Republic of the Philippines
Supreme Court
Baguio City

EN BANC

GLORIA MACAPAGAL-ARROYO,
Petitioner,

- versus -

PEOPLE OF THE PHILIPPINES AND THE SANDIGANBAYAN, (First Division),
Respondents.

x - x

BENIGNO B. AGUAS,
Petitioner,

- versus -

SANDIGANBAYAN (First Division),
Respondent.

G.R. No. 220598

G.R. No. 220953

Present:

SERENO, *C.J.*,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
PERALTA,
BERSAMIN,
DEL CASTILLO,
MENDOZA,
REYES,
PERLAS-BERNABE,
LEONEN,
JARDELEZA,
CAGUIOA,
MARTIRES, and
TIJAM, *JJ.*

Promulgated:

April 18, 2017

x----------x

RESOLUTION

BERSAMIN, *J.*:

On July 19, 2016, the Court promulgated its decision, disposing:

WHEREFORE, the Court **GRANTS** the petitions for *certiorari*; **ANNULS** and **SETS ASIDE** the resolutions issued in Criminal Case No. SB-12-CRM-0174 by the *Sandiganbayan* on April 6, 2015 and September 10, 2015; **GRANTS** the petitioners' respective demurrers to evidence; **DISMISSES** Criminal Case No. SB-12-CRM-0174 as to the petitioners **GLORIA MACAPAGAL-ARROYO** and **BENIGNO AGUAS** for insufficiency of evidence; **ORDERS** the immediate release from detention of said petitioners; and **MAKES** no pronouncements on costs of suit.

SO ORDERED.[1]

On August 3, 2016, the State, through the Office of the Ombudsman, has moved for the reconsideration of the decision, submitting that:

I. THIS HONORABLE COURT'S GIVING DUE COURSE TO A CERTIORARI ACTION ASSAILING AN INTERLOCUTORY ORDER DENYING DEMURRER TO EVIDENCE VIOLATES RULE 119, SECTION 23 OF THE RULES OF COURT, WHICH PROVIDES THAT AN ORDER DENYING THE DEMURRER TO EVIDENCE SHALL NOT BE REVIEWABLE BY APPEAL OR BY CERTIORARI *BEFORE* JUDGMENT.

II. THE HONORABLE COURT COMMITTED GRAVE ERRORS WHICH AMOUNT TO A VIOLATION OR DEPRIVATION OF THE STATE'S FUNDAMENTAL RIGHT TO DUE PROCESS OF LAW.

A. THE DECISION REQUIRES *ADDITIONAL* ELEMENTS IN THE PROSECUTION OF PLUNDER, *VIZ.* IDENTIFICATION OF THE MAIN PLUNDERER AND PERSONAL BENEFIT TO HIM/HER, BOTH OF WHICH ARE NOT PROVIDED IN THE TEXT OF REPUBLIC ACT (R.A.) NO. 7080.

B. THE EVIDENCE PRESENTED BY THE PROSECUTION WAS NOT FULLY TAKEN INTO ACCOUNT, INCLUDING BUT NOT LIMITED TO THE IRREGULARITIES IN THE CONFIDENTIAL/INTELLIGENCE FUND (CIF) DISBURSEMENT PROCESS, QUESTIONABLE PRACTICE OF CO-MINGLING OF FUNDS AND AGUAS' REPORTS TO THE COMMISSION ON AUDIT (COA) THAT BULK OF THE PHP365,997,915.00 WITHDRAWN FROM THE PHILIPPINE CHARITY SWEEPSTAKES OFFICE'S (PCSO) CIF WERE DIVERTED TO THE ARROYO-HEADED OFFICE OF THE PRESIDENT.

C. ARROYO AND AGUAS, BY INDISPENSABLE COOPERATION, IN CONSPIRACY WITH THEIR CO-ACCUSED IN SB-12-CRM-0174, COMMITTED

---

[1] *Rollo* (G.R. No. 220953), Vol. III, p. 1866.

