

JOSE P. DANS, JR., PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.*G.R. No. 127073. January 29, 1998*

Ponente: ROMERO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-127073/>**ROMERO, J.:**

A man's signature, even if merely a flourish or even if indecipherable, may signify authority, agreement, acknowledgment and ownership. As indelible as his fingerprints, dental records or DNA genetic map, it denotes trust and honor. But the same trust and honor may be tainted by polluted intentions, as when signing is done in bad faith, or to perpetrate a fraud, to deceive others, or to commit a crime. The petitions at bar will illustrate how one's John Hancock can bring a man, or a woman for that matter, to ruin.

Sometime in 1984, then Minister of Human Settlements Imelda R. Marcos and then Transportation and Communications Minister Jose P. Dans, Jr., petitioners herein, entered into several contracts involving the Light Rail Transit Authority (LRTA) and the Philippine General Hospital Foundation, Inc. (PGHFI). Concurrently and respectively, Marcos and Dans served as ex-officio Chairman and ex-officio Vice-Chairman of the LRTA, and as Chairman and Director of the Board of Trustees of the PGHFI. By virtue of these agreements, which were authorized and in fact ratified by the LRTA Board of Directors, two vacant LRTA lots consisting of a 7,340-square meter parcel of land located in Pasay City (the Pasay lot), and a 1,141.20-square meter lot in Carriedo, Sta. Cruz, Manila (the Sta. Cruz lot), were leased out to the PGHFI. Specifically, the LRTA and the PGHFI, represented by Dans and Marcos, respectively, approved three deeds, namely, an "Agreement for the Development of the Areas Adjacent to the Light Rail Transit System Stations and the Management and Operation of the Concession Areas Therein,"[1] and two lease agreements[2] dated June 8 and June 18, 1984, covering the Pasay and the Sta. Cruz lots. The terms of the lease agreements were identical except as to the price: the lease would be good for 25 years subject to an annual escalation of 7.5%; PGHFI had the right to sublease the lots; and the monthly lease was P102,760.00 for the Pasay lot and P92,437.20 for the Sta. Cruz lot. Within the same month, the Pasay lot was subleased by PGHFI, through Marcos, to Transnational Construction Corporation (TNCC)[3] for P734,000.00 a month, while the Sta. Cruz lot was allegedly[4] subleased to Joy Mart Consolidated Corporation (Joy Mart)[5] for P199,710.00 per month.

Because of these deeds, petitioners were charged on January 14, 1992, with a 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 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.”

In short, Marcos and Dans were separately charged under Criminal Case Nos. 17451 and 17452 for accepting employment in and/or acting as Chairman and Director, respectively, of the PGHFI while the latter had pending business (the lease agreements) with the LRTA, which they both also headed. With regard to the other cases, Criminal Case Nos. 17449, 17450 and 17453, the accusations against both of them stemmed from the contracts they signed in representation of the LRTA and of the PGHFI which were allegedly entered into “under terms and conditions manifestly and grossly disadvantageous to the government.”

When arraigned, petitioners pleaded “not guilty” to all of the charges. Before trial could commence, Dans moved for the advance examination of defense witness Ramon F. Cuervo, Jr., a real estate broker, appraiser and friend of Dans who, as an expert witness, was in a position to inform the court that the agreed lease prices stated in the subject agreements were fair based on standard industry valuation standards. The court a quo granted said motion, and Cuervo was allowed to testify on August 12, 13, and 19, 1992. During this time, Marcos never questioned Cuervo and later expressed that she had no desire to further examine him.[6] Five days after the final hearing of Cuervo’s testimony, the trial of the five cases opened with the formal offer of the prosecution’s documentary evidence, which included, inter alia, the five agreements mentioned earlier. On November 23, 1992, the court issued an order admitting all the exhibits except Exhibits “D” and “E” as to Dans, who challenged the two sublease agreements, and Exhibit “E-1” as to Marcos, who, while accepting the validity of said sublease agreement, nevertheless questioned the authenticity of her signature thereon.

In Criminal Case No. 17543, Dans filed a Motion to Dismiss (demurrer to evidence) dated December 7, 1992, but the court denied the same, as well as his motion for reconsideration thereof.

By the time the case was submitted for decision, Marcos had neither submitted a formal offer of evidence, despite notice of the court’s orders[7] to do so, nor the required memorandum. She did file a motion for inhibition of the

justices of the Sandiganbayan's First Division on the ground of pre-judgment of her case based on the court's denial of Dans' demurrer to evidence, but this was denied in the court's resolution of May 20, 1993.

On September 24, 1993, the court a quo rendered judgment,[8] acquitting petitioners in Criminal Case Nos. 17449, 17451, and 17452, but convicting them in Criminal Case Nos. 17450 and 17453. The decretal portion of the assailed decision is reproduced hereunder:

"WHEREFORE, judgment is now rendered

- ACQUITTING the accused IMELDA R. MARCOS and the accused JOSE P. DANS, JR. of the charge in Criminal Case No. 17449, there being no manifest and gross disadvantage brought about by the contract dated September 8, 1982;

- ACQUITTING accused IMELDA R. MARCOS in Criminal Case No. 17451, it not having been demonstrated that the Information charging her had given her adequate notice of the acts for which she could be held liable under the law;

- ACQUITTING accused JOSE P. DANS, JR. in Criminal Case No. 17452, it not having been demonstrated that the Information charging him had given him adequate notice of the acts for which he could be held liable under the law;

and considering that the charges against them have been proved beyond reasonable doubt

- CONVICTING accused IMELDA R. MARCOS and JOSE P. DANS, JR. in Criminal Case No. 17450 under Sec. 3(g) of R.A. No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, and hereby imposes upon each accused the penalty of imprisonment for an indeterminate period of nine (9) years and one (1) day as minimum to twelve (12) years and ten (10) days as maximum.

Both accused shall also suffer the additional penalty of perpetual disqualification from public office as provided in Sec. 9 of R.A. No. 3019;

- CONVICTING accused IMELDA R. MARCOS and JOSE P. DANS, JR. in Criminal Case No. 17453 under Sec. 3(g) of R.A. No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, and hereby imposes upon each accused the penalty of imprisonment for the indeterminate period of nine (9) years and one (1) day as minimum to twelve (12) years and ten (10) days as maximum.

Both accused shall also suffer the additional penalty of perpetual disqualification from public office as provided in Sec. 9 of R.A. No. 3019.

The Ombudsman is given thirty (30) days from today within which to make a determination of whether or not the other members of the Board of Directors of the Light Rail Transit Authority during the relevant periods with respect to the lease contracts dated June 8, 1984 and June 18, 1984 executed by said Authority with the Philippine General Hospital Foundation, Inc. may also be prosecuted under Sec. 3(g) of R.A. No. 3019, and to report to this Court at the end of said period whatever determination he has made including the steps intended to be taken hereon towards a new preliminary investigation, if the same is appropriate.

The bonds posted for the provisional liberty of accused IMELDA R. MARCOS and accused JOSE P. DANS, JR. in Criminal Case No. 17449, No. 17451 and No. 17452 are hereby CANCELLED.

SO ORDERED."

Petitioners filed their respective motions for reconsideration of the court's decision on October 8, 1993. The Office of the Solicitor General also filed a motion for partial reconsideration on the same date, seeking civil indemnity for the People of the Philippines. On November 13, 1996, respondent court promulgated two resolutions, one denying the motion of Dans,[9] and another denying that of Marcos and modifying the assailed

September 24, 1993, decision with the addition of a sixth paragraph in the dispositive portion which dealt with the civil liability of petitioners, viz.:^[10]

“6. Accused IMELDA R. MARCOS and JOSE P. DANS, JR. are hereby ordered jointly and solidarily to reimburse the Light Railway Transit Authority for the prejudice that they have caused to said Light Railway Transit Authority through the lease contracts which they executed.

(a) Under Criminal Case No. 17450, the sum of THIRTY TWO MILLION ONE HUNDRED SEVENTY TWO THOUSAND PESOS (P32,172,000.00);

(b) Under Criminal Case No. 17453, the sum of NINETY TWO MILLION TWO HUNDRED SIXTY EIGHT THOUSAND EIGHT HUNDRED FORTY PESOS (P92,268,840.00).”

Aggrieved, petitioners separately elevated their case to this Court for a review on the following grounds:

G.R. No. 127073

- Respondent Court erred in denying petitioner’s demurrer to evidence in Criminal Case No. 17453 on the basis of baseless assumptions and conjectures not established by evidence. Worse, in violation of mandatory rules of evidence, the denial of the demurrer was made to rest on the advance, conditional testimony of defense witness Ramon Cuervo which had not yet been offered in evidence.
- Respondent Court erred in concluding that the two lease contracts in question were manifestly and grossly disadvantageous to the government despite un rebutted evidence that their terms and conditions were fair and reasonable and did not prejudice the Government.
- Respondent Court erred when it assumed without evidentiary basis that LRTA had put up or would put up buildings on the leased land.
- Respondent Court erred in holding that the lease contracts were also grossly disadvantageous to the Government because “non-payment of rentals . . . was not actionable unless the rentals were in arrears for one year”, citing the stipulation: “Should there be a delay in any payment of the rental consideration equivalent to one year, the lessor shall have the right to take possession of the premises, the property and improvements thereon, the ownership of all improvements thereby accruing to the lessor.” (Stip. II, par. 4).
- Assuming without admitting that LRTA would receive less than fair rental under the disputed lease contracts, respondent Court erred when it considered injury to LRTA as necessarily an injury to the Government, notwithstanding that such supposed injury to LRTA was offset by the corresponding benefit enuring to the Philippine General Hospital (a government hospital funded by government funds), which is inconsistent with the theory that the disputed lease contracts were disadvantageous to “the Government.” Under Sec. 3(g) of R.A. No. 3019 which seeks to protect public interest in general by condemning contracts disadvantageous to the Government, the term “government” is used in its widest sense so as to include “the national government, the government-owned and government-controlled corporations, and all other instrumentalities or agencies of the Republic of the Philippines and their branches.” [Sec. 2(a)].
- While respondent Court was duty-bound to be just and impartial, it failed to give petitioner a fair trial, who was thereby denied due process of law. Respondent Court was plainly biased against, if not downright hostile to, petitioner; it unfairly allied itself with the prosecution, which made it prosecutor and judge at the same time.
- Aside from the foregoing, the appealed decision is flawed by fatal infirmities which have effectively denied petitioner due process of law.”

G.R. No. 126995

- The questioned Decision is a nullity because Section 3 (g) of the Anti-Graft and Corrupt Practices Act (RA 3019, as amended) is unconstitutional for being, on its face, void for vagueness.
- The questioned Decision is a nullity because Section 3 (g) of the Anti-Graft and Corrupt Practices Act (RA 3019, as amended) is unconstitutional for being a “rider.”
- The questioned Decision is a nullity because the Informations in SB Criminal Cases Nos. 17450 and 17453 did not state all the essential facts constituting the offense but instead stated conclusions of law, thereby denying the Petitioner her constitutional right to be informed of “the nature and the cause of the accusation” against her (Sec. 14 (2), Bill of Rights).
- The questioned Decision is a nullity because the Information in said SB Criminal Cases Nos. 17450 and 17453 charged only two of the total number of members in the Board of Directors of the LRTA and the Board of Directors of the PGH Foundation, who had participated in the collective acts, thereby singling Petitioner and her companion for discriminatory prosecution, in violation of her right to Equal Protection of the Laws, which violation existed from the filing of the information and cannot be cured by post hoc proceedings.
- The questioned Decision is a nullity, because of the participation therein of Mr. Justice Garchitorena, whose long-standing bias and hostility towards President Marcos and Petitioner Imelda R. Marcos prevented him from having the requisite “cold neutrality of an impartial judge,” in violation of her right as an accused person to Procedural Due Process of Law.
- The questioned Decision is a nullity because Petitioner was denied of her Constitutional Right to counsel.
- Facts of record showing that Petitioner was deprived of and denied her Right to Counsel.
- Under the circumstances of record, the absence of counsel resulting from imposition of suspension from the practice of law upon her retained counsel, constituted deprivation of or denial of the Right to Counsel.
- Facts of record showing legal representation of Petitioner Imelda Marcos was not adequate.
- The questioned Decision is premature and had disregarded the constitutional right of the Petitioner to present evidence in her behalf. Her right to testify in her own behalf is a guaranteed right, the exercise of which is her personal choice alone, and which counsel had no authority to waive in her behalf. Besides, counsel being suspended, he could not have made a waiver. This constitutional right “to be heard by himself and counsel” she is invoking now, as part of her right to due process (Sec. 14 (1) and (2), Bill of Rights).
- The questioned Decision is a nullity for it was rendered in derogation of Petitioner’s subsisting right to be heard and to submit evidence in her defense. The finding of waiver is a prejudicial error. The evidence thereof on the record is tenuous. A waiver by an accused person of the right to be heard in her defense, including her right to testify in her own behalf must be indubitable, and is valid only if personally exercised through her own manifestation in open court.
- The questioned Decision is a nullity because the crime charged was not proven beyond a reasonable doubt, and the presumption of innocence was not overcome, which is required by Due Process.
- There was no disadvantage to the Government.
 - i. PGH Foundation is part of the “Government”.
 - ii. There was no disadvantage to the “Government” because the PGH, which is part of the Government benefitted.
 - iii. Facts of record, especially the questioned leases, show no disadvantage.

iv. Conviction was based on pure speculation.

v. Respondent Sandiganbayan (First Division) erred in holding the leases disadvantageous as to rental in absence of evidence existing at the time that higher rentals should have been paid.

vi. Respondent Sandiganbayan erred in holding that rentals for sub-leases were evidence of disadvantage when such sub-leases were made later and negotiated by a charitable foundation deserving of support through higher rentals.

