

IMELDA R. MARCOS, PETITIONER, VS. THE HONORABLE SANDIGANBAYAN (FIRST DIVISION), AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 126995. October 06, 1998

Ponente: PURISIMA, J.

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PURISIMA, J.:

This scenic Philippine archipelago is a citadel of justice, due process and rule of law. Succinct and clear is the provision of the constitution of this great Republic that every accused is presumed innocent until the contrary is proved. [Art. 111, Sec. 14(2)]. As held in *People of the Philippines vs. Ellizabeth Ganguso y Decena* (G.R. No 115430, November 23, 1995, 250 SCRA 268, 274-275):

"An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as, excluding the possibility of error, produce absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged."

So also, well-settled, to the point of being elementary, is the doctrine that when inculpatory facts are susceptible to two or more interpretations, one of which is consistent with the innocence of the accused, the evidence does not fulfill or hurdle the test of moral certainty required for conviction. (*People of the Philippines vs. Eric F. Timentan*, G.R. No. 101663, November 4, 1992, 215 SCRA 364, 373 citing *People vs. Remorosa*, 200 SCRA 350, 360 [1991]; *People vs. Raquel*, 265 SCRA 248; *People vs. Aranda*, 226 SCRA 562; *People vs. Maongco*, 230 SCRA 562; *People vs. Salangga*, 234 SCRA 407)

Mindful of and guided by the aforecited constitutional and legal precepts, doctrines and principles prevailing in this jurisdiction, should petitioner's Motion for Reconsideration be granted?

Docketed as Criminal Case No. 17450 before the Sandiganbayan, the Information indicting Imelda R. Marcos and Jose P. Dans, Jr. for a violation of Section 3(g) of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, alleges:

"That on or about June 8, 1984, and for sometime prior or subsequent thereto, in Makati, Metro-Manila, Philippines, and within the jurisdiction of this Honorable Court, the accused IMELDA R. MARCOS and JOSE P. DANS, JR., public officers, being then Chairman and Vice-Chairman, respectively, of the Light Rail Transit Authority (LRTA), a government corporate entity created under Executive Order No. 603 of the former President Ferdinand Marcos, while in the performance of their official functions, taking advantage of their positions and committing the crime in relation to their offices, did then and there wilfully, unlawfully and

criminally conspiring with one another, enter on behalf of the aforesaid government corporation into a Lease Agreement covering LRTA property located in Pasay City, with the Philippine General Hospital Foundation, Inc. (PGHFI), a private enterprise, under terms and conditions manifestly and grossly disadvantageous to the government.

CONTRARY TO LAW."

The case was raffled off to the First Division of the Sandiganbayan, with Presiding Justice Francis E. Garchitorena, as Chairman and Justices Jose S. Balajadia and Narciso T. Atienza, as members. On September 15, 1993, when the First Division failed to comply with the legal requirement of unanimity of its three members due to the dissent of Justice Narciso T. Atienza, Presiding Justice Garchitorena issued Administrative Order No. 288-93 constituting a Special Division of five and designating Justices Augusto M. Amores and Cipriano A. Del Rosario, as additional members.

On September 21, 1993, Justice Amores wrote Presiding Justice Garchitorena requesting that he be given fifteen (15) days to send in his Manifestation. However, on the same day, September 21, 1993, when Justice Balajadia and Presiding Justice Garchitorena agreed with the opinion of Justice Del Rosario, Presiding Justice Garchitorena issued Administrative Order No. 293-93, dissolving the Special Division of Five, without waiting for Justice Amores' manifestation. Justice Garchitorena considered the said request of Justice Amores as "pointless because of the agreement of Justice Balajadia and the undersigned to the conclusion reached by Justice Atienza." Thus, on September 24, 1993, the now assailed decision was handed down by the First Division of the Sandiganbayan.

Under the aforequoted Information charging accused Imelda R. Marcos and Jose P. Dans, Jr. with a violation of Section 3(g) of RA 3019, the following elements of the offense charged must be proved beyond reasonable doubt, to wit: 1] that the accused acted as a public officer; 2] that subject Contract or transaction entered into by the latter is manifestly and grossly disadvantageous to the government.

There is no dispute that sometime in the year 1984, the herein petitioner, Imelda R. Marcos, was Minister of Human Settlement while Jose P. Dans, Jr. was the Minister of Transportation and Communication. The two served as ex officio Chairman and Vice Chairman, respectively, of the Light Rail Transport Authority (LRTA). Petitioner Marcos was also Chairman of the Board of Trustees of the Philippine General Hospital Foundation, Inc. (PGHFI).

On June 8, 1984, petitioner, in her capacity as Chairman of PGHFI, and Jose P. Dans, Jr. as Vice Chairman of LRTA, signed the Lease Agreement (Exhibit "B") by virtue of which LRTA leased to PGHFI subject lot with an area of 7,340 square meters, at a monthly rental of P102,760.00 for a period of twenty-five (25) years.

On June 27, 1984, the PGHFI, represented by its Chairman Imelda R. Marcos, and Transnational Construction Corporation, represented by its President Ignacio B. Gimenez, signed the Sub-lease Agreement (Exhibit "D"), wherein said lessee rented the same area of 7,340 square meters for P734,000.00 a month, for a period of twenty-five (25) years.

For executing the aforesaid Lease Agreement (Exhibit "B"), petitioner and Jose P. Dans, Jr. were indicted in the said Information, for conspiring and confederating with each other in entering into subject Lease Agreement alleged to be manifestly and grossly disadvantageous to the government.

After trial, as earlier alluded to, the Sandiganbayan convicted the petitioner and Jose P. Dans, Jr. of the offense charged.

On June 29, 1998, the Third Division of this court came out with its decision affirming the judgment, as against petitioner Imelda R. Marcos, in G.R. No. 126995, but reversing the same judgment, as against Jose P. Dans, Jr., in

G.R. No. 127073.

In affirming the judgment of conviction against petitioner, the Third Division found the rental price stipulated in the Lease Agreement, (Exhibit "B") unfair and unreasonably low, upon a comparison with the rental rate in the Sub-lease Agreement (Exhibit "D"), which contract petitioner subsequently signed on behalf of PGHFI, with TNCC. Undaunted, the petitioner interposed the present Motion for Reconsideration.

The pivot of inquiry here is whether all the elements of the offense charged have been duly substantiated. As regards the first element, did petitioner Imelda R. Marcos enter into the Lease Agreement marked Exhibit "B" as a public officer? As clearly stated on the face of the subject contract under scrutiny, petitioner signed the same in her capacity as Chairman of PGHFI and not as Human Settlement Minister nor as ex-officio Chairman of LRTA. It was Jose P. Dans, Jr. who signed said Contract, as ex-officio Vice-Chairman of LRTA. Although petitioner was the ex-officio Chairman of LRTA, at the time, there is no evidence to show that she was present when the Board of Directors of LRTA authorized and approved the Lease Agreement sued upon.

In light of the foregoing antecedent facts and circumstances, the irresistible conclusion is that petitioner did not sign subject Lease Agreement as a public officer, within the contemplation of RA 3019 and, therefore, the first element of the offense charged is wanting.

It bears stressing, in this connection, that Jose P. Dans, Jr., the public officer who signed the said Lease Agreement (Exhibit "B") for LRTA, was acquitted.

As regards the second element of the offense - that such Lease Agreement is grossly and manifestly disadvantageous to the government, the respondent court based its finding thereon against the petitioner and Jose P. Dans, Jr., on a ratiocination that while the rental price under the Lease Agreement is only P102,760.00 a month, the monthly rental rate under the Sub-lease Agreement is P734,000.00. After comparing the two rental rates aforementioned, the respondent court concluded that the rental price of P102,760.00 a month is unfair, unreasonable and disadvantageous to the government.

But Exhibit "B" does not prove that the said contract entered into by petitioner is "manifestly and grossly disadvantageous to the government." There is no established standard by which Exhibit "B"'s rental provisions could be adjudged prejudicial to LRTA or the entire government. Exhibit "B" standing alone does not prove any offense. Neither does Exhibit "B" together with the Sub-lease Agreement (Exhibit "D") prove the offense charged.

At most, it creates only a doubt in the mind of the objective readers as to which (between the lease and sub-lease rental rates) is the fair and reasonable one, considering the different circumstances as well as parties involved. It could happen that in both contracts, neither the LRTA nor the Government suffered any injury. There is, therefore, insufficient evidence to prove petitioner's guilt beyond reasonable doubt.

Verily, it is too obvious to require an extended disquisition that the only basis of the respondent court for condemning the Lease Agreement (Exhibit "B") as "manifestly and grossly disadvantageous to the government " was a comparison of the rental rate in the Lease Agreement, with the very much higher rental price under the Sub-lease Agreement (Exhibit "D"). Certainly, such a comparison is purely speculative and violative of due process. The mere fact that the Sub-lease Agreement provides a monthly rental of P734,000.00 does not necessarily mean that the rental price of P102,760.00 per month under the Lease Agreement (Exhibit "B") is very low, unreasonable and manifestly and grossly disadvantageous to the government. There are many factors to consider in the determination of what is a reasonable rate of rental.

What is more, as stressed by Jose P. Dans Jr., when subject Lease Agreement was inked, the rental rate therein provided was based on a study conducted in accordance with generally accepted rules of rental computation. On

this score, Mr. Ramon F. Cuervo, Jr., the real estate appraiser who testified in the case as an expert witness and whose impartiality and competence were never impugned, assured the court that the rental price stipulated in the Lease Agreement under scrutiny was fair and adequate. According to him, witness, the reasonable rental for subject property at the time of execution of Exhibit "B" was only P73,000.00 per month.

That the Sub-lease Agreement (Exhibit "D") was for a very much higher rental rate of P734,000.00 a month is of no moment. This circumstance did not necessarily render the monthly rental rate of P102,760.00 manifestly and grossly disadvantageous to the lessor. Evidently, the prosecution failed to prove that the rental rate of P102,760.00 per month was manifestly and grossly disadvantageous to the government. Not even a single lease contract covering a property within the vicinity of the said leased premises was offered in evidence. The disparity between the rental price of the Lease Agreement and that of the Sublease Agreement is no evidence at all to buttress the theory of the prosecution, "that the Lease Agreement in question is manifestly and grossly disadvantageous to the government". "Gross" is a comparative term. Before it can be considered "gross," there must be a standard by which the same is weighed and measured.

All things viewed in proper perspective, it is decisively clear that there is a glaring absence of substantiation that the Lease Agreement under controversy is grossly and manifestly disadvantageous to the government, as theorized upon by the prosecution.

Furthermore, that the lessee, PGHFI, succeeded in obtaining a high rental rate of P734,000.00 a month, did not result in any disadvantage to the government because obviously, the rental income realized by PGHFI from the Sub-lease Agreement (Exhibit "D") augmented the financial support for and improved the management and operation of the Philippine General Hospital, which is, after all, a government hospital of the people and for the people.

Another sustainable ground for the granting of petitioner's motion for reconsideration is the failure and inability of the prosecution to prove that petitioner was present when the Board of Directors of LRTA authorized and approved the Lease Agreement complained of. Albeit, petitioner was ex officio chairman of the Board of Directors of LRTA when the said Lease Agreement was entered into, there is no evidence whatsoever to show that she attended the board meeting of LRTA which deliberated and acted upon subject Lease Agreement (Exhibit "B"). It is thus beyond cavil that petitioner signed the said Lease Agreement as Chairman of the PGH Foundation, Inc., a private charitable foundation, and not as a public officer.

Neither can petitioner be considered as in conspiracy with Jose P. Dans, Jr., who has been found without any criminal liability for signing the same Lease Agreement. Absent any conspiracy of petitioner with Dans, the act of the latter cannot be viewed as an act of the former. Petitioner is only answerable for her own individual act. Consequently, petitioner not having signed Exhibit "B" as a public officer, there is neither legal nor factual basis for her conviction under Section 3 (g) of Rep Act 3019.