PLUNDER VIA A COMPLEX ILLEGAL SCHEME WHICH DEFRAUDED PCSO IN HUNDREDS OF MILLIONS OF PESOS.

D. EVEN ASSUMING THAT THE ELEMENTS OF PLUNDER WERE NOT PROVEN BEYOND REASONABLE DOUBT, THE EVIDENCE PRESENTED BY THE PEOPLE SHOWS, BEYOND REASONABLE DOUBT, THAT ARROYO, AGUAS AND THEIR CO-ACCUSED IN SB-12-CRM-0174 ARE GUILTY OF MALVERSATION.[2]

In contrast, the petitioners submit that the decision has effectively barred the consideration and granting of the motion for reconsideration of the State because doing so would amount to the re-prosecution or revival of the charge against them despite their acquittal, and would thereby violate the constitutional proscription against double jeopardy.

Petitioner Gloria M. Macapagal-Arroyo (Arroyo) points out that the State miserably failed to prove the *corpus delicti* of plunder; that the Court correctly required the identification of the main plunderer as well as personal benefit on the part of the raider of the public treasury to enable the successful prosecution of the crime of plunder; that the State did not prove the conspiracy that justified her inclusion in the charge; that to sustain the case for malversation against her, in lieu of plunder, would violate her right to be informed of the accusation against her because the information did not necessarily include the crime of malversation; and that even if the information did so, the constitutional prohibition against double jeopardy already barred the re-opening of the case for that purpose.

Petitioner Benigno B. Aguas echoes the contentions of Arroyo in urging the Court to deny the motion for reconsideration.

In reply, the State avers that the prohibition against double jeopardy does not apply because it was denied its day in court, thereby rendering the decision void; that the Court should re-examine the facts and pieces of evidence in order to find the petitioners guilty as charged; and that the allegations of the information sufficiently included all that was necessary to fully inform the petitioners of the accusations against them.

Ruling of the Court

The Court **DENIES** the motion for reconsideration for its lack of merit.

---

[2] *Rollo* (G.R. No. 220598), Vol. VI, pp. 4158- 4159.

To start with, the State argues that the consolidated petitions for *certiorari* were improper remedies in light of Section 23, Rule 119 of the *Rules of Court* expressly prohibiting the review of the denial of their demurrer prior to the judgment in the case either by appeal or by *certiorari*; that the Court has thereby limited its own power, which should necessarily prevent the giving of due course to the petitions for *certiorari*, as well as the undoing of the order denying the petitioners' demurrer to evidence; that the proper remedy under the *Rules of Court* was for the petitioners to proceed to trial and to present their evidence-in-chief thereat; and that even if there had been grave abuse of discretion attending the denial, the Court's *certiorari* powers should be exercised only upon the petitioners' compliance with the stringent requirements of Rule 65, particularly with the requirement that there be no plain, speedy or adequate remedy in the ordinary course of law, which they did not establish.

Section 23, Rule 119 of the *Rules of Court*, pertinently provides:

> Section 23. *Demurrer to evidence.* – x x x
>
> 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**. (n)

The argument of the State, which is really a repetition of its earlier submission, was squarely resolved in the decision, as follows:

> The Court holds that it should take cognizance of the petitions for *certiorari* because the *Sandiganbayan*, as shall shortly be demonstrated, gravely abused its discretion amounting to lack or excess of jurisdiction.
>
> The special civil action for *certiorari* is generally not proper to assail such an interlocutory order issued by the trial court because of the availability of another remedy in the ordinary course of law. Moreover, Section 23, Rule 119 of the *Rules of Court* expressly provides that "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." It is not an insuperable obstacle to this action, however, that the denial of the demurrers to evidence of the petitioners was an interlocutory order that did not terminate the proceedings, and the proper recourse of the demurring accused was to go to trial, and that in case of their conviction they may then appeal the conviction, and assign the denial as among the errors to be reviewed. Indeed, it is doctrinal that the situations in which the writ of *certiorari* may issue should not be limited, because to do so –
>
> > x x x would be to destroy its comprehensiveness and usefulness. So wide is the discretion of the court that authority is not wanting to show that *certiorari* is more discretionary than either prohibition or *mandamus*. **In the exercise of our**

