



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-18-CRM-0241**
Plaintiff, For: Plunder

- versus -

AL C. ARGOSINO, ET AL.
Accused.

Present

FERNANDEZ, SJ, J.,
Chairperson
MIRANDA, J. and
TRESPESES,* J.

Promulgated:

JUN 29 2018

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves the following accused Wenceslao A. Sombero's *Motion to Quash Information*.¹

In his *Motion to Quash Information*, accused Sombero prays that this Court quash the Information in Crim. Case No. SB-18-CRM-0241 on the ground that the facts charged therein do not constitute the offense of Plunder. He contends:

1. The law on Plunder requires that a particular public officer be identified as a main plunderer. Such public officer must be identified as the one who amassed, acquired or accumulated ill-gotten wealth in the aggregate amount or total value of at least P50 million.

* The incidents were submitted for resolution upon the filing of the prosecution's *Consolidated Comment/Opposition* on April 16, 2018; In view of the vacancy in the Sixth Division (As per Administrative Order No. 071-2018 dated February 1, 2018; *Revised Internal Rules of the Sandiganbayan*, Rule XII, Sec. 3)

¹ Dated March 26, 2018; Record, Vol. 2, pp. 419-437

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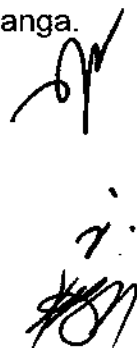
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- a. In *Macapagal-Arroyo v. People*,² the Supreme Court held that since ten (10) persons were accused of amassing, accumulating and acquiring ill-gotten wealth in the amount of ₱365,997,915.00, then each of the 10 accused would account for the aliquot amount of only ₱36,599,791.50, which is below the threshold value of ill-gotten wealth required for Plunder.
 - b. Here, no main plunderer was identified in the Information. Both accused Argosino and Robles were alleged to have amassed ₱50 million.
 - c. Applying the ruling in *Macapagal-Arroyo*, accused Argosino and Robles would have allegedly amassed, accumulated and acquired an aliquot portion of only ₱25 million each – an amount below the threshold for plunder.
2. The law on Plunder requires that the public officer's amassing, accumulation and acquisition of ill-gotten wealth be through a "series" or "combination" of overt and criminal acts.
- a. In *Jose "Jinggoy" E. Estrada v. Sandiganbayan*,³ the predicate act of receiving or collecting money in the aggregate amount of ₱545 million from illegal gambling was alleged to have been done "on several instances." The Supreme Court held that "on several instances" means that the predicate act was committed in series. In the Plunder law, "series" refers to a repetition of the same predicate act.
 - b. Here, the Information alleges that accused Argosino and Robles received the amount of ₱20 million at or about 2:00 a.m. on November 27, 2016, and the amount of ₱30 million on 5:45 a.m. of the same day, both from accused Sombero, in consideration for their intervention and assistance in the release of Chinese nationals arrested and detained at Fontana Leisure Parks and Casino in Pampanga.
 - c. The Information does not allege the commission of a series of overt or criminal acts. Instead, it alleges two (2) deliveries for a single criminal act by accused Argosino and Robles of receiving money from accused Sombero, as consideration for their intervention and assistance in the release of Chinese nationals arrested and detained at Fontana Leisure Parks and Casino in Pampanga.

² G.R. Nos. 220598 and 220953, July 19, 2016

³ G.R. No. 148965, February 26, 2002



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- d. The Information does not allege a series of overt or criminal acts, but instead, only one act of receiving money, done in two (2) installments.

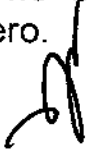
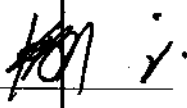
In its *Consolidated Comment/Opposition (To Accused Argosino's Omnibus Meritorious Motion dated 02 April 2018 and Accused Sombero's Motion to Quash Information dated 28 March 2018)*,⁴ the prosecution counters:

1. The Information in Crim. Case No. SB-18-CRM-0241 alleges that the accused are charged with amassing, accumulating and acquiring ill-gotten wealth in the aggregate sum of ₱50 million through a combination or series of overt or criminal acts described under Sec. 1, par. (d), subparagraphs (2)⁵ and (6)⁶ of R.A. No. 7080.
2. The law on Plunder makes no reference to a "main plunderer" as an essential element of the crime. The crime can be committed in connivance or in conspiracy with others. Thus, it is unnecessary to identify the "main plunderer." The Information expressly alleged that accused Sombero, Argosino and Robles conspired and confederated with one another.
3. In a conspiracy, the act of one is the act of all. Hence, the share received by each accused is not the pivotal consideration, as long as the total amount amassed is at least ₱50 million.

