Republic of the Philippines
Supreme Court
Manila

EN BANC

JANET LIM NAPOLES, **Petitioner,**	**G.R. No. 224162**
	Present:
	SERENO, *C.J.*,
	CARPIO,
	VELASCO, JR.,*
	LEONARDO-DE CASTRO,*
	PERALTA,
	BERSAMIN,
	DEL CASTILLO,*
	MENDOZA,
- versus -	PERLAS-BERNABE,*
	LEONEN,
	JARDELEZA,**
	CAGUIOA,**
	MARTIRES,**
	TIJAM,
	REYES, JR., and
	GESMUNDO, *JJ.*
SANDIGANBAYAN (THIRD DIVISION), **Respondent.**	Promulgated:
	November 7, 2017

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DECISION

REYES, JR., *J.*,

Before this Court is a petition for *certiorari* under Rule 65 of the Rules of Court, which sought to nullify and set aside the Resolutions dated October 16, 2015[1] and March 2, 2016[2] of the Sandiganbayan in SB-14-CRM-0238. These Resolutions denied Janet Lim Napoles' (Napoles)

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* On official leave.

** No part.

1 Penned by Presiding Justice Amparo M. Cabotaje-Tang, with Associate Justices Samuel R. Martires (now a Member of this Court) and Sarah Jane T. Fernandez concurring; *rollo*, pp. 56-304.

2 Id. at 339-372.

application for bail because the evidence of her guilt for the crime of Plunder is strong.

Factual Antecedents

On September 16, 2013, the Office of the Ombudsman received the report of the National Bureau of Investigation (NBI), regarding its investigation on several persons, including Napoles, former Senator Juan Ponce Enrile (Enrile) and his former Chief of Staff, Atty. Jessica Lucila Reyes (Reyes). In its report, the NBI recommended to prosecute Napoles, former Senator Enrile, Reyes, and several other named individuals for the crime of Plunder, defined and penalized under Section 2 of Republic Act (RA) No. 7080, as amended, for essentially misappropriating former Senator Enrile's Priority Development Assistant Fund (PDAF) through non-governmental organizations (NGOs) that were selected without the required bidding procedure.[3] This case was docketed as OMB-C-C-13-0318.[4]

Soon after, or on November 18, 2013, the Office of the Ombudsman received a Complaint from its Field Investigation Office (FIO), criminally charging former Senator Enrile, Reyes, Napoles, and fifty-two (52) other individuals with violations of RA No. 7080 and Section 3(e) of RA No. 3019.[5] Said complaint was docketed as OMB-C-C-13-0396.[6]

In a Joint Resolution dated March 28, 2014, the Ombudsman Special Panel of Investigators found probable cause to indict Napoles, among others, with one (1) count of Plunder and fifteen (15) counts of violating Section 3(e) of RA No. 3019. They likewise recommended to immediately file the necessary Informations against all the named accused.[7]

Some of the named accused, including Napoles, filed their respective motions for reconsideration. The Special Panel of Investigators denied these motions in its Joint Order dated June 4, 2014, but dropped Ruby Chan Tuason as a respondent, in light of her admission as a State witness and her corresponding immunity from criminal prosecution.[8]

Thus, in an Information dated June 5, 2014, Napoles, together with former Senator Enrile, Reyes, Ronald John Lim and John Raymund De Asis, were charged with Plunder in Criminal Case No. SB-14-CRM-0238 filed

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3 Id. at 373-392.
4 Id. at 550.
5 Id. at 393-545.
6 Id. at 550, 552-554.
7 Id. at 546-683.
8 Id. at 706-767.

Reyes

with the Sandiganbayan.[9] The pertinent portions of the Information state:

> In 2004 to 2010, or thereabout (sic), in the Philippines, and within this Honorable Court's jurisdiction, above-named accused JUAN PONCE ENRILE, then a Philippine Senator, JESSICA LUCILA G. REYES, then Chief of Staff of Senator Enrile's Office, both public officers, committing the offense in relation to their respective offices, conspiring with one another and with JANET LIM NAPOLES, RONALD JOHN LIM, and JOHN RAYMUND DE ASIS, did then and there willfully, unlawfully, and criminally amass, accumulate, and/or acquire ill-gotten wealth amounting to at least ONE HUNDRED SEVENTY TWO MILLION EIGHT HUNDRED THIRTY FOUR THOUSAND FIVE HUNDRED PESOS (Php172,834,500.00) through a combination or series of overt criminal acts, as follows:
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> a) by repeatedly receiving from NAPOLES and/or representatives LIM, DE ASIS, and others, kickbacks or commissions under the following circumstances: before, during and/or after the project identification, NAPOLES gave, and ENRILE and/or REYES received, a percentage of the cost of a project to be funded from ENRILE's Priority Development Assistance Fund (PDAF), in consideration of ENRILE's endorsement, directly or through REYES, **to the appropriate government agencies, of NAPOLES' non-government organizations which became the recipients and/or target implementors (*sic*) of ENRILE's PDAF projects, which duly-funded projects turned out to be ghosts or fictitious, thus enabling NAPOLES to misappropriate the PDAF proceeds for her personal gain**;
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> b) by taking undue advantage, on several occasions, of their official positions, authority, relationships, connections, and influence to unjustly enrich themselves at the expense and to the damage and prejudice, of the Filipino people and the Republic of the Philippines.
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> CONTRARY TO LAW.[10] (Emphasis Ours)

On July 7, 2014, Napoles filed her Petition for Bail, arguing that the evidence of the prosecution is insufficient to prove her guilt beyond reasonable doubt. She particularly assailed the credibility of the State witnesses (otherwise referred to as whistleblowers) as these are allegedly mere hearsay, tainted with bias, and baseless. Citing the *res inter alios acta* rule, Napoles submitted that the testimonies of these whistleblowers are inadmissible against her.[11]

In view of Napoles' application for bail, the Sandiganbayan conducted bail hearings. The prosecution presented the following witnesses: (a) Carmencita N. Delantar, then Director in the Department of Budget and

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9 Id. at 772-773.
10 Id.
11 Id. at 774-783.

Management (DBM); (b) Susan P. Garcia, an Assistant Commissioner in the Commission on Audit (COA), and the former Director of the Special Audit Office; (c) Ryan P. Medrano, the Graft Investigation and Prosecution Officer from the FIO, Office of the Ombudsman; (d) Marina Cortez Sula, former employee of Napoles; (e) Mary Arlene Joyce Baltazar, former bookkeeper for JLN Corporation; (f) Merlina P. Suñas, former employee of Napoles; (g) Benhur K. Luy, former finance officer of Napoles; and (h) Ruby Chan Tuason, former Social Secretary of former President Joseph E. Estrada.[12]

The prosecution likewise presented the following supposed beneficiaries of former Senator Enrile's PDAF projects, all of whom identified their respective sworn statements before the Sandiganbayan: (a) Eldred P. Tumbocon, Municipal Mayor of Umingan, Pangasinan; (b) Francisco O. Collado, Jr., Municipal Agriculturist of Umingan, Pangasinan; (c) Bartolome Ramos, Municipal Mayor of Sta. Maria, Bulacan; (d) Ricardo V. Revita, Municipal Mayor of Rosales, Pangasinan; (e) Rodolfo A. Mendoza, Municipal Agriculturist of San Miguel, Bulacan; and (f) Imelda Alvarado Eudenio, Municipal Agriculturist of Sta. Maria, Bulacan. The defense also stipulated that: (a) the witnesses occupied their respective positions at the time material to the case; (b) they were unaware that their respective municipalities were recipients of livelihood projects from former Senator Enrile's PDAF; (c) they did not receive any agricultural package or livelihood training from former Senator Enrile, the implementing agencies of his PDAF, or from any NGO; and (d) they did not sign or prepare any acknowledgment receipt or liquidation documents pertaining to the transactions.[13]

Furthermore, the prosecution presented another group of beneficiaries, whose testimonies were subject of the same stipulations: (a) Shiela May Cebedo, Municipal Mayor of Bacuag, Surigao del Norte; (b) Elyzer C. Chavez, City Mayor of Passi, Iloilo; (c) Benito D. Siadto, Municipal Mayor of Kibungan, Benguet; (d) Florencio Bentrez, Municipal Mayor of Tuba, Benguet; and (e) Jose C. Ginez, Municipal Mayor of Sta. Maria, Pangasinan. The defense cross-examined this group of beneficiaries.[14]

After the conclusion of the prosecution's presentation of evidence, Napoles manifested that she is not presenting any evidence for her bail application.[15]

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12 Id. at 60-257.
13 Id. at 140-141.
14 Id. at 141-143.
15 Id. at 784-785.

Ruling of the Sandiganbayan

In the first assailed Sandiganbayan Resolution dated October 16, 2015, the Petition for Bail of Napoles was denied for lack of merit.[16] The relevant portions of this Resolution reads:

> It is true that none of the prosecution witnesses testified that Senator Enrile directly received the kickbacks/commissions/rebates from accused Napoles. Based on the DDRs of Luy, accused Napoles repeatedly gave kickbacks/commissions/rebates to Senator Enrile's middlepersons. Also, prosecution witnesses Suñas and Luy categorically testified that they were the ones who prepared the documents and money in paying the kickbacks/commissions/rebates for Senator Enrile. These kickbacks/commissions/rebates were given by them or by accused Napoles to Ruby Tuason and other middlepersons for Senator Enrile.
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> x x x x
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> A FINAL WORD
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> The Court stresses, however, that in resolving this petition for bail of accused Napoles, it is not passing judgment on the culpability or non-culpability of Senator Enrile, Atty. Reyes, accused Napoles, Lim[,] and de Asis. Again, in a petition for bail, the Court is only mandated to determine whether based on the pieces of evidence presented by the prosecution, proof evident exists or the presumption of guilt is strong. As above discussed, the prosecution had presented clear and strong evidence which leads to a well-guarded dispassionate judgment that the offense of plunder has been committed as charged; that accused Napoles is guilty thereof, and that she will probably be punished capitally if the law were administered at this stage of the proceedings.
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> WHEREFORE, accused Janet Lim Napoles's (*sic*) *Petition for Bail* dated July 7, 2014, is *DENIED* for lack of merit.
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> SO ORDERED.[17]

On November 4, 2015, Napoles moved for the reconsideration of the Sandiganbayan's Resolution denying her Petition for Bail.[18] This motion was likewise deemed unmeritorious and the Sandiganbayan denied it in its Resolution dated March 2, 2016,[19] *viz.*:

> WHEREFORE, accused Janet Lim Napoles's (sic) *Motion for Reconsideration* dated November 4, 2015 is *DENIED* for lack of merit.
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> SO ORDERED.[20]

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16 Id. at 56-304.
17 Id. at 302-304.
18 Id. at 312-337.
19 Id. at 339-372.
20 Id. at 372.

Reyes

Napoles thus filed the present petition before this Court, alleging that the Sandiganbayan gravely abused its discretion, amounting to lack or excess of jurisdiction, in denying her bail application. She insists in the present petition that the prosecution was unable to discharge its burden of proving that the evidence of her guilt is strong.[21]

Ruling of this Court

Preliminarily, it should be emphasized that since this is a petition for *certiorari* under Rule 65 of the Rules of Court, this Court's review is limited to whether the Sandiganbayan gravely abused its discretion amounting to lack or excess of jurisdiction in issuing its assailed Resolutions denying Napoles' application for bail. The Court's *certiorari* jurisdiction covers only errors of jurisdiction on the part of the Sandiganbayan. It should be borne in mind that not every error in the proceedings, or every erroneous conclusion of law or fact, constitutes grave abuse of discretion. Errors in the appreciation of the parties' evidence, including the conclusions anchored on these findings, are not correctible by the writ of *certiorari*.[22]

In this regard, Napoles bears the burden of showing that the Sandiganbayan's denial of her bail application was capricious, whimsical, arbitrary, or despotic, so as to amount to grave abuse of discretion. This Court is not a trier of facts. As such, it must be established that there was a patent and gross abuse of discretion amounting to an evasion of a positive duty, or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law.[23]

It is within this framework that the Court reviewed the assailed Sandiganbayan Resolutions.

The prosecution bears the burden of proving that the evidence of Napoles' guilt for the crime of Plunder is strong.

Despite the arrest of the accused, or his/her voluntary surrender as the case may be, the accused may be granted provisional liberty under certain conditions. This right to bail is guaranteed in the Bill of Rights, except when the accused is charged with a capital offense,[24] *viz.*:

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21 Id. at 3-51.

22 *People v. Court of Appeals*, 475 Phil. 568 (2004).

23 *Yu v. Hon. Reyes-Carpio*, 667 Phil. 474 (2011); *See Agdeppa v. Office of the Ombudsman*, 734 Phil. 1 (2014); *See also Aleria, Jr. v. Velez*, 359 Phil. 141 (1998).

24 *Maguddatu v. Court of Appeals*, 383 Phil. 255, 262 (2000).

> Section 13. All persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of *habeas corpus* is suspended. Excessive bail shall not be required.[25]

While bail may generally be granted as a matter of right prior to the conviction of the accused,[26] those charged with a capital offense is granted bail only when the evidence of guilt is not strong:

> Section 7. *Capital offense of an offense punishable by reclusion perpetua or life imprisonment, not bailable.* — No person charged with a capital offense, or an offense punishable by *reclusion perpetua* or life imprisonment, shall be admitted to bail when evidence of guilt is strong, regardless of the stage of the criminal prosecution. (7a)[27]

The trial court is thus granted the discretion to determine whether there is strong evidence of guilt on the part of the accused. The trial court may also deny the application for bail when the accused is a flight risk, notwithstanding the prosecution's evidence on the guilt of the accused.[28]

In exercising this discretion, the trial court should receive the parties' evidence at a hearing duly scheduled for this purpose. The prosecution and the accused are granted reasonable opportunity to prove their respective positions: on the part of the prosecution, that the evidence of guilt against the accused is strong, and on the part of the defense, the opposite.[29] The hearing is summary and limited to the determination of the weight of evidence for purposes of granting or denying bail. The denial or refusal must be supported by a summary of the prosecution's evidence.[30]

In *Cortes v. Catral*,[31] this Court laid down the following duties of the trial court in cases of an application for bail:

> 1. In all cases, whether bail is a matter of right or of discretion, notify the prosecutor of the hearing of the application for bail or require him to submit his recommendation (Section 18, Rule 114 of the Rules of Court as amended);
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> 2. Where bail is a matter of discretion, conduct a hearing of the application for bail regardless of whether or not the prosecution refuses to present evidence to show that the guilt of the accused is strong

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25 1987 CONSTITUTION, Article III, Section 13.
26 RULES OF COURT, Rule 114, Section 4.
27 Id. at Rule 114, Section 7; *See also* Rule 114, Section 5.
28 *People v. Sandiganbayan,* 556 Phil. 596, 603-604 (2007).
29 *Santos v. Ofilada*, 315 Phil. 11 (1995); *See also Basco v. Rapatalo,* 336 Phil. 214 (1997).
30 *Narciso v. Sta. Romana-Cruz,* 385 Phil. 208, 221 (2000).
31 344 Phil. 415 (1997).

Reyes

> for the purpose of enabling the court to exercise its sound discretion; (Sections 7 and 8, supra).
>
> 3. Decide whether the guilt of the accused is strong based on the summary of evidence of the prosecution;
>
> 4. If the guilt of the accused is not strong, discharge the accused upon the approval of the bailbond (Section 19, supra) Otherwise petition should be denied.[32]

Since Napoles was charged with the crime of Plunder, which carries the imposable penalty of *reclusion perpetua*,[33] she cannot be admitted to bail when the evidence of her guilt is strong. This was the burden that the prosecution assumed in the subsequent hearings that followed the filing of Napoles' Petition for Bail before the Sandiganbayan. **As a trial court, the Sandiganbayan, in turn, possessed the jurisdiction to hear and weigh the evidence of the prosecution and the defense.**

At that stage of the proceedings, the bail hearings are limited to the determination of whether there is a strong *presumption* of Napoles' guilt.[34] **It is merely a preliminary determination, and the Sandiganbayan may deny admission to bail even when there is reasonable doubt as to the guilt of Napoles.** Thus, the prosecution can discharge its burden by proving that the evidence against Napoles shows evident proof of guilt or a great presumption of guilt, which the Court defined in *People v. Cabral*[35] as follows:

> By judicial discretion, the law mandates the determination of whether 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.* Even though there is a reasonable doubt as to the guilt of accused, if on an examination of the entire record the presumption is great that accused is guilty of a capital offense, bail should be refused.[36] (Emphasis in the original)

As a lesser quantum of proof than guilt beyond reasonable doubt, the Sandiganbayan may deny the application for bail on evidence less than that required for the conviction of Napoles. Furthermore, the Sandiganbayan

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32 Id. at 430.
33 *Republic Act No. 7080*, Section 2, as amended by RA No. 7659.
34 *Magno v. Abbas*, 121 Phil. 227 (1965).
35 362 Phil. 697, 709 (1999).
36 Id. at 709.

"does not sit to try the merits or to enter into any nice inquiry as to the weight that ought to be allowed to the evidence for or against accused, nor will it speculate on the outcome of the trial or on what further evidence may be therein offered and admitted."[37] It should not be forgotten that the purpose of the bail hearing is to determine whether the accused is entitled to provisional liberty before conviction. To require more from the prosecution, as well as from the trial court, effectively defeats the purpose of the proceeding.[38]

The Sandiganbayan did not gravely abuse its discretion in denying Napoles' Petition for Bail.

Applying these jurisprudential standards to the present case, it is readily apparent that the Sandiganbayan did not gravely abuse its discretion amounting to lack or excess of jurisdiction. Upon receiving Napoles' Petition for Bail, it scheduled hearings to allow the parties to submit their respective pieces of evidence. The prosecution submitted numerous testimonial and documentary evidence, endeavoring to establish evident proof of Napoles' guilt. Napoles, on the other hand, opted not to submit any evidence on her behalf and relied instead on the supposed weakness of the prosecution's evidence.[39]

The Sandiganbayan's first assailed Resolution dated October 16, 2015 also reveals straightaway that the evidence of the prosecution was summarized accordingly, effectively complying with the due process requirements.[40] It even extensively discussed the available evidence in relation to the elements of Plunder, which the prosecution intended to prove point by point for purposes of demonstrating Napoles' great presumption of guilt.[41]

Napoles points out in her petition, however, that the Sandiganbayan erred in finding strong evidence of her guilt for the crime of Plunder.[42] She challenges the credibility of the prosecution witnesses, particularly the whistleblowers Luy, Suñas, Sula, and Baltazar.[43]

She further claims that her bail application should have been granted because the prosecution did not present any documentary evidence directly connecting her to the NGOs that facilitated the misappropriation of former

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37 *Siazon v. Presiding Judge of the Criminal Court,* 149 Phil. 241, 248 (1971).
38 Id.
39 *Rollo*, pp. 784-785.
40 Id. at 59-257.
41 Id. at 257-304.
42 Id. at 13-29, and 43-50.
43 Id. at 29-43.

Senator Enrile's PDAF.[44] In the same manner, she likewise argues that there was no direct proof of any agreement with former Senator Enrile and Reyes to obtain kickbacks from the implementation of former Senator Enrile's PDAF projects.[45] Napoles particularly repudiates the evidentiary value of the Summary of Rebates that Luy prepared from the Daily Disbursement Reports (DDRs) and Disbursement Vouchers (DVs) that came into in his possession while he was an employee of Napoles.[46]

At first glance, it is apparent that the arguments of Napoles before this Court are fundamentally allegations of serious errors on the part of the Sandiganbayan in appreciating the evidence of the prosecution. This is not within the purview of this Court's review power under Rule 65 of the Rules of Court. This Court is not a trier of facts and this proceeding is limited to the determination of whether the Sandiganbayan patently, grossly, and arbitrarily exercised its discretion with respect to Napoles' bail application.

In these lights, the succeeding discussion on the evidence of the prosecution against Napoles is limited only to reviewing whether the Sandiganbayan gravely abused its discretion in denying the application for bail on the basis of the evidence of the prosecution. For this purpose, it must be clearly established that the Sandiganbayan arbitrarily ignored the alleged dearth of evidence against Napoles.

The prosecution was able to establish with evident proof that Napoles participated in the implied conspiracy to misappropriate public funds and acquire ill-gotten wealth.

The charge of Plunder against Napoles in this case alleges a conspiracy among former Senator Enrile and Reyes, as public officers, and Napoles, Lim, and De Asis, as private individuals. On this point, this Court has consistently ruled that the conspiracy among the accused to commit the crime of Plunder is usually an agreement or connivance to *secretly* cooperate in doing the unlawful act.[47] Even Congress, in its Explanatory Note to the proposed bill criminalizing Plunder, recognized that this crime, by its very nature, is committed through a series or combination of acts done "in stealth and secrecy over a period of time."[48]

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[44] Id. at 13-17.
[45] Id. at 20-29.
[46] Id. at 31-43.
[47] *See Enrile v. People,* 766 Phil. 75 (2015), citing Separate Opinion of Associate Justice Jose C. Vitug (Ret.) in *Atty. Edward Serapio v. Sandiganbayan, et al.*, 444 Phil. 499 (2003).
[48] Explanatory Note to Senate Bill No. 733, which was later on passed as R.A. No. 7080 as cited in *Jose "Jinggoy" Estrada v. Sandiganbayan,* 427 Phil. 820, 851 (2002).

Seeing as it would be difficult to provide direct evidence establishing the conspiracy among the accused, the Sandiganbayan may infer it "from proof of facts and circumstances which, taken together, apparently indicate that they are merely parts of some complete whole."[49] **It was therefore unnecessary for the Sandiganbayan to find direct proof of any agreement among Napoles, former Senator Enrile and Reyes.** The conspiracy may be implied from the intentional participation in the transaction that furthers the common design and purpose. As long as the prosecution was able to prove that two or more persons aimed their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment, **the conspiracy may be inferred even if no actual meeting among them was proven.**[50]

Here, the implied conspiracy among Napoles and her co-accused was proven through various documentary and testimonial evidence showing that they acted towards the common goal of misappropriating the PDAF of former Senator Enrile.

When Commissioner Susan P. Garcia (Garcia) testified regarding the results of their special audit on the PDAF-funded projects of the government, they found that Napoles and her co-accused committed Plunder through an elaborate scheme. It began through a letter originating from the office of former Senator Enrile being sent to the concerned implementing agency, informing the latter that the office of former Senator Enrile designated Jose Antonio Evangelista (Evangelista) as its representative in the implementation of the PDAF-funded project. Evangelista, who was likewise the Deputy Chief of Staff of former Senator Enrile and acting in representative capacity, then sends another letter to the implementing agency designating a specific NGO to implement the PDAF-funded project. Thereafter, the NGO that was endorsed by Evangelista submits a project proposal to the implementing agency, and proceeds to enter into a memorandum of agreement (MOA) with the implementing agency and former Senator Enrile as the parties.[51]

After the signing of the MOA, the project proposal is attached to the Special Allotment Release Order (SARO), which allows the implementing agency to incur the expenses that are stated in it.[52] These documents are submitted to the DBM for processing, and if not lacking in requirements, the DBM issues the Notice of Cash Allocation (NCA).[53] This authorizes the

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49 *People v. Sandiganbayan*, 556 Phil. 596, 610 (2007).

50 *People v. Del Rosario*, 365 Phil. 292 (1999), citing *People v. Orodio*, 247-A Phil. 409, 415-416 (1988).

51 *Rollo*, pp. 78-79.

52 Id. at 64.

53 Id. at 75.

payment of the allocated amount to the implementing agency, which is done by way of crediting the same to its account. After the amount is credited to its account, the implementing agency prepares the DVs and checks payable to the identified NGO.[54] The NGO, in turn, drafts and submits the requirements for liquidation (*i.e.* the accomplishment report, the disbursement report, and the list of beneficiaries) after receiving the check.[55] However, as it turned out, the Special Audit Team found that the beneficiaries denied receiving any proceeds, whether in terms of projects or equipment, from the PDAF of former Senator Enrile.[56]

Commissioner Garcia and the rest of the Special Audit Team found that the release of the PDAF to the concerned NGOs through this system violated the following: (a) DBM National Budget Circular No. 476 dated September 20, 2001, or the guidelines on the release of the PDAF, which requires national government agencies and government-owned and controlled corporations to only implement programs that are within their functions; (b) Government Procurement Policy Board (GPPB) Resolution No. 12-2007, which requires the selection of an NGO through public bidding or negotiated procurement; and (c) COA Circular No. 2007-001 dated October 25, 2007, or the guidelines on the grant, utilization, accounting and auditing of funds released to NGOs.[57]

Remarkably, the respective testimonies of Commissioner Garcia and the supposed beneficiaries[58] of former Senator Enrile's PDAF were corroborated on material points by the whistleblowers. These whistleblowers, who were former employees of Napoles, participated in different capacities to the conspiracy.

Merlina P. Suñas (Suñas), a former employee of Napoles, testified that the office of Napoles received copies of the SARO from the office of former Senator Enrile. Upon receipt, Napoles held meetings where they would be given instructions to prepare an indorsement letter addressed to the implementing agency, and a project proposal identifying the local government unit that would benefit from the PDAF-funded project. The drafts of these documents were sent to Evangelista for review, and subsequently, the finalized versions were returned to their office. Suñas, as the custodian of documents involving transactions with legislators, retained a copy for their file.[59]

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54 Id. at 78-79.
55 Id.
56 Id. at 140-143.
57 Id. at 75-90.
58 Id. at 140-143.
59 Id. at 146-150.

Suñas also testified that Benhur K. Luy (Luy) prepared the letters authorizing Evangelista to implement the PDAF-funded projects on behalf of former Senator Enrile. She likewise participated in the preparation of the MOA executed among the concerned implementing agency, former Senator Enrile, and the relevant NGO.[60]

Meanwhile, Luy confirmed that Napoles asked them to prepare the documents referred to in Suñas' testimony. He also substantiated the statement of Suñas that the office of former Senator Enrile furnished them with copies of the PDAF requirements after its submission to the DBM.[61] Luy was the first to receive the documents because he had to verify if the entries as to the name of the NGO and the project cost were correct.[62]

In their separate testimonies, both Suñas and Luy confirmed that former Senator Enrile received 40% to 50% of the project cost.[63] According to Luy, they referred to the share of the legislators as *rebates*, which he recorded in line with his position as the finance officer of Napoles.[64] The payment of the rebates was made in tranches starting in 2004—with the first half paid to former Senator Enrile upon the listing of the project, and the balance paid upon the release of the SARO.[65] Napoles, on the other hand, took 5% of the project cost as her share.[66] The middlepersons who received the rebates on behalf of former Senator Enrile, such as Tuason,[67] were also given 5% of the project cost.[68]

Another former employee of Napoles, Marina Cortez Sula (Sula), narrated that Napoles gave her instructions to register approximately twenty (20) NGOs, including those that implemented the ghost projects funded by former Senator Enrile's PDAF. The relevant information regarding these NGOs were listed in a red notebook that Sula kept to assist her in the preparation of the General Information Sheets that were regularly submitted to the Securities and Exchange Commission (SEC).[69] This notebook was presented to the Sandiganbayan during the bail hearing.[70]

Sula also stated that the NGOs were created at the instance of Napoles. According to Sula, Napoles asked her and the other employees to come up with the names of these NGOs. Upon Napoles' approval of the name, Sula reserved its use at the SEC. Sula also purchased forms for the

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60 Id.
61 Id. at 163-166.
62 Id. at 176-179.
63 Id. at 150, 163-164, and 276-277.
64 Id. at 151 and 163
65 Id. at 164, 170, and 273.
66 Id. at 163, 171, and 277.
67 Id. at 255-257.
68 Id. at 277.
69 Id. at 112.
70 Id. at 123.

articles of incorporation and by-laws of the NGOs, which she completed under the direction of Napoles. Napoles then provided the amount necessary for the initial deposit to open a bank account in the name of the NGO. The bank accounts were opened at either Metrobank or Landbank because the branch managers were already familiar with Napoles, making it easy for Sula to facilitate the process. Thereafter, Sula registered the NGOs with the SEC.[71]

Sula noted that Napoles selected the incorporators and officers of the NGOs. The incorporators and officers were usually employees of Napoles, or the relatives of these employees. Sula testified that those chosen as presidents of the NGO were aware that their names were used because they were made to sign the incorporation documents. In cases where the president was not an employee of Napoles, the employee who provided the name of the NGO president was made to sign in their stead.[72] Sula likewise admitted to forging the signatures of the incorporators, or using the incorporators' names without their knowledge.[73]

Suñas and Luy corroborated the testimony of Sula on the fictitious manner by which the NGOs were incorporated. The three of them were all presidents of different NGOs, and they provided the names of their relatives as its officers and incorporators.[74] In exchange for agreeing to become presidents of the NGOs, both Suñas and Sula testified that Napoles promised to provide them 1% of the project cost as their commission.[75]

Similar to Suñas and Sula, Mary Arlene Joyce Baltazar (Baltazar), testified that Napoles likewise promised to give her a commission in exchange for using her name as the president of an NGO. As the former bookkeeper of Napoles, Baltazar further confirmed that Napoles used the names of her employees, and that of their friends and relatives to make them appear as incorporators or officers of the concerned NGOs.[76] Once they became president of an NGO, Napoles instructed them to become voluntary members of the Social Security System (SSS) and Philippine Health Insurance Corporation (PhilHealth), because Napoles needed to terminate their employment.[77] Baltazar stated that this was purposely done in order to avoid any connection between Napoles and the NGOs.[78]

As to the manner by which Napoles obtained the amount allocated for the PDAF-funded projects, Sula narrated that this was equally done through the employees of Napoles. Whenever the DBM disbursed the

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71 Id. at 113-114.
72 Id. at 115-118.
73 Id. at 126.
74 Id. at 144-145, 198-199.
75 Id. at 118-119, 146.
76 Id. at 130-134.
77 Id. at 121.
78 Id. at 136.

allocated amount to the implementing agency, a check was issued to the Napoles-controlled NGO. Since Sula and the other employees were designated as presidents of these NGOs, they were authorized to receive the check for the PDAF-funded project from the implementing agency.[79]

Napoles had access to the bank accounts of the NGOs because as Sula, Luy, and Suñas testified during the bail hearing, they were required to sign blank withdrawal slips, which were turned over to Napoles together with the corresponding passbook for these accounts.[80] Thus, in the ultimate scheme of things, Napoles received the amounts allocated for the PDAF-funded projects of former Senator Enrile, which she later on apportioned according to the agreed upon share of the legislators.

With respect to the actual delivery of the PDAF-funded projects to its intended beneficiaries, Sula, Luy, Suñas, and Baltazar admitted that they fabricated the liquidation documents. This was done by forging the receipts and the signatures of the beneficiaries, making it appear that the project was indeed implemented.[81] Again, this supported the findings of the COA Special Audit Team[82] and the FIO[83] on the fictitious projects funded by the PDAF of former Senator Enrile.

It is plain from the foregoing that Napoles and her co-accused, as well as the former employees of Napoles who were eventually admitted as State witnesses, had a common design and objective—to divert the PDAF of former Senator Enrile from its lawful purpose and to their own personal accounts. **The individuals involved in this case performed different criminal acts, which contributed, directly or indirectly, in the amassing, accumulation, and acquisition of ill-gotten wealth**. Consistent with the doctrine on *implied conspiracy*, these actions on the part of Napoles and her co-accused are sufficient to prove the existence of a "concurrence in sentiment," regardless of any proof that an actual agreement took place.

Arguably, there is no documentary evidence directly linking Napoles to the NGOs used as conduits for the PDAF-funded projects of former Senator Enrile. However, her ties to the officers of the NGOs involved in this case reveal otherwise. Napoles' participation in the conspiracy was established through testimonial evidence, not only from one of her former employees, but from four (4) witnesses—**all of whom corroborate each other on material points. More importantly, they testified on the minute details of the scheme that only those privy to the conspiracy would be able to provide**. Notably, Napoles did not even refute their claims that they were her former employees, relying instead on singling out inconsequential

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79 Id. at 121.
80 Id. at 126-129, 154, 179-180.
81 Id. at 126, 139, 151-154, 160, 174, and 181.
82 Id. at 80.
83 Id. at 106.

details in their testimonies.

Even the testimony of Ruby Chan Tuason, the middleperson who received the *rebates* of former Senator Enrile on his behalf, confirmed that Napoles oversaw the implementation of the scheme to divert the disbursements of the PDAF. She personally met with Napoles to negotiate the respective shares of the conspirators, and received the amount on behalf of former Senator Enrile, which she subsequently turned over to Reyes.[84]

Since the whistleblowers personally received instructions from Napoles to incorporate the NGOs, prepare the requirements for the release of the PDAF, prepare and deliver the *rebates* to the middlepersons, and fabricate the liquidation documents, they were competent witnesses on the subject of their respective testimonies.[85] **Clearly, the prosecution witnesses and the documentary evidence supply interlocking pieces of information that when taken together, provide a complete picture of the indispensability of the participation of Napoles in the scheme to misappropriate public funds for the benefit of select individuals, by using the NGOs as conduits for the PDAF projects of former Senator Enrile.** The directions and instructions she gave to her former employees constitute a clear evidence of her active participation, not mere acquiescence or presence, in the conspiracy.

The Sandiganbayan may rely on the testimonies of the whistleblowers, especially since these were corroborated by other available evidence.

Napoles nonetheless challenged the credibility of the whistleblowers, arguing that their testimonies should have been received with "grave suspicion," coming as they were from "polluted source[s]."[86] However, as this Court earlier discussed, the testimonies of these prosecution witnesses were consistent, clear, and corroborative of each other. Other testimonial and documentary evidence also substantiated the veracity of the whistleblowers' statements during the bail hearing.

In any case, a careful perusal of the assailed Sandiganbayan Resolutions reveals that it considered the prosecution's other testimonial and documentary evidence, and discussed it in relation to one another. Among the documents that the Sandiganbayan considered were the letters requesting for the release of former Senator Enrile's PDAF, the incorporation documents of the NGOs, the liquidation documents for the PDAF-funded

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84 Id. at 250-254.

85 RULES OF COURT, Rule 130, Section 36.

86 *Rollo*, p. 29.

Reyes

projects, the SAROs itself, and the DVs issued by the implementing agencies to the NGOs under the control of Napoles.[87]

In other words, the Sandiganbayan did not rely solely on the testimonies of the whistleblowers. Seeing as there were other available evidence lending credence to their testimonies, the Sandiganbayan did not gravely abuse its discretion when it considered the testimonies of the whistleblowers in denying Napoles' bail application, despite their participation in the conspiracy itself. The mere fact that the whistleblowers were conspirators themselves does not automatically render their testimonies incredible and unreliable. The ruling in *United States v. Remigio*[88] is instructive in this regard:

> The true doctrine which should govern the testimony of accomplices, or what may be variously termed principals, confederates, or conspirators, is not in doubt. The evidence of accomplices is admissible and competent. Yet such testimony comes from a "polluted source." Consequently, it is scrutinized with care. It is properly subject to grave suspicion. If not corroborated, credibility is affected. Even then, however, the defendant may be convicted upon the unsupported evidence of an accomplice. **If corroborated absolutely or even to such an extent as is indicative of trustworthiness, the testimony of the accomplice is sufficient to warrant a conviction.** This is true even if the accomplice has made previous statements inconsistent with his testimony at the trial and such inconsistencies are satisfactorily explained.
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> x x x x
>
> Where conspiracy is in issue these principles are even more certain. **A conspiracy is more readily proved by the acts of a fellow criminal than by any other method. If it is shown that the statements of the conspirator are corroborated by other evidence, then we have convincing proof of veracity**. Even if the confirmatory testimony only applies to some particulars, we can properly infer that the witness has told the truth in other respects.[89] (Emphasis and underscoring Ours)

At this point it should be emphasized that this Court is not the proper forum to weigh the credibility of the prosecution witnesses. It is elementary that the factual findings of the trial court, especially on the assessment or appreciation of the testimonies of witnesses, are accorded great weight and respect.[90] In this case, it is the Sandiganbayan that had the opportunity to observe the deportment and behavior of the witnesses during the bail hearing. It was in a better position to pass judgment on the credibility of these witnesses and the weight of their respective testimonies. At any rate, Napoles was unable to establish any motive on the part of her

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87 Id. at 257-304, 343-372.

88 37 Phil. 599 (1918); *See also Salvanera v. People,* 551 Phil. 147 (2007); *People v. Ponce,* 274 Phil. 1035 (1991).

89 Id. at 610-612.

90 *People v. Yambot,* 397 Phil. 23, 38 (2000).

former employees, which would compel them to falsely testify against her and her co-accused.

The core issue, therefore, of whether there is strong evidence of guilt on the part of Napoles, was resolved by the Sandiganbayan in accordance with the relevant laws, rules, and jurisprudence.

Plunder is a deplorable crime that unfairly exploits the trust that the public reposed in its officials. It is inherently immoral not only because it involves the corruption of public funds, but also because its essence proceeds from a rapacious intent. This Court's ruling in *Estrada v. Sandiganbayan*[91] is a constant reminder of the magnitude of this offense:

> As regards the third issue, again we agree with Justice Mendoza that plunder is a *malum in se* which requires proof of criminal intent. Thus, he says, in his *Concurring Opinion*—
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> x x x x
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> Finally, any doubt as to whether the crime of plunder is a *malum in se* must be deemed to have been resolved in the affirmative by the decision of Congress in 1993 to include it among the heinous crimes punishable by *reclusion perpetua* to death. Other heinous crimes are punished with death as a straight penalty in R.A. No. 7659. Referring to these groups of heinous crimes, this Court held in *People v. Echegaray*:
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> > The evil of a crime may take various forms. There are crimes that are, by their very nature, despicable, either because life was callously taken or the victim is treated like an animal and utterly dehumanized as to completely disrupt the normal course of his or her growth as a human being . . . . Seen in this light, the capital crimes of kidnapping and serious illegal detention for ransom resulting in the death of the victim or the victim is raped, tortured, or subjected to dehumanizing acts; destructive arson resulting in death; and drug offenses involving minors or resulting in the death of the victim in the case of other crimes; as well as murder, rape, parricide, infanticide, kidnapping and serious illegal detention, where the victim is detained for more than three days or serious physical injuries were inflicted on the victim or threats to kill him were made or the victim is a minor, robbery with homicide, rape or intentional

[91] 421 Phil. 290 (2001), citing *People v. Echegaray*, 335 Phil. 343 (1997).

> mutilation, destructive arson, and carnapping where the owner, driver or occupant of the carnapped vehicle is killed or raped, which are penalized by *reclusion perpetua* to death, are clearly heinous by their very nature.
>
> **There are crimes, however, in which the abomination lies in the significance and implications of the subject criminal acts in the scheme of the larger socio-political and economic context in which the state finds itself to be struggling to develop and provide for its poor and underprivileged masses.** Reeling from decades of corrupt tyrannical rule that bankrupted the government and impoverished the population, the Philippine Government must muster the political will to dismantle the culture of corruption, dishonesty, greed and syndicated criminality that so deeply entrenched itself in the structures of society and the psyche of the populace. [With the government] terribly lacking the money to provide even the most basic services to its people, any form of misappropriation or misapplication of government funds translates to an actual threat to the very existence of government, and in turn, the very survival of the people it governs over. **Viewed in this context, no less heinous are the effects and repercussions of crimes like qualified bribery, destructive arson resulting in death, and drug offenses involving government officials, employees or officers, that their perpetrators must not be allowed to cause further destruction and damage to society.**[92] (Emphasis in the original)

It is precisely the enormous gravity of this offense that capital punishment is imposed on those who are found guilty of Plunder. As a necessary consequence, provisional liberty is not easily granted to those accused of this offense, especially when the prosecution more than amply established that the evidence of guilt is strong. This is a matter of judicial discretion on the part of the trial court, which this Court may nullify only when the exercise of this discretion is tainted with arbitrariness and capriciousness that the trial court failed to act within the contemplation of law.

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92 Id. at 365-366.

Unfortunately for Napoles, there is nothing in the records showing that the Sandiganbayan gravely abused its discretion amounting to lack or excess of jurisdiction. It has discharged its judicial duty in Napoles' bail application in a manner consistent with the applicable laws and jurisprudence, and the evidence on record. Thus, all things considered, the Court finds no reason to nullify the assailed Sandiganbayan Resolutions. The Petition for Bail of Napoles was correctly denied.

WHEREFORE, premises considered, the petition is **DISMISSED**. The Resolutions dated October 16, 2015 and March 2, 2016 of the Sandiganbayan in SB-14-CRM-0238 are **AFFIRMED**, there being no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Sandiganbayan.

SO ORDERED.

ANDRES B. REYES, JR.
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

ANTONIO T. CARPIO
Associate Justice

(On official leave)
PRESBITERO J. VELASCO, JR.
Associate Justice

(On official leave)
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

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MARIANO C. DEL CASTILLO
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ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

(No part)
FRANCIS H. JARDELEZA
Associate Justice

(No part)
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

(No part)
SAMUEL R. MARTIRES
Associate Justice

NOEL GIMENEZ TIJAM
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

MARIA LOURDES P. A. SERENO
Chief Justice