9

> **superintending control over other courts, we are to be guided by all the circumstances of each particular case 'as the ends of justice may require.' So it is that the writ will be granted where necessary to prevent a substantial wrong or to do substantial justice.**
>
> The Constitution itself has imposed upon the Court and the other courts of justice the duty to correct errors of jurisdiction as a result of capricious, arbitrary, whimsical and despotic exercise of discretion by expressly incorporating in Section 1 of Article VIII the following provision:
>
> > Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
> >
> > Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.
>
> **The exercise of this power to correct grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government cannot be thwarted by rules of procedure to the contrary or for the sake of the convenience of one side. This is because the Court has the bounden constitutional duty to strike down grave abuse of discretion *whenever* and *wherever* it is committed. Thus, notwithstanding the interlocutory character and effect of the denial of the demurrers to evidence, the petitioners as the accused could avail themselves of the remedy of *certiorari* when the denial was tainted with grave abuse of discretion. As we shall soon show, the *Sandiganbayan* as the trial court was guilty of grave abuse of discretion when it capriciously denied the demurrers to evidence despite the absence of competent and sufficient evidence to sustain the indictment for plunder, and despite the absence of the factual bases to expect a guilty verdict.**[3]

We reiterate the foregoing resolution, and stress that the prohibition contained in Section 23, Rule 119 of the *Rules of Court* is not an insuperable obstacle to the review by the Court of the denial of the demurrer to evidence through *certiorari*. We have had many rulings to that effect in the past. For instance, in *Nicolas v. Sandiganbayan*,[4] the Court expressly ruled that the petition for *certiorari* was the proper remedy to assail the denial of the demurrer to evidence that was tainted with grave abuse of discretion or excess of jurisdiction, or oppressive exercise of judicial authority.

Secondly, the State submits that its right to due process was violated because the decision imposed additional elements for plunder that neither Republic Act No. 7080 nor jurisprudence had theretofore required, *i.e.*, the

---

[3] *Rollo* (G.R. No. 220953), Vol. III, pp. 1846-1847; bold underscoring is supplied for emphasis.

[4] G.R. Nos. 175930-31, February 11, 2008, 544 SCRA 324, 336.

identification of the main plunderer, and personal benefit on the part of the accused committing the predicate crime of raid on the public treasury. The State complains that it was not given the opportunity to establish such additional elements; that the imposition of new elements further amounted to judicial legislation in violation of the doctrine of separation of powers; that the Court nitpicked on the different infirmities of the information despite the issue revolving only around the sufficiency of the evidence; and that it established all the elements of plunder beyond reasonable doubt.

The State cites the plain meaning rule to highlight that the crime of plunder did not require personal benefit on the part of the raider of the public treasury. It insists that the definition of *raids on the public treasury*, conformably with the plain meaning rule, is the taking of public money through fraudulent or unlawful means, and such definition does not require enjoyment or personal benefit on the part of plunderer or on the part of any of his co-conspirators for them to be convicted for plunder.

The submissions of the State are unfounded.

The requirements for the identification of the main plunderer and for personal benefit in the predicate act of *raids on the public treasury* have been written in R.A. No. 7080 itself as well as embedded in pertinent jurisprudence. This we made clear in the decision, as follows:

> A perusal of the information suggests that what the Prosecution sought to show was an implied conspiracy to commit plunder among all of the accused on the basis of their collective actions prior to, during and after the implied agreement. It is notable that the Prosecution did not allege that the conspiracy among all of the accused was by express agreement, or was a wheel conspiracy or a chain conspiracy.
>
> This was another fatal flaw of the Prosecution.
>
> In its present version, under which the petitioners were charged, Section 2 of Republic Act No. 7080 (Plunder Law) states:
>
> > Section 2. *Definition of the Crime of Plunder; Penalties.* - Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt criminal acts as described in Section 1 (d) hereof in the aggregate amount or total value of at least Fifty million pesos (₱50,000,000.00) shall be guilty of the crime of plunder and shall be punished by *reclusion perpetua* to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the

court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State. [As Amended by Section 12, Republic Act No. 7659 (The Death Penalty Law)]

