

JOSE “JINGGOY” E. ESTRADA, PETITIONER, VS. SANDIGANBAYAN (THIRD DIVISION), PEOPLE OF THE PHILIPPINES AND OFFICE OF THE OMBUDSMAN, RESPONDENTS.

G.R. No. 148965. February 26, 2002

Ponente: PUNO, J.

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PUNO, J.:

A law may not be constitutionally infirm but its application to a particular party may be unconstitutional. This is the submission of the petitioner who invokes the equal protection clause of the Constitution in his bid to be excluded from the charge of plunder filed against him by the respondent Ombudsman.

The antecedent facts are as follows:

In November 2000, as an offshoot of the impeachment proceedings against Joseph Ejercito Estrada, then President of the Republic of the Philippines, five criminal complaints against the former President and members of his family, his associates, friends and conspirators were filed with the respondent Office of the Ombudsman.

On April 4, 2001, the respondent Ombudsman issued a Joint Resolution[1] finding probable cause warranting the filing with the Sandiganbayan of several criminal Informations against the former President and the other respondents therein. One of the Informations was for the crime of plunder under Republic Act No. 7080 and among the respondents was herein petitioner Jose “Jinggoy” Estrada, then mayor of San Juan, Metro Manila.

The Information was amended and filed on April 18, 2001. Docketed as Criminal Case No. 26558, the case was assigned to respondent Third Division of the Sandiganbayan. The arraignment of the accused was set on July 10, 2001 and no bail for petitioner’s provisional liberty was fixed.

On April 24, 2001, petitioner filed a “Motion to Quash or Suspend” the Amended Information on the ground that the Anti-Plunder Law, R.A. No. 7080, is unconstitutional and that it charged more than one offense. Respondent Ombudsman opposed the motion.

On April 25, 2001, the respondent court issued a warrant of arrest for petitioner and his co-accused. On its basis, petitioner and his co-accused were placed in custody of the law.

On April 30, 2001, petitioner filed a “Very Urgent Omnibus Motion”[2] alleging that: (1) no probable cause exists to put him on trial and hold him liable for plunder, it appearing that he was only allegedly involved in illegal gambling and not in a “series or combination of overt or criminal acts” as required in R.A. No. 7080; and (2) he is entitled to bail as a matter of right. Petitioner prayed that he be excluded from the Amended Information and be discharged from custody. In the alternative, petitioner also prayed that he be allowed to post bail in an amount to be fixed by respondent court.[3]

On June 28, 2001, petitioner filed a “Motion to Resolve Mayor Jose ‘Jinggoy’ Estrada’s Motion To Fix Bail On Grounds That An Outgoing Mayor Loses Clout An Incumbent Has And That On Its Face, the Facts Charged In

The Information Do Not Make Out A Non-Bailable Offense As To Him.”[4]

On July 3, 2001, petitioner filed a “Motion to Strike Out So-Called ‘Entry of Appearance,’ To Direct Ombudsman To Explain Why He Attributes Impropriety To The Defense And To Resolve Pending Incidents.”[5]

On July 9, 2001, respondent Sandiganbayan issued a Resolution denying petitioner’s “Motion to Quash and Suspend” and “Very Urgent Omnibus Motion.”[6] Petitioner’s alternative prayer to post bail was set for hearing after arraignment of all accused. The court held:

“WHEREFORE, in view of the foregoing, the Court hereby DENIES for lack of merit the following: (1) MOTION TO QUASH AND SUSPEND dated April 24, 2001 filed by accused Jose ‘Jinggoy’ Estrada; (2) MOTION TO QUASH dated June 7, 2001 filed by accused Joseph Ejercito Estrada; and (3) MOTION TO QUASH (Re: Amended Information dated 18 April 2001) dated June 26, 2001 filed by accused Edward S. Serapio.

