EN BANC

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:
April 18, 2017

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

DISSENTING OPINION

LEONEN, *J:*

I maintain my dissent.

This Court's July 19, 2016 Decision[1] sets a dangerous precedent. It effectively requires new elements to the crime of plunder that are not sustained by the text of the Anti-Plunder Law. In doing so, this Court sets itself upon the course of encroaching on Congress' plenary power to make laws. It also denies the State the opportunity to adequately present its case. Likewise, it unwittingly licenses the most cunning plunderers to prey upon public funds with impunity.

This is *not* what the Anti-Plunder Law intends.

I

Republic Act No. 7080 or the Anti-Plunder Law was adopted in the wake of the Marcos dictatorship, when the pilferage of the country's wealth by former President Ferdinand E. Marcos, his wife Imelda, their family and cronies bled the Philippine economy dry.[2] The terms "kleptocracy,"

---

[1] *Macapagal-Arroyo v. People*, G.R. No. 220598, July 19, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/july2016/220598.pdf> [Per J. Bersamin, En Banc].

[2] *See* Stolen Assert Recovery Initiative of the World Bank and the United Nations Office on Drugs and Crime, <http://star.worldbank.org/corruption-cases/node/18497> (last visited April 17, 2017); *see also* University of the Philippines Alumni Obituary for Senator Jovito Salonga, *Martial law veteran, Senate President who presided at anti-bases vote, dies*, <http://alum.up.edu.ph/?p=4864> (last visited April 17, 2017), Michael Bueza, *Plunder in the Philippines*, RAPPLER, June 21, 2014, <http://www.rappler.com/newsbreak/60139-plunder-philippines-history> (last visited April 17, 2017), and Nikko Dizon, *Salonga, senator, patriot, statesman; 95*, INQUIRER.NET <http://newsinfo.inquirer.net/772662/salonga-senator-patriot-statesman-95> (last visited April 17, 2017).

"plunder," and "government by thievery" populated political discourse during Marcos' rule.[3] Their ravaging is confirmed in jurisprudence. *Republic v. Sandiganbayan*[4] professes the Marcos' regime's looting of at least US$650 million (as of January 31, 2002) worth of government funds.

After the 1986 People Power Revolution, former Senate President Jovito Salonga lamented that laws already in force, such as Republic Act No. 3019 – the Anti-Graft and Corrupt Practices Act – "were clearly inadequate to cope with the magnitude of the corruption and thievery committed during the Marcos years."[5] Thus, he filed in the Senate a bill to address large-scale larceny of public resources – the anti-plunder bill. Then Representative Lorna Yap filed a counterpart bill in the House of Representatives.[6]

The Explanatory Note to Senate Bill No. 733 stated:

> *The acts and/or omissions sought to be penalized. . . constitute plunder of an entire nation resulting in material damage to the national economy*[, which] does not yet exist in Philippine statute books. Thus, the need to come up with a legislation as a safeguard against the possible recurrence of the depravities of the previous regime and as a deterrent to those with similar inclination to succumb to the corrupting influence of power.[7] (Emphasis supplied)

Senate Bill No. 733 and House Bill No. 22752 were consolidated into Republic Act No. 7080,[8] which President Corazon Aquino signed on July 12, 1991.[9]

II

Republic Act No. 7080, as amended by Republic Act No. 7659, defines plunder as follows:

> 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

---

3 Mortalla, Nelson Nogot, *Graft and Corruption: The Philippine Experience*, <http://www.unafei.or.jp/english/pdf/RS_No56/No56_44PA_Moratalla.pdf> 502 (last visited April 17, 2017).

4 461 Phil. 598 (2003) [Per J. Corona, En Banc].

5 Michael Bueza, *Plunder in the Philippines,* RAPPLER, June 21, 2014, <http://www.rappler.com/newsbreak/60139-plunder-philippines-history> (last visited April 17, 2017).

6 Michael Bueza, *Plunder in the Philippines,* RAPPLER, June 21, 2014, <http://www.rappler.com/newsbreak/60139-plunder-philippines-history> (last visited April 17, 2017).

7 *Estrada v. Sandiganbayan*, 427 Phil. 820, 851–852 (2002) [Per J. Puno, En Banc].

8 *See* Michael Bueza, *Plunder in the Philippines,* RAPPLER, June 21, 2014, <http://www.rappler.com/newsbreak/60139-plunder-philippines-history> (last visited April 17, 2017).

9 Republic Act No. 7080 (1991), An Act Defining and Penalizing the Crime of Plunder.

> a *combination or series of overt or 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 life imprisonment with perpetual absolute disqualification from holding any public office. Any person who participated with said public officer in the commission of plunder shall likewise be punished. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances 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 stock derived from the deposit or investment thereof forfeited in favor of the State. (Emphasis supplied)

This statutory definition may be divided into three (3) main parts.

The first part identifies the persons who may be liable for plunder and the central acts around which plunder revolves. It penalizes "[a]ny public officer who, by himself or *in connivance with* members of his family, relatives. . . or other persons, amasses, accumulates or acquires ill-gotten wealth[.]"

The law only requires a showing that a person holds public office. He or she may act alone or in conspiracy with others. Thus, the Anti-Plunder Law explicitly recognizes that plunder may be committed collectively—"in connivance with" others. In doing so, it makes no distinction between the conspirators. Glaringly absent is any mention of a so-called "main plunderer" or specific "personal benefit" gained by any confederate to the crime.

It is also silent on the manner by which conspirators organized themselves, or otherwise went about committing the offense. Thus, there is no need to show that plunder is centralized. All that Section 2 requires is proof that the accused acted out of a common design to amass, accumulate, or acquire ill-gotten wealth.

The second part specifies the means through which plunder is committed, that is, "through a *combination* or *series* of overt or criminal acts as described in Section 1(d) of Republic Act No. 7080."

"Combination," as used in Section 2 of the Anti-Plunder Law, was explained in *Estrada vs. Sandiganbayan*[10] to refer to "at least any two different predicate acts in any of said items" in Section 1(d).[11] "Series" was

---

[10] 427 Phil. 820 (2002) [Per J. Puno, En Banc].

[11] Id. at 846.

explained as synonymous to "on several instances"[12] or a "repetition of the same predicate act in any of the items in Section 1(d) of the law."[13]

The "overt or criminal acts described in Section 1(d)" are the following:

a. Misappropriating, converting, misusing, or malversing public funds; or *raiding on the public treasury*;

b. Receiving any commission or kickbacks from a government contract or project, or by reason of one's office or position;

c. Fraudulently disposing government assets;

d. Obtaining any interest or participating in any business undertaking;

e. Establishing monopolies or implementing decrees that benefit particular persons or interests; and

f. Taking undue advantage of one's official position or influence to enrich oneself at the expense of the People and the Republic.

Like Section 2, Section 1(d) does not speak of any "main plunderer" or any "personal benefit" obtained. In defining "ill-gotten wealth," it merely speaks of acquisitions made through a "combination or series" of any, some, or all of the six (6) identified schemes. Thus, for example, two (2) instances of raiding on the public treasury suffice to sustain a finding of plunder.

As I noted in my dissent to the majority's July 19, 2016 Decision:[14]

> Section 2 does not require plunder to be centralized, whether in terms of its planning and execution, or in terms of its benefits. All it requires is for the offenders to act out of a common design to amass, accumulate, or acquire ill-gotten wealth, such that the aggregate amount obtained is at least ₱50,000,000.00.[15]

The third part specifies the threshold amount for plunder. It must be "in the aggregate amount or total value of at least Fifty million pesos (₱50,000,000.00)[.]" The law speaks of an "aggregate amount." It also uses

---

12 Id.

13 Id.

14 Dissenting Opinion of J. Leonen in *Macapagal-Arroyo v. People,* G.R. No. 220598, July 19, 2016, <http://sc.judiciary.gov.ph/jurisprudence/2016/july2016/220598_leonen.pdf> [Per J. Bersamin, En Banc].

15 Id. at 8.

the term, "total value," to highlight how the amount must be counted in its whole, and not severed into parts. How this Court has replaced the statutory requirement of "aggregate amount" or "total value" to mere "aliquot" shares[16] is bewildering.

It is not for this Court to repeal or modify statutes in the guise of merely construing them. Our power to interpret law does not encompass the power to add to or cancel the statutorily prescribed elements of offenses.

