

RUFINO V. NUÑEZ, PETITIONER, VS. SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.*G.R. Nos. L-50581-50617. January 30, 1982*

Ponente: FERNANDO, C.J.

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In categorical and explicit language, the Constitution provided for but did not create a special Court, the Sandiganbayan, with "jurisdiction over criminal and civil cases involving graft and corrupt practices and such other offenses committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office as may be determined by law."^[1] It came into existence with the issuance in 1978 of a Presidential Decree.^[2] Even under the 1935 Constitution, to be precise, in 1955, an anti-graft statute was passed,^[3] to be supplemented five years later by another act,^[4] the validity of which was upheld in *Morfe v. Mutuc*,^[5] a 1968 decision. As set forth in the opinion of the Court: "Nothing can be clearer therefore than that the Anti-Graft Act of 1960 like the earlier statute was precisely aimed at curtailing and minimizing the opportunities for official corruption and maintaining a standard of honesty in the public service. It is intended to further promote morality in public administration. A public office must indeed be a public trust. Nobody can cavil at its objective; the goal to be pursued commands the assent of all. The conditions then prevailing called for norms of such character. The times demanded such a remedial device."^[6] It should occasion no surprise, therefore, why the 1971 Constitutional Convention, with full awareness of the continuing need to combat the evils of graft and corruption, included the above-cited provision.

Petitioner in this certiorari and prohibition proceeding assails the validity of the Presidential Decree creating the Sandiganbayan. He was accused before such respondent Court of estafa through falsification of public and commercial documents committed in connivance with his other co-accused, all public officials, in several cases.^[7] The informations were filed respectively on February 21 and March 26, 1979. Thereafter, on May 15 of that year, upon being arraigned, he filed a motion to quash on constitutional and jurisdictional grounds.^[8] A week later, respondent Court denied such motion.^[9] There was a motion for reconsideration filed the next day; it met the same fate^[10]. Hence this petition for certiorari and prohibition. It is the claim of petitioner that Presidential Decree No. 1486, as amended, creating the respondent Court is violative of the due process,^[11] equal protection,^[12] and ex post facto^[13] clauses of the Constitution.^[14]

The overriding concern, made manifest in the Constitution itself, to cope more effectively with dishonesty and abuse of trust in the public service whether committed by government officials or not, with the essential cooperation of the private citizens with whom they deal, cannot of itself justify any departure from or disregard of constitutional rights. That is beyond question. With due recognition, however, of the vigor and persistence of counsel of petitioner^[15] in his pleadings buttressed by scholarly and diligent research, the Court, equally aided in the study of the issues raised by the exhaustive memorandum of the Solicitor General,^[16] is of the view that the invalidity of Presidential Decree No. 1486 as amended, creating respondent Court has not been demonstrated.

The petition then cannot be granted. The unconstitutionality of such Decree cannot be adjudged.

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It is to be made clear that the power of the then President and Prime Minister Ferdinand E. Marcos to create the Sandiganbayan in 1978 is not challenged in this proceeding. While such competence under the 1973 Constitution contemplated that such an act should come from the National Assembly, the 1976 Amendments made clear that he as incumbent President "shall continue to exercise legislative powers until martial law shall have been lifted." [17] Thus, there is an affirmation of the ruling of this Court in *Aquino Jr. v. Commission on Elections* [18] decided in 1975. In the language of the ponente, Justice Makasiar, it dissipated "all doubts as to the legality of such law-making authority by the President during the period of Martial Law, * * *." [19] As the opinion went on to state: "It is not a grant of authority to legislate, but a recognition of such power as already existing in favor of the incumbent President during the period of Martial Law." [20]

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Petitioner in his memorandum invokes the guarantee of equal protection in seeking to nullify Presidential Decree No. 1486. What does it signify? To quote from *J. M. Tuason & Co. v. Land Tenure Administration*: [21] "The ideal situation is for the law's benefits to be available to all, that none be placed outside the sphere of its coverage. Only thus could chance and favor be excluded and the affairs of men governed by that serene and impartial uniformity, which is of the very essence of the idea of law." [22] There is recognition, however, in the opinion that what in fact exists "cannot approximate the ideal. Nor is the law susceptible to the reproach that it does not take into account the realities of the situation. The constitutional guarantee then is not to be given a meaning that disregards what is, what does in fact exist. To assure that the general welfare be promoted, which is the end of law, a regulatory measure may cut into the rights to liberty and property. Those adversely affected may under such circumstances invoke the equal protection clause only if they can show that the governmental act assailed, far from being inspired by the attainment of the common weal was prompted by the spirit of hostility, or at the very least, discrimination that finds no support in reason." [23] Classification is thus not ruled out, it being sufficient to quote from the *Tuason* decision anew "that the laws operate equally and uniformly on all persons under similar circumstances or that all persons must be treated in the same manner, the conditions not being different, both in the privileges conferred and the liabilities imposed. Favoritism and undue preference cannot be allowed. For the principle is that equal protection and security shall be given to every person under circumstances which, if not identical, are analogous. If law be looked upon in terms of burden or charges, those that fall within a class should be treated in the same fashion, whatever restrictions cast on some in the group equally binding on the rest." [24]