- Assuming arguendo alleged disadvantage, the same was not manifest nor gross.

- Petitioner Marcos did not enter into the questioned lease contracts on behalf of the Government.

- The charge of conspiracy was not proved hence no basis for liability.

- Conviction was based on weakness of defense evidence and not (on) strength of prosecution's evidence.

- The questioned Decision and Resolution are null and void because the Respondent Sandiganbayan (First Division) acted without jurisdiction in issuing the questioned Decision and Resolution since the records clearly show that the Court with jurisdiction over these cases is the Special Division of Five Justices created by Admin. Order 288-93 pursuant to Sec. 5 of PD 1606 as amended and not Respondent Sandiganbayan (First Division)."

The Court resolved to consolidate the two cases inasmuch as they raise similar issues and seek the same reliefs. The questions may be stated thus:

1) Was respondent court correct in denying the demurrer to evidence of petitioner Dans in Criminal Case No. 17453?

After the prosecution had rested its case, Dans filed a Motion to Dismiss (Demurrer to Evidence) dated December 7, 1992, based on Section 15, Rule 119 of the Rules of Court.[11] He argued that the prosecution failed to establish the fact that the lease agreement covering the Sta. Cruz lot (Exhibit "C") was manifestly and grossly disadvantageous to the government.[12]

On February 10, 1993, the court a quo denied the said motion in this wise:

"Since per testimony of witness Ramon Cuervo, Jr. (tsn, pp. 20 to 26, August 13, 1992) that considering the nature of the terminal at the Sta. Cruz Station, which would be (the) subject of the lease contract between the Light Rail Transit Authority and the PGH Foundation, Inc. (Exhibit "C"), the rental of the premises in question could go up to P400,000.00 per month if the LRTA would put up the building as against the stipulated rental of P92,437.00 actually entered into between the parties, there would appear cause to believe that the lease contract in question was grossly disadvantageous for (sic) the government.

For this reason, the Demurrer to Evidence of accused Jose P. Dans, Jr., dated December 7, 1992, is DENIED for lack of merit."

Dans questioned the denial on the ground that the demurrer should have been resolved solely on the basis of the prosecution's evidence; and even assuming that it could be resolved using the evidence for the defense, the latter must have been previously formally offered.[13]

These arguments are specious and must, therefore, be rejected.

Although a demurrer to evidence must be resolved based on the evidence of the prosecution, there is nothing in the rules which would bar the court from taking cognizance of any matter taken up during the trial or which has become part of the records of the case, especially in this instance where the disputed evidence was taken in

advance at the request of the defendant himself. Additionally, it is erroneous to suppose that Cuervo's testimony was not formally offered at the time because "(t)estimonial evidence is formally offered by the calling of the witness to the stand." [14] Thus, we find merit in the manner by which the trial court justified the denial of Dans' demurrer to evidence, [15] viz.:

"First, the advance testimony of Mr. Cuervo taken at the instance of Engr. Dans on August 12 and 13, 1992, was already part of the record(s) in these cases when the Demurrer to Evidence was filed by Engr. Dans on December 7, 1992. The testimony was introduced into the record in exactly the same manner as any other testimony would be presented in evidence during trial. x x x.

Being already part of the record in these cases, the advance testimony of Mr. Cuervo could be taken judicial notice of.

xxx xxx xxx

. . . . '(J)udicial notice takes the place of proof and is of equal force. As a means of establishing facts it is therefore superior to evidence. In its appropriate field it displaces evidence since, as it stands for proof, it fulfills the objects which the evidence is designed to fulfill and makes evidence unnecessary.' [16] Consequently, 'the party desiring to establish a fact is relieved, when judicial notice is taken of the fact, from introducing evidence to prove it.' [17]

Second, having been given in the course of the proceedings in these cases, the testimony of Mr. Cuervo constitutes judicial admission of Engr. Dans who made it part of the record of these cases.

xxx xxx xxx

As in judicial notice of a fact, 'admissions made in the course of the judicial proceedings are substitutes for, and dispense with, the actual proof of facts.' [18] The party benefited by the admission is relieved of the duty of presenting evidence of the admitted fact and '(t)he court, for the proper decision of the case, may and should consider, without the introduction of evidence, the fact admitted by the parties.' [19]

Third, since the advance testimony of Mr. Cuervo was given in open court and duly recorded, the Court could not just ignore the solemn declarations therein on the technicality that the testimony had not been formally offered in evidence. x x x."

In any event, even if the testimony of Cuervo were to be excluded, there was enough evidence proffered by the prosecution, particularly Exhibits "B" (the lease agreement in favor of the PGHFI) and "D" (the sublease agreement in favor of TNCC) which would have more than justified the denial of the demurrer. In other words, notwithstanding Cuervo's testimony, these exhibits constitute solid documentary proof of petitioners' liability under Section 3(g) of R.A. No. 3019, as amended, as will be shown later in our discussion of Issue No. 5, "Was the evidence properly appreciated by respondent court?"

2) Were the informations filed in Criminal Case Nos. 17450 and 17453 sufficient in form?

There appears to be no doubt that the questioned informations are reasonably adequate as to apprise Marcos on the nature and cause of the accusations against her. In the case of *Luciano v. Estrella*, [20] the Court had occasion to enumerate the elements of the crime under Section 3(g), R.A. No. 3019, namely, (1) that the accused is a public officer; (2) that he entered into a contract or transaction on behalf of the government; and (3) that such contract or transaction is grossly and manifestly disadvantageous to the government. The allegations in the two informations are hereby reproduced for quick reference:

"That on or about June 8 [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 Pasay City [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.”[21] (Underscoring supplied)

As can be readily observed, the informations meet the minimum requirements for them to be upheld in court.

It is also alleged that “for a criminal complaint or information to sufficiently inform the accused of the nature and cause of the accusation against him, all the essential facts constituting the offense must be stated therein, and not mere conclusions of law.”[22]

Assuming that the matters which Marcos wanted to see alleged in the informations are not evidentiary in character, and that they are really vague and ambiguous, other courses of action could have been taken, such as filing a motion for a bill of particulars. This is what the Court precisely suggested in *People v. Arlegui*,[23] viz.:

“ . . . A bill of particulars while provided for under Section 6 of Rule 116 is not a popular procedure among lawyers for the accused in criminal cases. For one thing, it may invite an amended information which is not only clearer but may also be stronger and more incriminating. However, it would have clarified and corrected at an early stage the kind of doubt which the accused in this particular case alleged to have entertained. Section 6 of Rule 116 provides:

SEC. 6. Bill of Particulars. -- Defendant may, at any time on or before arraignment, move for or demand a more definite statement or a bill of particulars of any matter which is not averred with sufficient definiteness or particularity to enable him properly to plead or prepare for trial. The motion shall point out the defects complained of and the details desired.[24]

The more appropriate procedure under the circumstances would have been an order from the court directing the Fiscal to amend the information because the defect, if there ever was one, was curable by the simplest of amendments or clarifications.” (Underscoring supplied)

In fact, the records reveal that Marcos did file such a motion.[25] After the prosecution had filed its answer thereto, she was given an opportunity to file a reply, but she did not, thereby indicating that she was satisfied with what was already stated in the answer.

3) Is Section 3(g), R.A. No. 3019, as amended, constitutional?

The validity of this provision is being assailed by petitioner Marcos on grounds of vagueness and superfluity. She claims that the phrase “manifestly and grossly disadvantageous to the government” is vague for it does not set a definite standard by which the court will be guided, thus, leaving it open to human subjectivity.

There is, however, nothing “vague” about the statute. The assailed provision answers the basic query “What is the violation?” Anything beyond this, the “how’s” and the “why’s,” are evidentiary matters which the law itself cannot possibly disclose in view of the uniqueness of every case. The “disadvantage” in this instance is something that still has to be addressed by the State’s evidence as the trial progresses. It may be said that the law is intended to be flexible in order to allow the judge a certain latitude in determining if the disadvantage to the government occasioned by the act of a public officer in entering into a particular contract is, indeed, gross and manifest.

The personal circumstances of an accused are, in this regard, also immaterial, because of the nature of the statute. As the Court declared in *Luciano*,[26]

“ . . . In other words, the act treated thereunder partakes of the nature of a *malum prohibitum*; it is the commission of that act as defined by the law, not the character or effect thereof, that determines whether or not the provision has been violated. And this construction would be in consonance with the announced purpose for which Republic Act (No.) 3019 was enacted, which is the repression of certain acts of public officers and private persons constituting graft or corrupt practices or which may lead thereto. Note that the law does not merely contemplate repression of acts that are unlawful or corrupt per se, but even of those that may lead to or result in graft and corruption. Thus, to require for conviction under the Anti-Graft and Corrupt Practices Act that the validity of the contract or transaction be first proved would be to enervate, if not defeat, the intention of the Act.”

We, therefore, affirm the constitutionality of Section 3(g) of R.A No. 3019, as amended.

4) Was petitioner Marcos deprived of her constitutional right to be heard by herself or counsel?

Marcos claims that she was not adequately represented by counsel at the trial due to the suspension from the practice of law of her counsel of record, Atty. Antonio Coronel. It appears from the records, however, that during the absence of Atty. Coronel and sometime thereafter, she was still represented by other lawyers, including Renato Dilag, Luis Sillano, Perfecto V. Fernandez, Jose and Cristobal Fernandez, Vicente D. Millora, Juan T. David, Balbino Diego, and the law firm of Manuel M. Lazaro and Associates. The representation of Atty. Millora and the Fernandezes subsisted even in this Court, where they were later substituted by Atty. Estelito Mendoza. In any event, at the time Atty. Coronel and his replacements withdrew their respective appearances, all evidence had already been presented. It is just that Marcos opted not to present any evidence for her defense, relying, perhaps, on what she perceived to be glaringly weak prosecution evidence. Or it is not impossible or far-fetched that her refusal may have been due to her indifference to or open defiance of the justice system.

5) Was the evidence properly appreciated by respondent court?

In proclaiming his innocence, Dans relied only on his and Cuervo's testimony. Marcos, on the other hand, presented no evidence at all, claiming that she had been prejudged by respondent court. The prosecution submitted documentary evidence and nothing else. The question that must first be answered, therefore, is: Was the State's evidence sufficient to prove beyond a shadow of a doubt that the accused, petitioners herein, committed the crimes for which they were held accountable?

Petitioners were charged with and found guilty of violating Section 3(g) of R.A. No. 3019, as amended. It states thus:

“SEC. 3. Corrupt practices of public officers. -- In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

xxx xxx xxx

(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.”

It is clear that for liability to attach under the aforequoted provision, the public officer concerned must have entered into a contract which is “manifestly and grossly disadvantageous” to the Government. The court *quo phrased* the focal issue in these petitions in this wise: “(A)re exhibits ‘A,’ ‘B’ and ‘C’, the Lease Agreements executed by the LRTA with the PGH Foundation over the LRT property at the stations in Pasay City and Sta. Cruz (Manila) ‘manifestly and grossly disadvantageous to the government’?”

A perusal of the prosecution's documentary evidence would readily reveal, even from a layman's perspective,

that the Government was seriously prejudiced in the transactions under review.

We concur with the observation of the court a quo that, by itself, Exhibit “A,” the “mother contract” which initially granted the PGHFI a virtual exclusive license or franchise over the subject properties, “would neither be prejudicial (n)or beneficial to anybody,” because it did not refer to any specific property or consideration. Hence, petitioners were correctly acquitted in Criminal Case No. 17449, which was based on this agreement.

With regard to Criminal Case Nos. 17450 and 17453, the Court is likewise constrained to agree with the trial court that the Government suffered a manifest and gross disadvantage with the execution of the two lease agreements, Exhibits “B” and “C.” The facts in this regard are undisputed.

The monthly rental price agreed upon between the LRTA and the PGHFI for the lease of the Pasay lot was P102,760.00, and for the Sta. Cruz lot, it was P92,437.20. Barely ten days later, the very same properties were subleased by PGHFI to private entities for P734,000.00 (for the Pasay lot) and P199,710.00 (for the Sta. Cruz lot). The difference in the lease price is too enormous to ignore, for no market force could possibly have raised the rental cost in the same site by that margin in just over a week. Even by conservative estimates, the properties could have originally been leased out for at least P500,000.00[27] more. The Government was thereby deprived of at least an additional half a million pesos per month.

