EN BANC

G.R. No. 220598 – GLORIA MACAPAGAL-ARROYO, Petitioner, **v. PEOPLE OF THE PHILIPPINES and the SANDIGANBAYAN (FIRST DIVISION),** Respondents.

G.R. No. 220953 – BENIGNO B. AGUAS, Petitioner, **v. SANDIGANBAYAN (FIRST DIVISION),** Respondent.

Promulgated:
July 19, 2016

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DISSENTING OPINION

LEONEN, *J:*

With respect, I dissent.

Gloria Macapagal-Arroyo was a highly intelligent President who knew what she was doing. Having had an extraordinary term of nine (9) years as President of the Philippines, she had the experience to make her wise to many, if not all, of the schemes perpetrated within the government bureaucracy that allowed the pilferage of public coffers especially if these were repeated acts in ever-increasing amounts reaching millions of pesos. As President, it was her duty to stop—not abet or participate—in such schemes.

Gloria Macapagal-Arroyo, as a highly intelligent and experienced President, was aware that the power to increase the allocation and, therefore, disbursement of additional confidential and intelligence funds (CIF) of the Philippine Charity and Sweepstakes Office (PCSO) was hers alone. She was aware that this power was discretionary on her part. She did not have to approve any request for increase if it was not properly supported by adequate funds and the enumeration of specific activities.

She was also aware that, as President who occupied the highest office imbued with public trust, it was her duty under the Constitution and our laws that all the financial controls supported by audit observations be complied with to ensure that all funds be disbursed in a regular manner and for legitimate purposes. She knew that it was her duty to scrutinize if repeated requests for increases in these funds especially in ever-increasing amounts in the millions of pesos were done regularly and for legitimate ends.

After all, the President is the Chief Executive. Along with the awesome powers and broad discretions is likewise the President's duty to ensure that public trust is respected. The regular and legitimate allocation, disbursement, and use of funds—even confidential and intelligence funds—are matters of grave public trust.

It is not possible to assume that Gloria Macapagal Arroyo, the President of the Philippines, was not intelligent, not experienced and, at the time she held office, powerless to command the huge bureaucracy once under her control and to stop schemes that plundered our public coffers.

Increases in the allocation of CIF of PCSO were made possible only with the approval of Gloria Macapagal-Arroyo as President. Within the period from 2008 to 2010, there was not only one increase. There were several. The additional allocations for CIF were of increasing amounts running into the hundreds of millions of pesos. In 2010 alone, it was One Hundred Fifty Million Pesos (₱150,000,000.00). The General Manager of the PCSO was able to disburse more than One Hundred Thirty Eight Million Pesos (₱138,000,000.00) to herself. That disbursement remains unaccounted.

There was testimony that during these years, the PCSO was in deficit. Despite continued annual warnings from the Commission on Audit with respect to the illegality and irregularity of the co-mingling of funds that should have been allocated for the Prize Fund, the Charitable Fund, and the Operational Fund, this co-mingling was maintained. This made it difficult to ensure that the CIF will only be charged to the Operational Fund and that the Operational Fund would be kept at the required percentage of the revenues of the PCSO.

Gloria Macapagal-Arroyo, as President, approved the increases in the allocation and thus facilitated the disbursement of CIF despite the irregular co-mingling of funds. She approved the ever-increasing additions to the CIF of PCSO even without a showing that this government corporation had savings. She approved the additional allocation in increasing amounts on the strength of pro-forma requests without anything on record to show that she required explanation why the regular budget for CIF was insufficient. There was nothing to show that her repeated approval of ever-increasing amounts running into the millions of pesos was preceded with her inquiry as to why there was really a need to continue to increase the allocations and the disbursements in those amounts.

In 2008, 2009, and 2010, she approved increases in allocation for the CIF in millions of pesos even before the PCSO Board was able to approve

its regular corporate budget (COB).

All these are supported by the evidence presented by the prosecution.

The scheme to amass and accumulate ₱365,997,915.00 in cash of CIF required the indispensable participation of the President in its approval and its actual disbursement in cash by the General Manager of the PCSO. The raid on public coffers was done in a series or combination of acts. The use of the funds was not properly accounted.

The Information filed against petitioners and their co-accused unequivocally charged them with conspiring to commit this type of plunder.

The demurrers to evidence of petitioners Gloria Macapagal-Arroyo and Benigno B. Aguas were properly denied as the prosecution's evidence showed that, as part of a conspiracy, they engaged in acts constituting plunder. The evidence demonstrated that they participated in a protracted scheme of raiding the public treasury aimed at amassing ill-gotten wealth.

It is of no consequence, as the ponencia harps on, that petitioners' specific and direct personal benefit or enrichment is yet to be established with unmitigated certainty. I echo the position taken by Associate Justice Estela Perlas-Bernabe: "raids on the public treasury"—as articulated in Section 1(d) of Republic Act No. 7080, the law penalizing plunder—does not require "that personal benefit be derived by the [persons] charged."[1]

The rule on demurrer to evidence in criminal proceedings is clear and categorical.[2] If the demurrer to evidence is denied, trial must proceed and, thereafter, a judgment on the merits rendered. If the accused is convicted, he or she may then assail the adverse judgment, not the order denying demurrer to evidence.

It is true that we have the power of judicial review. This power, however, must be wielded delicately. Its exercise must be guided by a temperament of deference. Otherwise, the competence of trial courts will be frustrated. We will likewise open ourselves to the criticism that we use our power to supplant our own findings of fact with those of the Sandiganbayan.

The extraordinary power of certiorari granted under Article VIII,

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[1] J. Bernabe, Separate Opinion, p. 17.

[2] RULES OF COURT, Rule 119, sec. 23 provides:
SEC. 23. *Demurrer to evidence.* — . . . .
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.

Section 1 of the Constitution allows the exercise of judicial review of other branches and constitutional organs. With respect to courts under our supervision, the use of certiorari is covered by our Rules.

Certainly, we cannot grant certiorari and annul the denial of the demurrer to evidence when we ourselves, through our Rules of Court, prohibit the review or appeal of any denial of the demurrer to evidence.

The unique circumstances of this case provide us with the temptation of an inopportune, overzealous intervention by a superior court. We have the potential to frustrate the unique competence of specially designed public instrumentalities. In this case, it is the Sandiganbayan.[3] This can similarly entail the undermining of mechanisms for exacting public accountability. In this case, it is for the criminal prosecution of what is possibly the most severe offense that public officers may commit, and of charges that are raised against the highest official of the executive branch of government.

This Court's principal task is to preserve the rule of law. Animated by this purpose, we should exercise the better part of restraint, defer to the original jurisdiction of the constitutionally mandated "anti-graft court,"[4] and prudently bide for a more opportune time to involve ourselves with the factual and evidentiary intricacies of the charges against petitioners.

We should allow the Sandiganbayan to proceed with trial, weigh the evidence, and acquit or convict on the basis of its evaluation of evidence received over the course of several months. Only after final judgment and in the proper course of an appeal should we intervene, if warranted.

I

At the core of these criminal proceedings is the charge of conspiracy. Petitioners and their co-accused are charged with "conniving, conspiring and confederating with one another . . . to amass, accumulate and/or acquire, directly or indirectly, ill-gotten wealth."[5]

This allegation of conspiracy is as pivotal to these proceedings as the basic requisites of the offense with which petitioners were charged.

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3 CONST. (1973), art. XIII, sec. 5 provides:
SEC. 5. The Batasang Pambansa shall create a special court, to be known as Sandiganbayan, which shall have jurisdiction over criminal and civil cases involving graft and corrupt practices and such other offenses committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office as may be determined by law.

4 CONST., art. XI, sec. 4 provides:
SEC. 4. The present anti-graft court known as the Sandiganbayan shall continue to function and exercise its jurisdiction as now or hereafter may be provided by law.

5 *Rollo* (G.R. No. 220598), p. 24, Petition.

Plunder is defined in Section 2 of Republic Act No. 7080,[6] as amended:

> ***Section 2. Definition of the Crime of Plunder; Penalties.*** — Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts as described in Section 1(d) hereof in the aggregate amount or total value of at least Fifty million pesos (P50,000,000.00) 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.

Estrada v. Sandiganbayan[7] has clarified the elements that must be established for a successful prosecution of this offense:

> Section 2 is sufficiently explicit in its description of the acts, conduct and conditions required or forbidden, and prescribes the elements of the crime with reasonable certainty and particularity. Thus —
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> 1. That the offender is a public officer who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons;
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> 2. That he amassed, accumulated or acquired ill-gotten wealth through a combination or series of the following overt or criminal acts: (a) through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury; (b) by receiving, directly or indirectly, any commission, gift, share, percentage, kickback or any other form of pecuniary benefits from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer; (c) by the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities of Government owned or controlled corporations or their subsidiaries; (d) by obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking; (e) by establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular

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[6] An Act Defining and Penalizing the Crime of Plunder (1991).
[7] 421 Phil. 290 (2001) [Per J. Bellosillo, En Banc].

> 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,
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> 3. That the aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired is at least P50,000,000.00.[8]

The definition of plunder in Section 2 makes explicit reference to Section 1(d)[9] of Republic Act No. 7080 and the six (6) "means or similar schemes" enumerated in it. It is these means which Section 2's second element describes as "overt *or* criminal acts." The statutory text's use of the disjunctive "or" indicates a distinction between "overt" acts and "criminal" acts.

It is a distinction critical to appreciating the nature of the predicate means or schemes enumerated in Section 1(d). While some of these means or schemes may coincide with specific offenses (i.e., "criminal" acts) defined and penalized elsewhere in our statutes, it is not imperative that a person accused of plunder be also shown to have committed other specific criminal offenses by his or her predicate acts. That there be an overt showing of engaging in such means or schemes suffices.

The Information filed against petitioners and their co-accused properly alleged the elements of plunder.

First, it stated that petitioners were public officers. Petitioner Gloria Macapagal-Arroyo (Former President Arroyo) is Former President of the

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[8] Id. at 343–344.

[9] Rep. Act No. 7080 (1991), sec. 1 provides:
Section 1. Definition of Terms. — As used in this Act, the term —
. . . .
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 other form of pecuniary benefit 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 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.