III

The most recent jurisprudence on plunder prior to this case is *Enrile v. People.*[17] Promulgated on August 15, 2015, *Enrile* specifies the elements of plunder under Republic Act No. 7080, as follows:

> [T]he elements of plunder are:
>
> (1) That the offender is a ***public officer*** who acts ***by himself or in connivance*** with members of his family, relatives by affinity or consanguinity, business associates, subordinates, or other persons;
>
> (2) That he amassed, accumulated or ***acquired ill-gotten wealth through a combination or series of the following overt or criminal acts***:
>
> a. through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;
> b. by receiving, directly or indirectly, any commission, gift, share, percentage, kickback or any other form of pecuniary benefits from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer;
> c. by the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities of Government-owned or -controlled corporations or their subsidiaries;
> d. 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;
> e. 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

---

[16] *Macapagal-Arroyo v. People*, G.R. No. 220598, July 19, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/july2016/220598.pdf> 35 [Per J. Bersamin, En Banc].

[17] *Enrile v. People*, G.R. No. 213455, August 11, 2015 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/august2015/213455.pdf> [Per J. Brion, En Banc].

> f. by taking 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; and,
>
> (3) That the aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired is at least ₱50,000,000.00.[18] (Emphasis in the original)

Enrile is faithful to the text of the Anti-Plunder Law. It makes no reference to a "main plunderer" or to "personal benefit." The prosecution and the Sandiganbayan were correct to rely on this recital of elements in the course of the proceedings that culminated in the Sandiganbayan's assailed September 10, 2015 Resolution.

The Office of the Ombudsman laments that this Court has effectively increased the elements required for conviction.[19] Coming at the heels of our definitive pronouncements in *Enrile*, the prosecution was caught by surprise.[20]

The majority's July 19, 2016 Decision states:

> 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 . . .[21] (Emphasis and underscoring supplied)

---

18 Id. at 21.

19 *Rollo*, pp. 4162–4171, Motion for Reconsideration.

20 The prosecution refers to the insertion of new elements as a "retroactive imposition" that "border[s] on judical legislation [and] is bereft of basis within the context of R[epublic] A[ct] No. 7080." (See Motion for Reconsideration, p. 15)

21 *Macapagal-Arroyo v. People*, G.R. No. 220598, July 19, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/july2016/220598.pdf> 34 [Per J. Bersamin, En Banc].

The July 19, 2016 Decision proceeds to cite the 2002 Decision in *Estrada v. Sandiganbayan*[22] (2002 *Estrada* case) in support of the supposed need for a specification of a "main plunderer" and of "personal benefit":

> This interpretation is supported by *[Jose "Jinggoy"] 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 <u>for</u> former President Estrada.**[23] (Emphasis and underscoring in the original)

The majority's sweeping reliance[24] on the 2002 *Estrada* case is misplaced. It fails to account for nuances that engendered the pronouncements made in *Estrada*.

The 2002 *Estrada*[25] case referred to one (1) of five (5) cases filed against former President Joseph Ejercito Estrada, his family, and associates. It explicitly acknowledged that the five (5) criminal complaints were "an offshoot of the impeachment proceedings against [former President] Estrada."[26]

---

22 *Estrada v. Sandiganbayan*, 427 Phil. 820 (2002) [Per J. Puno, En Banc].

23 *Macapagal-Arroyo v. People*, G.R. No. 220598, July 19, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/july2016/220598.pdf> 34–35 [Per J. Bersamin, En Banc].

24 *See Macapagal-Arroyo v. People*, G.R. No. 220598, July 19, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/july2016/220598.pdf> 31–35 [Per J. Bersamin, En Banc].

25 *Estrada v. Sandiganbayan*, 427 Phil. 820 (2002) [Per J. Puno, En Banc].

26 Id. at 839.

More specifically, the 2002 *Estrada* case involved a separate charge of plunder against President Estrada's son, Jose "Jinggoy" Estrada. Thus, it became necessary to state in the information that Jinggoy Estrada engaged in a conspiracy with his father.[27] That case needed to specifically establish the conspiracy linkage between former President Estrada and Jinggoy Estrada:

> From a reading of the Amended Information, the case at bar appears similar to a "wheel" conspiracy. The hub is former President Estrada while the spokes are all the accused [Jose "Jinggoy" Estrada, et al.], and the rim that encloses the spokes is the common goal in the overall conspiracy, i.e., the amassing, accumulation and acquisition of ill-gotten wealth.[28]

Notwithstanding these nuances in the 2002 *Estrada* case, it remains that, in a conspiracy:

> [T]he act of one is the act of all the conspirators, and a conspirator may be held as a principal even if he did not participate in the actual commission of every act constituting the offense. In conspiracy, all those who in one way or another helped and cooperated in the consummation of the crime are considered co-principals since the degree or character of the individual participation of each conspirator in the commission of the crime becomes immaterial.[29]

There is no need to identify a "main conspirator" and a "co-conspirator." For the accused to be found liable as a co-principal, prosecution must only show:

> [A]n overt act in furtherance of the conspiracy, either by actively participating in the actual commission of the crime, or by lending moral assistance to his co-conspirators by being present at the scene of the crime, or by exerting moral ascendancy over the rest of the conspirators as to move them to executing the conspiracy.[30]

Unlike in the 2002 *Estrada* case, all of the accused here are charged in the same information; not in five (5) separate informations that were explicit "offshoots of the impeachment proceedings against former President Estrada."[31]

---

27 Id. at 848–853.

28 Id. at 853.

29 *People v. Medina*, 354 Phil. 447, 460 (1998) [Per J. Regalado, En Banc], *citing People v. Paredes*, 133 Phil. 633, 660 (1968) [Per J. Angeles, En Banc]; *Valdez v. People*, 255 Phil. 156, 160–161 (1986) [Per J. Cortes, En Banc]; *People v. De la Cruz*, 262 Phil. 838, 856 (1990) [Per J. Melencio-Herrera, Second Division]; *People v. Camaddo*, 291 Phil. 154, 160–161 (1993) [Per J. Bidin, Third Division].

30 *People v. Peralta*, 134 Phil. 703, 723 (1968) [Per Curiam, En Banc].

31 *Estrada v. Sandiganbayan*, 427 Phil. 820, 839 (2002) [Per J. Puno, En Banc].

The present case is more akin to that involved in the 2015 *Enrile* Decision. There, the accused public officer, Senator Juan Ponce Enrile, along with his Chief of Staff, Jessica Lucila G. Reyes, as well as Janet Lim Napoles, Ronald John Lim, and John Raymund de Asis were charged in the same information with conspiring to commit plunder. *Enrile* never required the identification of a "main plunderer" or the showing of any "personal benefit" obtained. It is the more appropriate benchmark for this case.

IV

The July 19, 2016 Decision's requirement of a specification of a "main plunderer" and of "personal benefit," which was imposed only after the prosecution presented its case before the Sandiganbayan, makes it necessary for the prosecution to, at least, be given an opportunity to address this novel requirement. Otherwise, the prosecution shall have been deprived of due process to adequately ventilate its case. Thus, a favorable action on the prosecution's Motion for Reconsideration is not a violation of petitioners' right against double jeopardy.

Section 9 of Rule 117 of the Revised Rules on Criminal Procedure[32] identifies three (3) elements of double jeopardy: (1) a first jeopardy must have attached prior to the second; (2) the first jeopardy must have been validly terminated; and, (3) a second jeopardy must be for the same offense as that in the first.

Legal jeopardy attaches only (a) upon a valid indictment, (b) before a competent court, (c) after arraignment, (d) when a valid plea has been entered, and (e) when the case was dismissed or otherwise terminated without the express consent of the accused.[33]

Gorion v. Regional Trial Court of Cebu[34] has held that the right against double jeopardy is not violated when the first case was dismissed in violation of the prosecution's right to due process. Any such acquittal is "no acquittal at all, and thus can not constitute a proper basis for a claim of former jeopardy":[35]

---

32 RULES OF COURT, Rule 117, sec. 9 provides:
Section 9. Former conviction or acquittal or former jeopardy. - When a defendant shall have been convicted or acquitted, or the case against him dismissed or otherwise terminated without the express consent of the defendant, by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction, and after the defendant had pleaded to the charge, the conviction or acquittal of the defendant or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

33 *People v. Declaro*, 252 Phil. 139, 143 (1989) [Per J. Cancayco, First Division].

34 *Gorion v. RTC of Cebu*, 287 Phil. 1078 (1992) [Per J. Davide Jr., Third Division].

