

PLACIDO L. MAPA, JR, AND J. LORENZO VERGARA, PETITIONERS, VS. SANDIGANBAYAN, RESPONDENT.*G.R. No. 100295. April 26, 1994*

Ponente: PUNO, J.

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The denial of the right to be free from further prosecution of a cooperative witness who has been granted immunity is the core issue posed in this petition. On balance are important rights in conflict: the right of an individual who has surrendered his constitutional prerogative to be silent to the State to be exempt from further prosecution; the right of the State to prosecute all persons who appear to have committed a crime and its prerogative to revoke the immunity it has granted to an accused for breach of agreement; and the extent of the jurisdiction of the Sandiganbayan as an impartial tribunal to review the grant of immunity extended by the PCGG to an accused.

First, the facts.

On January 20, 1987, petitioners Placido L. Mapa and Lorenzo Vergara, together with Gregorio Ma. Araneta III, Fernando Balatbat, Ramon Aviado, Jr., Dominador Lopez, Jr., Fernando Maramag, Jr., and Jose Crisanto, Jr., were charged with violation of the Anti-Graft and Corrupt Practices Act (R.A. 3019) as amended, docketed as Case No. 11960 in the respondent court, as follows:

"That on or about and during the period from March 1985 and March 1986, in Metro Manila, Philippines, and within the jurisdiction of the Honorable Sandiganbayan, accused Placido L. Mapa, Jr., J. Lorenzo Vergara, Ramon F. Aviado, Jr., Dominador Lopez, Jr., Fernando Maramag, Jr., Jose C. Crisanto, Jr., acting in various capacities as management officials of the Philippine National Bank (PNB), National Investment and Development Corporation (NIDC) and/or Pantranco North Express Inc. (PNEI), all government-owned and controlled corporations, as well as Dolores Potenciano of BLTB, acting in concert in the performance of their duties, in utter neglect of their fiduciary responsibilities, and with intent to gain, conspiring and confederating with one another and with accused Gregorio Ma. Araneta III, son-in-law of former President Ferdinand E. Marcos and therefore related to the deposed President by affinity within the third degree, and Fernando Balatbat, did then and there, willfully and unlawfully, with manifest partiality and evident bad faith, without proper board resolution and in disregard of better offers, promote and facilitate the sale of a major portion of the public utility assets of the Pantranco Express, Inc., for a consideration of SEVEN HUNDRED SEVENTY-FIVE MILLION (P775,000,000.00) PESOS, Philippine Currency, to the North Express Transport, Inc. (NETI), which the accused knew be a newly organized paper corporation with a purported paid-up capital of only FIVE MILLION (P5,000,000.00) PESOS and owned and controlled by accused Gregorio Ma. Araneta III, by misleading, inducing and/or unduly influencing the Board of Directors of PNB, NIDC and PNEI into approving a Memorandum of Agreement and later a Purchase Agreement with manifestly and grossly disadvantageous terms and conditions which made possible the premature delivery of said PNEI assets to NETI without any down payment, and which, inter alia, allowed NETI to operate PNEI's franchises and utilize, even before the execution of the said Purchase Agreement, not only the PNEI assets subject of the proposed sale, but also other utility buses and properties of PNEI not covered by the sale, thereby allowing NETI to

derive an income from said operation between the period of actual delivery and execution of the Purchase Agreement of the sum of EIGHTY-FIVE MILLION SIX HUNDRED EIGHTY-NINE THOUSAND, ONE HUNDRED EIGHTY (P85,689,180.00) PESOS before the actual payment of the agreed FIFTY-FIVE MILLION (P55,000,000.00) PESOS down payment, thereby giving accused Gregorio Ma. Araneta III unwarranted benefits, advantages and/or preferences and causing undue injury to the damage and prejudice of the Government in the amount of FOUR HUNDRED MILLION (P400,000,000.00) PESOS, and such other amounts as may be awarded by the Court.

CONTRARY TO LAW."

Except for petitioner Araneta, all the accused in Criminal Case No. 11960 were arraigned. Their trial started on September 20, 1988.

In the interim, the late President Ferdinand E. Marcos and Mrs. Imelda R. Marcos were charged in New York with violations of the Racketeer Influenced and Corrupt Organization Act (RICO) by transporting to the United States and concealing the investment of money through cronies and offshore organizations. To insure the conviction of the Marcoses, the prosecution solicited the testimonies of witnesses. Among these witnesses were petitioners Vergara and Mapa. Petitioner Vergara was interviewed in 1987 by PCGG lawyers Kendall and Severina Rivera and by United States Prosecutor Charles La Bella. Petitioner Mapa was interviewed on November 14, 1988 and August 11, 1989 also by Prosecutor La Bella at the behest of former Secretary of Justice Sedfrey Ordonez and former PCGG Chairman Mateo Caparas. After their interviews, petitioners were requested to testify in the said RICO cases against the former First Couple. They were promised immunity from further criminal prosecution. They agreed.

