



**REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY**

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.,
and CORPUS-MAÑALAC, J.**

Promulgated:

March 13, 2019 *fel*

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RESOLUTION

PER CURIAM:

For consideration are the Motion for Leave to File Demurrer to Evidence, filed by accused, Janet Lim Napoles, through counsel, on March 4, 2019 and the Comment/Opposition, filed by the People, through the Panel of Prosecutors, on March 7, 2019.

The accused anchored her present motion on the following grounds: 1. the allegations in the Information do not charge the crime of Plunder; 2. the prosecution failed to establish that each accused, whether public officers or private individuals, by their individual acts, agreed to participate, directly or indirectly in the amassing, accumulation and acquisition of ill-gotten wealth of and/or for any of the accused

public officer. The accused believes that there is not an iota of proof presented by the prosecution, save for the bare allegation, that conspiracy to commit the crime of Plunder exists. Moreover, the accused alleges that in the present case, what appears in the evidence presented by the prosecution is that the conspiracy was geared towards helping accused Napoles misappropriate the PDAF proceeds for her personal gain and applying the rulings in the case of *Estrada*¹ and *Borje*², the crime of Plunder could not have been committed; 3. the allegations in the Information failed to specify who is the main plunderer. Citing the *GMA case*³, the accused avows that the identification of the main plunderer is an element of the crime of plunder to safeguard the rights of all of the accused to be properly informed of the charges that he/she was being made answerable to. In addition, the accused relied on a Supreme Court pronouncement in that same case that the prosecution's failure to properly allege the main plunderer is fatal to the cause of the State for violating the rights of each accused to be informed of the charges against each of them; 4. the prosecution failed to show that the proceeds of the PDAF landed in the pockets of any public officer. The accused argues that in a Plunder case, it must be shown that the public officer was principally and ultimately benefited or enriched and not a private person like herein accused; 5. the prosecution failed to present evidence to prove its allegations in the legally and factually defective Information by evidence beyond reasonable doubt.

In response and in opposition to the present motion, the prosecution countered that while Estrada was found by this Court to be the "apex of the PDAF scam", there is ample evidence pointing to Napoles as an active conspirator in this case. The testimonial evidence of all the witnesses presented corroborate with each other. They all testified that it was upon the behest and instruction of Napoles that Estrada's PDAF project were diverted from its legitimate source. Moreover, Napoles' contention that the Information failed to specify the main plunderer has no leg to stand on. The prosecution argues that the Plunder Law does not expressly require identification of a main plunderer. It accentuates that under Section 2 of R.A. No. 7080, Plunder may be committed by any public officer, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or any person who participated with the said public officer in the commission of the offense. Hence, a main plunderer who pulls the strings akin to a puppet master in the PDAF transactions of Estrada need not be identified. Furthermore, Estrada's and Napoles' individual acts constituting the crime of plunder have been sufficiently shown by the prosecution. Estrada had actual control and custody of his PDAF allocation. He repeatedly received from Napoles' kickbacks and commissions in exchange for his endorsement of her NGOs to the appropriate government agencies. Napoles, on the other hand gave Estrada a percentage of the cost of the projects which are to be funded from his PDAF allocation. It would not be amiss to stress that Estrada could still amass ill-gotten wealth from his PDAF allocation without Napoles, having control and custody of his PDAF, he could simply deal with other players like Napoles. Thus, it matters not whether Napoles concocted the scheme to divert the PDAF projects of Estrada in

¹ Jose "Jinggoy" Estrada v. Sandiganbayan (Third Division) 377 SCRA 538.

² Resolution dated January 20, 2005, People v. Borje, Jr., Criminal Case No. 27969, Second Division, citing Estrada v. Sandiganbayan.