Republic, and petitioner Benigno B. Aguas (Aguas) was former Budget and Accounts Manager of PCSO.[10]

Second, it alleged that the accused, *in conspiracy* with each other, transferred a total amount of ₱365,997,915.00 from PCSO's 2008 to 2010 Confidential and Intelligence Fund (CIF) in PCSO's accounts to their control and possession.[11]

Third, it stated that this diversion or transfer of funds was accomplished through three (3) of the six (6) acts enumerated in Section 1(d) of Republic Act No. 7080:

> (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 restriction, 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;
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> (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
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> (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 to the damage and prejudice of the Filipino people and the Republic of the Philippines.[12]

As expressly stated in the Information, the charge against petitioners is grounded on the assertion that there was a conspiracy.[13] On this assertion, petitioners' claim that the Information, let alone the evidence presented, fails to substantiate the charged offense—as it allegedly fails to specify who among the accused amassed, accumulated, or acquired the amount of ₱365,997,915.00[14]—crumbles.

By definition, plunder may be a collective act, just as well as it may be an individual act. Section 2 of Republic Act No. 7080 explicitly states that plunder may be committed "in connivance":

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10 *Rollo* (G.R. No. 220598), p. 306, Information.
11 Id. at 306–307.
12 Id. at 307.
13 Id. at 306–307.
14 Id. at 51–53, Petition.

> ***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[.] (Emphasis supplied)

In stating that plunder may be committed collectively, Section 2 does not require a central actor who animates the actions of others or to whom the proceeds of plunder are funneled.

It does, however, speak of "[a]ny public officer."[15] This reference is crucial to the determination of plunder as essentially an offense committed by a public officer. Plunder is, therefore, akin to the offenses falling under Title VII of the Revised Penal Code. Likewise, this reference highlights the act of plundering as essentially one that is accomplished by taking advantage of public office or other such instrumentalities.

Contrary to what the ponencia postulates, there is no need for a "main plunderer."[16] Section 2 does not require plunder to be centralized, whether in terms of its planning and execution, or in terms of its benefits. All it requires is for the offenders to act out of a common design to amass, accumulate, or acquire ill-gotten wealth, such that the aggregate amount obtained is at least ₱50,000,000.00. Section 1(d) of Republic Act No. 7080, in defining "ill-gotten," no longer even speaks specifically of a "public officer." In identifying the possessor of ill-gotten wealth, Section 1(d) merely refers to "any person":

> ***Section 1. Definition of Terms.*** — As used in this Act, the term —
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> . . . .
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> d) "*Ill-gotten wealth*" means any asset, property, business enterprise or material possession of *any person*[.] (Emphasis supplied)

With the allegation of conspiracy as its crux, each of the accused was charged as a principal. In a conspiracy:

> the act of one is the act of all the conspirators, and a conspirator may be held as a principal even if he did not participate in the actual commission of every act constituting the offense. In conspiracy, all those who in one way or another helped and cooperated in the consummation of the crime are considered co-principals since the degree or character of the individual participation of each conspirator in the commission of the crime becomes immaterial.[17]

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15 Rep. Act No. 7080 (1991), sec. 2.

16 Ponencia, p. 34.

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

From an evidentiary perspective, to be held liable as a co-principal, there must be a showing of an

> overt act in furtherance of the conspiracy, either by actively participating in the actual commission of the crime, or by lending moral assistance to his co-conspirators by being present at the scene of the crime, or by exerting moral ascendancy over the rest of the conspirators as to move them to executing the conspiracy.[18]

Direct proof, however, is not imperative:

> Direct proof is not essential to show conspiracy. It need not be shown that the parties actually came together and agreed in express terms to enter into and pursue a common design. The existence of the assent of minds which is involved in a conspiracy may be, and from the secrecy of the crime, usually must be, inferred by the court from proof of facts and circumstances which, taken together, apparently indicate that they are merely parts of some complete whole. If it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiments, then a conspiracy may be inferred though no actual meeting among them to concert means is proved. Thus, the proof of conspiracy, which is essentially hatched under cover and out of view of others than those directly concerned, is perhaps most frequently made by evidence of a chain of circumstances only.[19] (Citations omitted)

II

This is not an appeal from definitive findings of fact that have resulted in the conviction or acquittal of the accused. It is only a Petition for Certiorari seeking to supplant the discretion of the Sandiganbayan to hear all the evidence.

Section 4 of Republic Act No. 7080 provides:

> ***Section 4. Rule of Evidence.*** — For purposes of establishing the crime of plunder, it shall not be necessary to prove each and every criminal act done by the accused in furtherance of the scheme or conspiracy to amass, accumulate or acquire ill-gotten wealth, *it being sufficient to establish beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy.*

Division]; *People v. Camaddo*, G.R. No. 97934, January 18, 1993, 217 SCRA 162, 167 [Per J. Bidin, Third Division].

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

[19] *Alvizo v. Sandiganbayan*, 454 Phil. 34, 106 (2003) [Per J. Austria-Martinez, En Banc].

(Emphasis supplied)

The sufficiency of showing "a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy" is particularly crucial. It emphasizes how absence of direct proof of every conspirator's awareness of, as well as participation and assent in, every single phase of the overall conspiratorial design is not fatal to a group of conspirators' prosecution and conviction for plunder.

Section 4 was correctly applied in this case.

It would be inappropriate to launch a full-scale evaluation of the evidence, lest this Court—an appellate court, vis-à-vis the Sandiganbayan's original jurisdiction over plunder—be invited to indulge in an exercise which is not only premature, but also one which may entirely undermine the Sandiganbayan's competence. Nevertheless, even through a prima facie review, the prosecution adduced evidence of a combination or series of events that appeared to be means in a coherent scheme to effect a design to amass, accumulate, or acquire ill-gotten wealth. Without meaning to make conclusions on the guilt of the accused, specifically of petitioners, these pieces of evidence beg, at the very least, to be addressed during trial. Thus, there was no grave abuse of discretion on the part of the Sandiganbayan.

The Resolution of the Sandiganbayan, with respect to Former President Arroyo, deserves to be reproduced:

Pertinent Dates & Facts

2008

On April 2, 2008, accused Uriarte asked accused Arroyo for additional Confidential and Intelligence Funds in the amount of P25 million. This was approved.

On May 14, 2008, the Board issued Resolution No. 305 adopting and approving the PCSO's proposed Corporate Operating Budget (COB). In the COB was an allocation of P28 million as PCSO's CIF for 2008.

On August 13, 2008, Uriarte again asked Arroyo for additional CIF in the amount of P50 million. This was also approved.

2009

On February 18, 2009, the Board confirmed the additional CIF granted by Arroyo and designated Uriarte as Special Disbursing Officer through Resolution NO. 217.

On May 11, 2009, Plaras issued Credit Advice Nos. 2009-05-0216-C and 2009-05-0217-C, in relation to the cash advances drawn from

PCSO's CIF for 2008 in the amount of P29, 700,000.00 and P55, 152,000.00.

On March 31, 2009, the Board approved the 2009 PCSO COB. The allocation in the COB for the CIF was increased to P60 million.

On January 19, 2009, Uriarte asked Arroyo for an additional CIF in the amount of P50 million. This was approved.

On April 27, 2009, Uriarte asked Arroyo for an additional CIF in the amount of P10 million. This was approved.

On July 2, 2009, Uriarte asked Arroyo for an additional CIF in the amount of P10 million. This was approved.

On October 19, 2009, Uriarte asked Arroyo for an additional CIF in the amount of P20 million. This was approved. On the same date, Valencia wrote to Villar to liquidate the CIF under the Office of the Chairman in the amount of P2, 498,300.00. Enclosed in the said letter was the Certification of the Chairman, the original copy of the cash disbursement and liquidation vouchers, Board Resolution No. 469, a copy of the Maintenance and Other Operating Expenses Budget and the Matrix of Expenses incurred from the fund.

On December 9, 2009, the Board confirmed through Resolution No. 2356 the additional CIF approved by Arroyo and designated Uriarte as Special Disbursing Officer.

2010

On January 4, 2010, Uriarte asked Arroyo for an additional CIF in the amount of P150 million. This was approved.

On January 6, the Board issued Resolution No. 029 confirming the additional CIF and designated Uriarte as Special Disbursing Officer.

On March 10, 2010 the Board approved the proposed PCSO COB for 2010. The allocation of P60 million was made for the CIF.

On July 14, 2010, Plaras issued Credit Advice no. 2010-07-0413-C in relation to cash advances in 2009 from the CIF amounting to P116, 386,800.00

On July 15, 2010, Plaras asked Uriarte to submit various documents to support the requested liquidation.

On July 19, 2010, Uriarte submitted an accomplishment report, a single-page matrix of intelligence accomplishments prepared by Aguas and a two-page report on the utilization of the 2010 CIF.

On January 13, 2011, Plaras issued Credit Advice Nos. 2011-01-008-C in relation to the cash advances drawn by accused Uriarte and Valencia in 2010.

DISCUSSION

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

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.

The demurrers of each of the accused should thus be measured and evaluated in accordance with the High Court's pronouncement in the ***Gutib*** case. Focus must therefore be made as to whether the Prosecution's evidence sufficiently established the commission of the crime of plunder and the degree of participation of each of the accused.

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.
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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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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 accumulate during that period CIF funds in the total amount of P352, 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 P50 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" P5 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 P189, 681,646. This amount surpasses the P50 million threshold.

The evidence shows that for the year 2010 alone, Uriarte asked for P150 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 P138, 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

> P137, 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."
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> 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."
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> 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.
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> As to Aguas's involvement, Our June 6, 2013 Resolution said:
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> In all of the disbursement vouchers covering the case advances/releases to Uriarte of the CIF funds, Aguas certified that:
>
> CERTIFIED: Adequate available funds/budgetary allotment in the amount of P_____; 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 from 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 coulde 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 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-evident that the bulk of the CIF funds in 2009 and 2010 were allegedly spent for non-PCSO related activities, e.g. bomb threats, kidnapping, terrorism, and others.

With the **additional evidence** presented by the Prosecution **after** the bail hearings, the question now before the Court is whether such evidence elevated the quantum and weight of the evidence against the accused from strong evidence to sufficient evidence to convict, thereby justifying denial of their demurrers. Otherwise stated, was the "presumption great" finding in the bail hearings against Arroyo and Aguas further buttressed by the additional evidence presented bu the prosecution or was diluted by the same?

The Court believes that there is sufficient evidence that Uriarte accumulated more than P50 million of CIF funds in violation of COA circulars 92-385 and 2003-02, and LOI 1282, thus characterizing such as ill-gotten wealth. Uriarte used Arroyo's approval to illegally accumulate these CIF funds which she encashed during the period 2008-2010. Uriarte utilized Arroyo's approval to secure PCSO Board confirmation of such additional CIF funds and to "liquidate" the same resulting in the questionable credit advices issued by accused Plaras. These were simply consummated raids on public treasury.