Considering the denial of the MOTION TO QUASH AND SUSPEND of accused Jose ‘Jinggoy’ Estrada, his VERY URGENT OMNIBUS MOTION, praying that he be: (1) dropped from the information for plunder for want of probable cause and (2) discharged from custody immediately which is based on the same grounds mentioned in this MOTION TO QUASH AND SUSPEND is hereby DENIED. Let his alternative prayer in said OMNIBUS MOTION that he be allowed to post bail be SET for hearing together with the petition for bail of accused Edward S. Serapio scheduled for July 10, 2001, at 2:00 o’clock in the afternoon after the arraignment of all the accused.”[7]

The following day, July 10, 2001, petitioner moved for reconsideration of the Resolution. Respondent court denied the motion and proceeded to arraign petitioner. Petitioner refused to make his plea prompting respondent court to enter a plea of “not guilty” for him.[8]

Hence, this petition. Petitioner claims that respondent Sandiganbayan acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction in:

“1) not declaring that R.A. No. 7080 is unconstitutional on its face and, as applied to petitioner, and denying him the equal protection of the laws;

2) not holding that the Plunder Law does not provide complete and sufficient standards;

3) sustaining the charge against petitioner for alleged offenses, and with alleged conspirators, with which and with whom he is not even remotely connected - contrary to the dictum that criminal liability is personal, not vicarious - results in the denial of substantive due process;

4) not fixing bail for petitioner for alleged involvement in jueteng in one count of the information which amounts to cruel and unusual punishment totally in defiance of the principle of proportionality.”[9]

We shall resolve the arguments of petitioner in seriatim.

I.

Petitioner contends that R.A. No. 7080 is unconstitutional on its face and as applied to him and denies him the equal protection of the laws.[10]

The contention deserves our scant attention. The constitutionality of R.A. No. 7080, the Anti-Plunder Law, has been settled in the case of *Estrada v. Sandiganbayan*. [11] We take off from the Amended Information which charged petitioner, together with former President Joseph E. Estrada, Atty. Edward Serapio, Charlie “Atong” Ang, Yolanda T. Ricaforte and others, with the crime of plunder as follows:

“AMENDED INFORMATION

The undersigned Ombudsman Prosecutor and OIC-Director, EPIB Office of the Ombudsman, hereby accuses former PRESIDENT OF THE PHILIPPINES, Joseph Ejercito Estrada a.k.a. “ASIONG SALONGA” AND a.k.a “JOSE VELARDE”, together with Jose ‘Jinggoy’ Estrada, Charlie ‘Atong’ Ang, Edward Serapio, Yolanda T. Ricaforte, Alma Alfaro, JOHN DOE a.k.a. Eleuterio Tan OR Eleuterio Ramos Tan or Mr. Uy, Jane Doe a.k.a. Delia Rajas, and John DOES & Jane Does, of the crime of Plunder, defined and penalized under R.A. No. 7080, as amended by Sec. 12 of R.A. No. 7659, committed as follows:

That during the period from June, 1998 to January, 2001, in the Philippines, and within the jurisdiction of this Honorable Court, accused Joseph Ejercito Estrada, THEN A PUBLIC OFFICER, BEING THEN THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES, by himself AND/OR in CONNIVANCE/CONSPIRACY with his co-accused, WHO ARE MEMBERS OF HIS FAMILY, RELATIVES BY AFFINITY OR CONSANGUINITY, BUSINESS ASSOCIATES, SUBORDINATES AND/OR OTHER PERSONS, BY TAKING UNDUE ADVANTAGE OF HIS OFFICIAL POSITION, AUTHORITY, RELATIONSHIP, CONNECTION, OR INFLUENCE, did then and there wilfully, unlawfully and criminally amass, accumulate and acquire BY HIMSELF, DIRECTLY OR INDIRECTLY, ill-gotten wealth in the aggregate amount OR TOTAL VALUE of FOUR BILLION NINETY SEVEN MILLION EIGHT HUNDRED FOUR THOUSAND ONE HUNDRED SEVENTY THREE PESOS AND SEVENTEEN CENTAVOS [P4,097,804,173.17], more or less, THEREBY UNJUSTLY ENRICHING HIMSELF OR THEMSELVES AT THE EXPENSE AND TO THE DAMAGE OF THE FILIPINO PEOPLE AND THE REPUBLIC OF THE PHILIPPINES, through ANY OR A combination OR A series of overt OR criminal acts, OR SIMILAR SCHEMES OR MEANS, described as follows:

(a)

by receiving OR collecting, directly or indirectly, on SEVERAL INSTANCES, MONEY IN THE AGGREGATE AMOUNT OF FIVE HUNDRED FORTY-FIVE MILLION PESOS (P545,000,000.00), MORE OR LESS, FROM ILLEGAL GAMBLING IN THE FORM OF GIFT, SHARE, PERCENTAGE, KICKBACK OR ANY FORM OF PECUNIARY BENEFIT, BY HIMSELF AND/OR in connivance with co-accused CHARLIE ‘ATONG’ ANG, Jose ‘Jinggoy’ Estrada, Yolanda T. Ricaforte, Edward Serapio, AN (sic) JOHN DOES AND JANE DOES, in consideration OF TOLERATION OR PROTECTION OF ILLEGAL GAMBLING;

(b)

by DIVERTING, RECEIVING, misappropriating, converting OR misusing DIRECTLY OR INDIRECTLY, for HIS OR THEIR PERSONAL gain and benefit, public funds in the amount of ONE HUNDRED THIRTY MILLION PESOS [P130,000,000.00], more or less, representing a portion of the TWO HUNDRED MILLION PESOS [P200,000,000] tobacco excise tax share allocated for the Province of Ilocor Sur under R.A. No. 7171, BY HIMSELF AND/OR in CONNIVANCE with co-accused Charlie ‘Atong’ Ang, Alma Alfaro, JOHN DOE a.k.a. Eleuterio Tan OR Eleuterio Ramos Tan or Mr. Uy, and Jane Doe a.k.a. Delia Rajas, AND OTHER JOHN DOES AND JANE DOES;

(c)

by directing, ordering and compelling, FOR HIS PERSONAL GAIN AND BENEFIT, the Government Service Insurance System (GSIS) TO PURCHASE 351,878,000 SHARES OF STOCK MORE OR LESS, and the Social Security System (SSS), 329,855,000 SHARES OF STOCK MORE OR LESS, OF THE BELLE CORPORATION IN THE AMOUNT OF MORE OR LESS ONE BILLION ONE HUNDRED TWO

MILLION NINE HUNDRED SIXTY FIVE THOUSAND SIX HUNDRED SEVEN PESOS AND FIFTY CENTAVOS [P1,102,965,607.50] AND MORE OR LESS SEVEN HUNDRED FORTY FOUR MILLION SIX HUNDRED TWELVE THOUSAND AND FOUR HUNDRED FIFTY PESOS [P744,612,450.00], RESPECTIVELY, OR A TOTAL OF MORE OR LESS ONE BILLION EIGHT HUNDRED FORTY SEVEN MILLION FIVE HUNDRED SEVENTY EIGHT THOUSAND FIFTY SEVEN PESOS AND FIFTY CENTAVOS [P1,847,578,057.50]; AND BY COLLECTING OR RECEIVING, DIRECTLY OR INDIRECTLY, BY HIMSELF AND/OR IN CONNIVANCE WITH JOHN DOES AND JANE DOES, COMMISSIONS OR PERCENTAGES BY REASON OF SAID PURCHASES OF SHARES OF STOCK IN THE AMOUNT OF ONE HUNDRED EIGHTY NINE MILLION SEVEN HUNDRED THOUSAND PESOS [P189,700,000.00], MORE OR LESS, FROM THE BELLE CORPORATION WHICH BECAME PART OF THE DEPOSIT IN THE EQUITABLE-PCI BANK UNDER THE ACCOUNT NAME "JOSE VELARDE";

(d)

by unjustly enriching himself FROM COMMISSIONS, GIFTS, SHARES, PERCENTAGES, KICKBACKS, OR ANY FORM OF PECUNIARY BENEFITS, IN CONNIVANCE WITH JOHN DOES AND JANE DOES, in the amount of MORE OR LESS THREE BILLION TWO HUNDRED THIRTY THREE MILLION ONE HUNDRED FOUR THOUSAND ONE HUNDRED SEVENTY THREE PESOS AND SEVENTEEN CENTAVOS [P3,233,104,173.17] AND DEPOSITING THE SAME UNDER HIS ACCOUNT NAME "JOSE VELARDE" AT THE EQUITABLE-PCI BANK.

CONTRARY TO LAW.

Manila for Quezon City, Philippines, 18 April 2001"[12]

Petitioner's contention that R.A. No. 7080 is unconstitutional as applied to him is principally perched on the premise that the Amended Information charged him with only one act or one offense which cannot constitute plunder. He then assails the denial of his right to bail.

