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[G.R. No. 220598, April 18, 2017]

GLORIA MACAPAGAL-ARROYO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND THE SANDIGANBAYAN, (FIRST DIVISION), RESPONDENTS.

[G.R. No. 220953]

BENIGNO B. AGUAS, PETITIONER, VS. SANDIGANBAYAN (FIRST DIVISION), RESPONDENT.

R E S O L U T I O N

BERSAMIN, J.:

On July 19, 2016, the Court promulgated its decision, disposing:

> **WHEREFORE**, the Court **GRANTS** the petitions for *certiorari*; **ANNULS** and **SETS ASIDE** the resolutions issued in Criminal Case No. SB-12-CRM-0174 by the *Sandiganbayan* on April 6, 2015 and September 10, 2015; **GRANTS** the petitioners' respective demurrers to evidence; **DISMISSES** Criminal Case No. SB-12-CRM-0174 as to the petitioners **GLORIA MACAPAGAL-ARROYO** and **BENIGNO AGUAS** for insufficiency of evidence; **ORDERS** the immediate release from detention of said petitioners; and **MAKES** no pronouncements on costs of suit.
>
> **SO ORDERED.**[1]

On August 3, 2016, the State, through the Office of the Ombudsman, has moved for the reconsideration of the decision, submitting that:

> I. **THIS HONORABLE COURT'S GIVING DUE COURSE TO A CERTIORARI ACTION ASSAILING AN INTERLOCUTORY ORDER DENYING DEMURRER TO EVIDENCE VIOLATES RULE 119, SECTION 23 OF THE RULES OF COURT, WHICH PROVIDES THAT AN ORDER DENYING THE DEMURRER TO EVIDENCE SHALL NOT BE REVIEWABLE BY APPEAL OR BY CERTIORARI *BEFORE* JUDGMENT.**
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> II. **THE HONORABLE COURT COMMITTED GRAVE ERRORS WHICH AMOUNT TO A VIOLATION OR DEPRIVATION OF THE STATE'S FUNDAMENTAL RIGHT TO DUE PROCESS OF LAW.**
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> A. **THE DECISION REQUIRES *ADDITIONAL* ELEMENTS IN THE PROSECUTION Of PLUNDER, *VIZ*. IDENTIFICATION OF THE MAIN PLUNDERER AND PERSONAL BENEFIT TO HIM/HER, BOTH OF WHICH ARE NOT PROVIDED IN THE TEXT OF REPUBLIC ACT (R.A.) NO. 7080.**
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> B. **THE EVIDENCE PRESENTED BY THE PROSECUTION WAS NOT FULLY TAKEN INTO ACCOUNT, INCLUDING BUT NOT LIMITED TO THE IRREGULARITIES IN THE CONFIDENTIAL/INTELLIGENCE FUND (CIF) DISBURSEMENT PROCESS, QUESTIONABLE PRACTICE OF CO-MINGLING OF FUNDS AND AGUAS' REPORTS TO THE COMMISSION ON AUDIT (COA) THAT BULK OF THE PHP365,997,915.00 WITHDRAWN FROM THE PHILIPPINE CHARITY SWEEPSTAKES OFFICE'S (PCSO) CIF WERE DIVERTED TO**

THE ARROYO-HEADED OFFICE OF THE PRESIDENT.

C. **ARROYO AND AGUAS, BY INDISPENSABLE COOPERATION, IN CONSPIRACY WITH THEIR CO-ACCUSED IN SB-12-CRM-0174, COMMITTED PLUNDER VIA A COMPLEX ILLEGAL SCHEME WHICH DEFRAUDED PCSO IN HUNDREDS OF MILLIONS OF PESOS.**

D. **EVEN ASSUMING THAT THE ELEMENTS OF PLUNDER WERE NOT PROVEN BEYOND REASONABLE DOUBT, THE EVIDENCE PRESENTED BY THE PEOPLE SHOWS, BEYOND REASONABLE DOUBT, THAT ARROYO, AGUAS AND THEIR CO-ACCUSED IN SB-12-CRM-0174 ARE GUILTY OF MALVERSATION.**[2]

In contrast, the petitioners submit that the decision has effectively barred the consideration and granting of the motion for reconsideration of the State because doing so would amount to there prosecution or revival of the charge against them despite their acquittal, and would thereby violate the constitutional proscription against double jeopardy.