Section 1(d) of Republic Act No. 7080 provides:

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;

2. By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned;

3. By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities or government-owned or controlled corporations and their subsidiaries;

4. By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;

5. By establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or

6. By taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

The law on plunder requires that a particular public officer must be identified as the one who amassed, acquired or accumulated ill-gotten wealth because it plainly states that plunder is committed by any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth in the aggregate amount or total value of at least

₱50,000,000.00 through a *combination* or *series* of overt criminal acts as described in Section 1(d) hereof. Surely, the law requires in the criminal charge for plunder against several individuals that there must be a main plunderer and her co-conspirators, who may be members of her family, relatives by affinity or consanguinity, business associates, subordinates or other persons. In other words, the allegation of the wheel conspiracy or express conspiracy in the information was appropriate because the main plunderer would then be identified in either manner. Of course, implied conspiracy could also identify the main plunderer, but that fact must be properly alleged and duly proven by the Prosecution.

This interpretation is supported by *Estrada v. Sandiganbayan*, where the Court explained the nature of the conspiracy charge and the necessity for the main plunderer for whose benefit the amassment, accumulation and acquisition was made, thus:

> There is no denying the fact that the "plunder of an entire nation resulting in material damage to the national economy" is made up of a complex and manifold network of crimes. In the crime of plunder, therefore, different parties may be united by a common purpose. In the case at bar, the different accused and their different criminal acts have a commonality - to help the former President amass, accumulate or acquire ill-gotten wealth. Sub-paragraphs (a) to (d) in the Amended Information alleged the different participation of each accused in the conspiracy. **The gravamen of the conspiracy charge, therefore,** is not that each accused agreed to receive protection money from illegal gambling, that each misappropriated a portion of the tobacco excise tax, that each accused ordered the GSIS and SSS to purchase shares of Belle Corporation and receive commissions from such sale, nor that each unjustly enriched himself from commissions, gifts and kickbacks; rather, it **is that each of them, by their individual acts, agreed to participate, directly or indirectly, in the amassing, accumulation and acquisition of ill-gotten wealth of and/or for former President Estrada.**[5] [bold underscoring supplied for emphasis]

Indeed, because plunder is a crime that only a public official can commit by amassing, accumulating, or acquiring ill-gotten wealth in the aggregate amount or total value of at least ₱50,000,000.00, the identification in the information of such public official as the main plunderer among the several individuals thus charged is logically necessary under the law itself. In particular reference to Criminal Case No. SB-12-CRM-0174, the individuals charged therein – including the petitioners – were 10 public officials; hence, it was only proper to identify the main plunderer or plunderers *among the 10 accused* who herself or himself had amassed, accumulated, or acquired ill-gotten wealth with the total value of at least ₱50,000,000.00.

---

[5] *Rollo* (G.R. No. 220593), Vol. III, pp. 1851-1854.

The phrase *raids on the public treasury* as used in Section 1(d) of R. A. No. 7080 is itself ambiguous. In order to ascertain the objective meaning of the phrase, the act of raiding the public treasury cannot be divided into parts. This is to differentiate the predicate act of *raids on the public treasury* from other offenses involving property, like robbery, theft, or *estafa*. Considering that R.A. No. 7080 does not expressly define this predicate act, the Court has necessarily resorted to statutory construction. In so doing, the Court did not adopt the State's submission that personal benefit on the part of the accused need not be alleged and shown because doing so would have defeated the clear intent of the law itself,[6] which was to punish the amassing, accumulating, or acquiring of ill-gotten wealth in the aggregate amount or total value of at least ₱50,000,000.00 by any combination or series of acts of misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury.

