



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SIXTH DIVISION

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

Present

- versus -

AL C. ARGOSINO, ET AL.

Accused.

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

Promulgated:

NOV 12 2018 

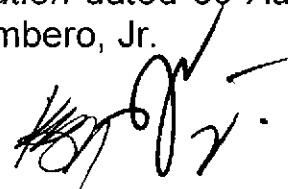
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RESOLUTION

FERNANDEZ, SJ, J.

This resolves the following:

1. *Motion for Reconsideration (Court Resolution dated 30 August 2018)*¹ filed by accused Al C. Argosino;
2. *Motion for Reconsideration (Re: Resolution dated 30 August 2018)*² filed by accused Michael B. Robles; and
3. *Motion for Reconsideration (of the Resolution dated 30 August 2018)*³ filed by accused Wenceslao A. Sombero, Jr.



* J. Trespeses participated in the assailed Resolution (Per Administrative Order No. 295-2018 dated May 25, 2018; *Revised Internal Rules of the Sandiganbayan*, Rule IX, Sec. 2[a])

¹ Dated September 4, 2018; Record, Vol. 5, pp. 349-376

² Dated September 3, 2018; Record, Vol. 5, pp. 377-400

³ Dated September 4, 2018; Record, Vol. 5, pp. 300-348

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In his *Motion for Reconsideration*, accused Argosino prays that this Court reverse its Resolution dated August 30, 2018⁴ and issue a new one granting his application for bail. He argues:

1. None of the prosecution's witnesses had personal knowledge of the facts and circumstances constituting the elements of Plunder as alleged in the Information.
 - a. None of the witnesses were present on the date and time the accused allegedly performed the acts in the City of Dreams.
 - b. General Charles Calima (Gen. Calima) and Commissioner Jaime Morente (Comm. Morente) declared that they had no personal knowledge of the allegations in the Information. Their testimonies should not be admitted for being hearsay.
 - c. The witnesses testified only as to the events that happened after the incident.
 - d. The Court did not address the issue he raised, as to how the receipt of money in two (2) instances do not constitute a series of acts under the Plunder Law.
 - i. The receipt of ₱20 million at or about 2:00 A.M. and ₱30 million at or about 5:45 A.M. on the same day are not two (2) separate overt acts under the Plunder Law.
 - ii. No witness or document was presented to prove at least one (1) criminal or overt act.
2. Gen. Calima is not a credible witness.
 - a. His knowledge was based on second-hand information.
 - b. Gen. Calima filed a complaint for Plunder only because the amount involved met the ₱50 million threshold.
3. No inference can be made from the condensed version of the CCTV footages.
 - a. No witness was presented to identify the persons who appeared in the video.



⁴ Record, Vol. 5, pp. 245-292

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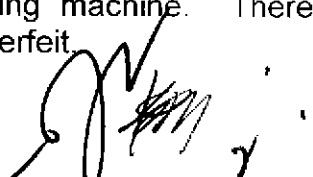
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- b. The video does not tell a complete story because the footages came from only 13 out of the 3,987 cameras in the City of Dreams. Furthermore, said video failed to fully capture the incident because there were blind spots.
 - c. The video has no sound.
 - i. The Court could not speculate on what the persons in the video were talking about.
 - ii. It is susceptible to various interpretations.
 - d. It was not properly authenticated. Mr. Calderon had no participation in its preparation, and had no personal knowledge of the identity of the persons who appeared in the video.
 - e. Mr. Calderon was not able to compare the hash value of the files given by Atty. Medrano with that of the files from the City of Dreams.
4. The video posted by inquirer.net also cannot be relied upon because it was shorter than the original video.
 5. No evidence was adduced to show that he is the main plunderer.
 - a. The Information failed to allege that he was the main plunderer. Furthermore, no evidence was adduced to show that he was the main plunderer.
 - b. The Court did not discuss the issue of the "main plunderer," which is an essential requirement in Plunder cases.
 - c. As a consequence of the failure to prove that accused Argosino was the "main plunderer," each accused would account for the aliquot amount of only ₱16,666,666, which falls below the threshold value required for Plunder.
 6. No evidence was adduced to prove that the money allegedly amassed, accumulated and acquired was in the amount of ₱50 million.
 - a. The money-counting machine used during the ocular inspection is capable of detecting counterfeit bills.
 - b. 211 pieces of ₱1,000.00 bills were rejected by said counting machine. Therefore, the rejected bills are counterfeit.



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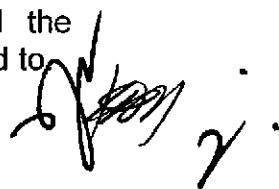
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- c. Said counterfeit bills cannot be considered as "wealth" under the Plunder Law.
7. He is not a flight risk.
 - a. Unless the prosecution shows that the evidence of guilt is strong, the accused should be released on bail.
 - b. Records would show that even prior to the filing of the present case, he actively participated in the investigation conducted in connection to the incident, and made no attempt to escape.
 - c. His voluntary surrender and the consequent turn-over of the money to the Department of Justice (DOJ) should be appreciated as mitigating circumstances in his favor.

In his *Motion for Reconsideration*, accused Robles similarly prays that the Resolution dated August 30, 2018 be reversed and set aside, and a new one be issued allowing him to post bail. He further prays that the amount of bail be fixed. He avers:

1. The prosecution's evidence failed to establish a "combination or series" of overt or criminal acts through which ill-gotten wealth was supposedly accumulated.
 - a. The CCTV footages did not show that money changed hands, or that money was handed to him and accused Argosino.
 - b. A person cannot be prosecuted for Plunder if the accumulation of ill-gotten wealth resulted from a single criminal act.
 - c. Even assuming that money in the amount of ₱50 million was "received in two (2) instances," such acts, which resulted from a single criminal impulse, cannot be considered as separate criminal acts that would constitute the crime of Plunder.
2. He never made any admission that he and accused Argosino received the aggregate amount of ₱50 million from accused Sombero in the City of Dreams.
 - a. In the YouTube video, after a reporter asked a question, accused Argosino replied that "x x x we have received in custody of ₱50 million x x x." Accused Argosino did not mention his (Robles) name, but instead, used the pronoun "we." It was unclear to whom "we" referred to.