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.[28]

The focus now shifts to the testimony of defense witness Ramon Cuervo. An examination of the pleadings filed in these petitions, including all their attachments, would demonstrate the confusion sown by Cuervo’s expert opinion. Petitioners insist that Cuervo confirmed their allegation that the lease price stated in the questioned agreements was a fair valuation based on the comparative rental costs in the immediate vicinity of the subject properties. This inference was drawn from Cuervo’s calculation of the fair monthly rental value of the Pasay lot at P73,400.00[29] and the Sta. Cruz lot at P80,825.64,[30] using standard appraisal techniques in the industry.

The court, on the other hand, interpreted his testimony differently and arrived at a much higher valuation, that is, P210,000.00 a month for the Pasay lot and P400,000.00 monthly for the Sta. Cruz lot.

In view of this conflict in opinion, with petitioners and respondent court holding steadfast to their respective interpretations of Cuervo’s testimony, this Court has no alternative but to fall back on the documentary evidence.

Dans, in his motion to dismiss dated December 7, 1992, actually made an implied recognition that the prosecution was able to establish the manifest and gross disadvantage to the government brought about by the lease agreement over the Pasay lot (Exhibit “B”), when he raised no objection to the presentation by the prosecution of the sublease agreement between the PGHFI and TNCC over the same property (Exhibit “D”). Just as he read the lease and sublease agreements over the Sta. Cruz lot (Exhibits “C” and “E”) together in order to demonstrate to the court that the prosecution’s evidence in Criminal Case No. 17453 was weak, Exhibit “B” must also be

appreciated in connection with Exhibit “D” so that the “gross and manifest” disadvantage to the government in Criminal Case No. 17450 can be established.

It must be noted that Dans objected vigorously to Exhibit “E” on the ground that it was a mere photocopy of the original. Despite diligent efforts to locate an original duplicate or an authentic copy, the prosecution could not produce one, so that as to Dans, said exhibit was not admitted. The same cannot be said of Marcos who never challenged the authenticity of Exhibit “E,” although she contested the validity of her signature thereon as representative of the PGHFI, the lessor.

For a better appreciation of the evidence at hand, the lease agreements (Exhibits “B” and “C”) must be read simultaneously with the sublease agreements (Exhibits “D” and “E”). While Dans signed the lease agreements in behalf of the LRTA, he apparently had no hand in the ensuing sublease of the properties, as indicated by the absence of his signature from the two subsequent agreements. Marcos, on the other hand, represented the PGHFI twice, first in the lease contract and later in the sublease agreements. Within the very brief period of time that separated the lease and the sublease of the LRTA’s prime lots, Marcos inevitably generated a situation where the LRTA, a government corporation,[31] lost out to the PGHFI, a private enterprise[32] headed by Marcos herself.

But, considering that there is an allegation of conspiracy in the informations, the sufficiency of which we have earlier upheld, should the liability of Dans be the same as that of Marcos?

The court a quo entertained no doubt that the prosecution’s evidence amply established a conspiracy between Dans and Marcos, thus:

“ . . . , (T)he avowed purpose of both accused in entering into the Lease Agreements was not to earn additional income for the use of the LRTA in its operations, but to give financial assistance to the PGHF in the pursuit of its charitable objectives.

xxx xxx xxx

This expressly admitted purpose explains why the rentals stipulated in the Lease Agreements were so low that when compared with the rentals provided in the Sub-Lease Agreements, the latter deceptively appear, to borrow the words of Mr. Cuervo, to be “extra-ordinarily high.” To have fixed much higher rentals would have been to reduce the income which both the accused would like the PGHF to earn from the lease contracts. And the rentals in the Lease Agreements all the more became very low in light of the fact that the Agreement for the development of the areas adjacent to the LRT stations was without any valuable consideration.”[33]

xxx xxx xxx

“In these cases, Engr. Dans and Mrs. Marcos had a common objective, namely, to lease in favor of the PGHF the Pasay City and Sta. Cruz properties under such terms and conditions so favorable to the PGHF as to result in manifest and gross disadvantage to the LRTA. This common purpose they pursued together and in concert with each other, being in the position to do so because they were both ranking officials of the LRTA and the PGHF.

Thus, on September 8, 1982, avowedly desirous to extend financial support to the PGHF (not to the PGH), Engr. Dans, representing the LRTA, and Mrs. Marcos, as chairman of the PGHF, executed an agreement wherein without any valuable consideration, the latter was granted (exclusive) authority to develop areas adjacent to the LRT stations and to operate commercial concessions therein.

In furtherance of their common design and pursuant to their intention to financially benefit the PGHF, Engr. Dans and Mrs. Marcos, acting in their said representative capacities, entered into a Lease Agreement on June 8, 1984, over the Pasay City area for P102,760.00 a month and another Lease Agreement ten days later over the Sta. Cruz Area for P92,437.20 per month. As already demonstrated, the monthly rentals and other

stipulations in both contracts placed the LRTA in a manifestly and grossly disadvantageous position.

Engr. Dans and Mrs. Marcos were, therefore, both co-conspirators for having acted in conspiracy with each other and co-principals by direct participation for having taken direct part in the execution of the acts charged. Engr. Dans could not have committed the offenses without Mrs. Marcos and vice-versa.”[34]

While these observations cannot be said to be flawed, they were made only after the trial, in fact, after the assailed decision was promulgated, and these conclusions are the court’s alone. The prosecution never attempted to establish a connection between the two defendants in committing the acts for which they were charged. It is a fundamental rule, however, that a charge of conspiracy must be proven just like any other criminal accusation, that is, “independently and beyond reasonable doubt.”[35] In this regard, therefore, this Court’s opinion that the alleged conspiracy between the petitioners was not sufficiently established by the State’s evidence.

6) Were the members of the Sandiganbayan’s First Division biased against petitioners? Consequently, is the assailed decision dated September 24, 1993, valid?

Petitioners consider erroneous the active participation of the members of the Sandiganbayan’s First Division during the hearing of Cuervo’s testimony. The records reveal that, indeed, the court a quo may have participated more actively than usual in the examination of Cuervo in order to elicit from him the information that would nail down the prosecution’s basic theory, thus rendering unassailable the conclusions which are now being impugned by petitioners who argue that the extensive questioning of Cuervo[36] made the Sandiganbayan, particularly Justice Garchitorena, not only a judge, but a prosecutor as well.

To be sure, instead of being satisfied with Cuervo’s testimonial affirmation of what it had all along considered to be the fair rental value of the properties, the court a quo relied on his responses to numerous postulated queries thereby concluding there was a “gross disparity” in the lease price, as agreed upon by the parties, and the projected rental price, as estimated by Cuervo. Indeed, if the trial court’s conclusions were to be followed, the Pasay lot should fetch a monthly rental of P210,000.00 and the Sta. Cruz lot, P400,000.00. These figures are extrapolated from the potential rental price of the lots, considering its location.

Petitioners point out that the limitations on the right of judges to ask questions during the trial were not observed by the Sandiganbayan. They accuse Justice Garchitorena of acting more of a prosecutor than the impartial judge he is supposed to be, particularly during the examination of Cuervo. Lest we be distracted by this allegation of bias on the part of respondent court, it must be remembered that petitioners were never prejudiced by such questioning,[37] which is about the only thing that would make a string of queries by a judge objectionable. As the following discussion will reveal, the trial court’s interpretation of Cuervo’s testimony is immaterial because of the sufficiency of the documentary evidence of the prosecution to prove the charges against herein petitioners.

In view of the circumstances obtaining here, we find that the trial court’s active role in this regard was necessary to clarify the mostly technical aspect of Cuervo’s testimony. Respondent court defended its action by declaring that:

“It was precisely for the reason that Mr. Cuervo was merely asked by Engr. Dans’ lawyer as to the fair and reasonable rentals of the leased premises as without improvements, without the LRT stations being adjacent thereto, and not parts of commercial centers, that the Court, through Presiding Justice Garchitorena, was constrained to propound questions on the fair and reasonable rentals of the leased areas by considering them as not ordinary parcels of land.”[38]

The Court notes that while petitioners have been making such an outcry since the promulgation of the questioned judgment regarding the line of questioning followed by respondent court, none of them ever objected to such queries during the trial. Neither did they attempt to salvage the situation by asking questions on re-direct

examination if they harbored the impression that the court's cross-examination seriously prejudiced their case. This observation was likewise made by the court a quo, to wit:

"It is now too late in the day to object to the alleged leading, misleading, and badgering questions of the Presiding Justice Garchitorena and to ask (the court) to expunge the answers thereto from the record. Needless to say, Engr. Dans (and Marcos, for that matter) should have done so when the supposed objectionable nature of the questions and/or answers were propounded or given. (Section 36, Rule 132, 1985 Rules on Evidence). As it happened, he (and she) did not even raise his (and her) objections at the close of the testimony of Mr. Cuervo. He (and she) did not also ask re-direct questions to correct whatever mistakes or misimpressions allegedly crept into Mr. Cuervo's testimony. Instead, he formally offered the entire testimony without making any exceptions or reservations." [39]

We should stress that in affirming the conviction of petitioner Marcos, this Court relies mainly on the prosecution's documentary evidence showing the chasmic disparity between the P102,760.00 monthly rental stipulated in Exhibit "B" and the P734,000.00 monthly rental provided in Exhibit "D." The testimony of Cuervo is, at best, opinion only, but the amounts mentioned in the said two exhibits are facts which cannot be altered by opinion, however "expert." Regardless of Cuervo's expert opinion on the probable rental rate of the Pasay lot, the stubborn fact and cold reality is that the PGHFI was able to lease it out for an amount that was seven times more than what it stipulated to pay the government. The sublease (Exhibit "D") is the best monument to the "gross and manifest disadvantage" suffered by the government due to the willful actions of Marcos. Hence, even if the questions of Justice Garchitorena and the answers thereto of Cuervo were totally ignored by this Court, the prosecution's evidence would still firmly stand, and would definitely be more than sufficient to warrant a conviction beyond reasonable doubt.

Going further, petitioners insist that some impropriety attended the promulgation of the challenged decision. This allegation stems from the dissolution of the Special Division earlier created by Justice Garchitorena because of the lack of unanimity among the members of the First Division.

It appears from the records that Justice Narciso T. Atienza initially wanted to acquit the defendants in Criminal Case Nos. 17449, 17451 and 17452, while Justices Garchitorena and Balajadia wanted to convict them in Criminal Case Nos. 17450, 17451, 17452 and 17453. There was, therefore, no unanimous vote in Criminal Case Nos. 17451 and 17452. Thereupon, a Special Division was constituted, with the addition of Justices Augusto M. Amores and Cipriano A. del Rosario. Over an informal luncheon among the members of the newly-created Special Division,[40] however, where the merits of the cases were incidentally discussed, an understanding was reached whereby the two newly-appointed members agreed with Justice Atienza that the defendants should be cleared of the charges in Criminal Case Nos. 17451 and 17452. The stance of those present was that if the actual voting were to take place, the majority would acquit the defendants in Criminal Case Nos. 17451 and 17452. Consequently, Justices Garchitorena and Balajadia decided to change their opinions in said two cases, thus giving the First Division a unanimous vote in all the cases. There seemed to be no further need for the Special Division; hence, it was dissolved. The result is the assailed decision promulgated, as scheduled, on September 24, 1993.

Petitioners point out that once the Special Division was created, the First Division was thereby divested of jurisdiction to decide the case. They also maintain that the informal discussion of the merits of the cases inside a restaurant was unofficial business and, therefore, should have no binding effect.

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. In any case, the fact that Justice Atienza signed his concurrence cured the defect, if any, in the questioned judgment; again, an illustration of the "curative" effect of one's signature. Petitioners are of the impression that this chain of events was meant to 'railroad' their conviction, thus making the magistrates concerned vulnerable to criticism. While the Court is averse to encouraging this kind of behavior in judges, it is of the view, however, that the assailed decision is in harmony with the basic right of an accused to a speedy disposition of his case. This, to our mind, is more important than any consideration of technical impropriety in resolving a case.

Summing up, was the guilt of petitioners proved beyond a reasonable doubt by the prosecution?

We distinguish.

In Criminal Case No. 17453, we do not concur with the conclusions reached by the court a quo. The culpability of petitioners in this case stems from their entering into the lease agreement (Exhibit "C") over the Sta. Cruz lot under terms and conditions manifestly and grossly disadvantageous to the government, which, in this instance, is the LRTA. To prove this assertion, the prosecution presented in evidence the sublease agreement (Exhibit "E") over the same property showing the disparity in the rental price. While the authenticity of Exhibit "D," which was used to prove the manifest and gross disadvantage to the government occasioned by Exhibit "B," was admitted by the court and by the parties themselves, the validity of Exhibit "E" cannot, even up to this point, be determined with certainty because it is a mere uncertified photocopy of the original. Thus, the "gross and manifest" disadvantage to the government, which Exhibit "E" was supposed to engender, remains an allegation which cannot be proved by other direct evidence. The fact that only Dans objected to its admissibility does not mean that it is valid as to Marcos. As a result, both petitioners should be, as they are hereby, acquitted in Criminal Case No. 17453 on ground of reasonable doubt.

In Criminal Case No. 17450, we must further qualify our judgment.

