EN BANC

G.R. No. 213455 – JUAN PONCE ENRILE, Petitioner, **v. PEOPLE OF THE PHILIPPINES, HON. AMPARO M. CABOTAJE-TANG, HON. SAMUEL R. MARTIRES and HON. ALEX L. QUIROZ OF THE THIRD DIVISION OF THE SANDIGANBAYAN**, Respondents.

Promulgated:
August 11, 2015

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DISSENTING OPINION

LEONEN, *J.*:

I concur with the dissenting opinion of Senior Associate Justice Antonio Carpio. I join his view that the text of the Information, in the context of the entire process participated in by petitioner (accused in the Sandiganbayan), sufficiently provides him with the notice required so that he can enter his plea. When he entered his plea, the details of the facts that would lead to proof of his culpability could be further specified in pre-trial or during the trial itself. Furthermore, I see no impediment for petitioner to avail himself of discovery procedures.

Therefore, the Petition should be denied, there being no grave abuse of discretion on the part of the Sandiganbayan.

The ponencia initially enumerated ten (10) matters, sufficient particulars on which "the prosecution must provide [petitioner] with . . . to allow him to properly enter his plea and prepare for his defense."[1]

Justice Estela Perlas-Bernabe, in her Concurring and Dissenting Opinion, agreed with the first five (5) items of these enumerated matters, partly agreed with the sixth,[2] and disagreed with the others.

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1 Ponencia, p. 38.

2 Id. at 38–39. In J. Perlas-Bernabe's Concurring and Dissenting Opinion, she qualified her agreement with the following matters:

1. The particular overt act/s alleged to constitute the "combination" and "series" charged in the Information.

2. A breakdown of the amounts of the kickbacks and commissions allegedly received, stating how the amount of ₱172,834,500.00 was arrived at.

3. A brief description of the 'identified' projects where kickbacks and commissions were received.

4. The approximate dates of receipt, "in 2004 to 2010 or thereabout," of the alleged kickbacks and commissions from the identified projects. At the very least, the prosecution should state the year when

The revised ponencia then adopted Justice Perlas-Bernabe's position except for the last item[3] in the original ten (10) matters. The list was limited accordingly.

I maintain my position that within its discretion, the Sandiganbayan did not make an error in allowing either the amendment by the prosecution or the filing of bill of particulars on the six (6) matters enumerated by Justice Perlas-Bernabe, which were adopted in the revised ponencia. Further clarity in the facts would have been desirable but not necessary for due process requirements.

In particular, it was not necessary for the prosecution to state the approximate dates or the exact year when the alleged kickbacks were received. Plunder, unlike ordinary crimes, is not committed through one isolated act, but rather, through a *combination* or *series* of overt acts.[4]

Informations for plunder should be treated differently from informations for other crimes like murder. Murder is only committed once. A person accused of the crime may have a credible alibi, and in order to adequately prepare for his or her defense, the information must state with particularity the approximate date and time of the commission of the offense.

By its nature, plunder is committed in increments over time. It may be committed by amassing, accumulating, or acquiring ill-gotten wealth every year from the start of the first commission or kickback. The statement

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the kickbacks and transactions from the identified projects were received.

5. The name of Napoles' non-government organizations (NGOs) which were the alleged "recipients and/or target implementors of Enrile's PDAF projects."

6. The government agencies to whom Enrile allegedly endorsed Napoles' NGOs. The particular person/s in each government agency who facilitated the transactions need not anymore be named in the Information.

[3] Ponencia as of August 4, 2015, p. 43. The item reads: "The factual premises for the allegation that Enrile took undue advantage of his official position, authority, relationships, connections and influence in order to enrich himself to the damage and prejudice of the Filipino people and the Republic of the Philippines. If done on several occasions, the overt acts done on each occasion must be specified."

[4] *See* Rep. Act No. 7080, sec. 2, which defines plunder as:
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 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 *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 RA 7659, approved Dec. 13, 1993.)

of a range of years in the Information, such as "2004 to 2010," is sufficient to inform the accused that the series of overt or criminal acts were committed within this period of time.

I dissent from the majority position requiring the last matter of fact as this is already evidentiary. Thus, this is not allowed by the Rules. Upholding petitioner's request will make it more difficult for prosecutions of public officers charged with offenses that imply betrayal of public trust.

Even the ponente, at one point, agreed that a relaxation of technical rules may be necessary to enforce accountability among public officers who hold the public's trust. In his Separate Concurring Opinion in *Re: Allegations Made Under Oath at the Senate Blue Ribbon Committee Hearing Held on September 26, 2013 Against Associate Justice Gregory S. Ong, Sandiganbayan*,[5] Justice Arturo Brion states that the strict application of the hearsay rule was detrimental to this court's sworn duty to discipline its ranks:

> [T]he unnecessarily strict application of hearsay in administrative proceedings of judges has crippled this Court's capability to discipline its ranks. An examination of bribery cases involving judges show our extreme wariness in declaring that a judge had in fact been bribed, often using the hearsay rule to conclude that insufficiency of evidence prevents us from finding the judge liable for bribery. We would, however, still penalize these judges and dismiss them from office because of acts constituting gross misconduct.
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> I cannot help but think that we so acted because, at the back of our minds, we might have believed that the respondent judge had indeed been guilty of bribery, but our over-attachment to the hearsay rule compelled us to shy away from this reason to support our conclusion. Hence, we try to find other ways to penalize the erring judge or justice.
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> While this indirect approach may ultimately arrive at the desired goal of penalizing erring judges and removing the corrupt from our roster, we should realize that this approach surrenders the strong signal that a finding of guilt for bribery makes.
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> *It must not be lost on us that we send out a message to the public, to the members of the judiciary, and to the members of the bar, every time we decide a case involving the discipline of judges: we broadcast, by our actions, that we do not tolerate the acts for which we found the erring judge guilty. This message is lost when we penalize judges and justices for gross misconduct other than bribery, when bribery was the real root cause for the disciplinary action.*

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[5] A.M. No. SB-14-21-J [Formerly A.M. No. 13-10-06-SB], September 23, 2014, 736 SCRA 12 [Per Curiam, En Banc].

