is precisely the essence of conspiracy.

The Sandiganbayan pointed to Arroyo's supposed breach of LOI 1282, from which one would supposedly infer her knowledge and eventual assent to the alleged Plunder scheme. For context, LOI 1281 was issued by then President Ferdinand E. Marcos on January 12, 1983, reflecting the government's policy on intelligence funds at that time. In reference to the duty of the President, LOI 1282 requires that all requests for the allocation and release of intelligence funds shall: **(*a*) indicate the specific purposes**

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[37] See *People v. Fabros*, 429 Phil. 701, 713-714 (2002).

[38] Id. at 714; emphasis and italics supplied.

for which the funds will be spent; (*b*) provide detailed explanations as to the circumstances giving rise to the necessity for the expenditure and the particular aims to be accomplished by the release of funds; and (*c*) be presented personally to the President for his perusal and examination.

The pertinent portions of LOI 1282 are highlighted below:

> LETTER OF INSTRUCTIONS NO. 1282
>
> To: All Ministries and Offices Concerned
>
> In recent years[,] intelligence funds appropriated for the various ministries and certain offices have been, as reports reaching me indicate, spent with less than full regard for secrecy and prudence. On the one hand, there have been far too many leakages of information on expenditures of said funds; and on the other hand, where secrecy has been observed, the President himself was often left unaware of how these funds had been utilized.
>
> **Effective immediately, all requests for the allocation or release of intelligence funds shall indicate in full detail the specific purposes for which said funds shall be spent and shall explain the circumstances giving rise to the necessity for the expenditure and the particular aims to be accomplished.**
>
> **The requests and the detailed explanations shall be submitted to the President personally.**
>
> It is imperative that such detailed presentations be made to the President in order to avoid such duplication of expenditures as has taken place in the past because of the lack of centralized planning and organized disposition of intelligence funds.
>
> Full compliance herewith is desired.[39] (Emphases and underscoring supplied)

From this, it may be deduced that the President's approval of a request for intelligence funds which lacks any detailed explanation on the intended purpose or specifics thereof would be tantamount to an overt act that would support the finding that he/she facilitated the conspiratorial design.

In this case, records reveal that Uriarte indeed personally delivered to Arroyo the letter-requests for CIF funds in the aggregate amount of ₱295 Million, and that the latter provided her "OK" notations in each of those letter-requests.[40] In the April 2, 2008 letter-request, Uriarte provided the following purposes of additional CIF funds amounting to ₱25 Million:

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39 See portions of LOI 1282 as reproduced in the *ponencia*, pp. 36-37.

40 See id. at 7.

> In dispensing its mandate, PCSO has been constantly encountering a number of fraudulent schemes and nefarious activities on a continuing basis which affect the integrity of our operations, to wit:
>
> 1. Donated medicines sometimes end up in drug stores for sale even if they were labelled "Donated by PCSO-Not for Sale";
>
> 2. Unwarranted or unofficial use of ambulances by beneficiary-donees;
>
> 3. Unauthorized expenditures of endowment fund for charity patients and organizations;
>
> 4. Lotto and Sweepstakes scams victimizing innocent people of winning the jackpot and selling tampered tickets as willing (*sic*) tickets;
>
> 5. Fixers for the different programs of PCSO such as Ambulance Donation Project, Endowment Fund Program and Individual Medical Assistance Program;
>
> 6. Other fraudulent schemes and activities which put PCSO in bad light.
>
> PCSO at all instances must be on guard and have ready available resources to conduct surveillance, discreet investigations, purchase of information and other related activities. With the use of the intelligence fund, PCSO can protect its image and integrity of its operations.[41]

In the letter-request dated August 13, 2008, seeking additional CIF funds in the amount of ₱50 Million, Uriarte detailed the purposes as follows:

> In dispensing its mandate, PCSO has been constantly encountering a number of fraudulent schemes and nefarious activities on a continuing basis which affect the integrity of our operations, to wit:
>
> 1. Donated medicines sometimes end up in drug stores for sale even if they were labelled "Donated by PCSO-Not for Sale";
>
> 2. Unauthorized expenditures of endowment fund for charity patients and organizations;
>
> 3. Fixers for the different programs of PCSO such as Ambulance Donation Project, Endowment Fund Program and Individual Medical Assistance Program;
>
> 4. Other fraudulent schemes and activities which put PCSO in bad light.

