Republic of the Philippines
Supreme Court
Manila

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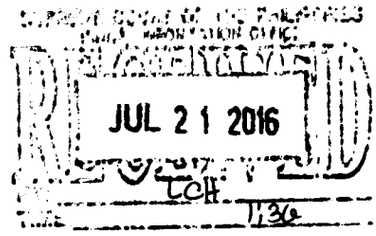

GLORIA MACAPAGAL-ARROYO,
Petitioner,

- versus -

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

x - x

BENIGNO B. AGUAS,
Petitioner,

- versus -

SANDIGANBAYAN (First Division),
Respondent.

G.R. No. 220598

G.R. No. 220953

Present:

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

Promulgated:

July 19, 2016

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DECISION

BERSAMIN, *J.*:

We resolve the consolidated petitions for *certiorari* separately brought to assail and annul the resolutions issued on April 6, 2015[1] and September 10, 2015,[2] whereby the *Sandiganbayan* respectively denied their demurrer to evidence, and their motions for reconsideration, asserting such denials to be tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.

Antecedents

On July 10, 2012, the Ombudsman charged in the *Sandiganbayan* former President Gloria Macapagal-Arroyo (GMA); Philippine Charity Sweepstakes Office (PCSO) Budget and Accounts Officer Benigno Aguas; PCSO General Manager and Vice Chairman Rosario C. Uriarte; PCSO Chairman of the Board of Directors Sergio O. Valencia; Members of the PCSO Board of Directors, namely: Manuel L. Morato, Jose R. Taruc V, Raymundo T. Roquero, and Ma. Fatima A.S. Valdes; Commission on Audit (COA) Chairman Reynaldo A. Villar; and COA Head of Intelligence/Confidential Fund Fraud Audit Unit Nilda B. Plaras with plunder. The case was docketed as Criminal Case No. SB-12-CRM-0174 and assigned to the First Division of the *Sandiganbayan*.

The information[3] reads:

> 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:
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> 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,

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[1] *Rollo*, Vol. I, pp. 139-194; penned by Associate Justice Rafael R. Lagos and concurred by Associate Justices Efren N. De La Cruz and Napoleon E. Inoturan. Associate Justices Rodolfo A. Ponferrada and Alex L. Quiroz submitted their respective concurring and dissenting opinion.

[2] Id. at 195-211.

[3] Id. at 305-307-A.

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 value of THREE HUNDRED SIXTY FIVE MILLION NINE HUNDRED NINETY SEVEN THOUSAND NINE HUNDRED FIFTEEN PESOS (PHP365,997,915.00), more or less, through any or a combination or a series of overt or criminal acts, or similar schemes or means, described as follows:

(a) diverting in several instances, funds from the operating budget of PCSO to its Confidential/Intelligence Fund that could be accessed and withdrawn at any time with minimal restrictions, and converting, misusing, and/or illegally conveying or transferring the proceeds drawn from said fund in the aforementioned sum, also in several instances, to themselves, in the guise of fictitious expenditures, for their personal gain and benefit;

(b) raiding the public treasury by withdrawing and receiving, in several instances, the above-mentioned amount from the Confidential/Intelligence Fund from PCSO's accounts, and or unlawfully transferring or conveying the same into their possession and control through irregularly issued disbursement vouchers and fictitious expenditures; and

(c) taking advantage of their respective official positions, authority, relationships, connections or influence, in several instances, to unjustly enrich themselves in the aforementioned sum, at the expense of, and the damage and prejudice of the Filipino people and the Republic of the Philippines.

CONTRARY TO LAW.

By the end of October 2012, the *Sandiganbayan* already acquired jurisdiction over GMA, Valencia, Morato and Aguas. Plaras, on the other hand, was able to secure a temporary restraining order (TRO) from this Court in *Plaras v. Sandiganbayan* docketed as G.R. Nos. 203693-94. Insofar as Roquero is concerned, the *Sandiganbayan* acquired jurisdiction as to him by the early part of 2013. Uriarte and Valdes remained at large.

Thereafter, several of the accused separately filed their respective petitions for bail. On June 6, 2013, the *Sandiganbayan* granted the petitions for bail of Valencia, Morato and Roquero upon finding that the evidence of

guilt against them was not strong.[4] In the case of petitioners GMA and Aguas, the *Sandiganbayan*, through the resolution dated November 5, 2013, denied their petitions for bail on the ground that the evidence of guilt against them was strong.[5] The motions for reconsideration filed by GMA and Aguas were denied by the *Sandiganbayan* on February 19, 2014.[6] Accordingly, GMA assailed the denial of her petition for bail in this Court, but her challenge has remained pending and unresolved todate.

Personal jurisdiction over Taruc and Villar was acquired by the *Sandiganbayan* in 2014. Thereafter, said accused sought to be granted bail, and their motions were granted on different dates, specifically on March 31, 2014[7] and May 9, 2014,[8] respectively.

The case proceeded to trial, at which the State presented Atty. Aleta Tolentino as its main witness against all the accused. The *Sandiganbayan* rendered the following summary of her testimony and evidence in its resolution dated November 5, 2013 denying the petitions for bail of GMA and Aguas, to wit:

> She is a certified public accountant and a lawyer. She is a member of the Philippine Institute of Certified Public Accountants and the Integrated Bar of the Philippines. She has been a CPA for 30 years and a lawyer for 20 years. She has practiced accountancy and law. She became accounting manager of several companies. She has also taught subjects in University of Santo Tomas, Manuel L. Quezon University, Adamson University and the Ateneo de Manila Graduate School. She currently teaches Economics, Taxation and Land Reform.
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> Presently, she is a Member of the Board of Directors of the PCSO. The Board appointed her as Chairman of an Audit Committee. The audit review proceeded when she reviewed the COA Annual Reports of the PCSO for 2006, 2007, 2008 and 2009 (Exhibits "D", "E", "F" and "G", respectively), and the annual financial statements contained therein for the years 2005 to 2009. The reports were given to them by the COA. These are transmitted to the PCSO annually after the subject year of audit.
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> One of her major findings was that the former management of the PCSO was commingling the charity fund, the prize fund and the operating fund. By commingling she means that the funds were maintained in only one main account. This violates Section 6 of Republic Act 1169 (PCSO Charter) and generally accepted accounting principles.
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> The Audit Committee also found out that there was excessive disbursement of the Confidential and Intelligence Fund (CIF). There were also excessive disbursements for advertising expenses. The internal audit

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4 Id. at 415-459.
5 Id. at 450-510.
6 Id. at 512-523.
7 *Rollo*, Vol. II, pp. 526-580.
8 Id. at 581-586.

department was also merged with the budget and accounting department, which is a violation of internal audit rules.

There was excessive disbursement of the CIF because the PCSO was given only ₱10 million in 2002, i.e. ₱5 million for the Office of the Chairman and ₱5 million for the Office of the General Manager. Such allocation was based on the letters of then Chairman Lopez (Exh. "I") and then General Manager Golpeo (Exh. "J"), asking for ₱5 million intelligence fund each. Both were dated February 21, 2000, and sent to then President Estrada, who approved them. This allocation should have been the basis for the original allocation of the CIF in the PCSO, but there were several subsequent requests made by the General Manager during the time of, and which were approved by, former President Arroyo.

The allocation in excess of ₱10 million was in violation of the PCSO Charter. PCSO did not have a budget for this. They were working on a deficit from 2004 to 2009. The charter allows only 15% of the revenue as operating fund, which was already exceeded. The financial statements indicate that they were operating on a deficit in the years 2006 to 2009.

It is within the power of the General Manager to ask for additional funds from the President, but there should be a budget for it. The CIF should come from the operating fund, such that, when there is no more operating fund, the other funds cannot be used.

The funds were maintained in a commingled main account and PCSO did not have a registry of budget utilization. The excess was not taken from the operating fund, but from the prize fund and the charity fund.

In 2005, the deficit was ₱916 million; in 2006, ₱1,000,078,683.23. One of the causes of the deficit for 2006 was the CIF expense of ₱215 million, which was in excess of the approved allocation of ₱10 million. The net cash provided by operating expenses in 2006 is negative, which means that there were more expenses than what was received.

In the 2007 COA report, it was found that there was still no deposit to the prize and charity funds. The COA made a recommendation regarding the deposits in one main account. There were also excessive disbursements of CIF amounting to ₱77,478,705.

She received a copy of the PCSO corporate operating budget (COB) for the year 2008 in 2010 because she was already a member of its Board of Directors. The 2008 approved COB has a comparative analysis of the actual budget for 2007 (Exh. "K"). It is stated there that the budget for CIF in 2007 is only ₱25,480,550. But the financial statements reflect ₱77 million. The budget was prepared and signed by then PCSO General Manager Rosario Uriarte. It had accompanying Board Resolution No. 305, Series of 2008, which was approved by then Chairperson Valencia, and board members Valdes, Morato, Domingo, and attested to by Board Secretary Atty. Ronald T. Reyes.

In the 2008 COA report, it was noted that there was still no deposit to the prize and charity funds, adverted in the 2007 COA report. There was already a recommendation by the COA to separate the deposits or

funds in 2007. But the COA noted that this was not followed. The financial statements show the Confidential and the Extra-Ordinary Miscellaneous Expenses account is ₱38,293,137, which is more than the ₱10 million that was approved.

In the Comparative Income Statement (Exh. "K"), the 2008 Confidential/Intelligence Expense budget was approved for ₱28 million. The Confidential and Extra-Ordinary Miscellaneous Expenses is the account being used for confidential and intelligence expenses. The amount in the financial statements is over the budgeted amount of ₱28 million. Further, the real disbursement is more than that, based on a summary of expenditures she had asked the treasurer to prepare.

In the Comparative Income Statement for 2009 Budget against the 2008 Actual Budget (Exh. "L"), the budget for CIF and expenses was ₱60 million.

In the 2009 COA report, it was noted that there was still no deposit to the prize and charity funds, despite the instruction or recommendation of COA. The funds were still deposited in one account. The COA observation in 2007 states that there is juggling or commingling of funds.

After she had concluded the audit review, she reported her findings to the Board of Directors in one of their executive meetings. The Board instructed her to go in-depth in the investigation of the disbursements of CIF.

The Audit Committee also asked Aguas why there were disbursements in excess of ₱10 million. He explained that there were board resolutions confirming additional CIF which were approved by former President Arroyo. Aguas mentioned this in one of their meetings with the directors and corporate secretary. The board secretary, Atty. Ed Araullo, gave them the records of those resolutions.

In the records that Araullo submitted to her, it appears that Uriarte would ask for additional CIF, by letter and President Arroyo approves it by affixing her signature on that same letter-request. There were seven letters or memoranda to then President Arroyo, with the subject "Request for Intelligence Fund."

She then asked their Treasurer, Mercy Hinayon, to give her a summary of all the disbursements from CIF from 2007 to 2010. The total of all the amounts in the summaries for three years is ₱365,997,915.

After receiving the summaries of the disbursed checks, she asked Hinayon to give her the checks or copies thereof. She also asked Dorothy Robles, Budget and Accounting Manager, to give her the corresponding vouchers. Only two original checks were given to her, as the rest were with the bank. She asked her to request certified true copies of the checks.

They were then called to the Senate Blue Ribbon Committee, which was then investigating the operation of PCSO, including the CIF. She was invited as a resource speaker in an invitation from Chairman Teofisto Guingona III (Exh. "DD"). Before the hearing, the Committee Chairman went to the PCSO and got some documents regarding the subject matter being investigated. Araullo was tasked to prepare all the

documents needed by the Committee. These documents included the CIF summary of disbursements, letters of Uriarte and the approval of the former president.

She attended whenever there were committee hearings. Among those who also attended were the incoming members if the PCSO Board Directors and the directors. Accused Valencia and Aguas were also present in some hearings as resources speakers. They were invited in connection with the past disbursements of PCSO related to advertising expenses, CIF, vehicles for the bishops, and the commingling of funds.

The proceedings in the Committee were recorded and she secured a copy of the transcript of stenographic notes from the Office of the Blue Ribbon Committee. In the proceeding on June 7, 2011 (Exh. "EE"), Uriarte testified. The witness was about two to three meters away from Uriarte when the latter testified, and using a microphone.

According to the witness, Uriarte testified that all the confidential intelligence projects she had proposed were approved by President Arroyo; all the requests she gave to the President were approved and signed by the latter personally in her (Uriarte's) presence; and all the documents pertaining to the CIF were submitted to President Arroyo. On the other hand, Valencia and Taruc said they did not know about the projects. Statements before the Committee are under oath.

