



Republic of the Philippines  
**Supreme Court**  
 Manila

**EN BANC**

**ROLANDO P. DE LA CUESTA,**  
 Petitioner,

**G.R. Nos. 164068-69**

Present:

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

- versus -

**THE SANDIGANBAYAN, FIRST  
 DIVISION and THE PEOPLE OF  
 THE PHILIPPINES,**  
 Respondents.

X ----- X

**PEOPLE OF THE PHILIPPINES,**  
 Petitioner,

**G.R. Nos. 166305-06**

- versus -

**EDUARDO M. COJUANGCO, JR.,  
 HERMENEGILDO\*\* C. ZAYCO,  
 SALVADOR ESCUDERO III,  
 VICENTE B. VALDEPEÑAS, JR.,**

\* No part.

\*\* Also referred to as Herminigildo and Hermenigildo in some parts of the records.

**ROLANDO P. DE LA CUESTA and  
THE HON. SANDIGANBAYAN  
(FIRST DIVISION),**

Respondents.

x ----- x

**REPUBLIC OF THE PHILIPPINES,**  
Petitioner,

**G.R. Nos. 166487-88**

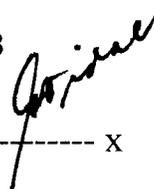
- versus -

**THE SANDIGANBAYAN and  
EDUARDO M. COJUANGCO, JR.,  
ROLANDO P. DE LA CUESTA,  
HERMINIGILDO C. ZAYCO,  
JOSE R. ELEAZAR, JR., FELIX  
V. DUEÑAS, JR., SALVADOR  
ESCUADERO III, and VICENTE  
B. VALDEPEÑAS, JR.,**

Respondents.

Promulgated:

NOVEMBER 19, 2013



x ----- x

***DECISION***

**ABAD, J.:**

These cases refer to a government agency's grant of financial assistance to a private non-profit organization representing the community whose interests such agency serves.

**The Facts and the Case**

On February 9, 1995 the Office of the Ombudsman (OMB) filed two separate informations against former members of the Governing Board of the Philippine Coconut Administration (PCA), including its chairman, accused Rolando P. De La Cuesta, and a member, Eduardo M. Cojuangco, Jr., before the Sandiganbayan in Criminal Cases 22017 and 22018. They were charged with granting financial assistance of ₱2 million in 1984<sup>1</sup> and ₱6 million in 1985<sup>2</sup> to the Philippine Coconut Producers Federation (COCOFED), a nationwide association of coconut farmers, in violation of

<sup>1</sup> Under Board Resolution 009-84, *rollo* (G.R. 166305-06), pp. 245-247.

<sup>2</sup> Under Board Resolution 128-85, *id.* at 254 and 1291; *Cojuangco, Jr. v. Sandiganbayan*, 360 Phil. 559, 568 (1998).



Section 3(e) of Republic Act 3019 (the Anti-Graft and Corrupt Practices Act).

The criminal Informations read:

In Criminal Case 22017

That on or about December 19, 1985, or sometime prior or subsequent thereto, in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, all public officers, accused MARIA CLARA L. LOBREGAT, ROLANDO P. DE LA CUESTA, HERMENEGILDO C. ZAYCO, JOSE R. ELEAZAR, JR., SALVADOR ESCUDERO III and VICENTE B. VALDEPEÑAS, JR., being then Members of the Board of Directors and FELIX J. DUEÑAS, JR., being then the Administrator, all of the Philippine Coconut Authority, committing the crime herein charged in relation to, while in the performance and taking advantage of their official functions, with evident bad faith and manifest partiality, and all conspiring and confederating with each other, did then and there wilfully, unlawfully and criminally donate and/or extend financial assistance to the Philippine Coconut Producers Federation (COCOFED), a private entity, the total amount of Six Million Pesos (₱6,000,000.00) which sum was taken from the Special Funds of the Philippine Coconut Authority, said accused knowing fully well that COCOFED is a private entity and that the same amount was not included in the budget Fund 503, thereby giving unwarranted benefit in favor of the Philippine Coconut Producers Federation (COCOFED) and, consequently, causing undue injury to the Government in the aforestated amount.