It bears repeating that apart from the Lease Agreement and Sub-lease Agreement marked Exhibits "B" and "D", respectively, the prosecution offered no other evidence to prove the accusation at bar.

What makes petitioner's stance the more meritorious and impregnable is the patent violation of her right to due process, substantive and procedural, by the respondent court. Records disclose that: (a) the First Division of the Sandiganbayan composed of Presiding Justice Garchitorena and Associate Justices Balajadia and Atienza could not agree on whether to convict or acquit the petitioner in the five (5) criminal cases pending against her. Justice Atienza was in favor of exonerating petitioner in Criminal Case Nos. 17449, 17451 and 17452. Justices Garchitorena and Balajadia wanted to convict her in Criminal Case Nos. 17450, 17451, 17452 and 17453. As there there was no unanimity of votes in Criminal Case Nos. 17451 and 17452; (b) on September 15, 1993, in

accordance with Sec. 5 of P. D. No. 1606, Presiding Justice Garchitorena issued Adm. Order No. 288-93 constituting a Special Division of five (5) justices, and naming thereto, Justices Augusto M. Amores and Cipriano A. del Rosario; (c) on September 21, 1993, Justice Amores sent a written request to Presiding Justice Garchitorena asking that he be given fifteen (15) days to submit his Manifestation; (d) on the same day, September 21, 1993, however, Presiding Justice Garchitorena and Justices Balajadia and del Rosario, after attending a hearing of the Committee of Justice of the House of Representatives, lunched together in a Quezon City restaurant where they discussed petitioner's cases in the absence of Justices Atienza and Amores and in the presence of a non-member of the Special Division. Thereat, Presiding Justice Garchitorena, and Justices Balajadia and del Rosario agreed with the position of Justice Atienza to acquit petitioner in Criminal Case Nos. 17449, 17451 and 17452 and to convict her in the other cases; and (e) when the Justices returned to the official workplace of Sandiganbayan, Presiding Justice Garchitorena issued Adm. Order No. 293-93 dissolving the Special Division.

Such procedural flaws committed by respondent Sandiganbayan are fatal to the validity of its "decision" convicting petitioner for the following reasons, viz:

First. Section 4, Rule VI categorically provides that "sessions of the Sandiganbayan, whether en banc or division, shall be held in its principal office in the Metropolitan Manila where it shall try and determine all cases filed with it x x x." This rule reiterates Sec. 2 of P.D. No. 1606, as amended, creating the Sandiganbayan.

Second, The rules of Sandiganbayan do not allow unscheduled discussion of cases. We take judicial notice of the procedure that cases in all courts are carefully calendared and advance notices are given to judges and justices to enable them to study and prepare for deliberation. The calendaring of cases cannot be the subject of anybody's whims and caprices.

Third. The rules of Sandiganbayan do not also allow informal discussion of cases. The deliberations in case at bar did not appear on record. The informal discussion of the three justices came to light only when petitioner moved to inhibit Presiding Justice Garchitorena after her conviction by the resuscitated First Division. Presiding Justice Garchitorena, in a paper entitled "Response," revealed for the first time the informal discussion of petitioner's cases at an unnamed restaurant in Quezon City. There is no way to know how the discussion was conducted as it was not minuted.

Fourth. The rules of the Sandiganbayan do not allow the presence of a non-member in the deliberation of cases. In the case at bar, a certain justice was present when Presiding Justice Garchitorena, Justice Balajadia, and Justice del Rosario discussed petitioner's cases while taking their lunch in a Quezon City restaurant.

Fifth. The rules of the Sandiganbayan do not allow the exclusion of a member of a Division, whether regular or special, in the deliberation of cases. Justices Atienza and Amores were members of the Special Division but were not present when petitioner's cases were discussed over lunch in a Quezon City restaurant. They were not notified of the informal, unscheduled meeting. In fact, Justice Amores had a pending request for 15 days to study petitioner's cases. In effect, Atienza and Amores were disenfranchised. They were denied their right to vote for the conviction or acquittal of petitioner.

These irregularities violated the right of petitioner to be tried by a collegial court. Under PD No. 1606, as amended, and pursuant to the rules of Sandiganbayan, petitioner cannot be convicted except upon the vote of three justices, regardless of whether her cases are before a regular division of three (3) justices or a Special Division of five (5) justices. But more important than the vote of three (3) justices is the process by which they arrive at their vote. It is indispensable that their vote be preceded by discussion and deliberation by all the members of the division. Before the deliberation by all, any opinion of a justice is but tentative and could be changed. It is only after all the justices have been heard should the justices reach a judgment. No one opinion can

be denigrated in importance for experience shows that an opinion that starts as a minority opinion could become the majority opinion after the collision of views of the justices. The right of the petitioner, therefore, is the right to be heard by all the five justices of the Special Division. She is entitled to be afforded the opinion of all its members.

In the case at bar, Presiding Justice Garchitorena had already created the Special Division of five (5) justices in view of the lack of unanimity of the three (3) justices in the First Division. At that stage, petitioner had a vested right to be heard by the five (5) justices, especially the new justices in the persons of Justices Amores and del Rosario who may have a different view of the cases against her. At that point, Presiding Justice Garchitorena and Justice Balajadia may change their mind and agree with the original opinion of Justice Atienza but the turnaround cannot deprive petitioner of her vested right to the opinion of Justices Amores and del Rosario. It may be true that Justice del Rosario had already expressed his opinion during an informal, unscheduled meeting in the unnamed restaurant but as aforesaid, that opinion is not the opinion contemplated by law. But what is more, petitioner was denied the opinion of Justice Amores for before it could be given, Presiding Justice Garchitorena dissolved the Special Division.

We reject the rationalization that the opinion of Justice Amores was of de minimis importance as it cannot overturn the votes of the three justices convicting the petitioner. This is a mere guesswork. The more reasonable supposition is that said opinion could have changed the opinions of the other justices if it is based on an unbiased appreciation of facts and an undistorted interpretation of pertinent laws. For we cannot unreasonably suppose that Presiding Justice Garchitorena and Justices Balajadia and Atienza are bigots who will never change their opinions about the guilt of the petitioner despite a better opinion.

Yet, that is not all the value of the aborted opinion of Justice Amores. If it were an opinion for the acquittal of the petitioner, that opinion will have an added value when petitioner appeals her conviction to this Court. Again, depending on its scholarship, that minority opinion could sway the opinion of this Court towards the acquittal of petitioner.

Prescinding from those premises, it is indisputable that the decision of the First Division of the respondent Sandiganbayan convicting the petitioner is void for violating her right to substantive and procedural due process of law.

It is opined, however, that this case should be remanded to the respondent Sandiganbayan for re-decision by a Special Division of 5. As a general rule, a void decision will not result in the acquittal of an accused. The case ought to be remanded to the court of origin for further proceedings for a void judgment does not expose an accused to double jeopardy. But the present case deserves a different treatment considering the great length of time it has been pending with our courts. Records reveal that petitioner was first indicted in Criminal Case No. 17450 in January 1992. More than six (6) years passed but petitioner's prosecution is far from over. To remand the case to the Sandiganbayan will not sit well with her constitutional right to its speedy disposition. Section 16, Article III of the Constitution assures "all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies." This right expands the right of an accused "to have a speedy, impartial, and public trial x x x" in criminal cases guaranteed by Section 14(2) of Article III of the Constitution. It has a broadening effect because Section 16 covers the periods before, during and after trial whereas Section 14(2) covers only the trial period.[1] Heretofore, we have held that an accused should be acquitted when his right to speedy trial has been violated. Thus, in the early 1936 case of *People vs. Castañeda, et al.* 63 Phil 480, 485, 486, a ponencia of Mr. Justice Laurel, we held:

"A strict regard for the constitutional rights of the accused would demand, therefore, that the case be remanded to the court below for new trial before an impartial judge. There are vital considerations, however, which in the

opinion of this court render this step unnecessary. In the first place, the Constitution, Article III, section 1, paragraph 17, guarantees to every accused person the right to a speedy trial. This criminal proceeding has been dragging on for almost five (5) years now. The accused have twice appealed to this court for redress from the wrong that they have suffered at the hands of the trial court. At least one of them, namely, Pedro Fernandez (alias Piro), had been confined in prison from July 20, 1932 to November 27, 1934 for inability to post the required bond of P3,000 which was finally reduced to P300. The Government should be the last to set an example of delay and oppression in the administration of justice and it is the moral and legal obligation of this court to see that the criminal proceedings against the accused to come to an end and that they be immediately discharged from the custody of the law. (Conde vs. Rivera and Unson, 45 Phil., 650)."

We reiterated this rule in *Acebedo vs. Sarmiento*, viz:[2]

"2. More specifically, this Court has consistently adhered to the view that a dismissal based on the denial of the right to a speedy trial amounts to an acquittal. Necessarily, any further attempt at continuing the prosecution or starting a new one would fall within the prohibition against an accused being twice put in jeopardy. The extensive opinion of Justice Castro in *People vs. Obsania* noted earlier made reference to four Philippine decisions, *People vs. Diaz*, *People vs. Abaño*, *People vs. Robles*, and *People vs. Cloribel*. In all of the above case, this Court left no doubt that a dismissal of the case, though at the instance of the defendant grounded on the disregard of his right to a speedy trial was tantamount to an acquittal. In *People vs. Diaz*, it was shown that the case was set for hearing twice and the prosecution without asking for postponement or giving any explanation failed to appear. In *People vs. Abaño*, the facts disclosed that there were three postponements. Thereafter, at the time the resumption of the trial was scheduled, the complaining witness as in this case was absent, this Court held that respondent Judge was justified in dismissing the case upon motion of the defense and that the annulment or setting aside of the order of dismissal would place the accused twice in jeopardy of punishment for the same offense. *People vs. Robles* likewise presented a picture of witnesses for the prosecution not being available, with the lower court after having transferred the hearings on several occasions denying the last plea for postponement and dismissing the case. Such order of dismissal, according to this Court "is not provisional in character but one which is tantamount to acquittal that would bar further prosecution of the accused for the same offense." This is a summary of the *Cloribel* case as set forth in the above opinion of Justice Castro. "In *Cloribel*, the case dragged for three years and eleven months, that is, from September 27, 1958 when the information was filed to August 15, 1962 when it was called for trial, after numerous postponements, mostly at the instance of the prosecution. On the latter date, the prosecution failed to appear for trial, and upon motion of defendants, the case was dismissed. This Court held, 'that the dismissal here complained of was not truly a 'dismissal' but an acquittal. For it was entered upon the defendants' insistence on their constitutional right to speedy trial and by reason of the prosecution's failure to appear on the date of trial.' (Italics supplied)" There is no escaping the conclusion then that petitioner here has clearly made out a case of an acquittal arising from the order of dismissal given in open court."

The rationale for both Section 14(2) and section 16 of Article III of the Constitution is the same: "justice delayed is justice denied." Violation of either section should therefore result in the acquittal of the accused.

There are other reasons why the case should not be remanded to the court a quo. Three justices of the Special Division, namely Justice Atienza, Balajadia and Amores have already retired. Presiding Justice Garchitorena is still with the respondent court but his impartiality has been vigorously assailed by the petitioner. Mr. Justice Francisco of the Third Division of this Court noted that Presiding Justice Garchitorena's undue interference in the examination of witness Cuervo revealed his bias and prejudice against petitioner.[3] As Mr. Justice Francisco observed "the court questions were so numerous which as per petitioner Dans count totaled 179 compared to prosecutor Querubin's questions which numbered merely 73. More noteworthy, however, is that the court propounded leading, misleading, and baseless hypothetical questions rolled into one." [4] Mr. Justice Francisco's opinion was concurred by Mr. Justice Melo. Truly, even Mr. Chief Justice Narvasa, Madam Justice Romero and

Mr. Justice Panganiban who voted to convict petitioner did not refute Mr. Justice Francisco's observations on the lack of impartiality of Presiding Justice Garchitorena. They disregarded Mr. Ramon F. Cuervo's testimony and based the conviction of petitioner purely on the documentary evidence submitted by the People. Moreover, all the evidence in the case at bar are now before this Court and to avoid further delay, we can evaluate the evidence. In fact, the same evidence has been passed upon by the Third Division of this Court in formulating its judgment of affirmance sought to be reconsidered. Certainly, it will be sheer rigmarole for this Court to still remand the case for a Special Division of five of the Sandiganbayan to render another decision in the case, with respect to the herein petitioner.