35 Id. at 1085.

> [The dismissal] unquestionably deprived the State of a fair opportunity to present and prove its case. Thus, its right to due process was violated. The said order is null and void and hence, cannot be pleaded by the petitioner to bar the subsequent annulment of the dismissal order or a re-opening of the case on the ground of double jeopardy. This is the rule obtaining in this jurisdiction.[36]

Due process requires that both parties have a real and fair opportunity to be heard. "The State, like the accused[,] is also entitled to due process in criminal cases."[37] In *Dimatulac v. Villon*:[38]

> Indeed, for justice to prevail, the scales must balance; justice is not to be dispensed for the accused alone. The interests of society and the offended parties [including the State] which have been wronged must be equally considered. Verily, a verdict of conviction is not necessarily a denial of justice; and an acquittal is not necessarily a triumph of justice; for, to the society offended and the party wronged, it could also mean injustice. Justice then must be rendered even-handedly to both the accused, on one hand, and the State and offended party, on the other.[39] (Citation omitted)

The state must be afforded the right to prosecute, present, and prove its case. Just as importantly, the prosecution must be able to fully rely on expressed legal provisions, as well as on settled and standing jurisprudential principles. It should not be caught in a bind by a sudden and retroactive imposition of additional requirements for successful prosecution.

In *Serino v. Zosa*,[40] the judge announced that he would first hear the civil aspect of the case before the criminal aspect of the case. The public and private prosecutors then stepped out of the courtroom. After trial in the civil case was finished, the criminal case was called. By then, the prosecutors were unavailable. The judge dismissed the case for failure to prosecute. This Court held that double jeopardy did not attach as the order of dismissal was void for having been issued without due process.

In *People v. Navarro*,[41] a Joint Decision was issued acquitting the accused of light threats and frustrated theft. However, there was no actual joint trial in these two (2) criminal cases and no hearing in the light threats case. This Court nullified the judgment of acquittal for light threats.

---

36 Id.
37 *People v. Judge Tac-an*, 446 Phil. 496, 505 (2003) [Per J. Callejo, Second Division].
38 *Dimatulac v. Villon*, 358 Phil. 328 (1998) [Per J. Davide Jr., First Division].
39 Id. at 365.
40 148-B Phil. 497 (1971) [Per J. Makalintal, En Banc].
41 159 Phil. 863 (1975) [Per J. Fernandez, Second Division].

In *People v. Gomez*,[42] the trial court issued a notice of hearing only to the assistant city prosecutor, not to the special prosecutor actively handling the case. The assistant city prosecutor arrived for trial, but the special prosecutor did not, as he did not know of the hearing. The records, however, were with the special prosecutor. Not ready to appear, the assistant city prosecutor moved to postpone the hearing. The trial court denied the motion and proceeded to dismiss the case due to alleged delays. This Court overruled the dismissal for depriving the State of a fair opportunity to prosecute and convict.

In *People v. Pablo*,[43] the prosecution's last witness failed to arrive. The prosecution moved to postpone the hearing as that witness' testimony was indispensable. The judge denied the motion. The defense, in turn, filed a motion to consider the prosecution's case rested and to dismiss the case. The judge granted the motion and acquitted all the accused on the same day, "without giving the prosecution a chance to oppose the same, and without reviewing the evidence already presented for a proper assessment as to what crime has been committed by the accused of which they may properly be convicted thereunder[.]"[44]

This Court overturned the acquittal, declaring that courts must be fair to both parties:

> There are several actions which the respondent judge could and should have taken if he had wished to deal with the case considering the gravity of the crime charged, *with fairness to both parties*, as is demanded by his function of dispensing justice and equity. But he utterly failed to take such actions. Thus, *he should have first given warning* that there will definitely be no further postponement after that which he reasonably thought should be the last.[45] (Emphasis supplied)

In these cases, the State was denied vital avenues for the adequate prosecution of offenses, and was not given a fair chance to fully present and prove its case. Thus:

> A purely capricious dismissal of an information, as herein involved, moreover, deprives the State of fair opportunity to prosecute and convict. It denies the prosecution its day in court. Accordingly, it is a dismissal without due process and, therefore, null and void. A dismissal invalid for lack of a fundamental prerequisite, such as due process, will not constitute a proper basis for the claim of double jeopardy.[46]

---

42 126 Phil. 640 (1967) [Per J. Bengzon, En Banc].
43 187 Phil. 190 (1980) [Per J. De Castro, First Division].
44 Id. at 197–198.
45 Id. at 196.
46 *People v. Gomez*, 126 Phil. 640, 645 (1967) [Per J. Bengzon, En Banc].

Here, the import of identifying the "main plunderer" and the "personal benefit" obtained was not emphasized upon the prosecution at the onset. At the minimum, this Court's July 19, 2016 Decision should be considered an admonition, and then applied only prospectively.

Such a consideration would be analogous to the course taken by this Court in *Carpio-Morales v. Court of Appeals*.[47] There, this Court abandoned the condonation doctrine, but expressly made its ruling applicable only to future cases, and not to the case at hand. Respecting the people's reliance on "good law,"[48] we stated:

> Hence, while the future may ultimately uncover a doctrine's error, it should be, as a general rule, *recognized as "good law" prior to its abandonment.* Consequently, *the people's reliance thereupon should be respected.* The landmark case on this matter is *People v. Jabinal*, wherein it was ruled:
>
> > [W]hen a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and *should not apply to parties who had relied on the old doctrine and acted on the faith thereof.*
>
> Later, in *Spouses Benzonan v. CA*, it was further elaborated:
>
> > [P]ursuant to Article 8 of the Civil Code "judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines." But while our decisions form part of the law of the land, they are also subject to Article 4 of the Civil Code which provides that "laws shall have no retroactive effect unless the contrary is provided." This is expressed in the familiar legal maxim *lex prospicit, non respicit,* the law looks forward not backward. The rationale against retroactivity is easy to perceive. The retroactive application of a law usually divests rights that have already become vested . . . and hence, is unconstitutional.[49]

V

There is ample evidentiary basis for trial in the Sandiganbayan to proceed.

The prosecution underscores that funds were diverted to the Office of the President.[50] Citing the April 6, 2015[51] Sandiganbayan Resolution, it also

---

[47] *Carpio-Morales v. Court of Appeals*, G.R. Nos. 217126-27, November 10, 2015 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/november2015/217126-27.pdf> [Per J. Perlas-Bernabe, En Banc].

[48] *Carpio-Morales v. Court of Appeals*, G.R. Nos. 217126-27, November 10, 2015 [Per J. Perlas-Bernabe, En Banc].

[49] Id. at 65–66.

[50] *Rollo*, p. 4164, Motion for Reconsideration.

emphasizes that petitioner former President Gloria Macapagal-Arroyo's approvals for the letter-requests of petitioner Philippine Charity Sweepstakes Office (PCSO) General Manager Rosario C. Uriarte (Uriarte) for the disbursement of additional Confidential and Intelligence Fund[52] and for the latter's use of these funds[53] are overt acts of plunder within the contemplation of Section 2, in relation to Section 1(d) of the Anti-Plunder Law.[54]

To begin with, Arroyo's appointment of Uriarte to the position of PCSO General Manager already raises serious doubts.[55] According to the prosecution, Uriarte's appointment was made in violation of Republic Act No. 1169,[56] as amended by Batas Pambansa Blg. 42 and Presidential Decree No. 1157. Section 2 of the amended Republic Act No. 1169 states that the power to appoint the PCSO General Manager is lodged in its Board of Directors, not in the President of the Philippines:

> Section 2. The [PCSO] general manager shall be appointed by the [PCSO] Board of Directors and he [or she] can be removed or suspended only for cause as provided by law. He [or she] shall have the direction and control of the Office in all matters which are not specifically reserved for action by the Board. Subject to the approval of the Board of Directors, he [or she] shall also appoint the personnel of the Office, except the Auditor and the personnel of the Office of the Auditor who shall be appointed by the Auditor General.

The purpose for the disbursement of Confidential and Intelligence Fund was not specifically detailed.[57] Letter of Instruction No. 1282 expressly provides that requests for intelligence funds must particularly state the purposes for which these would be spent:[58]

> 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. (Emphasis supplied)[59]

---

51 Id. at 4178–4179.
52 Id. at 4174–4173.
53 Id. at 4179.
54 Id. at 4179–4181.
55 Id. at 4177. The prosecution states: "the PCSO Board designated [Uriarte] by virtue of Arroyo's '*I desire*' letter/order. Obviously, Uriarte's appointment by Arroyo was a clear departure from Section 2 of [Republic Act] No. 1169.
56 An Act Providing for Charity Sweepstakes, Horse Races, and Lotteries.
57 Id. at 4174.
58 L.O.I. No. 1282 (1983).
59 L.O.I. No. 1282 (1983).