> *I believe that the time has come for this Court to start calling a spade a spade, and make the conclusion that bribery had taken place if and when the circumstances sufficiently prove its occurrence. In making this conclusion, we should not be unduly hindered by technical rules of evidence, including hearsay, as we have the resources and experience to interpret and evaluate the evidence before us and the information it conveys.*
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> *We must not likewise get lost as we wander in our search for the proper degree of supporting evidence in administrative proceedings. This quantum of evidence should be substantial evidence because this standard provides the necessary balance and flexibility in determining the truth behind the accusations against a respondent judge, without sacrificing the necessary fairness that due process accords him and without sacrificing what is due to the institution we serve and the Filipino people*.[6] (Emphasis supplied, citation omitted)

In addition, I am of the view that the nature of the privileges that petitioner enjoyed while allegedly committing the offense puts him in a different class from other accused.

The Constitution is a document that necessarily contains the fundamental norms in our legal order. These norms are articulated in various provisions. These provisions are not separate from each other. They all contribute to an ideal, which is our duty to articulate in interpretations occasioned by actual controversies properly brought before us. These provisions cannot be disembodied from each other.

Section 1 of Article III of the Constitution enshrines the right to due process:

> *Section 1.* No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.[7]

At the same time, Section 1 of Article XI of the Constitution unequivocally mandates:

> *Section 1.* Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency,

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6 J. Brion, Separate Concurring Opinion in *Re: Allegations Made Under Oath at the Senate Blue Ribbon Committee Hearing Held on September 26, 2013 Against Associate Justice Gregory S. Ong, Sandiganbayan*, A.M. No. SB-14-21-J [Formerly A.M. No. 13-10-06-SB], September 23, 2014, 736 SCRA 12, 123–124 [Per Curiam, En Banc].

7 CONST., art. III, sec. 1.

act with patriotism and justice, and lead modest lives.[8]

This is a unique feature of our Constitution. These words are not empty rhetoric.

Those who qualify for public office hold their title in trust. Their tenure is defined but not inherently entrenched in their person. Their temporary occupation of these offices is not a right vested in them but a privilege from the sovereign.

Public officers carry this privilege with an additional burden. "At all times[,]"[9] they are required "to be accountable to the people."[10] They are to serve in their position with "utmost"[11] integrity.

The interpretation and application of the constitutionally guaranteed individual right to due process must also be read alongside the constitutional duty of public accountability and utmost integrity.

Public officers who hold powerful offices can potentially provide opportunities to enrich themselves at the expense of the taxpaying public. They are not in the same class as individuals charged with common offenses. The impact of the malfeasances of government officers is far-reaching and long-lasting. Plunder of the public coffers deprives the poor, destitute, and vulnerable from the succor they deserve from their government. Economic resources that are diverted to private gain do not contribute to the public welfare. Plunder weakens and corrupts governance, thus resulting in incalculable costs for future generations. It contributes to the denial of the very basis of government—the same government that is supposed to ensure that all laws are enforced fairly and efficiently.

There is no question that all elements of the offense have been pleaded. The question is whether the language in the Information is specific enough. All words are open-textured, and there is always a hierarchy of specificity required by the context of the author and the reader.

I would have readily joined my colleagues who would advocate a stricter scrutiny—and, therefore, a restriction of a trial court's discretion—in assessing whether the language of the Information representing ultimate facts is specific enough if this were a common crime.

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8 CONST., art. XI, sec. 1.
9 CONST., art. XI, sec. 1.
10 CONST., art. XI, sec. 1.
11 CONST., art. XI, sec. 1.

For instance, if this were the usual crime charging an unlettered member of our urban slums with selling less than one-tenth of a gram of *shabu*, or the sordid offense in informal settlements of rape committed by fathers on their daughters, or even the usual crime of snatching a mobile phone by a desperate accused, I would have agreed to more specificity in the language contained in the Information.

But this is a different offense, one allegedly committed by a sitting public officer. The offense, if true, as well as his participation, if proven beyond reasonable doubt, is the probable contributing cause for the destitution of millions of Filipinos.

Public officers are also entitled to the constitutional guarantee of due process. In my view, the language in the Information in question sufficiently lists the ultimate facts constitutive of the offense for petitioner. Its level of specificity and the amount of discretion we should give the Sandiganbayan should be commensurate with his right to due process and with his duties as a public officer, which are mandated in the Constitution.

We can choose to narrow our vision and exact the strictest rigors of notice on a narrow and specific part of the criminal procedure's process. Alternately, we can view the entire context for petitioner who comes before us to assess whether he has been fairly given the opportunity to know the charges against him. The constitutional requirement favoring petitioner should not be read as requiring an inordinate burden and exacting cost on the prosecution, such that it becomes a deterrent to move against erring public officials with powerful titles. After all, the People, represented by the prosecution, is also entitled to fairness and reasonability. The prosecution is also entitled to due process. Our doctrines should thrive on the realities of present needs.

Rightly so, we should be concerned with technical rules. Also as important is that we do not lose sight of the context of these technical rules.

In this case, petitioner was properly informed. He was given sufficient information to enter his plea.

ACCORDINGLY, I vote to dismiss the Petition.

MARVIC M.V.F. LEONEN
Associate Justice