I consider this opinion incomplete without quoting herein the following portion of the concurring and dissenting opinion of former Associate Justice Ricardo J. Francisco dated January 29, 1998:

"Thus, purely from the legal standpoint, with the evident weakness of the prosecution's case and the procedural aberrations that marred the trial, it is simply unsound and impossible to treat differently each petitioner who found themselves in one and the same situation. Indeed, our regained democracy, creditably, is successfully bailing us out from the ruins of the authoritarian regime, and it expects that government efforts in going after the plunderers of that dark past remain unrelenting and decisive. But let us not, in our anxiety to carry out this duty, for a moment forget that our criminal justice system is not a popularity contest where freedom and punishment are determined merely by the fame or infamy of the litigants. "The scales of justice", it has been aptly said,[5] "must hang equal and, in fact, should even be tipped in favor of the accused because of the constitutional presumption of innocence. Needless to stress, this right is available to every accused, whatever his present circumstance and no matter how dark and repellent his past." Culpability for crimes must always take its bearing from evidence and universal precepts of due process - lest we sacrifice in mocking shame once again the very liberties we are defending."

IN VIEW OF THE FOREGOING, the Motion for Reconsideration under consideration is hereby GRANTED and petitioner Imelda R. Marcos is hereby ACQUITTED of the offense charged. Costs de officio.

SO ORDERED.

Martinez and Quisumbing, JJ., concur.

Bellosillo, J., for insufficiency of evidence voted for acquittal of petitioner. See Concurring Opinion.

Melo, J., concur in the separate opinion of Justice Kapunan.

Puno, J., voted for acquittal: (1) petitioner's trial was not impartial, and (2) Petitioner was convicted by a Division of the Sandiganbayan without jurisdiction.

Kapunan, J., see separate concurring opinion.

Mendoza, J., concur on the ground of insufficiency of evidence.

Vitug, J., voted for remanding the case the case in order to allow the corrections of the perceived "irregularities" in the proceedings below.

Narvasa, C.J. on official leave. Certified by Regalado, J., that he concurs in the dissenting opinion of Romero, J.

Regalado, J., concurs in the dissenting opinion of Romero, J.

Davide Jr. J., certified by Regalado J. that he concurs in the dissenting opinion of Romero, J.

Romero, Panganiban, J., please see Dissenting Opinion.

[1] Bernas, Constitution of the Republic of the Philippines, 1987 ed., p. 42.

[2] 36 SCRA 247, 252-254.

[3] See Concurring and Dissenting Opinion in G.R. Nos. 127973 and 126995, pp. 23-24.

[4] *Ibid.*, p. 23.

[5] *People v. Opida*, *supra*, p. 303

CONCURRING OPINION

BELLOSILLO, J.:

I concur. In affirming the conviction of petitioner by the Sandiganbayan, this Court in its Decision of 29 January 1998 relied "mainly on the prosecution's documentary evidence showing the chasmic disparity between the P102,760.00 monthly rental stipulated in Exh. 'B' and the P734,000.00 monthly rental provided in Exh. 'D'."

At first blush, the presentation may appear sound; in a way, logical. But a critical and dispassionate review of the facts impels me to hold that the evidence of the prosecution miserably fails to meet the requisite quantum of proof to warrant the conviction of petitioner. It is simply too insubstantial and inadequate to establish her guilt beyond reasonable doubt.

The acquittal of petitioner may run against the current of popular temper and inclination, and particularly odious to those who may have already prejudged the case without knowing the facts. But I can only do what my conscience unerringly commands me to do. Perhaps it can be said that this is the essence of a strong and independent judicial system - that it remains immune from arbitrary and personal politics. I have pondered deeply on the issue; I have searched my mind and soul for an avenue to affirm petitioner's conviction; but I have failed to see my way to that conclusion.

The apparent disparity may really be "chasmic," but this by itself is too tenuous to prove that the Lease Contract between the LRTA and the PGHFI is "manifestly and grossly disadvantageous to the Government." For, how can a mere disparity in the amount of lease rental - chasmic or otherwise - be the sole *raison d' être* for convicting an accused? Should not the disparity, or the cause of it, be at the very least sufficiently explained to uncover and be connected with the criminal mind of the accused? Should not other evidence be offered to clearly show that the accused entered into a transaction which was "manifestly and grossly disadvantageous to the Government?"

To convict under Sec. 3, par. (g), RA No. 3019, as amended, no less than proof beyond reasonable doubt is demanded for the contract or transaction entered into by the public officer on behalf of the Government to be considered "manifestly and grossly disadvantageous to the Government." In the instant case, the prosecution has utterly failed in the endeavor. Thus, the constitutional presumption of innocence of petitioner has become a matter of fact.

This Court, acquitting accused Jose P. Dans Jr. earlier, held that the prosecution failed to prove his guilt beyond reasonable doubt as his liability, if any, could only stem from a knowledge of the terms of the sublease agreement, of which he was not aware. Consequently, it is reasonably inferred from the decision acquitting Dans that as far as the Court was concerned Exh. "B" (the Lease Contract between LRTA and PGHFI) which he signed, was not per se "manifestly and grossly disadvantageous to the Government." Prescinding from this premise, it would be illogical to conclude that a subsequent agreement has transformed Exh. "B", found by this Court to be fair and regular, into a contract "manifestly and grossly disadvantageous to the Government" without changing substantially the provisions of the same agreement.

If accused Dans was acquitted because he merely signed Exh. "B", necessarily implying that it was not tainted with irregularity, how can petitioner be now convicted for merely signing Exh. "D"? Would we not be saying in

effect that because of mere disparity, Exh. "D" made Exh. "B" manifestly and grossly disadvantageous to the Government? Perhaps it would have been different if at the outset Exh. "B" were considered excessively low or "manifestly and grossly disadvantageous to the Government." I pause to warn that if we are to pursue the theory that a mere "chasmic" disparity is sufficient to prove that a contract is "manifestly and grossly disadvantageous to the Government," it may not be difficult for an ill-motivated individual to incriminate a high ranking government official, or any person of consequence for that matter, by simply offering to pay and paying a much higher sublease rental.

Consequently, it is serious error to rely mainly, if not solely, on Exh. "D" stipulating a monthly rental of P734,000.00 which shows the so-called "chasmic" disparity. While the subject property was subsequently subleased for a rental seven (7) times higher, which a well-respected real estate broker and appraiser opined to be "extraordinary high," we can at best only speculate on the reason behind the "extraordinary high" sublease rental. For sure, there is no showing that the LRTA, on its own, could have commanded the same sublease rental PGHFI commanded in its sublease agreement. Could it be that the sublessee only wished to be ingratiated to the former First Lady or to the then powerful administration? Or, could it be that the sublessee really wanted the property so much, perhaps for reasons only known to him, or he saw a great potential in the property which other parties did not see nor wanted to risk on? But, the Court does not engage in speculative exercises; it goes by the hard facts.

This Court has time and again declared that when the inculpatory facts and circumstances are capable of two or more interpretations, one of which being consistent with the innocence of the accused and the other or others consistent with his guilt, then the evidence in view of the constitutional presumption of innocence has not fulfilled the test of moral certainty and is thus insufficient to support a conviction. It need not be overstressed that, in criminal cases, every circumstance favoring the innocence of the accused must be duly taken into account, and presumptions unsupported by solid evidence do not have a place in the dispensation of justice, especially as the law requires proof beyond reasonable doubt.

The Solicitor General in his Memorandum submitted after the 10 September 1998 Oral Arguments insists that "[t]he lease agreement (Exhibit B) is grossly and manifestly disadvantageous to the government" and ventures to say that the lease was "not for the purpose of earning additional income for the LRTA operations but solely to extend financial assistance to the PGHF." Thus, it is argued that "[b]eing a transaction purely intended to benefit the PGHF, without any regard to the interest of the government, the lease agreement by itself is the most compelling evidence demonstrating the gross and manifest disadvantage to the government." Again, this is a dangerous presumption.

Is the Court now being asked to reverse itself and hold that the lease agreement between the LRTA and PGHFI (Exh. "B") is per se "manifestly and grossly disadvantageous to the Government?" Is the Court now going to recall the acquittal of accused Dans for entering into a contract which was "manifestly and grossly disadvantageous to the government?" This is absurd and no longer an issue since *res judicata* and double jeopardy have already set in.

While the procedure followed in the leasing and subleasing of subject property left much to be desired, more so after taking into consideration the official positions and functions of the persons involved in the transactions at the time they were entered into, there was likewise so much to be desired in the presentation of the evidence to prove the guilt of the accused. But the difference is that the accused here is not to bear the burden of proving her innocence. We may not even say that she is indeed innocent; simply stated, the prosecution has utterly failed to prove that she is guilty beyond reasonable doubt, hence, must be acquitted. For, the conviction of the accused does rest not on the weakness of the defense but on the strength of the prosecution. Unless the prosecution discharges its burden, the accused need not even offer evidence in his behalf.

It cannot be overemphasized that we can convict only when the evidence submitted shows a crime has been committed; we can convict only if we have ascertained beyond reasonable doubt that the accused is indeed guilty. Otherwise, we have no, recourse but to acquit. It is not the Court, nay, not the men who sit in judgment, that loosen the prisoner at bar, but the State, by the compelling majesty of its Constitution, that sets him free.

By this precept, I vote to grant the motion for reconsideration and to reverse petitioner's conviction.

SEPARATE CONCURRING OPINION

KAPUNAN, J.:

For better understanding and appreciation of the issues raised in the Motion for Reconsideration, I wish to restate briefly some basic facts.

Petitioner Imelda R. Marcos, and Jose P. Dans, Jr. were charged on January 14, 1992 before the Sandiganbayan with violation of Republic Act No. 3019 (the Anti-Graft and Corrupt Practices Act), to wit:

Criminal Case No. 17449

The undersigned Special Prosecution Officer I, Office of the Special Prosecutor, hereby accuses IMELDA R. MARCOS and JOSE P. DANS, JR. of Violation of Section 3(g) of RA 3019, as amended, committed as follows:

That on or about September 8, 1982, and for sometime prior or subsequent thereto, in Manila, Philippines, and within the jurisdiction of this Honorable Court, the accused IMELDA R. MARCOS and JOSE P. DANS, JR., public officers, being then the Chairman and Vice-Chairman, respectively, of the Light Rail Transit Authority (LRTA), a government corporate entity created under Executive Order No. 603 of the former President Ferdinand E. Marcos, while in the performance of their official functions, taking advantage of their positions and committing the crime in relation to their offices, did then and there wilfully, unlawfully and criminally conspiring with one another, enter on behalf of the aforesaid government corporation into an agreement for the development of the areas adjacent to the LRTA stations and the management and operation of the concession areas therein, with the Philippine General Hospital Foundation, Inc. (PGHFI), a private enterprise, under terms and conditions manifestly and grossly disadvantageous to the government.

CONTRARY TO LAW.

Criminal Case No. 17450.

The undersigned Special Prosecution Officer I, Office of the Special Prosecutor, hereby accuses IMELDA R. MARCOS and JOSE P. DANS, JR. of Violation of Section 3(g) of RA 3019, as amended, committed as follows:

That on or about June 8, 1984, and for sometime prior or subsequent thereto, in Makati, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the accused IMELDA R. MARCOS and JOSE P. DANS, JR., public officers, being then the Chairman and Vice-Chairman, respectively, of the Light Rail Transit Authority (LRTA), a government corporate entity created under Executive Order No. 603 of the former President Ferdinand E. Marcos, while in the performance of their official functions, taking advantage of their positions and committing the crime in relation to their offices, did then and there wilfully, unlawfully and criminally conspiring with one another, enter on behalf of the aforesaid government corporation into a Lease Agreement covering LRTA property located in Pasay City, with the Philippine General Hospital Foundation, Inc. (PGHFI), a private enterprise, under terms and conditions manifestly and grossly disadvantageous to the government.