After the Committee hearings, she then referred to the laws and regulations involved to check whether the disbursements were in accordance with law. One of the duties and responsibilities of the audit committee was to verify compliance with the laws.

She considered the following laws: R.A. 1169, as amended (PCSO Charter); P.D. 1445 (COA Code); LOI 1282; COA Circular 92-385, as amended by Circular 2003-002, which provides the procedure for approval of disbursements and liquidation of confidential intelligence funds. She made a handwritten flowchart (Exh. "II") of the allocations/disbursements/liquidation and audit of the CIF, based on LOI 1282 and the COA Circulars. A digital presentation of this flowchart was made available.

The first step is the provision or allotment of a budget because no CIF fund can be disbursed without the allocation. This is provided in the second whereas clause of Circular 92-385. For GOCCs, applying Circular 2003-002, there must be allocation or budget for the CIF and it should be specifically in the corporate operating budget or would be taken from savings authorized by special provisions.

This was not followed in the PCSO CIF disbursement in 2008. The disbursement for that year was ₱86,555,060. The CIF budget for that year was only ₱28 million, and there were no savings because they were on deficit. This was also not followed for the year 2009. The CIF disbursement for that year was ₱139,420,875. But the CIF budget was only ₱60 million, and there was also no savings, as they were in deficit. For the year 2010, the total disbursement, as of June 2010, was ₱141,021,980. The budget was only ₱60 million.

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The requirements in the disbursement of the CIF are the budget and the approval of the President. If the budget is correct, the President will approve the disbursement or release of the CIF. In this case, the President approved the release of the fund without a budget and savings. Also, the President approved the same in violation of LOI 1282, because there were no detailed specific project proposals and specifications accompanying the request for additional CIF. The requests for the year 2008, 2009 and 2010 were uniform and just enumerated the purposes, not projects. They did not contain what was required in the LOI.

The purpose of this requirement is stated in the LOI itself. The request for allocations must contain full details and specific purposes for which the fund will be used. A detailed presentation is made to avoid duplication of expenditures, as what had happened in the past, because of a lack of centralized planning and organization or intelligence fund.

There was no reason for each additional intelligence fund that was approved by then President Arroyo.

The third step is the designation of the disbursing officer. In this case, the Board of Directors designated Uriarte as Special Disbursing Officer (SDO) for the portion of the CIF that she withdrew. For the portion withdrawn by Valencia, there was no special disbursing officer designated on record.

The designation of Uriarte was in violation of internal control which is the responsibility of the department head, as required by Section 3 of Circular 2003-002. When she went through copies of the checks and disbursement vouchers submitted to her, she found out that Uriarte was both the SDO and the authorized officer to sign the vouchers and checks. She was also the payee of the checks. All the checks withdrawn by Uriarte were paid to her and she was also the signatory of the checks.

Aside from Uriarte, Valencia also disbursed funds in the CIF. For the funds withdrawn by Valencia, he was also the authorized officer to sign the vouchers and checks. He was also the payee of the checks.

The confidential funds were withdrawn through cash advance. She identified the vouchers and checks pertaining to the disbursements made by Uriarte and Valencia in 2008, 2009 and 2010.

The checks of Uriarte and Valencia had the treasurer as co-signatory. The treasurer who signed depends on when the checks were issued

She knows the signatures of Uriarte, Valencia and Aguas because they have their signatures on the records.

Uriarte and Valencia signed the vouchers to certify to the necessity and legality of the vouchers; they also signed to approve the same, signify they are "okay" for payment and claim the amount certified and approved as payee. Gloria P. Araullo signed as releasing officer, giving the checks to the claimants.

Accused Aguas signed the vouchers to certify that there are adequate funds and budgetary allotment, that the expenditures were

properly certified and supported by documents, and that the previous cash advances were liquidated and accounted for. This certification means that the cash advance voucher can be released. This is because the COA rule on cash advance is that before any subsequent cash advance is released, the previous cash advance must be liquidated first. This certification allowed the requesting party and payee to get the cash advance from the voucher. Without this certification, Uriarte and Valencia could not have been able to get the cash advance. Otherwise, it was a violation of P.D. 1445 (Government Auditing Code).

The third box in the flowchart is the designation of the SDO. Board Resolutions No. 217, Series of 2009 (Exh."M"), No. 2356, Series of 2009 (Exh."N"), and No. 029, Series of 2010 (Exh. "O"), resolved to designate Uriarte as SDO for the CIF. These resolutions were signed and approved by Valencia, Taruc, Valdes, Uriarte, Roquero and Morato. The witness is familiar with these persons' signature because their signatures appear on PCSO official records.

Valencia designated himself as SDO upon the recommendation of COA Auditor Plaras. There was no board resolution for this designation. There was just a certification dated February 2, 2009 (Exh. "Z[4]"). This certification was signed by Valencia himself and designates himself as the SDO since he is personally taking care of the funds which are to be handled with utmost confidentiality. The witness is familiar with Valencia's signature because it appears on PCSO official documents. Under COA rules, the Board of Directors has authority to designate the SDO. The chairman could not do this by himself.

Plaras wrote a letter dated December 15, 2008 to Valencia. It appears in the letter that to substantiate the liquidation report, Plaras told Valencia to designate himself as SDO because there was no disbursing officer. It was the suggestion of Plaras. Plaras is the head of the CIF Unit under then COA Chairman Villar. Liquidation vouchers and supporting papers were submitted to them, with corresponding fidelity bond.

COA Circulars 92-385 and 2003-002 indicate that to disburse CIF, one must be a special disbursing officer or SDO. All disbursing officers of the government must have fidelity bonds. The bond is to protect the government from and answer for misappropriation that the disbursing officer may do. The bond amount required is the same as the amount that may be disbursed by the officer. It is based on total accountability and not determined by the head of the agency as a matter of discretion. The head determines the accountability which will be the basis of the bond amount.

The Charter states that the head of the agency is the Board of Directors, headed by the Chairman. But now, under the Governance of Government Corporation law, it is the general manager.

Plaras should have disallowed or suspended the cash advances because there was no fidelity bond and the disbursing officer was not authorized. There was no bond put up for Valencia. The records show that the bond for Uriarte was only for the amount of ₱1.5 million. This is shown in a letter dated August 23, 2010, to COA Chairman Villar through Plaras from Aguas (Exh. "B[5]"), with an attachment from the Bureau of Treasury, dated March 2, 2009. It appears there that the bond for Uriarte

for the CIF covering the period February 2009 to February 2010 was only ₱1.5 million.

Aguas submitted this fidelity bond certification, which was received on August 24, 2010, late, because under the COA Circulars, it should have been submitted when the disbursing officer was designated. It should have been submitted to COA because a disbursing officer cannot get cash advances if they do not have a fidelity bond.

Once an SDO is designated, the specimen signature must be submitted to COA, together with the fidelity bond and the signatories for the cash advances.

The approval of the President pertains to the release of the budget, not its allocation. She thinks the action of the Board was done because there was no budget. The Board's confirmation was needed because it was in excess of the budget that was approved. They were trying to give a color of legality to them approval of the CIF in excess of the approved corporate operating budget. The Board approval was required for the amount to be released, which amount was approved in excess of the allotted budget for the year. The President cannot approve an additional amount, unless there is an appropriation or a provision saying a particular savings will be used for the CIF. The approvals here were all in excess of the approved budget.

Cash advances can be given on a per project basis for CIF. For one to get a cash advance, one must state what the project is as to that cash advance. No subsequent cash advance should be given, until previous cash advances have been liquidated and accounted for. If it is a continuing project, monthly liquidation reports must be given. The difference in liquidation process between CIF and regular cash advances is that for CIF, the liquidation goes to the Chair and not to the resident auditor of the agency or the GOCC. All of the liquidation papers should go to the COA Chair, given on a monthly basis.

In this case, the vouchers themselves are couched generally and just say cash advance from CIF of the Chairman or from the GM's office in accordance with her duties. There is no particular project indicated for the cash advance. Also, the requirement that prior advances be liquidated first for subsequent advances to be given was not followed. The witness prepared a summary of the cash advances withdrawn by the two disbursing officers covering the years 2008, 2009 and 2010 (Exh. "D^5"). The basis for this summary is the record submitted to them by Aguas, which were supposedly submitted to COA. It shows that there were subsequent cash advances, even if a prior advance has not yet been liquidated. Valencia submitted liquidation reports to Villar, which consists of a letter, certification and schedule of cash advances, and liquidation reports. One is dated July 24, 2008 (Exh. "G^5") and another is dated February 13, 2009 (Exh. "H^5").

When she secured Exhibit "G^5", together with the attached documents, she did not find any supporting documents despite the statement in Exhibit "G^5" that the supporting details of the expenses that were incurred from the fund can be made available, if required. Aguas, the person who processed the cash advances said he did not have the details or supporting details of documents of the expenditures.

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Normally, when liquidating CIF, the certification of the head of the agency is necessary. If there were vouchers or receipts involved, then all these should be attached to the liquidation report. There should also be an accomplishment report which should be done on a monthly basis. All of these should be enclosed in a sealed envelope and sent to the Chairman of the COA, although the agency concerned must retain a photocopy of the documents. The report should have a cover/transmittal letter itemizing the documents, as well as liquidation vouchers and other supporting papers. If the liquidation voucher and the supporting papers are in order, then the COA Chairman or his representative shall issue a credit memorandum. Supporting papers consist of receipts and sales invoices. The head of the agency would have to certify that those were all actually incurred and are legal. In this case, there were no supporting documents submitted with respect to Valencia's cash advances in 2008. Only the certifications by the SDO were submitted. These certifications stated that he has the documents in his custody and they can be made available, if and when necessary.

When she reviewed the CIF, she asked Aguas to produce the supporting documents which were indicated in Valencia's certification and Aguas's own certification in the cash advance vouchers, where he also certified that the documents supporting the cash advance were in their possession and that there was proper liquidation. Aguas replied that he did not have them.

She identified the letter of Uriarte to Villar dated July 24, 2008 as well as a transmittal letter by Uriarte for August 1, 2008, a certification and schedule of cash advances and an undetailed liquidation report. Among the attachments is Board Resolution 305, a copy of the COB for 2008, a document for the second half of 2008, a document dated April 2, 2009, and a document for liquidation of ₱2,295,000. She also identified another letter for ₱50 million, dated February 13, 2009, attached to the transmittal letter. There is a certification attached to those two letters amounting to ₱2,295,000. Also attached is the schedule of cash advances by Aguas and a liquidation report where Aguas certified that the supporting documents are complete and proper although the supporting documents and papers are not attached to the liquidation report, only the general statement. These documents were submitted to them by Aguas.

She was shown the four liquidation reports (Exhibits "M[5]", "N[5]", "O[5]" and "P[5]") attached to the transmittal letter and was asked whether they were properly and legally accomplished. She replied that they were couched in general terms and the voucher for which the cash advance was liquidated is not indicated and only the voucher number is specified. She adds that the form of the liquidation is correct, but the details are not there and neither are the supporting papers.

The liquidation report was dated July 24, 2008, but it was submitted only on August 1, 2008 to COA, and it supposedly covered the cash advances of Uriarte from January to May 2008. This is stated in her summary of liquidation that was earlier marked. There were no supporting papers stated on or attached to the liquidation report.

She identified a set of documents to liquidate the cash advances from the CIF for the second semester of 2008 by Uriarte. The transmittal

letter of Uriarte was received by the COA on April 2, 2009. Upon inquiry with Aguas, he said that he did not have any of the supporting papers that he supposedly had according to the certification. According to him, they are with Uriarte. Uriarte, on the other hand, said, during the Senate hearing, that she gave them to President Arroyo.

When Plaras wrote Valencia on December 15, 2008, Aguas wrote back on behalf of Valencia, who had designated himself as SDO. However, their designations, or in what capacity they signed the voucher are not stated. Among the attachments is also a memorandum dated April 2, 2008 (Exhibit "P[5]"), containing the signature of Arroyo, indicating her approval to the utilization of funds. Another memorandum, dated August 13, 2008, indicating the approval of Arroyo was also attached to the transmittal letter of Aguas on April 4, 2009. These two memoranda bear the reasons for the cash advances, couched in general terms. The reasons were donated medicines that were sold and authorized expenditures on endowment fund. The reasons stated in the memoranda are practically the same. Uriarte did not submit any accomplishment reports regarding the intelligence fund. Aguas submitted an accomplishment report, but the accomplishments were not indicated in definite fashion or with specificity.