On May 16, 1990, the Philippine Government through the PCGG, and the petitioners formalized their separate agreements in writing. The agreement with petitioner Mapa provided:

"WHEREAS, REPUBLIC has requested MAPA to make himself available as a witness in the case entitled "United States of America vs. Ferdinand E. Marcos, et. al.," more particularly in the on-going trial of the case;

WHEREAS, MAPA is a defendant or respondent in several civil and criminal cases which the REPUBLIC has filed or intends to file in relation to his participation in various contracts that are alleged to have resulted in the accumulation of ill-gotten wealth by Ferdinand and Imelda Marcos in violation of Philippine laws, rules and regulations;

WHEREAS, on the basis of MAPA's express intent to make himself available as witness in the case entitled "United States of America vs. Ferdinand E. Marcos, et. al.," and in light of REPUBLIC's re-appraisal of the civil and criminal cases which it has filed or intends to file against MAPA under the terms and conditions hereinbelow set forth.

NOW, THEREFORE, for and in consideration of the foregoing premises, the parties agree as follows:

1. MAPA shall make himself available as a witness in the case entitled "United States of America vs. Ferdinand E. Marcos, et. al."
2. In consideration of the same, REPUBLIC grants MAPA immunity from investigation, prosecution and punishment for any offense with reference to which his testimony and information are given, including any offense and commission of which any information, directly or indirectly derived from such testimony or other information is used as basis thereof, except a prosecution for perjury and/or giving false testimony.
3. Likewise, in consideration of such cooperation, and in light of REPUBLIC's review of the cases both civil and criminal which it has filed or intends to file against MAPA within the purview of Executive Orders Nos. 1, 2, 14 and 14-A, the REPUBLIC shall cause the dismissal or exclusion of MAPA as party defendant or

respondent in all PCGG initiated civil cases and criminal proceeding or investigation.

4. The immunity has been granted by the REPUBLIC to MAPA on the basis of and relying on MAPA's promise of cooperation as described herein. In case of breach of his commitment to fully cooperate and make himself available as a witness in the case entitled "United States of America vs. Ferdinand E. Marcos, et. al.", the immunity herein granted shall forthwith be deemed revoked, and of no force and effect.

5. The parties agree that the grant of immunity from criminal prosecution to MAPA and his exclusion from PCGG initiated civil cases and criminal proceeding or investigations has been undertaken in the exercise of the PCGG's authority under Executive Orders Nos. 1, 2, 14 and 14-A. Accordingly, nothing herein shall be construed as an admission by MAPA of any criminal or civil liability."

The agreement with petitioner Vergara stated:

"WHEREAS, REPUBLIC has requested VERGARA to make himself available as a witness in the case entitled "United States of America vs. Ferdinand E. Marcos, et. al.," more particularly in the on-going trial of the case;

WHEREAS, Vergara is a defendant in Criminal Case No. 11960 entitled People vs. Gregorio Ma. Araneta, et. al., now pending before the Sandiganbayan, Second Division;

WHEREAS, on the basis of VERGARA's express intent to make himself available as witness in the case entitled "United States of America vs. Ferdinand E. Marcos, et. al.," and in light of REPUBLIC's re-appraisal of VERGARA's participation in Criminal Case No. 11960, the REPUBLIC approved to grant immunity to VERGARA under the terms and conditions hereinbelow set forth.

NOW, THEREFORE, for and in consideration of the foregoing premises, the parties agree as follows:

1. VERGARA shall make himself available as a witness in the case entitled "United States of America vs. Ferdinand E. Marcos, et. al."

2. In consideration of the same, REPUBLIC grants VERGARA immunity from investigation, prosecution and punishment for any offense with reference to which his testimony and information are given, including any offense and commission of which any information, directly or indirectly derived from such testimony or other information is used as basis thereof, except a prosecution for perjury and/or giving false testimony.

3. Likewise, in consideration of such cooperation, and in light of REPUBLIC's review of VERGARA's participation in Criminal Case No. 11960, the REPUBLIC shall cause the dismissal of VERGARA from Criminal Case No. 11960.