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The premise underlying petitioner's contention on this point is set forth in his memorandum thus: "1. The Sandiganbayan proceedings violates petitioner's right to equal protection, because - appeal as a matter of right became minimized into a mere matter of discretion; - appeal likewise was shrunk and limited only to questions of law, excluding a review of the facts and trial evidence; and - there is only one chance to appeal conviction, by certiorari to the Supreme Court, instead of the traditional two chances; while all other estafa indictees are entitled to appeal as a matter of right covering both law and facts and to two appellate courts, i.e., first to the Court of Appeals and thereafter to the Supreme Court." [25] That is hardly convincing, considering that the classification satisfies the test announced by this Court through Justice Laurel in *People v. Vera* [26] requiring that it "must be based on substantial distinctions which make real differences; it must be germane to the purposes of the law; it must not be limited to existing conditions only, and must apply equally to each member of the class." [27] To repeat, the Constitution specifically makes mention of the creation of a special court, the Sandiganbayan, precisely in response to a problem, the urgency of which cannot be denied, namely, dishonesty in the public

service. It follows that those who may thereafter be tried by such court ought to have been aware as far back as January 17, 1973, when the present Constitution came into force, that a different procedure for the accused therein, whether a private citizen as petitioner is or a public official, is not necessarily offensive to the equal protection clause of the Constitution. Petitioner, moreover, cannot be unaware of the ruling of this Court in *Co Chiong v. Cuaderno*,^[28] a 1949 decision, that the general guarantees of the Bill of Rights, included among which are the due process of law and equal protection clauses must "give way to [a] specific provision," in that decision, one reserving to "Filipino citizens of the operation of public services or utilities."^[29] The scope of such a principle is not to be constricted. It is certainly broad enough to cover the instant situation.

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The contention that the challenged Presidential Decree is contrary to the *ex post facto* provision of the Constitution is similarly premised on the allegation that "petitioner's right of appeal is being diluted or eroded efficacy wise * * *."^[30] A more searching scrutiny of its rationale would demonstrate the lack of persuasiveness of such an argument. The *Kay Villegas Kami*^[31] decision, promulgated in 1970, cited by petitioner, supplies the most recent and binding pronouncement on the matter. To quote from the ponencia of Justice Makasiar: "An *ex post facto* law is one which: (1) makes criminal an act done before the passage of the law and which was innocent when done, and punishes such an act; (2) aggravates a crime, or makes it greater than it was, when committed; (3) changes the punishment and inflicts a greater punishment than the law annexed to the crime when committed; (4) alters the legal rules of evidences, and authorizes conviction upon less or different testimony than the law required at the time of the commission of the offense; (5) assuming to regulate civil rights and remedies only, in effect imposes penalty or deprivation of a right for something which when done was lawful; and (6) deprives a person accused of a crime of some lawful protection to which he has become entitled, such as the protection of a former conviction or acquittal, or a proclamation of amnesty."^[32] Even the most careful scrutiny of the above definition fails to sustain the claim of petitioner. The "lawful protection" to which an accused "has become entitled" is qualified, not given a broad scope. It hardly can be argued that the mode of procedure provided for in the statutory right to appeal is therein embraced. This is hardly a controversial matter. This Court has spoken in no uncertain terms. In *People vs. Vilo*,^[33] a 1949 decision, speaking through the then Justice, later Chief Justice Paras, it made clear that seven of the nine Justices then composing this Court, excepting only the ponente himself and the late Justice Perfecto, were of the opinion that Section 9 of the Judiciary Act of 1948, doing away with the requirement of unanimity under Article 47 of the Revised Penal Code with eight votes sufficing for the imposition of the death sentence, does not suffer from any constitutional infirmity. For them its applicability to crimes committed before its enactment would not make the law *ex post facto*.

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It may not be amiss to pursue the subject further. The first authoritative exposition of what is prohibited by the *ex post facto* clause is found in *Mekin v. Wolfe*,^[34] decided in 1903. Thus: "An *ex post facto* law has been defined as one - (a) Which makes an action done before the passing of the law and which was innocent when done criminal, and punishes such action; or (b) Which aggravates a crime or makes it greater than it was when committed; or (c) Which changes the punishment and inflicts a greater punishment than the law annexed to the crime when it was committed; or (d) Which alters the legal rules of evidence and receives less or different testimony than the law required at the time of the commission of the offense in order to convict the defendant."^[35] There is relevance to the next paragraph of the opinion of Justice Cooper: "The case clearly does not come within this definition, nor can it be seen in what way the act in question alters the situation of petitioner to his disadvantage. It gives him, as well as the Government, the benefit of the appeal, and is intended as furnishing the means for the correction of errors. The possibility that the judge of the Court of First Instance may

commit error in his favor and wrongfully discharge him appears to be the only foundation for the claim. A person can have no vested right in such a possibility." [36]

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Mekin v. Wolfe is traceable to *Calder v. Bull*, [37] a 1798 decision of the United States Supreme Court. Even the very language as to what falls within the category of this provision is well-nigh identical. Thus: "I will state what laws I consider ex post facto laws, within the words and the intent of the prohibition. 1st. Every law that makes an action done before the passing of the law; and which was innocent when done, criminal; and punishes such action. 2d. Every law that aggravates a crime, or makes it greater than it was, when committed. 3d. Every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed. 4th Every law that alters the legal rules of evidence, and receives less, or different, testimony, than the law required at the time of the commission of the offense, in order to convict the offender. All these, and similar laws, are manifestly unjust and oppressive." [38] The opinion of Justice Chase who spoke for the United States Supreme Court went on to state: "The expressions 'ex post facto laws,' are technical, they had been in use long before the Revolution, and had acquired an appropriate meaning, by legislators, lawyers, and authors. The celebrated and judicious Sir William Blackstone in his commentaries, considers an ex post facto law precisely in the same light I have done. His opinion is confirmed by his successor, Mr. Wooddeson; and by the author of the *Federalist*, who I esteem superior to both, for his extensive and accurate knowledge of the true principles of government." [39]