The witness narrated, based on her Summary of Liquidation Reports in 2009, that the total cash advance made by Uriarte was ₱132,760,096. Arroyo approved ₱90 million for release. ₱10 million in January 2009 and April 27, 2009, and then ₱50 million in May 6, 2009.In July 2, 2009, ₱10 million or a total of ₱70 million. In October 2009, ₱20 million or a total of ₱90 million. The amount that was cash advanced by Valencia was ₱5,660,779. Therefore, the total cash advances by these two officials were ₱138,420,875, but all of these were never liquidated in 2009. Uriarte and Valencia only submitted a liquidation voucher and a report to COA on April 12, 2010. For the January 22, 2009 disbursements, the date of the liquidation voucher was June 30, 2009, but it was submitted to COA on April 12, 2010. Witness identified the transmittal letter for ₱28 million by Uriarte, dated October 19, 2009, which was received by the COA only on April 12, 2010, with an accompanying certification from Uriarte as to some of the documents from which the witness's Summary of Liquidation was based.

The cash advances made by Uriarte and Valencia violated par. 1, Sec. 4 and Sec. 84 of P.D. 1445 and par. 2, III, COA Circular No. 92-385.

Since these cash advances were in excess of the appropriation, in effect, they were disbursed without any appropriation. These cash advances were also made without any specific project, in violation of par. 2 of COA Circular No. 92-385. In this case, the cash advances were not for a specific project. The vouchers only indicate the source of the fund. The vouchers did not specify specific projects.

The total cash advances for the years 2008, 2009 and 2010 to accused Uriarte and Valencia is more than ₱366,000,000. Valencia cash advanced ₱13.3 million. The rest was made by Uriarte.

The memoranda to President Arroyo stated only the problems encountered by the PCSO. These problems, as stated in each memorandum, included donated medicines sometimes ending up in store for sale, unofficial use of ambulances, rise of expenditures of endowment

fund, lotto sweepstakes scams, fixers for programs of the PCSO, and other fraudulent schemes. No projects were mentioned.

As regards the sixth step – the credit notice, the same was not validly issued by the COA. The credit notice is a settlement or an action made by the COA Auditors and is given once the Chairman, in the case of CIF Fund, finds that the liquidation report and all the supporting papers are in order. In this case, the supporting papers and the liquidation report were not in order, hence, the credit notice should not have been issued. Further, the credit notice has to follow a specific form. The COA Chairman or his representative can: 1) settle the cash advance when everything is in order; 2) suspend the settlement if there are deficiencies and then ask for submission of the deficiencies; or 3) out rightly disallow it in case said cash advances are illegal, irregular or unconscionable, extravagant or excessive. Instead of following this form, the COA issued a document dated January 10, 2011, which stated that there is an irregular use of the price fund and the charity fund for CIF Fund. The document bears an annotation which says, "wait for transmittal, draft" among others. The document was not signed by Plaras, who was the Head of the Confidential and Intelligence Fund Unit under COA Chairman Villar. Instead, she instructed her staff to "please ask Aguas to submit the supplemental budget." This document was not delivered to PCSO General Manager J.M. Roxas. They instead received another letter dated January 13, 2011 which was almost identical to the first document, except it was signed by Plaras, and the finding of the irregular use of the prize fund and the charity fund was omitted. Instead, the work "various" was substituted and then the amount of ₱137,5000,000. Therefore, instead of the earlier finding of irregularity, suddenly, the COA issued a credit notice as regards the total of ₱140,000,000. The credit notice also did not specify that the transaction had been audited, indicating that no audit was made.

A letter dated May 11, 2009 from the COA and signed by Plaras, states that the credit notice is hereby issued. Thus, it is equivalent to the credit notice, although it did not come in the required form. It merely stated that the credit notice is issued for ₱29,700,000, without specifying for which vouchers and for which project the credit notice was being given. It merely says "First Semester of 2008". In other words, it is a "global" credit notice that she issued and it did not state that she made an audit.

Another letter, dated July 14, 2010 and signed by Plaras, supposedly covers all the cash advances in 2009, but only up to the amount of ₱116,386,800. It also did not state that an audit was made.

There were no supporting papers attached to the voucher, and the certification issued is not in conformity with the required certification by COA Circular 2003-002. The certification dated July 24, 2008 by Valencia was not in conformity with the certification required by COA. The required form should specify the project for which the certification was being issued, and file code of the specific project. The certification dated July 24, 2008, however, just specified that it was to certify that the ₱2 million from the 2008 CIF Fund was incurred by the undersigned, in the exercise of his functions as PCSO Chairman for the various projects, projects and activities related to the operation of the office, and there was no specific project or program or file code of the intelligence fund, as required by COA. Furthermore, the certification also did not contain the

last paragraph as required by COA. Instead, the following was stated in the certification: "He further certifies that the details and supporting documents and papers on these highly confidential missions and assignments are in our custody and kept in our confidential file which can be made available if circumstances so demand." No details or supporting documents were reviewed by the witness, and though she personally asked Aguas, the latter said that he did not have the supporting papers, and they were not in the official files of the PCSO. Two people should have custody of the papers, namely, The Chairman of COA and the PCSO or its Special Disbursing Officer. The witness asked Aguas because Valencia was not there, and also because Aguas was the one who made the certification and was in-charge of accounting. The vouchers, supposedly certified by Aguas, as Budget and Accounting Department Manager, each time cash advances were issued, stated that the supporting documents are complete, so the witness went to him to procure the documents.

A certification dated February 13, 2009, stating that ₱2,857,000 was incurred by Valencia in the exercise of his function as PCSO Chairman, related to the operations of his office without the specific intelligence project. In the same document, there is a certification similar to one in the earlier voucher. No details of this certification were submitted by Aguas.

Another certification dated July 24, 2008 was presented, and it also did not specify the intelligence and confidential project, and it did not contain any certification that the amount was disbursed legally or that no benefits was given to any person. Similarly, the fourth paragraph of the same document states that Uriarte certified that details and supporting papers of the cash advance that she made of ₱27,700,000 are "kept in their confidential" (sic). The same were not in the PCSO official records.

The certification dated October 19, 2009 for the amount of ₱2,498,300, was submitted to the witness by Aguas. It also did not conform to the COA requirements, as it also did not specify the use of the cash advance, did not contain any certification that the cash advance was incurred for legal purposes, or that no benefits to other people were paid out of it. Again, no supporting documents were found and none were given by Aguas. Similarly, a certification dated February 8, 2010 for the amount of ₱2,394,654 was presented, and it also does not conform with the COA circular, as it only stated that the amount was spent or incurred by Valencia for projects covering the period of July 1 to December 31, 2009 to exercise his function as PCSO Chairman, thus no particular intelligence fund or project was stated. As in the other certifications, though it was stated that the details were in the confidential file, it appeared that these were not in the possession of PCSO. Another certification dated October 19, 2009 submitted by Uriarte was examined by the witness in the course of her audit, and found that it also did not conform to the requirements, as it only stated that the ₱25 million and P10 million intelligence and confidential fund dated January 29, 2009 and April 27, 2009 were used in the exercise of her function as PCSO Vice Chairman and General Manager.

All the documents were furnished by Aguas during the course of the audit of the financial transactions of PCSO. Other documents given by Aguas include a letter by Valencia to COA Chairman Villar, which was attached to the letter dated July 24, 2008. For the Certification issued by

Valencia for ₱2,857,000, there was also a certification attached dated February 13, 2009. As to Exhibit "J[5]", together with the certification, there was a letter but no other documents were submitted. Similarly, as to Exhibit "M[6]", it was attached to a letter dated October 19, 2009 and was submitted to the witness by Aguas. Exhibit "N[6]" was attached to the letter of Valencia dated February 8, 2010, the October 19, 2009 certification was attached to the October 19, 2009 letter to Chairman Villar.

The certification dated June 29, 2010, signed by Valencia in the amount of ₱2,075,000, also does not conform with the COA requirement as it only specifies that the fund was disbursed by Valencia under his office for various programs in the exercise of his function as Chairman. Though there was a certification that the supporting papers were kept in the office, these papers were not found in the records of the PCSO and Aguas did not have any of the records. The certification was attached to the letter of Valencia to Villar dated June 29, 2010.

In the certification dated June 29, 2010 signed by Uriarte in the amount of ₱137,500,000, the witness also said that the certification did not conform to the COA Circular because it only stated that the amount was disbursed from a special intelligence fund, authorized and approved by the President under the disposition of the Office of the Vice Chairman. Despite the statement certifying that there were documents for the audit, no documents were provided and the same were not in the official files of PCSO . The certification was attached to a letter by Uriarte dated July 1, 2010 addressed to Villar.

In the certification dated October 19, 2009 signed by Uriarte in the amount of ₱2,500,000, the witness made the same finding that it also did not conform to the COA Circular, as it did not specify the project for which the cash advance was obtained and there were also no records in the PCSO. It was attached to the letter dated October 19, 2009.

Finally, in the certification dated February 9, 2010 signed by Uriarte in the amount of ₱73,993,846, the witness likewise found that it did not conform with the requirements of the COA, as all it said was the amount was used for the exercise of the functions of the PCSO Chairman and General Manager. The documents related to this were also not in the PCSO records and Aguas did not submit the same. It was attached to a letter dated February 8, 2010 from Uriarte to Villar.

There are two kinds of audit on disbursements of government funds: pre-audit and post-audit. Both are defined in COA Circular 2009-002. Pre-audit is the examination of documents supporting the transaction, before these are paid for and recorded. The auditor determines whether: (1) the proposed expenditure was in compliance with the appropriate law, specific statutory authority or regulations; (2) sufficient funds are available to enable payment of the claim; (3) the proposed expenditure is not illegal, irregular, extravagant, unconscionable or unnecessary, and (4) the transaction is approved by the proper authority and duly supported by authentic underlying evidence. On the other hand, the post-audit requirement is the process where the COA or the auditor will have to do exactly what was done in the pre-audit, and in addition, the auditor must supplement what she did by tracing the transaction under audit to the books of accounts, and that the transaction is all recorded in the books of accounts. The auditor, in post-audit, also makes the final

determination of whether the transaction was not illegal, irregular, extravagant, excessive, unconscionable or unnecessary.

In this case, no audit was conducted. In a letter dated May 11, 2009 signed by Plaras, it was stated that a credit advice was given. However, the letter did not conform to the requirements or form of a credit notice. Such form was in COA Circular 2003-002, and should specify the liquidation report number, the amount, check numbers, and the action taken by the auditor. The auditor should also include a certification that these have been audited. In this instance, no certification that the transaction was audited was given by Plaras. Other similar letters did not conform with the COA Circular. All transactions of the government must be subject to audit in accordance with the provisions of the Constitution. Nevertheless, the requirements for audit are the same.

The effect of the issuance of the credit notice by the COA was that the agency will take it up in the books and credit the cash advance. This is the seventh step in the flowchart. Once there is a cash advance, the liability of the officers who obtained the cash advance would be recorded in the books. The credit notice, when received, would indicate that the account was settled. The agency will credit the receivable or the cash advance, and remove from the books as a liability of the person liable for the cash advance. The effect of this was that the financial liabilities of Uriarte and Valencia were removed from the books, but they could still be subject to criminal liability based on Sec. 10 of COA Circular 91-368 (Government Accounting and Auditing Manuals, Vol. 1, implementing P.D. 1445), which states: "The settlement of an account whether or not on appeal has been made within the statutory period is no bar to criminal prosecution against persons liable." From the 2008 COA Annual Audited Financial Statements of PCSO, it was seen that the procedure was not followed because the liability of the officers was already credited even before the credit notice was received. In the financial statements, it was stated that the amount due from officers and employees, which should include the cash advances obtained by Uriarte and Valencia, were not included because the amount stated therein was ₱35 million, while the total vouchers of Uriarte and Valencia was ₱86 million.

The witness also related that she traced the records of the CIF fund (since such was no longer stated as a receivable), and reviewed whether it was recorded as an expense in 2008. She found out that the recorded CIF fund expense, as recorded in the corporate operating budget as actually disbursed, was only ₱21,102,000. As such, she confronted her accountants and asked them "Saan tinago itong amount na to?" The personnel in the accounting office said that the balance of the ₱86 million or the additional ₱21 million was not recorded in the operating fund budget because they used the prize fund and charity fund as instructed by Aguas. Journal Entry Voucher No. 8121443 dated December 31, 2008, signed by Elmer Camba, Aguas (Head of the Accounting Department), and Hutch Balleras (one of the staff in the Accounting Department), showed that this procedure was done.