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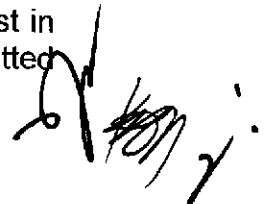
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- b. His (Robles) name was mentioned later, when accused Argosino said "*kami ni* Deputy Commissioner Mike Robles *ang nakadiskobre ng* the only living evidence against Jack Lam that there is pay-off in the Bureau of Immigration." The act of discovering evidence against Jack Lam is not the same as the act of receiving money in the aggregate amount of ₱50 million.
 - c. Rule 130, Sec. 26 of the Rules of Court provides that an admission of a party may only be used against such party, and not against other persons.
 - d. He never made any admission in the YouTube video.
 - e. Even if his silence can be considered his admission, the only admission he could have made was that pertaining to the discovery of evidence, and not the receipt of money.
3. Comm. Morente and Gen. Calima were not competent to testify on the matters they testified on.
 - a. Both of them admitted that they had no personal knowledge of the incident that occurred in the City of Dreams in the early morning of November 27, 2018.
 - b. Gen. Calima relied solely on the Information given by accused Sombero. Comm. Morente, in turn, relied solely on the information given by Gen. Calima.
 4. The CCTV footages from the City of Dreams never showed him and accused Argosino in possession of a total of five (5) paper bags, each containing ten (10) bundles of money.
 - a. There is nothing in the footages that would lead to the conclusion that the man wearing a white shirt who carried two (2) paper bags was his companion.
 - b. It is the prosecution's responsibility to prove not only the identity of the accused, but also that the accused is the perpetrator of the offense.
 - c. The prosecution did not present even a single witness who could have identified the persons in said footages.
 - d. Witness Calderon never named or positively identified him and accused Argosino as the persons of interest in the condensed video. Furthermore, Calderon admitted



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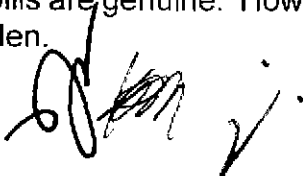
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- that the email mentioned no names—only photos of “persons of interest.”
- e. Witness Cuestas’ testimony was similar. He extracted and enhanced relevant images only based on the instructions of Atty. Medrano. He referred to the persons in the images as “persons of interest.” “Persons of interest” do not necessarily refer to the accused.
 - f. The allegations in the Information must be proved beyond reasonable doubt.
 - g. The condensed video’s accuracy may have been irreparably tainted by too much copying and a file conversion.
 - h. Without positive identification of the persons of interest therein, the condensed video only confirmed that no crime was committed “at or about 2:00 A.M.” and “at or about 5:45 A.M.” on November 27, 2016.
 - i. The persons of interest did nothing illegal. They merely sat at the table and walked about. They never (a) participated in putting cash into any bags, (b) examined the contents of any bag, and (c) carried any of the bags.
 - j. At 5:45:24 A.M., a man in blue shirt was carrying a small package on his forearms. Said small package cannot be a shopping bag laden with cash.
5. The 211 bills rejected by the money-counting machine are probably counterfeit, and therefore, should be excluded.
- a. The Land Bank personnel explained that the Glory machine may reject bills for various reasons, *i.e.*, counterfeit bills, folded bills, etc.
 - b. The bills rejected by the machines were not soiled, mutilated, old, taped, or folded.
 - c. A person is presumed innocent until proven guilty by proof beyond reasonable doubt. Conviction must rest on the strength of the prosecution’s evidence and not on the weakness of the defense.
 - d. The prosecution has the burden of proving that the rejected bills are genuine. However, it failed to discharge such burden.



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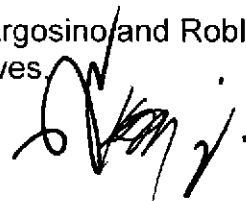
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6. The integrity of the prosecution's evidence – in particular, the money kept in the safety deposit boxes – is put into question when Director Germar and Undersecretary Balmes accessed the same on June 22, 2018.
 - a. Director Ma. Elisa B. Germar (Dir. Germar) explained that they opened the safety deposit boxes on June 22, 2018 to check if the money was still intact. Her explanation should not have been believed in its entirety, especially considering that no less than the Secretary of Justice certified that a particular bundle only contained ₱999,000.00, after a count done by DOJ personnel.
 - b. Dir. Germar and then Undersecretary Balmes (Usec. Balmes) were the only persons who could have accessed the safety deposit boxes. There was no reason why the contents would not have been intact.
 - c. Atty. Agustin-Se even observed and manifested that a bundle of cash labeled "₱999,000.00" appeared to contain new bills that looked different from the rest of the bills.

In his *Motion for Reconsideration*, accused Sombero likewise prays that this Court reconsider the Resolution dated August 30, 2018, admit him to bail in the amount it may fix, and order his release upon the posting of bail. He avers:

1. He did not conspire or connive with accused Argosino (or Robles). In fact, he was Gen. Calima's "highly reliable source."
 - a. Gen. Calima could not have conducted the counter-intelligence operations if not for the information he (Sombero) provided.
 - b. He was not included in Gen. Calima's complaint because he was Gen. Calima's asset.
2. There is no strong evidence that accused Argosino was the "main plunderer."
 - a. The prosecution did not even attempt to prove that accused Argosino is the main plunderer.
 - b. None of the prosecution's witnesses identified accused Argosino as the main plunderer.
 - c. Gen. Calima testified that accused Argosino and Robles divided the money between themselves.



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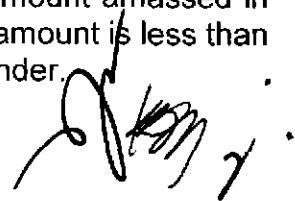
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- d. The prosecution's documentary and object evidence does not prove that accused Argosino was the main plunderer.
 - e. The prosecution offered its documentary and object evidence to prove that both accused Argosino and Robles received the ₱50 million.
3. There is no strong evidence showing that accused Argosino "received in two instances" the amount of ₱50 million.
- a. In the assailed Resolution, the Court found that he placed two (2) paper bags on the floor under the table occupied by accused Argosino and Robles. But the act placing of the bags on the floor is not the same as "receipt."
 - b. Even if there were two (2) instances of receipt, the same do not constitute a series of overt or criminal acts.
 - c. In the YouTube video, accused Argosino did not say that he received ₱20 million and then ₱30 million. He said that he and accused Robles received ₱50 million.
 - d. "Series" should be interpreted in relation to criminal intent. If there is a single criminal intent, then there can be no "series" of criminal acts. This is also true for "overt" acts.
 - e. If at all, there was only one predicate act involving five (5) paper bags.
4. The prosecution has the burden of proving the actual reasons for the rejection of 211 pieces of ₱1,000.00 bills.
- a. One of the features of the Glory GFS-100 Counting Machine is the ability to detect counterfeit bills.
 - b. The rejection of the 211 pieces of ₱1,000.00 bills was impartially done by a sophisticated machine whose function is to detect counterfeit bills.
 - c. The prosecution has the burden of proving that the evidence of guilt is strong. It follows that it also has the burden of proving that the accused acquired money in the amount of ₱50 million.
 - d. Establishing the actual reasons for the rejection of the 211 bills is necessary because the amount amassed in Plunder is a crucial element. If such amount is less than ₱50 million, then there can be no Plunder.