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Petitioner relies on *Thompson v. Utah*. [40] As it was decided by the American Supreme Court in April of 1898 – the very same year when the Treaty of Paris, by virtue of which, American sovereignty over the Philippines was acquired – it is understandable why he did so. Certainly, the exhaustive opinion of the first Justice Harlan, as was mentioned by an author, has a cutting edge, but it cuts both ways. It also renders clear why the obstacles to declaring unconstitutional the challenged Presidential Decree are well-nigh insuperable. After a review of the previous pronouncements of the American Supreme Court on this subject, Justice Harlan made this realistic appraisal: "The difficulty is not so much as to the soundness of the general rule that an accused has no vested right in particular modes of procedure as in determining whether particular statutes by their operation take from an accused any right that was regarded, at the time of the adoption of the constitution, as vital for the protection of life and liberty, and which he enjoyed at the time of the commission of the offense charged against him." [41] An 1894 decision of the American Supreme Court, *Duncan v. Missouri* [42] was also cited by petitioner. The opinion of the then Chief Justice Fuller, speaking for the Court, is to the same effect. It was categorically stated that "the prescribing of different modes of procedure and the abolition of courts and the creation of new ones, leaving untouched all the substantial protections with which the existing laws surrounds the person accused of crime, are not considered within the constitutional inhibition." [43]

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Even from the standpoint then of the American decisions relied upon, it cannot be successfully argued that there is a dilution of the right to appeal. Admittedly under Presidential Decree No. 1486, there is no recourse to the Court of Appeals, the review coming from this Court. The test as to whether the ex post facto clause is disregarded, in the language of Justice Harlan in the just-cited *Thompson v. Utah* decision taking "from an accused any right that was regarded, at the time of the adoption of the constitution as vital for the protection of life and liberty, and which he enjoyed at the time of the commission of the offense charged against him." The crucial words are "vital for the protection of life and liberty" of a defendant in a criminal case. Would the omission of the Court of Appeals as an intermediate tribunal deprive petitioner of a right vital to the protection of his liberty? The answer

must be in the negative. In the first place, his innocence or guilt is passed upon by the three-judge court of a division of respondent Court. Moreover, a unanimous vote is required, failing which "the Presiding Justice shall designate two other justices from among the members of the Court to sit temporarily with them, forming a division of five justices, and the concurrence of a majority of such division shall be necessary for rendering judgment." [44] Then if convicted, this Court has the duty if he seeks a review to see whether any error of law was committed to justify a reversal of the judgment. Petitioner makes much, perhaps excessively so as is the wont of advocates, of the fact that there is no review of the facts. What cannot be too sufficiently stressed is that this Court in determining whether or not to give due course to the petition for review must be convinced that the constitutional presumption of innocence [45] has been overcome. In that sense, it cannot be said that on the appellate level there is no way of scrutinizing whether the quantum of evidence required for a finding of guilt has been satisfied. The standard as to when there is proof of such weight to justify a conviction is set forth in *People v. Dramayo*. [46] Thus: "Accusation is not, according to the fundamental law, as synonymous with guilt. It is incumbent on the prosecution to demonstrate that culpability lies. Appellants were not even called upon then to offer evidence on their behalf. Their freedom is forfeit only if the requisite quantum of proof necessary for conviction be in existence. Their guilt must be shown beyond reasonable doubt. To such a standard, this Court has always been committed. There is need, therefore, for the most careful scrutiny of the testimony of the state, both oral and documentary, independently of whatever defense, is offered by the accused. Only if the judge below and thereafter the appellate tribunal could arrive at a conclusion that the crime had been committed precisely by the person on trial under such an exacting test should the sentence be one of conviction. It is thus required that every circumstance favoring his innocence be duly taken into account. The proof against him must survive the test of reason; the strongest suspicion must not be permitted to sway judgment. The conscience must be satisfied that on the defendant could be laid the responsibility for the offense charged; that not only did he perpetrate the act but that it amounted to a crime. What is required then is moral certainty." [47] This Court has repeatedly reversed convictions on a showing that this fundamental and basic right to be presumed innocent has been disregarded. [48] It does seem far-fetched and highly unrealistic to conclude that the omission of the Court of Appeals as a reviewing authority results in the loss "vital protection" of liberty.

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The argument based on denial of due process has much less to recommend it. In the exhaustive forty-two page memorandum of petitioner, only four and a half pages were devoted to its discussion. There is the allegation of lack of fairness. Much is made of what is characterized as "the tenor and thrust" of the leading American Supreme Court decision, *Snyder v. Massachusetts*. [49] Again this citation cuts both ways. With his usual felicitous choice of words, Justice Cardozo, who penned the opinion, emphasized: "The law, as we have seen, is sedulous in maintaining for a defendant charged with crime whatever forms of procedure are of the essence of an opportunity to defend. Privileges so fundamental as to be inherent in every concept of a fair trial that could be acceptable to the thought of reasonable men will be kept inviolate and inviolable, however crushing may be the pressure of incriminating proof. But justice, though due to the accused, is due to the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true." [50] What is required for compliance with the due process mandate in criminal proceedings? In *Arnault v. Pecson* [51] this Court with Justice Tuason as ponente, succinctly identified it with "a fair and impartial trial and reasonable opportunity for the preparation of defense." [52] In criminal proceedings then, due process is satisfied if the accused is "informed as to why he is proceeded against and what charge he has to meet, with his conviction being made to rest on evidence that is not tainted with falsity after full opportunity for him to rebut it and the sentence being imposed in accordance with a valid law. It is assumed, of course, that the court that rendered the decision is one of competent jurisdiction." [53] The above formulation is a reiteration of what was decided by the American Supreme Court in a