CONTRARY TO LAW.

Criminal Case No. 17451

The undersigned Special Prosecution Officer I, Office of the Special Prosecutor, hereby accuses IMELDA R. MARCOS of Violation of Section 3(d) of RA 3019, as amended, committed as follows:

That on or about June 8, 1984, and for sometime prior or subsequent thereto, in Makati, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the accused IMELDA R. MARCOS, a public officer, being then the Chairman of the Light Rail Transit Authority (LRTA), a government corporate entity created under Executive Order No. 603 of the former President Ferdinand E. Marcos, while in the performance of her official functions, taking advantage of her position and committing the offense in relation to her office, did then and there wilfully, unlawfully and criminally accepted employment and/or acted as Chairman of (the) Philippine General Hospital Foundation, Inc. (PGHFI), a private corporation duly organized under the laws of the Philippines, which private enterprise had, at that time(,) pending business transactions with the accused, in her capacity as Chairman of the LRTA.

CONTRARY TO LAW.

Criminal Case No. 17452

The undersigned Special Prosecution Officer I, Office of the Special Prosecutor, hereby accuses JOSE P. DANS, JR. of Violation of Section 3(d) of RA 3019, as amended, committed as follows:

That on or about June 8, 1984, and for sometime prior or subsequent thereto, in Makati, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the accused JOSE P. DANS, JR., a public officer, being then the Vice-Chairman of the Light Rail Transit Authority (LRTA), a government corporate entity created under Executive Order No. 603 of the former President Ferdinand E. Marcos, while in the performance of his official functions, taking advantage of his position and committing the offense in relation to his office, did then and there wilfully, unlawfully and criminally accepted employment and/or acted as Director of (the) Philippine General Hospital Foundation, Inc. (PGHFI), a private corporation duly organized under the laws of the Philippines, which private enterprise had, at that time(,) pending business transactions with the accused, in his capacity as Vice-Chairman of LRTA.

CONTRARY TO LAW.

Criminal Case No. 17453

The undersigned Special Prosecution Officer, Office of the Special Prosecutor, hereby accuses IMELDA R. MARCOS and JOSE P. DANS, JR. of Violation of Section 3(g) of RA 3019, as amended, committed as follows:

That on or about June 18, 1984, and for sometime prior or subsequent thereto, in Makati, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the accused IMELDA R. MARCOS and JOSE P. DANS, JR., public officers, being then the Chairman and Vice-Chairman, respectively, of the Light Rail Transit Authority (LRTA), a government corporate entity created under Executive Order No. 603 of the former President Ferdinand E. Marcos, while in the performance of their official functions, taking advantage of their positions and committing the crime in relation to their offices, did then and there wilfully, unlawfully and criminally conspiring with one another, enter on behalf of the aforesaid government corporation into a Lease Agreement covering LRTA property located in Sta. Cruz, Manila, with the Philippine General Hospital Foundation, Inc. (PGHFI), a private enterprise, under terms and conditions manifestly and grossly disadvantageous to the government.

CONTRARY TO LAW.

After trial, the Sandiganbayan acquitted petitioner Marcos in Criminal Case Nos. 17449 and 17451 and Dans in Criminal Case Nos. 17449 and 17452. However, it convicted both petitioner Marcos and Dans in Criminal Case Nos. 17450 and 17453.

Both appealed to this Court.

In the decision of the Third Division of this Court promulgated on January 29, 1998, the conviction of petitioner Marcos in Criminal Case No. 17450 was affirmed with modification, while her conviction in Criminal Case No.

17453 and that of Dans in Criminal Case Nos. 17450 and 17453 were reversed on reasonable doubt.

On February 18, 1998, petitioner Marcos filed a motion for reconsideration of the decision on the following grounds:

- a. It was not petitioner, but accused Jose P. Dans, Jr., who entered into the "Lease Agreement" (Exhibit 'B') on behalf of the Light Rail Transit Authority (LRTA), subject matter of Crim. Case No. 17450. And, since accused Jose P. Dans, Jr. has been acquitted of the offense charged in Crim. Case No. 17450, petitioner Imelda R. Marcos may not be convicted of the offense as his co-conspirator.
- b. The evidence upon which the finding of the Court that the terms and conditions of the "Lease Agreement" are "manifestly and grossly disadvantageous to the Government" does not constitute proof beyond reasonable doubt, sufficient to overcome the presumption of innocence, to establish that the terms and conditions of the "Lease Agreement" (Exhibit 'B') are manifestly and grossly disadvantageous to the Light Rail Transit Authority (LRTA).
- c. The finding of the Court that rendition of the decision by the First Division of the Sandiganbayan and not by the Special Division of Five constituted under Administrative Order No. 288-93 was valid and regular, is based on incorrect facts and erroneous application of the law.
- d. Likewise, the finding of the Court that there was no denial of the right of petitioner to counsel before the Sandiganbayan is based on an erroneous perception of the relevant facts.

I

The Information in Criminal Case No. 17450 (Violation of Sec. 3[g] of R.A. 3019, as amended) under which petitioner Marcos was convicted reads:

The undersigned Special Prosecution Officer I, Office of the Special Prosecutor, hereby accuses IMELDA R. MARCOS and JOSE P. DANS, JR., public officers being then the Chairman and Vice-Chairman, respectively, of the Light Rail Transit Authority (LRTA), a government corporate entity created under Executive Order No. 603 of the Former President Ferdinand E. Marcos, while in the performance of their official functions, taking advantage of their positions and committing the crime in relation to their offices, did then and there wilfully, unlawfully and criminally conspiring with one another, enter on behalf of the aforesaid government corporation into a Lease Agreement covering LRTA property located in Pasay City, with the Philippine General Hospital Foundation, Inc. (PGHFI), a private enterprise, under terms and conditions manifestly and grossly disadvantageous to the government.

CONTRARY TO LAW.

Section 3(g) of R.A. No. 3019 requires that the following be established:

- a. The accused public officer entered, on behalf of the Government, into a contract or transaction, and
- b. The contract or transaction entered into by the public officer, on behalf of the Government, is manifestly and grossly disadvantageous to the Government.

Under the Information, petitioner Marcos is alleged to have violated Sec. 3(g) of R.A. No. 3019 because while in the performance of her official functions as Chairman of the LRTA, she entered on behalf of said corporation into a Lease Agreement covering the LRTA property located in Pasay City with the PGHFI, under terms and conditions manifestly and grossly disadvantageous to the government and in conspiracy with Dans.

However, it is clear from the Lease Agreement that it was Dans, not petitioner Marcos, who entered into the said agreement, subject of the Information, in behalf of the LRTA. Petitioner Marcos signed the agreement in her

capacity as Chairman of the PGHFI, a private enterprise. Since it is conceded in the decision sought to reconsidered that there was no conspiracy between Dans and Marcos in entering into the contract, it is utterly illogical to acquit Dans who entered into the contract "on behalf of the Government" and convict Marcos who signed the same in her capacity as Chairman of the PGHFI, a private enterprise.

It is the argument of the Solicitor General, to which some members of the Court agree, that since petitioner Marcos was Chairman of the Board of Directors of the LRTA, she must have directly and actively participated in the authorization, approval and execution of the Lease Agreement for and in behalf of the LRTA, manifesting a conflict of interest.

In all due respect, the proposition has no factual moorings; it rests on pure speculations.

First, petitioner Marcos and Dans were virtually charged with conflict of interest in Criminal Case Nos. 17449, 17451 and 17453. But they were cleared by the Sandiganbayan; their acquittal has laid to rest the accusation that they acted in a double capacity.

Second, it is pure speculation and conjecture to allege that petitioner Marcos acted for the LRTA or is assumed to have given her approval to the execution of the Lease Agreement by the LRTA being Chairman thereof. There is no iota of proof at all that petitioner Marcos was present or had participated in any meeting of the LRTA Board of Directors authorizing the agreement. To convict, there should be proof of guilt beyond reasonable doubt. Bare assumptions and speculations cannot be bases for conviction.

Third, if petitioner Marcos had taken part in any action of the Board, why were the other members of the Board not included in the Information for violation of Sec. 3(g) of R.A. No. 3019? The decision of the Third Division of the Court itself has provided the answer when it stated that "this Court's opinion that the alleged conspiracy between the petitioners (Marcos and Dans) was not sufficiently established by the State's evidence" (page 22). Verily, having found that the alleged conspiracy between petitioner Marcos and Dans has not been established, no act committed by Dans may be imputed to Marcos, in the same way that it is purely guesswork to insinuate that the act of the LRTA in authorizing the Lease Agreement may be imputed to petitioner Marcos, absent any semblance of proof.

II

The decision sought to be reconsidered opted to rely solely on the documentary evidence of the prosecution, namely, the Lease Agreement (Exh. "B") and the sub-lease contract (Exh. "D") in rationalizing that the former is "manifestly and grossly disadvantageous to the government."

We should stress that in affirming the conviction of petitioner Marcos, this Court relies mainly on the prosecution's documentary evidence showing the disparity between the P102,760.00 monthly rental stipulated in Exhibit "B" and the P734,000.00 monthly rental provided in Exhibit "D."^[1]

I feel quite uneasy with the method used by the prosecution in determining that the government was grossly disadvantaged in the Lease Agreement, this is, by simply comparing the rental in the Lease Agreement and that in the sub-lease contract. Just by considering the disparity in the rentals, cannot it be argued as well that the lease rental is fair and reasonable and the sublease rental is too high?

Supposing there was no sublease contract at all, or the sublease rental was equal or lower than that in the Lease Agreement, would the conclusion of the Court be the same, considering that there would then be nothing to compare the lease rental with? The point I am trying to drive at is that proof should have been adduced to determine the fair market value of the Pasay lot based on the market data approach which considers how much properties in that particular area were sold or offered to be sold.

Curiously enough, when Sandiganbayan Chief Prosecutor Leonardo P. Tamayo was asked during the oral argument before the Court on September 10, 1998, why no such independent evidence was presented by the prosecution, he answered that he was not then involved in the case, but added that if he were the prosecutor, he would have adduced such evidence. This is an admission that the prosecution's evidence against Marcos is sorely lacking.

One other point. An essential element of Section 3(g) of R.A. No. 3019 is that the contract entered into by the public officer concerned is manifestly and grossly disadvantageous to the government. In the case at bar, a close scrutiny, however, reveals that the main and ultimate beneficiary of the subject transactions was the government-owned hospital, the Philippine General Hospital (PGH). The Philippine General Hospital Foundation, Inc. (PGHFI) was established as a charitable organization.[2] The funds it raised eventually went to the rehabilitation and support of the PGH as evidenced by the list of various medical equipment, drugs and supplies donated by the foundation to the said hospital.[3] There is no allegation, much less proof, that Marcos misappropriated a single centavo from the transactions. Since the major recipient of the high rentals negotiated by PGHFI (with private corporations) was one of the state-run medical facilities, the perceived disadvantage to the LRTA was negated by the benefits reaped by PGH. In the end, therefore, albeit indirectly, the ultimate gain still went to the government.

III

I cannot abide with the manner by which the Sandiganbayan rendered its decision in these cases, aptly termed by Justice Francisco in his Concurring and Dissenting Opinion as the "jurisdictional fiasco between the First and Special Division" of the Sandiganbayan. To my mind, it is not a mere "technical impropriety" which can readily be dismissed, as the majority did. The procedural infraction committed by the Sandiganbayan (First Division), unfortunately, has fatal consequences because it has decidedly placed the whole proceedings in serious doubt. It must be recalled that this is a criminal case. Thus, it is indispensable that all proceedings to determine the guilt or innocence of the accused must be undertaken with nary a hint of irregularity, for what is at stake is one's personal freedom.