As regards petitioner Dans, the Court is of the opinion that the prosecution failed to prove his guilt in committing the offenses charged beyond a reasonable doubt. We believe that his liability, if any, could only stem from a knowledge of the terms of the sublease agreements, Exhibits "D" and "E," which formed the core of the Court's appraisal of the manifest and gross disadvantage to the government. Exhibit "E," as already discussed, was correctly disregarded by the court a quo for being unauthenticated. Even though he was a Board Director of the PGHFI, Dans denied any knowledge of the execution of Exhibits "D" and "E," and his denial was never disproved by the prosecution. In fact, his signature does not appear in either sublease agreements. Neither was the alleged conspiracy between him and Marcos established by the prosecution.

It is this Court's opinion, however, that the guilt of petitioner Marcos was proved by the State beyond reasonable doubt. She was charged with violation of Section 3(g) of R.A. No. 3019, as amended, for executing a lease agreement (Exhibit "B") in behalf of the PGHFI, a private enterprise of which she was the Chairman, over a lot located in Pasay City owned by the LRTA, a government corporation of which she was undeniably also the Chairman. The consideration therefor was shown to be unfair and unreasonable upon comparison with the rental price stipulated in the sublease agreement (Exhibit "D") which she subsequently signed for the PGHFI in favor of TNCC. That she should be held responsible is shown by the presence of her signature in Exhibits "A" to "E," where she acts in different capacities. She cannot, under these circumstances, claim ignorance of the great disparity between the rental price stipulated in the lease and the sublease agreements. Consequently, in Criminal Case No. 17450, the conviction of petitioner Marcos should be, as it is hereby, upheld.

Finally, the Court observes that the Sandiganbayan awarded damages to the People in the amount of P32,172,000.00 in Criminal Case No. 17450 and P92,268,840.00 in Criminal Case No. 17453. This must be accordingly corrected.

Considering that petitioners were acquitted in Criminal Case No. 17453 due to lack of evidence, the Court deems them likewise free from any civil liability since the fact from which such liability might arise no longer exists.[41]

On the other hand, in Criminal Case No. 17450, the Court observes that an error has been committed in the computation of the damages to be awarded to the People. The trial court based its figures on the amount it perceived to be the fair rental value of the Pasay lot, as estimated by Cuervo, less the rental price stated in Exhibit “B.” Thus, it deducted P102,760.00 (the stipulated monthly rental for the Pasay lot) from P210,000.00 (Cuervo’s estimate, as interpreted by the court a quo) to arrive at a difference of P107,240.00, which was multiplied by 12 months to reach an “annual loss” of P1,286,880.00.[42] This amount was then multiplied by the life span of the lease contract, which is 25 years, to come up with the final award of P32,172,000.00.[43]

Since the estimates of Cuervo were found to be mere “estimates,” it is difficult to imagine why the trial court used them as basis for its calculation of damages. As we have already demonstrated, the gross and manifest disadvantage to the government in Criminal Case No. 17450 was determined by comparing Exhibits “B” and “D.” The conviction of Marcos was predicated on the nexus between these two documents, as well as on her obvious conflict of interest in entering into them. By the same token, her civil liability must also be made to depend on these two pieces of evidence. The correct figures should be those stated in Exhibits “B” and “D,” to wit: P734,000.00 (the stipulated monthly sublease rental for the Pasay lot) less P102,760.00 (the agreed monthly lease price for said property) times 12 months times 25 years. Thus, $P734,000.00 - P102,760.00 = P631,240.00 \times 12 \text{ months} = P7,574,880.00 \times 25 \text{ years} = P189,372,000.00$.

WHEREFORE, judgment is hereby rendered:

1) AFFIRMING the CONVICTION of petitioner Imelda R. Marcos in Criminal Case No. 17450, with the modification that said petitioner is hereby ordered to pay the Light Rail Transit Authority (LRTA) the amount of ONE HUNDRED EIGHTY-NINE MILLION, THREE HUNDRED SEVENTY-TWO THOUSAND PESOS (P189,372,000.00), as and by way of reimbursement for the prejudice caused thereto resulting from the execution of the lease contract dated June 8, 1984; and

2) REVERSING the CONVICTION of petitioner Imelda R. Marcos in Criminal Case No. 17453 and of petitioner Jose P. Dans, Jr. in Criminal Case No. 17450 and No. 17453, on ground of reasonable doubt.

Costs against petitioners.

SO ORDERED.

Narvasa, C.J. (Chairman), and Panganiban, JJ., concurs.

Melo, and Francisco JJ., see concurring and dissenting opinion.

[1] Exhibit “A.”

[2] Exhibits “B” and “C.”

[3] Exhibit “D.”

[4] The prosecution failed to submit an authenticated copy of the sublease agreement (see Fn 5).

[5] Exhibit “E.”

[6] Petitioner Marcos’ “Reply to Comment,” p. 81, Rollo in G.R. No. 126995, p. 586; Original records, p. 153.

[7] January 26, February 16, and April 2, 1993.

[8] Penned by Presiding Justice Francis E. Garchitorena, with Balajadia and Atienza, JJ., concurring.

[9] Dated November 8, 1996, and penned by Jose S. Balajadia, J., with Garchitorena and Chico-Nazario, JJ., concurring. Annex “B,” Rollo in G.R. No. 127073, p. 173.

[10] Undated, and penned by Garchitorena, J., with Balajadia and Chico-Nazario, JJ., concurring. Annex “B,” Rollo in G.R. No. 126995, p. 250.

[11] “SEC. 15. Demurrer to evidence. - After the prosecution has rested its case, the court may dismiss the case on the ground of insufficiency of evidence: (1) on its own initiative after giving the prosecution an opportunity to be heard; or (2) on motion of the accused filed with prior leave of court.

If the court denies the motion for dismissal, the accused may adduce evidence in his defense. When the accused files such motion to dismiss without express leave of court, he waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.”

[12] It must be noted that respondent court did not admit in evidence as against Dans the sublease agreement between the PGHFI and Joy Mart (Exhibit “E”) and the addendum thereto (Exhibit “E-2”), on which the prosecution relied to prove that Exhibit “C” was manifestly and grossly disadvantageous to the LRTA.

[13] Section 34, Rule 132 of the Rules of Court states that, “The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.”

[14] II Regalado, 1989, p. 437.

[15] Rollo in G.R. No. 127073, pp. 142-146.

[16] Citing 5 Moran, 1963 ed., p. 32.

[17] Citing Underhill’s Criminal Evidence, 5th ed., Vol. 1, pp. 91-97.

[18] Citing 29 Am. Jur. 2d p. 669.

[19] Citing Asia Banking Corporation v. Walter E. Olson & Co., 48 Phil. 529; Philippine Bank of Communications v. Court of Appeals, 195 SCRA 567 (1991).

[20] 34 SCRA 769 (1970).

[21] The allegations in Criminal Case No. 17450 are identical with those in Criminal Case No. 17453, except as otherwise indicated in brackets.

[22] Rollo in G.R. No. 126995, p. 43.

[23] 128 SCRA 556 (1984).

[24] Under the 1985 Rules on Criminal Procedure, this provision has been amended to read as follows:

“SEC. 10. Bill of particulars. -- Accused may, at or before arraignment, move for a bill of particulars to enable him properly to plead or prepare for trial. The motion shall specify the alleged defects and the details desired.”

[25] Records, Vol. I, pp. 25-27.

[26] Supra.

[27] Simple mathematics would yield a difference of P631,240.00 for the Pasay lot and P107,272.80 for the Sta. Cruz lot, or a sum of P738,512.80.

[28] Rollo in G.R. No. 126995, p. 213.

[29] TSN, August 13, 1992, p. 27.

[30] Ibid., p. 213.

[31] Under Section. 2(a) of R.A. No. 3019, as amended, the term “‘Government’ includes the national government, the local governments, the government-owned and controlled corporations, and all other instrumentalities or agencies of the Republic of the Philippines and their branches.”

[32] While the PGHFI is a private foundation which happens to count with some government officials on its Board of Trustees, the PGH is undoubtedly a State-run hospital.

[33] Rollo in G.R. No. 127073, pp. 151-152.

[34] Ibid., pp. 30-31.

[35] *People v. Cuizon*, 256 SCRA 325 (1996).

[36] TSN, August 13, 1992, pp. 17-26.

[37] 75 Am Jur 2d, Trial, Sec. 272, citing *U.S. v. Kelly* (CA3 NJ) 329 F2d 314; *Woodring v. U.S.* (CA8 Mo) 311 F2d 417, cert den 373 US 913, 10 L Ed 2d 414, 83 S Ct 1304.

[38] Rollo in G.R. No. 127073, p. 154.

[39] Ibid., p. 163.

[40] With Justice Regino C. Hermosisima, Jr., a non-member of either the First or the Special Division, in attendance.

[41] Section 2(b) of Rule 111 states that: “Extinction of the penal action does not carry with it extinction of the civil, unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil might arise did not exist.”

[42] Rollo in G.R. No. 126995, pp. 195-196.

[43] Ibid., p. 247.

CONCURRING AND DISSENTING OPINION

FRANCISCO, J.:

I join the ponencia in the acquittal of petitioner Jose P. Dans, Jr. but find myself unable to agree with the conviction of petitioner Imelda R. Marcos, in the light of the peculiar circumstances attendant herein.

This controversy raises seven issues:

- 1) the constitutionality of Sec. 3(g) of Anti-Graft and Corrupt Practices Act,

- 2) the sufficiency of the criminal informations
- 3) whether petitioner Marcos was properly represented by counsel during the trial,
- 4) the validity of the decision rendered by the First Division of Sandiganbayan,
- 5) the denial of petitioner Dan's demurrer,
- 6) appreciation/weight of the evidence, and
- 7) the alleged lack of fair trial.

I concede the correctness of the ponencia's finding as to the (a) constitutionality of Sec. 3 (g) of Anti-Graft and Corrupt Practices Act, (b) sufficiency of the informations, and (c) proper representation of petitioner Marcos by counsel. However, with respect to the constitutionality issue, I hasten to add that contrary to petitioner Marcos' claim, Sec. 3(g) is not a rider and therefore is not violative of the "one-title-one-subject" provision of the Constitution. There is nothing in the subject of Section 3(g), 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."

that is not germane to the title of R.A. 3019 which is the "Anti-Graft and Corrupt Practices Act". This law covers wrongdoings committed by public officers. Section 3(g) does not deal with "negligence/mistake" as erroneously argued by petitioner Marcos. Rather it deals with a public officer's act of entering into a "dishonest transaction in relation to official acts" per petitioner Marcos' own definition of "corruption." [1] Even assuming *arguendo*, that the act punished under Section 3(g) may be considered as negligent by nature, yet the opening statement of Section 3 clearly defined and classified it as one "constituting a corrupt practice." [2] It is within the province of the legislative body to define and describe what acts are criminal and to prescribe the penalty therefor. In any case, petitioner Marcos failed to show a clear case of unconstitutionality of Section 3(g) and thus was not able to rebut, even by mere scintilla of evidence or argument, the presumption of constitutionality of the assailed provision.

I, however, strongly disagree with the ponencia's stand on the following points:

1. Re: Demurrer

The Sandiganbayan Resolution dated February 10, 1993 denying petitioner Dan's demurrer to evidence, reads:

"Since per testimony of witness Ramon Cuervo, Jr. (tsn., pp. 20 to 26, August 13, 1992) that considering the nature of the terminal at the Sta. Cruz Station, which would be subject of the lease contract between the Light Rail Transit Authority and the PGH Foundation Inc. (Exhibit C), the rental of the premises in question could go up to P400,000.00 per month if the LRTA would put up the building against the stipulated rental of P92,437.00 actually entered into between the parties, there would appear cause to believe that the lease contract in question was grossly disadvantageous for the government.

"For this reason, the Demurrer to Evidence of accused Jose P. Dans, Jr., dated December 7, 1992 is DENIED for lack of merit."

It was highly improper for the Sandiganbayan to have ruled on the demurrer on the basis of the advanced testimony of defense witness Cuervo. A demurrer tests the sufficiency or insufficiency solely of the prosecution evidence and the trial court's resolution in connection therewith should be strictly limited to that. This is unmistakably deducible from Section 15, Rule 119 of the Revised Rules of Criminal Procedure, which states that a demurrer is filed and resolved when it is only the prosecution that has rested its case. Thus:

“Section 15. Demurrer to evidence – After the prosecution has rested its case, the court may dismiss the case on the ground of insufficiency of evidence; (1) on its own initiative after giving the prosecution an opportunity to be heard; or (2) on motion of the accused filed with prior leave of court.

“If the court denies the motion for dismissal, the accused may adduce evidence in his defense. When the accused files such motion to dismiss without express leave of court, he waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.”

That witness Cuervo’s testimony was taken in advance which the Sandiganbayan took judicial notice of, is no justification at all for the premature consideration of said defense evidence. For otherwise, it is a tantamount to an adjudication on the merits even before the defense takes its turn to present all evidence it deems necessary to its cause.