4. The immunity has been granted by the REPUBLIC to VERGARA on the basis of and relying on VERGARA's promise of cooperation as described herein. In case of breach of his commitment to fully cooperate and make himself available as a witness in the case entitled "United States of America vs. Ferdinand E. Marcos, et. al.", the immunity herein granted shall forthwith be deemed revoked, and of no force and effect.

5. The parties agree that the grant of immunity from civil and criminal prosecution to VERGARA and his exclusion from Criminal Case No. 11960 has been undertaken in the exercise of the PCGG's authority under Executive Orders Nos. 1, 2, 14 and 14-A. Accordingly, nothing herein shall be construed as an admission by VERGARA of any criminal liability."

On the same day, May 16, 1990, former PCGG Chairman Mateo Caparas wrote to petitioner Mapa the following letter:

"Dear Sir:

With reference to the agreement executed between yourself and the Republic of the Philippines on May 16,

1990, we would like to confirm that among the criminal cases which the Republic agrees to cause the dismissal of the case entitled "People of the Philippines vs. Mr. Gregorio Ma. Araneta III, et. al.," Criminal Case No. 11960 of the Sandiganbayan. We understand that in that case the prosecution is in the process of closing its evidence with the submission of its offer of documentary evidence and that it is your intention thereupon to submit a Motion to Dismiss for failure of the prosecution to prove its case. We affirm that if, because of the situation of the case, it would not be possible for the Republic to file the necessary motion to cause the dismissal thereof, then we shall upon submission of your Motion to Dismiss offer no objection to its favorable consideration by the court in relation to you.

We also affirm our understanding that we shall arrange with the U.S. prosecutors the grant of immunity in your favor no less broad or extensive than that granted to Mr. Jaime C. Laya.

Very truly yours,

(SGD.) M.A.T. Caparas"

A similar letter was sent to petitioner Vergara.

The petitioners complied with their respective undertaking. They travelled to New York to testify against the Marcoses. Their travel fare and hotel accommodations were even furnished by the PCGG. But despite their availability and willingness to testify, the US prosecutors decided not to call them to the witness stand. The result was a debacle for the US prosecutors and the PCGG. Mrs. Imelda Marcos was acquitted by the jury. Earlier, former President Marcos was delisted as an accused as he died in the course of the proceedings.

The legal struggle shifted back to the prosecution of petitioners in Criminal Case No. 11960 before the respondent court. On the basis of the immunity granted to them, petitioners filed a Joint Motion to Dismiss on October 22, 1990. Deputized PCGG prosecutors Vivencio B. Dionido and Angel J. Parazo filed a Manifestation interposing no objection to petitioners' Motion, viz:

"That herein accused Placido L. Mapa, Jr. and J. Lorenzo Vergara were granted immunity by the Presidential Commission on Good Government from criminal liability arising from cases which PCGG had or intends to file against them;

The PCGG, therefore, interposes no objection to the Joint Motion to Dismiss filed by accused Placido L. Mapa, Jr. and J. Lorenzo Vergara in Criminal Case No. 11960-PCGG by reason of the immunity aforestated."

Despite PCGG's concurrence, the respondent court denied the Joint Motion to Dismiss, by a vote of 4-1.[1] Petitioners were undaunted. On April 8, 1991, they filed a Motion for Reconsideration. This was followed on May 23, 1991, by a Supplement to the Motion for Reconsideration. The deputized prosecutors again filed a Manifestation reiterating PCGG's acquiescence to petitioners' Motion for Reconsideration. Respondent court, however, refused to budge from its prior position. It denied petitioners' motions.

Hence, this recourse where petitioners charge the respondent court with grave abuse of discretion in denying their Motion to Dismiss and Motion for Reconsideration. They pose the following issues:

"2.00.a. Does the fact that the information provided by petitioners to the Presidential Commission on Good Government (PCGG) did not refer to Criminal Case No.11960 make the immunity granted to them inapplicable to Criminal Case No. 11960?

2.00.b. Is it necessary that information furnished the PCGG, which would become basis of the grant of immunity, be submitted to the Sandiganbayan in order that it may determine whether such information is necessary to ascertain or prove the guilt or liability of a respondent, defendant or an accused in an action involving the recovery of ill-gotten wealth?

2.00.c. Does the fact that the prosecution in the RICO cases did not actually present petitioners as witnesses abrogate the immunity granted to them?

2.00.d. Was the immunity granted to petitioners too late considering that when it was granted, the prosecution in Criminal Case No. 11960 had already rested its case?"