To recap, at the initial voting of the First Division of the Sandiganbayan (composed of Presiding Justice Garchitorena, Justice Balajadia and Justice Atienza), Justices Garchitorena and Balajadia voted to convict petitioner Marcos in Criminal Case Nos. 17449, 17450 and 17451 and to acquit her in Criminal Case No. 17453, whereas Justice Atienza voted to convict her in Criminal Case Nos. 17450 and 17453 and to acquit her in Criminal Case Nos. 17449 and 17451. Due to the failure of the First Division to reach a unanimous agreement regarding the disposition of the criminal cases, Presiding Justice Garchitorena on September 15, 1993 created a Special Division to resolve the above cases pursuant to Sec. 5 of P.D. No. 1606, as amended:

SEC. 5. Proceedings, how conducted; votes required.--The unanimous vote of the three justices in a division shall be necessary for the pronouncement of a 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 a majority of such division shall be necessary for rendering judgment.

The Special Division was composed of the aforementioned three justices, with Justice Amores and Justice del Rosario in addition.

On September 21, 1993 over a late lunch at a restaurant in Quezon City, after attending a committee hearing in Congress, Justice Garchitorena, Justice del Rosario and Justice Balajadia, in the presence of Justice Regino C. Hermosisima, who was not a member of the First Division (Justices Atienza and Amores were absent), discussed

their respective positions in the criminal cases. After learning that Justice del Rosario concurred with the dissent of Justice Atienza, Justices Garchitorena and Balajadia capitulated and decided to adopt Justice Atienza's position. On the rationale that "there had resulted a unanimity among the regular members of the First Division" and thus concluding that there was no longer any need for the Special Division, Presiding Justice Garchitorena upon arrival at his Sandiganbayan office issued on the same day A.O. No. 293-93 dissolving said Special Division. When informed that same day of what transpired at the Quezon City restaurant, Justice del Rosario manifested that he "did not mind" the dissolution of the Special Division, while Justice Amores submitted a written manifestation requesting a fifteen-day extension to give his opinion. No action on Justice Amores' request was made as of September 24, 1993 when the First Division rendered its judgment.

The procedure is highly anomalous, irregular and is not sanctioned by practice. It is a blatant violation of the law, specifically Sec. 5 of P.D. NO. 1606 and Sec. 1(b), Rule XVIII of the Revised Rules of the Sandiganbayan.[4]

On this point, the majority of the Third Division of this Court opined:

While it is true that under Section 5 of Presidential Decree No. 1606, as amended, when a unanimous vote is not reached by a division, two other justices shall be designated by the Presiding Justice to sit in a special division, and their majority vote shall be required to reach a valid verdict, this provision does not totally rule out a situation where all members of the 3-justice division eventually come to a common agreement to reach a unanimous decision, thus, making another division's participation in these cases redundant. This is exactly what transpired in this case. The change of heart of Justices Garchitorena and Balajadia, though reached unofficially, may be perceived as a supervening event which rendered the Special Division's functions superfluous. xxx.

I beg to disagree for the following reasons:

1. The informal meeting of the Justices at a Quezon City restaurant where the criminal cases were discussed or taken up (perhaps as part of the menu, a Justice of the Court commented during the oral argument) is not sanctioned by law and the rules.

The Sandiganbayan law provides that:

The Sandiganbayan shall have its principal office in the Metro Manila area and shall hold sessions thereat for the trial and determination of all cases filed with it irrespective of the place where they may have arisen, x x x.[5]

The Sandiganbayan Rules of Procedure also requires that:

"sessions of the Sandiganbayan, whether en banc or division, shall be held in its principal office in the Metropolitan Manila area where it shall try and determine all cases filed with it xxx.[6] (Italics supplied.)

Besides, it goes without saying, there are certain formalities to be followed for meetings and deliberations by a collegial body. There should be an agenda, with advance notice of what cases are to be deliberated upon or matters to be taken up. The reason for these formalities is obvious. The members should be notified of the session to assure their presence and to enable them to prepare and discuss intelligently and authoritatively the matters to be taken up. Justices Amores and Atienza were not present because they were not notified. Thus, Justice Amores' views were not ventilated because he was not aware of the meeting.

Hence, I agree with the dissenting opinion of Justice Francisco that whatever discussion and agreement was made among the Justices present in the restaurant cannot be considered as "official business" and, therefore, has no binding effect.

2. The moment the Special Division of five justices was created, it assumed jurisdiction over the criminal cases to the exclusion of the First Division. It is a fundamental rule that once jurisdiction to try a criminal case is acquired,

it remains with the court until it is finally decided. The mere fact that the original three members of the First Division of the Sandiganbayan had arrived at a unanimity over the issues on which they had been previously divided did not authorize the Presiding Justice to abolish the Special Division of five justices and refer the cases back to the First Division. Besides, if the majority of the Special Division had already arrived at a consensus and was ready to vote, why did it not simply and promptly vote on the cases and promulgate the judgment itself, instead of resorting to the rigmarole of dissolving the body and returning the cases to the First Division?

I am not persuaded by the contention that since the Rules do not provide how and by whom a special division may be dissolved, the Presiding Justice has the authority to order the dissolution. As already mentioned, once jurisdiction to try a criminal case is acquired, the court retains jurisdiction to try it until finally disposed of. Moreover, a Sandiganbayan regular division and a Special Division of five that may be created in case of lack of unanimity by the former are not one and the same body, albeit three members of the special division are also members of the regular division. When a justice participates in the deliberation of the special division and votes, he does so as a member of that special division, not as a member of the regular division to which he belongs. Whatever opinion or view he had entertained of the case while it was being deliberated upon in the regular division does not bind him as a member of the special division.

How then could three justices of the original division have come to a unanimous decision, when in fact and in law, said division no longer existed, having been replaced by the Special Division? To repeat, under P.D. No. 1606, if a unanimous vote is not reached, a division of five justices shall be formed and it is the majority decision of such division which is required to render a judgment. Quite plainly, this means that the case is removed from the jurisdiction of the regular division and the final decision lies with the Special Division. The law is clear and leaves no room for any other interpretation. On this basis, I find it difficult to accept the majority's sweeping assertion that Section 5 of P.D. No. 1606 "does not rule out a situation where all members of the 3-justice division eventually come to a common agreement to reach a unanimous decision, thus, making another division's participation in these cases redundant." If we follow the majority's logic, suppose another member of the three-man division had changed his mind anew, would a special division of five have been created again? And supposing further, the original members of the three-man division had come to an agreement, should the special division be dissolved again, and so on ad infinitum? The framers of the law, certainly, could not have intended such resultant absurdity.

3. The arbitrary dissolution of the Special Division had inappropriately, perhaps illegally, deprived Justice Amores of the chance to present his own viewpoint and to vote. Justice Garchitorena rationalized that Justice Amores' vote would not change the result of the decision anyway:

If Justice Amores were to have disagreed with the conclusions reached by Justices del Rosario and Atienza (which were subsequently adopted by Justices Balajadia and the undersigned), he would have been outvoted by the other four Justices. On the other hand, if Justice Amores had concurred with the position taken by the four other Justices of the Special Division, it would not have altered the decision as promulgated. Such concurrence would only bring about unanimity in the decision - which would be a very odd situation since a Special Division is constituted precisely because of the existence of a divided court. If the Special Division had remained, the vote of Justice Amores either way would not have resulted in any change in the result of the decision as promulgated.[7]

Had Justice Amores been allowed to participate and vote, it is not such a far-fetched idea that in the course of the deliberations of the Special Division, the other justices might have been persuaded by his arguments and might have changed their minds and consequently, their votes, just as what Justice Garchitorena and Balajadia had done.

This case has drawn more than a passing attention, some mixed feelings, because it involves one of the most powerful personalities on the center stage during the difficult years when the light of freedom had been shut out across the land. When, finally, democracy was restored by the EDSA revolution in February 1986, the Filipino people, hurting from the wounds and iniquities inflicted by the dictatorship, vowed never again to allow democracy be taken away from them.

The martial law days may be far behind us but we have certainly not forgotten. No matter the odds, the toil continues to bring to justice all who have abused power and betrayed the Filipino people. This pursuit, however, is, or should be, tempered by the lessons from our past. We must forever be true to our vow to be faithful to the letter of the law and the dictates of due process, and not be distracted by the personalities involved. For the right to due process and the rule of law are immutable principles in a democratic society that should apply to all, even to those we hate. We should take a page from the dissenting opinion of Justice Abraham Sarmiento in *Marcos v. Manglapus*[8] on the issue of whether or not the Marcoses may be prohibited from returning to the Philippines after the EDSA revolution. The majority ruled against the Marcoses and opined that at that particular time their return posed a serious threat to national interest and welfare. Justice Sarmiento, who lost a son to, and himself experienced, the cruelties of the martial law regime disagreed and said:

. . . I am for Marcos's return not because I have a score to settle with him. Ditto's death or my arrest are scores that can not be settled.

I feel the ex-President's death abroad (presented in the dailies as "imminent") would leave him "unpunished" for his crimes to country and countrymen. If punishment is due, let this leadership inflict it. But let him stand trial and accord him due process.

Modesty aside, I have staunchly and consistently advocated the human right of travel and movement and the liberty of abode. We would have betrayed our own ideals if we denied Marcos his rights. It is his constitutional right, a right that can not be abridged by personal hatred, fear, founded or unfounded, and by speculations of the man's "capacity" "to stir trouble." Now that the shoe is on the other foot, let no more of human rights violations be repeated against any one, friend or foe. In a democratic framework, there is no such thing as getting even

Any quest no matter how noble will be in vain if pursued for ends other than truth and justice.

WHEREFORE, I vote to grant the motion for reconsideration and acquit petitioner Imelda R. Marcos.

[1] Decision, G.R. Nos. 127073 & 126995, 5 January 1998, pp. 24-25.

[2] In the Article of Incorporation submitted to the SEC on November 17, 1981 the PGHFI listed the following purposes:

1. To establish, construct, equip, maintain, administer, conduct and operate an integrated and general medical institution which shall provide medical, surgical and related services, facilities and accommodations for the treatment, care, rehabilitation and/or relief of persons suffering from illnesses, injuries and disabilities, primarily for the benefit of the people of the Philippines, particularly those who are without the necessary or sufficient means of support and are incapable of obtaining a comfortable livelihood, in pursuance of the policy of the State to secure the well-being of the people by providing them with the general medical, health and hygienic services and facilities; and for this purpose to manage and expend such money or other property, real or personal, as the corporation may acquire or receive for the above-mentioned purposes, and to all other acts incidental or related to the maintenance of the charity herein described;

2. To carry on any and all educational activities related to rendering care to the sick and injured or the promotion of health, which in the opinion of its Board of Trustees may be justified by the facilities, personnel, funds or other requirements that are, or can be made, available;
3. To promote and carry on scientific research related to the care of the sick and injured insofar as, in the opinion of its Board of Trustees, such research can be carried on, or in connection with the hospital;
4. To participate, as circumstances may warrant, in any activity designed and carried on to promote the general health of the community;
5. To establish and manage similar institutions and/or clinics in other parts of the country as its facilities, funds and personnel can sustain and support;
6. To facilitate the dissemination of ideas and public acceptance of information on medical and health consciousness or awareness, and the development of fact-finding, information and reporting facilities for and in aid of these general purposes or objects aforesaid, especially in general health and physical fitness, and other relevant or related fields;
7. To encourage the training of physicians, nurses, health officers, social workers and medical and technical personnel in the practical and scientific implementation of such persons or personnel;
8. To assist universities and research institutions in the field of medicine, and to encourage and to support educational programs of value to general health;
9. To encourage the formation of other organizations on the national, provincial and/or city and local levels; and to coordinate their various efforts and activities for the purpose of achieving a more effective programmatic approach on the common problems relative to the objectives enumerated herein;
10. To seek and obtain assistance in any form from both international and local foundations and organizations; and to administer grants and funds that may be given to the organization;
11. To help prevent, relieve and alleviate the afflictions and maladies of the people in any and all walks of life, including those who are poor and needy, all without regard to or discrimination, because of race, creed, color or political belief of the persons helped; and to enable them to obtain treatment when such disorders occur;
12. To acquire and/or borrow funds, and to own all funds and/or equipment, educational materials and supplies by purchase, donation, or otherwise, and to dispose and distribute the same in such manner, and, on such basis as the corporation shall, from time to time, deem proper and best, under the particular circumstances, to serve its general and non-profit purposes and objectives;
13. To buy, purchase, acquire, own, lease, hold, sell, exchange, transfer and dispose of properties whether real or personal for purposes herein mentioned; and
14. To do everything necessary, proper, advisable or convenient for the accomplishment of any of the powers herein set forth and to do every other act and thing incidental thereto or connected therewith.