2. The jurisdictional fiasco between the First and Special Division.

There is merit in petitioner Marcos’ contention that it should not be the First Division (with 3 members namely, Justices Garchitorena, Balajadia, and Atienza) but the Special Division (with 5 members namely, Justices Garchitorena, Balajadia, Atienza, Del Rosario and Amores) that has jurisdiction to render a “decision” on the case. The legal requirement on the unanimity in the votes of three members of the (First) Division was not obtained due to the dissent of Justice Atienza. As culled from the “Response” of Justice Garchitorena[3] to petitioner Marcos’ motion for his inhibition, in the initial voting, Justice Garchitorena and Balajadia voted to convict petitioner Marcos in Criminal Cases 17450, 17451, and 17449 and to acquit her in Criminal Case 17453, whereas Justice Atienza voted to convict her in Criminal Cases 17450 and 17453 and acquit her in Criminal Cases 17449 and 17451. Thus on September 15, 1993, Justice Garchitorena issued Administrative Order 288-93 forming a Special Division and designated Justices Amores and Del Rosario to “sit and participate in the rendition of a decision in Criminal Cases 17449-17453 People of the Philippines vs. Imelda Marcos and Jose Dans.”[4] On September 21, 1993, Justices Garchitorena, Balajadia and del Rosario, in the presence of another Sandiganbayan Justice[5] not a member of either the First or Special Division, discussed their respective positions while having lunch in a Quezon City restaurant. Justice Del Rosario had similar conclusions with that of Justice Atienza. That same day (September 21), Justice Amores sent a written request that he be given 15 days before submitting his “manifestation” which request was considered by Justice Garchitorena as “pointless because of the agreement of Justice Belajadia and the undersigned with the conclusion reached by Justice Atienza.”[6] Upon arriving at the Sandiganbayan office on the same day of September 21, 1993 Justice Garchitorena issued Administrative Order 293-93[7] dissolving the Special Division “after deliberation and discussion among the members of the First Division,” thus, not only pre-empting whatever opinion Justice Amores might render in his manifestation but likewise rendering nugatory the formation of the special division. A decision was earlier scheduled for promulgation on September 24, 1993 which turned out to be the now-assailed decision of the Sandiganbayan First Division.

From the foregoing, it is very disturbing why it was the First Division which rendered a “decision” notwithstanding the fact that the Special Division had already been created precisely because the First Division could no longer render any “decision” for lack of unanimity among its members, as required by Section 5 of the Sandiganbayan law (P.D. 1606 as amended), which reads:

“Section 5. Proceedings, how conducted; votes required. – The unanimous votes 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 reached 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 majority of such division shall be necessary for rendering a judgment.” (emphasis supplied).

Verily, by virtue of the creation of the Special Division, it is axiomatic that the First Division is divested of jurisdiction to pass judgment over the case in favor of the Special Division. And there is nothing in the law or rules that allows the original division to “re-render” a decision once a Special Division is already in place. Moreover, it was too speculative for Justice Garchitorena to consider as pointless Justice Amores’ manifestation. Who knows, Justice Amores’ opinion could have swayed the other Justices, and thus a different outcome may have possibly resulted.

Another point. 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.”[8]

And its Rules of Procedure particularly clarifies 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 x x x.”[9] (Emphasis supplied)

The Quezon City restaurant where the Justices (Garchitorena, Balajadia and Del Rosario) took lunch and where they, as per Justice Garchitorena’s account, “discussed their positions in these cases”[10] is not the principal office or an extension of the Sandiganbayan. Neither was there any prior valid authorization to hold sessions therein. Clearly then, whatever discussion and agreement was made among the above-mentioned Justice present in that restaurant cannot be considered as “official business” and therefore, has no binding effect.

Moreover, the presence of the non-member of the First Division in the deliberation of the cases likewise taints the decision with irregularity. Needless to state, the actual decision-making process is supposed to be conducted only by the designated members of the First Division in strict confidentiality. The “non member” justice’s presence in said deliberation is tantamount to a public disclosure of court proceedings that require utmost secrecy. This, and the jurisdictional fiasco between the First and Special Divisions as previously discussed, rendered the assailed decision sad to say, void.

3. Appereciation/Weight of evidence.

The centerpiece evidence for petitioners is the testimony of Mr. Cuervo who, in the light of his unquestioned credentials as a reputable veteran real estate broker and appraiser,[11] qualified as an expert witness. He gave a brief description of what a real estate broker and an appraiser do. A broker earns his living through services by offering for sale properties that had been entrusted to him, or to lease or administer them, or even for mortgage purposes. An appraiser, witness Cuervo continues, gives a knowledgeable opinion on what would be a fair market value for a specific property whether it be for sale, lease, mortgage or exchange. He also gives an opinion on what should be a fair rental for the property, or what should be the selling price of a property if the owner wishes to sell or exchange it with another property.[12]

Now to the heart of Cuervo’s testimony, hereby reduced to its simplest presentation. In determining fair rental value of properties, first to be determined is the fair market value (FMV) of the property. FMV properties already for sale in the market is based on the market data approach which considers how much properties in that particular area were sold, how much properties were being offered for sale in said area and also inputs from fellow appraisers and brokers.[13] The size, shape, frontage, and configuration of the property are also very relevant in determining FMV.[14] Fair rental is then computed on 6% to 8% of the FMV of the property, this being the most reasonable and commonly used value for long-term leases of land in areas where the value of land appreciates more rapidly.[15]

Thus, for the 7,340 sq. m. Pasay property, which is bare, Cuervo determined its FMV at P1,000.00 to P1,500.00 per square meter.[16] This evaluation considered offers for sale, actual sales and appraisal jobs by witness Cuervo's own real estate firm of comparable lots in the same vicinity which, as testified to witness Cuervo and summarized by the Sandiganbayan, are:

“Offers for sale in the ‘Bulletin Today’

“On January 20, 1984 –

629 sq. m. located along Taft Avenue Pasay City, offered for sale by Polo Manrique Realty with an asking price of P2,500 per square meter.

On October 16, 1983 –

RGV Realty offered for sale 1,000 sq. m. with improvement thereon along Taft Avenue, Pasay City, at P1.7 million or an average per square meter of P1,688.

On September 4, 1984 –

R.F. Pula, another broker, offered for sale 300 sq. m. of lot located on F.B. Harrison near Libertad St., Pasay City, for P1,500 per square meter.

The firm of the witness itself had also made the following appraisal jobs:

On June 7, 1984 –

Property along EDSA and Vizcarra St. close to Taft Avenue with an area of 823 sq. m. at P2,500 per square meter.

On June 6, 1984 –

25 contiguous lots along Taft Avenue, Maria Lim and Donada Streets near Dela Salle College with a total area of 12,000 sq. m. at P1,120 per square meter, with the area along Taft Avenue corresponding to 2,156 square meters at P1,700 per square meter.

On June 1, 1984 –

6 contiguous lots along Taft Avenue, Buendia and Donada Sts. with an area of 3,772 sq. m. at a total value of P7,964,900 or an average of P2,111.58 per square meter”[17]

FMV of the entire land, computed on P1,500.00/sq. m., is therefore, P11,010,00.00. Multiplied by the higher value of 8%, P880,800.00 then will be the fair rental value of the Pasay property per annum,[18] or P73,400.00 a month.

For the 1,141.2 sq. m. Sta. Cruz property, Cuervo assigned P10,000.00 to P15,000.00 as FMV per square meter, also by means of “comparables” of offers for sale, appraisals made and information from fellow realtors/appraisers, such as:

“On May 28, 1983 –

604 sq. m. lot located along Escolta offered by Uni-Invest Management Corporation at P6,000 per square meter;

On June 13, 1982 –

323 sq. m. lot along Carriedo Street near Plaza Miranda offered for sale by Realtor R.F. Pula at P18,575.00 per square meter;

On April 5, 1982 –

439 sq. m. lot along Echague St. in Quiapo offered for sale by Honoria Development at P12,000 per square meter.

His company, the Cuervo Appraiser Company, appraised two (2) properties in that year, viz:

On August 1, 1984 –

for purposes of selling, the Odeon Theater at Rizal Avenue cor. Recto Avenue with an area of 1,580 sq. m. appraised at P14,500 per square meter excluding the movie house); and

On March 19, 1984 –

The Philippine Commercial International (sic) Bank's site at Plaza Sta. Cruz, more less diagonally across Dasmariñas, with an area of 679 sq. m. was appraised at P8, 500 per square meter.”[19]

Fair rental value of this property was pegged at P969,907.68 per annum , or P80,825.64 a month.[20] This is assumed that the FMV per sq. M. is P10,623.76 at the same value of 8%.

The defense's position, in sum, is that the two (2) lease agreements could not have been grossly disadvantageous to the government since the stipulated rentals for the Pasay and Sta. Cruz properties (P102,760/month and P92,437.20/month, respectively) in fact exceed the uncontradicted fair rental values assigned by expert witness Cuervo for both properties (P73,400.00/month and P80,825.64/month, respectively). The lease agreements, obviously, generated very fair rentals for the government.

But the Sandiganbayan, in convicting petitioners, found a much higher valuation. It said:

“So we summarize.

Considering the real estate values given by appraiser Cuervo,

(1) compared with the fair rental value of P80,825.65 under normal circumstances for ordinary properties there, the rental value of the Sta. Cruz area of the LRTA property (Exhibit “E”) would go up by 5 times or up to P400,000 ‘if they would use that space available for shops’ (p.23, TSN, August 13, 1992); and

(2) the estimate given by witness Cuervo for the Pasay City Station would still be twice as much as the stipulated rental in the lease agreement. ‘It would be that way, your Honor, if they would put up the shops....’ (p. 25, id)

In sum, according to witness Ramon F. Cuervo, Jr., whom accused Dans qualified as a real estate broker and appraiser,

(a) the LRTA property in Pasay City was leased to the PGH Foundation at ½ of what the property should have been leased out for; and

(b) the Sta. Cruz property was leased to the PGH Foundation for ¼ of what that property should have been leased out for,

Obviously there is a gross disparity here.”[21]

The problem with the Sandiganbayan's findings is that it completely ignored the unchallenged testimony of witness Cuervo and instead supplanted the same with valuations based on unfounded assumptions and/or hypothetical situations. For the Pasay property, for instance, the Sandiganbayan – particularly Justice Garchitorena, proceeded from his insistent assumed premise that the property was with “substantial amount of improvement.” We quote the pertinent sequence of questioning from the transcript of stenographic notes, viz:

“ATTY. BELO

Q

What percent therefore of the fair market value constitute the rental of this property we talking about?

A

P880,800 per annum, which would be a fair rental.

Q

On the other hand, the rental stipulated in this contract is what?

A

P1,233,120.00, sir.

Q

So the rental stipulated in the contract exceeds what you call fair rental for this property?

A

Yes, sir.

PJ GARCHITORENA

Q

That is on the presumption that there are no buildings on the land you are renting?

WITNESS

A

Yes, your Honor.

Q

However, here we are talking of property with substantial amount of improvement?

A

I am computing it based on bare land, your Honor.”[22] (Underscoring supplied)

X X X X X X X X

“PJ GARCHITORENA

Now, the Court will ask questions.

Q Mr. Cuervo, when you were talking about real estate both in Pasay and in Sta. Cruz, you were talking about buildings and properties that are either empty or of building in the same vein of no useful construction or else of ordinary construction.

WITNESS

A In this particular property, the one in Sta. Cruz, the building was demolished.

PJ GARCHITORENA

Q We are talking of Pasay.

WITNESS

A The one in Pasay, I was told some improvements there were not yet existing at that time.

Q Obviously from your information the construction were of no significant value?

A Right.

Q We, of course, know what these properties are. These were the terminals, the important stations of the Light Railway Transport System, and if we did not know then, we know now that these constructions were of heavy designs and because of the nature of the activity there it will be a higher pedestrian traffic area which for retail purposes would be, presumably, a very important valuable piece of property, do you agree with that?

A Yes, for retail specially.

Q In that light, you are still prepared to tell us that insofar as Pasay is concerned, your appraisal in 1984 would still be rated at the same level that you were rating similar property which were listed among realtors in 1984?

A The value that I gave between P1,000 to P1,500?

Q Yes.

A That is because those improvements were not yet there. I am giving the value of the land as fair (sic, should be bare) not as already a station.

Q So that while, as a general statement, you would say for ordinary realtor in the Pasay area, your listing on Exhibit 4 would be valid. In fact, everybody in this courtroom knows that the property we are discussing here was not an ordinary piece of land?

A Was never an ordinary piece of property before it was built....

Q Insofar as the subject matter now is concerned which is an LRT terminal?

A Yes, sir.

Q Will you now be in position to make a statement as to what a fair market value of the property would be, if not for acquisition, ... what would be the value which would give you a fair rental?

A If the land would fair now?

Q Considering what it is being used for.

A The only thing that could be of value is the potential of what rental it could get by retailing but not the station.

Q So, as a retail outlet, or whatever, supposing you are going to lease it so that you could turn around and use it for advertising space, use it for particular stalls, stores, may be jeepney or tricycle terminal or whatever because it is an exchange, would you be in a position to do appraisals for rental value?

A Yes, your Honor.

Q Supposing the LRT at that time had engaged you and say, “Mr. Cuervo, we want to make money additionally out of this area, can you consult with us”?

A We would go on hypothetical. If there were no stores there at this point and time, then we will consider the rental rates of commercial properties of the immediate area, and with the market there we will also go to hypothetical approach to this area. Considering that it is a catchment area where thousands of people would be passing by in front of.....