Petitioner's premise is patently false. A careful examination of the Amended Information will show that it is divided into three (3) parts: (1) the first paragraph charges former President Joseph E. Estrada with the crime of plunder together with petitioner Jose "Jinggoy" Estrada, Charlie "Atong" Ang, Edward Serapio, Yolanda Ricaforte and others; (2) the second paragraph spells out in general terms how the accused conspired in committing the crime of plunder; and (3) the following four sub-paragraphs (a) to (d) describe in detail the predicate acts constitutive of the crime of plunder pursuant to items (1) to (6) of R.A. No. 7080, and state the names of the accused who committed each act.

Pertinent to the case at bar is the predicate act alleged in sub-paragraph (a) of the Amended Information which is of "receiving or collecting, directly or indirectly, on several instances, money in the aggregate amount of P545,000,000.00 for illegal gambling in the form of gift, share, percentage, kickback or any form of pecuniary benefit x x x." In this sub-paragraph (a), petitioner, in conspiracy with former President Estrada, is charged with the act of receiving or collecting money from illegal gambling amounting to P545 million. Contrary to petitioner's posture, the allegation is that he received or collected money from illegal gambling "on several instances." The phrase "on several instances" means the petitioner committed the predicate act in series. To insist that the Amended Information charged the petitioner with the commission of only one act or offense despite the phrase "several instances" is to indulge in a twisted, nay, "pretzel" interpretation.

It matters little that sub-paragraph (a) did not utilize the exact words "combination" or "series" as they appear in R.A. No. 7080. For in *Estrada v. Sandiganbayan*,[13] we held that where these two terms are to be taken in their

popular, not technical, meaning, the word “series” is synonymous with the clause “on several instances.” “Series” refers to a repetition of the same predicate act in any of the items in Section 1 (d) of the law. The word “combination” contemplates the commission of at least any two different predicate acts in any of said items. Plainly, sub-paragraph (a) of the Amended Information charges petitioner with plunder committed by a series of the same predicate act under Section 1 (d) (2) of the law.

Similarly misleading is petitioner’s stand that in the Ombudsman Resolution of April 4, 2001 finding probable cause to charge him with plunder together with the other accused, he was alleged to have received only the sum of P2 million, which amount is way below the minimum of P50 million required under R.A. No. 7080. The submission is not borne out by the April 4, 2001 Resolution of the Ombudsman, recommending the filing of charges against petitioner and his co-accused, which in pertinent part reads:

“x x x x x x x x

Respondent Jose ‘Jinggoy’ Estrada, the present Mayor of San Juan, Metro Manila, appears to have also surreptitious collection of protection money from jueteng operations in Bulacan. This is gleaned from the statements of Gov. Singson himself and the fact that Mayor Estrada, on at least two occasions, turned over to a certain Emma Lim, an emissary of the respondent governor, jueteng haul totalling P2 million, i.e., P1 million in January, 2000 and another P1 million in February, 2000. An alleged “listahan” of jueteng recipients listed him as one “Jingle Bell,” as affirmed by Singson [TSN 8 & Dec. 2000 SICt/17 Oct. 2000 SBRC/SCI].”[14]

Hence, contrary to the representations of the petitioner, the Ombudsman made the finding that P2 million was delivered to petitioner as “jueteng haul” on “at least two occasions.” The P2 million is, therefore, not the entire sum with which petitioner is specifically charged. This is further confirmed by the conclusion of the Ombudsman that:

“x x x x x x x x

It is clear that Joseph Ejercito Estrada, in confabulation with Jose ‘Jinggoy’ Estrada, Atty. Edward Serapio and Yolanda Ricaforte, demanded and received, as bribe money, the aggregate sum of P545 million from jueteng collections of the operators thereof, channeled thru Gov. Luis ‘Chavit’ Singson, in exchange for protection from arrest or interference by law enforcers; x x x.”[15]

To be sure, it is too late in the day for the petitioner to argue that the Ombudsman failed to establish any probable cause against him for plunder. The respondent Sandiganbayan itself has found probable cause against the petitioner for which reason it issued a warrant of arrest against him. Petitioner then underwent arraignment and is now on trial. The time to assail the finding of probable cause by the Ombudsman has long passed. The issue cannot be resurrected in this petition.

II.