According to the Sandiganbayan, Uriarte and Benigno Aguas (Aguas) made sweeping certifications that these funds were used for anti-lottery fraud and anti-terrorist operations, thus:

> In an attempt to explain and justify the use of these [Confidential and Intelligence Fund] funds, Uriarte together with Aguas, certified that these were utilized for the following purposes:
>
> a) Fraud and threat that affect integrity of operation.
> b) Bomb threat, kidnapping, destabilization and terrorism
> c) Bilateral and security relation.[60]

The prosecution emphasized that the purpose[61] for the disbursement not only lacked particulars, but that the "second and third purposes were never mentioned in Uriarte's letter-requests for additional [Confidential and Intelligence Fund] funds addressed to Arroyo."[62]

Moreover, under Commission on Audit Circular 2003-002, cash advances must be on a per-project basis and must be liquidated within one (1) month from the date the purpose of the cash advance was accomplished. The prosecution adduced proof that the certification of petitioner PCSO Budget and Accounts Officer Aguas that there were enough funds for cash advances[63] was fraudulent, as the Philippine Charity Sweepstakes Office had suffered significant losses from 2006 to 2009.[64]

The liquidation of Uriarte's cash advances, certified to by Aguas, was made on a semi-annual basis—without a monthly liquidation or at least a progress report on the monthly liquidation.[65] The liquidation was also questionable. For instance, in 2009, only ₱24.97 million was liquidated, despite the CIF's cash advances totalling ₱138.42 million for the same

---

60 Dissenting Opinion of J. Leonen in *Macapagal-Arroyo v. People,* G.R. No. 220598, July 19, 2016, <http://sc.judiciary.gov.ph/jurisprudence/2016/july2016/220598_leonen.pdf> 16 [Per J. Bersamin, En Banc] citing the Sandiganbayan Resolution dated November 5, 2013.

61 According to Uriarte's testimony before the Senate, the main purpose for these cash advances was for the "roll-out" of the small town lottery program. However, the accomplishment report submitted by Aguas shows that ₱137, 500,000 was spent on non-related PCSO activities, such as "bomb threat, kidnapping, terrorism and bilateral and security relations." All the cash advances made by Uriarte in 2010 were made in violation of LOI 1282, and COA Circulars 2003-002 and 92-385. These were thus improper use of the additional CIF funds amounting to raids on the PCSO coffers and were ill-gotten because Uriarte had encashed the checks and came into possession of the monies, which she had complete freedom to dispose of, but was not able to properly account for. (Dissenting Opinion of J. Leonen in *Macapagal-Arroyo v. People,* G.R. No. 220598, July 19, 2016, <http://sc.judiciary.gov.ph/jurisprudence/2016/july2016/220598_leonen.pdf> 13–14 [Per J. Bersamin, En Banc] citing the Sandiganbayan Resolution dated November 5, 2013.)

62 Dissenting Opinion of J. Leonen in *Macapagal-Arroyo v. People,* G.R. No. 220598, July 19, 2016, <http://sc.judiciary.gov.ph/jurisprudence/2016/july2016/220598_leonen.pdf> 16 [Per J. Bersamin, En Banc] citing the Sandiganbayan Resolution dated November 5, 2013.

63 *Rollo,* p. 4178.

64 Id. at 4178–4182.

65 *See* Dissenting Opinion of J. Leonen in *Macapagal-Arroyo v. People,* G.R. No. 220598, July 19, 2016, <http://sc.judiciary.gov.ph/jurisprudence/2016/july2016/220598_leonen.pdf> 15 [Per J. Bersamin, En Banc].

year.[66] Aguas and Uriarte likewise submitted what appeared to be spurious accomplishment reports, stating that the cash advances were remitted to law enforcement agencies, which denied these remittances.[67]

In addition, Aguas did not object to the charges that he falsified his certifications of fund availability, and that the repeated release of Confidential and Intelligence Fund cash advances was riddled with several serious irregularities.[68] He later disclosed that the funds were transferred to the Office of the President, which was under Arroyo's full control as then President of the Philippines.[69] This was resolved by the Sandiganbayan on April 6, 2015.

According to the prosecution, "Uriarte and Valencia [i.e. PCSO Board of Directors Chairperson Sergio O. Valencia] continued to receive [Confidential and Intelligence Fund] cash advances despite having earlier unliquidated cash advances,"[70] and Aguas could not have correctly certified that the previous liquidations were accounted for.[71] The prosecution further avers that petitioner Commission on Audit Head of Intelligence/Confidential Fund Fraud Audit Unit Nilda B. Plaras "repeatedly issued credit notices in favor of Uriarte and Valencia even as Aguas himself admitted that their [Confidential and Intelligence Fund] advances remained unliquidated. Moreover, Uriarte and Valencia continued to receive [Confidential and Intelligence Fund] advances despite having earlier unliquidated cash advances[.]"

According to the Sandiganbayan,[72] these acts violate Section 89 of Presidential Decree No. 1445, which states:

> 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.

The prosecution also argues that before she fled the country and evaded arrest, then PCSO General Manager Uriarte, with Arroyo's complicity,[73] "received and took possession of around 90% of the

---

66 *Rollo*, p. 4174.
67 Id. at 4179.
68 Id. at 4181.
69 Id. at 4179.
70 Id. at 4175.
71 *See* Dissenting Opinion of J. Leonen in *Macapagal-Arroyo v. People*, G.R. No. 220598, July 19, 2016, <http://sc.judiciary.gov.ph/jurisprudence/2016/july2016/220598_leonen.pdf> 15 [Per J. Bersamin, En Banc].
72 Id.
73 Id. at 4176.

approximately ₱366 million cash advances from the PCSO's Confidential and Intelligence Fund.[74] As payee, Uriarte drew a total of 48 checks against the Confidential and Intelligence Fund in 2008, 2009, and 2010.[75] She was able to withdraw from the Confidential and Intelligence Fund solely on the basis of Arroyo's approval, which was not ministerial in nature,[76] *and* despite Uriarte not having been designated as a special disbursing officer under Commission on Audit Circulars 92-385 and 03-002.[77]

Uriarte was designated as a special disbursing officer only on February 18, 2009,[78] after several disbursements were already made.[79] She managed to use the additional Confidential and Intelligence Fund at least three (3) times in 2008 and in early 2009, solely through Arroyo's approval.[80]

The prosecution further highlights that Uriarte "is a fugitive from justice" and has remained at large.[81] Jurisprudence has settled that flight is an indication of guilt.[82] For, indeed, "a truly innocent person would normally grasp the first available opportunity to defend [herself] and to assert [her] innocence."[83] The Sandiganbayan's finding of ample evidence against her is therefore bolstered by her leaving the country and evading arrest.

The prosecution also takes exception to this Court's finding that the commingling of funds is not illegal.[84] Section 6[85] of Republic Act No. 1169

---

74 Id. at 4175.
75 Id. at 4174.
76 Id. at 4177.
77 Id. at 1652–1653.
78 Id. at 1653.
79 At that time, three (3) disbursements were already made based on the approval of the requests of PCSO General Manager Uriarte. These were made on April 2, 2008, August 13, 2008, and January 19, 2009.
80 *Rollo* (G.R. No. 220598), p. 1653.
81 Id. at 4174.
82 *People v. Diaz*, 443 Phil. 67, 89 (2003) [Per J. Austria-Martinez, Second Division].
83 *People v. Del Mundo*, 418 Phil. 740, 753 (2001) [Per J. Ynares-Santiago, First Division].
84 *Rollo*, p. 4171.
85 Rep. Act No. 1169, sec. 6 provides:
Section 6. Allocation of Net Receipts. – From the gross receipts from the sale of sweepstakes tickets, whether for sweepstakes races, lotteries, or similar activities, shall be deducted the printing cost of such tickets, which in no case shall exceed two percent of such gross receipts to arrive at the net receipts. The net receipts shall be allocated as follows:
A. Fifty-five percent (55%) shall be set aside as a prize fund for the payment of prizes, including those for the owners, jockeys of running horses, and sellers of winning tickets.
Prizes not claimed by the public within one year from date of draw shall be considered forfeited, and shall form part of the charity fund for disposition as stated below.
B. Thirty percent (30%) shall be set aside as contributions to the charity fund from which the Board of Directors, in consultation with the Ministry of Human Settlement on identified priority programs, needs, and requirements in specific communities and with approval of the Office of the President (Prime Minister), shall make payments or grants for health programs, including the expansion of existing ones, medical assistance and services and/or charities of national character, such as the Philippine National Red Cross, under such policies and subject to such rules and regulations as the Board may from time establish and promulgate. The Board may apply part of the contributions to the charity fund to approved investments of the Office pursuant to Section 1 (B) hereof, but in no case

states that PCSO's revenues should be remitted in specific portions to separate funds or accounts, and *not* commingled together. The prosecution assails how the accused diverted public money from the PCSO Charity Fund and Prize Fund to the Operating Fund, and then commingled these funds to "conceal the violation of the restrictions imposed by [Republic Act] No. 1169."[86] The 2007 Annual Audit Report of the Commission on Audit has specifically directed then PCSO officers to immediately put a halt to this practice, but it fell on deaf ears.[87]