The contents of the Journal Entry Voucher are as follows:

(a) Accounts and Explanation: Due to other funds. This means that the amount of ₱63,750,000 was credited as confidential expense from the operating fund. The amount

was then removed from the operating fund, and it was passed on to other funds.

(b) PF Miscellaneous, Account No. 424-1-L ₱41,250,000 and CF Miscellaneous for 424-2-G for ₱22,500,000. PF Miscellaneous means Prize Fund Miscellaneous and CF stands for Charity Fund Miscellaneous. This means that funds used to release the cash advances to Uriarte and Valencia were from the prize fund and charity.

Attached to the Journal Entry Voucher was a document which reads "Allocation of Confidential and Intelligence Fund Expenses", and was the basis of Camba in doing the Journal Entry Voucher. In the same document, there was a written annotation dated 12-31-2008 which reads that the adjustment of CIF, CF and IF, beneficiary of the fund is CF and PF and signed by Aguas.

The year 2009 was a similar case, as the witness traced the recording of the credit notice at the end of 2009, and despite the absence of the credit notice, the Accounting Department removed from the books of PCSO the liability of Uriarte and Valencia, corresponding to the cash advances obtained in 2009. She based this finding on the COA Annual Audit Report on the PCSO for the year ended December 31, 2009. It was stated in the Audit Report that the total liability due from officers and employees was only ₱87,747,280 and it was less than the total cash advances of Uriarte and Valencia, which was P138 million. As a result, the witness checked the corresponding entry for the expenses in the corporate operating budget and found out that the same was understated. The CIF expenses were only ₱24,968,300, as against the actual amount per vouchers, which was ₱138,420,875. Upon checking with the Accounting Department, the department showed her another Journal Entry Voucher No. 9121157, dated December 29, 2009, where the personnel removed immediately the expense and recorded it as expense for the prize fund and charity fund by the end of December 31.

The contents of the Journal Entry Voucher, especially the notation "due from", means the accountability of those who had cash advance was instead credited. It was removed, and the amount was P106 million. The entry was confidential expense for ₱15,958,020 and then the due to other funds was ₱90,428,780. The explanation for "424" was found in the middle part, stating: "424-1-L" of miscellaneous prize fund was used in the amount of ₱58,502,740 and the charity fund was used in the amount of ₱31,916,040. The total amount of the receivables from Uriarte and Valencia that was removed was ₱106,386,800 and ₱90,428,780 respectively which came from the prize fund and charity fund.

The witness reported the discrepancy because there were violations of R.A. 1169, Sec. 6, which provides for the different funds of PCSO namely: prize fund (55% of the net receipts), charity fund (30% of the net receipts), and operating fund (15%). The proceeds of the lotto and sweepstakes ticket sales provide the money for these different funds, removing first the printing cost and the net proceeds (98%) is divided among the three funds mentioned. The prize fund is the fund set aside to be used to pay the prizes for the winnings in the lotto or sweepstakes draws, whether they are jackpot or consolation prizes. Incentives to the lotto operators or horse owners are also drawn from this fund, as all of the

expenses connected to the winnings of the draw. On the other hand, the charity fund is reserved for charity programs approved by the board of PCSO, and constitutes hospital and medical assistance to individuals, or to help facilities and other charities of national character. Operating expenses are charged to the expenses to operate, personnel services, and MOOE. One kind of fund cannot be used for another kind, as they become a trust fund which should only be used for the purpose for which it was authorized, not even with the approval of the board.

The amounts obtained from the charity fund and prize fund for 2008 was ₱63,750,000, and in 2009 ₱90,428,780. The Board of Directors was given a copy of the COA Audit Reports for years 2008 and 2009. The Board of Directors for both years was composed of: Chairman Valencia, and Board Members Morato, Roquero, Taruc and Valdez. Uriarte was the Vice Chairman of the Board of Directors. The witness did not know whether the Board checked the COA reports, but there was no action on their part, and neither did they question the correctness of the statements. They also had the Audit Committee (which was composed of members of the board) at that time, and one of the duties of the Audit Committee was to verify the balances.

The witness identified the documents referring to the confirmation by the Board of Directors of PCSO of the CIF. Board Resolution No. 217, approved on February 18, 2009, confirms the CIF approved by the President. It did not state which CIF they were approving. They also assigned Uriarte as the Special Disbursing Officer of the CIF, but it did say for what year. The signatories to the same Board Resolution were Valencia, Taruc, Valdes, Uriarte, Roquero and Morato. The same were the witness's findings for Board Resolution No. 2356 S. 2009, approved on December 9, 2009. As for Board Resolution No. 29, S. 2010, approved on January 6, 2010, the Board confirmed the fund approved by the President for 2010, though the approval of the President was only received on August 13, 2010 as shown in the Memorandum dated January 4. In effect, the Board was aware of the requests, and because they ratified the cash advances, they agreed to the act of obtaining the same.

Apart from the President violating LOI 1282, the witness also observed that the President directly dealt with the PCSO, although the President, by Executive Order No. 383 dated November 14, 2004, and Executive Order No. 455 dated August 22, 2005, transferred the direct control and supervision of the PCSO to the Department of Social Welfare and Development (DSWD), and later to the Department of Health (DOH). A project should first be approved by the Supervising and Controlling Secretary of the Secretary of Health; that the President had transferred her direct control and supervision, and lost the same. The witness said her basis was administrative procedure. In this regard, President Aquino now has transferred the control and supervision of the PCSO back to the Office of the President through Executive Order No. 14, S. 2010, dated November 19, 2010.

Uriarte should not have gone directly to the President to ask for the latter's approval for allocation. Nonetheless, the release of the CIF must still be approved by the President.[9]

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[9] *Rollo,* Vol. I, pp. 463-477.

The State also presented evidence consisting in the testimonies of officers coming from different law enforcement agencies[10] to corroborate Tolentino's testimony to the effect that the PCSO had not requested from their respective offices any intelligence operations contrary to the liquidation report submitted by Uriarte and Aguas.

To complete the evidence for the Prosecution, Atty. Anamarie Villaluz Gonzales, Office-in-Charge and Department Manager of the Human Resources of PCSO; Flerida Africa Jimenez, Head of the Intelligence and Confidential Fund Audit Unit of the COA; and Noel Clemente, Director of COA were presented as additional witnesses.

After the Prosecution rested its case, GMA, Aguas, Valencia, Morato, Taruc V, Roquero and Villar separately filed their demurrers to evidence asserting that the Prosecution did not establish a case for plunder against them.

On April 6, 2015, the *Sandiganbayan* granted the demurrers to evidence of Morato, Roquero, Taruc and Villar, and dismissed the charge against them. It held that said accused who were members of the PCSO Board of Directors were not shown to have diverted any PCSO funds to themselves, or to have raided the public treasury by conveying and transferring into their possession and control any money or funds from PCSO account; that as to Villar, there had been no clear showing that his designation of Plaras had been tainted with any criminal design; and that the fact that Plaras had signed "by authority" of Villar as the COA Chairman could not criminally bind him in the absence of any showing of conspiracy.

However, the *Sandiganbayan* denied the demurrers of GMA, Aguas and Valencia, holding that there was sufficient evidence showing that they had conspired to commit plunder; and that the Prosecution had sufficiently established a case of malversation against Valencia, pertinently saying:

> Demurrer to evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. **The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The court then ascertains**

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[10] The following law enforcers testified for the Prosecution, namely: (a) Capt. Ramil Roberto Enriquez, Assistant Chief of Staff for Intelligence of the Philippine Air Force; (b) Col. Teofilo Reyno Bailon, Jr., Assistant Chief of Staff, Air Staff for Intelligence of the Philippine Air Force; (c) Col. Ernest Marc Rosal, Chief Operations and Intelligence Division, Intelligence Service of the Armed Forces of the Philippines; (d) Lt. Col. Vince James de Guzman Bantilan, Chief of the Intelligence and Operations Branch, Office of the Assistant Chief of Staff for Intelligence of the AFP; (e) Col. Orlando Suarez, Chief Operations, Central Divisions, Office of the J12 of the AFP; (f) Ruel Lasala, Deputy Director for Intelligence Services of the NBI; (g) Atty. Reynaldo Ofialda Esmeralda, Deputy Director for Intelligence Services of the NBI; (h) NBI Agents Dave Segunial, Romy Bon Huy Lim, and Palmer Mallari; (i) Virgilio L. Mendez, Director of the NBI; and (j) Charles T. Calima, Jr., Director for Intelligence of the PNP.

whether there is a competent or sufficient evidence to sustain the indictment or to support a verdict of guilt.

x x x x

Sufficient evidence for purposes of frustrating a demurrer thereto is such evidence in character, weight or amount as will legally justify the judicial or official action demanded to accord to circumstances. To be considered sufficient therefore, the evidence must prove (a) the commission of the crime, and (b) the precise degree of participation therein by the accused (*Gutib v. CA,* 110 SCAD 743, 312 SCRA 365 [1999]).

x x x x x x x x x

A. Demurrer filed by Arroyo and Aguas:

It must be remembered that in Our November 5, 2013 Resolution, **We found strong evidence of guilt against Arroyo and Aguas, only as to the second predicate act charged in the Information,** which reads:

> (b) raiding the public treasury by withdrawing and receiving, in several instances, the above-mentioned amount from the Confidential/Intelligence Fund from PCSO's accounts, and/or unlawfully transferring or conveying the same into their possession and control through irregularly issued disbursement vouchers and fictitious expenditures.

In the November 5, 2013 Resolution, We said:

> It should be noted that in both R.A. No. 7080 and the PCGG rules, the enumeration of the possible predicate acts in the commission of plunder did not associate or require the concept of personal gain/benefit or unjust enrichment with respect to raids on the public treasury, as a means to commit plunder. It would, therefore, appear that a "raid on the public treasury" is consummated where all the acts necessary for its execution and accomplishment are present. Thus a "raid on the public treasury" can be said to have been achieved thru 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. x x x**
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> x x x x
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> Clearly, the improper acquisition and illegal use of CIF funds, which is obviously a government asset, will amount to a raid on the public treasury, and therefore fall into the category of ill-gotten wealth.
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> x x x x

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xxx It is not disputed that Uriarte asked for and was granted authority by Arroyo to use additional CIF funds during the period 2008-2010. **Uriarte was able [to] accumulate during that period CIF funds in the total amount of ₱352,681,646.** This was through a series of withdrawals as cash advances of the CIF funds from the PCSO coffers, as evidenced by the disbursement vouchers and checks issued and encashed by her, through her authorized representative.

These flagrant violations of the rules on the use of CIF funds evidently characterize the **series of withdrawals by and releases to Uriarte as "raids" on the PCSO coffers, which is part of the public treasury.** These were, in every sense, "pillage," as **Uriarte looted government funds and appears to have not been able to account for it.** The monies came into her possession and, admittedly, she disbursed it for purposes other than what these were intended for, thus, amounting to "misuse" of the same. Therefore, the additional CIF funds are ill-gotten, as defined by R.A. 7080, the PCGG rules, and *Republic v. Sandiganbayan.* **The encashment of the checks, which named her as the "payee," gave Uriarte material possession of the CIF funds which she disposed of at will.**

As to the determination whether the threshold amount of ₱50 million was met by the prosecution's evidence, the Court believes this to have been established. Even if the computation is limited only to the cash advances/releases made by accused Uriarte alone AFTER Arroyo had approved her requests and the PCSO Board approved CIF budget and the "regular" ₱5 million CIF budget accorded to the PCSO Chairman and Vice Chairman are NOT taken into account, still the total **cash advances through accused Uriarte's series of withdrawals will total ₱189,681,646.** This amount surpasses the ₱50 million threshold.

The evidence shows that for the year 2010 alone, Uriarte asked for ₱150 million additional CIF funds, and Arroyo granted such request and authorized its use. From January 8, 2010 up to June 18, 2010, Uriarte made a series of eleven (11) cash advances in the total amount of ₱138,223,490. **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.