Next, petitioner contends that “the plunder law does not provide sufficient and complete standards to guide the courts in dealing with accused alleged to have contributed to the offense.”[16] Thus, he posits the following questions:

“For example, in an Information for plunder which cites at least ten criminal acts, what penalty do we impose on one who is clearly involved in only one such criminal act? Is it reclusion perpetua? Or should it be a lesser penalty? What if another accused is shown to have participated in three of the ten specifications, what would be the penalty imposable, compared to one who may have been involved in five or seven of the specifications? The law does not provide the standard or specify the penalties and the courts are left to guess. In other words, the courts are called to say what the law is rather than to apply what the lawmaker is supposed to have intended.”[17]

Petitioner raises these hypothetical questions for he labors hard under the impression that: (1) he is charged with only one act or offense and (2) he has not conspired with the other accused named in sub-paragraphs (b) to (d) of the Amended Information, ergo, the penalty imposable on him ought to be different from reclusion perpetua to death. R.A. No. 7080, he bewails, is cloudy on the imposable penalty on an accused similarly situated as he is. Petitioner, however, overlooks that the second paragraph of the Amended Information charges him to have conspired with former President Estrada in committing the crime of plunder. His alleged participation consists in the commission of the predicate acts specified in sub-paragraph (a) of the Amended Information. If these allegations are proven, the penalty of petitioner cannot be unclear. It will be no different from that of the former President for in conspiracy, the act of one is the act of the other. The imposable penalty is provided in Section 2 of R.A. No. 7080, viz:

“Section 2. Any public officer who, by himself or in connivance with the members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts as described in Section 1(d) hereof in the aggregate amount or total value of at least Fifty million pesos (P50,000,000.00) shall be guilty of the crime of plunder and shall be punished by reclusion perpetua to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court.”

III.

Petitioner also faults the respondent Sandiganbayan for “sustaining the charge against petitioner for alleged offenses and with alleged conspirators, with which and with whom he is not even remotely connected – contrary to the dictum that criminal liability is personal, not vicarious – results in the denial of substantive due process.”[18]

The Solicitor General argues, on the other hand, that petitioner is charged not only with the predicate act in sub-paragraph (a) but also with the other predicate acts in sub-paragraphs (b), (c) & (d) because he is indicted as a principal and as co-conspirator of the former President. This is purportedly clear from the first and second paragraphs of the Amended Information.[19]

For better focus, there is a need to examine again the allegations of the Amended Information vis-à-vis the provisions of R.A. No. 7080.

The Amended Information, in its first two paragraphs, charges petitioner and his other co-accused with the crime of plunder. The first paragraph names all the accused, while the second paragraph describes in general how plunder was committed and lays down most of the elements of the crime itself. Sub-paragraphs (a) to (d) describe in detail the predicate acts that constitute the crime and name in particular the co-conspirators of former President Estrada in each predicate act. The predicate acts alleged in the said four sub-paragraphs correspond to the items enumerated in Section 1 (d) of R.A. No. 7080. Sub-paragraph (a) alleged the predicate act of receiving, on several instances, money from illegal gambling, in consideration of toleration or protection of illegal gambling, and expressly names petitioner as one of those who conspired with former President Estrada in committing the offense. This predicate act corresponds with the offense described in item [2] of the enumeration in Section 1 (d) of R.A. No. 7080. Sub-paragraph (b) alleged the predicate act of diverting, receiving or misappropriating a portion of the tobacco excise tax share allocated for the province of Ilocos Sur, which act is the offense described in item [1] in the enumeration in Section 1 (d) of the law. This sub-paragraph does not mention petitioner but instead names other conspirators of the former President. Sub-paragraph (c) alleged two predicate acts - that of ordering the Government Service Insurance System (GSIS) and the Social Security System (SSS) to purchase

shares of stock of Belle Corporation, and collecting or receiving commissions from such purchase from the Belle Corporation which became part of the deposit in the “Jose Velarde” account at the Equitable-PCI Bank. These two predicate acts fall under items [2] and [3] in the enumeration of R.A. No. 7080, and was allegedly committed by the former President in connivance with John Does and Jane Does. Finally, sub-paragraph (d) alleged the predicate act that the former President unjustly enriched himself from commissions, gifts, kickbacks, in connivance with John Does and Jane Does, and deposited the same under his account name “Jose Velarde” at the Equitable-PCI Bank. This act corresponds to the offense under item [6] in the enumeration of Section 1 (d) of R.A. No. 7080.