³ Gloria Macapagal Arroyo v. People and the Sandiganbayan, G. R. Nos. 220598 & 220953, July 19, 2016.

this case. In addition, the AMLC Bank Inquiry Report discloses that bank/financial transactions involving millions of pesos were made by Estrada, by himself, or either through Pauline Labayen, Carl Dominic Labayen, and Juan T. Ng. within thirty (30) days from the dates mentioned in the Daily Disbursement Records (DDR) and Summary of Rebates. Out of the One Hundred Eighty-Three Million Seven Hundred Ninety-Three Thousand Seven Hundred Fifty Pesos (PhP183,793,750.00) reflected in the DDRs and Summary of Rebates, Seventy Million Seven Hundred Forty-Eight Thousand Seven Hundred Fifty Pesos (PhP70,748,750.00) was confirmed by the AMLC to have been received by Estrada. In fine, the prosecution has sufficiently established the crime of Plunder, taking into account the documentary exhibits and testimonies given by the witnesses.

Hence, this resolution.

Demurrer to evidence is⁴ “an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt. x x x Sufficient evidence for purposes of frustrating a demurrer thereto is such evidence in character, weight or amount as will legally justify the judicial or official action demanded according to the circumstances. To be considered sufficient therefore, the evidence must prove: (a) the commission of the crime, and (b) the precise degree of participation therein by the accused.”⁵ Thus, when the accused files a demurrer, the court must evaluate whether the prosecution evidence is sufficient enough to warrant the conviction of the accused beyond reasonable doubt.⁶

After a careful examination of the totality of the evidence presented by the prosecution, both testimonial and documentary, the Court resolves to grant the present motion of the accused, to sufficiently provide her an opportunity to challenge the sufficiency of the prosecution’s evidence establishing the material elements of the offense charged to support a judgment of guilt.

⁴ Under Section 23, Rule 119 of the Rules of Court:

SEC. 23. Demurrer to evidence—After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.

If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.

The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.

If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.

The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by certiorari before judgment

⁵ Gutib v. Court of Appeals, 371 Phil. 293, 300, 305 (1999).

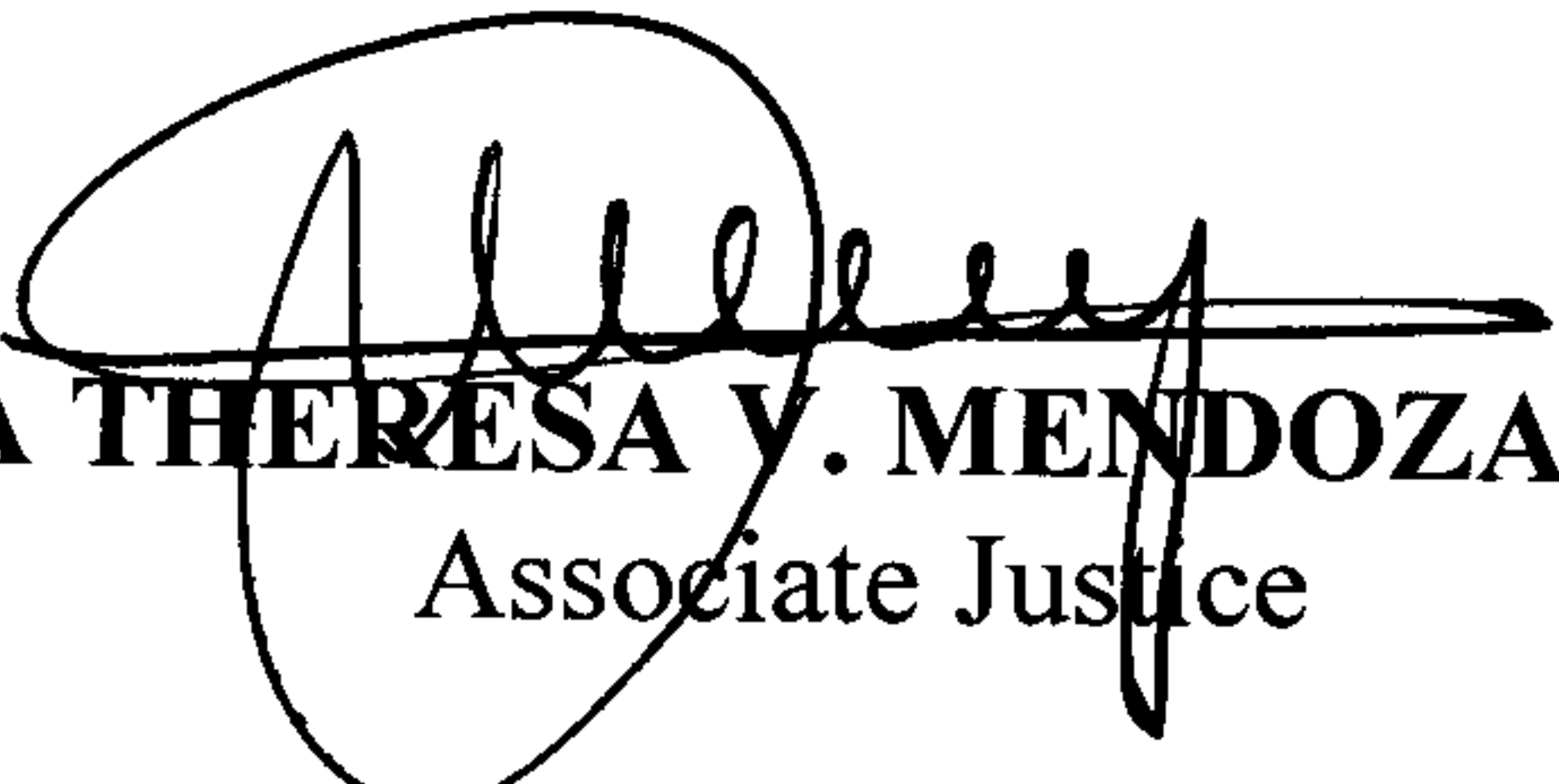
⁶ See Bautista v. Cuneta-Pangilinan, G.R. No. 189754, October 24, 2012, 684 SCRA 521, 538.