Petitioner Gloria M. Macapagal-Arroyo (Arroyo) points out that the State miserably failed to prove the *corpus delicti* of plunder; that the Court correctly required the identification of the main plunderer as well as personal benefit on the part of the raider of the public treasury to enable the successful prosecution of the crime of plunder; that the State did not prove the conspiracy that justified her inclusion in the charge; that to sustain the case for malversation against her, in lieu of plunder, would violate her right to be informed of the accusation against her because the information did not necessarily include the crime of malversation; and that even if the information did so, the constitutional prohibition against double jeopardy already barred the re-opening of the case for that purpose.

Petitioner Benigno B. Aguas echoes the contentions of Arroyo in urging the Court to deny the motion for reconsideration.

In reply, the State avers that the prohibition against double jeopardy does not apply because it was denied its day in court, thereby rendering the decision void; that the Court should re-examine the facts and pieces of evidence in order to find the petitioners guilty as charged; and that the allegations of the information sufficiently included all that was necessary to fully inform the petitioners of the accusations against them.

Ruling of the Court

The Court **DENIES** the motion for reconsideration for its lack of merit.

To start with, the State argues that the consolidated petitions for *certiorari* were improper remedies in light of Section 23, Rule 119 of the Rules of Court expressly prohibiting the review of the denial of their demurrer prior to the judgment in the case either by appeal or by *certiorari*; that the Court has thereby limited its own power, which should necessarily prevent the giving of due course to the petitions for *certiorari*, as well as the undoing of the order denying the petitioners' demurrer to evidence; that the proper remedy under the *Rules of Court* was for the petitioners to proceed to trial and to present their evidence-in-chief thereat; and that even if there had been grave abuse of discretion attending the denial, the Court's *certiorari* powers should be exercised only upon the petitioners' compliance with the stringent requirements of Rule 65, particularly with the requirement that there be no plain, speedy or adequate remedy in the ordinary course of law, which they did not establish.

Section 23, Rule 119 of the *Rules of Court*, pertinently provides:

> Section 23. *Demurrer to evidence*. - x x x
>
> x x x x
>
> **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. (n)

The argument of the State, which is really a repetition of its earlier submission, was squarely resolved in the decision, as follows:

> The Court holds that it should take cognizance of the petitions for *certiorari* because the *Sandiganbayan*, as shall shortly be demonstrated, gravely abused its discretion amounting to lack or excess of jurisdiction.
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> The special civil action for *certiorari* is generally not proper to assail such an interlocutory order issued by the trial court because of the availability of another remedy in the ordinary course of law. Moreover, Section 23, Rule 119 of the *Rules of Court* expressly provides that "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." It is not an insuperable obstacle to this action, however, that the denial of the demurrers to evidence of the petitioners was an interlocutory order that did not terminate the proceedings, and the proper recourse of the demurring accused was to go to trial, and that in case of their conviction they may then appeal the conviction, and assign the denial as among the errors to be reviewed. Indeed, it is doctrinal that the situations in which the writ of *certiorari* may issue should not be limited, because to do so -
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> > x x x would be to destroy its comprehensiveness and usefulness. So wide is the discretion of the court that authority is not wanting to show that *certiorari* is more discretionary than either prohibition or *mandamus*. **In the exercise of our superintending control over other courts, we are to be guided by all the circumstances of each particular case 'as the ends of justice may require.' So it is that the writ will be granted where necessary to prevent a substantial wrong or to do substantial justice.**
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> The Constitution itself has imposed upon the Court and the other courts of justice the duty to correct errors of jurisdiction as a result of capricious, arbitrary, whimsical and despotic exercise of discretion by expressly incorporating in Section 1 of Article VIII the following provision:
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> > Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
> >
> > Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.
>
> **The exercise of this power to correct grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government cannot be thwarted by rules of procedure to the contrary or for the sake of the convenience of one side. This is because the Court has the bounden constitutional duty to strike down grave abuse of discretion *whenever* and *wherever* it is committed. Thus, notwithstanding the interlocutory character and effect of the denial of the demurrers to evidence, the petitioners as the accused could avail themselves of the remedy of *certiorari* when the denial was tainted with grave abuse of discretion. As we shall soon show, the *Sandiganbayan* as the trial court was guilty of grave abuse of discretion when it capriciously denied the demurrers to evidence despite the absence of competent and sufficient evidence to sustain the indictment for plunder, and despite the absence of the factual bases to expect a guilty verdict.**[3]

We reiterate the foregoing resolution, and stress that the prohibition contained in Section 23, Rule 119 of the *Rules of Court* is not an insuperable obstacle to the review by the Court of the denial of the demurrer to evidence through *certiorari*. We have had many rulings to that effect in the past.