case of Philippine origin, *Ong Chang Wing v. United States*[54] decided during the period of American rule, 1910 to be precise. Thus: "This court has had frequent occasion to consider the requirements of due process of law as applied to criminal procedure, and, generally speaking, it may be said that if an accused has been heard in a court of competent jurisdiction, and proceeded against under the orderly processes of law, and only punished after inquiry and investigation, upon notice to him, with an opportunity to be heard, and a judgment awarded within the authority of a constitutional law, then he has had due process of law." [55]

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This Court holds that petitioner has been unable to make a case calling for a declaration of unconstitutionality of Presidential Decree No. 1486 as amended by Presidential Decree No. 1606. The decision does not go as far as passing on any question not affecting the right of petitioner to a trial with all the safeguards of the Constitution. It is true that other Sections of the Decree could have been worded to avoid any constitutional objection. As of now, however, no ruling is called for. The view is given expression in the concurring and dissenting opinion of Justice Makasiar that in such a case to save the Decree from the dire fate of invalidity, they must be construed in such a way as to preclude any possible erosion on the powers vested in this Court by the Constitution. That is a proposition too plain to be contested. It commends itself for approval. Nor should there be any doubt either that a review by certiorari of a decision of conviction by the Sandiganbayan calls for strict observance of the constitutional presumption of innocence.

WHEREFORE, the petition is dismissed. No costs. Aquino, Guerrero, Abad Santos, Melencio-Herrera, Plana, and Escolin, JJ., concur.

Teehankee, Fernandez, and De Castro, JJ., concurs with J. Makasiar's separate concurring and dissenting opinion. Barredo, J., concurs and adds a separate opinion.

Makasiar, J., submits a separate concurring and dissenting opinion.

Erica and Concepcion, Jr., JJ., did not take part.

[1] Article XIII, Section 5 of the Constitution.

[2] Presidential Decree No. 1486 as amended by Presidential Decree No. 1606, both issued in 1978.

[3] Republic Act No. 1379.

[4] Republic Act No. 3019 (1960).

[5] L-20387, January 31, 1968, 22 SCRA 424.

[6] *Ibid*, 435.

[7] Petition, par. 2, enumerating such criminal cases as 027, 029, 054, 055, 059, 062-067, 111, 119, 120, 124-126, 130, 131, 139, 141, 142, 145, 153, 154, 157, 160, 161, 163-165, 167, 168, 171, 175, 179 and 186. Cf. Section 4, Presidential Decree No. 1606.

[8] *Ibid*, par 3.

[9] *Ibid*, par. 4.

[10] *Ibid*, par. 5.

[11] Article IV, Section 1 of the Constitution provides: "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."

[12] Ibid.

[13] Ibid, Sec. 12.

[14] Memorandum of Petitioner, 1.

[15] Attorney Raymundo A. Armovit.

[16] Solicitor General Estelito Mendoza was assisted by Assistant Solicitor General Reynato Puno and Trial Attorney Patria Manalastas.

[17] 1976 Amendments, par. 5.

[18] L-40004, January 31, 1975, 62 SCRA 275.

[19] Ibid, 298.

[20] Ibid, 298-299.

[21] L-21064, February 18, 1970, 31 SCRA 413.

[22] Ibid, 434-435.

[23] Ibid, 435.

[24] Ibid.

[25] Memorandum of Petitioner, 7-8.

[26] 65 Phil. 56 (1937).

[27] Ibid, 126.

[28] 83 Phil. 242.

[29] Ibid, 251.

[30] Memorandum of Petitioner, 7-9, 36.

[31] In re: Kay Villegas Kami, Inc., L-32485, October 22, 1970, 35 SCRA 429.

[32] Ibid, 431.

[33] 82 Phil. 524. It is worthy of mention that the then Justice Paras was the sole member of the Court relying on the 1908 decision, *United States v. Gomez*, 12 Phil. 279, cited by petitioner.

[34] 2 Phil. 74.

[35] Ibid, 77-78.

[36] Ibid, 78.

[37] 3 Dallas 386.

[38] Ibid, 390-391.

[39] Ibid, 391.

[40] 170 US 343 (1898).

[41] Ibid, 352.

[42] 152 US 377.

[43] Ibid, 382.

[44] Section 5, Presidential Decree No. 1606.

[45] According to Article IV, Section 19 insofar as pertinent: "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, * * *."

[46] L-21325, October 29, 1971, 42 SCRA 59.

[47] Ibid, 64.