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[41] See Omnibus Opposition (to the Demurrer to Evidence by accused Arroyo, Valencia, Morato, Roquero, Taruc V, Aguas, and Villar) filed by the Official of the Special Prosecutor dated September 14, 2014, p. 73, attached as Annex "P" in Arroyo's Petition in G.R. No. 220598. See also April 6, 2015 Sandiganbayan Resolution, p. 28.

> PCSO at all instances must be on guard and have ready available resources to conduct surveillance, discreet investigations, purchase of information and other related activities. With the use of the intelligence fund, PCSO can protect its image and integrity of its operations.[42]

In the letter-request dated April 27, 2009, for ₱10 Million, the purposes were as follows:

> In dispensing its mandate, PCSO has been constantly encountering a number of fraudulent schemes and nefarious activities on a continuing basis which affect the integrity of our operations, to wit:
>
> 1. Unwarranted or unofficial use of ambulances by beneficiary-donees;
>
> 2. Lotto and Sweepstakes scams victimizing innocent people of winning the jackpot and selling tampered tickets as winning tickets;
>
> 3. Conduct of illegal gambling games (*jueteng*) under [the] guise of Small Town Lottery;
>
> 4. Other fraudulent schemes and activities which put PCSO in bad light.
>
> PCSO at all instances must be on guard and have ready available resources to conduct surveillance, discreet investigations, purchase of information and other related activities. With the use of the intelligence fund, PCSO can protect its image and integrity of its operations.[43]

In the letter-request dated July 2, 2009, for another ₱10 Million, the stated purposes were:

> In dispensing its mandate, PCSO has been constantly encountering a number of fraudulent schemes and nefarious activities on a continuing basis which affect the integrity of our operations, to wit:
>
> 1. Unwarranted or unofficial use of ambulances by beneficiary-donees;
>
> 2. Lotto and Sweepstakes scams victimizing innocent people of winning the jackpot and selling tampered tickets as winning tickets;
>
> 3. Conduct of illegal gambling games (*jueteng*) under the guise of Small Town Lottery;

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[42] Attached as Annex "Q" in Arroyo's Petition in G.R. No. 220598, p. 74. See also April 6, 2015 Sandiganbayan Resolution, p. 28.

[43] Attached as Annex "S" in Arroyo's Petition in G.R. No. 220598, p. 76. See also April 6, 2015 Sandiganbayan Resolution, p. 29.

4. Other fraudulent schemes and activities which put PCSO in bad light.

PCSO at all instances must be on guard and have ready available resources to conduct surveillance, discreet investigations, purchase of information and other related activities. With the use of the intelligence fund, PCSO can protect its image and integrity of its operations.[44]

In the letter-request dated August 19, 2009 seeking additional CIF amounting to ₱50 Million, the following purposes were stated:

In dispensing its mandate, PCSO has been constantly encountering a number of fraudulent schemes and nefarious activities on a continuing basis which affect the integrity of our operations, to wit:

1. Unwarranted or unofficial use of ambulances by beneficiary-donees;

2. Lotto and Sweepstakes scams victimizing innocent people of winning the jackpot and selling tampered tickets as winning tickets;

3. Conduct of illegal gambling games (*jueteng*) under [the] guise of Small Town Lottery;

4. Other fraudulent schemes and activities which put PCSO in bad light.

PCSO at all instances must be on guard and have ready available resources to conduct surveillance, discreet investigations, purchase of information and other related activities. With the use of the intelligence fund, PCSO can protect its image and integrity of its operations.[45]

Finally, in the letter-request dated January 4, 2010, for additional CIF funds amounting to ₱150 Million, Uriarte revealed the following purposes:

The Philippine Charity Sweepstakes Office (PCSO) had been conducting the experimental test run for the Small Town Lottery (STL) Project since February 2006. During the last semester of 2009, the PCSO Board has started to map out the regularization of the STL in 2010.

Its regularization will counter the illegal numbers game but will entail massive monitoring and policing using confidential agents in the area to ensure that all stakeholders are consulted in the process.