These findings of the Court clearly point out the **commission by Uriarte of the crime of Plunder under the second predicate act charged in the Information. As to Arroyo's participation,** the Court stated in its November 5, 2013 Resolution that:

> The evidence shows that Arroyo approved not only Uriarte's request for additional CIF funds in 2008-2010, but also authorized the latter to use such funds. **Arroyo's "OK" notation and signature on Uriarte's letter-requests signified unqualified approval of Uriarte's request to use the additional CIF funds because the last paragraph of Uriarte's requests uniformly ended with this phrase: "With the use of intelligence fund, PCSO can protect its image and integrity of its operations.**
>
> The letter-request of Uriarte in 2010 was more explicit because it categorically asked for: "The approval on the use of the fifty percent of the PR Fund as PCSO Intelligence Fund will greatly help PCSO in the disbursement of funds to immediately address urgent issues."
>
> Arroyo cannot, therefore, successfully argue that what she approved were only the request for the grant or allocation of additional CIF funds, because **Arroyo's "OK" notation was unqualified and, therefore, covered also the request to use such funds, through releases of the same in favor of Uriarte.** [11]

The *Sandiganbayan* later also denied the respective Motions for Reconsideration of GMA and Aguas, observing that:

> In this case, **to require proof that monies went to a plunderer's bank account or was used to acquire real or personal properties or used for any other purpose to personally benefit the plunderer, is absurd.** Suppose a plunderer had already illegally amassed, acquired or accumulated ₱50 Million or more of government funds and just decided to keep it in his vault and never used such funds for any purpose to benefit him, would that not be plunder? Or, if immediately right after such amassing, the monies went up in flames or recovered by the police, negating any opportunity for the person to actually benefit, would that not still be plunder? Surely, in such cases, a plunder charge could still prosper and the argument that the fact of personal benefit should still be evidence-based must fail.
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> Also, accused Arroyo insists that there was no proof of the fact of amassing the ill-gotten wealth, and that the "overt act" of approving the disbursement is not the "overt act" contemplated by law. She further stresses that there was no proof of conspiracy between accused Arroyo and her co-accused and that the Prosecution was unable to prove their case against accused Arroyo. **What accused Arroyo forgets is that although she did not actually commit any "overt act" of illegally amassing CIF**

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[11] *Rollo*, pp. 159-161.

> **funds, her act of approving not only the additional CIF funds but also their releases, aided and abetted accused Uriarte's successful raids on the public treasury.** Accused Arroyo is therefore rightly charged as a co-conspirator of Uriarte who accumulated the CIF funds. **Moreover, the performance of an overt act is not indispensable when a conspirator is the mastermind.**[12]

Considering that the *Sandiganbayan* denied the demurrers to evidence of GMA and Aguas, they have come to the Court on *certiorari* to assail and set aside said denial, claiming that the denial was with grave abuse of discretion amounting to lack or excess of jurisdiction.

Issues

GMA pleads that the denial of her demurrer to evidence was in patent and flagrant violation of Republic Act No. 7080, the law on plunder, and was consequently arbitrary and oppressive, not only in grave abuse of discretion but rendered without jurisdiction because:

First Ground

> **On the basis of the above Resolutions, the Sandiganbayan has denied petitioner Arroyo's Demurrer to Evidence and considering the reasons for doing so, would find petitioner Arroyo guilty of the offense of plunder under Republic Act No. 7080 as charged in the Information notwithstanding the following:**
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> a. **While the gravamen, indeed *corpus delicti* of the offense of plunder under R.A. No. 7080, and as charged in the Information, is that the public officer ... "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)", the Sandiganbayan Resolutions extirpate this vital element of the offense of plunder;**
>
> b. **In point of fact, not a single exhibit of the 637 exhibits offered by the prosecution nor a single testimony of the 21 witnesses of the prosecution was offered by the prosecution to prove that petitioner amassed, accumulated or acquired even a single peso of the alleged ill-gotten wealth amounting to ₱365,997,915.00 or any part of that amount alleged in the Information;**
>
> c. **Implicitly confirming the above, and aggravating its error, on the basis solely of petitioner Arroyo's authorization of the release of the Confidential/Intelligence Fund from PCSO's accounts, the Sandiganbayan ruled that she has committed the offense of plunder under R.A. No. 7080 for the reason that her release of CIF funds to the PCSO amount to a violation of Sec. 1(d) [1] of R.A. No. 7080 which reads, as follows:**

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[12] *Rollo*, G.R. No. 220598, Vol. I, pp. 204-205.

> 1) Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;
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> which, "did not associate or require the concept of personal gain/benefit or unjust enrichment with respect to raids on the public treasury", thereby disregarding the gravamen or the *corpus delicti* of the offense of plunder under R.A. No. 7080.

Second Ground

Worsening the above error of the Sandiganbayan, the Resolutions, with absolutely no justification in law or in the evidence, purportedly as the "mastermind" of a conspiracy, and without performing any overt act, would impute to petitioner Arroyo the "series of withdrawals as cash advances of the CIF funds from the PCSO coffers" by Uriarte as "raids on the PCSO coffers, which is part of the public treasury" and "in every sense, 'pillage' as Uriarte looted government funds and appears to have not been able to account for it". Parenthetically, Uriarte has not been arrested, was not arraigned and did not participate in the trial of the case.

Third Ground

That as an obvious consequence of the above, denial of petitioner Arroyo's Demurrer To Evidence for the reasons stated in the Sandiganbayan Resolutions, amounting no less to convicting her on the basis of a disjointed reading of the crime of plunder as defined in R.A. No. 7080, aggravated by the extirpation in the process of its "*corpus delicti*" – the amassing, accumulation or acquisition of ill-gotten wealth, hence, of a crime that does not exist in law and consequently a blatant deprivation of liberty without due process of law.

Fourth Ground

The Information alleges that the ten (10) persons accused in Crim. Case No. SB-12-CRM-0174, namely: Gloria Macapagal-Arroyo, Rosario C. Uriarte, Sergio O. Valencia, Manuel L. Morato, Jose R. Tarue V, Raymundo T. Roquero, [M]a. Fatima A.S. Valdes, Benigno B. Aguas, Reynaldo A. Villar and Nilda B. Plaras" ... 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 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 ..." or each of them, ₱36,599,791.50 which would not qualify the offense charged as "plunder" under R.A. No. 7080 against all ten (10) accused together, for which reason the Information does not charge the offense of

plunder and, as a consequence, all proceedings thereafter held under the Information are void.[13]

On his part, Aguas contends that:

A. In light of the factual setting described above and the evidence offered and admitted, does proof beyond reasonable doubt exist to warrant a holding that Prosecution proved the guilt of the accused such that there is legal reason to deny Petitioner's Demurrer?

B. Did the Prosecution's offered evidence squarely and properly support the allegations in the Information?

PETITIONER STRONGLY SUBMITS THAT PROSECUTION FAILED TO ESTABLISH BY PROOF BEYOND REASONABLE DOUBT THE EXISTENCE OF THE CORE ELEMENTS OF THE CRIME OF PLUNDER. [14]

On the other hand, the Prosecution insists that the petitions for *certiorari* should be dismissed upon the following grounds, namely:

A. CERTIORARI IS NOT THE PROPER REMEDY FROM AN ORDER OR RESOLUTION DENYING DEMURRER TO EVIDENCE.

B. THERE IS NO GRAVE ABUSE OF DISCRETION BECAUSE THE SANDIGANBAYAN MERELY INTERPRETED WHAT CONSTITUTES PLUNDER UNDER LAW AND JURISPRUDENCE IN LIGHT OF FACTS OF THE CASE. IT DID NOT JUDICIALLY LEGISLATE A "NEW" OFFENSE.

1. ACTUAL PERSONAL GAIN, BENEFIT OR ENRICHMENT IS NOT AN ELEMENT OF PLUNDER UNDER R.A. NO. 7080.

2. EVIDENCE SHOWS THAT ARROYO, BY INDISPENSABLE COOPERATION, CONSPIRED WITH HER CO-ACCUSED AND PARTICIPATED IN THE COMPLEX, ILLEGAL SCHEME WHICH DEFRAUDED PCSO IN HUNDREDS OF MILLIONS OF PESOS, WHICH CONSTITUTES PLUNDER.

3. ARROYO IS NOT SIMILARLY SITUATED WITH ACCUSED PCSO BOARD MEMBERS AND CANNOT THUS DEMAND THAT THE SANDIGANBAYAN DISMISS THE PLUNDER CASE AGAINST HER.

C. ARROYO'S BELATED, COLLATERAL ATTACK ON THE INFORMATION CHARGING HER AND CO-ACCUSED FOR

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[13] *Rollo*, G.R. No. 220598, Vol. I, pp. 51-54.
[14] *Rollo*, G.R. No. 220953, Vol. I, p. 15.

PLUNDER IS HIGHLY IMPROPER, ESPECIALLY AT THIS LATE STAGE OF THE PROCEEDING.

1. **THE FACTS CONSTITUTING THE OFFENSE ARE CLEARLY ALLEGED IN THE INFORMATION.**

2. **ARROYO'S ACTIVE PARTICIPATION IN THE PROCEEDINGS ARISING FROM OR RELATING TO SB-12-CRM-0174 PROVES THAT SHE HAS ALWAYS KNOWN AND UNDERSTOOD THE NATURE AND SCOPE OF THE ACCUSATIONS AGAINST HER.**

D. ARROYO IS NOT ENTITLED TO A TEMPORARY RESTRAINING ORDER BECAUSE THE CRIMINAL PROSECUTION IN SB-12-CRM-0174 CANNOT BE ENJOINED.[15]

Based on the submissions of the parties, the Court synthesizes the decisive issues to be considered and resolved, as follows:

Procedural Issue:

1. Whether or not the special civil action for *certiorari* is proper to assail the denial of the demurrers to evidence.

Substantive Issues:

1. Whether or not the State sufficiently established the existence of conspiracy among GMA, Aguas, and Uriarte;

2. Whether or not the State sufficiently established all the elements of the crime of plunder:

   a. Was there evidence of amassing, accumulating or acquiring ill-gotten wealth in the total amount of not less than ₱50,000,000.00?

   b. Was the predicate act of raiding the public treasury alleged in the information proved by the Prosecution?

Ruling of the Court

The consolidated petitions for *certiorari* are meritorious.

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[15] *Rollo*, G.R. No. 220598, Vol. II, pp. 1016-1017.

I.
The Court cannot be deprived of its jurisdiction to correct grave abuse of discretion

The Prosecution insists that the petition for *certiorari* of GMA was improper to challenge the denial of her demurrer to evidence; that she also thereby failed to show that there was grave abuse of discretion on the part of the *Sandiganbayan* in denying her demurrer to evidence; and that, on the contrary, the *Sandiganbayan* only interpreted what constituted plunder under the law and jurisprudence in light of the established facts, and did not legislate a new offense, by extensively discussing how she had connived with her co-accused to commit plunder.[16]

The Court holds that it should take cognizance of the petitions for *certiorari* because the *Sandiganbayan*, as shall shortly be demonstrated, gravely abused its discretion amounting to lack or excess of jurisdiction.

The special civil action for *certiorari* is generally not proper to assail such an interlocutory order issued by the trial court because of the availability of another remedy in the ordinary course of law.[17] Moreover, Section 23, Rule 119 of the *Rules of Court* expressly provides that "the order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by *certiorari* before judgment." It is not an insuperable obstacle to this action, however, that the denial of the demurrers to evidence of the petitioners was an interlocutory order that did not terminate the proceedings, and the proper recourse of the demurring accused was to go to trial, and that in case of their conviction they may then appeal the conviction, and assign the denial as among the errors to be reviewed.[18] Indeed, it is doctrinal that the situations in which the writ of *certiorari* may issue should not be limited,[19] because to do so –

> x x x would be to destroy its comprehensiveness and usefulness. So wide is the discretion of the court that authority is not wanting to show that *certiorari* is more discretionary than either prohibition or *mandamus*. **In the exercise of our superintending control over other courts, we are to be guided by all the circumstances of each particular case 'as the ends of justice may require.' So it is that the writ will be granted where necessary to prevent a substantial wrong or to do substantial justice.**[20]

The Constitution itself has imposed upon the Court and the other courts of justice the duty to correct errors of jurisdiction as a result of

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16 *Rollo,* Vol. I, p. 1628.
17 *Tadeo v. People*, G.R. No. 129774, December 29, 1998, 300 SCRA 744.
18 *Alarilla v. Sandiganbayan*, G.R. No. 136806, August 22, 2000, 338 SCRA 485, 495.
19 *Ong v. People*, G.R. No. 140904, October 9, 2000, 342 SCRA 372, 387.
20 Id.

capricious, arbitrary, whimsical and despotic exercise of discretion by expressly incorporating in Section 1 of Article VIII the following provision:

> Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

The exercise of this power to correct grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government cannot be thwarted by rules of procedure to the contrary or for the sake of the convenience of one side. This is because the Court has the bounden constitutional duty to strike down grave abuse of discretion *whenever* and *wherever* it is committed. Thus, notwithstanding the interlocutory character and effect of the denial of the demurrers to evidence, the petitioners as the accused could avail themselves of the remedy of *certiorari* when the denial was tainted with grave abuse of discretion.[21] As we shall soon show, the *Sandiganbayan* as the trial court was guilty of grave abuse of discretion when it capriciously denied the demurrers to evidence despite the absence of competent and sufficient evidence to sustain the indictment for plunder, and despite the absence of the factual bases to expect a guilty verdict.[22]

II.
The Prosecution did not properly allege and prove the existence of conspiracy among GMA, Aguas and Uriarte

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony, and decide to commit it.[23] In this jurisdiction, conspiracy is either a crime in itself or a mere means to commit a crime.