[48] To speak of 1981 decisions alone, the judgment of acquittal was handed down in the following cases: People v. Novales, L-47400, Jan. 19, 1981, 102 SCRA 86; People v. Mendoza, L-48275, Feb. 24, 1981, 103 SCRA 122; People v. Duero, L-52016, May 13, 1981, 104 SCRA 379; People v. Tabayoyong, L-31084, May 29, 1981, 104 SCRA 724; Perez v. People, L-43548, June 29, 1981; People v. Anggot, L-38101-02, June 29, 1981; People v. Utrella, L-38172, July 15, 1981; People v. Francisco, L-43789, July 15, 1981; People v. Cuison, L-51363, July 25, 1981; People v. Pisalvo, L-32886, Oct. 23, 1981; People v. Verges, L-36436, Oct. 23, 1981; People v. Tapao, L-41704, Oct. 23, 1981; People v. Delmendo, L-32146, Nov. 23, 1981; People v. Orpilla, L-30621, Dec. 14, 1981; People v. Marquez, L-31403, Dec. 14, 1981; People v. Rosales, L-31694, Dec. 14, 1981; People v. Felipe, L-54335, Dec. 14, 1981. In People v. Corpus, L-36234, Feb. 10, 1981, 102 SCRA 674, of the 10 accused, three were acquitted.

[49] 291 US 97 (1934).

[50] Ibid, 122.

[51] 87 Phil. 418 (1950).

[52] Ibid, 422.

[53] Cf. Vera v. People, L-31218, Feb. 18, 1970, 31 SCRA 711, 717.

[54] 218 US 272.

[55] Ibid, 279-280.

CONCURRING OPINION**BARREDO, J.:**

I concur.

I have read with great care the concurring and dissenting opinion of our learned colleague, Mr. Justice Makasiar, and I fully agree with the view that P.D. 1606 has unduly and improperly placed the Sandiganbayan on a higher plane than the Supreme Court insofar as the matter of automatic releases of appropriations is concerned, which

definitely should not be the case. I must say emphatically that if such a provision was conceived to guarantee the Sandigan's independence, it is certainly unwise to assume that the Supreme Court's independence is unworthy of similar protection. Strong as my feeling in this respect is, I am aware that my objection to the provision in question is not ground enough to render the same unconstitutional. In expressing myself as I do, I am just adding my little voice of protest in order that hopefully those concerned may hear it loud and clear and thus give the Supreme Court its deserved superior status over the Sandiganbayan.

I regret, however, I cannot agree with the constitutional strictures expressed by Justice Makasiar. I am more inclined to agree with our honored and distinguished Chief Justice, whose learning in constitutional law is duly respected here and abroad, that the arguments against the constitutionality of P.D. 1606 advanced by its critics lack sufficient persuasivity.

It should not be surprising nor unusual that the composition of and procedure in the Sandiganbayan should be designed and allowed to be different from the ordinary courts. Constitutionally speaking, I view the Sandiganbayan as *sui generis* in the judicial structure designed by the makers of the 1971 Constitution. To be particularly noted must be the fact that the mandate of the Constitution that the National Assembly "shall create," it is not under the Article on the Judiciary (Article X) but under the article on Accountability of Public Officers. More, the Constitution ordains it to be "a special court." To my mind, such "special" character endowed to the Sandiganbayan carries with it certain concomitants which compel that it should be treated differently from the ordinary courts. Of course, as a court it exercises judicial power, and so under Section 1 of Article X, it must be subordinate to the Supreme Court. And in this respect, I agree with Justice Makasiar that the rule-making power granted to it by P.D. 1606 must of constitutional necessity be understood as signifying that any rule it may promulgate cannot have force and effect unless approved by the Supreme Court, as if they have originated therefrom. Section 5(5) of the Constitution empowers the Supreme Court to promulgate rules concerning pleading, practice and procedure in all courts, and the Sandiganbayan is one of those courts, "special" as it may be.

I am of the considered opinion, nonetheless, that the special composition of the Sandiganbayan and the special procedure of appeal provided for it in P.D. 1606 does not infringe the constitutional injunction against *ex-post facto* laws. The creation of a special court to take cognizance of, try and decide crimes already committed is not a constitutional abnormality. Otherwise, there would be chaos in the prosecution of offenses which in the public interest must be dealt with more expeditiously in order to curtail any fast surging tide of evil-doing against the social order.

Since the Sandiganbayan is a collegiate trial court, it is obviously improper to make appeals therefrom appealable to another collegiate court with the same number of judges composing it. We must bear in mind that the Sandiganbayan's primary and primordial reason for being is to insure the people's faith and confidence in our public officers more than it used to be. We have only to recall that the activism and restlessness in the later '60's and the early '70's particularly of the youth who are always concerned with the future of the country were caused by their conviction that graft and corruption was already intolerably pervasive in the government and naturally they demanded and expected effective and faster and more expeditious remedies. Thus, the Tanodbayan or Ombudsman was conceived and as its necessary counterpart, the Sandiganbayan.

It must be against this backdrop of recent historical events that I feel We must view the Sandiganbayan. At this point, I must emphasize that P.D. 1606 is a legislative measure, and the rule-making power of the Supreme Court is not insulated by the Charter against legislature's attribute of alteration, amendment or repeal. Indeed, it is the Supreme Court that cannot modify or amend, much less repeal, a rule of court originated by the legislative power.

Accordingly, the method of appeal provided by P.D. 1606 from decisions of the Sandiganbayan cannot be unconstitutional. If a new or special court can be legitimately created to try offenses already committed, like the People's Court of Collaboration times, I cannot see how the new procedure of appeal from such courts can be faulted as violative of the Charter.

True, in criminal cases, the Constitution mandates that the guilt of the accused must be proved beyond reasonable doubt. But once the Sandiganbayan makes such a pronouncement, the constitutional requirement is complied with. That the Supreme Court may review the decisions of the Sandiganbayan only on questions of law does not, in my opinion, alter the fact that the conviction of the accused from the factual point of view was beyond reasonable doubt, as long as the evidence relied upon by the Sandiganbayan in arriving at such conclusion is substantial.