Subsequently, the prosecution filed its *Urgent Motion to Admit Amended Information*,⁷ and the Amended Information was admitted in the Resolution dated June 4, 2018.

THE COURT'S RULING

The Court resolves to deny the Motion to Quash of accused Sombero.

⁴ Dated and filed on April 16, 2018

⁵ 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.

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.

⁷ Dated May 16, 2018

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A motion to quash on the ground that the facts charged do not constitute an offense⁸ assails the sufficiency of the Information. In resolving such motion, the Court need not go beyond the four corners of the Information, the allegations of which the truth and veracity are hypothetically admitted. In *People v. Sandiganbayan*,⁹ it was held that the question that must be answered is whether or not the allegations in the Information are sufficient to establish the elements of the crime charged without considering matters aliunde. Viz.:

x x x. The question that must be answered is whether such allegations are sufficient to establish the elements of the crime charged without considering matters aliunde. In proceeding to resolve the issue, courts must look into three matters: (1) what must be alleged in a valid Information; (2) what the elements of the crime charged are; and (3) whether these elements are sufficiently stated in the Information.

Rule 110, Sec. 6 of the Rules of Court provides for the contents of a sufficient Information. To wit:

Sec. 6. Sufficiency of complaint or information. – A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

When an offense is committed by more than one person, all of them shall be included in the complaint or information.

(underscoring supplied)

The Amended Information charges accused Argosino, Robles and Sombero with Plunder. The elements of the offense are as follows:

1. That the offender is a public officer who acts by himself/herself or in connivance with members of his/her family, relatives by affinity or consanguinity, business associates, subordinates, or other persons;
2. That the offender amassed, accumulated or acquired ill-gotten wealth through a combination or series of the following overt or criminal acts:

⁸ Rules of Court, Rule 117, Sec. 3(a)
⁹ G.R. No. 160619, September 9, 2015

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- 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 concerned;
 - c. By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities of government-owned or -controlled corporations or their subsidiaries;
 - d. By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;
 - e. By establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or
 - f. By taking 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; and,
3. That the aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired is at least ₱50,000,000.00.¹⁰

The Court will determine if said Amended Information sufficiently alleges these elements. The accusatory portion of the Amended Information reads:

That on or about 27 November 2016, or sometime prior or subsequent thereto, in Parañaque City, Philippines, and within the jurisdiction of this Honorable Court, accused **AL CAPARROS ARGOSINO** (Argosino), being then the Deputy Commissioner of the Bureau of Immigration, by himself and/or in conspiracy with his co-accused, MICHAEL BAUTISTA ROBLES (Robles), also a public officer being then the Deputy Commissioner of the Bureau of Immigration, both public officers, committing the offense in relation to their office, and private individual WENCESLAO AZARCON

¹⁰ Enrile v. People, G.R. No. 213455, August 11, 2015

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SOMBERO, JR. (Sombero), did then and there willfully, unlawfully and criminally amass, accumulate and acquire, directly or indirectly, ill-gotten wealth in the aggregate amount of **FIFTY MILLION PESOS (PhP50,000,000.00)** through a series or combination of overt or criminal acts, or similar schemes or means, under Section 1, paragraph d, subparagraphs (2) and (6) of Republic Act No. 7080, as amended, described as follows:

- a) by repeatedly receiving or collecting a sum of money which aggregated to an amount of FIFTY MILLION PESOS (PhP50,000,000.00) delivered to and received by the accused Argosino, together with Robles, on two instances at the City of Dreams Manila, an establishment in Parañaque City, that is, TWENTY MILLION PESOS (PhP 20,000,000.00) at or about 2:00 a.m. of 27 November 2016 and THIRTY MILLION PESOS (PhP30,000,000.00) at or about 5:45 a.m. of the same day, both from accused Sombero, as consideration for the intervention and assistance of accused Argosino and Robles in the release of Chinese nationals arrested and detained at Fontana Leisure Parks and Casino in Pampanga; and
- b) by taking undue advantage of his official position, authority and influence, together with accused Robles who similarly took advantage of his official position, in demanding and receiving money from a private person by reason of his office to unjustly enrich himself/themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

CONTRARY TO LAW.