PJ GARCHITORENA

Q Have you thought of what values you would put there?

A No I did not get to that point.

Q Would you be in a position, you would not. But obviously, it would be much more than the values you gave (sic) us on the basis of your listings?

A The value that I gave you in 1983?

Q We are talking of 1984. We are talking about whether Mr. Dans was remiss in that property in 1984. What would be the multiples that you would use if you were the consultant of LRTA?

A I would go to the prevailing rental rates of CANTIMAR (sic) and all the other stores, and the Baclaran activity, and then...

Q Can you given (sic) us the multiples that you would use if this is the latest rental ub (sic) the area, would it be more, the same or less?

A Definitely more comparing to Cantimar (sic) and the Baclaran area would probably be 2 to 3 times more.

Q Alright, let's take it at 3. So, your testimony yesterday was what? Do you recall? Your estimate yesterday without inputing the LRT, was what again?

A P63,039.00

PJ GARCHITORENA

Q That was your assumed fair market value for what period?

A Then we have P425,885.

Q Would be for what period, monthly period?

A That is the valuation.

Q No, Mr. Cuervo, we are talking this out in testimony and we want to be able to read well. What was your estimates for the fair rental value per square meter of Pasay, the one that you gave us yesterday.

You gave us a figure yesterday. You were telling us that your land value is ranged from P1,000 to P1,500 in that area. Under this circumstances, what would be your fair rental at that time?

You can use your calculator.

A Taking a high figure of P1,500 times .08 would be P120.00 per square meter your Honor.

Q Rental?

A Yes, your Honor.

Q So, for the entire property of 7,340 square meters

A P10.00 per square meter.

Q P10.00 per square meter would be a fair rental?

A Fair rental at that time.

Q With an area of 7,340, you were saying that 73,400 would be of the ordinary property then?

A Yes, your Honor.

Q Now, if we talk of a multiple of 3, then we are talking of P210,000 more or less?

PJ GARCHITORENA

Q Per month, what is the rental agreement under Exhibit 3-c?

ATTY. BELLO

It was worth P102,760 monthly.

PJ GARCHITORENA

Q So, if we are going to look at your figures, your estimated rental of P210,000 per month would be twice as much as the rental fixed in the Lease Contract of the LRTA with the PGH Foundation?

A Yes, your Honor.”[23] (Underscoring supplied).

From the assumption/hypothesis that the Pasay property was with “substantial amount of improvement” (LRT station of “heavy design” which makes it a “higher pedestrian traffic area”), the Sandiganbayan was able to extract from witness Cuervo a valuation “2 to 3 times more” of Cuervo’s original input of P73,400.00/month. The court then multiplied P73,400.00 by the higher multiple of 3, yielding the figure “P210,000.00 more or less” which led it to conclude that the P102,760.00/month lease of the Pasay Property is only “1/2 of what the property should have been leased out for.” Certainly, witness Cuervo had no choice but to give answers to the series of hypothetical questions hurled by the Sandiganbayan. It is evident, however, that witness Cuervo was keen enough to protect his original figures from being lost in the court’s sea of assumptions, as he vigilantly pointed out, at a certain points, that:

(1) his computation is based on bare land,[24] and not as station because the improvements mentioned by the Sandiganbayan (LRT terminals, constructions of heavy designs) were not yet there,[25]

(2) that some improvements on the property were of no significant value,[26] and

(3) he and the Sandiganbayan were “going on hypothetical”. [27]

Similar state of affairs was present in connection with the Sta. Cruz property. Here, the Sandiganbayan arrived at P400,000.00/month rental for the property, or about 5 times witness Cuervo’s valuation of P80,654.64/month, on the same assumed premise that the property was with “substantial amount of improvement.” We go again to the transcript of stenographic notes:

“Q

Now with regard to the Sta. Cruz terminal, again the figures you gave us in Exhibit 7 which is the lower half of your listings were again on the basis of the property as based on the environment there, all the way to Escolta and going all the way to North to Recto, and the fair lease rental that you gave us, at that time, would have been what?

A We came out with P969,970 against P1,109,246 which was the contract.

Q So the contract was

A Was a little bit high.

Q So the contract was reading at P1.1 million.

A That’s right your Honor?

Q That was the lease rental of LRTA in favor of PGH Foundation. But we are talking about a general situation. Now, we have this particular station which was not only terminal but a crossroad really because you had people from all sides of Quiapo, Sta. Cruz, Rizal Avenue, which will board presumably all the way to Baclaran and all

the way to Caloocan. So, you have a bigger mixture of people coming in. What would be your multiple here?

WITNESS:

A I would go as high as 5, your Honor.

Q Now, you estimated the proper rental value per month for the property to be what?

A (Witness making his computation) P80,825.64, your Honor.

Q For the total area monthly?

A The total area divided by P70.82 per square meter, your Honor. P70.82 per square meter was the multiple for the 1,141 square meters.

Q That was your professional opinion?

A Yes, your Honor.

Q One more time. Your estimated professional opinion at that time, the rental value would be

A I came out with the figure P969,970.49 for the year.

Q Is this per square meter or for the entire property?

A For the entire property divided by 12, we come out with P80,825.64.

Q So, this would be our fair rental on the optimum condition?

A Yes, sir.

Q Now, our Lease Contract there, Exhibit 6, tell us....

ATTY. BELO

Under the Lease Contract is P92,437.20 a month.

PJ GARCHITORENA

Q If you say that the fair rental value was P80,000 but because of the construction of the particular nature of the condition of the Sta. Cruz station or the Carriedo Station, you would use a factor of 5, a multiple of 5, then you would be taking something like P400,000 per month rental. So on that basis, the rental of the LRT authority in favor of the PGH was almost $\frac{1}{4}$ as much as you think the rental should have been?

ATTY. BELO

Objection, your Honor, that is not the conclusion. You see this Honorable Court is inputting the value as station now but the witness testifying on the fair market value at the time.

PJ GARCHITORENA

Correct, but we also ask him to input now the character of the railway station. That is why he said the railway station would make it much valuable 5 times more.

WITNESS

A Yes, if they would use that space available for shops.

PJ GARCHITORENA

Yes, of course. We are talking here of all other things being equal except the fact that we have a railroad station, a cross terminal.

So, here we are saying that P400,000 a month would be good rental?

A Will they be putting up the building?

PJ GARCHITORENA

It does not matter. See, if the LRT put up the building it will ask for a fair return of the property. Whoever put up the building will charge for the rent.

WITNESS

A If the tenant will put up the building his capital outlay on his own will be beside the rent. While if the LRT will put up the building, then the rent.....

PJ GARCHITORENA

That is correct, we are talking here about cost of money. There is a beautiful phrase for that in finance, how you project the value of the money-etc.

So there are our figures now. P400,000 more or less us a good asking price or fair rental price insofar s the LRT authority were concerned. Nonetheless, we are told that the monthly rental for the Sub-Lease in the Sta. Cruz property is how much per month, (sic) for the entire property?

A The Lease Contract is P255,797.50 a month.

Q For the entire property?

A For the entire property.

Q So, based on your estimates it will still be ½ as much as you would charge if you were the LRT on the basis of the input? So, even if sub-leased to Trans-National Construction Corporation was still 50 percent cheaper than what you would have charge if you were going to advice the LRT as to what the rental would be.

A It would be that way, your Honor, if they would put up the shop. This is just a land.

PJ GARCHITORENA

Q Except that we know now that what was being leased was not land but the facilities which would be available in the LRT terminal.

WITNESS

A The building was built by the lessee.”[28]

Note that counsel for petitioners Dans, Atty. Belo, apparently disturbed by the trend of the Sandiganbayan’s questioning, could no longer help but raise the objection that the court is “inputting the value as station now but the witness is testifying on the fair market value at that time.” Atty. Belo’s objection is well-taken inasmuch as witness Cuervo’s uncontradicted valuation of P80,825.64 as fair rental on the “optimum condition”[29] is premised on the fact that the Sta. Cruz property is bare, “x x x just a land”[30] – the Isetann building which used to stand thereon having been demolished prior to the execution of the lease agreement.[31] This is supported by the Sta. Cruz property lease agreement itself which, in its first “WHEREAS” clause, describe the Sta. Cruz property to be “located at the former site of the Isetann Building at the President Hotel Building in the District of Santa Cruz, City of Manila, x x x.”[32]

The Sandiganbayan, in the course of the examination, would also appear to make issue of the fact that the PGHFI-TNCC sublease agreement over the Pasay property for P734,00/month[33] was very much higher than the P102,760.00/month rental under the LRTA-PGHFI lease contract or even witness Cuervo’s valuation of P73,400.00 month, which witness Cuervo admitted to be “extraordinary high” – the reason/s for which is beyond his knowledge.

“Q

As a professional because you are presented here as an expert, do you know of any reason why the consideration in the Sub-Lease Agreement was very much higher than the consideration in the Lease Contract after only 19 days?

A I am sorry I cannot give you an answer to that. All I know is that the rental of the sub-lease is extra-ordinary high. There must be some other reasons other than my knowledge.”[34]

This, however, is useless against petitioner Dans since his signature, it must be stressed, does not appear on the sublease agreement, the only signatory therein in behalf of the PGHFI is, to repeat, petitioner Marcos as Chairman of the Board. Furthermore, petitioner Dans testified that he did not participate in the negotiation for the PGHFI-TNCC sublease contract[35] It was only a few months after the execution of the sublease agreement that petitioner Dans learned about it.[36] In fact, petitioner Dans, as PGHFI board member, was able to attend only one board meeting – the very first which was the organizational meeting but the PGHFI-TNCC sublease contract

was not discussed therein.[37]

The Sandiganbayan also sniped at the following stipulation found in both lease contracts:

“Should there be a delay in any payment of the rental consideration equivalent to one year, the LESSOR shall have the right to take possession of the premises, the property and improvements thereon, the ownership of all improvements thereby accruing to the lessor.”[38]

and then proceeded to say that:

“As if this disadvantage were not enough, in both acts, non payment of rentals by the PGH Foundation was not actionable unless the rentals were in arrears for one year (par. II, 4, Exhibits “B” and “C”). The LRTA could be, therefore, deprived of the enjoyment of the rentals from its two valuable pieces of real estate or of the interest income therefrom for almost one year without any recourse for the LRTA. And if the LRTA needed any money which it could have otherwise gotten from the rentals of the properties, it would have to borrow money from other resources and pay interest for eleven (11) months because the PGH Foundation had to be in arrears for twelve (12) months before the LRTA could take any action.

“This was not only being over generous; it was gross abandonment of any effort to get decent terms for the LRTA.”[39]

This is a very narrow interpretation of said stipulation. I subscribe to petitioner Dans’ view that the stipulation gives the LRTA as lessor the “additional right” to recover possession of the two (2) leased properties and to acquire ownership of all improvements introduced thereon if and when PGHFI incurs arrears equivalent to one year rental. It certainly does not bar the LRTA from availing of other legal remedies not expressly contained in the contract, for the principle is well settled that an existing law enters into and forms part of a valid contract without need for the parties expressly making reference to it.[40]

The bottomline of it all is that the evidence, as I see it, tilts heavily in favor of petitioners. Conviction must rest, as well-settled jurisprudence tells us, not on the weakness of the defense but on the strength of the prosecution.[41] “When the prosecution fails to discharge its burden, an accused need not even offer evidence in his behalf.”[42] The weakness of State’s case is made glaringly evident not only because the documentary evidence it presented do not, by themselves, prove the crime/s charged against petitioners, but by its dismal failure to debunk witness Cuervo’s expert testimony in open court. And the Sandiganbayan cannot save the day for the prosecution by considering as evidence testimony made in response to hypothetical questions that find no basis at all on the records. The guiding rule is that hypothetical questions must include only facts that are supported by evidence and should embody substantially all facts relating to the particular matter upon which an expert opinion is sought to be elicited, but they need not include all facts pertinent to the ultimate issue.[43] The chief test, therefore, of the competency of a hypothetical question is whether it is a full and partial recital of all the essential evidence disclosed by the record on the particular issue which is involved. But where (as in this case) the question assumes facts in direct conflict with the undisputed evidence, or omits material facts upon which a determination of the problem depends, the hypothetical questions become misleading and it is then likely to lead the witness to a false conclusion.[44] Thus, the testimony given by witness Cuervo is, to my mind, the most telling evidence in this case, for testimony to the value of real estate by experts whose opinions are derived from an intimate knowledge of property in question and of the sales made in the immediate vicinity carries great weight[45] – if not the greatest weight when, as in this case, it is uncontradicted.

4. The undue interference of the Sandiganbayan Justices in the presentation of the case.

The transcript of stenographic notes supports petitioner Dans’ charge of “unfair alliance” of the Sandiganbayan with the prosecution during the trial – particularly in the examination of the witnesses.

For starters, the court questions were so numerous which, as per petitioner Dans' count, totalled 179 compared to prosecutor Querubin's questions which numbered merely 73.[46] More noteworthy, however, is that the court propounded leading, misleading and baseless hypothetical questions all rolled into one. And what appears to be the central assumption of the court is the following:

"X X X X X X X X

"Q

So the rental stipulated in the contract exceeds what you call fair rental for this property?

