

## EN BANC

[ G.R. No. 220598, July 19, 2016 ]

**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.**

### D E C I S I O N

**BERSAMIN, J.:**

We resolve the consolidated petitions for *certiorari* separately brought to assail and annul the resolutions issued on April 6, 2015<sup>[1]</sup> and September 10, 2015,<sup>[2]</sup> whereby the *Sandiganbayan* respectively denied their demurrer to evidence, and their motions for reconsideration, asserting such denials to be tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.

#### **Antecedents**

On July 10, 2012, the Ombudsman charged in the *Sandiganbayan* former President Gloria Macapagal-Arroyo (GMA); Philippine Charity Sweepstakes Office (PCSO) Budget and Accounts Officer Benigno Aguas; PCSO General Manager and Vice Chairman Rosario C. Uriarte; PCSO Chairman of the Board of Directors Sergio O. Valencia; Members of the PCSO Board of Directors, namely: Manuel L. Morato, Jose R. Taruc V, Raymundo T. Roquero, and Ma. Fatima A.S. Valdes; Commission on Audit (COA) Chairman Reynaldo A. Villar; and COA Head of Intelligence/Confidential Fund Fraud Audit Unit Nilda B. Plaras with plunder. The case was docketed as Criminal Case No. SB-12-CRM-0174 and assigned to the First Division of the *Sandiganbayan*.

The information<sup>[3]</sup> reads:

The undersigned Assistant Ombudsman and Graft Investigation and Prosecution Officer III, Office of the Ombudsman, hereby accuse GLORIA MACAPAGAL-ARROYO, ROSARIO C. URIARTE, SERGIO O. VALENCIA, MANUEL L. MORATO, JOSE R. TARUC V, RAYMUNDO T. ROQUERO, MA. FATIMA A.S. VALDES, BENIGNO B. AGUAS, REYNALDO A. VILLAR and NILDA B. PLARAS, of the crime of **PLUNDER**, as defined by, and penalized under Section 2 of Republic Act (R.A.) No. 7080, as amended by R.A. No. 7659, committed, as follows:

That during the period from January 2008 to June 2010 or sometime prior or subsequent thereto, in Quezon City, Philippines, and within the

jurisdiction of this Honorable Court, accused GLORIA MACAPAGAL-ARROYO, then the President of the Philippines, ROSARIO C. URIARTE, then General Manager and Vice Chairman, SERGIO O. VALENCIA, then Chairman of the Board of Directors, MANUEL L. MORATO, JOSE R. TARUC V, RAYMUNDO T. ROQUERO, MA. FATIMA A.S. VALDES, then members of the Board of Directors, BENIGNO B. AGUAS, then Budget and Accounts Manager, all of the Philippine Charity Sweepstakes Office (PCSO), REYNALDO A. VILLAR, then Chairman, and NILDA B. PLARAS, then Head of Intelligence/Confidential Fund Fraud Audit Unit, both of the Commission on Audit, all public officers committing the offense in relation to their respective offices and taking undue advantage of their respective official positions, authority, relationships, connections or influence, conniving, conspiring and confederating with one another, did then and there willfully, unlawfully and criminally amass, accumulate and/or acquire. Directly or indirectly, ill-gotten wealth in the aggregate amount or total value of THREE HUNDRED SIXTY FIVE MILLION NINE HUNDRED NINETY SEVEN THOUSAND NINE HUNDRED FIFTEEN PESOS (PHP365,997,915.00), more or less, through any or a combination or a series of overt or criminal acts, or similar schemes or means, described as follows:

- (a) diverting in several instances, funds from the operating budget of PCSO to its Confidential/Intelligence Fund that could be accessed and withdrawn at any time with minimal restrictions, and converting, misusing, and/or illegally conveying or transferring the proceeds drawn from said fund in the aforementioned sum, also in several instances, to themselves, in the guise of fictitious expenditures, for their personal gain and benefit;
- (b) raiding the public treasury by withdrawing and receiving, in several instances, the above-mentioned amount from the Confidential/Intelligence Fund from PCSO's accounts, and or unlawfully transferring or conveying the same into their possession and control through irregularly issued disbursement vouchers and fictitious expenditures; and
- (c) taking advantage of their respective official positions, authority, relationships, connections or influence, in several instances, to unjustly enrich themselves in the aforementioned sum, at the expense of, and the damage and prejudice of the Filipino people and the Republic of the Philippines.

CONTRARY TO LAW.

By the end of October 2012, the *Sandiganbayan* already acquired jurisdiction over GMA, Valencia, Morato and Aguas. Plaras, on the other hand, was able to secure a temporary restraining order (TRO) from this Court in *Plaras v. Sandiganbayan* docketed as G.R. Nos. 203693-94. Insofar as Roquero is concerned, the *Sandiganbayan* acquired jurisdiction as to him by the early part of 2013. Uriarte and Valdes remained at large.

Thereafter, several of the accused separately filed their respective petitions for bail.

On June 6, 2013, the *Sandiganbayan* granted the petitions for bail of Valencia, Morato and Roquero upon finding that the evidence of guilt against them was not strong.<sup>[4]</sup> In the case of petitioners GMA and Aguas, the *Sandiganbayan*, through the resolution dated November 5, 2013, denied their petitions for bail on the ground that the evidence of guilt against them was strong.<sup>[5]</sup> The motions for reconsideration filed by GMA and Aguas were denied by the *Sandiganbayan* on February 19, 2014.<sup>[6]</sup> Accordingly, GMA assailed the denial of her petition for bail in this Court, but her challenge has remained pending and unresolved to date.

Personal jurisdiction over Taruc and Villar was acquired by the *Sandiganbayan* in 2014. Thereafter, said accused sought to be granted bail, and their motions were granted on different dates, specifically on March 31, 2014<sup>[7]</sup> and May 9, 2014,<sup>[8]</sup> respectively.

The case proceeded to trial, at which the State presented Atty. Aleta Tolentino as its main witness against all the accused. The *Sandiganbayan* rendered the following summary of her testimony and evidence in its resolution dated November 5, 2013 denying the petitions for bail of GMA and Aguas, to wit:

She is a certified public accountant and a lawyer. She is a member of the Philippine Institute of Certified Public Accountants and the Integrated Bar of the Philippines. She has been a CPA for 30 years and a lawyer for 20 years. She has practiced accountancy and law. She became accounting manager of several companies. She has also taught subjects in University of Santo Tomas, Manuel L. Quezon University, Adamson University and the Ateneo de Manila Graduate School. She currently teaches Economics, Taxation and Land Reform.

Presently, she is a Member of the Board of Directors of the PCSO. The Board appointed her as Chairman of an Audit Committee. The audit review proceeded when she reviewed the COA Annual Reports of the PCSO for 2006, 2007, 2008 and 2009 (Exhibits "D", "E", "F" and "G", respectively), and the annual financial statements contained therein for the years 2005 to 2009. The reports were given to them by the COA. These are transmitted to the PCSO annually after the subject year of audit.

One of her major findings was that the former management of the PCSO was commingling the charity fund, the prize fund and the operating fund. By commingling she means that the funds were maintained in only one main account. This violates Section 6 of Republic Act 1169 (PCSO Charter) and generally accepted accounting principles.

The Audit Committee also found out that there was excessive disbursement of the Confidential and Intelligence Fund (CIF). There were also excessive disbursements for advertising expenses. The internal audit department was also merged with the budget and accounting department, which is a violation of internal audit rules.

There was excessive disbursement of the CIF because the PCSO was given only P10 million in 2002, i.e. P5 million for the Office of the

Chairman and P5 million for the Office of the General Manager. Such allocation was based on the letters of then Chairman Lopez (Exh. "I") and then General Manager Golpeo (Exh. "J"), asking for P5 million intelligence fund each. Both were dated February 21, 2000, and sent to then President Estrada, who approved them. This allocation should have been the basis for the original allocation of the CIF in the PCSO, but there were several subsequent requests made by the General Manager during the time of, and which were approved by, former President Arroyo.

The allocation in excess of P10 million was in violation of the PCSO Charter. PCSO did not have a budget for this. They were working on a deficit from 2004 to 2009. The charter allows only 15% of the revenue as operating fund, which was already exceeded. The financial statements indicate that they were operating on a deficit in the years 2006 to 2009.

It is within the power of the General Manager to ask for additional funds from the President, but there should be a budget for it. The CIF should come from the operating fund, such that, when there is no more operating fund, the other funds cannot be used.

The funds were maintained in a commingled main account and PCSO did not have a registry of budget utilization. The excess was not taken from the operating fund, but from the prize fund and the charity fund.

In 2005, the deficit was P916 million; in 2006, P1,000,078,683.23. One of the causes of the deficit for 2006 was the CIF expense of P215 million, which was in excess of the approved allocation of P10 million. The net cash provided by operating expenses in 2006 is negative, which means that there were more expenses than what was received.

In the 2007 COA report, it was found that there was still no deposit to the prize and charity funds. The COA made a recommendation regarding the deposits in one main account. There were also excessive disbursements of CIF amounting to P77,478,705.

She received a copy of the PCSO corporate operating budget (COB) for the year 2008 in 2010 because she was already a member of its Board of Directors. The 2008 approved COB has a comparative analysis of the actual budget for 2007 (Exh. "K"). It is stated there that the budget for CIF in 2007 is only P25,480,550. But the financial statements reflect P77 million. The budget was prepared and signed by then PCSO General Manager Rosario Uriarte. It had accompanying Board Resolution No. 305, Series of 2008, which was approved by then Chairperson Valencia, and board members Valdes, Morato, Domingo, and attested to by Board Secretary Atty. Ronald T. Reyes.

In the 2008 COA report, it was noted that there was still no deposit to the prize and charity funds, adverted in the 2007 COA report. There was already a recommendation by the COA to separate the deposits or funds in 2007. But the COA noted that this was not followed. The financial statements show the Confidential and the Extra-Ordinary Miscellaneous Expenses account is P38,293,137, which is more than the P10 million

that was approved.

In the Comparative Income Statement (Exh. "K"), the 2008 Confidential/Intelligence Expense budget was approved for P28 million. The Confidential and Extra-Ordinary Miscellaneous Expenses is the account being used for confidential and intelligence expenses. The amount in the financial statements is over the budgeted amount of P28 million. Further, the real disbursement is more than that, based on a summary of expenditures she had asked the treasurer to prepare.

In the Comparative Income Statement for 2009 Budget against the 2008 Actual Budget (Exh. "L"), the budget for CIF and expenses was P60 million.

In the 2009 COA report, it was noted that there was still no deposit to the prize and charity funds, despite the instruction or recommendation of COA. The funds were still deposited in one account. The COA observation in 2007 states that there is juggling or commingling of funds.

After she had concluded the audit review, she reported her findings to the Board of Directors in one of their executive meetings. The Board instructed her to go in-depth in the investigation of the disbursements of CIF.

The Audit Committee also asked Aguas why there were disbursements in excess of P10 million. He explained that there were board resolutions confirming additional CIF which were approved by former President Arroyo. Aguas mentioned this in one of their meetings with the directors and corporate secretary. The board secretary, Atty. Ed Araullo, gave them the records of those resolutions.

In the records that Araullo submitted to her, it appears that Uriarte would ask for additional CIF, by letter and President Arroyo approves it by affixing her signature on that same letter-request. There were seven letters or memoranda to then President Arroyo, with the subject "Request for Intelligence Fund."

She then asked their Treasurer, Mercy Hinayon, to give her a summary of all the disbursements from CIF from 2007 to 2010. The total of all the amounts in the summaries for three years is P365,997,915.

After receiving the summaries of the disbursed checks, she asked Hinayon to give her the checks or copies thereof. She also asked Dorothy Robles, Budget and Accounting Manager, to give her the corresponding vouchers. Only two original checks were given to her, as the rest were with the bank. She asked her to request certified true copies of the checks.

They were then called to the Senate Blue Ribbon Committee, which was then investigating the operation of PCSO, including the CIF. She was invited as a resource speaker in an invitation from Chairman Teofisto Guingona III (Exh. "DD"). Before the hearing, the Committee Chairman