In Criminal Case 22018

That on or about January 18, 1984, or sometime prior or subsequent thereto, in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the above named accused, all public officers, accused EDUARDO M. COJUANGCO, JR., MARIA CLARA L. LOBREGAT, ROLANDO P. DE LA CUESTA, HERMENEGILDO C. ZAYCO, and JOSE R. ELEAZAR, JR., being then the members of the Board of Directors and FELIX J. DUEÑAS, JR., being then the Administrator, all of the Philippine Coconut Authority, committing the crime herein charged in relation to, while in the performance and taking advantage of their official functions, with evident bad faith and manifest partiality, and all conspiring and confederating with each other, did then and there wilfully, unlawfully and criminally donate and/or extend financial assistance to the Philippine Coconut Producers Federation (COCOFED), a private entity, the total amount of Two Million Pesos (₱2,000,000.00) which sum was taken from the Special Funds of the Philippine Coconut Authority, said accused knowing fully well that COCOFED is a private entity and that the same amount was not included in the budget of Fund 503, thereby giving unwarranted benefit in favor of the Philippine Coconut Producers Federation (COCOFED) and, consequently, causing undue injury to the Government in the aforestated amount.

Claiming that the informations were prematurely filed as they were not notified of the June 2, 1992 Resolution, a requirement provided for by law,<sup>3</sup> the Sandiganbayan granted the accused leave to seek reconsideration of such Resolution from the Office of the Special Prosecutor (OSP),<sup>4</sup> the prosecution arm of the OMB. The court gave the Presidential Commission on Good Government (PCGG) the chance to comment.<sup>5</sup>

On December 6, 1996 the OMB submitted to the Sandiganbayan<sup>6</sup> the October 22, 1996 Memorandum of Special Prosecution Officer III Victorio U. Tabanguil, bearing the November 15, 1996 approval of Ombudsman Aniano A. Desierto<sup>7</sup> recommending the dismissal of the cases. This prompted the accused to file their respective motions to dismiss.<sup>8</sup>

Meantime, the Office of the Solicitor General (OSG) filed with the OMB a motion for reconsideration of the adverse position that it had taken in the cases.<sup>9</sup> On learning of the OSG's action, the Sandiganbayan directly ordered it to comment on the prosecution's motion to withdraw the Informations and the accused to reply in turn.<sup>10</sup> Both complied.<sup>11</sup> On February 4, 1997 the Sandiganbayan ordered the OSG and the PCGG to appear before it on February 17. Further, it required the PCGG to respond to the OSG's claim that the exhibits needed to prove the existence of probable cause remained with the PCGG.<sup>12</sup>

At the February 17 hearing of the withdrawal issue, the OSG told the court that, as it turned out, the documents needed to show probable cause had already been submitted to the OMB at the preliminary investigation but were simply not adequately explained and, therefore, not fully appreciated. With this development, the Sandiganbayan gave the OSG time to submit to the OSP a catalogue of the documents mentioned with the accompanying explanation of their significance, after which the latter was to inform the court whether it was maintaining its position or changing it.<sup>13</sup>

These documents are as follows:

(a) The PCA Administrator's separate 1984 and 1985 memoranda to the PCA Governing Board recommending the

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<sup>3</sup> Administrative Order 7 and Sec. 27 of Republic Act 6770 or The Ombudsman Act of 1989.

<sup>4</sup> *Rollo* (G.R. 164068-69), pp. 100-107, 466, 691, 775; *Cojuangco, Jr. v. Sandiganbayan*, supra note 2, at 570.

<sup>5</sup> *Id.* at 112-113.

<sup>6</sup> *Id.* at 149-151.

<sup>7</sup> *Id.* at 152-161.

<sup>8</sup> *Rollo* (G.R. 166305-06), pp. 150-158; 787-790.

<sup>9</sup> *Rollo* (G.R. 166487-88), pp. 21, 209-214.

<sup>10</sup> *Rollo* (G.R. 166305-06), pp. 792-793.

<sup>11</sup> *Id.* at 168-171; 373-417.

<sup>12</sup> *Id.* at 794-796.