The proceedings before us took a new wrinkle with the appointment of Atty. David Castro as Chairman of PCGG. In its Comment dated January 6, 1992, the PCGG somersaulted from its stance supporting the petitioners. Its Comment states:

"1. The Presidential Commission on Good Government has indeed granted Messrs. Placido L. Mapa, Jr., and Jesus Lorenzo Vergara immunity from investigation, prosecution and punishment for any offense for which civil and criminal cases have been or to be filed against them within the purview of Executive Orders Nos. 1, 2, 14 and 14-A but such immunity is conditional.

2. The conditions for giving such immunity is the cooperation said petitioners shall give to said Commission by way of information and testimony in cases now pending or to be filed before the Sandiganbayan against other defendants therein to prove the latter's acquisition or accumulation of property or properties in violation of existing laws.

3. Failure on the part of petitioners Placido Mapa, Jr. and Jesus Vergara to testify in favor of the government and against other defendants on matters referred to in the immediately preceding paragraph nullifies the immunity granted to both defendants (underscoring supplied)."

It reiterated its breakaway from petitioners in its Comment to the Reply of petitioners dated June 10, 1992, where it adopted the respondent Sandiganbayan's questioned Resolution and Concurring Opinions dated March 6, 1991. It further stressed that "[T]he granting of 'Immunity' from criminal liability and/or prosecution is a matter subject to the court's judicious determination and approval, after applying the test of compliance and the standard of reasonableness with the rigid requirements for such grant under Section 5 of Executive Order No. 14-A, as amended." The Solicitor General defended the stance of the PCGG and the respondent court.

We find merit in the petition.

The practice of granting government, its officials, and some accused or respondents immunity from suit, has a long history.

We begin with the Constitution which expressly grants some of these immunities. Article XVI, section 3 provides that "the State may not be sued without its consent." The classic justification for the non-suability of the State is that provided by Mr. Justice Oliver Wendell Holmes: "... there can be no legal right against the authority which makes the law on which the right depends." [2] Article VI, section 11 of the Constitution also grants parliamentary immunities, viz: "A Senator or Member of the House of Representatives shall, in all offenses punishable by not more than six years imprisonment, be privileged from arrest while the Congress is in session. No member shall be questioned nor be held liable in any other place for any speech or debate in the Congress or in any committee thereof." Mr. Justice Isagani A. Cruz explains the rationale for this immunity in the following manner: "x x x The first is intended to ensure representation of the constituents of the member of the Congress by preventing attempts to keep him from attending its sessions. The second enables the legislator to express views bearing upon the public interest without fear of accountability outside the halls of the legislature for his inability to support his statements with the usual evidence required in the court of justice. In other words, he is given more leeway than the ordinary citizen in the ventilation of matters that ought to be divulged for the public good." [3] The President was also immunized from suit during his tenure in the 1973 Constitution.

Aside from the Constitution, Congress has enacted laws giving immunity to witnesses to facilitate the solution of crimes with high political, social and economic impact against the people. Some of these statutory grants are related in the impugned Resolution. Thus, PD 749 provides:

"Section 1. Any person who voluntarily gives information about any violation of Articles 210, 211, 212 of the Revised Penal Code, Republic Act No. 3019, as amended; Section 345 of the Internal Revenue Code and Section 3604 of the Tariff and Customs Code and other provisions of the said codes penalizing abuse or dishonesty on the part of the public officials concerned; and other laws, rules and regulations punishing acts of graft, corruption and other forms of official abuse; and who willingly testified, such violator shall be exempt from prosecution or punishment for the offense with reference to which his information and testimony were given, and may plead or prove the giving of such information and testimony in bar of such prosecution: Provided, That this immunity may be enjoyed even in cases where the information and the testimony are given against a person who is not a public official but who is a principal or accomplice, or accessory in the commission of any of the above-mentioned violations: Provided, further, That this immunity may be enjoyed by such informant or witness notwithstanding that he offered or gave bribe or gift to the public official or is an accomplice for such gift or bribe-giving; And, Provided, finally, That the following conditions concur:

1. The information must refer to consummated violations of any of the above-mentioned provisions of law, rules and regulations;
2. The information and testimony are necessary for the conviction of the accused public officer;
3. Such information and testimony are not yet in the possession of the State;
4. Such information and testimony can be corroborated on its material points; and
5. The informant or witness has not been previously convicted of a crime involving moral turpitude."