[3] Submitted by the Accounting Services Division of the UP-PGH on 13 October 1993 and attached to the Initial Report of the investigating prosecutors submitted to the Sandiganbayan on 26 October 1993 in Crim. Case Nos. 17449-17453; Original Records, pp. 11-14; 49-67.

[4] (b) In Division.--The unanimous vote of three Justices in a division shall be necessary for the rendition of a judgment or order. In the event that the three Justices do not reach a unanimous vote, the Presiding Justice shall designate by raffle two Justices from among the other members of the Sandiganbayan to sit temporarily with them

forming a special division of five Justices, and the vote of a majority of such special division shall be necessary for the rendition of a judgment or order.

[5] Section 2 , P.D. 1606 as amended

[6] Section 4, Rule VI, Sandiganbayan Rules of Procedure.

[7] Response, Rollo, p. 385.

[8] 177 SCRA 667 (1989).

DISSENTING OPINION

(on the Resolution Granting Petitioner's

Motion for Reconsideration)

PANGANIBAN, J.:

In its Decision promulgated on January 29, 1998, this Court (through its Third Division), voting three^[1] to two,^[2] AFFIRMED (1) the conviction of Petitioner Imelda R. Marcos for violation of the Anti-Graft Law in Criminal Case No. 17450, and (2) the penalty of imprisonment of nine years and one day as minimum to twelve years and ten days as maximum. It also ordered her to pay the Light Rail Transit Authority (LRTA) P189,372,000, the amount the government lost because of her criminal acts.

In view of the appointment of two new members to the Court, namely, Justices Leonardo A. Quisumbing and Fidel P. Purisima, the three Divisions of the Court were reorganized on February 1, 1998. The Chief Justice transferred Justice Melo to the Second Division; and Justice Panganiban, to the First. Justices Kapunan and Purisima were, in turn, assigned to the Third Division in addition to the three retained members, namely, Chief Justice Narvasa and Justices Romero and Francisco. However, on February 13, 1998, Justice Francisco retired from the Court upon reaching the age of 70.

Hence, when petitioner filed her Motion for Reconsideration (MR) on February 18, 1998, the Third Division had only four members (Chief Justice Narvasa and Justices Romero, Kapunan and Purisima). After several attempts to deliberate and resolve the MR and upon motion of petitioner, the Division finally decided to elevate the matter to the Court en banc, which in turn accepted it.^[3] Although as a member of the banc, I had initial reservations on the propriety of elevating the MR to the full court, as it is well-settled that the banc is not an appellate body to which decisions of Divisions may be brought, I finally supported the referral in view of the unanimous request of all the four incumbent members of the Third Division. In fact, the banc's acceptance was unanimous, too. Again upon motion of petitioner, the banc heard oral argument on the MR on September 10, 1998, and thereafter required the parties to file their respective memoranda. Even if all the arguments raised in the MR had already been considered and passed upon in our January 29, 1998 Decision, I acceded (as all the Court members did) to the oral argument to forestall any further charge of denial of due process, which petitioner had repeatedly leveled at the Sandiganbayan.

I write these preliminary matters to show that this Court has bent backwards to accord the former First Lady of the land all the legal opportunities to defend herself - a right that she vehemently claims was denied her by the lower court.

I realize, and I am sure each member of this Court does too, that this case involves not merely a judgment on the acts of the former First Lady. By its Decision here, this Court will be evaluated by the nation and by the world. History will judge this Court - how it acted and how each member participated and voted. What we say and write

here will still be remembered and discussed by our countrymen and by the world fifty years from now, when all of us are, in all likelihood, already in the Great Beyond.

Having said that, I will now discuss the issues raised in the MR.

The Issues

To support her plea of acquittal in her Motion for Reconsideration, Petitioner Marcos alleges the following:

1. She did not "enter, on behalf of the government," (through the LRTA) into the lease contract that was allegedly "manifestly and grossly disadvantageous to the government."
2. The prosecution failed to prove beyond reasonable doubt that she violated Section 3 (g) of RA 3019, as amended, specifically because there is no evidence showing the fair and reasonable rental of the subject property.
3. The Decision of the Sandiganbayan was rendered without jurisdiction.
4. Petitioner was denied her right to counsel.

All these "grounds" were already raised in her Petition and resolved in our January 29, 1998 Decision. Normally then, the MR should have been denied with the usual minute resolution, which abhors mere repetition of arguments already passed upon. Since in the said Decision of January 29, 1998, I did not write any opinion on these matters but merely concurred in Justice Romero's ponencia, I thought it now prudent to refute each of petitioner's arguments *seriatim*.

First Ground:

Petitioner, as a Public Official, "Entered" into the

Lease Agreement on Behalf of the Government

On the first ground, petitioner elucidates in her Memorandum that as a public officer, she did not sign the lease contract on behalf of the government. She merely signed it as chairperson of the Philippine General Hospital Foundation, Inc. (PGHFI). Ergo, she cannot be held liable for violating Section 3 (g) of RA 3019, the Anti-Graft Law, which reads:

"(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby." (Italics supplied)

It does not take too much imagination to see the obvious flaw in this argument. Plainly, the law does not use the word "signing." It employs the word "entering." Definitely, signing is not the only way of entering into a transaction. Those who authorized, approved or assented to such contract must be held equally, if not more, accountable for having entered into the agreement. The campaign against graft and corruption would be seriously undermined, if only the obedient underlings are punished, while the bigwigs who ordered, authorized, approved or assented to such anomalous contracts are freed of accountability. That is simply unconscionable!

Furthermore, the fact that Petitioner Marcos was chairman of the board of directors of the LRTA, in which was vested the power to carry out the functions of the agency, proves her actual participation as a public officer, albeit indirectly, in the execution of the lease contract on behalf of the LRTA. She had actually entered into the anomalous contract in a double capacity: as chair of the lessor, acting through an agent (in the person of Jose Dans, Jr.); and as head of the lessee, signing the contract on behalf of the PGHFI.

Under its charter,[4] the powers and functions of the LRTA were "vested in and exercised by the Board of Directors." [5] This simply means that, as Solicitor General Ricardo P. Galvez correctly construes, the agency "can

officially act only through its Board of Directors." In fact, in the exercise of its general powers, among which was the power to lease real property, the LRTA was specifically mandated to act "through the Board of Directors." [6]

Consistent with the provisions of EO 603, the lease agreement executed between LRTA and PGHFI stated in unequivocal terms that Dans, the signatory on behalf of LRTA, was "duly authorized for the purpose." This qualification can only mean that Dans was priorly mandated by the proper body - the LRTA board of directors - to sign the said contract. There is no evidence whatsoever that the LRTA board did not authorize the transaction. Hence, the presumption of regularity operates and applies.

Being the chairman of the board at the time, Petitioner Marcos is assumed to have given her approval to the execution of the contract by the LRTA. She could or should have known that, indeed, the board she chaired gave such authority. She, however, insists that this fact has not been proven beyond reasonable doubt.

I strongly disagree. What could her representation of the PGHFI, the other party to the lease agreement, manifest other than her full knowledge of and unqualified consent to the contract? In other words, Petitioner Marcos cannot deny her knowledge of and consent to the contract which LRTA entered into. She was the signing officer of the other party (the lessee) to the same contract! There was no way she could not have known with whom she was contracting (that is, that she was contracting virtually with herself), as well as the specific terms of the contract. She could not have blindly bound PGHFI to the agreement with LRTA, if she had disapproved of LRTA entering into the same contract. Considering that at the time she was not only LRTA chair, but also human settlements minister, Metropolitan Manila governor and First Lady, it is simply inconceivable that the LRTA board would authorize the contract without her approval! To hold otherwise is to be blind to the obvious. Verily, to all legal intents and purposes, Petitioner Marcos authorized and effectively "entered" into the lease agreement on behalf of LRTA, a government agency.

Had she disapproved, even ex post facto, of LRTA's participation, petitioner could have sought the rescission of the LRTA-PGHFI agreement, when she became aware of the terms of the sublease contract and realized the manifest and gross disadvantage at which LRTA had been placed. She could then have sought to contract directly with the sublessee, the Transnational Construction Corporation (TNCC). But she made no such efforts. There is no showing that petitioner ever denounced the original lease contract as grossly disadvantageous to the government, even after she had learned of the great disparity in the rentals. No, she did not. The whole transaction was a charade devised openly to benefit her private foundation at the expense of the government.

She belatedly claims before the media that she simply raised funds through "creative financing" in order to extend assistance to a hospital. But such defense was never presented in court. Other than her out-of-court utterances, petitioner has submitted no evidence whatsoever to indicate that the money gained by PGHFI from TNCC (and lost by the LRTA) was actually spent for a hospital or any other charitable purpose, for that matter. Even if she has, such submission would be beside the point.

Under the circumstances of the case, to claim that she, as a public officer, did not approve of the lease by the LRTA is pure sophistry. And for her to add that, even if she knew of the transaction, she did not directly represent and sign for the government and is thus deserving of acquittal, is to render the Anti-Graft Law toothless. Furthermore, to insist that her approval must be independently proven "beyond reasonable doubt" is a futile and unworthy argument in the face of the very documents where, unquestionably, her signature appears.

Petitioner also harps on Dans' acquittal, arguing that she, as a mere conspirator, must also be acquitted. True, in conspiracy, the act of one is the act of all. [7] But the converse does not always follow; the absence of conspiracy does not necessarily result in the acquittal of all or both alleged conspirators. The innocence of one is not absolute proof of the innocence of the other. For one may have acted independently of the other; and for one's own

felonious acts, he or she alone is liable.[8] Indeed, this Court found no evidence of conspiracy. And petitioner was convicted not because of conspiratorial acts, but because of her own acts.

In the instant case, Dans' guilt was not proven beyond reasonable doubt, because his participation in the sublease agreement had not been duly established. This cannot be said of Petitioner Marcos. There is no equivocation in the earlier finding that she actively participated in both the lease and the sublease.

Second Ground:

Manifest and Gross Disadvantage

Proven Beyond Reasonable Doubt

Petitioner avers that the prosecution failed to prove beyond reasonable doubt that "manifest and gross disadvantage to the government" was caused by the LRTA-PGHFI-TNCC masquerade. While the terms have not been explicitly defined by law or jurisprudence, I agree with the common and accepted meanings of manifest and gross, as culled by Solicitor General Galvez from Black's Law Dictionary:[9]

"'Manifest' means obvious to the understanding, evident to the mind, not obscure or hidden, and is synonymous with open, clear, visible, unmistakable, indubitable, evident and self-evident. In evidence, that which is notorious. On the other hand, 'gross' means flagrant, shameful, such conduct as is not to be excused x x x."

The lease and sublease agreements, construed together, speak for themselves. There can be no stronger evidence of the blatant discrepancy in the rental amounts and the resulting "gross and manifest disadvantage" sustained by the lessor - the LRTA, which is a government agency.

A simple mathematical computation will illustrate the huge amount which the government lost thereby. LRTA leased the property at P102,760 per month to the PGHFI, which in turn subleased it to the TNCC for seven times that amount, at P734,000, resulting in a net loss to the government in the amount of P621,240 a month, or a grand total of P189,372,000 for the 25-year term of the two agreements. In other words, the PGHFI, the middleman, pocketed six times more than the LRTA, the property owner.

Petitioner argues that the prosecution should have presented expert opinion to show which of the two rental amounts was the "fair and reasonable" price. However, the law (RA 3019) does not speak of fair or reasonable price. It speaks of "gross and manifest disadvantage." And what better evidence is there of such prejudice than the two contracts themselves, which show the great loss incurred by the people and the government. Opinion cannot prevail over hard fact!

In view of these actual, concrete and operative contracts, which provided terms that were complete and facts that were indelible, expert opinion, if not entirely worthless, certainly cannot prevail. The expert witness' testimony cannot rebut and overcome the contents of the executed documents, specifically the rental price that the property actually commanded.

Such utter uselessness of expert opinion is demonstrated by Ramon F. Cuervo's testimony. His opinion of the "fair and reasonable" rental value of the property was based on "offers for sale, actual sales and appraisal jobs x x x of comparable [bare] lots in the same vicinity." [10] He did not consider the improvements and commerce that would be brought about by the operation of the adjacent LRT stations.

Be it remembered that the subject agreement and the rentals stipulated would become demandable only after the start of the LRT operations, or when the PGHFI would commence its business.[11] Such being the case, mere "expert" opinion based on the then prevailing rentals would be totally immaterial and irrelevant. Thus, Sandiganbayan Presiding Justice Garchitorena had to elicit from the witness what would be the fair and

reasonable rental value, if these factors were taken into account. In response, Cuervo estimated that the amount would likely double.[12]

Still, this was merely his estimate. The indubitable fact remains, as shown by the sublease contract executed between PGHFI and TNCC, that the leased property commanded seven times more than the amount for which LRTA rented it out. TNCC, a private commercial enterprise, would not have unwittingly or moronically agreed to pay a ludicrously high amount to PGHFI if it did not indeed value the subject property at that amount.

Moreover, it is undisputed that, as pointed out by the Republic's counsel, the LRTA-PGHFI agreements themselves state in no uncertain terms that the unabashed purpose of the lease was to extend financial advantage to the PGHFI, viz.:

"x x x The AUTHORITY (LRTA), realizing the charitable objectives of the FOUNDATION (PGHF) is desirous of extending financial support which can be derived from the development of such areas, for the pursuit of the objectives of the FOUNDATION x x x." [13]

"x x x the LESSEE (PGHF), as a means of generating funds to undertake its projects (to establish, maintain or equip medical institutions), has been granted by the Light Rail Transit Authority the right, authority, permit and license to develop the areas adjacent to the Light Rail Transit Stations, and manage and operate the concessions in such areas x x x

"x x x the LESSOR, realizing that the business of developing the specified areas adjacent to the LRT stations and of taking charge of the management and operation of the concessions therein, whose earnings will be used to fund medical services and facilities, charities and other benevolent projects of the FOUNDATION in Metro Manila, will be directly beneficial to the residents therein, and realizing also that the LESSEE finds it necessary to use these parcels of land described in the first paragraph, for the above-mentioned purposes, has agreed to lease the above-described property to the LESSEE x x x" [14]

In disregard of the law, the government, through petitioner, accommodated a private institution that was raising funds. The net effect of the juggling scheme, however, was the plunder of government earnings. Whether the funds raised were actually used for charitable and benevolent purposes, a matter claimed but not proven at all, will not erase the illegality of petitioner's maneuverings.

Petitioner repeatedly carps at the charges that she had authorized the anomalous transactions and that the government was placed at a gross and manifest disadvantage. She terms such conclusions "mere speculations or conjectures." They definitely are not. They are logical inferences from known and proven facts, or matters that the Court may take judicial notice of. To require proof that petitioner directly admitted authorizing the two contracts is to demand the unreasonable. If she did that, there would have been no need for trial. To require such proof is to require a virtual confession of guilt! On the other hand, to ask for expert opinion on fair and reasonable rental in the face of hard evidence of actual rental value clearly demonstrating manifest and gross disadvantage is to require a superfluity, an exercise in legal inutility.

In sum, petitioner was well aware of the manifest and gross disadvantage incurred by the government, when the LRTA property was leased out for an almost token amount through the execution of the subject contracts, which she, as a public official, was deemed to have entered into on behalf of the government.

Third Ground:

Decision of Sandiganbayan Valid

An error or irregularity in the rendition of a judgment does not affect the court's jurisdiction; neither does it affect

the validity of the judgment. While error in jurisdiction makes the judgment or order void or voidable,[15] an error in the exercise of jurisdiction does not.[16] The decision rendered in the latter is correctable merely through an appeal.[17] This remedy of appeal has already been availed of by petitioner's filing of the present recourse before this Court.

Consistent with the above principles, I respectfully submit that the assailed Decision of the Sandiganbayan (First Division) cannot be rendered void (or even voidable) simply because of an irregularity, assuming *arguendo* that it existed, in its rendition. Worth noting is the fact that petitioner took the recourse of filing a petition for review under Rule 45, not a special civil action for certiorari under Rule 65, the proper remedy to annul judgments rendered without jurisdiction or with grave abuse of discretion.[18]

Years ago, the Court taught the difference between "jurisdiction" and the "practice and method of procedure of the court" in these very explicit terms:[19]

"x x x the word 'jurisdiction' refers to something which, if once possessed by a court, does not vanish in the vicissitudes of decision. After a cause over which a division has undoubted jurisdiction has been debated and considered, the jurisdiction of the body does not cease when it is discovered that only three out of four or five of the members of the division concur in the prevailing view. This shows that the matter of the requirement of a certain number for the decision of a case is a matter of practice and procedure rather than of fundamental jurisdiction. Where a body consisting of more than two members is created, it must, by the very law of its being, be allowed to proceed upon a mere majority, in the absence of specific provision for a majority consisting of a precise number." (Italics ours.)

In *Faypon v. Quirino*,[20] a Resolution of the Court en banc, dated September 15, 1952, was invoked in order to set aside a judgment of the Court of Appeals for alleged want of jurisdiction. Said Resolution required that when there was no unanimous concurrence in a division of three, the presiding justice was to designate two additional associate justices "by rotation in the order of seniority." Such manner of choice was not observed by the appellate court, but this Court said that the "alleged violation of the resolution does not affect the jurisdiction of the Court of Appeals to hear and decide the case before it on appeal. If the alleged irregular designation be a sufficient ground for setting aside the judgment rendered by the Court of Appeals and remanding the case to it for further proceedings, it would unnecessarily delay the disposition of this case to the detriment of public interest."

The jurisdiction of the Sandiganbayan is defined principally in PD 1606, as amended, and additionally in special laws, such as RA 7080 on plunder and EO 14 on ill-gotten wealth cases.[21] Specifically, Section 4 of PD 1606, as amended by PD 1861, vests in the Sandiganbayan jurisdiction over "all cases involving: (1) violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act x x x." There should therefore be no question on said court's jurisdiction over the case at bar - a proceeding for a violation by petitioner of the Anti-Graft Law. Rather, the material issue involved is the authority of the Sandiganbayan's First Division to issue its assailed September 24, 1993 Decision.

I submit that the First Division of the Sandiganbayan not only had the jurisdiction to resolve the case at bar, but the authority as well. The alleged flaw in the rendition of its Decision was a procedural technicality that did not oust it of jurisdiction. While the initial absence of a unanimous concurrence of the three members in the said Division necessitated the designation of two additional justices to form a temporary special division of five, it must be stressed that the purpose of such designation was simply to obtain the concurrence of at least three in the final judgment, pursuant to the requirement of PD 1606.[22]

But the subsequent change in disposition of the two original members of the First Division, such that a unanimity in conclusion among all three original members was reached, practically aborted the purpose of the special division. Because of this development, the presiding justice forthwith revoked his previous order appointing the

two additional magistrates, in effect dissolving the special division. Obviously, there was no more need for additional members. I think it is also worth noting that the unanimous concurrence of the original division members had been arrived at, even before the special division convened. In any event, the more conclusive fact is the final and indubitable vote appearing on the Decision itself of each of the three justices in the Division.

Furthermore, the law and the rules of the Sandiganbayan do not expressly provide under what circumstances and in what manner a special division may be dissolved. Such being the case, how can the Court attribute error, irregularity or abuse of discretion to Presiding Justice Garchitorena's actions? As similarly provided in Section 5 of PD 1606, as amended, the Sandiganbayan rules simply state:[23]

"SEC. 1. Votes Necessary to Decide. --

x x x x x

"(b) In Division. - The unanimous vote of three Justices in a Division shall be necessary for the rendition of a judgment or order. In the event that the three Justices do not reach a unanimous vote, the Presiding Justice shall designate by raffle two Justices from among the other members of the Sandiganbayan to sit temporarily with them forming a special Division of five Justices, and the vote of a majority of such special Division shall be necessary for the rendition of a judgment or order." (Italics supplied)

Clearly, the presiding justice has the authority to designate two additional justices if the need arises. Since the said Rules do not provide who may dissolve a special division and under what circumstances it may be dissolved, it follows that the presiding justice likewise possesses the power to revoke such designation when the need therefor ceases. Note that the Rules expressly state that the two additional justices sit only temporarily - meaning as long as there is a need for them. In the instant case, the ensuing unanimity among the three original members of the Division rendered such designation *functus officio*. Thus, the revocation by Presiding Justice Garchitorena of his earlier order forming the special Division was not irregular. There being no violation of a law or rule, the Sandiganbayan could not have been ousted of jurisdiction, and neither could petitioner have been denied due process, under the circumstances.

While it is desirable to observe procedural rules faithfully and even meticulously, courts should not be overly strict with procedural lapses that do not really impair the proper administration of justice.[24] Rules are mere tools designed to facilitate the administration and the attainment of justice.[25] Where no serious injustice or grave abuse of discretion is committed, a suspension of the operation of adjective rules is not proscribed.

In the case at bar, no substantive right of petitioner was traversed by the First Division of the Sandiganbayan. She was given full opportunity to participate in the trial. All the defenses she offered were addressed by the court *a quo*, as well as by this Court. All the points -- factual, procedural and legal -- that she raised in her 93-page Petition were thoroughly taken up in the earlier Decision of this Court's Third Division. Through her Motion for Reconsideration and by way of oral argument and written memorandum, she was given several opportunities to amplify the same defenses before the Court *en banc*. I say, she has been more than fully heard.

Moreover, petitioner's plea for acquittal due to the alleged nullity of the Sandiganbayan judgment cannot be granted. A void judgment of conviction may entitle the accused only to a remand of the case to the trial court for further proceedings conformably with law.[26] A remand of her case to the graft court for another full-length proceeding will not only be a waste of time and effort, but a virtual approbation of trifling with the judicial process, a mockery of it. It would be a cop-out.

Fourth Ground:

No Denial of Right to Counsel

Records clearly show that Petitioner Marcos was represented by counsel during the entire trial proceedings. The failure of her counsel to appear in a couple of scheduled hearings[27] is not equivalent to a deprivation by the Sandiganbayan of her right to counsel. In her own words, "[n]otices of hearing were being sent directly to her," and her counsel "was apparently notified." Aside from the written notices, she was also informed by telephone. But, apparently, she chose not to be present; neither did she ensure the presence of her counsel in all the hearings. Well-settled is the rule that the negligence of counsel binds the party-litigant. It is also incumbent upon a party to take an active role, thus:

"Litigants represented by counsel, should not expect that all they need to do is sit back, relax and await the outcome of their case. They should give the necessary assistance to their counsel for what is at stake is their interest in the case."[28]

Neither did the suspension of her initial counsel of record (Atty. Antonio Coronel) from the practice of law amount to a deprivation of her right to counsel. She was continually represented by various lawyers. The fact that some[29] were contemned by the Sandiganbayan for effectively continuing the practice of Atty. Coronel did not altogether forfeit her representation. It does not appear that the actual participation of any of these contemned lawyers during the proceedings or any of the pleadings they had filed was stricken from the records or disregarded by the court a quo.