The Amended Information alleges the first element of Plunder. It states that accused Argosino, a public officer, being then a Deputy Commissioner of the Bureau of Immigration, acted by himself and/or in conspiracy with accused Robles, also then a Deputy Commissioner of the Bureau of Immigration, and with accused Sombero, a private individual.

The admission of the prosecution's Amended Information has rendered the issue of having no "main plunderer" alleged moot and academic. Said Amended Information indicates that accused Argosino is the "main plunderer."

The third element of Plunder is likewise alleged in the Information. It states that the accused willfully, unlawfully and criminally amassed, accumulated and acquired ill-gotten wealth in the aggregate amount of P50 million.

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The only matter left for determination is whether or not the Information alleges the second element.

According to accused Sombero, the Information failed to allege the second element of Plunder. Only one criminal act of receiving and collecting a sum of money was alleged, albeit delivered in two (2) installments. Both deliveries of sums of money were allegedly received from accused Sombero in consideration for accused Argosino and Robles' assistance in the release of the Chinese nationals arrested and detained at Fontana Leisure Parks and Casino in Pampanga.

On the other hand, the prosecution contends that the Information alleges two acts, namely, (a) receiving, directly or indirectly, a sum of money from a person and/or entity by reason of their office or position as Deputy Commissioners of the Bureau of Immigration, and (b) taking undue advantage of their official position, authority and influence as Deputy Commissioners to unjustly enrich themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

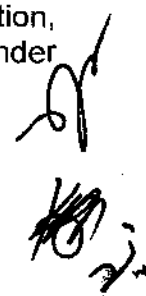
This Court is not inclined to agree with either accused Sombero or the prosecution. Nonetheless, this Court finds that the Information alleges the second element of Plunder.

The second element of Plunder is that the offender must have amassed, accumulated or acquired ill-gotten wealth through a combination or series of overt or criminal acts as described in Sec. 1(d) of Republic Act No. 7080 (R.A. No. 7080). In *Estrada v. Sandiganbayan*,¹¹ the Supreme Court explained the words "combination" and "series" in this wise:

Thus, when the Plunder Law speaks of "combination," it is referring to at least two (2) acts falling under different categories of enumeration provided in Sec. 1, par. (d), e.g., raids on the public treasury in Sec. 1, par. (d), subpar. (1), and fraudulent conveyance of assets belonging to the National Government under Sec. 1, par. (d), subpar. (3).

On the other hand, 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

¹¹ G.R. No. 148560, November 19, 2001



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Sec. 1, par. (d), subpar. (1). Verily, had the legislature intended a technical or distinctive meaning for "combination" and "series," it would have taken greater pains in specifically providing for it in the law.

Here, the Information states that the accused amassed, accumulated and acquired ill-gotten wealth "by receiving, directly or indirectly, a sum of money from any person and/or entity by reason of their office or position as Deputy Commissioners of the Bureau of Immigration, and by taking undue advantage of their official position, authority and influence as such Deputy Commissioners to unjustly enrich themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines."

At first glance, it may appear that the Information alleges a combination of two (2) separate acts, pertaining to subparagraphs (2) and (6) of Sec. 1(d) of R.A. No. 7080. However, a closer reading of the Information would show that such "receiving of a sum of money" and "taking undue advantage of their official position" pertain to the very same set of acts. The pertinent portion of the Information reads:

x x x by repeatedly receiving or collecting a sum of money which aggregated to an amount of FIFTY MILLION PESOS (PhP50,000,000.00) delivered to and received by the accused Argosino and Robles on two instances at the City of Dreams Manila, an establishment in Parañaque City, x x x, as consideration for the intervention and assistance of accused Argosino and Robles in the release of Chinese nationals arrested and detained at Fontana Leisure Parks and Casino in Pampanga, thereby the accused public officers took undue advantage of their position, authority and influence in amassing, accumulating and acquiring the said ill-gotten wealth.

(emphasis and underscoring supplied)

Stated differently, the Information alleges that accused Argosino and Robles repeatedly received the sum of money totaling ₱50 million by reason of their office or position, and thereby, took advantage of their position and authority. There can be no combination of acts in the Information because a combination requires at least two (2) separate acts, not a single act or same set of acts that may constitute two distinct means of, or schemes for the acquisition of ill-gotten wealth as enumerated in Sec. 1(d) of R.A. No. 7080.