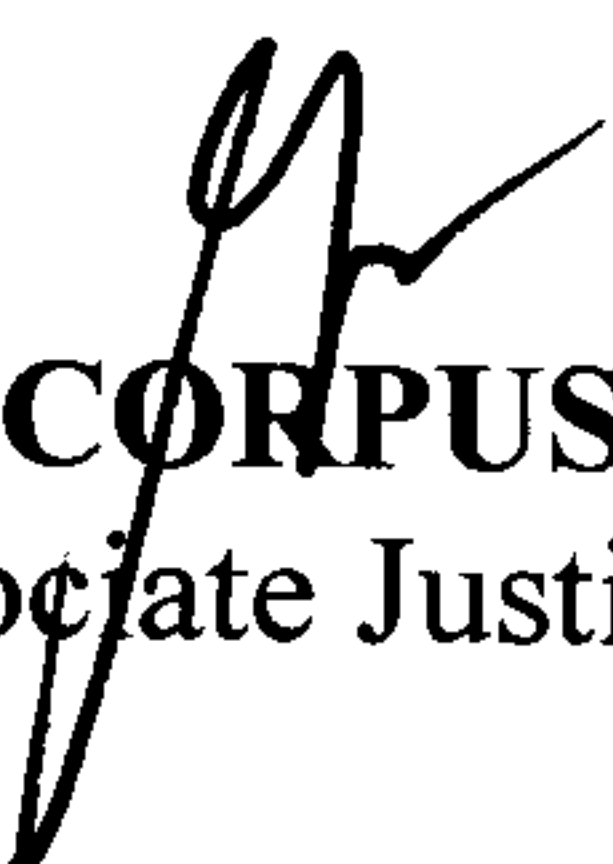
WHEREFORE, in view of the foregoing, the Motion for Leave of Court to File Demurrer to evidence is hereby **GRANTED**.

Accordingly, the accused is given a non-extendible period of ten (10) calendar days from receipt of this Resolution within which to file her Demurrer to Evidence, while the prosecution is given the same period from receipt of the Demurrer to Evidence within which to file its Comment thereto. Thereafter, the incident shall be deemed submitted for resolution.

SO ORDERED.


RAFAEL R. LAGOS
Chairperson


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice


MARYANN E. CORPUS-MAÑALAC
Associate Justice