Likewise, under PD No. 1886, the Agrava Fact Finding Board, created to conduct a fact-finding inquiry in the Aquino-Galman double murder case, was given the power to compel testimony of a witness. In exchange for his testimony, such a witness was extended transactional immunity from later prosecution. Section 5 of said PD No. 1886 states:

"No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to a subpoena issued by the Board on the ground that his testimony or the evidence required of him may tend to incriminate him or subject him to penalty or forfeiture; but his testimony or any evidence produced by him shall not be used against him in connection with any transaction, matter or thing concerning which he is compelled, after having invoked his privilege against self-incrimination to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying, nor shall he be exempt from demotion or removal from office."

Indeed, as early as April 16, 1951, R.A. 602, establishing a minimum wage law, extended transactional immunity to persons who testify or produce books, papers or other records and documents before the Secretary of Labor or a Wage Board. A similar but not identical power is given to the prosecution under section 9, Rule 119 of the 1985 Rules on Criminal Procedure to discharge an accused to be utilized as a state witness.

Our immunity statutes are of American origin. In the United States, there are two types of statutory immunity granted to a witness. They are the transactional immunity and the use-and-derivative-use immunity. Transactional immunity is broader in the scope of its protection. By its grant, a witness can no longer be prosecuted for any offense whatsoever arising out of the act or transaction.^[4] In contrast, by the grant of use--and-derivative-use immunity, a witness is only assured that his or her particular testimony and evidence derived from it will not be

used against him or her in a subsequent prosecution.[5] In *Kastigar vs. US*,[6] the rationale of these immunity grants is well explained, viz:

"The power of government to compel persons to testify in court or before grand juries and other governmental agencies is firmly established in Anglo-American jurisprudence . . . The power to compel testimony, and the corresponding duty to testify, are recognized in the Sixth Amendment requirements that an accused be confronted with the witnesses against him, and have compulsory process for obtaining witnesses in his favor. .

x x x

But the power to compel testimony is not absolute. There are a number of exemptions from the testimonial duty, the most important of which is the Fifth Amendment privilege against compulsory self-incrimination. The privilege reflects a complex of our fundamental values and aspirations, and marks an important advance in the development of our liberty. It can be asserted in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory; and it protects against any disclosures that the witness reasonably believes could be used in a criminal prosecution or could lead to other evidence that might be so used. This Court has been zealous to safeguard the values that underlie the privilege.

Immunity statutes, which have historical roots deep in Anglo-American jurisprudence, are not incompatible with these values. Rather, they seek a rational accommodation between the imperatives of the privilege and the legitimate demands of government to compel citizens to testify. The existence of these statutes reflects the importance of testimony, and the fact that many offenses are of such a character that the only persons capable of giving useful testimony are those implicated in the crime. Indeed, their origins were in the context of such offenses, and their primary use has been to investigate such offenses . . . (E)very State in the Union, as well as the District of Columbia and Puerto Rico, has one or more such statutes. The commentators, and this Court on several occasions, have characterized immunity statutes as essential to the effective enforcement of various criminal statutes. . ."

We shall now examine the powers granted to PCGG by Executive Order No. 14, as amended, to grant immunity from criminal prosecution. The pertinent sections provide:

x x x

"SEC. 2. Section 4 of Executive Order No. 14 dated May 7, 1986 is hereby amended to read as follows:

'SEC. 4. A witness may refuse on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding before the Sandiganbayan if the witness believes that such testimony or provision of information would tend to incriminate him or subject him to prosecution. Upon such refusal, the Sandiganbayan may order the witness to testify or provide information.

The witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony, or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.'

SEC. 3. Section 5 of Executive Order No. 14 dated May 7, 1986 is hereby amended to read as follows:

'Sec. 5. The Presidential Commission on Good Government is authorized to grant immunity from criminal prosecution to any person who provides information or testifies in any investigation conducted by such Commission to establish the unlawful manner in which any respondent, defendant or accused has acquired or accumulated the property or properties in question in any case where such information or testimony is necessary to ascertain or prove the latter's guilt or his civil liability. The immunity thereby granted shall be continued to protect the witness who repeats such testimony before the Sandiganbayan when required to do so

by the latter or by the Commission."

There are obvious differences between the powers granted to the PCGG under sections 4 and 5. Section 4 deals with the power which PCGG can use to compel an unwilling witness to testify. On the other hand, section 5 speaks of the power which PCGG can wield to secure information from a friendly witness. Under section 4, the hostile witness compelled to testify is not immunized from prosecution. He can still be prosecuted but "no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case" In contrast, under section 5, the friendly witness is completely immunized from prosecution.