STL regularization will also require the acceptance of the public. Hence, public awareness campaigns will be conducted nationwide. In the

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[44] Attached as Annex "T" in Arroyo's Petition in G.R. No. 220598, p. 77. See also April 6, 2015 Sandiganbayan Resolution, p. 29.

[45] Attached as Annex "R" in Arroyo's Petition in G.R. No. 220598, p. 75. See also April 6, 2015 Sandiganbayan Resolution, p. 29 (erroneously dated as "January 19, 2009 in the Sandiganbayan Resolution).

> process, we will need confidential funds to successfully implement all these.
>
> On top of these, PCSO has been constantly encountering a number of fraudulent schemes and nefarious activities on a continuing basis which affect the integrity of our operations, to wit:
>
> 1. Donated medicines sometimes end up in drug stores for sale even of (*sic*) they are labeled "Donated by PCSO-Not for Sale";
>
> 2. Unauthorized expenditures endowment fund for charity patients and organizations;
>
> 3. Fixers for the different programs of PCSO such as Ambulance Donation Project, Endowment Fund Program and Individual Medical Assistance Program;
>
> 4. Other fraudulent schemes and activities which put PCSO in bad light.
>
> In order to save PCSO operating funds, we suggest that the General Manager's Office be given at most, twenty percent (20%) of the [P]ublic Relations [(PR)] Fund or a minimum of 150 Million Pesos, to be used as intelligence/confidential fund. PCSO spent 760 Million for PR in 2009.
>
> The approval on the use of the fifty percent of the PR Fund as PCSO Intelligence Fund will greatly help PCSO in the disbursement of funds to immediately address urgent issues. PCSO will no longer need to seek approval for additional intelligence fund without first utilizing the amount allocated from the PR Fund.[46]

To my mind, the foregoing letter-requests show that, while they are indeed all similarly worded – as pointed out by the Sandiganbayan[47] – it is nonetheless apparent that there was substantial compliance with the guidelines set forth in LOI 1282. In particular, Uriarte's letter-requests: (*a*) indicated the specific purposes for which the additional CIF funds will be spent (*e.g.*, to protect the image and integrity of PCSO operations); (*b*) provided detailed explanations as to the circumstances giving rise for the expenditure and the particular aims to be accomplished by the release of additional CIF funds (*e.g.*, the proliferation of fraudulent schemes that affect the integrity of PCSO operations and the need to curb the same); and (*c*) were presented personally to Arroyo for her approval.

To stress, LOI 1282 merely required that requests for additional CIF funds shall "indicate in full detail the specific purposes for which said funds shall be spent," and "explain the circumstances giving rise to the necessity

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[46] Attached as Annex "W" in Arroyo's Petition in G.R. No. 220598, p. 78. See also April 6, 2015 Sandiganbayan Resolution, p. 29.

[47] See April 6, 2015 Sandiganbayan Resolution, p. 41.

for the expenditure and the particular aims to be accomplished."[48] It did not provide for any other parameter as to how the purposes and the underlying circumstances should be particularized, thereby giving the President ample discretion to scrutinize and deem by himself/herself whether or not a letter-request indeed complied with the requirements of LOI 1282. In this case, it must be pointed out that as General Manager of the PCSO, Uriarte enjoyed the full trust and confidence not only of the PCSO Board of Directors who appointed her as such, but also of the President (Arroyo, in this instance), who is the appointing authority of the said board.[49] Hence, when Arroyo placed her "OK" notations on Uriarte's letter-requests, it is as if she deemed such letter-requests compliant with the requirements of LOI 1282. Thus, while the Sandiganbayan correctly examined Arroyo's alleged participation under the lens of her duties under LOI 1282, it, however, erroneously concluded that there was sufficient evidence to prove that she knew of any Plunder conspiracy and henceforth, proceeded to approve the release of CIF funds in furtherance thereof.