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5. He is entitled to bail because of his poor health, and also because he is not a flight risk.
 - a. Even assuming that the prosecution has shown that the evidence of guilt is strong, the Court may, in its discretion, grant him bail because he is not a flight risk.
 - b. Considering his official and social standing, as well as other personal circumstances, the possibility that he will escape is remote, if not nil.
 - c. He immediately and voluntarily surrendered to the Philippine National Police (PNP) a day after the issuance of the warrant of arrest against him.
 - d. He returned to the country to appear before the Senate Blue Ribbon Committee on February 16 and March 9, 2017, when he could have stayed abroad.
 - e. His health condition does not make it possible for him to live the life of a fugitive.

In its *Consolidated Comment/Opposition (Re: Accused Argosino, Robles, and Sombero's Motions for Reconsideration of the Resolution dated 30 August 2018)*,⁵ the prosecution counters:

1. All three (3) accused failed to raise new matters or issues that would warrant reconsideration or reversal of the assailed Resolution.
2. Their Motions should be denied outright because the arguments therein are a mere rehash of those in their previous motions. The same had already been passed upon, and found to be without merit in the assailed Resolution.
3. The evidence it adduced was able to show "evident guilt" or a "great presumption of guilt" that the accused committed Plunder.
4. First element
 - a. There is no dispute that at the time material to the allegations in the Amended Information, accused Argosino and Robles were public officers. At the time, they were Deputy Commissioners of the Bureau of Immigration.

⁵ Dated and filed on September 17, 2018



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- b. Accused Sombero, a private individual, acted in conspiracy with accused Argosino and Robles. The extortion plot would not have succeeded without his direct participation.
- c. Accused Sombero's claim that he did not conspire with accused Argosino and Robles is negated by the fact that he reported the pay-off to Gen. Calima only on November 30, 2016—three (3) days after it was consummated.

5. Second element

- a. Accused Argosino, as the "main plunderer," in connivance with accused Robles and Sombero, amassed ill-gotten wealth by demanding and receiving the total sum of ₱50 million from Lam through accused Sombero on two (2) occasions at the City of Dreams.
- b. Although its witnesses testified on matters which occurred after the transaction subject of the present case, said witnesses identified and authenticated the pertinent object and documentary evidence establishing the facts and circumstances surrounding the pay-off between Lam, through accused Sombero, and accused Argosino and Robles.
 - i. Mr. Calderon authenticated the CCTV footages stored in the WD Elements Drive given to the Office of the Ombudsman.
 - ii. SPO2 Cuestas identified and authenticated the sixty-seven (67) processed or enhanced photos taken from the CCTV footages.
 - iii. Ms. Aurelio of the Philippine Daily Inquirer and Inquirer.net identified and authenticated the Youtube video wherein accused Argosino and Robles publicly admitted, in the press conference held on December 13, 2016, that they received the total amount of ₱50 million from Lam through accused Sombero.
 - iv. Dir. Barros of the Legal Records and Archives Services of the Senate of the Philippines identified and authenticated the Transcript of Stenographic Notes (TSN) showing that during the Senate hearing, Alex Yu testified that accused Argosino initially demanded the amount of ₱100 million from Lam in exchange for the release of the 1,316 Chinese nationals arrested and detained at the



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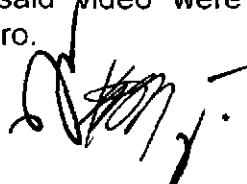
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Fontana Leisure Parks and Casino, and confirmed that ₱50 million was given to accused Argosino and Robles through accused Sombero.

- c. The condensed video of the CCTV footages and the enhanced photos showed that the accused were at the City of Dreams from the late evening of November 26, 2016 to about 5:50 A.M. of November 27, 2016.
- d. The YouTube video proves the extortion plot, and accused Argosino and Robles' receipt of the aggregate amount of ₱50 million from Lam through accused Sombero.
- e. Its evidence shows that accused Argosino is the main plunderer.
 - i. He was the one who initially demanded ₱100 million from Lam in exchange for the release of the 1,316 Chinese nationals arrested and detained in Fontana.
 - ii. He, together with accused Robles, received the total sum of ₱50 million.
 - iii. He shared the loot with accused Sombero and Gen. Calima.
 - iv. During the confrontation at Comm. Morente's office on December 8, 2016, accused Robles told Comm. Morente "*isinama lang naman ako dito.*"
- f. Even if the condensed video lacks sound, it was able to show that accused Argosino and Robles received two (2) paper bags, each containing ₱10 million at or about 2:00 A.M. of November 27, 2016, and another three (3) paper bags, also containing ₱10 million each, at or about 5:45 A.M. of the same day.
- g. Calderon testified that although the CCTV footages were converted from MPEG-4 to AVI format, they were taken from the CCTV footages initially stored in the CCTV Recording System of the City of Dreams.
- h. The condensed video of the CCTV footages is object evidence, which is addressed to the senses of the Court. The Court exercised its senses to determine that the persons who appeared in said video were accused Argosino, Robles and Sombero.



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- i. That accused Argosino, Robles and Sombero were the persons appearing in the CCTV footages is corroborated by the YouTube video of the press conference on December 13, 2016, where accused Argosino publicly admitted that they were in the City of Dreams when they received the total amount of ₱50 million. He even acknowledged the presence of CCTV cameras in the City of Dreams.
 - j. The CCTV footages clearly showed that the accused were in possession of a total of five (5) paper bags, each containing ten (10) bundles of money. The accused and their companions were seen walking in the parking area of the City of Dreams. Two (2) paper bags were carried by accused Robles' companion while three (3) paper bags were carried by accused Sombero and his companion. After accused Sombero and his companion left the parking area, accused Robles and his companion were seen getting off an SUV. Accused Robles was carrying a paper bag when he returned to said SUV. Accused Robles and Argosino left the vicinity of the City of Dreams with the five (5) paper bags in their possession.
 - k. Accused Robles was present in the press conference on December 13, 2016, where accused Argosino declared that he (Argosino), together with accused Robles, received the total amount of ₱50 million from Lam through accused Sombero.
 - l. Gen. Calima was able to verify the information regarding accused Argosino and Robles' receipt of the ₱50 million from accused Sombero through engagement or interaction with them (Argosino and Robles). Furthermore, he used tradecraft to obtain admissions from accused Argosino with regard to the said receipt of money.
 - m. During the confrontation at Comm. Morente's office on December 8, 2016, accused Robles had an emotional meltdown, while accused Argosino thought that it was a missed opportunity to demand more money from Lam's group.
6. Third element
- a. The aggregate amount of money received by accused Argosino and Robles from accused Sombero was ₱50 million. The parties stipulated that the money turned over by accused Sombero to the Office of the Ombudsman on December 22, 2016 was in the amount



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of ₱2 million. The money Gen. Calima turned over to the Criminal Investigation and Detection Group (CIDG) was in the amount of ₱18 million. Finally, after a physical count, it was determined that the money turned over by accused Argosino and Robles to the DOJ was in the amount of ₱30 million.