In an attempt to explain and justify the use of these CIF funds, Uriarte together with Aguas, certified that these were utilized for the following purposes:

a) Fraud and threat that affect integrity of operation.
b) Bomb threat, kidnapping, destabilization and terrorism
c) Bilateral and security relation.

According to Uriarte and Aguas, these purposes were to be accomplished through "cooperation" of law enforcers which include the military, police and the NBI. The second and third purposes were never mentioned in Uriarte's letter-requests for additional CIF funds addressed to Arroyo. Aguas, on the other hand, issued an accomplishment report addressed to the COA, saying that the "Office of the President" required funding from the CIF funds of the PCSO to achieve the second and third purposes abovementioned. For 2009 and 2010, the funds allegedly used for such purposes amounted to P244, 500,00.00.

Such gargantuan amounts should have been covered, at the very least, by some documentation covering fund transfers or agreements with the military, police or the NBI, notwithstanding that these involved CIF funds. However, all the intelligence chiefs of the Army, Navy, Air Force, the PNP and the NBI, testified that for the period 2008-2010, their records do not show any PCSO-related operations involving any of the purposes mentioned by Uriarte and Aguas in their matrix of accomplishments. Neither were there any memoranda of agreements or any other documentation covering fund transfers or requests for assistance or surveillance related to said purposes. While the defense counsels tried to question the credibility of the intelligence chiefs by drawing our admissions from them that their records were not 100% complete, it seems highly incredulous that not a single document or record exists to sustain

Uriarte's and Aguas's report that CIF funds were used for such purposes. Uriarte, who was obliged to keep duplicate copies of her supporting documents for the liquidation of her CIF funds, was unable to present such duplicate copies when she was investigated by the Senate and the Ombudsman. As it stands, the actual use of these CIF funds is still unexplained.

Arroyo and Aguas's degree of participation as co-conspirators of Uriarte are established by sufficient evidence.

In ***Jose "Jinggoy" Estrada v. Sandiganbayan***, the gravamen of **conspiracy** in plunder cases was discussed by the Supreme Court, as follows:

> 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. Sub-paragraphs (a) to (d) in the Amended Information alleged the different participation of each accused in the conspiracy. The gravamen of the conspiracy charge, therefore, is not that each accused agreed to receive protection money from illegal gambling, that each misappropriated a portion of the tobacco excise tax, that each accused order 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.

It seems clear that in a conspiracy to commit plunder, the essence or material point is not the actual receipt of monies or unjust enrichment by each conspirator, but that a conspirator had participated in the accumulation of ill-gotten wealth, directly or indirectly.

In Our February 19, 2014 Resolution, We stated:

> The overt act, therefore, which establishes accused Macapagal-Arroyo's conspiracy with accused Uriarte is her unqualified "OK" notation on the letter-requests. All the badges of irregularities were there for accused Macapagal-Arroyo to see, but still she approved the letter-requests. Consider the following: accused Macapagal-Arroyo approved accused Uriarte's requests despite the absence of full details on the specific purpose for which the additional CIF were to be spent for. There was also no concrete explanation of the circumstances which gave rise to the necessity for the expenditures, as required by LOI 1282. Accused Macapagal-Arroyo did not question accused Uriarte's repetitive and simplistic basis for the requests, as

> she readily approved accused Uriarte's requests without any qualification or condition. Accused Macapagal-Arroyo apparently never questioned accused Uriarte why the latter was asking for additional CIF funds. All of accused Uriarte's requests did not state any balance or left-over CIF funds which PCSO still had before accused Uriarte made the requests. As President of the Republic, accused Macapagal-Arroyo was expected to be aware of the rules governing the use of CIF. Considering that accused Macapagal-Arroyo's approval also covered the use and release of these funds, it was incumbent upon her to make sure that accused Uriarte followed and complied with the rules set forth by the COA and LOI 1282.
>
> The findings on the conspiratorial acts of Arroyo and Aguas have been strengthened by the testimonies and certifications presented by the intelligence officers. Even granting, *arguendo*, that their testimonies should not be accorded great weight, the fact that Uriarte and Aguas certified that these CIF funds were used for purposes other than PCSO related activities, sufficiently established the conclusion that CIF monies were diverted to fund activities of the Office of the President. Therefore, Arroyo and Aguas's demurrers must be denied.[20] (Emphasis in the original, citations omitted)

The following observations from the evidence bears repeating for emphasis:

First, evidence was adduced to show that there was co-mingling of PCSO's Prize Fund, Charity Fund, and Operating Fund. In the Annual Audit Report of PCSO for 2007, the Commission on Audit already found this practice of having a "combo account" questionable.[21] The prosecution further alleged that this co-mingling was "to ensure that there is always a readily accessible fund from which to draw CIF money."[22]

Section 6 of PCSO's Charter, Republic Act No. 1169,[23] as amended by Batas Pambansa Blg. 42 and Presidential Decree No. 1157, stipulates how PCSO's net receipts (from the sale of tickets) shall be allocated. It specifies three separate funds – the Prize Fund, the Charity Fund, and funds for the operating expenses (or operating fund) – and defines the apportionment of gross receipts:

> SECTION 6. Allocation of Net Receipts. — From the gross receipts from the sale of sweepstakes tickets, whether for sweepstakes races, lotteries, or similar activities, shall be deducted the printing cost of such tickets, which in no case shall exceed two percent of such gross receipts to arrive at the net receipts. The net receipts shall be allocated as follows:

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[20] *Rollo* (G.R. No. 220598), p. 157-165.

[21] *Rollo* (G.R. No. 220598), p. 3416, Comment filed by the Ombudsman in G.R. No. 220953; Sandiganbayan records, Exhibit "E" for the Prosecution.

[22] Id. at 1644, Comment filed by the Ombudsman in G.R. No. 220598.

[23] Otherwise known as "An Act Providing for Charity Sweepstakes, Horse Races, and Lotteries",

A. Fifty-five percent (55%) shall be set aside as a prize fund for the payment of prizes, including those for the owners, jockeys of running horses, and sellers of winning tickets.

Prizes not claimed by the public within one year from date of draw shall be considered forfeited, and shall form part of the charity fund for disposition as stated below.

B. Thirty percent (30%) shall be set aside as contributions to the charity fund from which the Board of Directors, in consultation with the Ministry of Human Settlement on identified priority programs, needs, and requirements in specific communities and with approval of the Office of the President (Prime Minister), shall make payments or grants for health programs, including the expansion of existing ones, medical assistance and services and/or charities of national character, such as the Philippine National Red Cross, under such policies and subject to such rules and regulations as the Board may from time establish and promulgate. The Board may apply part of the contributions to the charity fund to approved investments of the Office pursuant to Section 1 (B) hereof, but in no case shall such application to investments exceed ten percent (10%) of the net receipts from the sale of sweepstakes tickets in any given year.

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

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

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

Co-mingling PCSO's funds into a single account runs against the plain text of PCSO's Charter. Accordingly, in 2007, the Commission on Audit's Annual Audit Report of PCSO found the practice of having a "combo account" questionable.[24] In this same Report, the Commission on Audit further observed that "said practice will not ensure the use of the fund for its purpose and will not account for the available balance of each fund as of a specified date."[25] Thus, it recommended that there be a corresponding transfer of funds to the specific bank accounts created for the different funds

[24] *Rollo* (G.R. No. 220598), p. 3416, Comment filed by the Ombudsman in G.R. No. 220953; Sandiganbayan records, Exhibit "E" for the Prosecution.

[25] Id. at 1671, Annex 1 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "E" for the Prosecution.

of PCSO:[26]

> 7. No corresponding transfer of cash was made to prize and charity funds whenever receivables were collected.
>
> . . . .
>
> 7. 3 Management commented that it is maintaining a combo (mother) account for the three funds where drawings or transfer of funds are being made as the need arises. Thus, there is no prejudice or danger in financing the charity mandate of the office.
>
> 7. 4 *In our opinion, said practice will not ensure the use of fund for its purpose and will not account for the available balance of each fund as of a specific date.*
>
> 7. 5 In order to avoid juggling/ using of one fund to/for another fund, we have recommended that all collections be deposited in on *Cash in bank* general account. *Upon computation of the allocation of net receipts to the three funds, a corresponding transfer of funds to the specific bank accounts created for the prize, charity and operating funds be effected.*[27] (Emphasis supplied)

Second, the prosecution demonstrated—through Former President Arroyo's handwritten notations—that she personally approved PCSO General Manager Rosario C. Uriarte's (Uriarte) "requests for the allocation, release and use of additional [Confidential and Intelligence Fund.]"[28] ***The prosecution stressed that these approvals were given despite Uriarte's generic one-page requests, which ostensibly violated Letter of Instruction No. 1282's requirement that, for intelligence funds to be released, there must be a specification of: (1) specific purposes for which the funds shall be used; (2) circumstances that make the expense necessary; and (3) the disbursement's particular aims. The prosecution further emphasized that Former President Arroyo's personal approvals were necessary, as Commission on Audit Circular No. 92-385's stipulates that confidential and intelligence funds may only be released upon approval of the President of the Philippines.***[29] Unrefuted, these approvals are indicative of Former President Arroyo's indispensability in the scheme to plunder.

Letter of Instruction No. 1282 states:

> Effective immediately, all requests for the allocation or release of intelligence funds shall indicate in full detail the *specific purposes for which said funds shall be spent* and *shall explain the circumstances giving rise to the necessity for the expenditure and the particular aims to be accomplished.* (Emphasis supplied)

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[26] Id.
[27] Id.
[28] Id. at 1644.
[29] Id. at 1642, Comment filed by the Ombudsman in G.R. No. 220598.

Uriarte's April 2, 2008 request stated:

> The Philippine Charity Sweepstakes Office (PCSO) respectfully requests that Office of the Vice Chairman and General Manager Rosario C. Uriarte be given additional intelligence fund in the amount of P25 Million Pesos for the year 2008.
>
> Since you took over the administration in 2001, we were able to continuously increase the funds generated for charity due to substantial improvement in our sales performance, From the sales of P7.32 B registered in 2000, the office has generated actual sales of P18.69B in 2007.
>
> 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 ambulance 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.
>
> PCSO at all instances must be on guard and have ready available resources to conduct surveillance, discreet investigations, purchase of information and other related activities. With the use of intelligence fund, PCSO can protect its image and integrity of its operations.
>
> (sgd.)
> ROSARIO C. URIARTE[30]

The wording and construction of the August 13, 2008 request is markedly similar:

[30] Id. at 1831, Annex 5 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "P" for the Prosecution.