The case at bench involves an exercise of power by PCGG under section 5, *supra*. Petitioners are not hostile but friendly witnesses. It is not disputed that they furnished information to the PCGG during their interviews conducted by PCGG lawyers and US prosecutor La Bella. Due to their cooperation, they were extended immunity from prosecution by the PCGG. In return, they flew to New York to testify in the RICO trial of Imelda Marcos. As they were witnesses for the prosecution, their expenses were shouldered by the PCGG itself. At the last minute, however, US prosecutor La Bella decided to dispense with their testimony. The rest is history. The prosecution failed to convict Mrs. Marcos.

The first issue is whether the respondent court has jurisdiction to review the immunity granted by PCGG in favor of the petitioners. We sustain the jurisdiction of the respondent court. To be sure, we have grappled with this once slippery issue in the case of *Republic vs. Sandiganbayan*, 173 SCRA 76, 80-81, and we held:

"We first ascertain whether or not the Sandiganbayan has jurisdiction to look into the validity of the immunity granted by the PCGG to Jose Y. Campos which was extended to his son, petitioner-intervenor herein, Jose Campos, Jr.

x x x

"The powers of the PCGG are not unlimited. Its jurisdiction over cases involving ill-gotten wealth must be within the parameters stated in Executive Order No. 14. Necessarily, the jurisdiction of the Sandiganbayan which is tasked to handle the ill-gotten wealth cases must include the jurisdiction to determine whether or not the PCGG exceeded its power to grant immunity pursuant to the provisions of Executive Order No 14."

It should also be noted that the respondent court has already acquired jurisdiction to try and decide Case No. 11960 where petitioners stand accused of violating RA 3019. It has started receiving the evidence of the prosecution against the petitioners. Petitioners, with the conformity of PCGG, then claimed their immunity via a motion to dismiss addressed to the respondent court. The motion to dismiss is thus a mere incident well within the jurisdiction of the respondent court to resolve.

The next issue is a finer and more difficult one, i.e., gauging the range of the power of the respondent court to review the exercise of discretion of the PCGG granting immunity to petitioners pursuant to section 5 of E.O. No. 14, as amended.

Respondent court, thru the Solicitor General, pushes the proposition that said power of review is plenary in reach. It is urged that its plenitude and panoply empower the respondent court to reverse the grant of immunity made by the PCGG by supplanting the latter's judgment. The submission will warrant the respondent court in examining the intrinsic quality of the given information or testimony, i.e., whether it truly establishes the "unlawful manner" in which the respondent, defendant or accused has acquired or accumulated the property or properties in question. Likewise, it will give a warrant to the respondent court to change the judgment made by the PCGG that the witness' information or testimony is "necessary" to ascertain or prove the guilt or civil liability of the respondent,

defendant or accused.

We are not prepared to concede the correctness of this proposition. Neither the text nor the texture of E.O. No. 14, as amended, lends color to the suggested interpretation. Section 5 of E.O. No. 14, as amended, vests no such role in respondent court. In instances, where the intent is to endow courts of justice with the power to review and reverse tactical moves of the prosecution, the law confers the power in clear and certain language. Thus, under section 9 of Rule 119, the prosecution in the exercise of its discretion may tactically decide to discharge an accused to be a state witness but its decision is made subject to the approval of the court trying the case. It has to file a proper motion and the motion may be denied by the court if the prosecution fails to prove that it has satisfied the requirements of the rule on discharge of a witness. The rule is crafted as to leave no iota of doubt on the power of the court to interfere with the discretion of the prosecution on the matter. In the case at bench, E.O. 14, as amended, is eloquently silent with regard to the range and depth of the power of the respondent court to review the exercise of discretion by the PCGG granting a section 5 immunity. This silence argues against the thesis that the respondent court has full and unlimited power to reverse PCGG's exercise of discretion granting a section 5 immunity. Legitimate power can not arise from a vacuum.