As the decision has observed, the rules of statutory construction as well as the deliberations of Congress indicated the intent of Congress to require personal benefit for the predicate act of *raids on the public treasury*, *viz.*:

> The phrase *raids on the public treasury* is found in Section 1 (d) of R.A. No. 7080, which provides:
>
> > Section1.*Definition of Terms.* – x x x
> >
> > 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;
> >
> > x x x x
>
> **To discern the proper import of the phrase *raids on the public treasury*, the key is to look at the accompanying words: *misappropriation, conversion, misuse* or *malversation of public funds.* This process is conformable with the maxim of statutory construction *noscitur a sociis*, by which the correct construction of a particular word or phrase that is ambiguous in itself or is equally susceptible of various meanings may be made by considering the company of the words in which the word or phrase is found or with which it is associated. Verily, a word or phrase in a statute is always used in association with other words or phrases, and its meaning may, therefore, be modified or restricted by the latter.**

---

[6] See *Garcia v. Social Security Commission Legal and Collection*, G.R. No. 170735, December 17, 2007, 540 SCRA 456, 472.

To convert **connotes the act of using or disposing of another's property as if it were one's own; *to misappropriate* means to own, to take something for one's own benefit; *misuse* means "a good, substance, privilege, or right used improperly, unforeseeably, or not as intended;" and *malversation* occurs when "any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same or shall take or misappropriate or shall consent, through abandonment or negligence, shall permit any other person to take such public funds, or property, wholly or partially." The common thread that binds all the four terms together is that the public officer *used* the property taken. Considering that *raids on the public treasury* is in the company of the four other terms that require the use of the property taken, the phrase *raids on the public treasury* similarly requires such use of the property taken. Accordingly, the *Sandiganbayan* gravely erred in contending that the mere accumulation and gathering constituted the forbidden act of *raids on the public treasury.* Pursuant to the maxim of *noscitur a sociis*, *raids on the public treasury* requires the raider to use the property taken impliedly for his personal benefit.**[7]

The Prosecution asserts that the Senate deliberations removed *personal benefit* as a requirement for plunder. In not requiring personal benefit, the *Sandiganbayan* quoted the following exchanges between Senator Enrile and Senator Tañada, *viz.*:

> Senator Enrile. The word here, Mr. President, "such public officer or person who conspired **or knowingly benefited**". **One does not have to conspire or rescheme**. The only element needed is that he "knowingly benefited". A candidate for the Senate for instance, who received a political contribution from a plunderer, knowing that the contributor is a plunderer and therefore, he knowingly benefited from the plunder, would he also suffer the penalty, Mr. President, for life imprisonment?
>
> Senator Tañada. In the committee amendments, Mr. President, we have deleted these lines 1 to 4 and part of line 5, on page 3. But, in a way, Mr. President, it is good that the Gentleman is bringing out these questions, I believe that under the examples he has given, the Court will have to...
>
> Senator Enrile. How about the wife, Mr. President, he may not agree with the plunderer to plunder the country but because she is a dutiful wife or a faithful husband, she has to keep her or his vow of fidelity to the spouse. And, of course, she enjoys the benefits out of the plunder. Would the Gentleman now impute to her or him the crime of plunder simply because she or he knowingly benefited out of the fruits of the plunder and, therefore, he must suffer or he must suffer the penalty of life imprisonment?
>
> The President. That was stricken out already in the Committee amendment.

---

[7] Bold underscoring is added for emphasis.

> Senator Tañada. Yes, Mr. President. Lines 1 to 4 and part of line 5 were stricken out in the Committee amendment. But, as I said, the examples of the Minority Floor Leader are still worth spreading the *Record.* And, I believe that in those examples, the Court will have just to take into consideration all the other circumstances prevailing in the case and the evidence that will be submitted.
>
> The President. In any event, 'knowingly benefited' has already been stricken off."
>
> The exchanges between Senator Enrile and Senator Tañada reveal, therefore, that what was removed from the coverage of the bill and the final version that eventually became the law was a person who was not the main plunderer or a co-conspirator, but one who personally benefited from the plunderers' action. The requirement of personal benefit on the part of the main plunderer or his co-conspirators by virtue of their plunder was not removed.
>
> As a result, not only did the Prosecution fail to show where the money went but, more importantly, that GMA and Aguas had personally benefited from the same. Hence, the Prosecution did not prove the predicate act of *raids on the public treasury* beyond reasonable doubt.[8]