In addition, the PCSO had been placed under the supervision and control of the Department of Social Welfare and Development,[88] and later of the Department of Health.[89] Yet, Uriarte was able to bypass departmental approval and divert PCSO funds amounting to ₱244 million to the Office of the President,[90] upon the sole approval of Arroyo.[91] Later, with conflict-of-interest, both Uriarte and Valencia approved the disbursement vouchers and made the checks payable to them at the same time.[92]

According to the prosecution, Uriarte requested for additional Confidential and Intelligence Fund, and Arroyo's unqualified approval of these requests was deliberate and willful.[93] The prosecution argues that "[w]ithout [Arroyo's] participation, [Uriarte] could not release any money because there was then no budget for additional [Confidential and Intelligence Fund]."[94] Thus, "Arroyo's unmitigated failure to comply with the laws and rules regulating the approval of the [Confidential and Intelligence Fund] releases betrays any claim of lack of malice on her

---

shall such application to investments exceed ten percent (10%) of the net receipts from the sale of sweepstakes tickets in any given year.

Any property acquired by an institution or organization with funds given to it under this Act shall not be sold or otherwise disposed of without the approval of the Office of the President (Prime Minister), and that in the event of its dissolution all such property shall be transferred to and shall automatically become the property of the Philippine Government.

C. Fifteen (15%) percent shall be set aside as contributions to the operating expenses and capital expenditures of the Office.

D. All balances of any funds in the Philippine Charity Sweepstakes Office shall revert to and form part of the charity fund provided for in paragraph (B), and shall be subject to disposition as above stated.The disbursements of the allocation herein authorized shall be subject to the usual auditing rules and regulations.

86 *Rollo*, p. 4172.

87 Id.

88 Exec. Order No. 383, sec. 1 provides:
Section 1. The Philippine Charity Sweepstakes Office shall hereby be under the supervision and control of the Department of Social Welfare and Development.

89 Exec. Order No. 455, sec. 1 provides:
Section 1. The Philippine Charity Sweepstakes Office shall hereby be placed under the supervision and control of the Department of Health.

90 Dissenting Opinion of J. Leonen in *Macapagal-Arroyo v. People*, G.R. No. 220598, July 19, 2016, <http://sc.judiciary.gov.ph/jurisprudence/2016/july2016/220598_leonen.pdf> [Per J. Bersamin, En Banc] citing the Sandiganbayan Resolution dated November 5, 2013.

91 *Rollo* (G.R. No. 220598), p. 1831.

92 Id. at 4174.

93 Id. at 4177.

94 Id. at 4176.

part."[95] Without Arroyo or Aguas, the conspiracy to pillage the PCSO's Confidential and Intelligence Fund would not have succeeded.[96]

VI

Plunder may be committed in connivance or conspiracy with others. The share that each accused received is not the pivotal consideration. What is more crucial is that the *total amount* amassed is at least ₱50 million.[97] In a conspiracy, the act of one is the act of all. Each conspirator is considered a principal actor of the crime. *Enrile v. People*[98] is on point:

> The law on plunder provides that it is committed by "*a public officer who acts by himself or in connivance with. . .*" The term "connivance" suggests an agreement or consent to commit an unlawful act or deed with another; to *connive* is to cooperate or take part secretly with another. It implies both knowledge and assent that may either be active or passive.
>
> Since the crime of plunder may be done in connivance or in conspiracy with other persons, and the Information filed clearly alleged that Enrile and Jessica Lucila Reyes **conspired** with one another and with Janet Lim Napoles, Ronald John Lim and John Raymund De Asis, then it is unnecessary to specify, as an essential element of the offense, whether the ill-gotten wealth amounting to at least ₱172,834,500.00 had been acquired by one, by two or by all of the accused. ***In the crime of plunder, the amount of ill-gotten wealth acquired by each accused in a conspiracy is immaterial for as long as the total amount amassed, acquired or accumulated is at least ₱50 million.***[99]

Section 2 of the Anti-Plunder Law focuses on the "aggregate amount or total value" amassed, accumulated, or acquired, not its severed distributions among confederates. Thus, in the present case, it is unnecessary to specify whether the allegedly amassed amount of ₱365,997,915.00 ultimately came to the possession of one, some, or all of the accused.

Enrile also underscores that conspiracy is not the essence of plunder.[100] To sufficiently charge conspiracy as a mode of committing

---

95 Id. at 4178.
96 Id. at 4181.
97 *Enrile v. People*, G.R. No. 213455, August 11, 2015 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/august2015/213455.pdf> 22 [Per J. Brion, En Banc].
98 *Enrile v. People*, G.R. No. 213455, August 11, 2015 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/august2015/213455.pdf> [Per J. Brion, En Banc].
99 Id. at 22.
100 Id.

plunder, an information may simply state that the accused "conspired with one another":[101]

> We point out that conspiracy in the present case is not charged as a crime by itself but only as the mode of committing the crime. Thus, *there is no absolute necessity of reciting its particulars in the Information because conspiracy is not the gravamen of the offense charged.*
>
> It is enough to allege conspiracy as a mode in the commission of [plunder] in either of the following manner: (1) *by use of the word "conspire," or its derivatives or synonyms, such as confederate, connive, collude*; or (2) by allegations of basic facts constituting the conspiracy in a manner that a person of common understanding would know what is intended, and with such precision as the nature of the crime charged will admit, to enable the accused to competently enter a plea to a subsequent indictment based on the same facts.[102] (Emphasis in the original)

In this case, the accused were properly informed that they were to be answerable for the charge of plunder "in connivance" with each other. As in *Enrile*, the information here uses the words, "conniving, conspiring, and confederating":

> 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 willfully, unlawfully and criminally amass, accumulate and/or acquire, directly or indirectly, ill-gotten wealth in the aggregate amount or total

---

[101] Id.
[102] Id.

> 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: . . .[103]

I take exception to the majority's July 19, 2016 Decision stating that the prosecution needed to specifically allege in the information whether the conspiracy was by express agreement, by wheel conspiracy, or by chain conspiracy.[104] In *Enrile*, an accused's assent in a conspiracy may be active or *passive*, and may be *alleged simply "by use of the word 'conspire,' or its derivatives or synonyms*, such as confederate, connive, collude[.]"[105] The prosecution has faithfully complied with these requirements.

The information is valid in all respects. *Retroactively* mandating additional averments for the prosecution violates its right to due process.

VII

"Raids on the public treasury" must be understood in its plain meaning. There is no need to derive its meaning from the other words mentioned in Section 1(d)(1) of the Anti-Plunder Law. It does not inherently entail taking *for personal gain.*

People v. Sandiganbayan[106] emphasized that the words in a statute must generally be understood in their natural, plain, and ordinary meaning, unless the lawmakers have evidently assigned a technical or special legal meaning to these words.[107] "The intention of the lawmakers – who are, ordinarily, untrained philologists and lexicographers – to use statutory phraseology in [a natural, plain, and ordinary] manner is always presumed."[108]

Contrary to the majority's position,[109] there are no words with which the term "raids on the public treasury," as mentioned in Section 1(d)(1) of

---

103 *Rollo*, pp. 305–307-A.

104 *Macapagal-Arroyo v. People*, G.R. No. 220598, July 19, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/july2016/220598.pdf> 32–33 [Per J. Bersamin, En Banc].

105 *Enrile v. People*, G.R. No. 213455, August 11, 2015 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/august2015/213455.pdf> 22 [Per J. Brion, En Banc].

106 *People v. Sandiganbayan*, 613 Phil. 407 (2009) [Per J. Peralta, Third Division].

107 Id. at 426.

108 Id.

109 *Macapagal-Arroyo v. People*, G.R. No. 220598, July 19, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/july2016/220598.pdf> 44–45 [Per J. Bersamin, En Banc].
The Decision stated:

the Anti-Plunder Law are to be associated, thereby justifying the application of *noscitur a sociis*. Misappropriation, conversion, misuse, and malversation of public funds are items enumerated distinctly from "raids on the public treasury," they being separated by the disjunctive "or."[110] Therefore, there is no basis for insisting upon the term "raids on the public treasury" the concept of personal benefit.