- b. Whether the 211 pieces of ₱1,000.00 bills were genuine or counterfeit is of no moment, in view of accused Argosino and Robles' admission that they received a total of ₱50 million from Lam through accused Sombero.
 - c. Dir. Germar categorically explained that she and Usec. Balmes opened the safety deposit boxes on June 22, 2018 merely to check if the money was still intact. They opened the box without opening the plastic packaging of the money.
7. The determining factor in the grant of bail to an accused charged with a capital offense is whether or not the evidence of guilt is strong.
 8. Its evidence showed that the evidence of guilt is strong. Thus, it is the Court's duty to deny the application for bail.

THE COURT'S RULING

The Court resolves to deny the respective *Motions for Reconsideration* of accused Argosino, Robles and Sombero.

I. "Main plunderer" and the "combination or series of overt or criminal acts."

The accused insist that the Amended Information does not allege that accused Argosino is the main plunderer, and that there is no combination or series of overt or criminal acts.

These arguments are the very same arguments they made in their previous motions, in particular, their respective *Motions to Quash*. These had already been considered, and found to be without merit in the Resolutions⁶ denying their respective *Motions to Quash*. In his

⁶ Resolution dated May 29, 2018 denying accused Argosino's Motion to Quash, Record, Vol. 3, pp. 414-426; Resolution dated May 31, 2018 denying accused Robles' Motion to Quash, Record, Vol. 3, pp. 428-443; Resolution dated June 29, 2018 denying accused Sombero's Motion to Quash, Record, Vol. 3, pp. 504-514.

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Motion for Reconsideration, accused Argosino even mentioned that the Court had already ruled on the matter.⁷ Hence, it is unnecessary to discuss it anew.

Next, accused Argosino contends that the prosecution failed to prove that he was the main plunderer, and hence, each accused would account for only 1/3 of the aggregate amount of the alleged ill-gotten wealth, or ₱16,666,666. For his part, accused Sombero contends that the prosecution failed to prove the element of "main plunderer," and thus, bail should be granted. Both contentions are untenable.

Accused Argosino and Sombero's argument is the same as that raised by petitioner Janet Lim Napoles in her motion for reconsideration in *Napoles v. Sandiganbayan*.⁸ In resolving the motion for reconsideration of therein petitioner Napoles, the Supreme Court held that its ruling in *Macapagal-Arroyo v. People*,⁹ which involves the Sandiganbayan's denial of a demurrer to evidence, cannot be applied in an application for bail because of the difference in the required standards of proof in a demurrer to evidence, and in a bail application. viz.:

The Court has previously discussed in our Decision dated November 7, 2017 that the trial court is required to conduct a hearing on the petition for bail whenever the accused is charged with a capital offense. While mandatory, the hearing may be summary and the trial court may deny the bail application on the basis of evidence less than that necessary to establish the guilt of an accused beyond reasonable doubt. In this hearing, **the trial court's inquiry is limited to whether there is evident proof that the accused is guilty of the offense charged.** This standard of proof is clearly different from that applied in a demurrer to evidence, which measures the prosecution's entire evidence against the required moral certainty for the conviction of the accused.

The distinction between the required standards of proof precludes the application of *Macapagal-Arroyo* to the present case. The Sandiganbayan's denial of the demurrer to evidence in *Macapagal-Arroyo* was annulled based on the paucity of the evidence of the prosecution, which failed to prove *beyond reasonable doubt* that former President GMA was the mastermind of the conspiracy to commit plunder. In other words, there was a final

⁷ Accused Argosino's Motion for Reconsideration, p. 10, par. 15

⁸ G.R. No. 224162, February 6, 2018 (Resolution on the motion for reconsideration of therein petitioner Napoles)

⁹ G.R. Nos. 220598 and 220953, July 19, 2016

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determination of former President GMA's innocence of the crime charged.

This is not the case for Napoles. The issue that the Court resolved in its Decision dated November 7, 2017 was whether the Sandiganbayan gravely abused its discretion in denying Napoles' application for bail. This involved a preliminary determination of her eligibility to provisional liberty.

The resolution of this issue does not involve an inquiry as to whether there was proof beyond reasonable doubt that Napoles, or her co-accused as the case may be, was the main plunderer for whose benefit the ill-gotten wealth was amassed or accumulated. These are matters of defense best left to the discretion of the Sandiganbayan in the resolution of the criminal case. It is sufficient that the denial of her bail application was based on evidence establishing a *great presumption of guilt* on the part of Napoles.

(underscoring supplied)

This Court, in the assailed Resolution, found that the evidence of the accused' guilt is strong, and accordingly denied their respective bail applications. The matter of whether or not the prosecution proved that accused Argosino was the main plunderer will be passed upon in the trial on the merits.

At any rate, for the purposes of bail, this Court makes a preliminary finding that the prosecution proved that accused Argosino was the main plunderer.

Although in the condensed video of the CCTV footages from the City of Dreams, it appears that the money was received by both accused Argosino and Robles, their subsequent acts would show that accused Argosino was the main plunderer, and that accused Robles was a mere co-conspirator.

From the testimony of Gen. Calima on the confrontation at Comm. Morente's office on December 8, 2016, when accused Argosino and Robles were informed that Gen. Calima had evidence against them, accused Argosino appeared to be relaxed.¹⁰ In contrast, as testified to by Comm. Morente and Gen. Calima, accused Robles appeared to be on the verge of a nervous breakdown, had to use Comm. Morente's restroom several times,¹¹ and mentioned "*isinama lang naman ako*

¹⁰ TSN, August 10, 2018, p. 34

¹¹ TSN, August 1, 2018, pp. 53, 57

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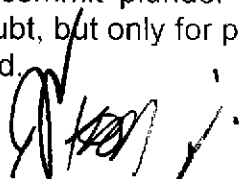
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*ditto.*¹² Also from Gen. Calima's *Complaint-Affidavit*, which forms part of his direct testimony, as to how the ₱18 million came into his possession, it appears that accused Argosino had control over the disposition of the ₱50 million received at the City of Dreams.¹³

II. Conspiracy

In *Revilla v. Sandiganbayan*,¹⁴ it was held that it is not necessary to show that the accused met and entered into an explicit agreement setting out the details of an unlawful scheme in a conspiracy charge. It is sufficient to show that each of the accused, by their individual acts, agreed to participate in amassing, accumulating and acquiring ill-gotten wealth. *viz.:*