The Philippine Charity Sweepstakes Office (PCSO) respectfully requests that Office of the Vice Chairman and General Manager Rosario C. Uriarte be given additional intelligence fund in the amount of P50 Million Pesos for the year 2008.

Since you took over the administration in 2001, we were able to continuously increase the funds generated for charity due to substantial improvement in our sales performance. From the sales of P7.32 B registered in 2000, the office has generated actual sales of P18.69B in 2007.

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. Unauthorized expenditures of endowment fund for charity patients and organizations;

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

4. Other fraudulent schemes and activities which put the PCSO in bad light.

PCSO at all instances must be on guard and have ready available resources to conduct surveillance, discreet investigations, purchase of information and other related activities. With the use of intelligence fund, PCSO can protect its image and integrity of its operations.

(sgd.)
ROSARIO C. URIARTE[31]

The same is true of the January 19, 2009 request:

The Philippine Charity Sweepstakes Office (PCSO) respectfully requests that Office of the Vice Chairman and General Manager Rosario C. Uriarte be given additional intelligence fund in the amount of P50 Million Pesos for the year 2009.

Since you took over the administration in 2001, we were able to continuously increase the funds generated for charity due to substantial improvement in our sales performance. From the sales of P7.32 B registered in 2000, the office has generated actual sales of P21 B in 2008.

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:

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[31] Id. at 1832, Annex 6 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "Q" for the Prosecution.

1. Unwarranted or unofficial use of ambulance by beneficiary-donees;

2. Lotto and Sweepstakes scams victimizing innocent people of winning the jackpot and selling tampered tickets as winning tickets.

3. Conduct of illegal gambling games (jueteng) under the guise of Small Town Lottery;

4. Other fraudulent schemes and activities which put the PCSO in bad light.

PCSO at all instances must be on guard and have ready available resources to conduct surveillance, discreet investigations, purchase of information and other related activities. With the use of intelligence fund, PCSO can protect its image and integrity of its operations.

(sgd.)
ROSARIO C. URIARTE [32]

Subsequent requests made on April 27, 2009 and July 2, 2009, respectively, also merely followed the formula employed in previous requests:

The Philippine Charity Sweepstakes Office (PCSO) respectfully requests that Office of the Vice Chairman and General Manager Rosario C. Uriarte be given additional intelligence fund in the amount of P10 Million Pesos for the year 2009.

Since you took over the administration in 2001, we were able to continuously increase the funds generated for charity due to substantial improvement in our sales performance. From the sales of P7.32 B registered in 2000, the office has generated actual sales of P23 B in 2008.

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. Unwarranted or unofficial use of ambulance by beneficiary-donees;

2. Lotto and Sweepstakes scams victimizing innocent people of winning the jackpot and selling tampered tickets as winning tickets.

3. Conduct of illegal gambling games (jueteng) under the guise of Small Town Lottery;

4. Other fraudulent schemes and activities which put the

[32] Id. at 1953, Annex 23 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "R-2" for the Prosecution.

PCSO in bad light.

PCSO at all instances must be on guard and have ready available resources to conduct surveillance, discreet investigations, purchase of information and other related activities. With the use of intelligence fund, PCSO can protect its image and integrity of its operations.

(sgd.)
ROSARIO C. URIARTE[33]

. . . .

The Philippine Charity Sweepstakes Office (PCSO) respectfully requests that Office of the Vice Chairman and General Manager Rosario C. Uriarte be given additional intelligence fund in the amount of P10 Million Pesos for the year 2009.

Since you took over the administration in 2001, we were able to continuously increase the funds generated for charity due to substantial improvement in our sales performance. From the sales of P7.32 B registered in 2000, the office has generated actual sales of P23 B in 2008.

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. Unwarranted or unofficial use of ambulance by beneficiary-donees;

2. Lotto and Sweepstakes scams victimizing innocent people of winning the jackpot and selling tampered tickets as winning tickets.

3. Conduct of illegal gambling games (jueteng) under the guise of Small Town Lottery;

4. Other fraudulent schemes and activities which put the PCSO in bad light.

PCSO at all instances must be on guard and have ready available resources to conduct surveillance, discreet investigations, purchase of information and other related activities. With the use of intelligence fund, PCSO can protect its image and integrity of its operations.

(sgd.)
ROSARIO C. URIARTE[34]

The request made on January 24, 2010 had some additions, but was still noticeably similar:

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[33] Id. at 1955, Annex 25 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "S" for the Prosecution.

[34] Id. at 1956, Annex 26 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "T" for the Prosecution.

> The Philippine Charity Sweepstakes Office (PCSO) has been conducting the experimental test run for the Small Town Lottery(STL) Project since February 2006. During the last semester of 2009, the PCSO Board has started to map out the regularization of the STL in 2010.
>
> Its regularization will encounter the illegal numbers game but it will entail massive monitoring and policing using confidential agents in the area to ensure that all stakeholders are consulted in the process.
>
> STL regularization will also require the acceptance of the public. Hence, public awareness campaign will be conducted nationwide. In the process, we will need confidential 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. Unauthorized expenditures of endowment fund for charity patients and organizations;
>
> 3. Fixers for the different programs of PCSO such as Ambulance Donation Project, Endowment Fund Program and Individual Medical Assistance Program;
>
> 4. Other fraudulent schemes and activities which put the PCSO in bad light.
>
> In order to save on PCSO operating funds, we suggest that the General Manager's Office be given at most, twenty percent (20%) of the Public Relations Fund or a minimum of 150 Million Pesos, to be used as intelligence/confidential fund. PCSO spent 760 Million pesos for PR in 2009.
>
> 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. PCSO will no longer need to seek approval for additional intelligence fund without first utilizing the amount allocated from the PR fund.
>
> For Her Excellency's approval.
>
> [sgd.]
> ROSARIO C. URIARTE[35]

These similarly worded requests relied on the same justification; that is, "a number of fraudulent schemes and nefarious activities . . . which affect the integrity of [PCSO's] operations[.]" The different requests used various permutations of any of the following seven (7) such schemes and activities:

1. Donated medicines sometimes end up in drug stores for sale even if they were labeled "*Donated by PCSO – Not for Sale*";

[35] Id. at 2063, Annex 37 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan Records Exhibit "W" for the Prosecution.

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. Conduct of illegal gambling games (jueteng) under [the] guise of Small Town lottery; and

7. Other fraudulent schemes and activities which put PCSO in [a] bad light.[36]

Citing "a number of fraudulent schemes and nefarious activities . . . which affect the integrity of [PCSO's] operations"[37] hardly seems to be sufficient compliance with Letter of Instruction No. 1282. This Letter of Instruction requires a request's specification of three (3) things: first, the specific purposes for which the funds shall be used; second, circumstances that make the expense necessary; and third, the disbursement's particular aims.[38] Citing "fraudulent schemes and nefarious activities" may satisfy the requirement of stating the circumstances that make the expense necessary. It may also imply that the disbursement's overarching (though not its particular) aim is to curtail such schemes and activities. Still, *merely citing these fails to account for the first requirement of the specific purposes for which the funds shall be used.* There was no mention of specific projects, operations, or activities "for which said funds shall be spent."[39]

The requests likewise failed to account for why additional amounts—

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[36] Id. at 1591–1611, Comment filed by the Ombudsman in G.R. No. 220598.

[37] *See rollo* (G.R. No. 220598), p. 1831, Annex 5 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "P" for the Prosecution;
Id. at 1832, Annex 6 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "Q" for the Prosecution;
Id. at 1953, Annex 23 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "R-2" for the Prosecution;
Id. at 1955, Annex 25 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "S" for the Prosecution;
Id. at 1956, Annex 26 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "T" for the Prosecution; and
Id. at 2063, Annex 37 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "W" for the Prosecution.

[38] L.O.I. No. 1282 (1983), par. 2 provides: "Effective immediately, all requests for the allocation or release of intelligence funds shall indicate in full detail the specific purposes for which said funds shall be spent and shall explain the circumstances giving rise to the necessity for the expenditure and the particular aims to be accomplished."

[39] L.O.I. No. 1282 (1983).

which ballooned to ₱150,000,000.00, as shown in the January 4, 2010 request—were necessary. Instead, these requests merely relied on the repeated refrain of how "PCSO at all instances must be on guard and have ready available resources to conduct surveillance, discreet investigations, purchase of information and other related activities."[40] These requests also relied on the claim that "[w]ith the use of intelligence fund, PCSO can protect its image and integrity."[41]

Commission on Audit Circular No. 92-385[42] emphasizes that funds provided for in the General Appropriations Act, which are released for intelligence operations, must be specifically designated as such in the General Appropriations Act. It further identifies the President of the Philippines as the sole approving authority for the release of confidential and intelligence funds:

> WHEREAS, no amount appropriated in the General Appropriations Act shall be released or disbursed for confidential and intelligence activities unless specifically identified and authorized as such intelligence or confidential fund in said Act;
>
> WHEREAS, intelligence and confidential funds provided for in the budgets of departments, bureaus, offices or agencies of the national government, including amounts from savings authorized by Special Provisions to be used for intelligence and counter intelligence activities, shall be released only upon approval of the President of the Philippines.

Similarly, Commission on Audit Circular 03-002[43] includes the "Approval of the President of the Release of the Confidential and Intelligence Fund"[44] as among the documentary requirements for the audit and liquidation of confidential and intelligence funds.

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40 *See rollo* (G.R. No. 220598), p. 1831, Annex 5 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "P" for the Prosecution;
Id. at 1832, Annex 6 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "Q" for the Prosecution;
Id. at 1953, Annex 23 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "R-2" for the Prosecution;
Id. at 1955, Annex 25 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "S" for the Prosecution;
Id. at 1956, Annex 26 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "T" for the Prosecution; and
Id. at 2063, Annex 37 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "W" for the Prosecution.

41 Id.

42 In re: Restatement with Amendments of COA Issuances on the Audit of Intelligence and/or Confidential Funds (1992).

43 In re: Audit and Liquidation of Confidential and Intelligence Funds For National and Corporate Sectors (2003).

44 The following must be submitted whenever a new Disbursing Officer is appointed.
A. *Certified xerox copy of the designation of Special Disbursing Officers.*
B. Certified xerox copy of their fidelity bonds.
C. Specimen signature of officials authorized to sign cash advances and liquidation vouchers. (Emphasis supplied)

The prosecution presented evidence to show that Former President Arroyo personally approved the release of additional CIF to the PCSO on several occasions from 2008 to 2010. This she did by handwriting the notation "OK, GMA."[45] In addition, the prosecution showed that these releases were in excess of amounts initially allocated as such CIF and were facilitated despite PCSO's having had to operate under a deficit.