A

Yes, sir.

PJ GARCHITORENA

Q

That is on the presumption that there are no buildings on the land you are renting?

WITNESS

A

Yes, your honor.

Q

However, we are talking of property with substantial amount of improvement?

A

I am computing it based on bare land, your honor."[47]

(Underscoring ours.)

“X X X X X X X X

“PJ GARCHITORENA

Now, the court will ask questions.

Q

Mr. Cuervo, when your talking about real estate both in Pasay and Sta. Cruz, you were talking about buildings and properties that are either empty or of buildings in the same vein of no useful construction or else of ordinary construction.

WITNESS

A

In this particular property, the one in Sta. Cruz, the building was demolished.

PJ GARCHITORENA

Q

We are talking of Pasay.

WITNESS

A

The one in Pasay, I was told some improvements there were not yet existing at that time.

Q

Obviously from your information the construction were of no significant value?

A

Right.

Q

We, of course, know what these properties are. These were the terminals, the important stations of the Light Railway Transport System, and if we did not know then, we know now that these constructions were of heavy designs and because of the nature of the activity there it will be a higher pedestrian traffic area which for retail purposes would be, presumably, a very important valuable piece of property, do you agree with that?

A

Yes, for retail especially.

Q

Inn that light, are you still prepared to tell us that insofar as Pasay is concerned, your appraisal in 1984 would still be rated at the same level that you were rating similar property which were listed among realtors in 1984?

A

The value that I gave between P1,000 to P1,500?

Q

Yes.

A

That is because those improvements were not yet there. I am giving the value of the land as fair not as already a station.

Q

So that while, as a general statement, you would say for ordinary realtor in the Pasay area, your listing on Exhibit 4 would be valid. In fact, everybody in this courtroom knows that the property we are discussing here was not an ordinary piece of land?

A

Was never an ordinary piece of property before it was built.....

Q

Insofar as the subject matter now is concerned which is an LRT terminal?

A

Yes, sir.”[48] (Underscoring ours)

Aware that witness Cuervo’s assessments of FMV of the property pertains to bare land, respondent court (PJ Garchitorena), during the examination of the witness, cunningly entices and misleads the latter that the subject of conversation is a piece of land with substantial improvements. A priori convinced that the rentals were disadvantageous to the government, the court was not only assuming, but likewise insisting upon Cuervo that the valuation he gives pertains to land with improvements contrary to what the witnesses had testified that what he is giving value is a bare land.

From this “mother” assumption flowed the continuous string of follow-up assumptions of the court scattered all over the transcript of stenographic notes. Thus:

(For the Pasay Property)

Q

Will you now be in position to make a statement as to what a fair market value of the property would be, if not for acquisition,..... what would be the value which would give you a fair rental?

A If that land would fair now?

Q Considering what it is being used for.

A The only thing that could be of value is the potential of what rental it could get by retailing but not as station.

Q So, as a retail outlet, or whatever, supposing you are going to lease it so that you could turn around and use it for advertising space, use it for particular stalls, stores, may be jeepney or tricycle terminal or whatever because it is an exchange, would you be in a position to do appraisal for rental value?

A Yes, your honor.

Q Supposing the LRT at that time had engaged you and say, “Mr. Cuervo, we want to make money additionally out of this area, can you consult with us?

A We would go on hypothetical. If there were no stores there at this point and time, then we will consider the rental rates of commercial properties of the immediate area, and with the market there we will also go to hypothetical approach to this area. Considering that it is a catchment area where thousands of people would be passing by in front of.....

PJ GARCHITORENA

Q Have you thought of what values you would put there?

A No I did not get to that point.

Q Would you be in a position, no you would not. But, obviously, it would be much more than the values you gave (sic) us on the basis of your listings?

A The value that I gave you in 1983?

Q We are talking of 1984. We are talking about whether Mr. Dans was remiss in that property in 1984. What would be the multiples that you would use if you were the consultant of the LRTA?

A I would go to the prevailing rental rates of CANTIMAR (sic) and all the other stores, and the Baclaran activity, and then...

Q Can you give us the multiples that you would use if this is the latest rental value (sic) the area, would it be more, the same or less?

A Definitely more comparing it to Cantimar (sic) and the Baclaran area would probably be 2 to 3 times more.

Q Alright, let's take it at 3. So, your testimony yesterday was what? Do you recall? Your estimate yesterday without inputting the LRT, was what again?

A P63,039.00.

PJ GARCHITORENA

Q That was your assumed fair market value for what period?

A Then we have P425,885.

Q Would be for what period, monthly period?

A That is the evaluation.

Q No, Mr. Cuervo, we are taking this out in testimony and we want to be able to read well. What was your estimates for the fair rental value per square meter of Pasay, the one that you gave us yesterday?

You gave us a figure yesterday. You were telling us that your land value is ranged from P1,000 to P1,500 in that area. Under this circumstances, what would be your fair rental at that time?

You can use your calculator.

A Taking a high figure of P1,500 times .08 would be P120.00 per square meter, your honor.

Q Rental?

A Yes, your honor.

Q So, for the entire property of 7,340 square meters

A P10.00 per square meter.

Q P10.00 per square meter would be fair rental?

A Fair rental at that time.

Q With an area of 7,340, you were saying that 73,400 would be of the ordinary property then?

A Yes, your honor.

Q Now, if we talk of a multiple of 3, then we are talking of P210,000 more or less?

PJ GARCHITORENA

Q Per month, what was the rental agreement under exhibit 3-C?

ATTY. BELO

It was P102,760 monthly.

PJ GARCHITORENA

Q So, if we are going to look at your figures, your estimated rental of P210,000 per month would be twice as much as the rental fixed in the Lease Contract of the LRTA with the PGH Foundation?

A Yes, your honor.”[49]

(For the Sta. Cruz Property)

“Q Now with regard to the Sta. Cruz terminal, again the figures you gave us in exhibit 7 which is the lower half of your listings were again on the basis of the property as based on the environment there, all the way to Escolta and going all the way to North to Recto, and fair lease rental that you gave us, at that time, would have been what?

A We came out with P969,970 against the P1,109,246 which was the contract.

Q So the contract was.....

A Was a little bit high.

Q So the contract was reading at P1.1 million?

A That is right, your honor?

Q That was the lease rental of LRTA in favor of PGH Foundation. But we are talking about a general situation. Now, we have this particular station which was not only terminal but a crossroad really because you had people from all sides of Quiapo, Sta. Cruz, Rizal Avenue which will board presumably all the way to Baclaran and all the way to Caloocan. So, you have a bigger mixture of people coming in. What would be your multiple here?

WITNESS

A I would to as high as 5, your Honor.

Q Now, you estimated the proper rental value per month for the property to be what?

A (Witness making his computation). P80,825.64, your Honor.

Q For the total area monthly?

A The total area divided by P70.82 per square meter, your Honor. P70.82 per square meter was the multiple for the 1,141 square meters.

Q That was your personal opinion?

A Yes, your Honor.

Q One more time. Your estimated professional opinion at that time, the rented value would be....

A I came out with the figure P969,970.49 for the year.

Q Is this per square meter or for the entire property?

A For the entire property divided by 12, we come out with P80,825.64.

Q So, this would be our fair rental on the optimum condition?

A Yes, sir.

Q Now, our Lease Contract there, Exhibit 6, tell us....

ATTY. BELO

Under the Lease Contract is P92,437.20 a month.

PJ GARCHITORENA

Q If you say the fair rental value was P80,000 but because of the construction of the particular nature of the condition of the Sta. Cruz Station or the Carriedo Station, you would use a factor of 5, a multiple of 5, then you would be talking something like P400,000 per month rental. So on the basis, the rental of the LRT authority in favor of the PGH was almost $\frac{1}{4}$ as much as you think the rental should have been?

ATTY. BELO

Objection, your Honor, that is not the conclusion. You see this Honorable Court is inputting the value as station now but the witness is testifying on the fair market value at that time.

PJ GARCHITORENA

Correct, but we also ask him to input now the character of the railway station. That is why he said the railway station would make it much valuable 5 times more.

WITNESS

A Yes, if they would use that space available for shops.

PJ GARCHITORENA

Yes, of course. We are talking here of all other things being equal except the fact that we have a railroad station, a cross terminal.

So, here we are saying that P400.000 a month would be a good rental?

A Will they be putting up the building?

PJ GARCHITORENA

It does not matter. See, if the LRT put up the building it will ask for a fair return of the property. Whoever put up the building will charge for the rent.

WITNESS

A If the tenant will put up the building his capital outlay on his own will be beside the rent. While if the LRT will

put up the building, then the rent....

PJ GARCHITORENA

That is correct, we are talking here about cost of money. There is a beautiful phrase for that in finance, how you project the value of money-etc.

So, these are our figures now, P400,000 more or less is a good asking price or fair rental price insofar as the LRT authority were concerned. Nonetheless, we are told that the monthly rental for the Sub-Lease in the Sta. Cruz property is how much per much, for the entire property?

A The Lease Contract is P255,797.50 a month.

Q For the entire property?

A For the entire property.

Q So, based on your estimates it will still be $\frac{1}{2}$ as much as you would charge if you were the LRT on the basis of the input? So, even if sub-leased to Trans-National Construction Corporation was still 50 per cent cheaper than what you would have charge if you were going to advice the LRT as to what the rental would be.

A It would be that way, your Honor, if they would put up the shop. This is just a land.

PJ GARCHITORENA

Q Except that we know now that what was being leased was not land but the facilities which would be available in the LRT terminal.

WITNESS

A The building was built by the lessee.”[50]

The court questions were far from being clarificatory. They were, in the main, queries that have no basis on the

records. It has been said that purely abstract questions, assuming facts or theories for which there is no foundation in the evidence, are not admissible as a matter of right, although such questions may be permitted on cross-examination for the purpose of testing the knowledge of the witness as to the subject on which he has testified.[51] But cross-examination is the exclusive function of the advocate. Thus any trend of court questioning which shows even slight semblance of cross-examination is already offensive to fundamental requirements of due process, for this Court in “People v. Opida”[52] had admonished that: “x x x the judge must not only be impartial but must also appear to be impartial, to give added assurance to the parties that his decision will be just. The parties are entitled to no less than this, as a minimum guaranty of due process.” In “Tabuena vs. Sandiganbayan”,[53] this Court en banc highlighted the following observation and limitations of a judge’s/justice’s participation in the conduct of the trial. Thus:

“...It is indeed an impressive proportion (referring to the volume of questions of the trial judge), but no such mathematical computation is of itself determinative. However, taking all this in conjunction with the long and vigorous examination of the defendant himself by the judge, x x x, we fear that in its zeal for arriving at the facts the court here conveyed to the jury to strong an impression of the court’s belief in the defendant’s probable guilt to permit the jury freely to perform it own function of independent determination of the facts.”

x x x x x x x x

“This Court has acknowledged the right of a trial judge to question witnesses with a view to satisfying his mind upon any material point which presents itself during the trial of a case over which he presides. But not only should his examination be limited to asking “clarificatory” questions, the right should be sparingly and judiciously used; for the rule is that the court should stay out of it as much as possible, neither interfering nor intervening in the conduct of the trial.”

x x x x x x x x

“A trial judge should not participate in the examination of witnesses as to create the impression that he is allied with the prosecution”

“We doubt not that the sole motive of the learned judge was to ascertain the truth of the transaction, but it is never proper for a judge to discharge the duties of a prosecuting attorney. However anxious a judge may be for the enforcement of the law, he should always remember that he is as much judge in behalf of the defendant accused of the crime, and whose liberty is in jeopardy, as he is judge in behalf of the state, for the purpose of safeguarding the interest of society.”

“Ordinarily it is not good practice for the presiding judge himself to examine witnesses at length. The circumstances may be such in a given case as to justify the court in so doing...This court, however, has more than once said that the examination of witnesses is the more appropriate function of counsel, and the instances are rare and the conditions exceptional which will justify the presiding judge is conducting an extensive examination. It is always embarrassing for counsel to object to what he may deem improper questions by the court. Then, in conducting a lengthy examination, it would be almost impossible for the judge to preserve a judicial attitude. While he is not a mere figurehead or umpire in a trial, and it is his duty to see that justice is done, he will usually not find it necessary to conduct such examinations. The extent to which this shall be done must largely be a matter of discretion, to be determined by the circumstances of each particular case, but in so doing he must not forget the function of the judge and assume that of an advocate....”

“While it is true that the manner in which a witness shall be examined is largely in the discretion of the trial judge, it must be understood that we have not adopted in this country the practice of making the presiding judge the chief inquisitor. It is better to observe our time-honored custom of orderly judicial procedure, even at the expense of occasional delays The judge is an important figure in the trial of a cause, and while he has the right, and it is often his duty, to question witnesses to the end that justice shall prevail, we can conceive of no other reason, for him to take the trial of the cause out of the hands of counsel.”

“The examination of witnesses is the more appropriate function of counsel, and it is believed the instances are rare and the conditions exceptional in a high degree which will justify the presiding judge in entering upon and conducting an extended examination of a witness, and that the exercise of a sound discretion will seldom deem such action necessary or advisable.”