Thirdly, the State contends that the Court did not appreciate the totality of its evidence, particularly the different irregularities committed in the disbursement of the PCSO funds, *i.e.*, the commingling of funds, the non-compliance with LOI No. 1282, and the unilateral approval of the disbursements. Such totality, coupled with the fact of the petitioners' indispensable cooperation in the pilfering of public funds, showed the existence of the conspiracy to commit plunder among all of the accused.

The contention lacks basis.

As can be readily seen from the decision, the Court expressly granted the petitioners' respective demurrers to evidence and dismissed the plunder case against them for insufficiency of evidence because:

> x x x the *Sandiganbayan* as the trial court was guilty of grave abuse of discretion when it capriciously denied the demurrers to evidence **despite the absence of competent and sufficient evidence to sustain the indictment for plunder, and despite the absence of the factual bases to expect a guilty verdict.**[9]

Such disposition of the Court fully took into consideration *all* the evidence adduced against the petitioners. We need not rehash our review of the evidence thus adduced, for it is enough simply to stress that the Prosecution failed to establish the *corpus delicti* of plunder – that any or all

---

[8] *Rollo* (G.R. No. 220953), Vol. III, pp. 1863-1865.

[9] Id. at 1847.

of the accused public officials, particularly petitioner Arroyo, had amassed, accumulated, or acquired ill-gotten wealth in the aggregate amount or total value of at least ₱50,000,000.00.

Fourthly, in accenting certain inadequacies of the allegations of the information, the Court did not engage in purposeless nitpicking, and did not digress from the primary task of determining the sufficiency of the evidence presented by the State against the petitioners. What the Court thereby intended to achieve was to highlight what would have been relevant in the *proper* prosecution of plunder and thus enable itself to discern and determine whether the evidence of guilt was sufficient or not. In fact, the Court categorically clarified that in discussing the essential need for the identification of the main plunderer it was not harping on the sufficiency of the information, but was only enabling itself to search for and to find the relevant proof that unequivocally showed petitioner Arroyo as the "mastermind" – which was how the Sandiganbayan had characterized her participation – in the context of the implied conspiracy alleged in the information. But the search came to naught, for the information contained nothing that averred her commission of the *overt act* necessary to implicate her in the supposed conspiracy to commit the crime of plunder. Indeed, the Court assiduously searched for but did not find the sufficient incriminatory evidence against the petitioners. Hence, the Sandiganbayan capriciously and oppressively denied their demurrers to evidence.

Fifthly, the State posits that it established at least a case for malversation against the petitioners.

Malversation is defined and punished under Article 217 of the *Revised Penal Code*, which reads thusly:

> Article 217. *Malversation of public funds or property; Presumption of malversation.* — Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same or shall take or misappropriate or shall consent, through abandonment or negligence, shall permit any other person to take such public funds, or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:
>
> 1. The penalty of *prision correccional* in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed two hundred pesos.
>
> 2. The penalty of *prision mayor* in its minimum and medium periods, if the amount involved is more than two hundred pesos but does not exceed six thousand pesos.
>
> 3. The penalty of *prision mayor* in its maximum period to reclusion temporal in its minimum period, if the amount involved is more than six thousand pesos but is less than twelve thousand pesos.

> 4. The penalty of *reclusion temporal*, in its medium and maximum periods, if the amount involved is more than twelve thousand pesos but is less than twenty-two thousand pesos. If the amount exceeds the latter, the penalty shall be *reclusion temporal* in its maximum period to *reclusion perpetua*.
>
> In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.
>
> The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal use. (As amended by RA 1060).