The error of the Sandiganbayan is even more evident in relation to COA Circular Nos. 92-385 and 2003-002. This is because there appears to be no basis to render Arroyo accountable under the guidelines and control measures stated in these circulars. Reading their provisions, these issuances apply only to lower-level officials, particularly, the department heads, heads of government owned and controlled corporations, accountable officers, and other COA officers. At most, they only mention that the approval of the President is required before intelligence and confidential funds are to be released.[50] However, the document showing the President's approval is but part of the requirements needed to be ascertained by the various heads and accountable officers as part of their duty to "institute and maintain sound and effective internal control measures to discourage and prevent irregular, unnecessary, excessive, extravagant and unconscionable expenditures as well as promote prudence in the use of government resources by those involved in intelligence/confidential operations."[51] Outside of the duty to approve requests under LOI 1282, **the circulars do not articulate any active responsibility on the part of the President so as to render him/her accountable for the irregular processing of CIF funds**. The foregoing observation is buttressed by the testimony of prosecution witness Flerida Africa Jimenez, Director IV and Head of the Intelligence and Confidential Fund Audit Unit (ICFAU), Office of the Chairman, COA,[52] to wit:

> It is not the duty of the President of the Philippines to make or submit the liquidation of the GOCCs. It was not the duty of accused President Arroyo to submit these liquidations to COA. She also did not

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48 See *ponencia*, p. 37.

49 See RA 1169 entitled "AN ACT PROVIDING FOR CHARITY SWEEPSTAKES, HORSE RACES, AND LOTTERIES" (As Amended by Batas Pambansa Blg. 42 and Presidential Decree No. 1157) (June 18, 1954).

50 See 2nd Whereas clause of COA Circular No. 92-385 and Documentary Requirements, Item 2 of COA Circular No. 2003-002.

51 See COA Circular No. 2003-002.

52 See April 6, 2015 Sandiganbayan Resolution, pp. 20-27.

> prepare these reports. She did not have any participation in the preparation of these reports. The reason for this is that she is not the payee or recipient of the CIF. Under the law, the special disbursing officer, who is the accountable officer, prepares the liquidation report. The President is not the accountable officer for CIF because she did not receive or use the CIF.[53]

In sum, considering that Arroyo's "OK" notations in Uriarte's letter-requests are the only pieces of evidence which the Sandiganbayan used to link her to the Plunder charge, and that the same does not sufficiently prove that she assented to or committed any irregularity so as to facilitate the criminal design, it is my considered opinion that the Sandiganbayan patently erred – and in so doing, gravely abused its discretion – in denying Arroyo's demurrer to evidence. As I see it, the evidence of the prosecution has failed to prove Arroyo's commission of the crime, and her precise degree of participation under the evidentiary threshold of proof of guilt beyond reasonable doubt. While the records do reveal circumstances that may point to certain irregularities that Arroyo may or may not have knowingly committed, in the context of this criminal case for the high crime of Plunder, there lingers reasonable doubt as to her actual knowledge of the criminal design and that her approval of the release of CIF funds was in furtherance thereof. Case law instructs that "[i]ndeed, suspicion no matter how strong must never sway judgment. Where there is reasonable doubt, the accused must be acquitted even though their innocence may not have been established. The Constitution presumes a person innocent until proven guilty by proof beyond reasonable doubt. When guilt is not proven with moral certainty, it has been our policy of long standing that the presumption of innocence must be favored, and exoneration granted as a matter of right."[54] Also, everyone is entitled to the presumption of good faith.[55] While it is indeed tempting to cast the former President in a negative light because of the numerous anomalies involving her, the allure of publicity should not influence the outcome of a decision. Magistrates must be impartial to all that seek judicial succor. Every case should be decided based on the record and on its merits. The refuge of all presumptions, both of innocence and good faith, should not distinguish between similarly situated suitors.

In contrast, no grave abuse of discretion may be attributed to the Sandiganbayan in denying the demurrer of Aguas as his complicity to the said scheme appears to be supported by sufficient evidence on record. As PCSO Budget and Accounts Manager, Aguas was tasked to audit CIF

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53 See id. at 23.

54 *People v. Maraorao*, 688 Phil. 458, 467 (2012).