As a rule, conspiracy is not a crime unless the law considers it a crime, and prescribes a penalty for it.[24] The exception is exemplified in Article 115 (*conspiracy and proposal to commit treason*), Article 136 (*conspiracy and proposal to commit coup d'etat, rebellion or insurrection*) and Article 141 (*conspiracy to commit sedition*) of the *Revised Penal Code*. When conspiracy is a means to commit a crime, it is indispensable that the

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21 *Cruz v. People*, G.R. No. 121422, February 23, 1999, 303 SCRA 533.
22 *Gutib v. Court of Appeals*, G.R. No. 131209, August 13, 1999, 312 SCRA 365, 377.
23 Article 8, *Revised Penal Code*.
24 *Estrada v. Sandiganbayan*, G.R. No. 148965, February 26, 2002, 377 SCRA 538, 557.

agreement to commit the crime among all the conspirators, or their community of criminal design must be alleged and competently shown.

We also stress that the community of design to commit an offense must be a conscious one.[25] Conspiracy transcends mere companionship, and mere presence at the scene of the crime does not in itself amount to conspiracy. Even knowledge of, or acquiescence in, or agreement to cooperate is not enough to constitute one a party to a conspiracy, absent any active participation in the commission of the crime with a view to the furtherance of the common design and purpose.[26] Hence, conspiracy must be established, not by conjecture, but by positive and conclusive evidence.

In terms of proving its existence, conspiracy takes two forms. The first is the express form, which requires proof of an actual agreement among all the co-conspirators to commit the crime. However, conspiracies are not always shown to have been expressly agreed upon. Thus, we have the second form, the implied conspiracy. An implied conspiracy exists when two or more persons are shown to have aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, were in fact connected and cooperative, indicating closeness of personal association and a concurrence of sentiment.[27] Implied conspiracy is proved through the mode and manner of the commission of the offense, or from the acts of the accused before, during and after the commission of the crime indubitably pointing to a joint purpose, a concert of action and a community of interest.[28]

But to be considered a part of the conspiracy, each of the accused must be shown to have performed at least an overt act in pursuance or in furtherance of the conspiracy, for without being shown to do so none of them will be liable as a co-conspirator, and each may only be held responsible for the results of his own acts. In this connection, the character of the *overt act* has been explained in *People v. Lizada*:[29]

> An overt or external act is defined as some physical activity or deed, indicating the intention to commit a particular crime, more than a mere planning or preparation, which if carried out to its complete termination following its natural course, without being frustrated by external obstacles nor by the spontaneous desistance of the perpetrator, will logically and necessarily ripen into a concrete offense. **The *raison d'etre* for the law requiring a direct overt act is that, in a majority of cases, the conduct of the accused consisting merely of acts of preparation has never ceased to be equivocal; and this is necessarily so, irrespective of his declared intent. It is that quality of being**

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25 *Bahilidad v. People*, G.R. No. 185195, March 17, 2010, 615 SCRA 597, 606.
26 Id. at 686.
27 *People v. De Leon*, G.R. No. 179943, June 26, 2009, 591 SCRA 178, 194-195.
28 *People v. Del Castillo*, G.R. No. 169084, January 18, 2012, 663 SCRA 226, 246.
29 G.R. No. 143468-71, January 24, 2003, 396 SCRA 62, 94-95.

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> **equivocal that must be lacking before the act becomes one which may be said to be a commencement of the commission of the crime, or an overt act or before any fragment of the crime itself has been committed, and this is so for the reason that so long as the equivocal quality remains, no one can say with certainty what the intent of the accused is.** It is necessary that the overt act should have been the ultimate step towards the consummation of the design. It is sufficient if it was the "first or some subsequent step in a direct movement towards the commission of the offense after the preparations are made." **The act done need not constitute the last proximate one for completion. It is necessary, however, that the attempt must have a causal relation to the intended crime. In the words of Viada, the overt acts must have an immediate and necessary relation to the offense.** (Bold underscoring supplied for emphasis)

In her case, GMA points out that all that the State showed was her having affixed her unqualified "OK" on the requests for the additional CIFs by Uriarte. She argues that such act was not even an overt act of plunder because it had no immediate and necessary relation to plunder by virtue of her approval not being *per se* illegal or irregular. However, the *Sandiganbayan*, in denying the Motions for Reconsideration of GMA and Aguas *vis-à-vis* the denial of the demurrers, observed that:

> xxxx accused Arroyo insists that there was no proof of the fact of amassing the ill-gotten wealth, and that the "overt act" of approving the disbursement is not the "overt act" contemplated by law. She further stresses that there was no proof of conspiracy between accused Arroyo and her co-accused and that the Prosecution was unable to prove their case against accused Arroyo. What accused Arroyo forgets is that although she did not actually commit any "overt act" of illegally amassing CIF funds, her act of approving not only the additional CIF funds but also their releases, aided and abetted accused Uriarte's successful raids on the public treasury. Accused Arroyo is therefore rightly charged as a co-conspirator of Uriarte who accumulated the CIF funds. Moreover, the performance of an overt act is not indispensable when a conspirator is the mastermind.[30]

It is in this regard that the *Sandigabayan* gravely abused its discretion amounting to lack or excess of its jurisdiction. To start with, its conclusion that GMA had been the mastermind of plunder was plainly conjectural and outrightly unfounded considering that the information did not aver *at all* that she had been the mastermind; hence, the *Sandigabayan* thereby acted capriciously and arbitrarily. In the second place, the treatment by the *Sandiganbayan* of her handwritten unqualified "OK" as an overt act of plunder was absolutely unwarranted considering that such act was a common legal and valid practice of signifying approval of a fund release by the President. Indeed, pursuant to *People v. Lizada*, *supra*, an act or conduct becomes an overt act of a crime only when it evinces a *causal relation* to the

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[30] Supra note 12.

intended crime because the act or conduct will not be an overt act of the crime if it does not have an immediate and necessary relation to the offense.

In *Estrada v. Sandiganbayan*,[31] the Court recognized two nuances of appreciating conspiracy as a means to commit a crime, the *wheel conspiracy* and the *chain conspiracy*.

The wheel conspiracy occurs when there is a single person or group (the hub) dealing individually with two or more other persons or groups (the spokes). The spoke typically interacts with the hub rather than with another spoke. In the event that the spoke shares a common purpose to succeed, there is a single conspiracy. However, in the instances when each spoke is unconcerned with the success of the other spokes, there are multiple conspiracies.[32]

An illustration of wheel conspiracy wherein there is only one conspiracy involved was the conspiracy alleged in the information for plunder filed against former President Estrada and his co-conspirators. Former President Estrada was the hub while the spokes were all the other accused individuals. The rim that enclosed the spokes was the common goal in the overall conspiracy, *i.e.,* the amassing, accumulation and acquisition of ill-gotten wealth.

On the other hand, the American case of *Kotteakos v. United States*[33] illustrates a wheel conspiracy where multiple conspiracies were established instead of one single conspiracy. There, Simon Brown, the hub, assisted 31 independent individuals to obtain separate fraudulent loans from the US Government. Although all the defendants were engaged in the same type of illegal activity, there was no common purpose or overall plan among them, and they were not liable for involvement in a single conspiracy. Each loan was an end in itself, separate from all others, although all were alike in having similar illegal objects. Except for Brown, the common figure, no conspirator was interested in whether any loan except his own went through. Thus, the US Supreme Court concluded that there existed 32 separate conspiracies involving Brown rather than one common conspiracy.[34]

The chain conspiracy recognized in *Estrada v. Sandiganbayan* exists when there is successive communication and cooperation in much the same way as with legitimate business operations between manufacturer and wholesaler, then wholesaler and retailer, and then retailer and consumer.[35]

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[31] G.R. No. 148965, February 26, 2002, 377 SCRA 538, 556.

[32] *Contemporary Criminal Law. Concepts, Cases, and Controversies*. Third Ed., Lippman, M. R., Sage Publication, California, USA, 2013, p. 195.

[33] 328 U.S. 750 (1946).

[34] Supra note 32.

[35] Supra note 31.

This involves individuals linked together in a vertical chain to achieve a criminal objective.[36] Illustrative of chain conspiracy was that involved in *United States v. Bruno*,[37] of the US Court of Appeals for the Second Circuit. There, 88 defendants were indicted for a conspiracy to import, sell, and possess narcotics. This case involved several smugglers who had brought narcotics to retailers who, in turn, had sold the narcotics to operatives in Texas and Louisiana for distribution to addicts. The US Court of Appeals for the Second Circuit ruled that what transpired was a single chain conspiracy in which the smugglers knew that the middlemen must sell to retailers for distribution to addicts, and the retailers knew that the middle men must purchase drugs from smugglers. As reasoned by the court, "the conspirators at one end of the chain knew that the unlawful business would not and could not, stop with their buyers; and those at the other end knew that it had not begun with their sellers." Each conspirator knew that "the success of that part with which he was immediately concerned was dependent upon success of the whole." This means, therefore, that "every member of the conspiracy was liable for every illegal transaction carried out by other members of the conspiracy in Texas and in Louisiana."[38]

Once the State proved the conspiracy as a means to commit a crime, each co-conspirator is as criminally liable as the others, for the act of one is the act of all. A co-conspirator does not have to participate in every detail of the execution; neither does he have to know the exact part performed by the co-conspirator in the execution of the criminal act.[39] Otherwise, the criminal liability of each accused is individual and independent.

The Prosecution insisted that a conspiracy existed among GMA, Uriarte, Valencia and the Members of the PCSO Board of Directors, Aguas, Villar and Plaras. The *Sandiganbayan* agreed with the Prosecution as to the conspirators involved, declaring that GMA, Aguas, and Uriarte had conspired and committed plunder.

A review of the records of the case compels us to reject the *Sandiganbayan*'s declaration in light of the information filed against the petitioners, and the foregoing exposition on the nature, forms and extent of conspiracy. On the contrary, the Prosecution did not sufficiently allege the existence of a conspiracy among GMA, Aguas and Uriarte.

A perusal of the information suggests that what the Prosecution sought to show was an implied conspiracy to commit plunder among all of the accused on the basis of their collective actions prior to, during and after the implied agreement. It is notable that the Prosecution did not allege that

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36 *Supra* note 32.
37 105 F.2d 921 (2d Cir. 1939).
38 *Supra* note 32.
39 *People v. Del Castillo*, G.R. No. 169084, January 18, 2012, 663 SCRA 226, 247.

the conspiracy among all of the accused was by express agreement, or was a wheel conspiracy or a chain conspiracy.

This was another fatal flaw of the Prosecution.

In its present version, under which the petitioners were charged, Section 2 of Republic Act No. 7080 (Plunder Law) states:

> Section 2. *Definition of the Crime of Plunder; Penalties.* - Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt criminal acts as described in Section 1 (d) hereof in the aggregate amount or total value of at least Fifty million pesos (₱50,000,000.00) shall be guilty of the crime of plunder and shall be punished by *reclusion perpetua* to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State. [As Amended by Section 12, Republic Act No. 7659 (The Death Penalty Law)]

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

> Section 1. *Definition of terms.* - As used in this Act, the term:
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> x x x x
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> d. "*Ill-gotten wealth*" means any asset, property, business enterprise or material possession of any person within the purview of Section two (2) hereof, acquired by him directly or indirectly through dummies, nominees, agents, subordinates and/or business associates by any combination or series of the following means or similar schemes:
>
> 1. Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;
>
> 2. By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned;
>
> 3. By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities or government-owned or controlled corporations and their subsidiaries;

> 4. By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;
>
> 5. By establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or
>
> 6. By taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

The law on plunder requires that a particular public officer must be identified as the one who amassed, acquired or accumulated ill-gotten wealth because it plainly states that plunder is committed by any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth in the aggregate amount or total value of at least ₱50,000,000.00 through a *combination* or *series* of overt criminal acts as described in Section 1(d) hereof. Surely, the law requires in the criminal charge for plunder against several individuals that there must be a main plunderer and her co-conspirators, who may be members of her family, relatives by affinity or consanguinity, business associates, subordinates or other persons. In other words, the allegation of the wheel conspiracy or express conspiracy in the information was appropriate because the main plunderer would then be identified in either manner. Of course, implied conspiracy could also identify the main plunderer, but that fact must be properly alleged and duly proven by the Prosecution.