In *Estrada v. Sandiganbayan*, we held that "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 ordered the GSIS and SSS to purchase shares of Belle Corporation and receive commissions from such sale, nor that each unjustly enriched himself from commissions, gifts and kickbacks; **rather, it is that each of them, by their individual acts, agreed to participate, directly or indirectly, in the amassing, accumulation and acquisition of ill-gotten wealth of and/or for [petitioner Estrada].** Also, **proof of the agreement need not rest on direct evidence**, as the agreement itself may be inferred from the conduct of the parties disclosing a common understanding among them with respect to the commission of the offense. **It is not necessary to show that two or more persons met together and entered into an explicit agreement setting out the details of an unlawful scheme** or the details by which an illegal objective is to be carried out. Thus, in *Guy v. People of the Philippines*, we held that conspiracy was properly appreciated by the Sandiganbayan because even though there were no direct proof that petitioners agreed to cause undue injury to the government and give unwarranted benefits to a certain corporation, their individual acts when taken together as a whole showed that they were acting in concert and cooperating to achieve the same unlawful objective. The conspiracy to commit plunder need not even be proved beyond reasonable doubt, but only for purposes of determining whether bail shall be granted.



¹² *Complaint-Affidavit* dated December 22, 2016, p. 9; TSN, August 10, 2018, pp. 31-32

¹³ *Complaint-Affidavit* dated December 22, 2016, p. 10

¹⁴ G.R. Nos. 218232, 218235, 218266, 218903 and 219162, July 24, 2018, citing *Estrada v. Sandiganbayan*

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Here, the prosecution's evidence showed that the three (3) accused cooperated to achieve the same unlawful objective, *i.e.*, the accumulation of ill-gotten wealth in the aggregate amount of ₱50 million. Accused Sombero, in two (2) instances, delivered paper bags containing money taken from the City of Dreams to accused Argosino and Robles. Accused Argosino, together with accused Robles, in turn, received said paper bags containing money in connection with the 1,316 detained Chinese Nationals.

Accused Sombero now argues that he cannot be considered a co-conspirator because he was Gen. Calima's informant. The Court disagrees.

Indeed, it appears that Gen. Calima's source of information about the "pay-off" at the City of Dreams was accused Sombero. However, this does not preclude him from being a co-conspirator. The scheme of the accused would not have been successfully executed without accused Sombero's participation.

The facts in *People v. Batoctoy*¹⁵ are not on all fours with the present case. There, the Supreme Court observed that there was no reason to arrest the person who supplied the information because said person acted as the NBI's agent. Here, accused Sombero did not act as Gen. Calima's agent on November 27, 2016. To be sure, he informed Gen. Calima about the actual "pay-off" at the City of Dreams, but only after the occurrence of said "pay-off." Prior to November 30, 2016, accused Sombero informed Gen. Calima that some Bureau of Immigrations officials were asking for *areglo*, but did not specifically name accused Argosino and Robles.

*III. The condensed video of the
CCTV footages*

Accused Argosino and Robles argue that no inferences can be made from the condensed video of the CCTV footages (condensed video) because it has no sound, and because no witnesses identified the persons who appeared therein. This argument is without merit.



¹⁵ G.R. Nos. 137458-59, April 24, 2003

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The condensed video stored in the WD Elements hard drive is both documentary and object evidence. As object evidence,¹⁶ it is addressed to the senses of the Court. The Court, using its sense of sight, determined that the persons appearing in the condensed video are indeed accused Argosino, Robles and Sombero. Even without any witness positively identifying the accused in the video, the Court can very well compare the appearance of the persons in the video with the appearance of the accused, who were physically present in Court, to reach the conclusion that the accused and the persons appearing in the video are one and the same. That the video has no sound is of no moment. The Court never made any finding based on what the persons in the video talked about. The narration of events in the assailed Resolution was based solely on what could be seen in the video.

The Court found that all three (3) accused were at the City of Dreams at the time and date material to the present case. The first two (2) paper bags, each containing ten (10) bundles of money, were delivered at around 3:00 A.M. at the Red Ginger restaurant. The remaining three (3) paper bags, also containing ten (10) bundles of money each, were delivered to accused Argosino at around 5:42 A.M. at the parking area of the City of Dreams, where a white Toyota SUV was parked. In both instances, accused Sombero delivered the paper bags.

Accused Robles' claim that the video never showed the paper bags in their possession likewise deserves scant consideration.

Although it was not shown that accused Argosino and Robles took—or even touched—the first two (2) paper bags after accused Sombero left them (paper bags) under the table they (Argosino and Robles) occupied, it appeared that accused Argosino and Robles acquired control over said paper bags. When accused Sombero placed the paper bags on the floor under the table, it appeared that he relinquished control over them. The first two (2) paper bags were never returned to accused Sombero or to his companions. After they were left on the floor, the only person who actually carried them was accused Argosino and/or Robles' companion—the man wearing a white shirt

¹⁶ Rules of Court. Rule 130, Sec. 1. Object as evidence. – Objects as evidence are those addressed to the senses of the court. When an object is relevant to the fact in issue, it may be exhibited to, examined or viewed by the court.

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The three (3) accused, together with their companions, left Red Ginger restaurant at the same time a few minutes after accused Sombero and his companion returned to the Red Ginger restaurant, bringing with them three (3) paper bags containing money. In the parking area, they split into two (2) groups. Accused Robles and the man wearing a white shirt went together, bringing with them the two (2) paper bags, while accused Argosino went together with accused Sombero and the latter's companion. Three (3) persons—accused Argosino, accused Sombero, and accused Sombero's companion—went to the back portion of a white Toyota SUV. Accused Sombero and his companion carried three (3) paper bags at the time. Later, when accused Sombero and his companion left the area, accused Argosino was no longer with them, and they no longer carried the three (3) paper bags. It could be reasonably inferred therefrom that the three (3) paper bags remained in the possession of accused Argosino.

That the man wearing a white shirt, who carried the first two (2) paper bags, was the companion of either or both accused Argosino and Robles can be reasonably inferred from the condensed video. On several instances, the man wearing a white shirt appeared to be talking to either or both accused Argosino and Robles. He stayed with accused Argosino and Robles at the Red Ginger, albeit occupying a nearby table. He went with accused Robles to the parking area, and was later seen together with accused Robles when the Mitsubishi SUV stopped near the area where the white Toyota SUV was parked. The man wearing a white shirt and accused Robles got off, and later, re-boarded the same Mitsubishi SUV. After getting off said vehicle, accused Robles went to the back portion of the white Toyota SUV. He was already carrying a paper bag when he returned to the Mitsubishi SUV.