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The lack of an allegation of a combination of acts has not been addressed in the Amended Information. In the Amended Information, the second act, i.e., "by taking undue advantage of his official position x x x," may, at first, appear to be a separate act from the first act, i.e., "by repeatedly receiving or collecting a sum of money x x x." But considering that the ill-gotten wealth allegedly amassed, accumulated and acquired is in the amount of exactly P50 million, and that the first set of acts pertains to amounts in the total of exactly P50 million, the second act alleged does not appear to be a separate means or scheme for the acquisition of said P50 million.

While no combination of acts is alleged in the Information, as well as in the Amended Information, both allege a series of overt acts. The pertinent portion of the Amended Information reads:

- a) by repeatedly receiving or collecting a sum of money which aggregated to an amount of FIFTY MILLION PESOS (PhP50,000,000.00) delivered to and received by the accused Argosino, together with Robles, on two instances, at the City of Dreams Manila, an establishment in Paranaque City, that is, TWENTY MILLION PESOS (PhP20,000,000.00) at or about 2:00 a.m. of 27 November 2016 and THIRTY MILLION PESOS (PhP30,000,000.00) at or about 5:45 a.m. of the same day, both from accused Sombero, as consideration for the intervention and assistance of accused Argosino and Robles in the release of Chinese nationals arrested and detained at Fontana Leisure Parks and Casino in Pampanga;

Accused Sombero's contention that the Information alleges only a single act or offense is the very same argument made by the petitioner in Jose "Jinggoy" E. Estrada.¹² In that case, the portion of the Information charging the petitioner reads:

- (a) By receiving OR collecting, directly or indirectly, on SEVERAL INSTANCES, MONEY IN THE AGGREGATE AMOUNT OF FIVE HUNDRED FORTY-FIVE MILLION PESOS (P545,000,000.00) MORE OR LESS, FROM ILLEGAL GAMBLING IN THE FORM OF GIFT, SHARE, PERCENTAGE, KICKBACK OR ANY FORM OF PECUNIARY BENEFIT, BY HIMSELF AND/OR in connivance with co-accused CHARLIE 'ATONG' ANG, Jose 'Jinggoy' Estrada, Yolanda T. Ricaforte, Edward Serapio, AN (sic) JOHN DOES AND JANE DOES, in consideration OF TOLERATION OR PROTECTION OF ILLEGAL GAMBLING:

¹² Supra. Note 3

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The Supreme Court rejected the petitioner's claim that only one act or offense was alleged in the information in this manner:

Petitioner's contention that R.A. No. 7080 is unconstitutional as applied to him is principally perched on the premise that the Amended Information charged him with only one act or one offense which cannot constitute plunder. He then assails the denial of his right to bail.

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Pertinent to the case at bar is the predicate act alleged in sub-paragraph (a) of the Amended Information which is of "receiving or collecting, directly or indirectly, **on several instances**, money in the aggregate amount of ₱545,000,000.00 for illegal gambling in the form of gift, share, percentage, kickback or any form of pecuniary benefit x x x." In this sub-paragraph (a), **petitioner**, in conspiracy with former President Estrada, is charged with the act of receiving or collecting money from illegal gambling amounting to ₱545 million. Contrary to petitioner's posture, the allegation is that he received or collected money from illegal gambling "**on several instances.**" **The phrase "on several instances" means the petitioner committed the predicate act in series.** To insist that the Amended Information charged the petitioner with the commission of only one act or offense despite the phrase "several instances" is to indulge in a twisted, nay, "pretzel" interpretation.

The Amended Information in the present case alleges that accused Argosino and Robles repeatedly received or collected a sum of money on two (2) instances, in consideration for their intervention and assistance in the release of Chinese nationals arrested and detained at Fontana Leisure Parks and Casino in Pampanga. Applying the ruling in the aforesaid case, each instance of receiving or collecting a sum of money constitutes a separate act. Hence, the Amended Information in the case at bar alleges the commission of acts in series.

WHEREFORE, accused Sombero's *Motion to Quash Information* is hereby **DENIED** for lack of merit.

SO ORDERED



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SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA
Associate Justice


ZALDY V. TRESPESES
Associate Justice