<sup>13</sup> *Rollo* (G.R. 164068-69), pp. 175-176.

financial grants of ₱2 million and ₱6 million, respectively, for COCOFED's use and providing justifications for the same;<sup>14</sup>

(b) Minutes of the PCA Board Meetings of January 18, 1984 and December 19, 1985<sup>15</sup> during which the PCA Governing Board approved the grants under Resolutions 009-84 and 128-85, respectively;

(c) The PCA Governing Board Resolutions 009-84 and 128-85;<sup>16</sup>

(d) The Disbursement Vouchers showing PCA's release of ₱2 million and ₱6 million (the latter in two equal payments) grants to COCOFED pursuant to the above Resolutions.<sup>17</sup>

(e) The PNB check and the corresponding COCOFED official receipt covering the ₱2 million PCA "financial assistance" to COCOFED under Board Resolution 009-84.<sup>18</sup>

(f) The PNB check and the corresponding COCOFED official receipt covering the first ₱3 million of the ₱6 million PCA "financial assistance" to COCOFED under Board Resolution 128-85.<sup>19</sup>

(g) The PNB check and the corresponding COCOFED official receipt covering the second ₱3 million of the ₱6 million PCA "financial assistance" to COCOFED under Board Resolution 128-85.<sup>20</sup>

(h) The letter dated 31 July 1986<sup>21</sup> of PCA Corporate Auditor Archimedes S. Sitjar to the PCA Administrator, disallowing the ₱2 million "financial assistance" to COCOFED paid out of the PCA Special Funds on the ground that this was not included in Fund 503 of that agency for the year 1984;

(i) The letter bearing receipt dated October 6, 1986<sup>22</sup> of PCA Auditor Sitjar to the PCA Administrator, disallowing the ₱6 million "financial assistance" to COCOFED paid out of the National Coconut Productivity Program (NCP) fund on the ground that this was not included in the NCP budget of that agency;

(j) The letter dated December 29, 1986 of the PCA Office of the Auditor to the PCA Administrator,<sup>23</sup> disallowing

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<sup>14</sup> *Rollo* (G.R. 166305-06), pp. 214-217. The first is dated January 17, 1984 and the second dated December 16, 1985.

<sup>15</sup> *Id.* at 221, 246-247, 249, 254.

<sup>16</sup> *Id.* at 218-220.

<sup>17</sup> *Id.* at 263-265. Disbursement Vouchers (DV) No. 503-8403-546 (dated 20 March 1984) and DV Nos. 8601-003 (dated 9 January 1986); and 8601-0016 (dated 21 January 1986).

<sup>18</sup> *Id.* at 266. PNB Check 574587 dated March 20, 1984 and Official Receipts 10499 dated March 29, 1984.

<sup>19</sup> *Id.* at 267. PNB Check 671405 dated January 9, 1986 and COCOFED Official Receipt 11587 dated January 9, 1986.

<sup>20</sup> *Id.* at 269. PNB Check 671729 dated January 21, 1986 and PCA Official Receipt 11603 dated January 22, 1986.

<sup>21</sup> *Id.* at 271.

<sup>22</sup> *Id.* at 273.

<sup>23</sup> *Id.* at 274.

the ₱6 million “financial assistance” to COCOFED on the further ground of failure to secure the approval of the Chief Executive/President as provided for in Section 2 of P.D. 1997.<sup>24</sup>

On March 17, 1997 the OSP informed the Sandiganbayan that, even with the above documents, it still found no new evidence sufficient to overturn its earlier findings that no probable cause existed against the accused.<sup>25</sup>

Four years later on October 31, 2001 the Sandiganbayan ruled that probable cause existed to warrant the prosecution of the accused. It said:

Admittedly, the recipient of these donations was the COCOFED, a private corporation. When government funds are “donated” to private entities—which is against laws and regulations unless otherwise authorized by law—there is, at least at first blush, an apparent undue injury to the government and a corresponding unwarranted benefit to the private party favored with the donation. These make out *prima facie* the third and fourth elements above, or conversion for misuse of public funds, or some other offense which would be adequately covered by the present Informations.<sup>26</sup>

Petitioners Dela Cuesta and Cojuangco moved for reconsideration on December 7<sup>27</sup> and December 10, 2001,<sup>28</sup> respectively. Meantime, Special Prosecutor Raymundo Julio A. Olaguer replaced Special Prosecutor Tabanguil who retired and on October 17, 2002 Ombudsman Simeon V. Marcelo took over the OMB,<sup>29</sup> signalling a change in its position. On January 9, 2003 Special Prosecutor Olaguer recommended to Ombudsman Marcelo the adoption of the OSG’s position, which he approved.<sup>30</sup> Subsequently, the Special Prosecutor conveyed this change of position to the Sandiganbayan.<sup>31</sup>

On July 23, 2004, following accused De La Cuesta’s filing of a petition before this Court in G.R. 164068-69, complaining of alleged denial of his right to speedy trial,<sup>32</sup> the Sandiganbayan issued a Resolution<sup>33</sup> granting the accused’s motions for reconsideration of its October 31, 2001 Resolution. The Sandiganbayan thus dismissed the cases against them for

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<sup>24</sup> *Rollo* (G.R. 166487-88), pp. 223-225.

<sup>25</sup> *Rollo* (G.R. 166305-06), pp. 797-811.

<sup>26</sup> *Rollo* (G.R. 166487-88), p. 112.

<sup>27</sup> *Rollo* (G.R. 164068-69), pp. 214-226.

<sup>28</sup> *Rollo* (G.R. 166305-06), pp. 838-883.

<sup>29</sup> *Id.* at 1218.

<sup>30</sup> *Id.* at 487.

<sup>31</sup> *Id.* at 485-486.

<sup>32</sup> *Rollo* (G.R. 164068-69), pp. 3-36.

<sup>33</sup> *Rollo* (G.R. 166305-06), pp. 78-103. Penned by Associate Justice Diosdado M. Peralta (now a member of this Court) and concurred in by Associate Justices Teresita J. Leonardo-De Castro (now a member of this Court) and Roland B. Jurado.

lack of probable cause, specifically since it found no *prima facie* evidence that evident bad faith, manifest partiality, or gross inexcusable negligence attended the PCA financial assistance to COCOFED.

The Sandiganbayan said that, based on the OSG-submitted documents, the grant of assistance to COCOFED followed a correct course: the PCA Administrator's proposal outlined the justification for the grants and the law that allowed these; the Board of Directors adopted the proposal upon an assumption that funds were indeed available and that the grants were allowed by law and the PCA charter; the required checks were supported by approved disbursement vouchers that were passed in audit; and COCOFED received the checks in due time. While the payments were disallowed in post audit, this was not because the grants were irregular but because of the absence of certifications of availability of funds and a prior approval by the President.

The Sandiganbayan observed, however, that these omissions only gave rise to possible administrative or civil liability, given that the grants did not appear to be patently illegal. At best, said that court, such omissions were mere errors in management discretion or bad judgment. That court concluded that, in the absence of *prima facie* evidence of evident bad faith, manifest partiality or gross inexcusable negligence, no case for violation of Section 3(e) of Republic Act (R.A.) 3019 exists.

Further, the Sandiganbayan did not agree with the prosecution that the accused may be indicted for technical malversation, using the same informations without violating their right to know what they were accused of. The charges were for the violation of a special law, the Anti-Graft and Corrupt Practices Act, a *malum prohibitum*, which did not embrace or cover any other offense. Section 3(e) of R.A. 3019 did not cover technical malversation or misuse of public funds under Article 220 of the Revised Penal Code, a *malum in se* offense the elements of which were distinct from Section 3(e) of R.A. 3019.

The OSP and OSG filed their respective motions for reconsideration<sup>34</sup> that the accused opposed.<sup>35</sup> On December 15, 2004 the Sandiganbayan denied the motion, prompting the OSP and the OSG to file separate petitions with this Court in G.R. 166305-06 and 166487-88, respectively. Subsequently, this Court ordered the two petitions consolidated with the earlier petition in G.R. 164068-69.<sup>36</sup>

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<sup>34</sup> Id. at 489-531; 532-576.

<sup>35</sup> Id. at 577-599; 604-637.

<sup>36</sup> *Rollo* (G.R. 164068-69), pp. 391 and 446.

### The Issues Presented

These cases present the following issues:

1. Whether or not the Sandiganbayan erred in not holding that it was bound by the findings and recommendations of the Ombudsman concerning the existence of probable cause in the two cases;
2. Whether or not the Sandiganbayan erred in dismissing for lack of probable cause the twin criminal informations against accused Rolando P. De La Cuesta, Eduardo M. Cojuangco, Jr., and the others with them for violation of Section 3(e) of R.A. 3019 covering the financial assistance that the PCA gave COCOFED in 1984 (₱2 million) and 1985 (₱6 million);
3. Whether or not the Sandiganbayan erred in failing to hold that the accused may be held for trial, using the same criminal informations, for the crime of technical malversation under Article 220 of the Revised Penal Code; and
4. Whether or not the Sandiganbayan erred in declining to dismiss the criminal actions against the accused on the ground of denial of their right to speedy trial.

### The Court's Rulings

To simplify discussion, the Court will refer to the OSP and the OSG collectively as the prosecution.

1. The prosecution points out that the Sandiganbayan erred in dismissing the subject cases for lack of probable cause, given that the Ombudsman, who has the primary authority on the matter, found probable cause that warrants the filing of the informations against the accused.

But while it is true that the prosecution has the quasi-judicial discretion to determine whether or not a criminal case should be filed in court, once the case is filed, any disposition the prosecutor may afterwards deem proper should be addressed to the court for its consideration and approval.<sup>37</sup> It is the court's bounden duty to assess independently the merits of the same.<sup>38</sup> The only qualification is that the action of the court must not

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<sup>37</sup> *Leviste v. Alameda*, G.R. No. 182677, August 3, 2010, 626 SCRA 575, 598-599, citing *Galvez v. Court of Appeals*, G.R. No. 114046, October 24, 1994, 237 SCRA 685, 698-699.

<sup>38</sup> *Cerezo v. People*, G.R. No. 185230, June 1, 2011, 650 SCRA 222, 229.

impair the substantial right of the accused or the right of the People to due process of law.<sup>39</sup> This has not happened in the cases below.

2. There is probable cause when the evidence at hand will persuade a reasonably discreet and prudent man to believe that the accused committed the offense of which he is charged. Only common sense, not the technical rules for weighing evidence, is required. But, although less than the evidence that would justify conviction is needed, probable cause demands more than bare suspicion.<sup>40</sup>

The corrupt practice committed by a public officer under Section 3(e) of R.A. 3019 consists in his “causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence.”

It will be recalled that, following a reinvestigation of the subject cases, the OSP reversed its previous position and informed the Sandiganbayan that no probable cause existed against the accused. But the OSG, as general counsel for the government, disagreed. It claimed that the documents before the OMB showed otherwise. To settle the issue, the Sandiganbayan let the OSG catalogue the documents mentioned and show how these could prove probable cause that the accused violated Section 3(e) of R.A. 3019.

Two of those documents, the PCA Administrator’s separate memoranda to the Board of Governors in 1984 and 1985 that recommended the financial grants to COCOFED, do not on their faces show some semblance of corruption. The January 17, 1984 Memorandum which recommended the ₱2 million grant to COCOFED informed the Board that the grant was meant to help COCOFED stave off an anticipated scaling down of its 992 chapters nationwide which were essential channels for the dissemination of information on the advances in coconut technology and other programs of the coconut industry. COCOFED, a non-profit organization, had a vast national membership of coconut farmers and it had consistently helped the PCA implement its programs for their industry. COCOFED was PCA’s indispensable link to farmers.<sup>41</sup>

Similarly, the December 16, 1985 Memorandum recommending the ₱6 million grant to COCOFED adequately explained that it was made to augment the resources of COCOFED due to the lifting of government

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<sup>39</sup> *Leviste v. Alameda*, supra note 37, at 599.

<sup>40</sup> *Sarigumba v. Sandiganbayan*, 491 Phil. 704, 720 (2005).

<sup>41</sup> *Rollo* (G.R. 166305-06), pp. 214-215.

funding to ensure the effective implementation of the national coconut replanting program which was carried out with its active assistance and participation.<sup>42</sup>

Notably, the prosecution does not dare diminish or malign COCOFED's above role. Nor does it deny that the PCA has been working in partnership with COCOFED towards the attainment of the policy established by law for the industry. Consequently, it cannot be said that, in granting financial assistance to COCOFED, the accused PCA Governing Board members gave it "unwarranted benefits x x x through manifest partiality, evident bad faith or gross inexcusable negligence." The grant was not for any dishonest purpose.

COCOFED's role in the coconut industry began with the enactment of R.A. 6260<sup>43</sup> in 1971. The law created a Coconut Investment Fund, initially capitalized by the government, but eventually supported by a levy on the farmers' sale of their *copra*. Further, it directed the PCA to prescribe rules for the collection of the levy in consultation with "the recognized national association of coconut producers with the largest number of membership as determined by"<sup>44</sup> the PCA.

COCOFED quickly qualified to that position on account of its large membership and no one had disputed its credentials. Notably, recognizing the organization's importance, R.A. 6260 set aside ₱0.02 out of every ₱0.55 levied on farmers "for the maintenance and operation of its principal office which shall be responsible for continuing liaison with the different sectors of the industries, the government and its own mass base."<sup>45</sup> Relating to this, the financial grants that the PCA Board gave appear to serve a public purpose.

Furthermore, Presidential Decree (P.D.) 1972,<sup>46</sup> and Executive Order (E.O.) 1064<sup>47</sup> required the PCA to undertake a coconut replanting program "with the active assistance and participation of the recognized organization of the coconut farmers pursuant to the provisions of R.A. 6260."<sup>48</sup> This meant COCOFED.<sup>49</sup> Without this organization, the PCA would forfeit its important link to the coconut farmers that it primarily served, hampering the attainment of its objectives.<sup>50</sup> Although the Coconut Investment Fund was scrapped in 1982, the PCA continued to work with COCOFED in its

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<sup>42</sup> Id. at 216-217.

<sup>43</sup> Entitled An Act Instituting a Coconut Investment Fund and Creating A Coconut Investment Company for the Administration Thereof.

<sup>44</sup> Republic Act 6260, Sec. 8.

<sup>45</sup> Id., Sec. 9.

<sup>46</sup> April 8, 1985, An Act to Finance the Coconut Replanting Program.

<sup>47</sup> November 13, 1985, Implementing the Coconut Productivity Program.

<sup>48</sup> P.D. 1972, Sec. 1; E.O. 1064, Sec. 1.

<sup>49</sup> *Philippine Coconut Producers Federation, Inc. (COCOFED) v. Presidential Commission on Good Government*, 258-A Phil. 1 (1989).

<sup>50</sup> *Rollo* (G.R. 166305-06), pp. 214-215.

programs for coconut farmers; hence, the recommendation to grant the organization financial assistance so it could maintain its useful function.

Actually, the Sandiganbayan noted that, in charging the accused with violation of Section 3(e) of R.A. 3018, the prosecution completely relied on the COA disallowance of the disbursements upon post audit. But the post audits disallowed the twin financial assistance to COCOFED, not because government funds were used for something unrelated to the objectives of the PCA but because: a) the ₱2 million was not included in its budget for Fund 503<sup>51</sup> and b) the ₱6 million was not included in the NCPP budget and had not been approved by the President.<sup>52</sup>

The prosecution points out that the ₱2 million grant was supposed to be taken from Fund 503 or the PCA Special Funds; yet, nothing in the laws that mandated the collection of fees for the PCA Special Funds authorized the PCA to grant assistance out of the same in COCOFED's favor.<sup>53</sup> But this is not altogether accurate. Sections 1 and 2 of P.D. 1854 grant the PCA Governing Board the authority to draw up its own budgetary requirements out of the earmarked collections. Thus:

Section 1. The PCA fee imposed and collected pursuant to the provisions of R.A. No. 1145 and Sec. 3(k), Article II of P.D. 1468, is hereby increased to three centavos per kilo of copra or husked nuts or their equivalent in other coconut products delivered to and/or purchased by copra exporters, oil millers, desiccators and other end-users of coconut products. The fee shall be collected under such rules that PCA may promulgate, and shall be paid by said copra exporters, oil millers, desiccators, and other end-users of coconut products, receipt of which shall be remitted to the National Treasury on a quarterly basis.

Section 2. The receipt and process of all collections pursuant to Section 1 hereof, shall be utilized exclusively for the operations of the Philippine Coconut Authority and shall be released automatically by the National Treasury upon approval by the PCA Governing Board of its budgetary requirements, as an exception to P.D. 1234 and the budgetary processes provided in P.D. 1177, as amended.

The above vested in the PCA Governing Board the authority to allocate and disburse PCA funds by board resolution without the need for presidential approval. The above of course provides that the PCA Special Funds are to be used "exclusively" for its operations. But this restriction was evidently intended to prevent the use of the money for other than the implementation of PCA plans and programs for the coconut industry. It bars the hands of other government agencies from dipping into those funds. As pointed out above, the initial ₱2 million grant to COCOFED was actually in

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<sup>51</sup> Id. at 272.

<sup>52</sup> Id. at 273-274.

<sup>53</sup> Id. at 1237-1239.

furtherance of PCA's operations, its partnership with that organization being an integral part of such operations.

The prosecution also claimed that the National Coconut Productivity Fund budget from which it was sourced did not include the grant of ₱6 million to COCOFED and, therefore, the PCA Board's approval of the same on December 16, 1985 without the President's approval was illegal.

But President Marcos indirectly authorized such expenditure. On January 14, 1985 he issued a Memorandum addressed to Prime Minister Cesar E.A. Virata, Budget and Management Minister Manuel S. Alba, and PCA Chairman Rolando P. De La Cuesta ordering the release of ₱118.7 million from the coconut productivity program and authorizing the PCA to implement the government's long-term productivity program and its major components. Thus, the President said:

Further to my Memorandum dated September 19, 1984 directing the adoption and implementation of a long-term Coconut Productivity Program and providing for the utilization of a portion of the export tax on coconut products to finance the same, please be guided as follows:

1. The special budget of the Coconut Productivity Program of the Philippine Coconut Authority (PCA) for 1985 in the total amount of ₱118.7 million is hereby approved as a priority developmental project under the Special Activities Fund.

2. To cover the herein-approved special budget, the Office of the Budget and Management is hereby directed to set aside the amount as may be necessary from out of the Special Productivity Fund to augment the funds earlier made available from out of the export tax on coconut products to finance the program.

3. In order to hasten the implementation of the program, the amount of ₱60 million shall be immediately released to PCA not later than January 31, 1985, and the balance of ₱58.7 million not later than June 30, 1985 any provision of Letter of Instructions No. 1408 to the contrary notwithstanding.

4. The PCA is hereby directed to start the full-scale implementation of the program effective on January 1, 1985 with priority given to coconut-producing areas recently affected by the recent typhoons and calamities. For this purpose and in order to ensure the success of the program, *the PCA is authorized to purchase equipment/motor vehicles, to create positions and to hire new, and effect necessary movement of, personnel, and to undertake such other activities that may be required in the implementation of the program and its major components*, as an exception to Letter of Implementation No. 146.<sup>54</sup>

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<sup>54</sup> Id. at 1231-1232.

Clearly, the President had approved the use of money out of the Special Activities Funds to finance and implement the PCA coconut productivity program. Further to this, on November 13, 1985 President Marcos issued E.O. 1064, Section 1 of which directed the PCA to immediately implement the government's accelerated coconut hybrid planting and replanting program specifically "with the active assistance and participation of the recognized organization of coconut farmers pursuant to the provisions of R.A. 6260," which was no other than COCOFED. Section 1 provides:

Section 1. The Philippine Coconut Authority (PCA) is hereby directed to immediately formulate and implement an accelerated coconut hybrid planting and replanting program (the Program) aimed at increasing farm productivity. The annual program (January-December) shall be prepared by the PCA Board in consultation with the private sector and reviewed by the Cabinet and shall be effective upon approval of the President and 30 days after publication of the same in newspapers of general circulation. The Program shall include the rehabilitation of existing coconut trees as well as intercropping of areas planted to coconut with suitable crops and the replanting shall, together with the project(s) as hereinafter defined involve approximately 30,000 hectares per annum. **PCA shall implement the Program with the active assistance and participation of the recognized organization of coconut farmers pursuant to the provisions of RA 6260** and shall service the requirements of small coconut farmers owning not more than twenty-four (24) hectares who volunteer to participate in the Program. Initially, the devastated areas in Visayas and Mindanao shall be given priority. (Emphasis supplied)

But, as stated above, COCOFED was in danger of disintegrating with the unwitting removal of the financial subsidy it was getting from the former Coconut Investment Fund. Consequently, in order to successfully carry out the President's order under E.O. 1064 dated November 13, 1985 to pursue the government's planting and replanting program,<sup>55</sup> it was essential that PCA grant financial assistance to COCOFED.

3. Apparently conscious that its charge of violation of Section 3(e) of R.A. 3019 against the accused had not been strong, the prosecution claims that the latter may alternatively be prosecuted and tried under the same informations for two counts of technical malversation under Article 220 of the Revised Penal Code.

The rule of course is that the real nature of the criminal charge is determined not by the caption of the information or the citation of the law allegedly violated but by the actual recital of facts in that information.<sup>56</sup> Consequently, the issue is whether the facts alleged in the informations in

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<sup>55</sup> E.O. 1064, Sec. 1.

<sup>56</sup> *Socrates v. Sandiganbayan*, 324 Phil. 151, 173 (1996).

the subject criminal cases make out a case for the crime of technical malversation.