We observe that in contrast to our other laws on immunity, section 5 of E.O. No. 14, as amended, confers on the PCGG the power to grant immunity alone and on its own authority. The exercise of the power is not shared with any other authority. Nor is its exercise subject to the approval or disapproval of another agency of government. The basic reason for vesting the power exclusively on the PCGG lies in the principle of separation of power. The decision to grant immunity from prosecution forms a constituent part of the prosecution process. It is essentially a tactical decision to forego prosecution of a person for government to achieve a higher objective. It is a deliberate renunciation of the right of the State to prosecute all who appear to be guilty of having committed a crime. Its justification lies in the particular need of the State to obtain the conviction of the more guilty criminals who, otherwise, will probably elude the long arm of the law. Whether or not the delicate power should be exercised, who should be extended the privilege, the timing of its grant, are questions addressed solely to the sound judgment of the prosecution. The power to prosecute includes the right to determine who shall be prosecuted and the corollary right to decide whom not to prosecute. In reviewing the exercise of prosecutorial discretion in these areas, the jurisdiction of the respondent court is limited. For the business of a court of justice is to be an impartial tribunal, and not to get involved with the success or failure of the prosecution to prosecute. Every now and then, the prosecution may err in the selection of its strategies, but such errors are not for neutral courts to rectify, any more than courts should correct the blunders of the defense. For fairness demands that courts keep the scales of justice at equipoise between and among all litigants. Due process demands that courts should strive to maintain the legal playing field perfectly even and perpetually level.

Prescinding from these baseline propositions, we hold that in reviewing the grant of a section 5 immunity made by the PCGG to the petitioners, the power of the respondents court can go no further than to pass upon its procedural regularity. The respondent court should only ascertain: (a) whether the person claiming immunity has provided information or testimony in any investigation conducted by the PCGG in the discharge of its functions; (b) whether in the bona fide judgment of the PCGG, the information or testimony given would establish the unlawful manner in which the respondent, defendant or accused has acquired or accumulated the property or properties in question; and (c) whether in the bona fide judgment of the PCGG, such information or testimony is necessary to ascertain or prove the guilt or civil liability of the respondent, defendant or accused. Respondent court cannot substitute its judgment to the discretion of the PCGG without involving itself in prosecution and without ceasing to be a court catering untilted justice.

Applying this standard, we hold that the respondent court committed grave abuse of discretion when it denied

petitioners' motion to dismiss based on a claim of immunity granted by the PCGG under section 5 of E.O. 14, as amended.

The records show that petitioners provided information to the PCGG relating to the prosecution of the RICO cases against the Marcoses in New York. They gave the information in the course of interviews conducted by PCGG lawyers Kendall and Severina Rivera and US prosecutor Charles La Bella. They collaborated with the prosecution.

Sec. 5 requires that the information should relate to "any case" which PCGG can prosecute as mandated by the Constitution and E.O. Nos. 1, 2, 14 and 14-A. It does not limit said information to be given only in a case where the informant is himself an accused or a respondent. Such a reading adopted by the respondent court is unduly restrictive of the intendment of section 5 of E.O. No. 14, as amended, even as it is clearly in contravention of its plain language.

It is also fairly established that the pieces of information given by the petitioners would in the judgment of the PCGG, establish the "unlawful manner" with which the Marcoses acquired or accumulated their properties and were "necessary" to prove their guilt. The totality of the circumstances of the case established this element. Thus, after their interview, the PCGG was obviously convinced of the evidentiary value of the information given by the petitioners. It forthwith signed and sealed an agreement with petitioners extending them immunity from prosecution. In the case of petitioner Mapa, "the Republic shall cause the dismissal or exclusion of MAPA as party defendant or respondent in all PCGG initiated civil cases and criminal proceeding or investigation." In the case of petitioner Vergara, "the Republic shall cause the dismissal of Vergara from Criminal Case No. 11960." This commitment was reiterated by former Chairman Mateo Caparas of PCGG in his May 16, 1990 letters to the petitioners, as related above. The parties' agreements were then implemented. Petitioners travelled to New York to testify in the RICO cases against the Marcoses. It was even the PCGG that shouldered their expenses. All these circumstances prove the judgment of the PCGG that the pieces of information given by petitioners would establish the "unlawful manner" with which the Marcoses acquired their wealth.

Contrary to the ruling of the respondent court, the failure of petitioners to testify in the RICO cases against the Marcoses in New York can not nullify their immunity. They have satisfied the requirements both of the law and the parties' implementing agreements. Under section 5 of E.O. No. 14, as amended, their duty was to give information to the prosecution, and they did. Under their Memorandum of Agreement, they promised to make themselves available as witnesses in the said RICO cases, and they did. Petitioners were ready to testify but they were not called to testify by the US prosecutors of the RICO case. Their failure to testify was not of their own making. It was brought about by the decision of the US prosecutors who may have thought that their evidence was enough to convict the Marcoses. Since petitioners' failure to testify was not of their own choosing nor was it due to any fault of their own, justice and equity forbid that they be penalized by the withdrawal of their immunity. Indeed, initially, the PCGG itself adopted the posture that the immunity of petitioners stayed and should not be disturbed. It joined the motion to dismiss filed by petitioners in the respondent court. When the respondent court denied the motion, PCGG stuck to its previous position as it again joined the petitioners in their motion for reconsideration. It is only in this petition for review on certiorari that PCGG, after a change of Chairman, flip-flopped in its position.

We also rule that there was nothing irregular when PCGG granted a section 5 immunity to petitioners while they were already undergoing trial in Criminal Case No. 11960. Section 5 of E.O. 14, as amended, does not prohibit the PCGG from granting immunity to persons already charged in court and undergoing trial. As long as the privilege of immunity so given will in the judgment of the PCGG assist it in attaining its greater objectives, the PCGG is well within legal grounds to exercise this power at any stage of the proceedings. This section 5

immunity frees and releases one from liability, and as it inures to the benefit of an accused, it can be invoked at any time after its acquisition and before his final conviction. Our regard for the rights of an accused dictates this result. Thus, we have consistently held that laws that decriminalize an act or a grant of amnesty may be given retroactive effect. They constitute a bar against the further prosecution of their beneficiaries' regardless of the appearance of their guilt. To be sure, the guilt of the petitioners in Criminal Case No. 11960 has yet to be established beyond doubt. The PCGG itself does not appear certain and confident of the strength of its evidence against the petitioners in said criminal case. The records show that petitioner Mapa was granted immunity not only because of the information he gave to the prosecution but also "... in light of Republic's review of the cases both civil and criminal which it has filed or intends to file against ..." him. Similarly, petitioner Vergara was granted immunity "... in light of Republic's review of Vergara's participation in Criminal Case No. 11960" After reviewing its evidence against the petitioners, PCGG appears to have sensed the sterility of its efforts of continuing their prosecution. Its former chairman, M.A.T. Caparas, learned that petitioners would file a Motion to Dismiss Criminal Case No. 11960 after PCGG rest its evidence, "for failure of the prosecution to prove its case." In his May 16, 1990 letters to the petitioners, he assured them that "we shall ... offer no objection to its favorable consideration." This is a patent admission that petitioners' Motion to Dismiss has merit and that the PCGG cannot prove its case against the petitioners in Criminal Case No. 11960.

Finally, we reject respondent court's ruling that the grant of section 5 immunity must be strictly construed against the petitioners. It simplistically characterized the grant as a special privilege, as if it was gifted by the government, *ex gratia*. In taking this posture, it misread the *raison d'être* and the long pedigree of the right against self-incrimination vis-a-vis immunity statutes.

The days of inquisition brought about the most despicable abuses against human rights. Not the least of these abuses is the expert use of coerced confessions to send to the guillotine even the guiltless. To guard against the recurrence of this totalitarian method, the right against self-incrimination was ensconced in the fundamental laws of all civilized countries. Over the years, however, came the need to assist government in its task of containing crime for peace and order is a necessary matrix of public welfare. To accommodate the need, the right against self-incrimination was stripped of its absoluteness. Immunity statutes in varying shapes were enacted which would allow government to compel a witness to testify despite his plea of the right against self-incrimination. To insulate these statutes from the virus of unconstitutionality, a witness is given what has come to be known as transactional or a use-derivative-use immunity, as heretofore discussed. Quite clearly, these immunity statutes are not a bonanza from government. Those given the privilege of immunity paid a high price for it - the surrender of their precious right to be silent. Our hierarchy of values demands that the right against self-incrimination and the right to be silent should be accorded greater respect and protection. Laws that tend to erode the force of these preeminent rights must necessarily be given a liberal interpretation in favor of the individual. The government has a right to solve crimes but it must do it, rightly.

IN VIEW WHEREOF, the resolutions of the respondent court dated March 7, and June 3, 1991 are annulled and set aside and the Amended Information against the petitioners in Criminal Case No. 11960 is ordered dismissed. No costs.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quiason, Vitug, and Kapunan, JJ., concur.

[1] The Resolution was written by Associate Justice Romeo M. Escareal. Associate Justices Jose S. Balajadia,

Cipriano A. del Rosario and Sabino R. de Leon, Jr., wrote separate concurring opinions. Associate Justice Nathanael M. Grospe dissented.

[2] *Kawanakoa vs. Polybank*, 205 US 349.

[3] *Philippine Political Law*, 1993 ed., p. 115.

[4] Dr. Rolando del Carmen, *Criminal Law and Procedure*, Brooks/Cole Publishing Co., p. 336.

[5] *Ibid.*

[6] 406 US 441 [1992]. See also Joseph Varon, *Searches, Seizures and Immunities*, Dobbs-Merrill Co., pp. 731--733.

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