Even if the preceding terms were to be associated with "raids on the public treasury," it does not follow that "personal benefit" becomes its element. For example, malversation does not inherently involve taking for one's personal benefit. As pointed out in the prosecution's Motion for Reconsideration,[111] malversation under Article 220[112] of the Revised Penal Code does not require that the offender personally benefited from the crime. It only requires that he or she used the funds for a purpose different from that for which the law appropriated them.

This finds further support in the Congress' deletion of the phrase, "knowingly benefited," from the final text of Republic Act No. 7080.[113]

This Court can also apply by analogy the principles governing the crime of theft. Like in plunder, theft involves the unlawful taking of goods belonging to another.[114] In theft, the mere act of taking—regardless of actual gain—already consummates the crime.[115] In *Valenzuela v. People*:[116]

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.

[110] Rep. Act No. 7060, sec. 1(d)(1) states that plunder is committed "through misappropriation, conversion, misuse, or malversation of public funds *or* raids on the public treasury."

[111] *Rollo*, p. 4169, Motion for Reconsideration.

[112] REV. PEN. CODE, art. 220 provides:
Article 220. Illegal Use of Public Funds or Property. — Any public officer who shall apply any public fund or property under his administration to any public use other than that for which such fund or property were appropriated by law or ordinance shall suffer the penalty of prisión correccional in its minimum period or a fine ranging from one-half to the total of the sum misapplied, if by reason of such misapplication, any damage or embarrassment shall have resulted to the public service. In either case, the offender shall also suffer the penalty of temporary special disqualification.
If no damage or embarrassment to the public service has resulted, the penalty shall be a fine from 5 to 50 per cent of the sum misapplied.

[113] Record of the Senate, Vol. IV, No. 141, p. 1403 (1989).

[114] REV. PEN. CODE, art. 308 provides:
Article 308. Who are liable for theft. — Theft is committed by any person who, with intent to gain but without violence against or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.
Theft is likewise committed by:
1. Any person who, having found lost property, shall fail to deliver the same to the local authorities or to its owner;
2. Any person who, after having maliciously damaged the property of another, shall remove or make use of the fruits or object of the damage caused by him; and

> Unlawful taking, which is the deprivation of one's personal property, is the element which produces the felony in its consummated stage. . .
>
> . . . .
>
> . . .The presumed inability of the offenders to freely dispose of [i.e. gain from] the stolen property does not negate the fact that the *owners have already been deprived of their right to possession* upon the completion of the taking.
>
> [T]he taking has been completed, causing the unlawful deprivation of property, and ultimately the consummation of the theft.[117]

This standard for theft takes on greater significance in plunder. *Valenzuela* reminds us to not lose sight of the owners' deprivation of their property.[118] Here, public funds were taken from the government. Theft involves larceny against individuals; plunder involves pillage of the State. Certainly, it is much more depraved and heinous than theft:

> Finally, any doubt as to whether the crime of plunder is a *malum in se* must be deemed to have been resolved in the affirmative by the decision of Congress in 1993 to include it *among the heinous crimes* punishable by *reclusion perpetua* to death.[119]

Plunder is a betrayal of public trust. Thus, it cannot require an element that a much lesser crime of the same nature does not even require. Ruling otherwise would "introduce a convenient defense for the accused which does *not* reflect any legislated intent."[120]

To raid means to "steal from, break into, loot, [or] plunder."[121] Etymologically, it comes from the Old English word, "rād," which referred to the act of riding[122] or to an incursion along the border.[123] It described the incursion into towns by malefactors on horseback (i.e. mounted military

---

3. Any person who shall enter an inclosed estate or a field where trespass is forbidden or which belongs to another and without the consent of its owner, shall hunt or fish upon the same or shall gather cereals, or other forest or farm products.

115 *Valenzuela v. People,* 552 Phil. 381, 416–417 (2008) [Per J. Tinga, En Banc].

116 *Valenzuela v. People*, 552 Phil. 381 (2008) [Per J. Tinga, En Banc].

117 Id. at 417–418.

118 Id. at 418.

119 *Estrada v. Sandiganbayan,* 421 Phil. 290. 365 (2001) [Per J. Bellosillo, En Banc].

120 *Valenzuela v. People*, 552 Phil. 381, 417 (2008) [Per J. Tinga, En Banc].

121 Collins Dictionary, <https://www.collinsdictionary.com/dictionary/english/raid> (last visited April 17, 2017).

122 ANDREAS H. JUCKER, DANIELA LANDERT, ANNINA SEILER, NICOLE STUDER-JOHO, MEANING IN THE HISTORY OF ENGLISH: WORDS AND TEXTS IN CONTEXT 64 (2013).

123 Collins Dictionary, <https://www.collinsdictionary.com/dictionary/english/raid> (last visited April 17, 2017).

expedition[124]), who fled easily as peoples of more sedentary cultures could not keep pace with them.[125] In 1863, during the American Civil War, the word, "raid," gave birth to an agent noun, "raider,"[126] or a person trained to participate in a sudden attack against the enemy.[127] In more recent times, "raider" has evolved to likewise refer to "a person who seizes control of a company, as by secretly buying stock and gathering proxies."[128] The act of taking through stealth, treachery, or otherwise taking advantage of another's weakness characterizes the word, "raid" or "raider."

The specific phrase used in the Anti-Plunder Law – "raids on the pubic treasury" – is of American origin. It was first used during the Great Depression, when the United States Congress sought to pass several bills, such as an appropriation of $35 million to feed people and livestock,[129] in an attempt to directly lift Americans from squalor.[130] Then President Herbert Hoover did not see wisdom in government intervention. He vetoed these bills, famously declaring that "[p]rosperity cannot be restored by *raids upon the public treasury*."[131]

In its plain meaning, and taking its history and etymological development into account, "raids on the public treasury" refers to dipping one's hands into public funds, taking them as booty. In the context of the Anti-Plunder Law, this may be committed by a public officer through fraud, stealth, or secrecy, done over a period of time.[132] The Sandiganbayan's November 5, 2013 Resolution in this case is enlightening:

> [A] "raid on the public treasury" can be said to have been achieved thr[ough] the pillaging or looting of public coffers either through misuse, misappropriation or conversion, without need of establishing gain or profit to the raider. Otherwise stated, once a "raider" gets material possession of a government asset through improper means and has free disposal of the same, the raid or pillage is completed. . . .[133]

---

124 Online Etymology Dictionary, <http://www.etymonline.com/index.php?term=raid&allowed_in_frame=0> (last visited April 17, 2017).

125 The Science Show, <https://web.archive.org/web/20081006030339/http://www.abc.net.au/rn/science/ss/stories/s70986.htm> (last visited April 17, 2017).

126 Douglas Harper, Online Etymology Dictionary, <http://www.dictionary.com/browse/raider> (last visited April 17, 2017).

127 Collins Dictionary, <https://www.collinsdictionary.com/dictionary/english/raid> (last visited April 17, 2017).

128 Based on the Random House Dictionary, Random House, Inc. (2017) <http://www.dictionary.com/browse/raider> (last visited April 17, 2017).

129 ROBERT A. CARO, THE PATH TO POWER: THE YEARS OF LYNDON JOHNSON 247 (1982).

130 Herbert Hoover, <http://www.history.com/topics/us-presidents/herbert-hoover> (last visited April 17, 2017).

131 Herbert Hoover, <http://www.history.com/topics/us-presidents/herbert-hoover> (last visited April 17, 2017).

132 *See* S.B. No. 733, as cited in *Estrada v. Sandiganbayan*, 427 Phil. 820, 851 (2002) [Per J. Puno, En Banc].

133 *Rollo*, pp. 450–510.