From the foregoing allegations of the Amended Information, it is clear that all the accused named in sub-paragraphs (a) to (d), thru their individual acts, conspired with former President Estrada to enable the latter to amass, accumulate or acquire ill-gotten wealth in the aggregate amount of P4,097,804,173.17. As the Amended Information is worded, however, it is not certain whether the accused in sub-paragraphs (a) to (d) conspired with each other to enable the former President to amass the subject ill-gotten wealth. In light of this lack of clarity, petitioner cannot be penalized for the conspiracy entered into by the other accused with the former President as related in the second paragraph of the Amended Information in relation to its sub-paragraphs (b) to (d). We hold that petitioner can be held accountable only for the predicate acts he allegedly committed as related in sub-paragraph (a) of the Amended Information which were allegedly done in conspiracy with the former President whose design was to amass ill-gotten wealth amounting to more than P4 billion.

We hasten to add, however, that the respondent Ombudsman cannot be faulted for including the predicate acts alleged in sub-paragraphs (a) to (d) of the Amended Information in one, and not in four, separate Informations. A study of the history of R.A. No. 7080 will show that the law was crafted to avoid the mischief and folly of filing multiple informations. The Anti-Plunder Law was enacted in the aftermath of the Marcos regime where charges of ill-gotten wealth were filed against former President Marcos and his alleged cronies. Government prosecutors found no appropriate law to deal with the multitude and magnitude of the acts allegedly committed by the former President to acquire illegal wealth.[20] They also found that under the then existing laws such as the Anti-Graft and Corrupt Practices Act, the Revised Penal Code and other special laws, the acts involved different transactions, different time and different personalities. Every transaction constituted a separate crime and required a separate case and the over-all conspiracy had to be broken down into several criminal and graft charges. The preparation of multiple Informations was a legal nightmare but eventually, thirty-nine (39) separate and independent cases were filed against practically the same accused before the Sandiganbayan.[21] R.A. No. 7080 or the Anti-Plunder Law[22] was enacted precisely to address this procedural problem. This is pellucid in the Explanatory Note to Senate Bill No. 733, viz:

“Plunder, a term chosen from other equally apt terminologies like kleptocracy and economic treason, punishes the use of high office for personal enrichment, committed thru a series of acts done not in the public eye but in stealth and secrecy over a period of time, that may involve so many persons, here and abroad, and which touch so many states and territorial units. The acts and/or omissions sought to be penalized do not involve simple cases of malversation of public funds, bribery, extortion, theft and graft but constitute plunder of an entire nation resulting in material damage to the national economy. The above-described crime does not yet exist in Philippine statute books. Thus, the need to come up with a legislation as a safeguard against the possible recurrence of the depravities of the previous regime and as a deterrent to those with similar inclination to succumb to the corrupting influence of power.”

There is no denying the fact that the “plunder of an entire nation resulting in material damage to the national economy” is made up of a complex and manifold network of crimes. In the crime of plunder, therefore, different parties may be united by a common purpose. In the case at bar, the different accused and their different criminal

acts have a commonality—to help the former President amass, accumulate or acquire ill-gotten wealth. Sub-paragraphs (a) to (d) in the Amended Information alleged the different participation of each accused in the conspiracy. The gravamen of the conspiracy charge, therefore, is not that each accused agreed to receive protection money from illegal gambling, that each misappropriated a portion of the tobacco excise tax, that each accused ordered the GSIS and SSS to purchase shares of Belle Corporation and receive commissions from such sale, nor that each unjustly enriched himself from commissions, gifts and kickbacks; rather, it is that each of them, by their individual acts, agreed to participate, directly or indirectly, in the amassing, accumulation and acquisition of ill-gotten wealth of and/or for former President Estrada.

In the American jurisdiction, the presence of several accused in multiple conspiracies commonly involves two structures: (1) the so-called “wheel” or “circle” conspiracy, in which there is a single person or group (the “hub”) dealing individually with two or more other persons or groups (the “spokes”); and (2) the “chain” conspiracy, usually involving the distribution of narcotics or other contraband, in which there is successive communication and cooperation in much the same way as with legitimate business operations between manufacturer and wholesaler, then wholesaler and retailer, and then retailer and consumer.[23]

From a reading of the Amended Information, the case at bar appears similar to a “wheel” conspiracy. The hub is former President Estrada while the spokes are all the accused, and the rim that encloses the spokes is the common goal in the overall conspiracy, i.e., the amassing, accumulation and acquisition of ill-gotten wealth.