Next, accused Argosino and Robles argue that the said condensed video was not properly authenticated because witness Calderon had no participation in the preparation thereof. This Court disagrees.

Rule 11, Sec. 1 of the Rules on Electronic Evidence, which provides for the admissibility of video evidence, reads:

Sec. 1. Audio, video and similar evidence. – Audio, photographic and video evidence of events, acts or transactions shall be admissible provided it shall be shown, presented or displayed to the court and shall be identified, explained or authenticated by the

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person who made the recording or by some other person competent to testify on the accuracy thereof.

It is clear that it is not necessary for the video evidence to be identified, explained or authenticated by the person who made the recording. The identification, explanation or authentication may also be made by a person competent to testify on the accuracy of the video evidence. This Court found that witness Calderon was competent to testify on the accuracy of the condensed video, and that the video was properly authenticated.

Witness Calderon testified that he monitors the premises of the City of Dreams through CCTVs as part of his functions as Surveillance Operations Manager. Although he did not make the condensed video stored in the WD Elements hard drive, he testified that the condensed video is composed of extracts taken from footages from the CCTV cameras. He participated in the extraction of footages and explained in detail how the footages from the CCTV Recording System were extracted, and how the extracted footages were merged. According to him, the video files stored in the WD Elements hard drive were the same as those originally from the CCTV Recording System of the City of Dreams. The Dallmeier system accepts only footages from cameras within the system, *i.e.* those in the City of Dreams, and does not allow access to cameras not within said system.¹⁷ He further testified that the files were converted from MPEG-4 to AVI format because MPEG-4 format is not compatible with some video players, and that the converted files were the same as those which originally came from the CCTV Recording System.

IV. The YouTube video

Accused Argosino contends that the YouTube video of the press conference on December 13, 2016 cannot be relied upon because it is shorter than the original recording. Accused Robles, on the other hand, claims that he never admitted to receiving money in the video. Accused Argosino only mentioned his name when he (Argosino) said that he and accused Robles discovered evidence against Jack Lam. These contentions do not persuade.

Witness Aurelio, a journalist who recorded the original video, testified that although the YouTube video was edited to tell a more

¹⁷ TSN, August 17, 2018, pp. 78-79

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concise story, it nonetheless reasonably represents what actually occurred during the press conference on December 13, 2016.

Next, the Court finds that although accused Robles did not say anything in the YouTube video, accused Argosino's admissions were also his (Robles) admissions. Hereunder is a transcript of the whole video:¹⁸

Accused Argosino:

[Mr.] President, we are presenting to you the first criminal complaint against Jack Lam, against Wally Sombrero (sic), against the two (2) interpreters, with the collusion of Gen. Charles Calima.

(break)

Reporter:

Magkano po bang kabuuang perang binigay ni Wally Sombrero?

Accused Argosino:

Ah... 50 million *binigay niya, at ang sabi niya, "sir, balato niyo na yung 2 million."* Okay. We do not look at it as bribe money. We look at it as evidence of corruption. It doesn't matter to us whether he gets 2 million, he gets 5 million, so we get 48 million. And then General Calima should explain where is the 18 million.

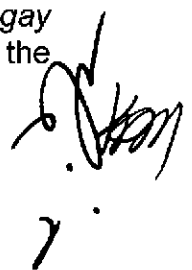
(break)

So ang nangyari dito is a continuing... is a continuing investigation in our capacity as Associate Commissioners of the Bureau of Immigration.

(break)

At the time that we have received in custody of ₱50 million, *alisin mo lang yung binawas ni Wally Sombrero (sic), we could have easily made the arrest. But why did we not pursue it and consider this as future evidence? Because at the time that Wally Sombrero (sic) had met us in the City of Dreams, walang signs of Jack Lam. Mahuhuli ko si Wally Sombrero (sic) but there is no sign of Jack Lam. We were not born yesterday. We know... We know that when we put ourselves in the City of Dreams, sa tingin niyo ba na di namin alam na may mga camera diyan? Sa tingin niyo ba di namin niri-risk ang aming chance na makita ang opportunity kung hanggang saan ang korupsiyon... kung hanggang saan ang korupsiyon na ginagawa ng mga taong hindi nagbabayad ng tamang buwis, at rather, ibinibigay sa mga present officers of the gov... sa mga previous officers of the*

¹⁸ Breaks are indicated to prevent the statements from being taken out of context



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government. *Yan ang katibayan* that corruption exists through the illegal operations of Jack Lam.

(break)

Mr. President, we were able to give you the living proof that Jack Lam is into corruption. And we are the first officer... *at* we are able to file corruption charge against Jack Lam.

(break)

Kami ni Commissioner... Kami ni Deputy Commissioner Mike Robles ang naka-diskubre ng the only living evidence against Jack Lam.

(break)

We may be new... we may be new as public officers, but please, our integrity is intact when we go here and assume that we are the appointed of President Duterte as his trusted immigration officers.

In the video, accused Argosino and Robles appeared to be presenting a complaint against Jack Lam, accused Sombero, two (2) interpreters, and Gen. Calima. Said complaint appeared to be in connection with a continuing investigation *they* conducted in *their* capacity as Associate Commissioners of the Bureau of Immigration. Accused Argosino declared that *they* received the money from accused Sombero, and that said money was evidence in a case against Jack Lam.

At that time, there were only two (2) Associate Commissioners of the Bureau of Immigration¹⁹—accused Argosino and accused Robles. Accused Argosino, together with accused Robles, presented said complaint. It is, thus, reasonable to assume that whenever accused Argosino said “we,” it referred to him and accused Robles, who appeared to have stood beside accused Argosino the whole time. There was nothing in the video that could be interpreted as accused Robles’ objection to accused Argosino’s statements. Hence, even if accused Robles did not utter a single word, his silence²⁰ may be considered as an admission of the receipt of money in the City of Dreams.

¹⁹ Executive Order No. 292. Book IV, Title III, Chapter 10, Sec. 31

²⁰ Rules of Court. Rule 130, Sec. 32. Admission by silence. – An act or declaration made in the presence and within the hearing or observation of a party who does or says nothing when the act or declaration is such as naturally to call for action or comment if not true, and when proper and possible for him to do so, may be given in evidence against him.

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In any event, it must also be emphasized that the Court's finding that accused Robles also received the money subject of the present case, or a portion thereof, was based not only on the YouTube video, but also on the condensed video of the CCTV footages, as well as accused Argosino and Robles' admissions²¹ in their respective petitions for bail. The Court's discussion thereof²² in the assailed Resolution is hereunder quoted for convenience:

Second element

The prosecution presented clear and convincing evidence that accused Argosino and Robles received money, in two (2) instances, from accused Sombero, as consideration for the release of the Chinese nationals detained at Fontana Leisure Parks and Casino.