55 "It is a standing rule that every public official is entitled to the presumption of good faith in the discharge of official duties, such that, in the absence of any proof that a public officer has acted with malice or bad faith, he should not be charged with personal liability for damages that may result from the performance of an official duty. Good faith is always presumed and he who alleges the contrary bears the burden to convincingly show that malice or bad faith attended the public officer's performance of his duties." *Dimapilis-Baldoz v. Commission on Audit*, G.R. No. 199114, July 16, 2013,703 SCRA 318, 337.

liquidation reports.[56] In this light, he is bound to comply with the provisions of COA Circular Nos. 92-385 and 2003-002 on the audit of CIF, which includes, *inter alia*, **the proper scrutiny of liquidation reports with the corresponding supporting documents, as well as the submission of the same to the COA chairman before subsequent cash advances may be made**. As exhaustively discussed by the Sandiganbayan, Aguas committed various irregularities in such audit, resulting in the release of additional CIF funds to Uriarte, *viz.*:

> In all of the disbursement vouchers covering the cash advances/releases to Uriarte of the CIF funds, Aguas certified that:
>
> > **CERTIFIED: Adequate available funds/budgetary allotment in the amount of ₱ ; expenditure properly certified; supported by documents marked (X) per checklist and back hereof; account codes proper; previous cash advance liquidated/accounted for**.
>
> These certifications, after close scrutiny, were not true because: 1) **there were no documents which lent support to the cash advances on a per project basis**. The particulars of payment simply read: "To draw cash advance from the CIF Fund of the Office of the Vice-Chairman and General Manager." No particular purpose or project was specified contrary to the requirement under COA Circular 2003-002 that cash advances must be on a per project basis. Without specifics on the project covered by each cash advance, Aguas could not certify that supporting documents existed simply because he would not know what project was being funded by the cash advances; and 2) **There were no previous liquidations made of prior cash advances when Aguas made the certifications**. COA Circular 2003-002 required that cash advances be liquidated within one (1) month from the date the purpose of the cash advance was accomplished. If completion of the projects mentioned were for more than one month, a monthly progress liquidation report was necessary. In the case of Uriarte's cash advances certified to by Aguas, the liquidation made was wholesale, *i.e.*, these were done on a semi-annual basis without a monthly liquidation or at least a monthly liquidation progress report. How then could Aguas correctly certify that previous liquidations were accounted for? Aguas's certification also violated Sec. 89 of P.D. 1445 which states:
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> > Limitations on cash advance. No cash advance shall be given unless for a legally authorized specific purpose. A cash advance shall be reported on and liquidated as soon as the purpose for which it was given has been served. No additional cash advance shall be allowed to any official or employee unless the previous cash advance given to him is first settled or a proper accounting thereof is made.
>
> There is a great presumption of guilt against Aguas, as his action aided and abetted Uriarte's being able to draw these irregular CIF funds in contravention of the rules on CIF funds. Without Aguas's certification, the disbursement vouchers could not have been processed for payment. Accordingly, the certification that there were supporting documents and

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[56] See Petition of Aguas in G.R. No. 220953, pp. 8 and 46.

> prior liquidation paved the way for Uriarte to acquire ill-gotten wealth by raiding the public coffers of the PCSO.
>
> By just taking cognizance of the series and number of cash advances and the staggering amounts involved, Aguas should have been alerted that something was greatly amiss and that Uriarte was up to something. If Aguas was not into the scheme, it would have been easy for him to refuse to sign the certification, but he did not. The conspiracy "gravamen" is, therefore, present in the case of Aguas. Moreover, Aguas's attempt to cover-up Uriarte's misuse of these CIF funds in his accomplishment report only contributed to unmasking the actual activities for which these funds were utilized. Aguas's accomplishment report, which was conformed to by Uriarte, made it self-evident that the bulk of the CIF funds in 2009 and 2010 were allegedly spent for non-PCSO related activities, *e.g.*, bomb threats, kidnapping, terrorism, and others.[57] (Emphases and underscoring supplied)

Since the records show how Aguas evidently ignored his auditing duties and responsibilities in defiance of guidelines and control measures set therefor, there appears to be sufficient evidence to link him as a co-conspirator who had assented and eventually, facilitated Uriarte's amassment, accumulation, or acquisition of CIF funds subject of the present Plunder charge. Therefore, no grave abuse of discretion was committed by the Sandiganbayan in denying Aguas's demurrer to evidence.