Prosecution witness, Atty. Aleta Tolentino (Atty. Tolentino), Head of the Audit Committee of PCSO, emphasized that the approval and disbursements of the CIF were irregular as they did not comply with Commission on Audit Circular 92-385's requirement of there being an amount "specifically identified and authorized as such intelligence or confidential fund" before disbursements may be made for confidential and intelligence activities.

Atty. Tolentino noted that, as a consequence of Commission on Audit Circular 03-002, a government-owned and controlled corporation must first have an allocation for the CIF specified in its Corporate Operating Budget or "taken from savings authorized by special provisions."

In 2008, only ₱28,000,000.00 was allocated as CIF.[46] Nevertheless, Former President Arroyo approved the requests of Uriarte—separately, on April 2, 2008 and on August 13, 2008—to increase the budget allotted for PCSO Confidential and Intelligence Expenses, with an amount totaling ₱75,000,000.00.[47] For this year, an amount totaling ₱86,555,060.00 was disbursed.[48]

In 2009, the original budget of ₱60,000,000.00[49] was increased by a total of ₱90,000,000.00, through the approval of separate requests made by

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45 *See Rollo* (G.R. No. 220598), p. 1831, Annex 5 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "P" for the Prosecution.
Id. at 1832, Annex 6 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "Q" for the Prosecution;
Id. at 1953, Annex 23 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "R-2" for the Prosecution;
Id. at 1955, Annex 25 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "S" for the Prosecution;
Id. at 1956, Annex 26 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "T" for the Prosecution.
Id. at 2063, Annex 37 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "W" for the Prosecution.

46 Id. at 1829, Annex 4 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "K" for the Prosecution.

47 Id. at 1831, Annex 5 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "P" for the Prosecution;
Id. at 1832, Annex 6 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "Q" for the Prosecution;

48 Ponencia, p. 7.

49 Id. at 1952, Annex 22 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "L" for the Prosecution.

Uriarte to increase the budget by ₱50,000,000.00 on January 19, 2009;[50] ₱10,000,000.00 on April 27, 2009;[51] and ₱10,000,000.00 on July 2, 2009.[52] A letter[53] dated October 19, 2009 issued by former Executive Secretary Eduardo Ermita showed that Former President Arroyo also approved the release of additional CIF amounting to ₱20,000,000.00.[54] Total 2009 disbursements amounted to P138,420,875.00.[55]

In 2010, ₱141,021,980.00 was disbursed as of June 2010,[56] even as the CIF allocation for the entire year was only ₱60,000,000.00.[57] This comes at the heels of an increase of ₱150,000,000.00,[58] again through Former President Arroyo's approval of the request made by Uriarte.

It was similarly impossible for PCSO to have sourced these funds from savings. As Atty. Tolentino emphasized, PCSO was running on a deficit from 2004 to 2009.[59] She added that the financial statements for the years 2006 to 2009, which she obtained in her capacity as the Head of the Audit Committee of the PCSO, specifically stated that the PCSO was operating on a deficit in 2006 to 2009.

Third, the prosecution demonstrated that Uriarte was enabled to withdraw from the CIF solely on the strength of Former President Arroyo's approval *and* despite not having been designated as a special disbursing officer, pursuant to Commission on Audit Circulars 92-385 and 03-002.[60]

Commission on Audit Circular 92-385 provides:

> 3 - The following must be submitted whenever a new Disbursing Officer is appointed.
>
> A. *Certified xerox copy of the designation of Special Disbursing Officers.*
>
> B. Certified xerox copy of their fidelity bonds.

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[50] Id. at 1953, Annex 23 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "R-2" for the Prosecution.

[51] Id. at 1955, Annex 25 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "S" for the Prosecution.

[52] Id. at 1956, Annex 26 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "T" for the Prosecution.

[53] Id. at 1957, Annex 27 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "V" for the Prosecution.

[54] Id.

[55] Ponencia, p. 7.

[56] Ponencia, p. 7.

[57] Id. at 2062, Annex 36 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "E" for the Prosecution.

[58] Id. at 2063, Annex 37 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "W" for the Prosecution.

[59] *Ponencia,* p.5,

[60] Id. at 1652–1653, Comment filed by the Ombudsman in G.R. No. 220598.

> C. Specimen signature of officials authorized to sign cash advances and liquidation vouchers. (Emphasis supplied)

In addition, Commission on Audit Circular 2003-02 specifically requires that:

> Whenever a new Disbursing Officer is appointed or designated, the following must likewise be submitted:
>
> *a. Certified copy of the designation of the Special Disbursing Officer (SDO)*
>
> b. Certified copies of the Fidelity Bond of the designated SDO.
>
> c. Specimen signatures of officials authorized to sign cash advances and liquidation reports (formerly liquidation vouchers), particularly:
>
> c.1 Special Disbursing Officer
>
> c.2 Head of Agency
>
> c.3 Chief Accountant
>
> c.4 Budget Officer
>
> When the Head of Agency is the Special Disbursing Officer, the Head of Agency must make a signed statement to that effect. (Emphasis supplied)

The prosecution pointed out that Uriarte was only designated as Special Disbursing Office on February 18, 2009,[61] after several disbursements had already been made.[62] Thus, he managed to use the additional CIF at least three (3) times in 2008 and in early 2009, solely through Former President Arroyo's approval.[63]

Fourth, there were certifications on disbursement vouchers issued and submitted by Aguas, in his capacity as PCSO Budget and Accounts Manager, which stated that: there were adequate funds for the cash advances; that prior cash advances have been liquidated or accounted for; that the cash advances were accompanied by supporting documents; and that the expenses incurred through these were in order.[64] As posited by the

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61 Id. at 1653, Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "M" for the Prosecution.

62 At that time, three (3) disbursements were already made based on the approval of the requests of PCSO General Manager Uriarte. These were made on April 2, 2008, August 13, 2008, and January 19, 2009.

63 *Rollo* (G.R. No. 220598), p. 1653, Comment filed by the Ombudsman in G.R. No. 220598.

64 Id. at 1653, Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibits "JJ" to "H" for the Prosecution.

prosecution, these certifications facilitated the drawing of cash advances by PCSO General Manager Uriarte and Chairperson Sergio Valencia.[65]

Aguas repeatedly made the certifications in the disbursement vouchers twenty-three (23) times[66] in the following tenor:

> CERTIFIED: Adequate available funds/budgetary allotment in the amount of P_____; expenditure properly certified; supported by documents marked (X) per checklist and back hereof; account codes proper; previous cash advance liquidated/ accounted for.[67]

However, as the prosecution pointed out, the certifications were false and irregular because there were no documents that lent support to the cash advances on a per project basis. Moreover, there were no liquidations made of prior cash advances when the certifications were made.[68]

Fifth, *officers from the Philippine National Police, the Armed Forces of the Philippines, and the National Bureau of Investigation gave testimonies to the effect that no intelligence activities were conducted by PCSO with their cooperation, contrary to Uriarte's claims.*[69]

These officers were:

(1) Colonel Ernest Marc P. Rosal of the Intelligence Service of the Armed Forces of the Philippines;[70]
(2) Captain Ramil Roberto B. Enriquez, Assistant Chief of Naval Staff for Intelligence of the Philippine Navy;[71]
(3) Colonel Teofilo Reyno Bailon, Jr., Assistant Chief of Air Staff for Intelligence, A2 at the Philippine Air Force;[72]
(4) Lieutenant Colonel Vince James de Guzman Bantilan, Chief of the Intelligence and Operations Branch of the Office of the Assistant Chief of Staff for Intelligence, G2 at the Philippine Army;[73]
(5) Colonel Orlando Suarez, Chief of the Operations Control Division of the Office of the Chief of Staff for Intelligence, J2 at the Armed Forces of the Philippines;[74]
(6) Atty. Ruel M. Lasala, Head of Special Investigation Services of

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65 Id.
66 Sandiganbayan records, Exhibits "JJ" to "H^{3}" for the Prosecution.
67 Sandiganbayan records, Exhibits "JJ" to "H^{3}" for the Prosecution.
68 *Rollo* (G.R. No. 220598), p. 1653, Comment filed by the Ombudsman in G.R. No. 220598.
69 Id.
70 TSN, February 12, 2014.
71 TSN, January 29, 2014.
72 TSN, February 5, 2014.
73 TSN, February 19, 2014.
74 TSN, February 26, 2014.

the National Bureau of Investigation;[75]

(7) Atty. Reynaldo Ofialdo Esmeralda, Deputy Director for Intelligence Services of the National Bureau of Investigation;[76]

(8) Atty. Virgilio Mendez, former Deputy Director for Regional Operations Services of the National Bureau of Investigation;[77] and

(9) Director Charles T. Calima, Jr., former Director for Intelligence of the Philippine National Police.[78]

The prosecution added that no contracts, receipts, correspondences, or any other documentary evidence exist to support expenses for PCSO's intelligence operations.[79] *These suggest that funds allocated for the CIF were not spent for their designated purposes, even as they appeared to have been released through cash advances.* This marks a critical juncture in the alleged scheme of the accused. The disbursed funds were no longer in the possession and control of PCSO and, hence, susceptible to misuse or malversation.

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

On November 8, 2004, Former President Arroyo issued Executive Order No. 383, Series of 2004, which placed PCSO under the supervision and control of the Department of Welfare and Development. Section 1 of this Executive Order stated:

> SECTION 1. The Philippine Charity Sweepstakes Office shall hereby be ***under the supervision and control*** of the Department of Social Welfare and Development.[80] (Emphasis supplied)

Amending Executive Order No. 383 on August 22, 2005, Former President Arroyo issued Executive Order No. 455, Series of 2005. This put PCSO under the supervision and control of the Department of Health. Section 1 of this Executive Order stated:

> SECTION 1. The Philippine Charity Sweepstakes Office shall hereby be ***under the supervision and control*** of the Department of Health.[81] (Emphasis supplied)

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75 TSN, March 5, 2014.
76 TSN, March 12, 2014.
77 TSN, March 19, 2014.
78 TSN, March 26, 2014.
79 *Rollo* (G.R. No. 220598), p. 1653, Comment filed by the Ombudsman in G.R. No. 220598.
80 Executive Order No. 383, series of 2004.
81 Executive Order No. 455, series of 2005.