The elements of malversation are that: (a) the offender is an accountable public officer; (b) he/she is responsible for the misappropriation of public funds or property through intent or negligence; and (c) he/she has custody of and received such funds and property by reason of his/her office.[10]

The information in Criminal Case No. SB-12-CRM-0174[11] avers:

> The undersigned Assistant Ombudsman and Graft Investigation and Prosecution Officer III, Office of the Ombudsman, hereby accuse GLORIA MACAPAGAL-ARROYO, ROSARIO C. URIARTE, SERGIO O. VALENCIA, MANUEL L. MORATO, JOSE R. TARUC V, RAYMUNDO T. ROQUERO, MA. FATIMA A.S. VALDES, BENIGNO B. AGUAS, REYNALDO A. VILLAR and NILDA B. PLARAS, of the crime of **PLUNDER**, as defined by, and penalized under Section 2 of Republic Act (R.A.) No. 7080, as amended by R.A. No. 7659, committed, as follows:
>
> That during the period from January 2008 to June 2010 or sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, accused GLORIA MACAPAGAL-ARROYO, then the President of the Philippines, ROSARIO C. URIARTE, then General Manager and Vice Chairman, SERGIO O. VALENCIA, then Chairman of the Board of Directors, MANUEL L. MORATO, JOSE R. TARUC V, RAYMUNDO T. ROQUERO, MA. FATIMA A.S. VALDES, then members of the Board of Directors, BENIGNO B. AGUAS, then Budget and Accounts Manager, all of the Philippine Charity Sweepstakes Office (PCSO), REYNALDO A. VILLAR, then Chairman, and NILDA B. PLARAS, then Head of Intelligence/Confidential Fund Fraud Audit Unit, both of the Commission on Audit, all public officers committing the offense in relation to their respective offices and taking undue advantage of their respective official positions, authority, relationships, connections or influence, conniving, conspiring and confederating with one another, did then and there

---

[10] Regalado, *Criminal Law Conspectus*, 1st Edition, 2000, National Book Store, Inc., p. 424.

[11] *Rollo* (G.R. No. 220598), Vol. I, pp. 305-307-A.

willfully, unlawfully and criminally amass, accumulate and/or acquire directly or indirectly, ill-gotten wealth in the aggregate amount or total value of THREE HUNDRED SIXTY FIVE MILLION NINE HUNDRED NINETY SEVEN THOUSAND NINE HUNDRED FIFTEEN PESOS (PHP365,997,915.00), more or less, through any or a combination or a series of overt or criminal acts, or similar schemes or means, described as follows:

(a) diverting in several instances, funds from the operating budget of 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.

CONTRARY TO LAW.

In thereby averring the *predicate act* of malversation, the State did not sufficiently allege the aforementioned essential elements of malversation in the information. The omission from the information of factual details descriptive of the aforementioned elements of malversation highlighted the insufficiency of the allegations. Consequently, the State's position is entirely unfounded.

Lastly, the petitioners insist that the consideration and granting of the motion for reconsideration of the State can amount to a violation of the constitutional prohibition against double jeopardy because their acquittal under the decision was a prior jeopardy within the context of Section 21, Article III (*Bill of Rights*) of the 1987 Constitution, to wit:

> Section 21. No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

The insistence of the petitioners is fully warranted. Indeed, the consideration and granting of the motion for reconsideration of the State will

amount to the violation of the constitutional guarantee against double jeopardy.

The Court's consequential dismissal of Criminal Case No. SB-12-CRM-0174 as to the petitioners *for insufficiency of evidence* amounted to their *acquittal* of the crime of plunder charged against them. In *People v. Tan*,[12] the Court shows why:

> In *People v. Sandiganbayan*, this Court explained the general rule that the grant of a demurrer to evidence operates as an acquittal and is, thus, final and unappealable, to wit:
>
> > **The demurrer to evidence in criminal cases, such as the one at bar, is "*filed after the prosecution had rested its case*," and when the same is granted, it calls "for an appreciation of the evidence adduced by the prosecution and its sufficiency to warrant conviction beyond reasonable doubt, resulting in a *dismissal of the case on the merits, tantamount to an acquittal of the accused.*" Such dismissal of a criminal case by the grant of demurrer to evidence may not be appealed, for to do so would be to place the accused in double jeopardy. The verdict being one of acquittal, the case ends there.**
> >
> > x x x x
>
> The rule on double jeopardy, however, is not without exceptions. In *People v. Laguio, Jr.*, this Court stated that the only instance when double jeopardy will not attach is when the RTC acted with grave abuse of discretion, thus:
>
> > **. . . The only instance when double jeopardy will not attach is when the <u>trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction</u>, such as where the prosecution was denied the opportunity to present its case or where the trial was a sham**. However, while *certiorari* may be availed of to correct an erroneous acquittal, the petitioner in such an extraordinary proceeding must clearly demonstrate that the trial court blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice.[13]

The constitutional prohibition against placing a person under double jeopardy for the same offense bars not only a new and independent prosecution but also an appeal in the same action after jeopardy had attached.[14] As such, every *acquittal* becomes final *immediately upon promulgation* and cannot be recalled for correction or amendment. With the acquittal being immediately final, granting the State's motion for reconsideration in this case would violate the Constitutional prohibition

---

[12] G.R. No. 167526, July 26, 2010, 625 SCRA 388.

[13] Id. at 395-397 (bold underscoring supplied for emphasis).

[14] *Republic v. Court of Appeals*, No. L-41115, September 11, 1982, 116 SCRA 505, 556; *People v. Pomeroy*, 97 Phil 927 (1955); *People v. Bringas*, 70 Phil 528; *People v. Yelo*, 83 Phil. 618.

against double jeopardy because it would effectively reopen the prosecution and subject the petitioners to a second jeopardy *despite their acquittal.*

It is cogent to remind in this regard that the Constitutional prohibition against double jeopardy provides to the accused three related protections, specifically: *protection against a second prosecution for the same offense after acquittal*; *protection against a second prosecution for the same offense after conviction*; and *protection against multiple punishments for the same offense*.[15] The rationale for the three protections is expounded in *United States v. Wilson*:[16]

> **The interests underlying these three protections are quite similar. When a defendant has been once convicted and punished for a particular crime, principles of fairness and finality require that he not be subjected to the possibility of further punishment by being again tried or sentenced for the same offense.** *Ex parte Lange*, 18 Wall 163 (1874); *In re Nielsen*, 131 U.S. 176 (1889). **When a defendant has been acquitted of an offense, the Clause guarantees that the State shall not be permitted to make repeated attempts to convict him,**
>
> > **"thereby subjecting him to embarrassment, expense and ordeal, and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that, even though innocent, he may be found guilty."**
>
> *Green v. United States*, 355 U.S. 184, 187-188 (1957).
>
> **The policy of avoiding multiple trials has been regarded as so important that exceptions to the principle have been only grudgingly allowed. Initially, a new trial was thought to be unavailable after appeal, whether requested by the prosecution or the defendant.** See *United States v. Gibert*, 25 F. Cas. 1287 (No. 15,204) (CCD Mass. 1834) (Story, J.). **It was not until 1896 that it was made clear that a defendant could seek a new trial after conviction, even though the Government enjoyed no similar right.** *United States v. Ball*, 163 U.S. 662. (Bold underscoring supplied for emphasis)

WHEREFORE, the Court **DENIES** the motion for reconsideration for lack of merit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

---

[15] *North Carolina v. Pearce*, 395 US 711, 717 (1969).
[16] 420 US 332, 343 (1975).

WE CONCUR: I join J. Leonen's Dissent.

MARIA LOURDES P. A. SERENO
Chief Justice

I join J. Leonen's Dissent
ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

Please see Concurring and Dissenting opinion in the main case
BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

I dissent. See separate opinion
MARVIC M.V.F. LEONEN
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

I join the dissent of J. Leonen
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

SAMUEL R. MARTIRES
Associate Justice

NOEL G. TIJAM
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED XEROX COPY:
FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT