Republic of the Philippines
Supreme Court
Manila

EN BANC

SENATOR JINGGOY EJERCITO ESTRADA,
Petitioner,

- versus -

OFFICE OF THE OMBUDSMAN, HON. SANDIGANBAYAN, FIELD INVESTIGATION OFFICE, OFFICE OF THE OMBUDSMAN, NATIONAL BUREAU OF INVESTIGATION, and ATTY. LEVITO D. BALIGOD,
Respondents.

x- x

JOHN RAYMUND DE ASIS,
Petitioner,

- versus -

CONCHITA CARPIO MORALES, in her official capacity as Ombudsman, PEOPLE OF THE PHILIPPINES, and SANDIGANBAYAN, Fifth Division,
Respondents.

x- x

JANET LIM NAPOLES,
Petitioner,

G.R. Nos. 212761-62

G.R. Nos. 213473-74

G.R. Nos. 213538-39

Present:

CARPIO, *J.*,
VELASCO, JR.,
LEONARDO-DE CASTRO,
PERALTA,

BERSAMIN,
DEL CASTILLO,
PERLAS-BERNABE,
LEONEN,
JARDELEZA,*
CAGUIOA,*
MARTIRES,*
TIJAM,
REYES, JR., and
GESMUNDO,* *JJ.*

- versus -

CONCHITA CARPIO MORALES, in her official capacity as Ombudsman, PEOPLE OF THE PHILIPPINES, and SANDIGANBAYAN, Fifth Division,
Respondents.

Promulgated:
July 31, 2018

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DECISION

CARPIO, *J.*:

The Case

The present consolidated[1] petitions for certiorari[2] filed by petitioners Senator Jinggoy Ejercito Estrada (Estrada), John Raymund de Asis (De Asis), and Janet Lim Napoles (Napoles) assail the Joint Resolution[3] dated 28 March 2014 and the Joint Order[4] dated 4 June 2014 of the Office of the Ombudsman (Ombudsman) in OMB-C-C-13-0313 and OMB-C-C-13-0397 finding probable cause to indict them, along with several others, for the crime of Plunder, defined and penalized under Section 2 of Republic Act No. (RA) 7080, as amended, and for violation of Section 3(e) of RA 3019.

The Facts

Petitioners are charged as co-conspirators for their respective participation in the illegal pillaging of public funds sourced from the Priority

* No part.

1 See orders of consolidation in Court Resolutions dated 30 September 2014 (*rollo* [G.R. Nos. 213473-74], pp. 430-431) and 16 November 2015 (*rollo* [G.R. Nos. 213538-39], unpaged).

2 Under Rule 65 of the Rules of Court. Pertain to the following petitions: (*a*) petition in G.R. Nos. 212761-62 filed by Estrada; (*b*) petition in G.R. Nos. 213473-74 filed by De Asis; and (*c*) petition in G.R. Nos. 213538-39 filed by Napoles.

3 *Rollo* (G.R. Nos. 212761-62), Vol. I, pp. 68-187.

4 Id. at 188-232.

Development Assistance Fund (PDAF) of Estrada for the years 2004 to 2012. The charges are contained in two (2) complaints, namely: (1) a Complaint for Plunder[5] filed by the National Bureau of Investigation and Atty. Levito D. Baligod (NBI Complaint) on 16 September 2013, docketed as OMB-C-C-13-0313; and (2) a Complaint for Plunder and violation of Section 3(e) of RA 3019[6] filed by the Field Investigation Office of the Ombudsman (FIO Complaint) on 18 November 2013, docketed as OMB-C-C-13-0397, both before the Ombudsman. Briefly stated, petitioners were implicated for allegedly committing the following acts:

(a) Estrada, as Senator of the Republic of the Philippines, for: (1) authorizing the illegal utilization, diversion, and disbursement of his allocated PDAF through his endorsement of fraudulent non-governmental organizations created and controlled by Napoles' JLN Corporation (JLN-controlled NGOs); (2) acquiring and receiving significant portions of the diverted PDAF funds as his commission, kickbacks, or rebates in the total amount of ₱183,793,750.00; and (3) giving unwarranted benefits to Napoles and the JLN-controlled NGOs in the implementation of his PDAF-funded projects, causing undue injury to the government in an amount of more than ₱278,000,000.00;[7]

(b) Napoles, as the mastermind of the entire PDAF scam, for facilitating the illegal utilization, diversion, and disbursement of Estrada's PDAF through: (1) the commencement via "business propositions" with Estrada regarding his allocated PDAF; (2) the creation and operation of JLN-controlled NGOs to serve as "conduits" for "ghost" PDAF-funded projects; (3) the use of spurious receipts and liquidation documents to make it appear that the projects were implemented by her NGOs; (4) the falsification and machinations used in securing funds from the various implementing agencies (IAs) and in liquidating disbursements; and (5) the remittance of Estrada's PDAF for misappropriation; and

(c) De Asis, as driver/messenger/janitor of Napoles, for assisting in the fraudulent processing and releasing of the PDAF funds to the JLN-controlled NGOs through, among others, his designation as President/Incorporator of a JLN-controlled NGO, namely, *Kaupdanan Para sa Mangunguma Foundation, Inc.* (KPMFI) and for eventually remitting the PDAF funds to Napoles' control.

The NBI Complaint alleged that, based on the sworn statements of Benhur Luy (Luy) along with several other JLN employees including Marina Sula (Sula) and Merlina Suñas (Suñas) (collectively, the whistleblowers), the PDAF scheme would commence with Napoles and the

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5 Id. at 233-251.

6 Id., Vol. II, pp. 675-736.

7 Id., Vol. I, p. 94.

legislator - in this case, Estrada – discussing the utilization of the latter's PDAF. During this stage, the legislator and Napoles would discuss the list of projects, description or purpose of the projects, corresponding implementing government agency, project cost, and "commission" or "rebate" of the legislator, ranging from 40-60% of the total project cost or the amount stated in the Special Allotment Release Order (SARO). After the negotiations and upon instruction of Napoles, Luy would prepare the so-called "Listing," containing the list of projects allocated by the legislator to Napoles and her NGOs, project title or description, name of the IA under the General Appropriations Act (GAA) Menu, and the project cost. Thereafter, Napoles would submit the "Listing" to the legislator. The legislator would prepare a letter, which incorporated the "Listing" submitted by Napoles, addressed to the Senate President and the Finance Committee Chairperson in the case of a Senator, or to the House Speaker and Chairperson of the Appropriations Committee in the case of a Congressman, who would then endorse such request to the Department of Budget and Management (DBM) for the release of the SARO. Upon receipt by the DBM of a copy of the letter with the endorsement, the legislator would give Napoles a copy of the letter with a "received" stamp and Napoles would give the legislator the agreed advance legislator's commission.

Thereafter, Luy and other Napoles' employees would follow-up the release of the SARO from the DBM, by citing the details of the legislator's letter to expedite the release of the SARO. Upon release of the SARO, the DBM would furnish a copy of it to the legislator, who in turn, would give a copy of it to Napoles. Upon receipt of the copy of the SARO, Napoles would order her employees to prepare the balance of the legislator's commission, which would be delivered by Napoles to the legislator or his/her authorized representative.

Napoles, who chose the NGO owned or controlled by her that would implement the project, would instruct her employee to prepare a letter for the legislator to sign endorsing her NGO to the IA. The legislator would sign the letter endorsing Napoles' NGOs to the IAs, based on the agreement with Napoles. The IA would then prepare a Memorandum of Agreement (MOA) between the legislator, the IA, and the selected NGO. Napoles' employee would secure a copy of the MOA. Thereafter, the DBM would release the Notice of Cash Allocation (NCA) to the IA concerned, and the head of the IA would expedite the transaction and release of the corresponding check representing the PDAF disbursement, in exchange for a 10% share in the project cost.

The succeeding checks would be issued upon compliance with the necessary documentation, i.e. official receipts, delivery receipts, sales invoices, inspection reports, delivery reports, certificates of acceptance, terminal reports, and master lists of beneficiaries. Napoles' employees, upon

instruction of Napoles, would pick up the checks and deposit them to the bank accounts of the NGO concerned. Once the funds are in the account of the JLN-controlled NGO, Napoles would call the bank to facilitate the withdrawal of the money, and Napoles' employees would bring the proceeds to the office of JLN Corporation for accounting. Napoles would then decide how much would be left in the office and how much would be brought to her residence in Taguig City. Napoles and her employees would subsequently manufacture fictitious lists of beneficiaries, inspection reports, and similar documents that would make it appear that the PDAF-funded projects were implemented when, in fact, they were not.

Under this *modus operandi*, Estrada, with the help of Napoles and De Asis, among others, funneled his PDAF amounting to around ₱262,575,000.00[8] to the JLN-controlled NGOs, specifically *Masaganang Ani Para sa Magsasaka Foundation, Inc.* (MAMFI) and *Social Development Program for Farmers Foundation, Inc.* (SDPFFI), and in return, received "commissions" or "rebates" amounting to ₱183,793,750.00, through his authorized representative, Pauline Labayen (Labayen) and Ruby Tuason (Tuason).[9]

On the other hand, the FIO Complaint alleged that Estrada and Labayen, in conspiracy with Napoles and her NGOs, committed plunder through repeated misuse of public funds as shown by the series of SAROs issued to effect releases of funds from the PDAF allocation of Estrada to Napoles' NGOs, and through accumulation of more than ₱50,000,000.00 in the form of kickbacks.[10] Estrada likewise violated Section 3(e) of RA 3019 by acting with manifest partiality and evident bad faith in endorsing MAMFI and SDPFFI in violation of existing laws, such as the GAA, Implementing Rules and Regulations of RA 9184, Government Procurement Policy Board Resolution No. 012-2007 and Commission on Audit (COA) Circular 2007-01.

Both the NBI Complaint and the FIO Complaint cited the COA Special Audit Office Report No. 2012-2013 (COA report) in illustrating the PDAF allotments of Estrada in 2007-2009:

SARO Number	Amount (₱)	IA	NGO
08-06025	16.490 million	National Agribusines Corporation (NABCOR)	MAMFI
09-02770	9.700 million		
08-01697	24.250 million[11]		
08-03116	18.915 million[12]		

8 Id. at 242.
9 Id. at 246.
10 Id., Vol. II, p. 727.
11 ₱23,710,000.00 in the FIO Complaint.
12 ₱18,914,000.00 in the FIO Complaint.

09-01612	19.400 million	National Livelihood Development Corporation (NLDC)	
09-02769	29.100 million		
G-09-07076	30.070 million		
G-09-07579	24.250 million		
08-06025	19.400 million	NABCOR	SDPFFI
G-09-07579	24.250 million	NLDC	
F-09-09579	24.250 million		
08-01698	22.500 million	Technology Resource Center (TRC)	
TOTAL	**₱262.575 million**[13]		

The COA Report also made the following observations applicable to all of the PDAF disbursements of Estrada for 2007-2009: (1) the implementation of most livelihood projects was undertaken by the NGOs, not the IAs, in violation of existing laws; (2) the selection of NGOs and implementation of the projects were not compliant with existing regulations; (3) the selected NGOs, their suppliers and beneficiaries are unknown, or could not be located at their given addresses, or submitted questionable documents, or failed to liquidate or fully document the utilization of funds; and (4) irregularities manifested in the implementation of the livelihood projects, such as multiple attendance of the same beneficiaries to the same or similar trainings and multiple receipt of the same or similar kits.[14]

Pursuant to the Orders of the Ombudsman directing the petitioners and their co-respondents in the complaints to submit their counter-affidavits, Estrada submitted his separate Counter-Affidavits to the NBI Complaint on 8 January 2014, and to the FIO Complaint on 16 January 2014. De Asis failed to submit his counter-affidavit to the NBI Complaint, while Napoles failed to submit her counter-affidavit to both complaints. The petitioners' co-respondents filed their respective counter-affidavits between 9 December 2013 and 14 March 2014.

In both his Counter-Affidavits,[15] Estrada denied having received, directly or indirectly, any amount from Napoles, or any person associated with her, or any NGO owned or controlled by her, and having amassed, accumulated, or acquired ill-gotten wealth. He further denied instructing or directing any of his staff to commit and/or participate in any irregular and unlawful transaction involving his PDAF allocations.

Estrada claimed that he committed no intentional or willful wrongdoing in his choice of NGOs to implement the PDAF projects, and he

[13] ₱262,034,000.00 in the FIO Complaint.
[14] *Rollo* (G.R. Nos. 212761-62), Vol. II, pp. 722-723.
[15] Id. at 737-776 and 777-821.

had no knowledge or notice of any relationship between the NGOs that implemented the projects and Napoles. He further claimed that the "letters where (a) [he] requested certain livelihood programs and projects to be implemented by certain [NGOs] and those where (b) [he] authorized [his] staff to follow[-]up, supervise, sign, and act in [his] behalf to ensure the proper and timely implementation of these projects do not show that [he] authorized the performance of any illegal activity."[16] Answering the charge against him for violation of Section 3(e) of RA 3019, he alleged that there was no manifest partiality or evident bad faith in endorsing the NGOs to implement the PDAF projects, since he only endorsed the NGOs accredited and selected by the IAs, and his act of endorsement was merely recommendatory and not deemed irregular or in violation of law.[17]

On 28 March 2014, the Ombudsman issued the assailed Joint Resolution finding probable cause to charge petitioners and several other respondents in the NBI and FIO Complaints for one (1) count of Plunder and eleven (11) counts of violation of Section 3(e) of RA 3019.

After considering the testimonial and documentary evidence, the Ombudsman concluded that petitioners conspired with the DBM personnel, and the heads of the IAs, specifically NABCOR, NLDC, and TRC, in amassing ill-gotten wealth by diverting the PDAF of Estrada from its intended project recipients to JLN-controlled NGOs, specifically MAMFI and SDPFFI. Estrada, in particular, took advantage of his official position and amassed, accumulated, and acquired ill-gotten wealth by receiving money from Napoles, through Tuason and Labayen, in the amount of ₱183,793,750.00 in exchange for endorsing JLN-controlled NGOs to the IAs of his PDAF-funded projects. De Asis, for his part, participated in the conspiracy by facilitating the transfer of the checks from the IAs and depositing the same to the bank accounts of the JLN-controlled NGOs. Furthermore, the Ombudsman found that petitioners, among others, acting in concert are manifestly partial, and in evident bad faith in violation of Section 3(e) of RA 3019 in relation to Estrada's PDAF releases, coursed through NABCOR, NLDC, TRC, MAMFI, and SDPFFI.

The motions for reconsideration were denied in the Joint Order issued by the Ombudsman on 4 June 2014.

Following the denial of the petitioners' motions for reconsideration, the Ombudsman filed several Informations before the Sandiganbayan, charging petitioners with one (1) count of Plunder and eleven (11) counts of violation of Section 3(e) of RA 3019.

Thus, Estrada, De Asis, and Napoles filed their separate petitions for certiorari assailing the Joint Resolution and Joint Order of the Ombudsman

[16] Id. at 771 and 817.
[17] Id. at 803-804, 808.

before this Court. The petition filed by Estrada is docketed as G.R. Nos. 212761-62, the petition filed by De Asis is docketed as G.R. Nos. 213473-74, and the petition filed by Napoles is docketed as G.R. Nos. 213538-39.

Estrada subsequently filed a Supplement to the Petition for Certiorari on 28 May 2015 and a Second Supplement to the Petition for Certiorari on 16 March 2018 basically asserting that his indictment is an act of political persecution and violates his constitutional right to equal protection of the laws.

The Issue

The sole issue left to be resolved in this case is whether or not the Ombudsman committed any grave abuse of discretion in rendering the assailed Resolution and Order ultimately finding probable cause against Estrada, De Asis, and Napoles for the charges against them.

The Ruling of the Court

We do not find merit in the petitions.

Both the Constitution[18] and RA 6770,[19] or The Ombudsman Act of 1989, give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees.[20] As an independent constitutional body, the Office of the Ombudsman is "beholden to no one, acts as the champion of the people, and is the preserver of the integrity of the public service."[21]

This Court's consistent policy has been to maintain non-interference in the determination by the Ombudsman of the existence of probable cause.[22] Since the Ombudsman is armed with the power to investigate, it is in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause.[23] As this Court is not a trier of

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18 1987 CONSTITUTION, Article XI, Section 12 provides: "The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof."

19 An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for Other Purposes (1989).

20 *Reyes v. Office of the Ombudsman,* G.R. No. 208243, 5 June 2017, 825 SCRA 436, 446, citing *Dichaves v. Office of the Ombudsman,* G.R. Nos. 206310-11, 7 December 2016, 813 SCRA 273.

21 Id.

22 Id.; *Cambe v. Office of the Ombudsman*, G.R. Nos. 212014-15, 6 December 2016, 812 SCRA 537, 580; *Clave v. Office of the Ombudsman,* G.R. No. 206425, 5 December 2016, 812 SCRA 187, 196-197; *Joson v. Office of the Ombudsman*, 784 Phil. 172, 189 (2016); *Reyes v. Ombudsman*, 783 Phil. 304, 332 (2016); *Ciron v. Ombudsman Gutierrez*, 758 Phil. 354, 362 (2015).

23 *Reyes v. Office of the Ombudsman,* supra note 20, at 447, citing *Dichaves v. Office of the Ombudsman*, G.R. Nos. 206310-11, 7 December 2016, 813 SCRA 273.

facts, we defer to the sound judgment of the Ombudsman.[24]

This policy is based not only on respect for the investigatory and prosecutory powers granted by the Constitution to the Ombudsman, but upon practicality as well.[25] Otherwise, innumerable petitions seeking dismissal of investigatory proceedings conducted by the Ombudsman will grievously hamper the functions of the courts, in much the same way that courts will be swamped with petitions if they had to review the exercise of discretion on the part of public prosecutors each time prosecutors decide to file an information or dismiss a complaint by a private complainant.[26]

Nonetheless, this Court is not precluded from reviewing the Ombudsman's action when there is a charge of grave abuse of discretion.[27] Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction.[28] The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined by law.[29]

Thus, for the present petition to prosper, petitioners would have to show this Court that the Ombudsman exercised its power, to determine whether there is probable cause, in an arbitrary or despotic manner which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined by law. On the petitioners lie the burden of demonstrating all the facts essential to establish the right to a writ of *certiorari*.[30]

There are two kinds of determination of probable cause: executive and

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24 *Reyes v. Office of the Ombudsman,* supra note 20, at 447, citing *Dichaves v. Office of the Ombudsman,* G.R. Nos. 206310-11, 7 December 2016, 813 SCRA 273.

25 *Reyes v. Office of the Ombudsman,* supra note 20, at 447, citing *Dichaves v. Office of the Ombudsman,* G.R. Nos. 206310-11, 7 December 2016, 813 SCRA 273; *Cambe v. Office of the Ombudsman*, supra note 22, at 580; *Clave v. Office of the Ombudsman,* supra note 22, at 197; *Joson v. Office of the Ombudsman*, supra note 22, at 189; *Reyes v. Ombudsman*, supra note 22, at 333; *Ciron v. Ombudsman Gutierrez*, supra note 22, at 363.

26 *Reyes v. Office of the Ombudsman,* supra note 20, at 447, citing *Dichaves v. Office of the Ombudsman,* G.R. Nos. 206310-11, 7 December 2016, 813 SCRA 273, further citing *Republic v. Ombudsman Desierto*, 541 Phil. 57 (2007); *Clave v. Office of the Ombudsman,* supra note 22, at 197; *Joson v. Office of the Ombudsman*, supra note 22, at 189; *Reyes v. Ombudsman*, supra note 22, at 333; *Ciron v. Ombudsman Gutierrez*, supra note 22, at 363.

27 *Soriano v. Deputy Ombudsman Fernandez,* 767 Phil. 226, 240 (2015); *Reyes v. Ombudsman*, supra note 22, at 332; *Ciron v. Ombudsman Gutierrez*, supra note 22, at 362.

28 *Duque v. Ombudsman*, G.R. Nos. 224648 and 224806-07, 29 March 2017 (Unsigned Resolution); *Dichaves v. Office of the Ombudsman,* G.R. Nos. 206310-11, 7 December 2016, 813 SCRA 273, 300, citing *Casing v. Ombudsman*, 687 Phil. 468 (2012); *Cambe v. Office of the Ombudsman*, supra note 22, at 580; *Clave v. Office of the Ombudsman,* supra note 22, at 197-198; *Reyes v. Ombudsman*, supra note 22, at 332; *Ciron v. Ombudsman Gutierrez,* supra note 22, at 362.

29 *Duque v. Ombudsman*, supra note 28; *Dichaves v. Office of the Ombudsman,* supra note 20, at 300, citing *Casing v. Ombudsman*, 687 Phil. 468 (2012); *Cambe v. Office of the Ombudsman*, supra note 22, at 580; *Clave v. Office of the Ombudsman,* supra note 22, at 197-198; *Reyes v. Ombudsman*, supra note 22, at 332-333; *Ciron v. Ombudsman Gutierrez*, supra note 22, at 362.

30 *Clave v. Office of the Ombudsman,* supra note 22, at 198.

judicial.[31] The executive determination of probable cause, made during preliminary investigation, is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge the person believed to have committed the crime as defined by law.[32] **Whether or not that function has been correctly discharged by the public prosecutor, i.e., whether or not the prosecutor has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.**[33] The judicial determination of probable cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused.[34]

Under Sections 1 and 3, Rule 112 of the Revised Rules of Criminal Procedure, **probable cause** is needed to be established by the investigating officer, to determine **whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial,** during preliminary investigation. Thus, probable cause has been defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted.[35] It is merely based on opinion and reasonable belief.[36] In determining probable cause, the average person weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he or she has no technical knowledge.[37]

We have explained the concept of probable cause in *Estrada v. Office of the Ombudsman (Estrada)*[38] in this wise:

> A finding of probable cause needs only to rest on **evidence showing that more likely than not a crime has been committed and was committed by the suspects**. Probable cause need not be based on clear and convincing evidence of guilt, neither on evidence establishing guilt beyond reasonable doubt and definitely, not on evidence establishing

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31 *Inocentes v. People of the Philippines*, 789 Phil. 318, 331 (2016), citing *People v. Castillo*, 607 Phil. 754, 764 (2009).

32 Id.

33 Id.

34 Id.

35 *Joson v. Office of the Ombudsman*, supra note 22, at 185; *Estrada v. Office of the Ombudsman*, 751 Phil. 821, 873 (2015) (citations omitted); *Hasegawa v. Giron*, 716 Phil. 364, 373 (2013).

36 *Cambe v. Office of the Ombudsman*, supra note 22, at 580; *Clave v. Office of the Ombudsman*, supra note 22, at 199; *Reyes v. Ombudsman*, supra note 22, at 334; *Estrada v. Office of the Ombudsman*, supra note 35, at 873, (citations omitted); *Aguilar v. Department of Justice*, 717 Phil. 789, 800 (2013); *Hasegawa v. Giron*, supra note 35, at 374; *Ang-Abaya v. Ang*, 593 Phil. 530, 541(2008).

37 *Dichaves v. Office of the Ombudsman*, supra note 20, at 302-303, citing *Kalalo v. Office of the Ombudsman*, 633 Phil. 160 (2010); *Relampagos v. Office of the Ombudsman*, G.R. Nos. 216812-16, 19 July 2016 (Unsigned Resolution); *Aguilar v. Department of Justice*, supra note 36, at 800; *Hasegawa v. Giron*, supra note 35, at 374.

38 751 Phil. 821 (2015).

absolute certainty of guilt. As well put in *Brinegar v. United States*, while **probable cause demands more than "bare suspicion," it requires "less than evidence which would justify . . . conviction."** A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt.

x x x. **To repeat, probable cause merely implies probability of guilt and should be determined in a summary manner.** Preliminary investigation is not a part of trial and it is only in a trial where an accused can demand the full exercise of his rights, such as the right to confront and cross-examine his accusers to establish his innocence. x x x.

x x x x

x x x. In the United States, from where we borrowed the concept of probable cause, the prevailing definition of probable cause is this:

> In dealing with probable cause, however, as the very name implies, we deal with **probabilities.** These are not technical; they are **the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.** The standard of proof is accordingly correlative to what must be proved.
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> "The substance of all the definitions" of probable cause "is a reasonable ground for belief of guilt." *McCarthy v. De Armit, 99 Pa. St. 63, 69,* quoted with approval in the *Carroll* opinion. *267 U. S. at 161.* And this "means less than evidence which would justify condemnation" or conviction, as Marshall, C. J., said for the Court more than a century ago in *Locke v. United States*, 7 Cranch 339, 348. Since Marshall's time, at any rate, it has come to mean more than bare suspicion: Probable cause exists where "the facts and circumstances within their [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that" an offense has been or is being committed. *Carroll v. United States, 267 U. S. 132, 162.*
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> These long-prevailing standards seek to safeguard citizens from rash and unreasonable interferences with privacy and from unfounded charges of crime. They also seek to give fair leeway for enforcing the law in the community's protection. Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability. The rule of probable cause is a practical, nontechnical conception affording the best compromise that has been found for accommodating these often opposing interests. Requiring more would unduly hamper law enforcement. To allow less would be to leave law-abiding citizens at the mercy of the officers' whim or caprice.[39] (Emphasis supplied)

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[39] *Estrada v. Office of the Ombudsman,* supra note 35 at 868-871.

In order to arrive at probable cause, the elements of the crime charged should be present.[40] In *Reyes v. Ombudsman (Reyes)*,[41] this Court unanimously held that in determining the elements of the crime charged for purposes of arriving at a finding of probable cause, "**only facts sufficient to support a *prima facie* case against the [accused] are required, not absolute certainty**." We explained that:

> **Owing to the nature of a preliminary investigation and its purpose, all of the foregoing elements need not be definitively established for it is enough that their presence becomes reasonably apparent.** This is because probable cause - the determinative matter in a preliminary investigation implies mere probability of guilt; thus, a finding based on more than bare suspicion but less than evidence that would justify a conviction would suffice.
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> Also, it should be pointed out that a preliminary investigation is not the occasion for the full and exhaustive display of the prosecution's evidence, and that the **presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits.** Therefore, "the **validity and merits of a party's defense or accusation, as well as the admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level**."
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> Furthermore, owing to the initiatory nature of preliminary investigations, the "**technical rules of evidence should not be applied**" in the course of its proceedings, keeping in mind that **"the determination of probable cause does not depend on the validity or merits of a party's accusation or defense or on the admissibilitv or veracity of testimonies presented**." Thus, in *Estrada v. Ombudsman* (*Estrada*), the Court declared that since a preliminary investigation does not finally adjudicate the rights and obligations of parties, "probable cause can be established with hearsay evidence, as long as there is substantial basis for crediting the hearsay."[42] (Emphasis supplied)

We reiterated the same principles in *Cambe v. Office of the Ombudsman (Cambe)*:[43]

> x x x [P]robable cause is determined during the context of a preliminary investigation **which is "merely an inquisitorial mode of discovering whether or not there is reasonable basis to believe that a crime has been committed and that the person charged should be held responsible for it."** It "is not the occasion for the full and exhaustive display of the prosecution's evidence." Therefore, "the validity and merits of a party's defense or accusation, as well as the admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level." Accordingly, "owing to the initiatory nature of preliminary investigations, **the technical rules of evidence should not be applied in the course of its proceedings.**" In this light, and

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40 *Hasegawa v. Giron*, supra note 35, at 374.

41 783 Phil. 304 (2016).

42 Id. at 336-337.

43 G.R. Nos. 212014-15, 6 December 2016, 812 SCRA 537.

> as will be elaborated upon below, this Court has ruled that "probable cause can be established with hearsay evidence, as long as there is substantial basis for crediting the hearsay," and that even an invocation of the rule on res inter alios acta at this stage of the proceedings is improper.[44] (Boldfacing and underscoring in the original)

In the present case, petitioners are charged with the crime of plunder and violation of Section 3(e) RA 3019. Plunder, defined and penalized under Section 2[45] of RA 7080, as amended, has the following elements: (a) that the offender is a public officer, who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons; (b) that he amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts described in Section 1(d)[46] hereof; and (c) that the aggregate amount or total value of the ill-gotten wealth amassed, accumulated, or

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[44] Id. at 583-584.

[45] This provision reads:

> 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 or criminal acts as described in Section 1(d) hereof in the aggregate amount or total value of at least Fifty million pesos (₱50,000,000.00) 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.

[46] Section 1(d) states:

> 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.
>
> 1) Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;
>
> 2) By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/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;
>
> 4) By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including promise of future employment in any business enterprise or undertaking;
>
> 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
>
> 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.

acquired is at least Fifty Million Pesos (₱50,000,000.00). On the other hand, the elements of violation of Section 3(e)[47] of RA 3019 are: (a) that the accused must be a public officer discharging administrative, judicial, or official functions (or a private individual acting in conspiracy with such public officers); (b) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and (c) that his action caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his functions.

The Ombudsman did not abuse its discretion amounting to lack or excess of jurisdiction in finding probable cause to indict Estrada for one count of plunder and 11 counts of violation of Section 3(e) of RA 3019.

In its Joint Resolution[48] dated 28 March 2014, the Ombudsman found that probable cause exists to indict Estrada for plunder, after finding that the elements of the crime charged are reasonably apparent based on the evidence on record:

> *First*, it is *undisputed* that Senator Estrada was a public officer at the time material to the charges.
>
> *Second*, he **amassed, accumulated or acquired ill-gotten wealth.**
>
> As disclosed by the evidence, he *repeatedly* received sums of money from Janet Napoles for endorsing her NGOs to implement the projects to be funded by his PDAF.
>
> x x x x
>
> As outlined by witnesses Luy, Sula and Suñas which Tuason similarly claimed, once a PDAF allocation becomes available to Senator Estrada, his staff Labayen would inform Tuason of this development. Tuason, in turn, would relay the information to either Napoles or witness Luy. Napoles or Luy would then prepare a listing of the projects available where Luy would specifically indicate the IAs. This listing would be sent to Labayen who would then endorse it to the DBM under her authority as Deputy Chief-of-Staff of Senator Estrada. **After the listing is released** by the Office of Senator Estrada to the DBM, Napoles would give Tuason or Labayen a down payment for delivery to Senator Estrada. **After the**

[47] This provisions reads:

> Section 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
>
> x x x x
>
> (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[48] *Rollo* (G. R. Nos. 212761-62), Vol. I, pp. 68-187.

SARO and/or NCA is released, Napoles would give Tuason the **full payment for delivery to Senator Estrada** through Labayen or by Tuason.

It bears noting that money was paid and delivered to Senator Estrada even **before** the **SARO and/or NCA is released**. Napoles would advance Senator Estrada's down payment from her own pocket upon the mere release by his Office of the listing of projects to the DBM, with the remainder of the amount payable to be given after the SARO representing the legislator's PDAF allocation is released by the DBM and a copy of the SARO forwarded to Napoles.

Significantly, after the DBM issues the SARO, Senator Estrada, through Labayen, would then write another letter addressed to the IAs which would **identify and indorse** Napoles' NGOs as his preferred NGO to undertake the PDAF-funded project, thereby effectively designating in writing the Napoles-affiliated NGO to implement projects funded by his PDAF. Along with the other PDAF documents, the **indorsement letter** of Senator Estrada is transmitted to the IA, which, in turn, handles the preparation of the MOA concerning the project, to be entered into by the Senator's Office, the IA and the chosen NGO.

[Dennis] Cunanan, [Deputy Director General of TRC], in his Counter-Affidavit, claimed that Senator Estrada confirmed to him that he, indeed, chose the NGOs named in the aforementioned letters and insisted that the choice be honored by the TRC:

> 17.4. ... I remember vividly how ***both Senators Revilla and Estrada admonished me because they thought that TRC was purportedly "delaying" the projects. Both Senators Revilla and Estrada insisted that the TRC should honor their choice of NGO***, which they selected to implement the projects, since the projects were funded from their PDAF. They both asked me to ensure that TRC would immediately act on and approve their respective projects. *(emphasis, italics and underscoring supplied)*

As previously discussed, the indorsements enabled Napoles to gain access to substantial sums of public funds. The collective acts of Senator Estrada, Napoles, et al. allowed the illegal diversion of public funds to their own personal use.

It cannot be gainsaid that the sums of money received by Senator Estrada amount to "kickbacks" or "commissions" from a government project within the purview of Sec. 1 (d) (2) of RA 7080. He repeatedly received commissions, percentage or kickbacks representing his share in the project cost allocated from his PDAF, in exchange for his **indorsement** of Napole[s'] NGOs to implement his PDAF-funded projects.

Worse, the evidence indicates that he took undue advantage of his official position, authority and influence to unjustly enrich himself at the expense, and to the damage and prejudice of the Filipino people and the Republic of the Philippines, within the purview of Sec. 1 (d) (6) of RA

7080. He used and took undue advantage of his official position, authority and influence as a Senator of the Republic of the Philippines to access his PDAF and illegally divert the allocations to the possession and control of Napoles and her cohorts, in exchange for commissions, kickbacks, percentages from the PDAF allocations.

Undue pressure and influence from Senator Estrada's Office, as well as his endorsement of Napoles' NGOs, were brought to bear upon the public officers and employees of the IAs.

[Francisco] Figura, an officer from the TRC, claimed that the TRC management told him: *"legislators highly recommended certain NGOs/Foundations as conduit implementors and since PDAFs are their discretionary funds, they have the prerogative to choose their NGO's"*; and the TRC management warned him that *"if TRC would disregard it (choice of NGO), they (legislators) would feel insulted and would simply take away their PDAF from TRC, and TRC losses (sic) the chance to earn service fees."* Figura further claimed that **he tried his best to resist the pressure exerted on him** and did his best to perform his duties faithfully; *[but]* **he and other low-ranking TRC officials had no power to *"simply disregard the wishes of Senator [Estrada]*,"** especially on the matter of public bidding for the PDAF projects.

Cunanan, narrates that he met Napoles sometime in 2006 or 2007, who *"introduced herself as the representative of certain legislators wo supposedly picked TRC as a conduit for PDAF-funded projects;"* at the same occasion, Napoles told him that *"her principals were then Senate President Juan Ponce Enrile, Senators Ramon "Bong" Revilla, Jr.,* **Sen. Jinggoy Ejercito Estrada;" letters signed by Estrada prove** that he [Estrada] **directly indorsed** NGOs affiliated with or controlled by Napoles to implement his PDAF projects; in the course of his duties, he *"often ended up taking and/or making* ***telephone verifications*** *and follow-ups and receiving legislators or their staff members*;" during one of these telephone conversations, **Estrada admonished him and *"insisted that the TRC should honor their choice of the NGO....since the projects were funded from their PDAF;" "all the liquidation documents and the completion reports of the NGO always bore the signatures of Ms. Pauline Labayen, the duly designated representative of Sen. Estrada;"*** and he occasionally met with witness Luy, who **pressured** him to expedite the release of the funds by **calling the offices of the legislators.**

NLDC's [Gondelina] Amata also mentioned about undue pressure surrounding *the designation of NLDC as one of the Implementing Agencies for PDAF.* Her fellow NLDC employee [Gregoria] Buenaventura adds that in accordance with her functions, she ***"checked and verified the endorsement letters of Senator [Estrada],*** which designated the NGOs that would implement his PDAF projects **and found them to be valid and authentic;" she also confirmed the authenticity of the authorization given by Estrada to his subordinates** regarding the monitoring, supervision and implementation of PDAF projects; and her evaluation and verification reports were accurate.

Another NLDC officer, [Alexis] Sevidal, claimed that Senator Estrada and Napoles, not NLDC employees, were responsible for the misuse of the PDAF; **Senator Estrada, through Labayen, was responsible for *"identifying the projects, determining the project costs and choosing the NGOs"* which was *"manifested in the letters of Senator Estrada and Ms. Pauline Labayen...that were sent to the NLDC;"*** and that he and other NLDC employees were **victims of the *"political climate"* and *"bullied into submission by the lawmakers."***

The evidence evinces that Senator Estrada used and took undue advantage of his official position, authority and influence as a Senator to unjustly enrich himself at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

The PDAF was allocated to Senator Estrada by virtue of his position, hence, he exercised control in the selection of his priority projects and programs. He indorsed Napoles' NGOs in consideration for the remittance of kickbacks and commissions from Napoles. These circumstances were compounded by the fact that the PDAF-funded projects were *"ghost projects"* and that the rest of the PDAF allocation went into the pockets of Napoles and her cohorts. Undeniably, Senator Estrada unjustly enriched himself at the expense, and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

Third, the amounts earned by Senator Estrada through kickbacks and commissions amounted to more than Fifty Million Pesos (₱50,000,000.00).

Witness Luy's ledger shows, among others, that Senator Estrada received the following amounts as and by way of kickbacks and commissions:

Year	**Amount received by Senator Estrada (In PhP)**
2004	1,500,000.00
2005	16,170,000.00
2006	12,750,000.00
2007	16,250,000.00
2008	51,250,000.00
2009	2,200,000.00
2010	73,923,750.00
2012	9,750,000.00
Total:	**Php183,793,750.00**

The aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired by Senator Estrada stands at **Php183,793,750.00, at the very least.**

> The sums were received by the Senator either personally or through his Deputy Chief-Of-Staff, Labayen, as earlier discussed.
>
> Napoles *provided* those kickbacks and commissions. Witnesses Luy and Suñas, not to mention Tuason, stated that Napoles was assisted in delivering the kickbacks and commissions by her employees and cohorts John Raymond de Asis, Ronald John Lim and Tuason.
>
> Senator Estrada's commission of the acts covered by Section 1 (d) (2) and Section 1 (d) (6) of RA No. 7080 repeatedly took place over the years 2004 to 2012. This shows a pattern – a combination or series of overt or criminal acts – directed towards a common purpose or goal, which is to enable Senator Estrada to amass, accumulate or acquire ill-gotten wealth.
>
> Senator Estrada, taking undue advantage of official position, authority, relationship, connection or influence as a Senator acted, *in connivance* with his subordinate-authorized representative Labayen, to receive commissions and kickbacks for indorsing the Napoles NGOs to implement his PDAF-funded project; and likewise, *in connivance* with Napoles, with the assistance of her employees and cohorts Tuason, de Asis and Lim who delivered the kickbacks to him. These acts are linked by the fact that they were plainly geared towards a common goal which was to amass, acquire and accumulate ill-gotten wealth amounting to at least **Php183,793,750.00** for Senator Estrada.[49] (Emphasis in the original)

In concluding that there is probable cause to indict Estrada for 11 counts of violation of Section 3(e) RA 3019, the Ombudsman likewise examined the evidence on record in finding that it is reasonably apparent that the elements of the crime are present:

> *First*, respondents Senator Estrada, Labayen, x x x were all public officers at the time material to the charges. Their respective roles in the processing and release of PDAF disbursements were in the exercise of their administrative and/or official functions.
>
> Senator Estrada himself chose, in writing, the Napoles-affiliated NGO to implement projects funded by his PDAF. His trusted authorized staff, respondent Labayen, then prepared indorsement letters and other communications relating to the PDAF disbursements addressed to the DBM and the IAs (NABCOR, TRC and NLDC). This trusted staff member also participated in the preparation and execution of MOAs with the NGOs and the IAs, inspection and acceptance reports, disbursement reports and other PDAF documents.
>
> x x x x
>
> From the accounts of witnesses Luy, Sula and Suñas as well as of Tuason, Napoles made a business proposal to Labayen regarding the Senator's PDAF, which Labayen accepted. Senator Estrada later chose NGOs affiliated with/controlled by Napoles to implement his PDAF-funded projects.

[49] Id. at 145-157.

x x x x

Second, Senator Estrada and respondent-public officers of the IAs were manifestly partial to Napoles, her staff and the NGOs affiliated she controlled.

x x x x

That Napoles and the NGOs affiliated with/controlled by her were extended undue favor is manifest.

Senator Estrada *repeatedly* and *directly* chose the NGOs headed or controlled by Napoles and her cohorts to implement his projects without the benefit of a public bidding, and without being authorized by an appropriation law or ordinance.

As correctly pointed out by the FIO, the Implementing Rules and Regulations of RA 9184 states that an NGO may be contracted only when so authorized by an appropriation law or ordinance.

x x x x

National Budget Circular (NBC) No. 476, as amended by NBC No. 479, provides that PDAF allocations should be directly released only to those government agencies identified in the project menu of the pertinent General Appropriations Act (GAAs). The GAAs in effect at the time material to the charges, however, did not authorize the direct release of funds to NGOs, let alone the direct contracting of NGOs to implement government projects. This, however, did not appear to have impeded Estrada's direct selection of the Napoles affiliated or controlled NGOs, and which choice was accepted *in toto* by the IAs.

Even assuming arguendo that the GAAs allowed the engagement of NGOs to implement PDAF-funded projects, such engagements remain subject to **public bidding** requirements. x x x.

x x x x

The aforementioned laws and rules, however, were disregarded by public respondents, Senator Estrada having just chosen the Napoles-founded NGOs. Such blatant disregard of public bidding requirements is highly suspect, especially in view of the ruling in *Alvarez v. People*.

x x x x

Notatu dignum is the extraordinary speed attendant to the examination, processing and approval by the concerned NABCOR, NLDC and TRC officers of the PDAF releases to the Napoles-affiliated or controlled NGOs. In most instances, the DVs were accomplished, signed and approved on the same day. Certainly, the required, careful examination of the transaction's supporting documents could not have taken place if the DV was processed and approved in one day.

x x x x

In addition to the presence of *manifest partiality* on the part of respondent public officers alluded to, *evident bad faith* is present.

x x x x

That several respondent public officers unduly benefitted from the diversion of the PDAF is borne by the records.

As earlier mentioned, Tuason claimed that she regularly remitted significant portions (around 50%) of the diverted sums to Estrada, which portions represented Senator Estrada's "share" or "commission" in the scheme, x x x.

x x x x

Notably, Tuason admitted having received a 5% commission for acting as liaison between Napoles and Senator Estrada.

Witness Luy's business ledgers validate Tuason's claim that Labayen did, from time to time, receive money from Napoles that was intended for Estrada.

x x x x

Indubitably, repeatedly receiving portions of sums of money wrongfully diverted from public coffers constitutes evident bad faith.

Third, the assailed PDAF-related transactions caused undue injury to the Government in the aggregate amount of PHP278,000,000.00.

Based on the 2007-2009 COA Report as well as on the independent field verification conducted by the FIO, the projects supposedly funded by Senator Estrada's PDAF were "ghost[s]" or inexistent. There were no livelihood kits distributed to beneficiaries. Witnesses Luy, Sula and Suñas declared that, per directive given by Napoles, they made up lists of fictitious beneficiaries to make it appear that the projects were implemented, albeit none took place.

Instead of using the PDAF disbursements received by them to implement the livelihood projects, respondent De Asis as well as witnesses Luy, Sula and Suñas, all acting for Napoles, continuously diverted these sums amounting to PHP278,000,000.00 to the pocket of Napoles.

Certainly, these repeated, illegal transfers of public funds to Napoles' control, purportedly for projects which did not exist, and just as repeated irregular disbursements thereof, represent quantifiable, pecuniary losses to the Government, constituting undue injury within the context of Section 3 (e) of RA 3019.

Fourth, respondents Estrada, Labayen x x x, granted respondent Napoles unwarranted benefits.

x x x x

> x x x. That they repeatedly failed to observe the requirements of R. A. No. 9184, its implementing rules and regulations, GPPB regulations as well as national budget circulars shows that unwarranted benefits, advantage or preference were given to private respondents.
>
> The NGOs selected by Estrada did not appear to have the capacity to implement the undertakings to begin with. At the time material to the charges, these entities did not possess the required accreditation to transact with the Government, let alone possess a track record in project implementation to speak of.[50]

In *Clave v. Office of the Ombudsman*,[51] we held that in order to arrive at a finding of probable cause, the Ombudsman only has to find enough relevant evidence to support its belief that the accused most likely committed the crime charged. Otherwise, grave abuse of discretion can be attributed to its ruling.

Given the ample supporting evidence it has on hand, the Ombudsman's exercise of prerogative to charge Estrada with plunder and violation of Section 3(e) of RA 3019 was not whimsical, capricious, or arbitrary, as to amount to grave abuse of discretion. Estrada's bare claim to the contrary cannot prevail over such positive findings of the Ombudsman.

In *Reyes,* we unanimously ruled that the Ombudsman did not gravely abuse its discretion in finding probable cause to indict Reyes of plunder and violation of Section 3(e) of RA 3019 after its consideration that the testimonial and documentary evidence are substantial enough to reasonably conclude that Reyes had, in all probability, participated in the PDAF scam and, hence, must stand trial therefor. The testimonial and documentary evidence relied upon by the Ombudsman in *Reyes* are: (a) the declarations of the whistleblowers Luy, Sula, and Suñas; (b) Tuason's verified statement which corroborated the whistleblowers accounts; (c) the business ledgers prepared by witness Luy, showing the amounts received by Senator Enrile, through Tuason and Reyes, as his "commission" from the so-called PDAF scam; (d) the 2007-2009 COA Report documenting the results of the special audit undertaken on PDAF disbursements - that there were serious irregularities relating to the implementation of PDAF-funded projects, including those endorsed by Senator Enrile; and (e) the reports on the independent field verification conducted in 2013 by the investigators of the FIO which secured sworn statements of local government officials and purported beneficiaries of the supposed projects which turned out to be inexistent.

We held in *Reyes* that: "[i]ndeed, these pieces of evidence are already sufficient to engender a well-founded belief that the crimes charged were committed and Reyes is probably guilty thereof as it remains apparent that:

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50 Id. at 127-140.

51 Supra note 22.

(a) Reyes, a public officer, connived with Senator Enrile and several other persons x x x in the perpetuation of the afore-described PDAF scam, among others, in entering into transactions involving the illegal disbursement of PDAF funds; (b) Senator Enrile and Reyes acted with manifest partiality and/or evident bad faith by repeatedly endorsing the JLN-controlled NGOs as beneficiaries of his PDAF without the benefit of public bidding and/or negotiated procurement in violation of existing laws, rules, and regulations on government procurement; (c) the PDAF-funded projects turned out to be inexistent; (d) such acts caused undue injury to the government, and at the same time, gave unwarranted benefits, advantage, or preference to the beneficiaries of the scam; and (e) Senator Enrile, through Reyes, was able to accumulate and acquire ill-gotten wealth amounting to at least ₱172,834,500.00."[52]

In *Cambe,* we likewise upheld the Ombudsman's finding of probable cause against Revilla and held that Revilla should stand for trial for plunder and violation of Section 3(e) of RA 3019, considering that after taking all the pieces of evidence together, i.e. the PDAF documents, the whistleblowers' testimonies, Luy's business ledger, the COA and FIO reports, these pieces of evidence tend to *prima facie* establish that irregularities had indeed attended the disbursement of Revilla's PDAF and that he had a hand in such anomalous releases, being the head of office which unquestionably exercised operational control thereof. We agreed with the Ombudsman's observation that, "[t]he PDAF was allocated to him by virtue of his position as a Senator, and therefore he exercise[d] control in the selection of his priority projects and programs. He indorsed [Napoles'] NGOs in consideration for the remittance of kickbacks and commissions from Napoles. Compounded by the fact that the PDAF-funded projects turned out to be 'ghost projects', and that the rest of the PDAF allocation went into the pockets of Napoles and her cohorts, [there is probable cause to show that] Revilla thus unjustly enriched himself at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines."[53]

In the present case, the Ombudsman relied upon the same testimonial and documentary evidence relied upon by the Ombudsman in *Reyes* and *Cambe,* specifically: (a) the testimonies of the whistleblowers Luy, Sula, and Suñas; (b) the affidavits of Tuason and other co-respondents in the NBI and FIO Complaints; (c) the business ledgers prepared by Luy, showing the amounts received by Estrada, through Tuason and Labayen, as his "commission" from the so-called PDAF scam; (d) the COA Report documenting the results of the special audit undertaken on PDAF disbursements; and (e) the reports on the independent field verification conducted by the FIO. Aside from the said pieces of evidence, the

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52 *Reyes v. Ombudsman,* supra note 22, at 340-341.

53 *Cambe v. Office of the Ombudsman,* supra note 22, at 599.

Ombudsman pointed to the PDAF documents, corporate papers of JLN-controlled NGOs, and admissions made by some of Estrada's co-respondents themselves, in concluding that a person of ordinary caution and prudence would believe, or entertain an honest or strong suspicion, that plunder and violation of Section 3(e) of RA 3019 were indeed committed by Estrada, among the respondents named in the Joint Resolution.

Applying our ruling in *Reyes* and *Cambe* to the present case, the Ombudsman, thus, did not abuse its discretion in holding that the same pieces of evidence, taken together, are already sufficient to engender a well-founded belief that the crimes charged were committed and Estrada is probably guilty thereof, since it remains apparent that: (a) Estrada, a public officer, connived with Napoles and several other persons in entering into transactions involving the illegal disbursement of PDAF funds; (b) Estrada acted with manifest partiality and/or evident bad faith by repeatedly endorsing the JLN-controlled NGOs as beneficiaries of his PDAF in violation of existing laws, rules, and regulations on government procurement; (c) the PDAF-funded projects turned out to be inexistent; (d) such acts caused undue injury to the government, and at the same time, gave unwarranted benefits, advantage, or preference to the beneficiaries of the scam; and (e) Estrada, through Tuason and Labayen, was able to accumulate and acquire ill-gotten wealth amounting to at least ₱183,793,750.00.

Given that the Court previously unanimously ruled in *Reyes* that the following pieces of evidence: (a) the declarations of the whistleblowers Luy, Sula, and Suñas; (b) Tuason's verified statement which corroborated the whistleblowers' accounts; (c) the business ledgers prepared by Luy; (d) the COA Report documenting the results of the special audit undertaken on PDAF disbursements; and (e) the reports on the independent field verification conducted by the FIO, all taken together are already sufficient to engender a well-founded belief that the crimes charged were committed, specifically plunder and violation of Section 3(e) of RA 3019, and petitioners in *Reyes* and *Cambe* were probably guilty thereof, we shall likewise take these into account and uphold in the present case the finding of the Ombudsman as to the existence of probable cause against Estrada based on the said pieces of evidence.

Besides, we held in *Estrada*, that "**the sufficiency of the evidence put forward by the Ombudsman against Sen. Estrada to establish its finding of probable cause** in the 28 March 2014 Joint Resolution in OMB-C-C-13-0313 and OMB-C-C-13-0397 **was judicially confirmed by the Sandiganbayan, when it examined the evidence, found probable cause, and issued a warrant of arrest against Sen. Estrada** on 23 June 2014."[54]

[54] *Estrada v. Office of the Ombudsman,* supra note 35, at 865.

In *Sec. De Lima v. Reyes,*[55] this Court held that once the trial court finds probable cause, which results in the issuance of a warrant of arrest, such as the Sandiganbayan in this case, with respect to Estrada, **any question on the prosecution's conduct of preliminary investigation becomes moot.**

Thus, the Ombudsman's exercise of prerogative to charge Estrada with plunder and violation of Section 3(e) of RA 3019 was not whimsical, capricious, or arbitrary, amounting to grave abuse of discretion.

To emphasize, a preliminary investigation is not the occasion for the full and exhaustive display of the prosecution's evidence; and the **presence or absence of the elements of the crime charged is evidentiary in nature and is a matter of defense that may be passed upon only after a full-blown trial on the merits.**[56] Moreover, the validity and merit of a party's defense or accusation, as well as **the admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level.**[57]

Thus, Estrada's defense, similar to De Asis' and Napoles', which is anchored on the absence of all the elements of the crime charged, is better ventilated during trial and not during preliminary investigation.

Moreover, as to De Asis' arguments that there is no evidence that he knowingly took part in the acts of plunder, and that he merely acted as driver, messenger, and janitor in good faith when he delivered money to Napoles' house or he picked up checks and deposited the same in banks,[58] we have already ruled upon the same arguments raised by De Asis and upheld the finding of probable cause against him in the case of *Cambe*:

> Records show that De Asis was designated as the President/Incorporator of KPMFI which was one of the many NGOs controlled by Napoles that was used in the embezzlement of Sen. Revilla's PDAF allocations. Moreover, whistleblowers Luy and Suñas explicitly named De Asis as one of those who prepared money to be given to the lawmaker. Said whistleblowers even declared that De Asis, among others, received the checks issued by the IAs to the NGOs and deposited the same in the bank; and that, after the money is withdrawn from the bank, he was also one of those tasked to bring the money to Janet Napoles' house. Indeed, the foregoing prove to be well-grounded bases to believe that, in all probability, De Asis conspired with the other co-accused to commit the crimes charged.

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55 776 Phil. 623, 652 (2016).

56 *Cambe v. Office of the Ombudsman*, supra note 22, at 604; *Reyes v. Ombudsman*, supra note 22, at 336-337.

57 *Cambe v. Office of the Ombudsman*, supra note 22, at 583; *Reyes v. Ombudsman*, supra note 22, at 337; *Hasegawa v. Giron,* supra note 35, at 376.

58 *Rollo* (G.R. Nos. 213473-74), pp. 24-26.

> To refute the foregoing allegations, **De Asis presented defenses which heavily centered on his perceived want of criminal intent, as well as the alleged absence of the elements of the crimes charged. However, such defenses are evidentiary in nature, and thus, are better ventilated during trial and not during preliminary investigation. To stress, a preliminary investigation is not the occasion for the full and exhaustive display of the prosecution's evidence; and the presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon only after a full-blown trial on the merits.**[59] (Emphasis supplied)

As to the finding of probable cause to indict Napoles for the crimes charged, and as to her argument that the NBI and FIO Complaints are defective and insufficient in form and substance as to the charges against her, we likewise find our ruling in *Reyes* applicable to this case:

> Anent Janet Napole[s'] complicity in the abovementioned crimes, records similarly show that she, in all reasonable likelihood, played an integral role in the calculated misuse of Senator Enrile's PDAF. As exhibited in the *modus operandi* discussed earlier, once Janet Napoles was informed of the availability of a PDAF allocation, either she or Luy, as the "lead employee" of the JLN Corporation, would prepare a listing of the available projects specifically indicating the IAs. After said listing is released by the Office of Senator Enrile to the DBM, Janet Napoles would give a down payment from her own pockets for delivery to Senator Enrile through Reyes, with the remainder of the amount given to the Senator after the SARO and/or NCA is released. Senator Enrile would then indorse Janet Napole[s'] NGOs to undertake the PDAF-funded projects, which were "ghost projects" that allowed Janet Napoles and her cohorts to pocket the PDAF allocation.
>
> Based on the evidence in support thereof, the Court is convinced that there lies probable cause against Janet Napoles for the charge of Plunder as it has *prima facie* been established that: (a) she, in conspiracy with Senator Enrile, Reyes, and other personalities, was significantly involved in the afore-described *modus operandi* to obtain Senator Enrile's PDAF, who supposedly abused his authority as a public officer in order to do so; (b) through this *modus operandi*, it appears that Senator Enrile repeatedly received ill-gotten wealth in the form of "kickbacks" in the years 2004-2010; and (c) the total value of "kickbacks" given to Senator Enrile amounted to at least ₱172,834,500.00.
>
> In the same manner, there is probable cause against Janet Napoles for violations of Section 3 (e) of RA 3019, as it is ostensible that: (a) she conspired with public officials, *i.e.*, Senator Enrile and his chief of staff, Reyes, who exercised official functions whenever they would enter into transactions involving illegal disbursements of the PDAF; (b) Senator Enrile, among others, has shown manifest partiality and evident bad faith by repeatedly indorsing the JLN-controlled NGOs as beneficiaries of his PDAF-funded projects - even without the benefit of a public bidding and/or negotiated procurement, in direct violation of existing laws, rules, and regulations on government procurement;and (c) the "ghost" PDAF-

[59] *Cambe v. Office of the Ombudsman*, supra note 22, at 604.

> funded projects caused undue prejudice to the government in the amount of ₱345,000,000.00.
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> x x x x
>
> Furthermore, there is no merit in Janet Napole[s'] assertion that the complaints are insufficient in form and in substance for the reason that it lacked certain particularities such as the time, place, and manner of the commission of the crimes charged. "According to Section 6, Rule 110 of the 2000 Rules of Criminal Procedure, the complaint or information is sufficient if it states the names of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed. **The fundamental test in determining the sufficiency of the averments in a complaint or information is, therefore, whether the facts alleged therein, if hypothetically admitted, constitute the elements of the offense."** In this case, the NBI and the FIO Complaints stated that: (a) Senator Enrile, Reyes, and Janet Napoles, among others, are the ones responsible for the PDAF scam; (b) Janet Napoles, *et al.* are being accused of Plunder and violations of Section 3 (e) of RA 3019; (c) they used a certain *modus operandi* to perpetuate said scam, details of which were stated therein; (d) because of the PDAF scam, the Philippine government was prejudiced and defrauded in the approximate amount of ₱345,000,000.00; and (e) the PDAF scam happened sometime between the years 2004 and 2010, specifically in Taguig City, Pasig City, Quezon City, and Pasay City. The aforesaid allegations were essentially reproduced in the sixteen (16) Informations — one (1) for Plunder and fifteen (15) for violation of RA 3019 — filed before the Sandiganbayan. Evidently, these factual assertions already square with the requirements of Section 6, Rule 110 of the Rules of Criminal Procedure as above-cited. Upon such averments, there is no gainsaying that Janet Napoles has been completely informed of the accusations against her to enable her to prepare for an intelligent defense. The NBI and the FIO Complaints are, therefore, sufficient in form and in substance.[60] (Boldfacing and underscoring in the original)

Applying our ruling in *Reyes* and *Cambe,* we likewise do not find that the Ombudsman gravely abused its discretion in finding probable cause to indict De Asis and Napoles for the crimes charged in the present case.

Moreover, Justice Presbitero J. Velasco, Jr.'s dissent should not have individually assessed as inadmissible and incompetent the evidence used by the Ombudsman in finding that probable cause exists to indict petitioners for plunder and violation of Section 3(e) of RA 3019.

In *De Lima v. Judge Guerrero*,[61] penned by Justice Velasco, the Court held that the **admissibility of evidence, their evidentiary weight, probative value, and the credibility of the witness are matters that are best left to be resolved in a full-blown trial, not during a preliminary**

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60 *Reyes v. Ombudsman*, supra note 22, at 348-351.

61 G.R. No. 229781, 10 October 2017.

investigation where the technical rules of evidence are not applied nor at the stage of the determination of probable cause for the issuance of a warrant of arrest. Thus, the better alternative is to proceed to the conduct of trial on the merits and for the prosecution to present its evidence in support of its allegations.

In any event, we have already ruled on the arguments raised by Justice Velasco in individually refuting the evidence used by the Ombudsman in finding probable cause in the cases of *Reyes* and *Cambe.*

First, there is no basis in ruling at this stage that the whistleblowers' statements, along with those of Estrada's co-respondents, are not admissible as evidence for being hearsay and covered by the *res inter alios acta* rule. We have already unanimously ruled in *Reyes,* and reiterated in *Cambe,* that **technical rules on evidence, such as hearsay evidence and the *res inter alios acta* rule, should not be rigidly applied in the course of preliminary investigation proceedings,** thus:

> Neither can the Napoles siblings discount the testimonies of the whistleblowers based on their invocation of the *res inter alios acta* rule under Section 28, Rule 130 of the Rules on Evidence, which states that the rights of a party cannot be prejudiced by an act, declaration, or omission of another, unless the admission is by a conspirator under the parameters of Section 30 of the same Rule. To be sure, the foregoing rule constitutes a technical rule on evidence which should not be rigidly applied in the course of preliminary investigation proceedings. In *Estrada*, the Court sanctioned the Ombudsman's appreciation of hearsay evidence, which would otherwise be inadmissible under technical rules on evidence, during the preliminary investigation "as long as there is substantial basis for crediting the hearsay." This is because "such investigation is merely preliminary, and does not finally adjudicate rights and obligations of parties." Applying the same logic, and with the similar observation that there lies substantial basis for crediting the testimonies of the whistleblowers herein, the objection interposed by the Napoles siblings under the evidentiary *res inter alios acta* rule should falter. Ultimately, as case law edifies, **"[t]he technical rules on evidence are not binding on the fiscal who has jurisdiction and control over the conduct of a preliminary investigation," as in this case.**[62] (Emphasis supplied)

To reiterate, in *Estrada*, where the present petitioner is the same petitioner, we held that since a preliminary investigation does not finally adjudicate the rights and obligations of parties, "**probable cause can be established with hearsay evidence, as long as there is substantial basis for crediting the hearsay.**"[63] On the applicability of *res inter alios acta* rule, we further stated that: "In OMB-C-C-13-0313 and OMB-C-C-13-0397, the admissions of Sen. Estrada's co-respondents can in no way prejudice Sen. Estrada. Even granting Justice Velasco's argument that the 28 March

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62 *Cambe v. Office of the Ombudsman*, supra note 22, at 592-593, citing *Reyes v. Ombudsman,* 783 Phil. 304 (2016).

63 *Estrada v. Office of the Ombudsman,* supra note 35, at 874.

2014 Joint Resolution in OMB-C-C-13-0313 and OMB-C-C-13-0397 mentioned the testimonies of Sen. Estrada's co-respondents like Tuason and Cunanan, their testimonies were merely corroborative of the testimonies of complainants' witnesses Benhur Luy, Marina Sula, and Merlina Suñas and were not mentioned in isolation from the testimonies of complainants' witnesses."[64]

Second, as to Estrada's endorsement letters, **which he admittedly executed**, instructing the IAs to have his PDAF-funded projects implemented by JLN-controlled NGOs, we held in *Cambe* that "the PDAF documents, consisting of the **written endorsements signed by Sen. Revilla himself requesting the IAs to release his PDAF funds to the identified JLN-controlled NGOs**, as well as other documents that made possible the processing of his PDAF, x x x — **directly implicate him for the crimes charged**, as they were nonetheless, all issued under the authority of his Office as Senator of the Republic of the Philippines. In *Belgica v. Ochoa (Belgica),* this Court observed that 'the defining feature of all forms of Congressional Pork Barrel would be the authority of legislators to participate in the post-enactment phases of project implementation.' x x x. It is through this mechanism that individual legislators, such as Sen. Revilla, were able to practically dictate the entire expenditure of the PDAF allocated to their offices throughout the years x x x under the DBM's menu for pork barrel allocations. '[However,] [i]t bears noting that the NGO is directly endorsed by the legislator [and that] [n]o public bidding or negotiated procurement [took] place[,]' [in] defiance of [GPPB] Resolution No. 012-2007."[65] Similarly, Estrada's endorsement letters directly implicate him for the crimes charged and there is no basis for his argument that his letters were merely recommendatory.

Third, as to Luy's business ledger, Luy's admission of falsification of PDAF-related documents did not cast serious doubt on its credibility, considering that in *Cambe,* we already held:

> Luy's testimony therefore explicates that although the whistleblowers would sometimes forge the legislators' signatures, such were made with the approval of Napoles based on her prior agreement with the said legislators. It is not difficult to discern that this authorization allows for a more expedient processing of PDAF funds since the documents required for their release need not pass through the legislator's respective offices. It is also apparent that this grant of authority gives the legislators room for plausible deniability: the forging of signatures may serve as a security measure for legislators to disclaim their participation in the event of discovery. Therefore, Luy's testimony completely makes sense as to why the legislators would agree to authorize Napoles and her staff to forge their signatures. As such, **even if it is assumed that the signatures were forged, it does not mean that the legislators did not**

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64 *Estrada v. Office of the Ombudsman,* supra note 35, at 865.

65 *Cambe v. Office of the Ombudsman*, supra note 22, at 584-586. Emphasis supplied.

authorize such forgery.[66] (Emphasis supplied)

And, fourth, as to the COA Report and FIO verifications, we likewise find that these evidence buttress the finding of probable cause against Estrada as they did against Revilla since we held in *Cambe:*

> The findings of the COA in its SAO Report No. 2012-2013 (COA report) also buttress the finding of probable cause against Sen.Revilla. This report presents in detail the various irregularities in the disbursement of the PDAF allocations of several legislators in the years 2007 to 2009, such as: (a) the IAs not actually implementing the purported projects, and instead, directly releasing the funds to the NGOs after deducting a "management fee," which were done at the behest of the sponsoring legislator x x x; (b) the involved NGOs did not have any track record in the implementation of government projects, provided fictitious addresses, submitted false documents, and were selected without any public bidding and complying with COA Circular No. 2007-001 and GPPB Resolution No. 12-2007; and (c) the suppliers who purportedly provided supplies to the NGOs denied ever dealing with the latter. Resultantly, the COA Report concluded that the PDAF-funded projects of Sen. Revilla were "ghost" or inexistent.
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> The findings in the COA report were further corroborated by the field verifications conducted by the Field Investigation Office - Office of the Ombudsman (FIO) to determine whether or not Sen. Revilla's PDAF was indeed utilized for its intended livelihood projects. In the course of investigation, it was revealed that the mayors and municipal agriculturists, who had reportedly received livelihood assistance kits/packages, purportedly procured through Sen. Revilla's PDAF, actually denied receiving the same and worse, were not even aware of any PDAF-funded projects intended for their benefit. Moreover, the signatures on the certificates of acceptance and delivery reports were forged, and in fact, the supposed beneficiaries listed therein were neither residents of the place where they were named as such; had jumbled surnames; deceased; or even downright fictitious. The foregoing led the FIO to similarly conclude that the purported livelihood projects were "ghost" projects, and that its proceeds amounting to ₱517,000,000.00 were never used for the same.[67]

Accordingly, as Justice Velasco's dissent put it: "x x x the Ombudsman is given wide latitude, in the exercise of its investigatory and prosecutory powers, to prosecute offenses involving public officials and employees, pursuant to Sec. 15 of RA No. 6770, otherwise known as the Ombudsman Act of 1989. As such, the Ombudsman possesses the authority to determine whether probable cause exists or not in a given set of facts and circumstances that would warrant the filing of a criminal case against erring government employees."[68] Thus, we have consistently held that we will not interfere in the determination by the Ombudsman of the existence of probable cause, absent grave abuse of discretion amounting to lack or excess of jurisdiction.

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66 *Cambe v. Office of the Ombudsman*, supra note 22, at 589-590.

67 *Cambe v. Office of the Ombudsman*, supra note 22, at 598-599.

68 Concurring and Dissenting Opinion of Justice Velasco, p. 7.

The Ombudsman is empowered to determine, in the exercise of its discretion, whether probable cause exists, and to charge the person believed to have committed the crime as defined by law.[69] The Ombudsman's finding of probable cause does not touch on the issue of guilt or innocence of the accused.[70] All that the Ombudsman did was to weigh the evidence presented together with the counter-allegations of the accused and determine if there was enough reason to believe that a crime has been committed and that the accused are probably guilty thereof.[71] Even Justice Velasco's dissent stated that:

> Certainly, prosecutors are given a wide latitude of discretion in determining whether an information should be filed in court or whether the complaint shall be dismissed, and **the courts must respect the exercise of such discretion when the information filed against the person charged is valid on its face, and that no manifest error or grave abuse of discretion can be imputed to the public prosecutor. It is for this reason that Sen. Estrada's asseveration of political persecution has no leg to stand on. Before such a claim may prosper, it must be proved that the public prosecutor – the Ombudsman, in this case – employed bad faith in prosecuting the case, or that it has employed schemes that lead to no other purpose than to place Sen. Estrada in contempt and disrepute. I do not find such malevolent designs in the case at bar.**[72] (Emphasis supplied)

Thus, there is no evidence that the Ombudsman acted in capricious and whimsical exercise of judgment amounting to lack or excess of jurisdiction. No manifest error or grave abuse of discretion or bad faith can be imputed to the public prosecutor, or the Ombudsman in this case. In fine, the Ombudsman's finding of probable cause prevails over petitioners' bare allegations of grave abuse of discretion. Accordingly, the Court must defer to the exercise of discretion of the Ombudsman, in the absence of actual grave abuse of discretion on the part of the Ombudsman.

WHEREFORE, we **DISMISS** the petitions for lack of merit and **AFFIRM** the finding of probable cause against all the petitioners.

SO ORDERED.

ANTONIO T. CARPIO
Senior Associate Justice

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69 *Ramiscal, Jr. v. Sandiganbayan,* 530 Phil. 773, 792 (2006).

70 *Cambe v. Office of the Ombudsman*, supra note 22, at 607; *Duque v. Ombudsman*, supra note 28.

71 *Cambe v. Office of the Ombudsman*, supra note 22, at 607; *Duque v. Ombudsman*, supra note 28.

72 Concurring and Dissenting Opinion of Justice Velasco, p. 11.

WE CONCUR:

Please see Dissenting Opinion
PRESBITERO J. VELASCO, JR.
Associate Justice

Please see concurring and dissenting opinion
DIOSDADO M. PERALTA
Associate Justice

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

I join the dissenting opinion of J. Velasco
LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

See separate concurring opinion
MARVIC M.V.F. LEONEN
Associate Justice

(no part) prior OSG action
FRANCIS H. JARDELEZA
Associate Justice

Prior CHED & SOJ action
(no part)
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

I certify that J. Martires took no part due to his appointment on July 31, 2018 as Ombudsman.
(no part)
SAMUEL R. MARTIRES
Associate Justice

(Please see Concurring Opinion)
NOEL GIMENEZ TIJAM
Associate Justice

I join the concurring & dissenting opinion of J. Peralta

ANDRES B. REYES, JR.
Associate Justice

No participation

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.

ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. 296,
The Judiciary Act of 1948, as amended)

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EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court