As Atty. Tolentino emphasized, with the set-up engendered by Executive Orders 383 and 455, it became necessary for PCSO projects to first be approved at the department-level before being referred to the Office of the President for approval. Nevertheless, PCSO General Manager Uriarte made her requests directly to Former President Arroyo, who then acted favorably on them, as shown by her handwritten notations.[82]

PCSO General Manager Uriarte had intimate access to the Office of the President and was likewise critical in the allocation, disbursement, and release of millions of pesos in cash.

Summing up, the prosecution adduced evidence indicating that Former President Arroyo and Aguas were necessary cogs to a machinery effected to raid the public treasury. It is hardly of consequence, then, that their direct personal gain has not been indubitably established.

For Former President Arroyo, this came through her capacity as the sole and exclusive approving authority. The funds, demarcated as confidential and intelligence funds, would not have been at any prospective plunderer's disposal had their release not been sanctioned. As the prosecution asserted, her own handwriting attests to her assent.

It defies common sense to think that other malevolent actors could have so easily misled Former President Arroyo into giving her assent. The more reasonable inference is that she acted with awareness, especially considering the large amounts involved, as well as the sheer multiplicity in the number of times her assent was sought.

Violations of regulations must necessarily be presumed to not have been made out of ignorance. This is especially true of senior government officials. The greater one's degree of responsibility, as evinced by an official's place in the institutional hierarchy, the more compelling the supposition that one acted with the fullness of his or her competence and faculty. The person involved here was once at the summit of the entire apparatus of government: a former President of the Republic.

These commonsensical and soundly logical suppositions arising from the prosecution's evidence demand a process through which the defendant Former President Arroyo may prove the contrary. Trial, then, must continue to afford her this opportunity.

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[82] *See Rollo* (G.R. No. 220598), p. 1831, Annex 5 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "P" for the Prosecution.

We cannot assume that the President of the Philippines, the Chief Executive, was ignorant of these regulations and these infractions.

For Aguas, he was in a position to enforce internal control mechanisms to ensure that the PCSO's financial mechanisms comply with the relevant laws and regulations. As the prosecution pointed out, his task was far from merely being perfunctory and ministerial.[83] By his certifications on disbursement vouchers, he attested that: "(1) the expenditure for which disbursements are made have been verified; (2) the expenditure for which the disbursements are made are supported by documents; (3) that account codes from which the fund[s] are to be sourced are proper; and (4) the previous cash advance has been liquidated/accounted."[84]

His very act of making these certifications presume an active effort to verify and make the necessary confirmations. Doing so without these prerequisites is tantamount to knowingly making false declarations. Still, Aguas appears to have proceeded to certify anyway, thereby enabling his co-accused PCSO General Manager Uriarte and Chairperson Sergio Valencia to draw cash advances. This drew the proverbial door open to the larger scheme of plunder, which the Information averred. As the prosecution explained:

> 5.11. Petitioner, despite committing a falsification knew well that he had to sign and certify the [disbursement vouchers] because he knew that without his false certification, no check to pay for the disbursement vouchers thus prepared can be issued and no money can be withdrawn by Uriarte and Valencia. Petitioner Aguas' certification truly facilitated the release of the checks in favor of Uriarte and Valencia. Without his false certification, the scheme of repeatedly raiding the coffers of PCSO would not have been accomplished.[85]

The proof adduced by the prosecution raises legitimate questions. It is well within the reasonable exercise of its competencies and jurisdiction that the Sandiganbayan opted to proceed with the remainder of trial so that these issues could be addressed. Thus, it was in keeping with the greater interest of justice that the Sandiganbayan denied petitioners' demurrers to evidence and issued its assailed resolutions.

III

Parenthetically, even assuming without conceding that petitioners could not be convicted of plunder, the prosecution still adduced sufficient

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[83] Id. at 3476–3479, Comment filed by the Ombudsman in G.R. No. 220953.
[84] Id.
[85] Id. at 3478, Comment filed by the Ombudsman in G.R. No. 220953.

evidence to convict them with malversation of public funds, as penalized by Article 217 of the Revised Penal Code. Hence, trial should still proceed to receive their evidence on this point.

At the heart of the offense of plunder is the existence of "a combination or series of overt or criminal acts." *Estrada v. Sandiganbayan*[86] clarified that "to constitute a "series" there must be two (2) or more overt or criminal acts falling under the same category of enumeration found in Sec. 1, par.(d), say, misappropriation, malversation and raids on the public treasury, all of which fall under Sec. 1, par. (d), subpar. (1)."

Accordingly, this Court has consistently held that the lesser offense of malversation can be included in plunder when the amount amassed reaches at least ₱50,000,000.00.[87] This Court's statements in *Estrada v. Sandiganbayan* are an acknowledgement of how the predicate acts of bribery and malversation (if applicable) need not be charged under separate informations when one has already been charged with plunder:

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

In *Atty. Serapio v. Sandiganbayan,*[88] the accused assailed the information for charging more than one offense: bribery, malversation of public funds or property, and violations of Sec. 3(e) of Republic Act No. 3019 and Section 7(d) of Republic Act No. 6713. This Court observed that "the acts alleged in the information are not separate or independent offenses,

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[86] 427 Phil. 820 (2002) [Per J. Puno, En Banc]

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

[88] 444 Phil. 499 (2003) [Per J. Callejo Sr., En Banc]

but are predicate acts of the crime of plunder."[89] The Court, quoting the Sandiganbayan, clarified:

> It should be stressed that the Anti-Plunder law specifically Section 1(d) thereof does not make any express reference to any specific provision of laws, other than R.A. No. 7080, as amended, which coincidentally may penalize as a separate crime any of the overt or criminal acts enumerated therein. The said acts which form part of the combination or series of act are described in their generic sense. Thus, aside from 'malversation' of public funds, the law also uses the generic terms 'misappropriation,' 'conversion' or 'misuse' of said fund. The fact that the acts involved may likewise be penalized under other laws is incidental. The said acts are mentioned only as predicate acts of the crime of plunder and the allegations relative thereto are not to be taken or to be understood as allegations charging separate criminal offenses punished under the Revised Penal Code, the Anti-Graft and Corrupt Practices Act and Code of Conduct and Ethical Standards for Public Officials and Employees.[90]

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

> There is evidence, however, that certain amounts were released to accused Rosario Uriarte and Sergio Valencia and these releases were made possible by certain participatory acts of accused Arroyo and Aguas, as discussed in the subject Resolution. Hence, there is a need for said accused to present evidence to exculpate them from liability which need will warrant the denial of their Demurrer to Evidence, as under the variance rule they maybe held liable for the lesser crimes which are necessarily included in the offense of plunder.[91]

Significantly, the Sandiganbayan's Resolution to the demurrers to evidence includes the finding that the PCSO Chairperson Valencia, should still be made to answer for malversation as included in the Information in these cases.[92] Since the Information charges conspiracy, both petitioners in these consolidated cases still need to answer for those charges. Thus, the demurrer to evidence should also be properly denied. It would be premature to dismiss and acquit the petitioners.

IV

The sheer absence of grave abuse of discretion is basis for denying the consolidated Petitions. There, however, lies a more basic reason for

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89 Id. at 524–525.

90 Id.

91 Petition, Annex "B", People v Gloria Macapagal Arroyo et al., Crim. Case No. SB-12-crm-0174 Concurring and Dissenting, April 6, 2016, p. 5, per Ponferrada J.

92 Petition, Annex "A", People v Gloria Macapagal Arroyo et al., Crim. Case No. SB-12-CRM-0174, Resolution, April 6, 2016, pp. 44-52, per Lagos J.

respecting the course taken by the Sandiganbayan.

Rule 119, Section 23 of the Revised Rules on Criminal Procedure articulates the rules governing demurrers to evidence in criminal proceedings:

> RULE 119
> TRIAL
>
> SEC. 23. *Demurrer to evidence.* — After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.
>
> If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.
>
> The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.
>
> If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.
>
> 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.

A demurrer to evidence is "an objection or exception by one of the parties in an action at law, to the effect that the evidence which his adversary produced is insufficient in point of law (whether true or not) to make out his case or sustain the issue."[93]

It works by "challeng[ing] the sufficiency of the whole evidence to sustain a verdict."[94] In resolving the demurrer to evidence, a trial court is not as yet compelled to rule on the basis of proof beyond reasonable doubt[95]—the requisite quantum of proof for *conviction* in a criminal

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[93] *Choa v. Choa*, 441 Phil. 175, 183 (2002) [Per J. Panganiban, Third Division], *citing* Black's Law Dictionary 433 (6th ed,1990).

[94] *Gutib v. Court of Appeals*, 371 Phil. 293, 300 (1999) [Per J. Bellosillo, Second Division].

[95] *Cf. Spouses Condes v. Court of Appeals*, 555 Phil. 311, 323–324 (2007) [Per J. Nachura, Third Division], on demurrer to evidence in civil cases: "In civil cases, the burden of proof is on the plaintiff to establish his case by preponderance of evidence. 'Preponderance of evidence' means evidence

proceeding[96]—but "is merely required to ascertain whether there is *competent or sufficient evidence* to sustain the indictment or to support a verdict of guilt."[97]

A demurrer to evidence is a device to effect one's right to a speedy trial[98] and to speedy disposition of cases.[99] This has been settled very early on in our jurisprudence:

> [T]here seems now to be no reason for putting the defendant to the necessity of presenting his proof, if, at the time of the close of the proof of the prosecution, there is not sufficient evidence to convince the lower court that the defendant is guilty, beyond a reasonable doubt, of the crime charged in the complaint. . . .
>
> . . . [W]e see no reason now . . . for denying the right of the lower court to dismiss a case at the close of the presentation of the testimony by the prosecuting attorney, if at that time there is not sufficient evidence to make out a prima facie case against the defendant. If, however, the lower court, at that time, in the course of the trial, refuses to dismiss the defendant, his dismissal can not be made the basis of an appeal for the purpose of reversing the sentence of the lower court.[100]

Indeed, if there is not even "competent or sufficient evidence"[101] to sustain a prima facie case, there cannot be proof beyond reasonable doubt to ultimately justify the deprivation of one's life, liberty, and/or property, which ensues from a criminal conviction. There is, then, no need for even burdening the defendant with laying out the entirety of his or her defense. If proof beyond reasonable doubt is so far out of the prosecution's reach that it cannot even make a prima facie case, the accused may as well be acquitted. On the part of the court before which the case is pending, it may likewise then be disburdened of the rigors of a full trial. A demurrer to evidence

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which is of greater weight, or more convincing than that which is offered in opposition to it. ***It is, therefore, premature to speak of 'preponderance of evidence' in a demurrer to evidence*** because it is filed before the defendant presents his evidence." (Emphasis supplied)

96 RULES OF COURT, Rule 133, sec. 2 provides:
SEC. 2. *Proof beyond reasonable doubt.* — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof, excluding possibility of error, produces absolute certainly. Moral certainly only is required, or that degree of proof which produces conviction in an unprejudiced mind.