For instance, in *Nicolas v. Sandiganbayan*,[4] the Court expressly ruled that the petition for *certiorari* was the proper remedy to assail the denial of the demurrer to evidence that was tainted with grave abuse of discretion or excess of jurisdiction, or oppressive exercise of judicial authority.

Secondly, the State submits that its right to due process was violated because the decision imposed additional elements for plunder that neither Republic Act No. 7080 nor jurisprudence had theretofore required, *i.e.*, the identification of the main plunderer, and personal benefit on the part of the accused committing the predicate crime of raid on the public treasury. The State complains that it was not given the opportunity to establish such additional elements; that the imposition of new elements further amounted to judicial legislation in violation of the doctrine of separation of powers; that the Court nitpicked on the different infirmities of the information despite the issue revolving only around the sufficiency of the evidence; and that it established all the elements of plunder beyond reasonable doubt.

The State cites the plain meaning rule to highlight that the crime of plunder did not require personal benefit on the part of the raider of the public treasury. It insists that the definition of *raids on the public treasury*, conformably with the plain meaning rule, is the taking of public money through fraudulent or unlawful means, and such definition does not require enjoyment or personal benefit on the part of plunderer or on the part of any of his co-conspirators for them to be convicted for plunder.

The submissions of the State are unfounded.

The requirements for the identification of the main plunderer and for personal benefit in the predicate act of *raids on the public treasury* have been written in R.A. No. 7080 itself as well as embedded in pertinent jurisprudence. This we made clear in the decision, as follows:

> A perusal of the information suggests that what the Prosecution sought to show was an implied conspiracy to commit plunder among all of the accused on the basis of their collective actions prior to, during and after the implied agreement. It is notable that the Prosecution did not allege that the conspiracy among all of the accused was by express agreement, or was a wheel conspiracy or a chain conspiracy.
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> This was another fatal flaw of the Prosecution.
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> In its present version, under which the petitioners were charged, Section 2 of Republic Act No. 7080 (Plunder Law) states:
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> > Section 2. *Definition of the Crime of Plunder; Penalties*. - Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt criminal acts as described in Section 1(d) hereof in the aggregate amount or total value of at least Fifty million pesos (P50,000,000.00) shall be guilty of the crime of plunder and shall be punished by *reclusion perpetua* to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State. [As Amended by Section 12, Republic Act No. 7659 (The Death Penalty Law)]
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> Section 1(d) of Republic Act No. 7080 provides:
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> > Section 1. *Definition of terms*. - As used in this Act, the term:
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> > x x x x

> d. "*Ill-gotten wealth*" means any asset, property, business enterprise or material possession of any person within the purview of Section two (2) hereof, acquired by him directly or indirectly through dummies, nominees, agents, subordinates and/or business associates by any combination or series of the following means or similar schemes:
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> 1. Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;
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> 2. By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned;
>
> 3. By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities or government owned or controlled corporations and their subsidiaries;
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> 4. By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;
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> 5. By establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or
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> 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.

The law on plunder requires that a particular public officer must be identified as the one who amassed, acquired or accumulated ill-gotten wealth because it plainly states that plunder is committed by any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill gotten wealth in the aggregate amount or total value of at least P50,000,000.00 through a *combination* or *series* of overt criminal acts us described in Section 1(d) hereof. Surely, the law requires in the criminal charge for plunder against several individuals that there must be a main plunderer and her co-conspirators, who may be members of her family, relatives by affinity or consanguinity, business associates, subordinates or other persons. In other words, the allegation of the wheel conspiracy or express conspiracy in the information was appropriate because the main plunderer would then be identified in either manner. Of course, implied conspiracy could also identify the main plunderer, but that fact must be properly alleged and duly proven by the Prosecution.

This interpretation is supported by *Estrada v. Sandiganbayan*, where the Court explained the nature of the conspiracy charge and the necessity for the main plunderer for whose benefit the amassment, accumulation and acquisition was made, thus:

> There is no denying the fact that the "plunder of an entire nation resulting in material damage to the national economy" is made up of a complex and manifold network of crimes. In the crime of plunder, therefore, different parties may be united by a common purpose. In the case at bar, the different accused and their different criminal acts have a commonality - to help the former President amass, accumulate or acquire ill-gotten wealth. Sub-paragraphs (a) to (d) in the Amended Information alleged the different participation of each accused in the conspiracy. **The gravamen of the**