“He [the judge] may properly intervene in a trial of a case to promote expedition, and prevent unnecessary waste of time, or to clear up some obscurity, but he should bear in mind that his undue interference, impatience, or participation in the examination of witnesses, or a severe attitude on his part toward witnesses, especially those who are excited or terrified by the unusual circumstances of a trial, may tend to prevent the proper presentation of the cause, or the ascertainment of the truth in respect thereto.”

“The impartiality of the judge – his avoidance of the appearance of becoming the advocate of either one side or the other of the pending controversy is a fundamental and essential rule of special importance in criminal cases....”

“Our courts, while never unmindful of their primary duty to administer justice, without fear or favor, and to dispose of these cases speedily and in as inexpensive a manner as is possible for the court and the parties, should refrain from showing any semblance of one-sided or more or less partial attitude in order not to create any false impression in the minds of the litigants. For obvious reasons, it is the bounden duty of all to strive for the preservation of the people’s faith in our courts.”

“Time and again this Court has declared that due process requires no less than the cold neutrality of an impartial judge. Bolstering this requirement, we have added that the judge must not only be impartial but must also appear to be impartial, to give added assurance to the parties that his decision will be just. The parties are entitled to no less than this, as a minimum guaranty of due process.”

Let it thus be stressed anew at this juncture that convictions are based on the actual commission of crimes, to be ascertained with the pure objectivity of the true judge who must uphold the law for all without favor or malice and always with justice.[54]

Finally, it is incorrect for the Sandiganbayan, per its Resolution of November 13, 1996 denying petitioner Dans’ motion for reconsideration, to say, in response to petitioner objection anent Presiding Justice Garchitorena’s question during the trial, that:

“x x x. It is now too late in the day to object to the alleged leading, misleading, and badgering questions of the Presiding Justice Garchitorena and to ask to expunge the answers thereto from the record. Needless to say, Engr. Dans should have done so when the supposed objectionable nature of the questions and/or answers were propounded or given. As it happened, he did not even raise his objections at the close of the testimony of Mr. Cuervo. He did not also ask re-direct questions to correct whatever mistakes or misimpressions allegedly crept into Mr. Cuervo’s testimony. Instead, he formally offered the entire testimony without making any exceptions or reservations.”[55]

In “Tabuena”, this Court took cognizance of the Sandiganbayan’s active participation in the examination of witnesses even when petitioners did not raise this issue at all either in the trial court or in their appeal before us, justifying the same under the doctrine that “an appeal throws the whole case open to review, and it becomes the duty of the appellate court to correct such errors as may be found in the judgment appealed from whether they are made the subject of assignments of error or not.”[56] What more when, as in this case, this objection has been raised while the case is still within the power of review of the trial court.

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 petitioners 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 the 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,[57] “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.

I, therefore, vote also for the acquittal of petitioner Imelda R. Marcos in Criminal Case No. 17450.

[1] Records, Vol VI, p. 189.

[2] Section 3, P.D. 1606 as amended provides: ‘Corrupt Practices of public officers. – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and hereby declared to be unlawful:

xxx xxx xxx

(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.”

[3] Justice Garchitorena’s RESPONSE dated November 8, 1996 states in part:

“That morning of September 21, 1993, several members of this Court (i.e. Justice Regino Hermosisima, Jr., Justice del Rosario, Justice Balajadia and the undersigned) had appeared before a committee hearing of the Committee of Justice of the House of Representatives at the Asian Institute of Tourism in Quezon City. They had a late lunch together at a restaurant in Quezon City after the committee hearing and it was there that Justice del Rosario and Balajadia as well as the undersigned discussed their positions in these cases. That was the time when the undersigned and Justice Balajadia agree with Justice del Rosario’s position”

“There and then, the undersigned as Chairman of the Division asked Justice del Rosario if he would mind if, by reason of our going along with his view resulting therefore in concurrence with Justice Atienza’s opinion, the Special Division were to be dissolved because of the lack of need therefor, i.e., there had resulted a unanimity among the regular members of the First Division were to be dissolved because of the lack of need therefor, i.e., there had resulted a unanimity among the regular members of the First Division Justice del Rosario said he did not mind at all so that as soon as the Justices arrived at the Sandiganbayan, the undersigned sent word for Justice Amores to join Justice Balajadia and the undersigned to discuss the agreement with Justice del Rosario. The undersigned then issued A.O. No. 293-93, dissolving the Special Division.

It was on that same day even before the undersigned had come back from lunch with the other Justices that Justice Amores had submitted his “Manifestation” to the undersigned in a sealed envelope asking for fifteen-day extension. The request for extension had, however, become pointless because of the agreement of Justice Balajadia and the undersigned with the conclusion of Justice Atienza.

“Justice Amores did not at any time thereafter indicate in any way his opposition to the dissolution of he Special Division.

“C. At all events, whatever position Justice Amores had taken would not alter the final decision.

“To Recapitulate :

Justice Balajadia and the undersigned had originally voted

- to convict accused Imelda Marcos in Criminal Cases No. 17450, No. 17451 and No. 17453;
- to convict accused Jose P. Dans in Criminal Cases NO. 17450, No. 17452, and No. 17453;
- to acquit both accused in Criminal Case No. 17449.

Justice Narciso Atienza had voted

- to convict accused Marcos and Dans in criminal Cases No. 17450 and No. 17453;
- to acquit accused Marcos in Criminal Case No. 17451;
- to acquit accused Dans in Criminal Case No. 17452;
- to acquit both accused Dans and Marcos in Criminal Case No. 17449.

“Justice del Rosario’s conclusion were similar to those of Justice Atienza.

“If Justice Amores were to have disagreed with the conclusion reached by Justice 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 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 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.

“A debate can be held about the correctness of the dissolution of the Special Division when the regular members of the First Division had come to an agreement. Regardless of the correctness or incorrectness thereof, however, it would not prove bias or prejudice. In fact, if the Special Division had not been dissolved, the only effect of the extension sought by Justice Amores would have been to defer – and delay the promulgation for over fifteen (15) days. This would have been of no consequence to accused Marcos (nor to accused Dans) since, as above shown, the opinion still to be rendered by Justice Amores would no longer alter the results. (Certainly, accused Marcos does not claim that a deferment of, or a delay in, the promulgation of the decision would benefit either herself or accused Dans, and if she did say that, one would wonder what or how the delay would have benefited her specially after the Supreme Court had refused to act in G.R. Nos. 111784-87 which had precisely sought that deferment.)

“In closing on this point, it might be useful to note that none of the administrative orders which created and dissolved the Special Division, not even the separate opinions rendered by Justice Atienza and Justice del Rosario, were kept hidden; on the contrary, all were made part of the record – and open to inspection by all – as accused have plainly seen. More than that: when Justice Balajadia and the undersigned had agreed during lunch on September 21, 1993 with Justice del Rosario’s presentation, the agreement was explicit that the written opinions submitted by Justice del Rosario and Justice Atienza, together with the Administrative Orders constituting and later dissolving the Special Division, would form part of the record because they were official acts actually performed by different members of the Court in connection with the cases. Likewise, the Administrative Order itself dissolving the Special Division explicitly stated the reason therefor: that Justice Jose S. Balajadia and the undersigned had agreed with the conclusion of Justice Atienza. There was no secret there.

“Accused Marcos makes an issue of the fact that some copies of the decision made available to media after the promulgation still bore the names of Justices Amores and del Rosario in the first page thereof. This was because

when drafts of the decision were prepared for circulation to Justices Amores and del Rosario, their names were added to the draft in the office of the undersigned. When extra copies were reproduced for media, a clerical error resulted in someone producing the first page which had the five names including those of Justice Amores and del Rosario rather than the first page which had contained only names of three (3) members of the regular division.

“Since the Administrative Orders creating and dissolving the Special Division were all on record, there can be no great discovery there except only the discovery of clerical oversight.

“In sum, no irregularity can be attributed to the dissolution of the Special Division resulting from Justice Jose S. Balajadia’s and of the undersigned’s agreeing with the opinion of Justice del Rosario and, consequently, concurring with the conclusion of Justice Atienza. Certainly, no prejudice was brought about to either accused Marcos or to accused Dans. Certainly, no bias. (Rollo in G.R. 126995, pp. 383-387; Reply of Marcos, p. 88).

[4] Rollo in G.R. No. 126995 pp. 592.

[5] Justice Regino C. Hermosisima, Jr., now retired Supreme Court Justice.

[6] RESPONSE of Justice Garchitorena. (Rollo in G.R. 126995, pp. 384.)

[7] Rollo in G.R. No. 126995, pp. 594-595.

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

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

[10] See Response earlier referred to.

[11] Witness had his masteral degrees in Business Economics in 1951 at the Letran College, an in Business Economics for Research and Communications in 1985. In 1949, he joined the F. Calero & Company. In 1952, he took his broker’s license and in 1957, his appraiser’s license. In 1961, he opened his own real estate brokerage as an individual, then established Perpetual Investment, Inc. in 1963. He thereafter established the realty brokerage from R.F. Cuervo, Inc. and was Vice-President for 14 years of Appraisers Phil. which was later known as Asian Appraisers Co.. He formed the appraiser’s firm Cuervo Appraisers, Inc. accredited by the Securities and Exchange Commission, Land Bank of the Philippines., Development Bank of the Phils. and the Philippine National Bank. He has attended various seminars and workshops in real estate held locally, in Mexico, Copenhagen, Vancouver and Madrid. (TSN, August 12, 1992, pp. 5-13).

[12] TSN, August 12, 1992, pp. 6-7.

[13] TSN, August 12, 1992, p. 22.

[14] TSN, August 12, 1992, p. 21.

[15] TSN, August 12, 1992, p. 25.

[16] TSN, August 12, 1992, pp. 21-24.

[17] TSN, August 12, 1992, pp. 23-24, Summary thereof made by the Sandiganbayan appears on pp. 26-27 of its Decision.

[18] TSN, August 12, 1992, p.27.

[19] TSN, August 12, 1992, pp. 34-35, as summarized by the Sandiganbayan on pp. 28-29 of its Decision.

[20] TSN, August 13, 1992, p. 23.

- [21] Sandiganbayan Decision, p. 48.
- [22] TSN, August 12, 1992, pp. 27-28.
- [23] TSN, August 13, 1992, pp. 17-22.
- [24] TSN, August 12, 1992, p. 28.
- [25] TSN, August 13, 1992, p. 18.
- [26] TSN, August 13, 1992, p. 18.
- [27] TSN, August 13, 1992, p. 18.
- [28] TSN, August 13, 1992, p. 22-26.
- [29] TSN, August 13, 1992, p. 23.
- [30] TSN, August 23, 1992, p. 25.
- [31] TSN, August 13, 1992, p. 17.
- [32] Sta. Cruz Lease Agreement, Exhibit C.
- [33] Annex E.
- [34] TSN, August 13, 1992, p. 10.
- [35] TSN, November 27, 1992 p. 14.
- [36] TSN, November 27, 1992 p. 14.
- [37] TSN, November 27, 1992 p. 14.
- [38] Stipulation 4, paragraph II, "Rights and Obligations of the Lessee" of Pasay property lease agreement, p. 7. Also appearing as stipulation 4 under the same paragraph in the Sta. Cruz lease agreement, pp. 6-7.
- [39] Sandiganbayan Decision, p. 54.
- [40] Philippine Airlines vs. NLRC, 259 SCRA 459; Philippine Integrated Labor Assistance Corp. vs. NLRC, 264 SCRA 418; Boman Environmental Dev't Corp. vs. Court of Appeals, 167 SCRA 540, citing Lakas ng Manggagawang Makabayan vs. Abiera, 36 SCRA 437.
- [41] People vs. Sotto, 312 Phil. 869; People vs. Capilitan, 182 SCRA 313; People vs. Fider, 223 SCRA 117; Layug vs. Sandiganbayan, 315 Phil. 93.
- [42] People vs. Castro, et al., G.R. No. 122671, November 18, 1997.
- [43] 22 Am. Jur. 662 cited in V.J. Francisco, Rules of Court, Vol. II, Part I (Evidence) 1997 Ed., p. 651.
- [44] Bickford v. Lawson, 81 P. 2d. 216, 22, 27, Cal. App. 2d. 416, cited in V.J. Francisco, Rules of Court, Vol. II, Part I (Evidence) 1997 Ed., p. 654.
- [45] Moore on Facts (1908), Vol II, citing Browning v. Stiles, (N.J. 1906) 65 Atl. Rep. 457.
- [46] Amended petition of Dans, p. 75.
- [47] TSN, August 12, 1992, pp. 27-28.

[48] TSN, August 13, 1992, pp. 17-19.

[49] Previously cited.

[50] Previously cited.

[51] 2 Wharton's Criminal Evidence, (11th ed.), 1779-1780, cited in V.J. Francisco, Rules of Court, Vol. II, Part I (Evidence) 1997 Ed., p. 654.

[52] 142 SCRA 295, 298.

[53] G.r. Nos 103501-03 and 103507, En Banc Decision dated February 17, 1997.

[54] People v. Opida, supra, p. 304.

[55] Resolutions of November 13, 1996, p. 24.

[56] Tabuena v. Sandiganbayan, supra, p. 27.

[57] People v. Opida, supra, p. 303.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.