97 *Gutib v. Court of Appeals*, 371 Phil. 293, 300 (1999) [Per J. Bellosillo, Second Division], emphasis supplied.

98 CONST., art. III, sec. 14 provides:
SECTION 14. (1) No person shall be held to answer for a criminal offense without due process of law. (2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

99 CONST., art. III, sec. 16 provides:
SECTION 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

100 *Romero v. U.S.*, 22 Phil. 565, 569 (1912) [Per J. Johnson, First Division].

101 *Gutib v. Court of Appeals*, 371 Phil. 293, 300 (1999) [Per J. Bellosillo, Second Division].

thereby incidentally serves the interest of judicial economy.

In *Spouses Condes v. Court of Appeals*:[102]

> The purpose of a demurrer to evidence is precisely to expeditiously terminate the case without the need of the defendant's evidence. It authorizes a judgment on the merits of the case without the defendant having to submit evidence on his part as he would ordinarily have to do, if it is shown by plaintiff's evidence that the latter is not entitled to the relief sought.[103]

V

The competence to determine whether trial must continue and judgment on the merits eventually rendered is exclusively lodged in the trial court:

> Whether or not the evidence presented by the prosecuting attorney, at the time he rests his cause, is sufficient to convince the court that the defendant is guilty, beyond a reasonable doubt, of the crime charged, ***rests entirely within the sound discretion and judgment of the lower court.***[104] (Emphasis supplied)

This is because it is before the trial court that evidence is presented and the facts are unraveled. By its very nature as a "trial" court, the adjudicatory body has the opportunity to personally observe the demeanor of witnesses delivering testimonial evidence, as well as to peruse the otherwise sinuous mass of object and documentary evidence. It is the tribunal with the capacity to admit and observe and, in conjunction with this case, the principal capacity to test and counterpoise. Thus, it entertains and rules on objections to evidence.

Therefore, it follows that if a demurrer to evidence is denied, the correctness of this denial may only be ascertained when the consideration of evidence has been consummated. There is no better way of disproving the soundness of the trial court's having opted to continue with the proceedings than the entire body of evidence:

> Whether he committed an error in denying the [demurrer to evidence], for insufficiency of proof, can only be determined upon appeal, and then ***not because he committed an error, as such,*** *but because the evidence adduced during the trial of the cause was not sufficient to show that the*

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[102] 555 Phil. 311 (2007) [Per J. Nachura, Third Division].

[103] Id. at 324, *citing Heirs of Emilio Santioque v. Heirs of Emilio Calma*, 536 Phil. 524, 540–541 (2006) [Per J. Callejo, First Division].

[104] *Romero v. U.S.*, 22 Phil. 565, 569 (1912) [Per J. Johnson, First Division]. In the context of this Decision, "lower court" was used to mean "trial court."

defendant was guilty of the crime charged.[105] (Emphasis supplied)

The settled wisdom is that while a demurrer is an available option to the accused so that he may speedily be relieved of an existing jeopardy, it is the tribunal with the opportunity to scrutinize the evidence that can best determine if the interest of *justice*—not of any particular party—is better served by either immediately terminating the trial (should demurrer be granted) or still continuing with trial (should demurrer be denied). It is this wisdom that animates Rule 119, Section 23's proscription against reviews "by appeal or by certiorari *before judgment.*"

Accordingly, in the event that a demurrer to evidence is denied, "the remedy is . . . to continue with the case in due course and *when an unfavorable verdict is handed down*, to take an appeal in the manner authorized by law."[106] The proper subject of the appeal is the trial court's judgment convicting the accused, not its prior order denying the demurrer. The denial order is but an interlocutory order rendered during the pendency of the case,[107] while the judgment of conviction is the "judgment or final order that completely disposes of the case"[108] at the level of the trial court.

People v. Court of Appeals[109] involved two assailed Resolutions of the Court of Appeals. The first assailed Resolution granted the accused's Motion to consider the trial court's denial order not as an interlocutory order but as a "judgment of conviction." In granting this Motion, the first assailed Resolution also considered the Petition for Certiorari subsequently filed before the Court of Appeals as an "appeal" from that "judgment of conviction." This Resolution ruled that the Court of Appeals should proceed to rule on the "appeal" as soon as the parties' appeal briefs or memoranda had been filed. The second assailed Resolution considered the "appeal" submitted for resolution.

This Court found grave abuse of discretion on the part of the Court of Appeals in issuing the assailed Resolutions, particularly in "preempt[ing] or arrogat[ing] unto itself the trial court's original and exclusive jurisdiction."[110]

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[105] Id.

[106] *Soriquez v. Sandiganbayan*, 510 Phil. 709, 719 (2005) [Per J. Garcia, Third Division], *citing Quiñon v. Sandiganbayan*, 338 Phil. 290, 309 (1997) [Per C.J. Narvasa, Third Division].

[107] *Azor v. Sayo*, 273 Phil. 529, 533 (1991) [Per J. Paras, En Banc]: "[A] denial of the demurrer is not a final order but merely an interlocutory one. Such an order or judgment is only provisional, as it determines some point or matter but is not a final decision of the whole controversy."

[108] RULES OF COURT, Rule 41, sec. 1 provides:
SECTION 1. *Subject of appeal.* — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.
No appeal may be taken from:
. . . .
(c) An interlocutory order;

[109] 204 Phil. 511 (1982) [Per J. Teehankee, First Division].

[110] Id. at 517.

In making its conclusions, this Court emphasized an appellate court's lack of competence or jurisdiction to render an original judgment on the merits, i.e., one which, at the first instance, is based on the evidence or the facts established. It further explained that the exercise of appellate jurisdiction is contingent on a prior judgment rendered by a tribunal exercising original jurisdiction:

> Manifestly, *respondent court was bereft of jurisdiction* to grant accused's counsel's motion, supra, *to by-pass the trial court and itself "find the accused guilty and impose upon them the requisite penalty provided by law"* (with their proposal to consider the trial court's denial order as a "judgment of conviction") and then review its own verdict and imposition of penalty (with the conversion of the certiorari petition into one of review on appeal).
>
> *The exclusive and original jurisdiction to* hear the case for estafa involving the sum of US$999,000.00 and *pass judgment upon the evidence and render its findings of fact and in the first instance adjudicate the guilt or non-guilt of the accused lies with the trial court* i.e. the Court of First Instance concurrently with the Circuit Criminal Court, as in this case.
>
> On the other hand, the certiorari petition before it was filed only in aid of its appellate jurisdiction on the narrow issue of whether the trial court committed a grave abuse of discretion in denying the motion to dismiss the criminal case. Such a petition merited outright dismissal, more so with the accused's motion to consider the denial order as a verdict of conviction as above shown.
>
> *There was no judgment of the trial court over which respondent court could exercise its appellate jurisdiction.* The mandate of Article X, section 9 of *the Constitution requires that "Every decision of a court of record shall state the facts and the law on which it is based."* Rule 120, section 2 of the Rules of Court requires further that "The judgment must be written in the official language, personally and directly prepared by the judge and signed by him and shall contain clearly and distinctly a *statement of the facts proved or admitted by the defendant and upon which the judgment is based.* If it is of conviction the judgment or sentence shall state (a) the legal qualification of the offense constituted by the acts committed by the defendant, and the aggravating or mitigating circumstances attending the commission thereof, if there is any; (b) the participation of the defendant in the commission of the offense, whether as principal, accomplice or accessory after the fact; (c) the penalty imposed upon the defendant party; and (d) the civil liability or damages caused by the offended party, if there is any, unless the enforcement of the civil liability by a separate action has been reserved." *It is obvious that the denial order was not such a judgment.*[111] (Emphasis supplied, citations omitted)

For the same reason that a denial order is an interlocutory order, it may not be assailed through a petition for certiorari. However, *Resoso v.*

[111] Id. at 528–529.

Sandiganbayan[112] explained that the non-availability of a petition of certiorari is premised not only on the interlocutory nature of a denial order, but more so on how "certiorari does not include the correction of evaluation of evidence":[113]

> Petitioner would have this Court review the assessment made by the respondent Sandiganbayan on the sufficiency of the evidence against him at this time of the trial. *Such a review cannot be secured in a petition for certiorari,* prohibition, and mandamus *which is not available to correct mistakes in the judge's findings and conclusions or to cure erroneous conclusions of law and fact.* Although there may be an error of judgment in denying the demurrer to evidence, this cannot be considered as grave abuse of discretion correctible by certiorari, as *certiorari does not include the correction of evaluation of evidence.* When such an adverse interlocutory order is rendered, the remedy is not to resort to certiorari or prohibition but to continue with the case in due course and when an unfavorable verdict is handed down, to take an appeal in the manner authorized by law.[114] (Emphasis supplied, citations omitted)

The invariable import of the entire body of jurisprudence on demurrer to evidence is the primacy of a trial court's capacity to discern facts. For this reason, the last paragraph of Rule 119, Section 23 is cast in such certain and categorical terms that its text does not even recognize a single exception:

> SEC. 23. *Demurrer to evidence.* — . . .
>
> . . . .
>
> 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.

VI

It is true that the Revised Rules on Criminal Procedure is subordinate to and must be read in harmony with the Constitution. Article VIII, Section 1 of the 1987 Constitution spells out the injunction that "[j]udicial power includes the duty of the courts of justice . . . 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." Judicial review of a denial order is, therefore, still possible.

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[112] 377 Phil. 249 (1999) [Per J. Gonzaga-Reyes, Third Division].

[113] Id. at 256, *citing Interorient Maritime Enterprises, Inc. v. NLRC*, 330 Phil. 493, 503 (1996) [Per J. Panganiban, Third Division].

[114] Id.