The short version of the CCTV footages stored in the WD Elements hard drive (Exhibit G) shows that accused Sombero delivered paper bags containing money to accused Argosino and Robles in the City of Dreams in two (2) instances. This is corroborated by the YouTube video of the press conference on December 13, 2016 (Exhibit K), wherein accused Argosino, in the presence of accused Robles and several reporters, declared in no uncertain terms that he and accused Robles received the aggregate amount of P50 million from accused Sombero in the City of Dreams.

This Court notes that accused Argosino and Robles themselves do not dispute the fact that the money came into their possession.

In his *Petition for Bail*, accused Robles stated:

20. Even before the filing of the instant case, the money involved herein was already turned over by the accused voluntarily, willingly and readily to the government agencies for safe-keeping purposes. As claimed by the accused, this money was to be used by them [as] evidence for bribery and/or corruption of public officers.

In his *Petition for Bail*, accused Argosino similarly stated:

28. It is a matter of record that on 13 December 2016 Accused Argosino and Robles filed a case docketed as NPS Docket Number 16-3000 entitled "*Deputy Commissioners Al C. Argosino and Michael B. Robles vs. Dr. Lam Yin Lok @ Jack Lam, et al.*" for Corruption of Public Officials and Wire-Tapping. On the same day, they proceeded to the

²¹ *Rules of Court. Rule 129, Sec. 3. Judicial admissions.* – An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

²² Resolution dated August 30, 2018, p. 43-45; Record, Vol. 5, pp. 287-289

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Department of Justice to turnover as evidence the amount of Php 29,999,000.00 declaring that Php18 Million was with Calima and the Php2 Million was with Accused Sombero.

29. Clearly the filing of said criminal case and the subsequent turnover of Php29,999,000.00 before the Department of Justice as evidence *effectively negated Plunder*. By turning over this amount, accused Argosino has shown lack of pecuniary interest to even consider amassing, accumulating or acquiring the same.

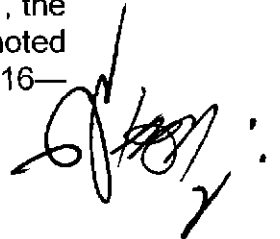
Although accused Argosino and Robles do not make any express averment in their respective Petitions that they received the money, their admission of turning over the money to the concerned government agency, implies that the money was in their possession at some point. They could not have turned over the money if it never came into their possession in the first place. That the money came into their possession necessarily means that they received the same.

The accused only dispute the reason behind their receipt of the money. They claim that they intended to use the money as evidence in a case against Jack Lam, and that the money was for the "legal bail" of the detained Chinese nationals. The prosecution's evidence, however, tells a different story.

From the testimonies of Comm. Morente and Gen. Calima, it could be reasonably inferred that accused Argosino and Robles received the money by reason of their official position of Associate Commissioners of the Bureau of Immigration.

It appears that witness Morente, Commissioner of the Bureau of Immigration, learned of accused Argosino and Robles' receipt of the money from Gen. Calima, who conducted counter-intelligence operations against the said accused. Had there been a legitimate entrapment operation against Jack Lam, it is reasonable to expect that Comm. Morente, the head of agency, would have known, or at the very least, would have been informed about it, especially considering the substantial amount of money involved. If Comm. Morente knew that accused Argosino and Robles were conducting a legitimate entrapment operation, he would not have instructed Gen. Calima to conduct counter-intelligence operations against accused Argosino and Robles.

Further supporting the conclusion that the money could not have been intended as evidence against Jack Lam is Gen. Calima's possession of the ₱18 million. He explained that accused Argosino gave him the ₱18 million for the purpose of damage control, specifically, to prevent Ramon Tulfo and accused Sombero from revealing to the public the incident that occurred on November 27, 2016 in the City of Dreams, and the events that led thereto, *i.e.*, the raid operation in Fontana Leisure Parks in Clark. It must be noted that Gen. Calima received the ₱18 million on December 9, 2016—



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twelve (12) days after accused Argosino and Robles received ₱50 million from accused Sombero. If the intention was to use the money as evidence in a case against Jack Lam, the amount would have been kept intact.

Next, that the money was intended for the bail of the detained Chinese nationals is belied by the fact that the posting of bail had to be processed at the main office of the Bureau of Immigration. As Comm. Morente testified, the cashiers had to perform overtime work to process the bail of 592 detainees who were assisted by different law firms.

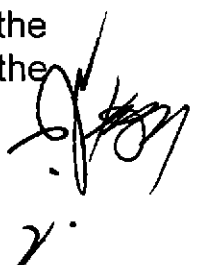
The prosecution's evidence, taken as a whole, convincingly shows that there was no legitimate reason why accused Argosino and Robles received money from accused Sombero outside the premises of their office and beyond office hours, and hence, the money received appears to be ill-gotten wealth.

V. The reliability of the witnesses

Accused Argosino and Robles posit that the testimonies of the prosecution's witnesses cannot be relied upon because said witnesses had no personal knowledge of the events that occurred in the City of Dreams on November 27, 2016. Accused Argosino further points out that the witnesses testified only on matters that occurred after November 27, 2016; and that Gen. Calima filed a complaint for Plunder only because the amount involved reached the ₱50 million threshold.

There is no question that none of the witnesses presented by the prosecution had personal knowledge of the events that occurred in the City of Dreams on November 27, 2016. However, it cannot be said that their testimonies cannot be relied upon. Comm. Morente and Gen. Calima's respective testimonies were offered not for the purpose of proving the events in the City of Dreams on November 27, 2016, but for the purpose of providing context for the alleged receipt of money by accused Argosino and Robles. Gen. Calima's testimony further showed how the ₱18 million came into his possession. Witnesses Calderon, Cuestas, Aurelio and Barros likewise did not testify to prove the events in the City of Dreams on November 27, 2016, but to identify and authenticate object and documentary evidence that will prove the allegations in the Information.

The reason behind Gen. Calima's Complaint for Plunder is irrelevant because it is not the private complainant who determines the proper offense to charge the accused, but the Office of the

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Ombudsman. Said Office is not bound by the charge in the complaint, and it may, in fact, file an Information charging an offense different from that in the complaint. As the Supreme Court held in *Galario v. Office of the Ombudsman*:²³

It is clear from the foregoing constitutional and statutory provisions that the Ombudsman is given a **plenary and unqualified authority with respect to its investigatory and prosecutory power**, subject only to the constitutional limitations, and its coverage cannot be limited to the allegations in any complaint-affidavit that may have been filed against a public officer. In fact, the Ombudsman may investigate and prosecute on its own, without need for a complaint-affidavit, for as long as the case falls within its jurisdiction. Hence, regardless of the allegations and accusations against the public officer in the affidavit-complaint, it still rests upon the Ombudsman to determine the proper crime or offense which can be charged against the public officer depending on the findings of the Ombudsman in the preliminary investigation.

