



REPUBLIC OF THE PHILIPPINES  
SANDIGANBAYAN  
QUEZON CITY

\*\*\*

SPECIAL FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff,

SB-14-CRM-0239  
For: Plunder

-vs-

JOSE "JINGGOY" P. EJERCITO  
ESTRADA, ET AL.,  
Accused.

*Present:*

*LAGOS, J., Chairperson*  
*MENDOZA-ARCEGA, J.,*  
*CRUZ, J.,\**  
*TRESPESES, J.\*\*, and*  
*PAHIMNA, J.\*\*\**

*Promulgated:*

November 10, 2017 *lal*

X-----X

RESOLUTION

**MENDOZA-ARCEGA, J.:**

This resolves the Motion for Reconsideration with Prayer to Set the Same for Oral Argument, filed by the prosecution on October 3, 2017.

In the said motion, the prosecution state that: 1) the case of *Gloria Macapagal-Arroyo v. Sandiganbayan* is inapplicable in the present case; and 2) the Court failed to consider the plethora of evidence showing the existence of conspiracy between and among the accused and insisted that there was dearth of evidence showing

\* Sitting as special member pursuant to Administrative Order No. 025-2017 dated 1 February 2017.

\*\* Sitting as special member pursuant to Administrative Order No. 10-C-2017 dated 7 August 2017.

\*\*\* Sitting as special member pursuant to Administrative Order No. 10-C-2017 dated 7 August 2017.

accused Estrada as the main plunderer. It avers that in previous bail hearings, the Court found that accused Estrada was at the apex of the PDAF scam yet, in the subject Resolution, the Court taking cue from the Arroyo doctrine made a sudden turn-around ratiocinating that there is an ambiguity or doubt as to who the main plunderer is in the present case. In support of its allegation, it said that the text of the Plunder Law does not expressly require the prosecution to allege or identify or even prove the so-called "main-plunderer" among the conspirators in the crime of Plunder. Section 2 of R.A. 7080 does not require a central actor who animates the actions of others or to who the proceeds of plunder are funneled as the same provision recognizes that Plunder may be committed collectively, as the phrase "in connivance with and "who participated with." In effect, the prosecution only needs to prove that the accused conspired with one another to amass, acquire or accumulate ill-gotten wealth, through a series or combination of predicate acts. In addition, it asserts that they were able to present evidence showing conspiracy between accused Estrada and Napoles, which is indicative of the finding of existence of conspiracy by this Court in its Resolution dated 7 January 2016.

Citing the case of People v. Pagalasan, the prosecution asserts that settled jurisprudence found no need to prove conspiracy by direct evidence. It also avers that the original Resolution of the Court denying bail has found that the accused Estrada is, as the prosecution evidence would strongly show, at the apex of the PDAF Scam. It was stressed further that the release of his PDAF allocations through subject SAROs was his own means to an end. Said findings of fact by those who personally heard the testimonies and observed the demeanor of witnesses were not disturbed in the subject Resolution granting bail, thus the prosecution believes that it is grievously wrong for the majority members of the Special Division to entertain the idea that the elaborate scheme was not accused Estrada's own doing and that it was accused Napoles's handiwork. Finally, it alleges that the Court erred when it considered the probability of flight in granting the motion for bail and even assuming that it should be taken into account in bail application, accused Estrada failed to present any evidence to substantiate his claim that he is indeed not a flight-risk.

In response, the accused, through counsel, filed an Amended Opposition, which states that the prosecution is asking the Court to not only reverse its Resolution but to also defy the categorical pronouncement that "the law requires in the criminal charge for plunder against several individuals that there must be a main plunderer and her co-conspirators." Moreover, the prosecution avers that the evidence clearly do not show that accused Estrada was the mastermind or main plunderer because the Information is explicit that the supposed conspiracy with respect to the so-called PDAF Scam began in 2004 and lasted until 2012; however, the evidence for the prosecution tends to show that Estrada was not a participant to such supposed conspiracy at its inception and also, had no participation therein at the end. Furthermore, the prosecution was not able to establish that the proceeds of the PDAF allocation or any of the kickbacks or commission intended for Estrada was actually received by him. Said failure of the prosecution to prove receipt of the alleged kickbacks was held in the Arroyo case as tantamount to failure to prove the

gravamen of the crime of Plunder. Finally, the accused avows that the assessment of risk of flight was, after a determination that the evidence on whether accused was the mastermind or main plunderer was weak is necessary.