Since the creation of the Court of Appeals, the Supreme Court's power of review over decisions of the former even in criminal cases has been limited statutorily or by the rules only to legal questions. We have never been supposed to exercise the power to reweigh the evidence but only to determine its substantiality. If that was proper and legal, and no one has yet been heard to say the contrary, why should We wonder about the method of review of the decisions of the Sandiganbayan under P.D. 1606? With all due respect to the observation of Justice Makasiar, I believe that the accused has a better guarantee of a real and full consideration of the evidence and the determination of the facts where there are three judges actually seeing and observing the demeanor and conduct of the witnesses. It is Our constant jurisprudence that the appellate courts should rely on the evaluation of the evidence by the trial judges, except in cases where pivotal points are shown to have been overlooked by them. With more reason should this rule apply to the review of the decision of a collegiate trial court. Moreover, when the Court of Appeals passes on an appeal, in a criminal case, it has only the records to rely on, and yet the Supreme Court has no power to reverse its findings of fact, with only the usual exceptions already known to all lawyers and judges. I strongly believe that the review of the decisions of the Sandiganbayan, whose three justices have actually seen and observed the witnesses as provided for in P.D. 1606 is a more iron-clad guarantee that no person accused before such special court will ever be finally convicted without his guilt appearing beyond reasonable doubt as mandated by the Constitution.

CONCURRING AND DISSENTING OPINION'

MAKASIAR, J.:

Some provisions in the Sandiganbayan violate not only the constitutional guarantees of due process as well as equal protection of the law and against the enactment of ex post facto laws, but also the constitutional provisions on the power of supervision of the Supreme Court over inferior courts as well as its rule-making authority.

All the relevant cases on due process, equal protection of the law and ex post facto laws, have been cited by the petitioner, the Solicitor General, and the majority opinion; hence, there is no need to repeat them here.

It should be noted that petitioner does not challenge the constitutionality of P.D. No. 1606 on the ground that it impairs the rule-making authority of the Supreme Court and its power of supervision over inferior courts.

It should likewise be emphasized that in the opinion of the Writer, the provisions of P.D. No. 1606 which he does not impugn, remain valid and complete as a statute and therefore can be given effect minus the challenged portions, which are separable from the valid provisions.

The basic caveat for the embattled citizen is *obsta principiis* - resist from the very beginning any attempt to assault his constitutional liberties.

I

PARAGRAPH 3, SECTION 7 OF P.D. NO. 1606 DENIES PETITIONER DUE PROCESS AND EQUAL PROTECTION OF THE LAW.

1. Persons who are charged with estafa or malversation of funds not belonging to the government or any of its instrumentalities or agencies are guaranteed the right to appeal to two appellate courts -- first, to the Court of Appeals, and thereafter to the Supreme Court. Estafa and malversation of private funds are on the same category as graft and corruption committed by public officers, who, under the decree creating the Sandiganbayan, are only allowed one appeal -- to the Supreme Court (par. 3, Sec. 7, P.D. No. 1606). The fact that the Sandiganbayan is a collegiate trial court does not generate any substantial distinction to validate this invidious discrimination. Three judges sitting on the same case does not ensure a quality of justice better than that meted out by a trial court presided by one judge. The ultimate decisive factors are the intellectual competence, industry and integrity of the trial judge. But a review by two appellate tribunals of the same case certainly ensures better justice to the accused and to the people.

It should be stressed that the Constitution merely authorizes the law-making authority to create the Sandiganbayan with a specific limited jurisdiction only over graft and corruption committed by officers and employees of the government, government instrumentalities and government-owned and -controlled corporations. The Constitution does not authorize the lawmaker to limit the right of appeal of the accused convicted by the Sandiganbayan to only the Supreme Court. The Bill of Rights remains as restrictions on the law-maker in creating the Sandiganbayan pursuant to the constitutional directive.

It is also clear that paragraph 3, Section 7 of P.D. No. 1606 trenches upon the due process clause of the Constitution, because the right to appeal to the Court of Appeals and thereafter to the Supreme Court was already secured under Sections 17 and 29 of the Judiciary Act of 1948, otherwise known as R.A. No. 296, as amended, and therefore also already part of procedural due process to which the petitioner was entitled at the time of the alleged commission of the crime charged against him (*Marcos vs. Cruz*, 68 Phil. 96, 104 1939; *People vs. Moreno*, 77 Phil. 548, 555; *People vs. Casiano*, 1 SCRA 478 1961; *People vs. Sierra*, 46 SCRA 717; *Fernando*, Phil. Constitution, 1974 ed., pp. 674-675). This is also reiterated in Our discussion hereunder concerning the violation of the constitutional prohibition against the passage of *ex post facto* laws.

2. Then again, paragraph 3 of Section 7 of P.D. No. 1606, by providing that the decisions of the Sandiganbayan can only be reviewed by the Supreme Court through certiorari, likewise limits the reviewing power of the Supreme Court only to question of jurisdiction or grave abuse of discretion, and not questions of fact nor findings or conclusions of the trial court. In other criminal cases involving offenses not as serious as graft and corruption, all questions of fact and of law are reviewed, first by the Court of Appeals, and then by the Supreme Court. To repeat, there is greater guarantee of justice in criminal cases when the trial court's judgment is subject to review by two appellate tribunals, which can appraise the evidence and the law with greater objectivity, detachment and impartiality unaffected as they are by views and prejudices that may be engendered during the trial.