In any event, as I have mentioned earlier, petitioner's defenses, even those belatedly raised before this Court only, have been thoroughly reviewed, evaluated and duly considered. Whatever shortcomings, if any, she may have perceived in the Sandiganbayan proceedings must have been rectified by this Court, even twice over -- by the Third Division and by the banc. Here, she is represented by one of the most adroit legal minds in this country, Atty. Estelito P. Mendoza. No longer can she whimper and whine about counsel deprivation.

Epilogue

To say that Petitioner Marcos could not be held criminally liable simply because she did not sign the lease contract in her public capacity is either pure naiveté or utter sophistry designed to create an improvident loophole to circumvent what is glaring: that this lease-and-sublease charade was a clever device to illegally siphon into private hands money that should properly go to the coffers of the government. Such charade cannot and should not be allowed! This Court has the duty to unmask and to condemn this raid against the public treasury. No amount of verbal juggling or legal nit-picking can alter the indelible fact that petitioner, by this ingenious but illegal method, has deprived the government of badly needed revenues.

Equally untenable is petitioner's contention that she deserves acquittal, because the prosecution did not present expert opinion showing the fair and reasonable rental price for the disputed premises. Be it remembered that the Anti-Graft Law requires proof, not of "fair and reasonable" price, but of "manifest and gross disadvantage" to the government. The glaring disparity between the two rental amounts, totaling P189 million which the lease-sublease charade diverted to private hands, is more than enough monument to graft. Certainly, such concrete and actual fact cannot be overturned by mere opinion, however expert it may be. Indubitably, in the presence of the incontrovertible fact of government loss, any opinion of what constitutes "fair price" is not only superfluous but counter-productive.

Petitioner's claim of irregularity or denial of due process in the Sandiganbayan proceedings is plainly baseless. In any event, such allegation is not enough to warrant an invalidation of the judgment of conviction. Neither can it justify a remand to the anti-graft court. Such sidetrack, I repeat, is an obvious cop-out. If at all, the alleged defects do not impair the lower court's jurisdiction or the binding effect of its Decision. They can, at best, only be grounds for possible administrative sanctions.

Finally, the over-indulgent attention given by this Court - initially by the Third Division and then the banc, with full oral argument and written memorandum - is more than sufficient proof that petitioner has been granted due process. In fact, I believe she has, in more ways than one, been the recipient of "over-due" process in this Court.

WHEREFORE, I vote to DENY with finality the Motion for Reconsideration and to AFFIRM the conviction of petitioner for graft.

[1] CJ Narvasa, JJ. Romero (ponente) and Panganiban

[2] JJ. Melo and Francisco (who wrote the dissent).

[3] Under a Resolution of the Court en banc, dated November 18, 1993, "the following are considered en banc cases:

xxx xxx xxx

"8. Cases assigned to a division which, in the opinion of at least three (3) members thereof, merit the attention of the Court en banc and are acceptable to a majority of the actual membership of the Court en banc;"

[4] EO 603, July 12, 1980.

[5] § 3, *ibid*

[6] § 4, *ibid*.

[7] *People v. Lopez*, 249 SCRA 610, October 30, 1995; *People v. Liquiran*, 228 SCRA 62, November 19, 1993

[8] *People v. Go Shiu Ling*, 251 SCRA 379, December 14, 1995, citing *People v. Dramayo*, 42 SCRA 59 (1971); *Pareño v. Sandiganbayan*, 256 SCRA 242, April 17, 1996.

[9] *Special Deluxe*, 5th ed. (Solicitor General's Memorandum, p. 19).

[10] Justice Francisco's Concurring and Dissenting Opinion on the main Decision, pp. 9-10 & 12, citing (Witness Cuervo's) TSN, August 12, 1992, pp. 23-24, 27-28.

[11] Under the lease agreement, the PGHFI would start paying the monthly rental only after either of the following has happened, whichever is earlier:

(a) The date the LRT is fully operational.

(b) The date when the lessee commences its business operations

[12] *Sandiganbayan Decision*, p. 48.

[13] "Agreement for the Development of the Areas Adjacent to the Light Rail Transit System" (Exh. "A").

[14] "Lease Agreement" (Exh. "B").

[15] *Lamagan v. De la Cruz*, 40 SCRA 101 (1971).

[16] See *Lim v. Pacquing*, 236 SCRA 211, September 1, 1994.

[17] *Commissioner of Internal Revenue v. Court of Appeals*, 257 SCRA 200, June 4, 1996. See also "No Grave Abuse of Discretion or Excess of Jurisdiction" by Prof. Lohel A. Martinez, annotated in 91 SCRA 471

[18] *Sanchez v. Court of Appeals*, 279 SCRA 647, September 29, 1997; *Fortich v. Corona*, GR No. 131457, April

24, 1998.

[19] *Buenviaje v. Director of Lands*, 49 Phil 939, 943 (1927), per Street, J.

[20] 96 Phil 294, 296 (1954).

[21] *Garcia, Jr. v. Sandiganbayan*, 237 SCRA 552, 562-563, October 7, 1994.

[22] "SEC. 5. Proceedings, how conducted; votes required. -- The unanimous vote of the three justices in a division shall be necessary for the pronouncement of a 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 a majority of such division shall be necessary for rendering judgment."

[23] Rule XVIII, Revised Rules of the Sandiganbayan.

[24] *Mauna v. Civil Service Commission*, 232 SCRA 388, May 13, 1994.

[25] *Buan v. Court of Appeals*, 235 SCRA 424, August 17, 1994.

[26] See *People v. Estomaca*, 256 SCRA 421, April 22, 1996; *People v. Veneracion*, 249 SCRA 244, October 12, 1995; *People v. Bellaflor*, 233 SCRA 196, June 15, 1994, citing *Solis v. Court of Appeals*, 38 SCRA 53 (1971).

[27] Allegedly on August 12, 1992 and November 27, 1992 (Motion for Reconsideration, pp. 45-46).

[28] *Bernardo v. Court of Appeals*, 275 SCRA 413, 429, July 14, 1997, quoting *Greenhills Airconditioning Services, Inc. v. NLRC*, 245 SCRA 384, June 27, 1995.

[29] Attys. Luis Sillano and Renato Dilag.

DISSENTING OPINION

ROMERO, J.:

I dissent.

The Court, in its decision promulgated on January 29, 1998, upheld the conviction of petitioner Marcos in Criminal Case No. 17450 and ordered her to reimburse the Light Rail Transit Authority (LRTA) the amount of P189,372,000.00. On February 18, 1998, petitioner filed a motion for reconsideration of said decision on the grounds, inter alia, (a) that it was Dans, not petitioner Marcos, who entered into the Lease Agreement (Exh. "B"); (b) that the prosecution was not able to establish beyond reasonable doubt that the terms and conditions of said Lease Agreement were manifestly and grossly disadvantageous to the Government; and (c) that the promulgation of the assailed decision by the Sandiganbayan's First Division after the constitution of Special Division rendered said judgment null and void.

As can be readily observed, these grounds merely reprise the issues already raised in the petition and adequately tackled in the challenged decision. Nevertheless, after the hearing of oral arguments before the Court en banc held on September 1998, I feel the need to discuss further some of the points raised thereat.

Petitioner insists that the acquittal of Jose P. Dans, Jr., her co-accused in Criminal Case No. 17450, should also have benefited her because the prosecution failed to prove that she entered into the lease agreement (Exhibit "B") in behalf of LRTA. Since the LRTA was represented by Dans, who was acquitted, and no conspiracy was established between them, then petitioner should also have been exonerated.

While there is no dispute that the alleged conspiracy between petitioner and Dans in executing the lease

agreement (Exhibit "B") was never proven by the prosecution, there is likewise no question, in fact, it is only too obvious, that petitioner could not have signed in behalf of the LRTA at the time even if she had wanted to do so because she was already signing for another party, the PGH Foundation, Inc. This does not detract from the admitted fact that petitioner was the Chairman of the LRTA during the negotiations. Expectedly, petitioner, despite extensively lifting excerpts from the assailed decision, purposely omitted the Court's discussion on how the lease transaction was tainted by her conflict of interest, a glaring fact which has been repeatedly glossed over by petitioner and her counsel in the course of these proceedings. Thus, we stated:

"Indubitably, there was some kind of conflict of interest in the premises. Marcos and Dans, who were then Cabinet members, occupied the highest positions in the Boards of the LRTA and the PGHFI in a concurrent capacity at the time the questioned deals were made. They were, as it were, playing both ends; but on paper, one was acting for the lessor and the other for the lessee. The fact that petitioners were cleared of the charge that they acted improperly in accepting seats in the PGHFI Board of Trustees at the time when it had pending business transactions with the LRTA, of which they were also officers is of no moment. First, their acquittal in Criminal Case No. 17451 and No. 17452 was simply due to the insufficiency of the informations. Second, the accusation in said informations have no bearing whatsoever on the subject matter of the other cases filed against them as signatories to the assailed lease agreements. Even Justice Garchitorena had occasion to advert to this conflict of interest in his resolution of November 13, 1996."^[1]

There is no dispute that petitioner was the chair of the LRTA at the time of execution of the lease agreement, but she chose to "enter" it as chair of the PGHFI. Moreover, it was conclusively demonstrated at the hearing on September 10, 1998, that although Dans was "duly authorized" to sign for the LRTA, it was the entire LRTA through its policy-making body, which approved the lease agreement. It is, therefore, erroneous for petitioner to argue that she did not enter into said agreement on behalf of the government because, certainly, she did. She may not have signed for the LRTA but she was one of those who approved it and duly authorized Dans to sign for the LRTA.

Furthermore, it must be remembered that a lease agreement is a bilateral contract which gives rise to reciprocal rights and obligations on the part of the lessor and the lessee. It is an agreement which becomes a contract when the parties signify their consent or assent thereto, thereby reflecting the meeting of the minds between said parties. By himself, the lessor cannot enter into a contract of lease; there must be another party, the lessee, who will take possession of the property subject of the lease during its effectivity. Thus, when Dans "entered" into the lease agreement, he did so as representative of the lessor; petitioner did so in representation of the lessee. It is erroneous to state, as petitioner maintains in her motion for reconsideration, that she did not enter into the lease contract simply because she did not sign it, for certainly she did, as one of two indispensable parties. The immediate beneficiary of the lease was the government, represented by the LRTA. For all intents and purposes, brushing aside semantics, the lease agreement was entered into in behalf of the Government by both petitioner and Dans.

Shifting now to the alleged procedural anomaly which attended the promulgation of the assailed decision of the Sandiganbayan's First Division on account of Justice Garchitorena's unilateral dissolution of the Special Division which he himself had formed to break a voting impasse, I find petitioner's arguments in this regard to be shallow and self-serving, as will be presently elucidated.

The principle that a Special Division in the Sandiganbayan cannot be stripped of jurisdiction once it is vested with the same was originally a rule in Civil Procedure first applied to trial courts, later to appellate courts. It is applicable to single sala courts or entire courts, but not to Divisions. Even the non-forum shopping rules refers to the filing of cases involving the same parties and causes of action from one court to another, and not from one Division to another.

Secondly, there is no rule in the Sandiganbayan authorizing or disauthorizing a Chairman of a Division from dissolving a Special Division once it has effectively become functus officio.

Third, by analogy, in appellate courts, such as the Court of Appeals, rules are fixed and practices have been established. In the Supreme Court, however, there are no rules regarding the dissolution of Special Divisions; hence, there is nothing against which the alleged procedural irregularities can be measured.

Finally, assuming *arguendo* that there was a lapse in procedure in the Sandiganbayan, this will not render the judgment null and void. If at all, it may indicate the bias of the judge concerned which may be proved in an administrative case, but certainly not to render the judgment null and void.

For these reason, I vote to dissent from the majority opinion.

[1] Decision p. 19

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