Compare the facts alleged in the information and the elements of the crime of technical malversation:

Factual Allegations In the Information	The Crime of Technical Malversation
The accused as members of the PCA Board of Directors, acting in conspiracy with each other and with evident bad faith and manifest partiality, gave financial assistance to COCOFED, a private entity, without an appropriate budget, giving unwarranted benefit to the same and causing undue injury to the Government.	The crime is committed by a public officer who administers public fund or property <u>that has been appropriated by law but he applies the same to a public use other than that for which such fund or property has been appropriated.</u> <sup>57</sup>

The element in the crime of technical malversation that public fund be appropriated for a public use requires an earmarking of the fund or property for a specific project.<sup>58</sup> For instance there is no earmarking if money was part of the municipality's "general fund," intended by internal arrangement for use in paving a particular road but applied instead to the payrolls of different *barangay* workers in the municipality. That portion of the general fund was not considered appropriated since it had not been earmarked by law or ordinance for a specific expenditure. Here, there is no allegation in the informations that the ₱2 million and ₱6 million grants to COCOFED had been earmarked for some specific expenditures.

What is more, the informations in question do not allege that the subject ₱2 million and ₱6 million were applied to a public use other than that for which such sums had been appropriated. Quite the contrary, those informations allege that those sums were unlawfully donated to "a private entity," not applied to some public use. Clearly, the constitutional right of the accused to be informed of the crimes with which they are charged would be violated if they are tried for technical malversation under criminal informations for violation of Section 3(e) of R.A. 3019 filed against them.

4. With the Court's affirmation of the Sandiganbayan's Resolution dismissing the criminal informations against the accused De La Cuesta and Cojuangco, there is no point in resolving the question of whether or not they are entitled to dismissal on ground of denial of their right to speedy trial.

**WHEREFORE**, the Court **DENIES** the petitions in G.R. 166305-06, *People v. Eduardo Cojuangco, Jr., et al.*, and G.R. 166487-88, *Republic v.*

<sup>57</sup> *Abdulla v. People*, 495 Phil. 70, 83 (2005).

<sup>58</sup> *Parungao v. Sandiganbayan*, 274 Phil. 451, 462 (1991); *Gil v. People*, 258 Phil. 23, 41 (1989).

*Eduardo Cojuangco, Jr., et al.*, for lack of merit and **AFFIRMS** the Resolutions of the Sandiganbayan dated July 23, 2004 and December 15, 2004 in Criminal Cases 22017 and 22018.

The Court further **DENIES** the petition in G.R. 164068-69, *Rolando P. De La Cuesta v. Sandiganbayan*, on ground of mootness.

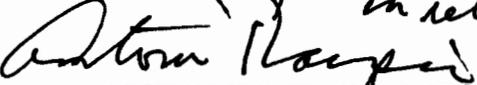
**SO ORDERED.**

  
**ROBERTO A. ABAD**  
Associate Justice

**WE CONCUR:**

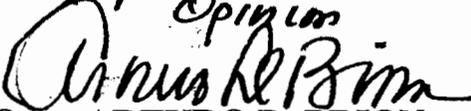
*I join the separate concurring opinion of J. Brion in G.R. 166305-06 and 166487-88*

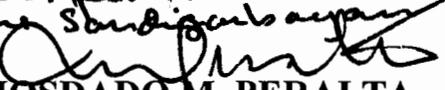
**MARIA LOURDES P. A. SERENO**  
Chief Justice

*No Part, prior inhibition in related case*  
  
**ANTONIO T. CARPIO**  
Associate Justice

**PRESBITERO J. VELASCO, JR.**  
Associate Justice

*No part due to prior participation in the Sandiganbayan: Presceta Leonardo de Castro*  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

*See: Separate Concurring Opinion*  
  
**ARTURO D. BRION**  
Associate Justice

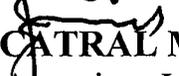
*No Part penned the Decision in the Sandiganbayan*  
  
**DIOSDADO M. PERALTA**  
Associate Justice

  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**MARIANO C. DEL CASTILLO**  
Associate Justice

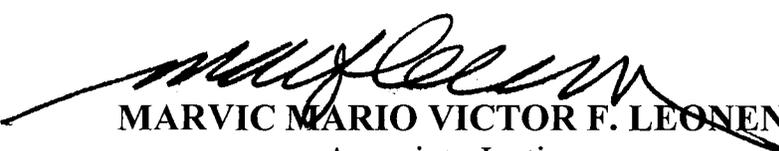
  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

*I agree with the Separate  
Concurring Opinion  
of J. Brion*  
  
**JOSE CATRAL MENDOZA**  
Associate Justice

  
**BIENVENIDO L. REYES**  
Associate Justice

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

  
**MARVIC MARIO VICTOR F. LEONEN**  
Associate Justice

### **CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified 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