3. Limiting the power of review by the Supreme Court of convictions by the Sandiganbayan only to issues of jurisdiction or grave abuse of discretion, likewise violates the constitutional presumption of innocence of the accused, which presumption can only be overcome by proof beyond reasonable doubt (Sec. 19, Art. IV, 1973 Constitution).

Even if in certiorari proceedings, the Supreme Court, to determine whether the trial court gravely abused its discretion, can inquire into whether the judgment of the Sandiganbayan is supported by substantial evidence,

the presumption of innocence is still violated; because proof beyond reasonable doubt cannot be equated with substantial evidence. Because the Supreme Court under P.D. No. 1606 is precluded from reviewing questions of fact and the evidence submitted before the Sandiganbayan, the Supreme Court is thereby deprived of the constitutional power to determine whether the guilt of the accused has been established by proof beyond reasonable doubt - by proof generating moral certainty as to his culpability - and therefore subverts the constitutional presumption of innocence in his favor which is enjoyed by all other defendants in other criminal cases, including defendants accused of only light felonies, which are less serious than graft and corruption.

4. Furthermore, the Sandiganbayan is composed of a presiding Justice and 8 associate Justices, sitting in three divisions of 3 Justices each (Sec. 3, P.D. No. 1606). Under Section 5 thereof, the unanimous vote of three Justices in a division shall be necessary for the pronouncement of the judgment. In the event that the three Justices do not reach a unanimous vote, the Presiding Justice shall designate two other Justices from among the members of the Court to sit temporarily with them, forming a division of five Justices, and the concurrence of the majority of such division shall be necessary for rendering judgment.

At present, there are only 6 members of the Sandiganbayan or two divisions actually operating. Consequently, when a member of the Division dissents, two other members may be designated by the Presiding Justice to sit temporarily with the Division to constitute a special division of five members. The fact that there are only 6 members now composing the Sandiganbayan limits the choice of the Presiding Justice to only three, instead of 6 members from whom to select the two other Justices to compose a special division of five in case a member of the division dissents. This situation patently diminishes to an appreciable degree the chances of an accused for an acquittal. Applied to the petitioner, Section 5 of P.D. No. 1606 denies him the equal protection of the law as against those who will be prosecuted when three more members of the Sandiganbayan will be appointed to complete its membership of nine.

P.D. No. 1606 therefore denies the accused advantages and privileges accorded to other defendants indicted before other trial courts.

5. Section 1 of P.D. No. 1606 further displays such arbitrary classification; because it places expressly the Sandiganbayan on "the same level as the Court of Appeals." As heretofore stated, the Sandiganbayan is a collegiate trial court and not an appellate court; its jurisdiction is purely limited to criminal and civil cases involving graft and corruption as well as violation of the prohibited drug law committed by public officers and employees of the government, its instrumentalities and government-owned or controlled corporations. The Court of Appeals is an appellate tribunal exercising appellate jurisdiction over all cases - criminal cases, civil cases, special civil actions, special proceedings, and administrative cases - appealable from the trial courts or quasi-judicial bodies. The disparity between the Court of Appeals and the Sandiganbayan is too patent to require extended demonstration.

6. Even the Supreme Court is not spared from such odious discrimination as it is being downgraded by Section 14 of P.D. No. 1606, which effectively makes the Sandiganbayan superior to the Supreme Court; because said Section 14 expressly provides that "the appropriation for the Sandiganbayan shall be automatically released in accordance with the schedule submitted by the Sandiganbayan" (underlining supplied). There is no such provision in any law or in the annual appropriations act in favor of the Supreme Court. Under the 1982 Appropriations Act, the funds for the Supreme Court and the entire Judiciary can only be released by the Budget Ministry upon request therefor by the Supreme Court. Sometimes compliance with such request is hampered by bureaucratic procedures. Such discrimination against the Supreme Court the highest tribunal of the land and the only other Branch of our modified parliamentary-presidential government - the first Branch being constituted by the merger or union of the Executive and the Batasang Pambansa - emphasizes the peril to the independence of the Judiciary, whose operations can be jeopardized and the administration of justice consequently obstructed or impeded by the delay or refusal on the part of the Budget Ministry to release the needed funds for the operation of the courts.

II

P.D. NO. 1606 VIOLATES THE GUARANTEE AGAINST EX POST FACTO LAWS

1. WE ruled in *Kay Villegas Kami* (Oct. 22, 1970, 35 SCRA 429) that an ex post facto law is one which alters the rules of evidence and authorizes conviction upon less testimony than the law required at the time the crime was committed, or deprives a person accused of a crime of some lawful protection to which he has become entitled. The indictment against herein petitioner accuses him of graft and corruption committed "from July 20, 1977 up to and including January 12, 1978" (Annex A, p. 24, rec.), long before the creation of the Sandiganbayan on December 10, 1978 by P.D. No. 1606 which expressly repealed P.D. No. 1486, the original charter of the Sandiganbayan promulgated on June 11, 1978.

As heretofore stated, before the creation of the Sandiganbayan on December 10, 1978, all persons accused of malversation of public funds or graft and corruption and estafa were entitled to a review of a trial court's judgment of conviction by the Court of Appeals on all questions of fact and law, and thereafter by the Supreme Court also on both questions of fact and law. This right to a review of the judgment of conviction by two appellate tribunals on both factual and legal issues, was already part of the constitutional right of due process enjoyed by the petitioner in 1977. This vital right of the accused has been taken away on December 10, 1978 by P.D. No. 1606, thus placing herein petitioner under a great disadvantage for crimes he allegedly committed prior to 1978.