IV.

Some of our distinguished colleagues would dismiss the charge against the petitioner on the ground that the allegation of conspiracy in the Amended Information is too general. The fear is even expressed that it could serve as a net to ensnare the innocent. Their dissents appear to be inspired by American law and jurisprudence.

We should not confuse our law on conspiracy with conspiracy in American criminal law and in common law. Under Philippine law, conspiracy should be understood on two levels. As a general rule, conspiracy is not a crime in our jurisdiction. It is punished as a crime only when the law fixes a penalty for its commission such as in conspiracy to commit treason, rebellion and sedition. In contrast, under American criminal law, the agreement or conspiracy itself is the gravamen of the offense.[24] The essence of conspiracy is the combination of two or more persons, by concerted action, to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal or unlawful, by criminal or unlawful means.[25] Its elements are: agreement to accomplish an illegal objective, coupled with one or more overt acts in furtherance of the illegal purpose; and requisite intent necessary to commit the underlying substantive offense.[26]

A study of the United States Code ought to be instructive. It principally punishes two (2) crimes of conspiracy[27] – conspiracy to commit any offense or to defraud the United States, and conspiracy to impede or injure officer. Conspiracy to commit offense or to defraud the United States is penalized under 18 U.S.C. Sec. 371,[28] as follows:

“Sec. 371. Conspiracy to commit offense or to defraud the United States. If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons to any act to effect the object of the conspiracy, each shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.”

Conspiracy to impede or injure officer is penalized under 18 U.S.C. Sec. 372, viz:

“Sec. 372. Conspiracy to impede or injure officer. If two or more persons in any State, Territory, Possession, or District conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust or place of confidence under the United States, or from discharging any duties thereof, or to induce by like means any officer of the United States to leave the place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties, each of such persons shall be fined not more than \$5,000 or imprisoned not more than six years, or both.”

Section 371 of 18 U.S.C. punishes two acts: (1) conspiracy to commit any offense against the United States; and (2) conspiracy to defraud the United States or any agency thereof. The conspiracy to “commit any offense against the United States” refers to an act made a crime by federal laws.[29] It refers to an act punished by statute.[30] Undoubtedly, Section 371 runs the whole gamut of U.S. Federal laws, whether criminal or regulatory.[31] These laws cover criminal offenses such as perjury, white slave traffic, racketeering, gambling, arson, murder, theft, bank robbery, etc. and also include customs violations, counterfeiting of currency, copyright violations, mail fraud, lotteries, violations of antitrust laws and laws governing interstate commerce and other areas of federal regulation.[32] Section 371 penalizes the conspiracy to commit any of these substantive offenses. The offense of conspiracy is generally separate and distinct from the substantive offense,[33] hence, the court rulings that acquittal on the substantive count does not foreclose prosecution and conviction for related conspiracy.[34]

The conspiracy to “defraud the government” refers primarily to cheating the United States out of property or money. It also covers interference with or obstruction of its lawful governmental functions by deceit, craft or trickery, or at least by means that are dishonest.[35] It comprehends defrauding the United States in any manner whatever, whether the fraud be declared criminal or not.[36]

The basic difference in the concept of conspiracy notwithstanding, a study of the American case law on how conspiracy should be alleged will reveal that it is not necessary for the indictment to include particularities of time, place, circumstances or causes, in stating the manner and means of effecting the object of the conspiracy. Such specificity of detail falls within the scope of a bill of particulars.[37] An indictment for conspiracy is sufficient where it alleges: (1) the agreement; (2) the offense-object toward which the agreement was directed; and (3) the overt acts performed in furtherance of the agreement.[38] To allege that the defendants conspired is, at least, to state that they agreed to do the matters which are set forth as the substance of their conspiracy. To allege a conspiracy is to allege an agreement.[39] The gist of the crime of conspiracy is unlawful agreement, and where conspiracy is charged, it is not necessary to set out the criminal object with as great a certainty as is required in cases where such object is charged as a substantive offense.[40]

In sum, therefore, there is hardly a substantial difference on how Philippine courts and American courts deal with cases challenging Informations alleging conspiracy on the ground that they lack particularities of time, place, circumstances or causes. In our jurisdiction, as aforestated, conspiracy can be alleged in the Information as a mode of committing a crime or it may be alleged as constitutive of the crime itself. When conspiracy is alleged as a crime in itself, the sufficiency of the allegations in the Information charging the offense is governed by Section 6, Rule 110 of the Revised Rules of Criminal Procedure. It requires that the information for this crime must contain the following averments:

“Sec. 6. Sufficiency of complaint or information.- A complaint or information is sufficient if it states the name of the accused, the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

When the offense was committed by more than one person, all of them shall be included in the complaint or information.”