VI. *The 211 ₱1,000.00 bills rejected by the money-counting machine*

Accused Argosino, Robles and Sombero contend that although the actual reasons for the rejection by the Glory GFS-100 money-counting machine of the 211 ₱1,000.00 bills was not established, said bills should be considered counterfeit, and should be excluded from the count. They argue that all doubt should be resolved in favor of the accused. They insist that the prosecution, which has the burden to prove that the evidence of the accused' guilt is strong, and the burden to prove the guilt of the accused beyond reasonable doubt, also has the burden to prove that the rejected bills are genuine. Allegedly, without the excluded bills, the total amount of money involved would be less than ₱50 million, and hence, no Plunder was committed. The Court is not persuaded.

Verily, the accused enjoy the constitutional right to be presumed innocent until the contrary is proved.²⁴ For this reason, the accused are entitled to an acquittal unless the prosecution proves their guilt beyond reasonable doubt—meaning that the prosecution must prove all the elements of the offense and the identity of the accused as the

²³ G.R. No. 166797, July 10, 2007
²⁴ *Constitution. Art. III, Sec. 14* (2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, x x x

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perpetrator beyond reasonable doubt. However, once the prosecution overturns the presumption of innocence, the burden then shifts to the defense. This was explained in *People v. Rodrigo*²⁵ as follows:

While an accused stands before the court burdened by a previous preliminary investigation finding that there is probable cause to believe that he committed the crime charged, the judicial determination of his guilt or innocence necessarily starts with the recognition of his constitutional right to be presumed innocent of the charge he faces. This principle, a right of the accused, is enshrined no less in our Constitution. It embodies as well a duty on the part of the court to ascertain that no person is made to answer for a crime unless his guilt is proven beyond reasonable doubt. Its primary consequence in our criminal justice system is the basic rule that the prosecution carries the burden of overcoming the presumption through proof of guilt of the accused beyond reasonable doubt. Thus, a criminal case rises or falls on the strength of the prosecution's case, not on the weakness of the defense. Once the prosecution overcomes the presumption of innocence by proving the elements of the crime and the identity of the accused as perpetrator beyond reasonable doubt, the burden of evidence then shifts to the defense which shall then test the strength of the prosecution's case either by showing that no crime was in fact committed or that the accused could not have committed or did not commit the imputed crime, or at the very least, by casting doubt on the guilt of the accused. x x x

If the prosecution later proves the elements of Plunder, as alleged in the Information, beyond reasonable doubt, the burden of evidence will then shift to the defense. The defense may prove that some of the bills are counterfeit, or at least, introduce doubt as to the genuineness of the bills. But at this point in the proceedings, it is premature to determine if the prosecution was able to prove the accused' guilt beyond reasonable doubt, or whether the fact that the Glory GFS-100 money-counting machine rejected 211 ₱1,000.00 bills constitutes reasonable doubt.

The Court must use this occasion to reiterate that for purposes of bail, the prosecution need only to establish strong evidence of guilt, or "proof evident," or "presumption great." As held in *Revilla v. Sandiganbayan*,²⁶ citing *People v. Cabral*:²⁷

For purposes of bail, we held in *People v. Cabral* that: "[b]y judicial discretion, the law mandates the determination of whether

²⁵ G.R. No. 176159, September 11, 2008
²⁶ G.R. Nos. 218232, 218235, 218266, 218903 and 219162, July 24, 2018
²⁷ G.R. No. 131909, February 18, 1999

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proof is evident or the presumption of guilt is strong. **‘Proof evident’ or ‘Evident proof’** in this connection has been held to mean **clear, strong evidence which leads a well-guarded dispassionate judgment to the conclusion that the offense has been committed as charged, that accused is the guilty agent, and that he will probably be punished capitally if the law is administered.** **‘Presumption great’** exists when the circumstances testified to are such that the **inference of guilt naturally to be drawn therefrom is strong, clear, and convincing to an unbiased judgment and excludes all reasonable probability of any other conclusion.** The weight of evidence necessary for bail purposes is not proof beyond reasonable doubt, but strong evidence of guilt, or “proof evident,” or “presumption great.” x x x

In the assailed Resolution, this Court found that the prosecution convincingly proved that the aggregate amount of the ill-gotten wealth allegedly amassed, accumulated or acquired is ₱50 million. The actual reasons for the rejection of the 211 bills by the money-counting machine had not been established. As shown by the TSN during the ocular inspection held on August 8, 2018, rejection by the money-counting machine does not necessarily mean that the rejected bill is counterfeit:²⁸

ATTY. CAMALIGAN:

Your Honor I'd like to put on record the manifestation earlier of the bank personnel that the fact that one bill separates, indicates that the same is counterfeit or fake.

JUSTICE MIRANDA:

Is that for sure?

MS. VALENCIA:

I-assess din po muna namin kung counterfeit po.

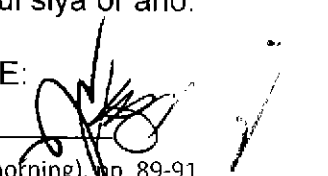
PROSEC. SE:

Questionable.

MS. VALENCIA:

Kung doubtful siya or ano.

PROSEC. SE:



²⁸ TSN, August 8, 2018 (morning), pp. 89-91

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X -----X

Can we use the word questionable?

JUSTICE MIRANDA:

Can you show the Court?

ATTY. CAMALIGAN:

There is a possibility that it is fake.

CHAIRPERSON FERNANDEZ:

The lady is not under oath. Okay.

ATTY. YU:

If we may be allowed to take a picture?

CHAIRPERSON:

The Court will take notes (sic) of the manifestation [of] Atty. Camaligan. But the Court likewise notes [that] Ms. Miriam is not a witness and she is not under oath. Okay. So it's just an explanation that she made.

ATTY. CAMALIGAN:

Yes, Your Honor.

(underscoring supplied)

VII. The opening of the safety boxes on June 22, 2018

Accused Robles insinuates that the evidence may have been tampered with when Dir. Germar and then Usec. Balmes accessed the safety deposit boxes on June 22, 2018.

As previously discussed, if the prosecution later proves the elements of Plunder, as alleged in the Information, and beyond reasonable doubt, the defense may assail, or introduce doubt as to, the integrity of the prosecution's evidence. At this point, there is no finding that the evidence in the safety deposit boxes had been tampered with. The *Record of Accesses* shows that Dir. Germar and then Usec. Balmes accessed the safety deposit boxes on June 22, 2018, and stayed from 10:28 to 10:39, or a total of eleven (11) minutes.