However, the review must be made on the narrowest parameters, consistent with the Constitution's own injunction and the basic nature of the remedial vehicle for review, i.e., a petition for certiorari:

> Though interlocutory in character, an order denying a demurrer to evidence may be the subject of a certiorari proceeding, *provided the petitioner can show that it was issued with grave abuse of discretion; and that appeal in due course is not plain, adequate or speedy under the circumstances*. It must be stressed that a writ of certiorari may be issued only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction, not errors of judgment. Where the issue or question involves or affects the wisdom or legal soundness of the decision — not the jurisdiction of the court — the same is beyond the province of a petition for certiorari.[115] (Emphasis supplied)

Relief from an order of denial shall be allowed only on the basis of grave abuse of discretion amounting to lack or excess of jurisdiction. At the core of this requirement is the existence of an "abuse." Further, the operative qualifier is "grave." Thus, to warrant the grant of a writ of certiorari, the denial of demurrer must be so arbitrary, capricious, or whimsical as to practically be a manifestation of the trial court's own malevolent designs against the accused or to be tantamount to abject dereliction of duty:

> [T]he abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. Mere abuse of discretion is not enough: it must be grave.[116]

Even then, grave abuse of discretion alone will not sustain a plea for certiorari. Apart from grave abuse of discretion, recourse to a petition for certiorari must be impelled by a positive finding that "there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law."[117]

A sweeping reference to the power of judicial review does not

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[115] *Spouses Condes v. Court of Appeals*, 555 Phil. 311, 322 (2007) [Per J. Nachura, Third Division] *citing Choa v. Choa*, 441 Phil. 175, 181 (2002) [Per J. Panganiban, Third Division], *Deutsche Bank Manila v. Chua Yok See*, 517 Phil. 212 (2006) [Per J. Callejo, First Division].

[116] *Mitra v. Commission on Elections*, 636 Phil. 753, 777 (2010) [Per J. Brion, En Banc].

[117] RULES OF COURT, Rule 65, sec. 1 provides:
SECTION 1. *Petition for certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.

sanction an ad hoc disregard of principles and norms articulated in the Rules of Court, such as those on the basic nature and availability of a Rule 65 petition, as well as the availability of relief from orders denying demurrers to evidence. These are Rules which this Court itself promulgated and by which it voluntarily elected to be bound. More importantly, these Rules embody a wisdom that was articulated in an environment removed from the ephemeral peculiarities of specific cases. They are not to be rashly suspended on a provisional basis. Otherwise, we jeopardize our own impartiality.

The power of judicial review through a petition for certiorari must be wielded delicately. The guiding temperament must be one of deference, giving ample recognition to the unique competence of trial courts to enable them to freely discharge their functions without being inhibited by the looming, disapproving stance of an overzealous superior court.

VII

The need for prudence and deference is further underscored by other considerations: first, a policy that frowns upon injunctions against criminal prosecution; and second, the need to enable mechanisms for exacting public accountability to freely take their course.

As a rule, "injunction will not lie to enjoin a criminal prosecution."[118] This is because "public interest requires that criminal acts be immediately investigated and prosecuted for the protection of society except in specified cases among which are to prevent the use of the strong arm of the law in an oppressive and vindictive manner, and to afford adequate protection to constitutional rights."[119]

"What cannot be done directly, cannot be done indirectly."[120] The quoted statements were made in jurisprudence and specifically pertained to the issuance of writs of injunction. Nevertheless, granting a petition for certiorari assailing the denial of demurrer to evidence will similarly mean the cessation of proceedings that, in the trial court's wisdom, were deemed imperative. By the stroke of another court's hand, the conduct of trial is peremptorily cast aside, and a full-scale inquiry into the accused's complicity is undercut.

The public interest that impels an uninhibited full-scale inquiry into complicity for criminal offenses, in general, assumes even greater significance in criminal offenses committed by public officers, in particular. If the legal system is to lend truth to the Constitution's declaration that

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[118] *Asutilla v. Philippine National Bank*, 225 Phil. 40, 43 (1986) [Per J. Melencio-Herrera, First Division].
[119] Id.
[120] *Director of Prisons v. Teodoro*, 97 Phil. 391, 397 (1955) [Per J. Labrador, First Division].

"[p]ublic office is a public trust,"[121] all means must be adopted and all obstructions cleared so as to enable the unimpaired application of mechanisms for demanding accountability from those who have committed themselves to the calling of public service.

This is especially true in prosecutions for plunder. It is an offense so debased, it may as well be characterized as the apex of crimes chargeable against public officers:

> Our nation has been racked by scandals of corruption and *obscene profligacy of officials in high places* which have shaken its very foundation. The anatomy of graft and corruption has become more elaborate in the corridors of time as unscrupulous people relentlessly contrive more and more ingenious ways to bilk the coffers of the government. Drastic and radical measures are imperative to fight the increasingly sophisticated, extraordinarily methodical and economically catastrophic looting of the national treasury. Such is the Plunder Law, especially designed to disentangle those ghastly tissues of grand-scale corruption which, if left unchecked, will spread like a malignant tumor and ultimately consume the moral and institutional fiber of our nation. *The Plunder Law, indeed, is a living testament to the will of the legislature to ultimately eradicate this scourge and thus secure society against the avarice and other venalities in public office.*[122] (Emphasis supplied)

This is especially true of prosecution before the Sandiganbayan. Not only is the Sandiganbayan the trial court exercising exclusive, original jurisdiction over specified crimes committed by public officers; it is also a court that exists by express constitutional fiat.

The Sandiganbayan was created by statute, that is, Presidential Decree No. 1486. However, this statute was enacted pursuant to a specific injunction of the 1973 Constitution:

> SECTION 5. The National Assembly shall create a special court, to be known as Sandiganbayan, which shall have jurisdiction over criminal and civil cases involving graft and corrupt practices and such other offenses committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office as may be determined by law.[123]

Under the 1987 Constitution, the Sandiganbayan continues to exist and operate by express constitutional dictum:

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[121] CONST., art. XI, sec. 1.

[122] *Estrada v. Sandiganbayan*, 421 Phil. 290, 366–367 (2001) [Per J. Bellosillo, En Banc].

[123] CONST. (1973), art. XIII, sec. 5 was subsequently amended to read as:
SEC. 5. The Batasang Pambansa shall create a special court, to be known as Sandiganbayan, which shall have jurisdiction over criminal and civil cases involving graft and corrupt practices and such other offenses committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office as may be determined by law.

> SECTION 4. The present anti-graft court known as the Sandiganbayan shall continue to function and exercise its jurisdiction as now or hereafter may be provided by law.[124]

Though the Sandiganbayan is not an independent constitutional body, that it owes its existence to an express and specific constitutional mandate is indicative of the uniqueness of its competence. This "expertise-by-constitutional-design" compels a high degree of respect for its findings and conclusions within the framework of its place in the hierarchy of courts.

Guided by these principles, animated by the wisdom of deferring to the Sandiganbayan's competence—both as a trial court and as the constitutionally ordained anti-graft court—and working within the previously discussed parameters, this Court must deny the consolidated Petitions.

This Court is not a trier of facts. Recognizing this Court's place in the hierarchy of courts is as much about propriety in recognizing when it is opportune for this Court to intervene as it is about correcting the perceived errors of those that are subordinate to it.

Prudence dictates that we abide by the established competence of trial courts. We must guard our own selves against falling into the temptation (against which we admonished the Court of Appeals in *People v. Court of Appeals)* to "preempt or arrogate unto [ourselves] the trial court's original and exclusive jurisdiction."[125]

We are faced with an independent civil action, not an appeal. By nature, a petition for certiorari does not enable us to engage in the "correction of evaluation of evidence."[126] In a Rule 65 petition, we are principally equipped with the parties' submissions. It is true that in such petitions, we may also require the elevation of the records of the respondent tribunal or officer (which was done in this case). Still, these records are an inadequate substitute for the entire enterprise that led the trial court—in this case, the Sandiganbayan—to its conclusions.

The more judicious course of action is to let trial proceed at the Sandiganbayan. For months, it received the entire body of evidence while it sat as a collegiate court. Enlightened by the evidence with which it has

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[124] CONST., art. XI, sec. 4.

[125] *People v. Court of Appeals*, 204 Phil. 511, 517 (1982) [Per J. Teehankee, First Division].

[126] *Resoso v. Sandiganbayan*, 377 Phil. 249 (1999) [Per J. Gonzaga-Reyes, Third Division], *citing Interorient Maritime Enterprises, Inc. v. NLRC*, 330 Phil. 493, 503 (1996) [Per J. Panganiban, Third Division].

intimate acquaintance, the Sandiganbayan is in a better position to evaluate them and decide on the full merits of the case at first instance. It has the competence to evaluate both substance and nuance of this case. Thus, in this important case, what would have emerged is a more circumspect judgment that should have then elevated the quality of adjudication, should an appeal be subsequently taken.

VIII

The cardinal nature of the offense charged, the ascendant position in government of the accused (among them, a former President of the Republic), and the sheer amount of public funds involved demand no less. Otherwise, the immense public interest in seeing the prosecution of large-scale offenders and in the unbridled application of mechanisms for public accountability shall be undermined.

I dissent from the view of the majority that there was insufficient evidence to support a finding beyond reasonable doubt that the accused were in conspiracy to commit a series or combination of acts to amass and accumulate more than Three Hundred Million Pesos within 2008 to 2010 through raids of the public coffers of the PCSO.

If any, what the majority reveals as insufficient may be the ability of the judiciary to correctly interpret the evidence with the wisdom provided by the intention of our laws on plunder and the desire of the sovereign through a Constitution that requires from public officers a high degree of fidelity to public trust. We diminish the rule of law when we deploy legal interpretation to obfuscate rather than to call out what is obvious.

A total of Php 365,997,915.00 was disbursed in cash as additional Confidential and Intelligence Fund (CIF) from the PCSO. Where it went and why it was disbursed was not fully explained. It is clear that the cash was taken out by the General Manager and the Chair of the PCSO among others. Its disbursement was made possible only by repeated acts of approval by the former President. The General Manager had intimate access to the President herself. She bypassed layers of supervision over the PCSO. The approvals were in increasing amounts and each one violating established financial controls. The former President cannot plead naivete. She was intelligent and was experienced.

The scheme is plain except to those who refuse to see.

ACCORDINGLY, I vote to **DENY** the consolidated Petitions for Certiorari. Public respondent Sandiganbayan committed no grave abuse of

discretion in issuing the assailed April 6, 2015 and September 10, 2015 Resolutions.

MARVIC M.V.F. LEONEN
Associate Justice