This interpretation is supported by *Estrada v. Sandiganbayan*,[40] 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

[40] Supra note 31, at 555-556.

> misappropriated a portion of the tobacco excise tax, that each accused ordered the GSIS and SSS to purchase shares of Belle Corporation and receive commissions from such sale, nor that each unjustly enriched himself from commissions, gifts and kickbacks; rather, it **is that each of them, by their individual acts, agreed to participate, directly or indirectly, in the amassing, accumulation and acquisition of ill-gotten wealth of and/or for former President Estrada**. [bold underscoring supplied for emphasis]

Here, considering that 10 persons have been accused of amassing, accumulating and/or acquiring ill-gotten wealth aggregating ₱365,997,915.00, it would be improbable that the crime charged was plunder if none of them was alleged to be the main plunderer. As such, each of the 10 accused would account for the aliquot amount of only ₱36,599,791.50, or exactly 1/10 of the alleged aggregate ill-gotten wealth, which is far below the threshold value of ill-gotten wealth required for plunder.

We are not unmindful of the holding in *Estrada v. Sandiganabayan*[41] to the effect that an information alleging conspiracy is sufficient if the information alleges conspiracy either: (1) with the use of the word *conspire*, or its derivatives or synonyms, such as *confederate*, *connive*, *collude*, *etc*; or (2) by allegations of the basic facts constituting the conspiracy in a manner that a person of common understanding would know what is being conveyed, and with such precision as would enable the accused to competently enter a plea to a subsequent indictment based on the same facts. We are not talking about the sufficiency of the information as to the allegation of conspiracy, however, but rather the identification of the main plunderer sought to be prosecuted under R.A. No. 7080 as an element of the crime of plunder. Such identification of the main plunderer was not only necessary because the law required such identification, but also because it was essential in safeguarding the rights of all of the accused to be properly informed of the charges they were being made answerable for. The main purpose of requiring the various elements of the crime charged to be set out in the information is to enable all the accused to suitably prepare their defense because they are presumed to have no independent knowledge of the facts that constituted the offense charged.[42]

For sure, even the *Sandiganbayan* was at a loss in this respect. Despite the silence of the information on who the main plunderer or the mastermind was, the *Sandiganbayan* readily condemned GMA in its resolution dated September 10, 2015 as the mastermind despite the absence of the specific allegation in the information to that effect. Even worse, there was no evidence that substantiated such sweeping generalization.

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[41] Id. at 565.

[42] *Andaya v. People*, G.R. No. 168486, June 27, 2006, 493 SCRA 539, 558.

In fine, the Prosecution's failure to properly allege the main plunderer should be fatal to the cause of the State against the petitioners for violating the rights of each accused to be informed of the charges against each of them.

Nevertheless, the Prosecution insists that GMA, Uriarte and Aguas committed acts showing the existence of an implied conspiracy among themselves, thereby making all of them the main plunderers. On this score, the Prosecution points out that the sole overt act of GMA to become a part of the conspiracy was her approval *via* the marginal note of "OK" of all the requests made by Uriarte for the use of additional intelligence fund. The Prosecution stresses that by approving Uriarte's requests in that manner, GMA violated the following:

a. Letter of Instruction 1282, which required requests for additional confidential and intelligence funds (CIFs) to be accompanied with detailed, specific project proposals and specifications; and

b. COA Circular No. 92-385, which allowed the President to approve the release of additional CIFs only if there was an existing budget to cover the request.

The insistence of the Prosecution is unwarranted. GMA's approval of Uriarte's requests for additional CIFs did not make her part of *any* design to raid the public treasury as the means to amass, accumulate and acquire ill-gotten wealth. Absent the specific allegation in the information to that effect, and competent proof thereon, GMA's approval of Uriarte's requests, even if unqualified, could not make her part of any criminal conspiracy to commit plunder or any other crime considering that her approval was not *by any means* irregular or illegal.

The Prosecution takes GMA to task for approving Uriarte's request despite the requests failing to provide "the full detail [of] 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." It posits that the requests were not specific enough, contrary to what is required by LOI 1282.

LOI 1282 reads:

LETTER OF INSTRUCTION NO. 1282

To: All Ministries and Offices Concerned

> In recent years intelligence funds appropriated for the various ministries and certain offices have been, as reports reaching me indicate, spent with less than full regard for secrecy and prudence. On the one hand, there have been far too many leakages of information on expenditures of said funds; and on the other hand, where secrecy has been observed, the President himself was often left unaware of how these funds had been utilized.
>
> Effective immediately, all requests for the allocation or release of intelligence funds shall indicate in full detail the specific purposes for which said funds shall be spent and shall explain the circumstances giving rise to the necessity for the expenditure and the particular aims to be accomplished.
>
> The requests and the detailed explanations shall be submitted to the President personally.
>
> It is imperative that such detailed presentations be made to the President in order to avoid such duplication of expenditures as has taken place in the past because of the lack of centralized planning and organized disposition of intelligence funds.
>
> Full compliance herewith is desired.
>
> Manila, January 12, 1983.
>
> (Sgd.) FERDINAND E. MARCOS
> President of the Philippines

However, an examination of Uriarte's several requests indicates their compliance with LOI No. 1282. The requests, similarly worded, furnished: (a) the full details of the specific purposes for which the funds would be spent; (b) the explanations of the circumstances giving rise to the necessity of the expenditure; and (c) the particular aims to be accomplished.

The specific purposes and circumstances for the necessity of the expenditures were laid down as follows:

> In dispensing its mandate, PCSO has been constantly encountering a number of fraudulent schemes and nefarious activities on a continuing basis which affect the integrity of our operations, to wit:
>
> 1. Donated medicines sometimes end up in drug stores for sale even if they were labeled "*Donated by PCSO – Not for Sale*";
>
> 2. Unwarranted or unofficial use of ambulances by beneficiary-donees;
>
> 3. Unauthorized expenditures of endowment fund for charity patients and organizations;

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

5. Fixers for the different programs of PCSO such as Ambulance Donation Project, Endowment Fund Program and Individual Medical Assistance Program;

6. Other fraudulent schemes and activities which put the PCSO in bad light.[43]

A reading of the requests also reveals that the additional CIFs requested were to be used to protect PCSO's image and the integrity of its operations. The Court thus cannot share the Prosecution's dismissiveness of the requests for not being compliant with LOI No. 1282. According to its terms, LOI No. 1282 did not detail any qualification as to how specific the requests should be made. Hence, we should not make any other pronouncement than to rule that Uriarte's requests were compliant with LOI No. 1282.

COA Circular No. 92-385 required that additional request for CIFs would be approved only when there was available budget. In this regard, the Prosecution suggests that there was no longer any budget when GMA approved Uriarte's requests because the budget had earmarked intelligence funds that had already been *maxed out and used.* The suggestion is not acceptable, however, considering that the funds of the PCSO were co-mingled into one account as early as 2007. Consequently, although only 15% of PCSO's revenues was appropriated to an operation fund from which the CIF could be sourced, the remaining 85% of PCSO's revenues, already co-mingled with the operating fund, could still sustain the additional requests. In short, there was available budget from which to draw the additional requests for CIFs.

It is notable that the COA, although frowning upon PCSO's co-mingling of funds, did not rule such co-mingling as illegal. As such, sourcing the requested additional CIFs from one account was far from illegal.

Lastly, the Prosecution's effort to show irregularities as badges of bad faith has led it to claim that GMA had known that Uriarte would raid the public treasury, and would misuse the amounts disbursed. This knowledge was imputed to GMA by virtue of her power of control over PCSO.

The Prosecution seems to be relying on the doctrine of command responsibility to impute the actions of subordinate officers to GMA as the

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[43] *Rollo,* Vol. II, p. 990.

superior officer. The reliance is misplaced, for incriminating GMA under those terms was legally unacceptable and incomprehensible. The application of the doctrine of command responsibility is limited, and cannot be true for all litigations. The Court ruled in *Rodriguez v. Macapagal-Arroyo*[44] that command responsibility pertains to the responsibility of commanders for crimes committed by subordinate members of the armed forces or other persons subject to their control in international wars or domestic conflict. The doctrine has also found application in civil actions for human rights abuses. But this case involves neither a probe of GMA's actions as the Commander-in-Chief of the Armed Forces of the Philippines, nor of a human rights issue. As such, it is legally improper to impute the actions of Uriarte to GMA in the absence of any conspiracy between them.

On the part of Aguas, the *Sandiganbayan* pronounced him to be as much a member of the implied conspiracy as GMA was, and detailed his participation in this manner:

> In all of the disbursement vouchers covering the cash advances/releases to Uriarte of the CIF funds, Aguas certified that:
>
> > CERTIFIED: Adequate available funds/budgetary allotment in the amount of ₱_____; expenditure properly certified; supported by documents marked (X) per checklist and back hereof; account codes proper; previous cash advance liquidated/accounted for.
>
> These certifications, after close scrutiny, were not true because: 1.) there were no documents which lent support to the cash advances on a per project basis. The particulars of payment simply read: "To draw cash advance form the CIF Fund of the Office of the Vice-Chairman and General Manager". No particular purpose or project was specified contrary to the requirement under COA Circular 2003-002 that cash advances must be on a per project basis. Without specifics on the project covered by each cash advance. Aguas could not certify that supporting documents existed simply because he would not know what project was being funded by the cash advances; and 2.) There were no previous liquidations made of prior cash advances when Aguas made the certifications. COA circular 2003-002 required that cash advances be liquidated within one (1) month from the date the purpose of the cash advance was accomplished. If the completion of the projects mentioned were for more than one month, a monthly progress liquidation report was necessary. In the case of Uriarte's cash advances certified to by Aguas, the liquidation made was wholesale, i.e. these were done on a semi-annual basis without a monthly liquidation or at least a monthly liquidation progress report. How then could Aguas correctly certify that previous liquidations were accounted for? Aguas's certification also violated Sec. 89 of P.D. 1445 which states:
>
> > 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

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[44] G.R. No. 191805, November 15, 2011, 660 SCRA 84.

> additional cash advance shall be allowed to any official or employee unless the previous cash advance given to him is first settled or a proper accounting thereof is made.
>
> There is a great presumption of guilt against Aguas, as his action aided and abetted Uriarte's being able to draw these irregular CIF funds in contravention of the rules on CIF funds. Without Aguas's certification, the disbursement vouchers could not have been processed for payment. Accordingly, the certification that there were supporting documents and prior liquidation paved the way for Uriarte to acquire ill-gotten wealth by raiding the public coffers of the PCSO.
>
> By just taking cognizance of the series and number of cash advances and the staggering amounts involved, Aguas should have been alerted that something was greatly amiss and that Uriarte was up to something. If Aguas was not into the scheme, it would have been easy for him to refuse to sign the certification, but he did not. The conspiracy "gravamen" is therefore present in the case of Aguas. Moreover, Aguas's attempt to cover-up Uriarte's misuse of these CIF funds in his accomplishment report only contributed to unmasking the actual activities for which these funds were utilized. Aguas's accomplishment report, which was conformed to by Uriarte, made it self-evidence that the bulk of the CIF funds in 2009 and 2010 were allegedly spend for non-PCSO related activities, e.g. bomb threats, kidnapping, terrorism, and others.[45]

Thus, the *Sandiganbayan* concluded that Aguas became a part of the implied conspiracy when he signed the disbursement vouchers despite the absence of certain legal requirements, and issued certain certifications to the effect that the budgetary allotment/funds for cash advance to be withdrawn were available; that the expenditures were supported by documents; and that the previous cash advances had been liquidated or accounted for.