Hence, this resolution.

The prosecution raised the following issues in the instant motion:

1. the doctrine enunciated in the case of *Gloria Macapagal-Arroyo v. Sandiganbayan* is inapplicable in the present case; and
2. the Court seriously erred when it failed to consider the plethora of evidence showing the existence of conspiracy between and among the accused, and instead, insisting dearth of evidence showing accused Estrada as the main plunderer.

First, as explained in the assailed Resolution, the Arroyo case is a judicial decision by the highest Court interpreting the plunder law and this Court is duty bound to follow and apply the Supreme Court's ruling in the said case. In the case of Arroyo, the Supreme Court reasoned that the Information under which the accused was charged was insufficient as it failed to identify the main plunderer. Moreover, the alleged participation of the accused was insufficient and did not constitute overt acts that consummate the alleged crime of plunder. The Supreme Court also enunciated that the identification of the main plunderer is not only necessary but is also essential to safeguard the rights of all the accused to be properly informed of the charges against them for which they were being made answerable for.

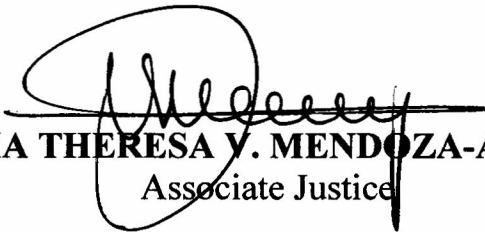
Secondly, the Court believes that the evidence presented by the prosecution in the bail hearings did not sufficiently establish that the accused was one of the main actors or masterminds in the so-called PDAF Scam. Since there is no strong evidence identifying the accused as main plunderer there can also be no showing of strong evidence against him. Moreover, it is noteworthy to state that the Information failed to expressly state the kind of conspiracy between the accused; instead, it states an implied conspiracy between the accused, which could possibly identify the main plunderer. However, such must be properly alleged and proven by the prosecution as stated in a plethora of cases decided by the Supreme Court.


In fine, for failure of the prosecution to present sufficient evidence to identify the mastermind/main actor of the whole plunder scheme, who had amassed ill-gotten wealth and who principally benefitted therefrom, the grant of the application for bail is in order.


Finally, a careful examination of the instant motion reveals that the issues raised by the prosecution are the very same issues already discussed and passed upon by the Court in the assailed Resolution and finding no new matters that could merit the reconsideration of its previous Resolution, the Court finds no cogent reason to depart from it.

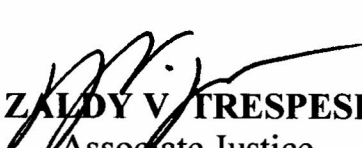
**WHEREFORE**, in view of the foregoing, the Court hereby resolves to deny the instant motion for lack of merit.

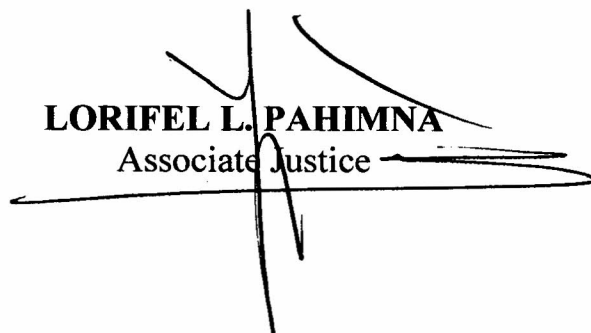
**SO ORDERED.**

  
**MARIA THERESA V. MENDOZA-ARCEGA**  
Associate Justice

*I maintain my original dissent.*  
  
**RAFAEL R. LAGOS**  
Chairperson

  
**REYNALDO P. CRUZ**  
Associate Justice

*I maintain my original dissent.*  
  
**ZALDY V. TRESPESES**  
Associate Justice

  
**LORIFEL L. PAHIMNA**  
Associate Justice