There are reasonable grounds for proceeding with trial. The voluminous records and pieces of evidence, consisting of at least 600 documentary exhibits, testimonies of at least 10 prosecution witnesses, and case records of at least 40 folders[134]—which the Sandiganbayan carefully probed for years[135]—point to a protracted scheme of raiding the public treasury to amass ill-gotten wealth. There were ostensible irregularities attested to by the prosecution in the disbursement of the Philippine Charity Sweepstakes Office funds, such as the accused's commingling of funds,[136] their non-compliance with Letter of Instruction No. 1282,[137] and the unilateral approval of disbursements.[138]

VIII

Under Section 119 of Rule 23 of the Revised Rules on Criminal Procedure, an order denying a demurrer to evidence may not be assailed through an appeal or by certiorari before judgment. Thus, the accused's remedy for the Sandiganbayan's denial of their demurrer is to "continue with the case in due course and when an unfavorable verdict is handed down, to appeal in the manner authorized by law."[139]

The majority's July 19, 2016 Decision cites *Nicolas v. Sandiganbayan*[140] in asserting that this Court may review the Sandiganbayan's denial of a demurrer when there is grave abuse of discretion. *Nicolas* stated:

---

134 Id. at 4175.

135 Id. at 4164.

136 The additional allocations for CIF were of increasing amounts running into the hundreds of millions of pesos. In 2010 alone, it was One Hundred Fifty Million Pesos (₱150,000,000.00). The General Manager of the PCSO was able to disburse more than One Hundred Thirty Eight Million Pesos (₱138,000,000.00) to herself. That disbursement remains unaccounted.
Despite continued annual warnings from the Commission on Audit with respect to the illegality and irregularity of the co-mingling of funds that should have been allocated for the Prize Fund, the Charitable Fund, and the Operational Fund, this co-mingling was maintained.
See Dissenting Opinion of J. Leonen in *Macapagal-Arroyo v. People,* G.R. No. 220598, July 19, 2016, <http://sc.judiciary.gov.ph/jurisprudence/2016/july2016/220598_leonen.pdf> [Per J. Bersamin, En Banc].

137 This Letter of Instruction requires a request's specification of three (3) things: first, the specific purposes for which the funds shall be used; second, circumstances that make the expense necessary; and third, the disbursement's particular aims. L.O.I. No. 1282 (1983), par. 2 provides: "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."

138 Uriarte used Arroyo's approval to illegally accumulate these CIF funds which she encashed during the period 2008-2010. Uriarte utilized Arroyo's approval to secure PCSO Board confirmation of such additional CIF funds and to "liquidate" the same resulting in the questionable credit advices issued by accused Plaras. These were simply consummated raids on public treasury. (*See* Dissenting Opinion of J. Leonen in *Macapagal-Arroyo v. People,* G.R. No. 220598, July 19, 2016, <http://sc.judiciary.gov.ph/jurisprudence/2016/july2016/220598_leonen.pdf> [Per J. Bersamin, En Banc] citing the Sandiganbayan Resolution dated November 5, 2013.)

139 *Soriquez v. Sandiganbayan*, 510 Phil. 709, 719 (2015) [Per J. Garcia, Third Division].

140 *Nicolas v. Sandiganbayan,* 568 Phil. 297 (2008) [Per J. Carpio-Morales, Second Division].

> [T]he general rule prevailing is that [certiorari] 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.[141] (Emphasis supplied)

Indeed, *Nicolas* illustrates an instance when this Court overruled the Sandiganbayan's denial of a demurrer for having been issued with grave abuse of discretion.[142] What sets *Nicolas* apart from this case, however, is that the Sandiganbayan's grave abuse of discretion was so patent in *Nicolas*. There, Economic Intelligence and Investigation Bureau Commissioner Wilfred A. Nicolas was administratively and criminally charged for his alleged bad faith and gross neglect of duty. This Court exonerated him in the administrative charge, finding that the records are bereft of any substantial evidence of bad faith and gross negligence on his part.[143] Considering that the criminal case—violation of Section 3(e) of Republic Act No. 3019, the Anti-Graft and Corrupt Practices Act, based on his alleged bad faith and gross negligence—required the highest burden of proof beyond reasonable doubt, then the finding that there was no substantial evidence of his bad faith and gross negligence binds the criminal case for the same act complained of.[144]

In contrast, here, the prosecution has sufficient evidence to establish a *prima facie* case that accused committed plunder or at least malversation. In ruling on a demurrer to evidence, this Court only needs to ascertain whether there is "competent or sufficient evidence to establish a *prima facie* case to sustain the indictment."[145]

The prosecution should have been given the chance to present this *prima facie* case against the accused. As I noted in my dissent to the majority's July 19, 2016 Decision:

> First, evidence was adduced to show that there was co-mingling of PCSO's Prize Fund, Charity Fund, and Operating Fund. In the Annual Audit Report of PCSO for 2007, the Commission on Audit already found this practice of having a "combo account" questionable. The prosecution further alleged that this co-mingling was "to ensure that there is always a readily accessible fund from which to draw [Confidential and Intelligence Fund] money."
>
> ....

---

141 Id. at 309.
142 Id.
143 Id.
144 Id.
145 Id. at 311.

Second, the prosecution demonstrated — through Former President Arroyo's handwritten notations — that she personally approved PCSO General Manager Rosario C. Uriarte's (Uriarte) "requests for the allocation, release and use of additional [Confidential and Intelligence Fund.]" ***The prosecution stressed that these approvals were given despite Uriarte's generic one-page requests, which ostensibly violated Letter of Instruction No. 1282's requirement that, for intelligence funds to be released, there must be a specification of: (1) specific purposes for which the funds shall be used; (2) circumstances that make the expense necessary; and (3) the disbursement's particular aims. The prosecution further emphasized that Former President Arroyo's personal approvals were necessary, as Commission on Audit Circular No. 92-385's stipulates that confidential and intelligence funds may only be released upon approval of the President of the Philippines***. Unrefuted, these approvals are indicative of Former President Arroyo's indispensability in the scheme to plunder.

....

Third, the prosecution demonstrated that Uriarte was enabled to withdraw from the CIF solely on the strength of Former President Arroyo's approval and despite not having been designated as a special disbursing officer, pursuant to Commission on Audit Circulars 92-385 and 03-002.

....

Fourth, there were certifications on disbursement vouchers issued and submitted by Aguas, in his capacity as PCSO Budget and Accounts Manager, which stated that: there were adequate funds for the cash advances; that prior cash advances have been liquidated or accounted for; that the cash advances were accompanied by supporting documents; and that the expenses incurred through these were in order. As posited by the prosecution, these certifications facilitated the drawing of cash advances by PCSO General Manager Uriarte and Chairperson Sergio Valencia.

....

Fifth, officers from the Philippine National Police, the Armed Forces of the Philippines, and the National Bureau of Investigation gave testimonies to the effect that no intelligence activities were conducted by PCSO with their cooperation, contrary to Uriarte's claims. . . *The prosecution added that no contracts, receipts, correspondences, or any other documentary evidence exist to support expenses for PCSO's intelligence operations. These suggest that funds allocated for the CIF were not spent for their designated purposes, even as they appeared to have been released through cash advances.* This marks a critical juncture in the alleged scheme of the accused. The disbursed funds were no longer in the possession and control of PCSO and, hence, susceptible to misuse or malversation.

....

Sixth, another curious detail was noted by the prosecution: that Former President Arroyo directly dealt with PCSO despite her having issued her own executive orders, which put PCSO under the direct

control and supervision of other agencies.[147] (Emphasis in the original)

The matters established by the prosecution belie any grave abuse of discretion on the part of the Sandiganbayan when it ruled that trial must proceed. This is especially considering that the Anti-Plunder Law does not even require proof of every single act alleged to have been committed by the accused. What it penalizes is the overarching scheme characterized by *a series or combination of overt or criminal acts*.[148] In *Jose "Jinggoy" Estrada v. Sandiganbayan*:[149]

> A study of the history of R.A. No. 7080 will show that the law was crafted to avoid the mischief and folly of filing multiple informations. The Anti-Plunder Law was enacted in the aftermath of the *Marcos regime* where charges of ill-gotten wealth were filed against former President Marcos and his alleged cronies. *Government prosecutors found no appropriate law to deal with the multitude and magnitude of the acts allegedly committed by the former President to acquire illegal wealth.* They also found that under the then existing laws such as the Anti-Graft and Corrupt Practices Act, the Revised Penal Code and other special laws, the acts involved different transactions, different time and different personalities. *Every transaction constituted a separate crime and required a separate case and the over-all conspiracy had to be broken down into several criminal and graft charges.* The preparation of multiple Informations was a legal nightmare but eventually, thirty-nine (39) separate and independent cases were filed against practically the same accused before the Sandiganbayan. Republic Act No. 7080 or the Anti-Plunder Law was enacted precisely to address this procedural problem.[150] (Emphasis in the original, citations omitted)

Thus, as I emphasized in my Dissent to the majority's July 19, 2016 Decision:

> It would be inappropriate to launch a full-scale evaluation of the evidence, lest this Court—an appellate court, vis-à-vis the Sandiganbayan's original jurisdiction over plunder—be invited to indulge in an exercise which is not only premature, but also one which may entirely undermine the Sandiganbayan's competence. Nevertheless, even through a prima facie review, the prosecution adduced evidence of a combination or series of events that appeared to be means in a coherent scheme to effect a design to amass, accumulate, or acquire ill-gotten wealth. Without meaning to make conclusions on the guilt of the accused,

---

147 Dissenting Opinion of J. Leonen in *Macapagal-Arroyo v. People*, G.R. No. 220598, July 19, 2016 <http://sc.judiciary.gov.ph/jurisprudence/2016/july2016/220598_leonen.pdf> 18–32 [Per J. Bersamin, En Banc].