2. As a necessary consequence, review by certiorari impairs the constitutional presumption of innocence in favor of the accused, which requires proof beyond reasonable doubt to rebut the presumption (Sec. 19, Art. IV, 1973 Constitution). P.D. No. 1606 thus in effect reduces the quality and quantity of the evidence requisite for a criminal conviction.

The conviction of petitioner is thus facilitated or made easier by P.D. No. 1606, which was not so prior to its promulgation.

The Sandiganbayan could not be likened to the People's Court exclusively trying cases against national security whose decisions were appealable directly only to the Supreme Court (Sec. 13, CA 682); because at the time the People's Court Act or C.A. No. 682 was enacted on September 25, 1945, the Court of Appeals was no longer existing then as it was abolished on March 10, 1945 by Executive Order No. 37 issued by President Sergio Osmeña soon after the Liberation. Consequently, the People's Court Act could not provide for appeal to the Court of Appeals which was revived only on October 4, 1946 by R.A. No. 52. But even under Section 13 of the People's Court Act appeal to the Supreme Court is not limited to the review by certiorari. The Supreme Court can review all judgments of the People's Court both on questions of fact and of law.

III

SECTION 9 OF P.D. NO. 1606 CLASHES WITH THE CONSTITUTIONAL RULE-MAKING AUTHORITY OF THE SUPREME COURT

Section 9 of P.D. No. 1606 authorizing the Sandiganbayan to promulgate its own rules of procedure without requiring the approval thereof by the Supreme Court, collides with the constitutional rule-making authority of the Supreme Court to promulgate rules of court for all courts of the land (par. 5, Sec. 5 of Art. X of the New Constitution).

IV

P.D. NO. 1606 SUBVERTS THE CONSTITUTIONAL POWER OF SUPERVISION OVER INFERIOR COURTS INCLUDING THE SANDIGANBAYAN

Section 10 of P.D. No. 1606 authorizing the Sandiganbayan to "administer its own internal affairs, to adopt

such rules governing the constitution of its divisions, the allocation of cases among them and other matters relating to its business," without requiring the approval of the Supreme Court also contravenes the constitutional power of supervision over the Sandiganbayan as an inferior trial court. It cannot be disputed that the Sandiganbayan is an inferior court.

2. Likewise, Section 12 of P.D. No. 1606 vesting the Sandiganbayan with the power to select and appoint its personnel including a clerk of court and three deputy clerks of court and to remove them for cause without reserving to the Supreme Court the authority to approve or disapprove such appointments and to review such removals, aggravates the violation of the constitutional power of supervision of the Supreme Court over inferior courts.

3. Section 13 of P.D. No. 1606 also contravenes the constitutional power of the Supreme Court to supervise inferior courts; because said Section 13 requires the Sandiganbayan to submit an annual report directly to the President without coursing the same to the Supreme Court for review and approval.

That the Sandiganbayan is a specially favored court is further shown by the General Appropriations Act of 1982 which states that "all appropriations provided herein for the Sandiganbayan shall be administered solely by the Presiding Justice, x x x" (par. 1, Sp. Provisions XXV on the Judiciary, p. 538, Gen. Appropriations Act of 1982). This particular provision impairs likewise the constitutional power of administrative supervision vested in the Supreme Court over all inferior courts (Sec. 6, Art. X, 1972 Constitution). It should be emphasized that the same General Appropriations Act of 1982 expressly provides that the disposition of all the appropriations for the Court of Appeals, Court of Tax Appeals, Circuit Criminal Courts, and the Court of Agrarian Relations is expressly subject to the approval of the Chief Justice of the Supreme Court (pp. 539-541, General Appropriations Act of 1982).

The authority delegated expressly by the Constitution to the law-maker to create the Sandiganbayan does not include the authority to exempt the Sandiganbayan from the constitutional supervision of the Supreme Court.

All the challenged provisions of P.D. No. 1606, namely, Sections 7 (par. 3), 9, 10, 12 and 13 are separable from the rest of its provisions without affecting the completeness thereof, and can therefore be declared unconstitutional without necessarily nullifying the entire P.D. No. 1606. The valid provisions amply determine what is to be done, who is to do it, and how to do it -- the test for a complete and intelligible law (*Barrameda vs. Moir*, 25 Phil. 44; *Edu vs. Ericta*, Oct. 20, 1970, 35 SCRA 481, 496-497). As a matter of fact, Section 15 acknowledges such separability although under the jurisprudence it is merely a guide for and persuasive, but not necessarily binding on, the Supreme Court, which can declare an entire law unconstitutional if the challenged portions are inseparable from the valid portions.

Section 1 of P.D. No. 1606 can be considered valid by just considering as not written therein the phrase "of the same level as the Court of Appeals."

Section 5 of P.D. No. 1606 could likewise be validated by simply appointing three more members of the Sandiganbayan to complete its membership.

Paragraph 3 of Section 7 of P.D. No. 1606 can be declared unconstitutional without affecting the completeness and validity of the remaining provisions of P.D. No. 1606; because in the absence of said paragraph 3, Sections 17 and 29 of the Judiciary Act of 1948, as amended, can apply.

However, the challenged provisions, especially Sections 9, 10, 12 and 13 could remain valid provided it is understood that the powers delegated thereunder to the Sandiganbayan are deemed subject to the approval of the Supreme Court.

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