We opine and declare, however, that Aguas' certifications and signatures on the disbursement vouchers were insufficient bases to conclude that he was into any conspiracy to commit plunder or any other crime. Without GMA's participation, he could not release any money because there was then no budget available for the additional CIFs. Whatever irregularities he might have committed did not amount to plunder, or to any implied conspiracy to commit plunder.

Under the circumstances, the *Sandiganbayan*'s finding on the existence of the conspiracy to commit plunder was unsustainable. It then becomes unavoidable for the Court to rule that because the Prosecution failed to properly allege the elements of the crime, as well as to prove that any implied conspiracy to commit plunder or any other crime existed among GMA, Aguas and Uriarte there was no conspiracy to commit plunder among them. As a result, GMA and Aguas could be criminally responsible only for their own respective actions, if any.

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[45] *Rollo*, Vol. I., pp. 205-206.

III.
No proof of amassing, or accumulating, or acquiring ill-gotten wealth of at least ₱50 Million was adduced against GMA and Aguas

The *Sandiganbayan* sustained the sufficiency of the evidence to convict the petitioners for plunder on the basis that the Prosecution established all the elements of plunder.

After a review of the records, we find and rule that the Prosecution had no case for plunder against the petitioners.

To successfully mount a criminal prosecution for plunder, the State must allege and establish the following elements, namely:

1. That the offender is a public officer who acts by herself or in connivance with members of her family, relatives by affinity or consanguinity, business associates, subordinates or other persons;

2. That the offender amasses, accumulates or acquires 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 (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.[46]

The *corpus delicti* of plunder is the amassment, accumulation or acquisition of ill-gotten wealth valued at not less than ₱50,000,000.00. The failure to establish the *corpus delicti* should lead to the dismissal of the criminal prosecution.

As regards the element that the public officer must have amassed, accumulated or acquired ill-gotten wealth worth at least ₱50,000,000.00, the Prosecution adduced no evidence showing that either GMA or Aguas or even Uriarte, for that matter, had amassed, accumulated or acquired ill-gotten wealth of any amount. There was also no evidence, testimonial or otherwise, presented by the Prosecution showing even the remotest possibility that the CIFs of the PCSO had been diverted to either GMA or Aguas, or Uriarte.

The absolute lack of evidence on this material but defining and decisive aspect of the criminal prosecution was explicitly noted in the concurring and partial dissenting opinion of Justice Rodolfo A. Ponferrada of the *Sandiganbayan*, to wit:

> Here the evidence of the prosecution failed to show the existence of the crime of plunder as no evidence was presented that any of the accused, accumulated and/or acquired ill-gotten wealth. In fact, the principal witness of the prosecution when asked, said that she does not know the existence or whereabouts of the alleged ill-gotten wealth, to wit:
>
> Q: Of course, you don't know where is this ill-gotten wealth are (sic) now?
>
> A: Yes, Your Honors. **We don't know whether they saved it, squandered it or what? We don't know, Your Honor.**[47] [bold emphasis supplied]

After Atty. Tolentino, as the Prosecution's main witness, conceded lack of any knowledge of the amassing, accumulating or acquiring of ill-gotten wealth of at least ₱50,000,000.00, nothing more remained of the criminal prosecution for plunder. Hence, the *Sandiganbayan* should have granted the demurrers of GMA and Aguas, and dismissed the criminal action against them.

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[46] *Estrada v. Sandiganbayan*, G.R. No. 148560, November 19, 2001, 369 SCRA 394, 432.
[47] *Rollo*, Vol. I, pp. 188-189.

IV.
The Prosecution failed to prove the predicate act of raiding the public treasury

The *Sandiganbayan* observed that the Prosecution established the predicate act of raiding the public treasury, to wit:

> Secondly, the terms "unjust enrichment," "benefit," and "pecuniary benefit" are only mentioned in the predicate acts mentioned in par. 2, 5 and 6 of Section 1 (d) of the Plunder Law. Paragraph 1 of the same section where "raids on the public treasury" is mentioned did not mention "unjust enrichment" or "personal benefit". Lastly, the predicate act covering "raids on the public treasury" is lumped up with the phrases misappropriation, conversion, misuse and malversation of public funds. Thus, once public funds, as in the case of CIF funds, are illegally accumulated, amassed or acquired. To the tune of ₱50 Million or more, there will be no need to establish any motive to gain, or much more establish where the money eventually ended up. As stated in Our Resolution dated November 5, 2013:
>
> It should be noted that in both R.A. No. 7080 and the PCGG rules, the enumeration of the possible predicate acts in the commission of plunder did not associate or require the concept of personal gain/benefit or unjust enrichment with respect to raids on the public treasury, as a means to commit plunder. It would, therefore, appear that a "raid on the public treasury" is consummated where all the acts necessary for its execution and accomplishment are present. Thus a "raid on the public treasury" can be said to have been achieved thru the pillaging or looting of public coffers either through misuse, misappropriation or conversion, without need of establishing gain or profit to the "raider" gets material possession of a government asset through improper means and has free disposal of the same, the raid or pillage is completed.
>
> x x x x
>
> Clearly, the improper acquisition and illegal use of CIF funds, which is obviously a government asset, will amount to a raid on the public treasury, and therefore fall into the category of ill-gotten wealth.
>
> x x x x
>
> x x x It is not disputed that Uriarte asked for and was granted authority by Arroyo to use additional CIF funds during the period 2008 – 2010. Uriarte was able to accumulate during that period CIF funds in the total amount of ₱352,681,646. This was through a series of withdrawals as cash advances of the CIF funds from the PCSO coffers, as evidenced by the disbursement vouchers and checks issued and encashed by her, through her authorized representatives.
>
> These flagrant violations of the rules on the use of CIF funds evidently characterize the series of withdrawals by and releases to Uriarte as "raids" on the PCSO coffers, which is part of the public treasury. These were, in every sense, "pillage," as Uriarte looted government funds and appears to have not been able to account for it. The monies came into her

> possession and, admittedly, she disbursed it for purposes other than what these were intended for, thus amounting to "misuse" of the same. xxx
>
> In this case, to require proof that monies went to a plunderer's bank account or was used to acquire real or personal properties or used for any other purpose to personally benefit the plunderer, is absurd. Suppose a plunderer had already amassed, acquired or accumulated ₱50 Million or more of government funds and just decide to keep it in his vault and never used such funds for any purpose to benefit him, would that not be plunder? Or, if immediately right after such amassing, the monies went up in flames or recovered by the police, negating any opportunity for the purpose to actually benefit, would that not still be plunder? Surely, in such cases, a plunder charge could still prosper and the argument that the fact of personal benefit should still be evidence-based must fail.[48]

The *Sandiganbayan* contended that in order to prove the predicate act of *raids of the public treasury*, the Prosecution need not establish that the public officer had benefited from such act; and that what was necessary was proving that the public officer had raided the public coffers. In support of this, it referred to the records of the deliberations of Congress to buttress its observation.

We do not share the *Sandiganbayan*'s contention.

The phrase *raids on the public treasury* is found in Section 1 (d) of R.A. No. 7080, which provides:

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

To discern the proper import of the phrase *raids on the public treasury*, the key is to look at the accompanying words: *misappropriation, conversion, misuse* or *malversation of public funds*. This process is conformable with the maxim of statutory construction *noscitur a sociis*, by which the correct construction of a particular word or phrase that is ambiguous in itself or is equally susceptible of various meanings may be

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[48] *Rollo*, Vol. I, pp. 203-204.

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.[49]

To convert connotes the act of using or disposing of another's property as if it were one's own; *to misappropriate* means to own, to take something for one's own benefit;[50] *misuse* means "a good, substance, privilege, or right used improperly, unforeseeably, or not as intended;"[51] and *malversation* occurs when "any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same or shall take or misappropriate or shall consent, through abandonment or negligence, shall permit any other person to take such public funds, or property, wholly or partially."[52] The common thread that binds all the four terms together is that the public officer *used* the property taken. Considering that *raids on the public treasury* is in the company of the four other terms that require the use of the property taken, the phrase *raids on the public treasury* similarly requires such use of the property taken. Accordingly, the *Sandiganbayan* gravely erred in contending that the mere accumulation and gathering constituted the forbidden act of *raids on the public treasury*. Pursuant to the maxim of *noscitur a sociis*, *raids on the public treasury* requires the raider to use the property taken impliedly for his personal benefit.

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

> Senator Enrile. The word here, Mr. President, "such public officer or person who conspired **or knowingly benefited**". **One does not have to conspire or rescheme**. The only element needed is that he "knowingly benefited". A candidate for the Senate for instance, who received a political contribution from a plunderer, knowing that the contributor is a plunderer and therefore, he knowingly benefited from the plunder, would he also suffer the penalty, Mr. President, for life imprisonment?
>
> Senator Tañada. In the committee amendments, Mr. President, we have deleted these lines 1 to 4 and part of line 5, on page 3. But, in a way, Mr. President, it is good that the Gentleman is bringing out these questions, I believe that under the examples he has given, the Court will have to...
>
> Senator Enrile. How about the wife, Mr. President, he may not agree with the plunderer to plunder the country but because she is a dutiful

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49 *Chavez v. Judicial and Bar Council*, G.R. No. 202242, July 17, 2012, 676 SCRA 579, 598-599.
50 *Sy v. People*, G.R. No. 85785, April 24, 1989, 172 SCRA 685, 694.
51 The Law Dictionary. Retrieved at http://thelawdictionary.org/misuse/ last June 6, 2016.
52 Article 217, *Revised Penal Code*.

> wife or a faithful husband, she has to keep her or his vow of fidelity to the spouse. And, of course, she enjoys the benefits out of the plunder. Would the Gentleman now impute to her or him the crime of plunder simply because she or he knowingly benefited out of the fruits of the plunder and, therefore, he must suffer or he must suffer the penalty of life imprisonment?
>
> The President. That was stricken out already in the Committee amendment.
>
> Senator Tañada. Yes, Mr. President. Lines 1 to 4 and part of line 5 were stricken out in the Committee amendment. But, as I said, the eamples of the Minority Floor Leader are still worth spreading the *Record.* And, I believe that in those examples, the Court will have just to take into consideration all the other circumstances prevailing in the case and the evidence that will be submitted.
>
> The President. In any event, 'knowingly benefited' has already been stricken off."[53]

The exchanges between Senator Enrile and Senator Tañada reveal, therefore, that what was removed from the coverage of the bill and the final version that eventually became the law was a person who was not the main plunderer or a co-conspirator, but one who personally benefited from the plunderers' action. The requirement of personal benefit on the part of the main plunderer or his co-conspirators by virtue of their plunder was not removed.

As a result, not only did the Prosecution fail to show where the money went but, more importantly, that GMA and Aguas had personally benefited from the same. Hence, the Prosecution did not prove the predicate act of *raids on the public treasury* beyond reasonable doubt.

V.
Summation

In view of the foregoing, the Court inevitably concludes that the *Sandiganbayan* completely ignored the failure of the information to sufficiently charge conspiracy to commit plunder against the petitioners; and ignored the lack of evidence establishing the *corpus delicti* of amassing, accumulation and acquisition of ill-gotten wealth in the total amount of at least ₱50,000,000.00 through any or all of the predicate crimes. The *Sandiganbayan* thereby acted capriciously, thus gravely abusing its discretion amounting to lack or excess of jurisdiction.

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[53] Record of the Senate, June 6, 1989, p. 1403, Vol. IV, No. 141.

Grave abuse of discretion means such capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction.[54] To justify the issuance of the writ of *certiorari*, the abuse of discretion must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and the abuse must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act at all, in contemplation of law, as to be equivalent to having acted without jurisdiction.[55]

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

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

I join the dissent of J. Leonen and attach my separate dissent

MARIA LOURDES P. A. SERENO
Chief Justice

I join the Dissenting Opinion of J. Leonen

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

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[54] *Feliciano v. Villasin*, G.R. No. 174929, June 27, 2008, 556 SCRA 348; *Uy v. Office of the Ombudsman*, G.R. Nos. 156399-400, June 27, 2008, 556 SCRA 73.

[55] *Vergara v. Ombudsman*, G.R. No. 174567, March 12, 2009, 580 SCRA 693; *Nationwide Security and Allied Services, Inc. v. Court of Appeals*, G.R. No. 155844, 14 July 2008, 558 SCRA 148.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

Please see my separate concurring and dissenting opinion

ESTELA M. PERLAS-BERNABE
Associate Justice

I dissent. See separate opinion

MARVIC M.V.F. LEONEN
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

I join the dissent of J. Leonen

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

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

MARIA LOURDES P. A. SERENO
Chief Justice