148 Rep. Act No. 7080, sec. 4 provides:
Section 4. Rule of Evidence. — For purposes of establishing the crime of plunder, it shall not be necessary to prove each and every criminal act done by the accused in furtherance of the scheme or conspiracy to amass, accumulate or acquire ill-gotten wealth, it being sufficient to establish beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy.

149 *Estrada v. Sandiganbayan*, 427 Phil. 820 (2002) [Per J. Puno, En Banc].

150 Id. at 851.

specifically of petitioners, these pieces of evidence beg, at the very least, to be addressed during trial. Thus, there was no grave abuse of discretion on the part of the Sandiganbayan.[151]

IX

Even granting that the prosecution has failed to establish as case for plunder, trial must nevertheless proceed for malversation.

This Court has consistently held[152] that the lesser offense of malversation can be included in plunder when the amount amassed reaches at least ₱50,000,000.00. The predicate acts of bribery and malversation do not need to be charged under separate informations when a person has already been charged with plunder.

I reiterate the following from my dissent from the majority's July 19, 2016 Decision:

> This Court's statements in *Estrada v. Sandiganbayan* are an acknowledgement of how the predicate acts of bribery and malversation (if applicable) need not be charged under separate informations when one has already been charged with plunder:
>
> > A study of the history of R.A. No. 7080 will show that the law was crafted to avoid the mischief and folly of filing multiple informations. The Anti-Plunder Law was enacted in the aftermath of the Marcos regime where charges of ill-gotten wealth were filed against former President Marcos and his alleged cronies. *Government prosecutors found no appropriate law to deal with the multitude and magnitude of the acts allegedly committed by the former President to acquire illegal wealth.* They also found that under the then existing laws such as the Anti-Graft and Corrupt Practices Act, the Revised Penal Code and other special laws, the acts involved different transactions, different time and different personalities. *Every transaction constituted a separate crime and required a separate case and the over-all conspiracy had to be broken down into several criminal and graft charges.* The preparation of multiple Informations was a legal nightmare but eventually. thirty-nine (39) separate and independent cases were filed against practically the same accused before the Sandiganbayan. Republic Act No. 7080

---

[151] Dissenting Opinion of J. Leonen in *Macapagal-Arroyo v. People,* G.R. No. 220598, July 19, 2016, <http://sc.judiciary.gov.ph/jurisprudence/2016/july2016/220598_leonen.pdf> 10 [Per J. Bersamin, En Banc].

[152] *See Estrada v. Sandiganbayan,* 421 Phil. 290 (2001) [Per J. Bellosillo, En Banc]; *Enrile v. People,* G.R. No. 213455, August 11, 2015, 766 SCRA 1 [Per J. Brion, En Banc]; *Serapio v. Sandiganbayan,* 444 Phil. 499 (2003) [Per J. Callejo Sr., En Banc]; *Estrada v. Sandiganbayan,* 427 Phil. 820 (2002) [Per J. Puno, En Banc].

> or the Anti-Plunder Law was enacted precisely to address this procedural problem. (Emphasis in the original, citations omitted)

In *Atty. Serapio v. Sandiganbayan*, the accused assailed the information for charging more than one offense: bribery, malversation of public funds or property, and violations of Sec. 3(e) of Republic Act No. 3019 and Section 7(d) of Republic Act No. 6713. This Court observed that "the acts alleged in the information are not separate or independent offenses, but are predicate acts of the crime of plunder." The Court, quoting the Sandiganbayan, clarified:

> It should be stressed that the Anti-Plunder law specifically Section 1(d) thereof does not make any express reference to any specific provision of laws, other than R.A. No. 7080, as amended, which coincidentally may penalize as a separate crime any of the overt or criminal acts enumerated therein. The said acts which form part of the combination or series of act are described in their generic sense. Thus, aside from 'malversation' of public funds, the law also uses the generic terms 'misappropriation,' 'conversion' or 'misuse' of said fund. The fact that the acts involved may likewise be penalized under other laws is incidental. The said acts are mentioned only as predicate acts of the crime of plunder and the allegations relative thereto are not to be taken or to be understood as allegations charging separate criminal offenses punished under the Revised Penal Code, the Anti-Graft and Corrupt Practices Act and Code of Conduct and Ethical Standards for Public Officials and Employees.

The observation that the accused in these petitions may be made to answer for malversation was correctly pointed out by Justice Ponferrada of the Sandiganbayan in his separate concurring and dissenting opinion:

> There is evidence, however, that certain amounts were released to accused Rosario Uriarte and Sergio Valencia and these releases were made possible by certain participatory acts of accused Arroyo and Aguas, as discussed in the subject Resolution. Hence, there is a need for said accused to present evidence to exculpate them from liability which need will warrant the denial of their Demurrer to Evidence, as under the variance rule they maybe held liable for the lesser crimes which are necessarily included in the offense of plunder.

Significantly, the Sandiganbayan's Resolution to the demurrers to evidence includes the finding that the PCSO Chairperson Valencia, should still be made to answer for malversation as included in the Information in these cases. Since the Information charges conspiracy, both petitioners in these consolidated cases still need to answer for those charges. Thus, the demurrer to evidence should also be properly denied. It would be

premature to dismiss and acquit the petitioners.[153]

X

The Anti-Plunder Law penalizes the most consummate larceny and economic treachery perpetrated by repositories of public trust. The majority's Decision—which effectively makes more stringent the threshold for conviction by implying elements not supported by statutory text—cripples the State's capacity to exact accountability. In *Joseph Ejercito Estrada v. Sandiganbayan*:[154]

> *Drastic and radical measures are imperative to fight the increasingly sophisticated, extraordinarily methodical and economically catastrophic looting of the national treasury.* Such is the Plunder Law, especially designed to disentangle those ghastly tissues of grand-scale corruption which, if left unchecked, will spread like a malignant tumor and ultimately consume the moral and institutional fiber of our nation. The Plunder Law, indeed, is a living testament to the will of the legislature to ultimately eradicate this scourge and thus secure society against the avarice and other venalities in public office.
>
> These are times that try men's souls. In the checkered history of this nation, few issues of national importance can equal the amount of interest and passion generated by petitioner's ignominious fall from the highest office, and his eventual prosecution and trial under a virginal statute. This continuing saga has driven a wedge of dissension among our people that may linger for a long time. Only by responding to the clarion call for patriotism, to rise above factionalism and prejudices, shall we emerge triumphant in the midst of ferment.[155] (Emphasis in supplied)

In issuing the Resolutions denying petitioners' demurrers to evidence, the Sandiganbayan acted well-within its jurisdiction and competence. It is not for us to substitute our wisdom for that of the court which presided over the full conduct of trial, as well as the reception and scrutiny of evidence.

The rule proscribing appeals to denials of demurrers to evidence is plain and basic. An accused's recourse is to present evidence and to rebut the prosecution's evidence. The petitioners here failed to establish an exceptional predicament.

This Court's overruling of the April 6, 2015 and September 10, 2015 resolutions of the Sandiganbayan on the strength of findings of inadequacy on the part of the prosecution, but based on standards introduced only upon the rendition of this Court's July 19, 2016 Decision, violated the prosecution's constitutional right to due process. Both the prosecution and

---

[153] Dissenting Opinion of J. Leonen in *Macapagal-Arroyo v. People*, G.R. No. 220598, July 19, 2016, <http://sc.judiciary.gov.ph/jurisprudence/2016/july2016/220598_leonen.pdf> 35–36 [Per J. Bersamin, En Banc].

[154] *Estrada v. Sandiganbayan*, 421 Phil. 290 (2001) [Per J. Bellosillo, En Banc]

[155] Id. at 367.

the accused deserve fairness: the prosecution, that it may sufficiently establish its case in contemplation of every appropriate legal standard; and the accused, that they may more competently dispel any case the prosecution may have established against them.

Trial must, thus, proceed.

Accordingly, I vote to **GRANT** the Motion for Reconsideration. Public respondent Sandiganbayan committed no grave abuse of discretion and acted within its competence and jurisdiction in issuing the assailed April 6, 2015 and September 10, 2015 Resolutions.

MARVIC M.V.F. LEONEN
Associate Justice