As a final point, allow me to submit my reservations on the *ponencia*'s characterization of the concept of a "raid of public treasury" under the auspices of Section 1 (d) of the Plunder Law, *viz.*:

> SECTION 1. Definition of Terms. — As used in this Act, the term —
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> x x x x
>
> d) Ill-gotten wealth means any asset, property, business enterprise or material possession of any person within the purview of Section Two (2) hereof, acquired by him directly or indirectly through dummies, nominees, agents, subordinates and/or business associates by any combination or series of the following means or similar schemes:
>
> 1) Through misappropriation, conversion, misuse, or malversation of public funds or **raids on the public treasury**[.] (Emphasis supplied)

I disagree that the said concept requires – purportedly similar to the accompanying words in the above-cited provision – that personal benefit be derived by the public officer/s so charged. The gravamen of plunder is the amassing, accumulating, or acquiring of ill-gotten wealth by a public officer. Section 1 (d) of the Plunder Law states the multifarious modes under which the amassment, accumulation, or acquisition of public funds would be tantamount to the Plunder of ill-gotten wealth. There is simply no reasonable

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[57] See April 6, 2015 Sandiganbayan Resolution, pp. 32-33.

relation that the requirement of personal benefit commonly inheres in the sense of the words accompanying the predicate act of "raids on public treasury." For one, "misuse" is such a broad term that would encompass the gamut of illegal means and methods for which public funds may be amassed, accumulated, or acquired, without necessarily meaning that the public officer so amassing, accumulating, or acquiring the same had derived any personal benefit therefrom. Equally perceivable is the connotation given to the word "malversation," which under Article 217 of the Revised Penal Code, can be classified into a type known as "technical malversation." In technical malversation, the public officer applies public funds under his administration not for his or another's personal use, but to a public use other than that for which the fund was appropriated by law or ordinance.[58] In such instance of malversation, there is no necessity to prove that any personal benefit was derived. Thus, based on these observations, I respectfully submit that the doctrine of associated words, or *noscitur a sociis* was misapplied.

In addition, the Sandiganbayan noted that there is no basis under the Congressional deliberations of Plunder Law that personal benefit was required. As may be gleaned therefrom, the phrase "knowingly benefited" had been stricken off from the final text of the law.[59]

Finally, the Sandiganbayan aptly pointed out that: "to require proof that monies went to a plunderer's bank account or was used to acquire real or personal properties for any other purpose to personally benefit the plunderer, is absurd. Suppose a plunderer had already illegally amassed, acquired, or accumulated ₱50 Million or more of government funds and just decided to keep it in his vault and never used such funds for any purpose to benefit him, would that not be plunder? Or, if immediately right after such amassing, the monies went up in flames or recovered by the police, negating any opportunity for the person to actually benefit, would that not still be plunder? Surely, in such cases, a plunder charge could still prosper and the argument that the fact of personal benefit should still be evidence-based must fail."[60] The *ponencia*'s appreciation of the Plunder Law tends to deleteriously impact the prosecution of other pending Plunder cases. Unfortunately, the majority has imposed a rule which now requires the State to submit direct proof of personal benefit for an accused plunderer, as well as those who have conspired with him to be convicted. I strongly criticize this approach as it is practically the case that those who have raided the coffers of our government, especially in light of the fairly recent PDAF[61] controversy and now current litigations, would, in great likelihood, had already hidden the money they stole through ingenious schemes and means. Regrettably, the majority's interpretation tends to enervate the potency of the Plunder Law's force.

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58 *Parungao v. Sandiganbayan*, 274 Phil. 451, 460 (1991).

59 See also September 10, 2015 Sandiganbayan Resolution, pp. 8-9.

60 See September 10, 2015 Sandiganbayan Resolution, p.10.

61 "Priority Development Assistance Fund.

ACCORDINGLY, for the reasons above-stated, I vote to **GRANT** the petition filed by petitioner Gloria Macapagal-Arroyo in G.R. No. 220598 and **DENY** the petition filed by petitioner Benigno B. Aguas in G.R. No. 220953.

ESTELA M. PERLAS-BERNABE
Associate Justice