The complaint or information to be sufficient must state the name of the accused, designate the offense given by statute, state the acts or omissions constituting the offense, the name of the offended party, the approximate date of the commission of the offense and the place where the offense was committed.

Our rulings have long settled the issue on how the acts or omissions constituting the offense should be made in order to meet the standard of sufficiency. Thus, the offense must be designated by its name given by statute or by reference to the section or subsection of the statute punishing it.[41] The information must also state the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances.[42] The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment.[43] No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged.[44] Every element of the offense must be stated in the information.[45] What facts and circumstances are necessary to be included therein must be determined by reference to the definitions and essentials of the specified crimes.[46] The requirement of alleging the elements of a crime in the information is to inform the accused of the nature of the accusation against him so as to enable him to suitably prepare his defense. The presumption is that the accused has no independent knowledge of the facts that constitute the offense.[47]

To reiterate, when conspiracy is charged as a crime, the act of conspiring and all the elements of said crime must be set forth in the complaint or information. For example, the crime of “conspiracy to commit treason” is committed when, in time of war, two or more persons come to an agreement to levy war against the Government or to adhere to the enemies and to give them aid or comfort, and decide to commit it.[48] The elements of this crime are: (1) that the offender owes allegiance to the Government of the Philippines; (2) that there is a war in which the Philippines is involved; (3) that the offender and other person or persons come to an agreement to: (a) levy war against the government, or (b) adhere to the enemies, to give them aid and comfort; and (4) that the offender and other person or persons decide to carry out the agreement. These elements must be alleged in the information.

The requirements on sufficiency of allegations are different when conspiracy is not charged as a crime in itself but only as the mode of committing the crime as in the case at bar. There is less necessity of reciting its particularities in the Information because conspiracy is not the gravamen of the offense charged. The conspiracy is significant only because it changes the criminal liability of all the accused in the conspiracy and makes them answerable as co-principals regardless of the degree of their participation in the crime.[49] The liability of the conspirators is collective and each participant will be equally responsible for the acts of others,[50] for the act of one is the act of all.[51] In *People v. Quitlong*,[52] we ruled on how conspiracy as the mode of committing the offense should be alleged in the Information, viz:

“x x x. In embodying the essential elements of the crime charged, the information must set forth the facts and circumstances that have a bearing on the culpability and liability of the accused so that the accused can properly prepare for and undertake his defense. One such fact or circumstance in a complaint against two or more accused persons is that of conspiracy. Quite unlike the omission of an ordinary recital of fact which, if not excepted from or objected to during trial, may be corrected or supplied by competent proof, an allegation, however, of conspiracy, or one that would impute criminal liability to an accused for the act of another or others, is indispensable in order to hold such person, regardless of the nature and extent of his own participation, equally guilty with the other or others in the commission of the crime. Where conspiracy exists and can rightly be appreciated, the individual acts done to perpetrate the felony becomes of secondary importance, the act of one being imputable to all the others (*People v. Ilano*, 313 SCRA 442). Verily, an

accused must know from the information whether he faces a criminal responsibility not only for his acts but also for the acts of his co-accused as well.

A conspiracy indictment need not, of course, aver all the components of conspiracy or allege all the details thereof, like the part that each of the parties therein have performed, the evidence proving the common design or the facts connecting all the accused with one another in the web of the conspiracy. Neither is it necessary to describe conspiracy with the same degree of particularity required in describing a substantive offense. It is enough that the indictment contains a statement of facts relied upon to be constitutive of the offense in ordinary and concise language, with as much certainty as the nature of the case will admit, in a manner that can enable a person of common understanding to know what is intended, and with such precision that the accused may plead his acquittal or conviction to a subsequent indictment based on the same facts. It is said, generally, that an indictment may be held sufficient “if it follows the words of the statute and reasonably informs the accused of the character of the offense he is charged with conspiring to commit, or, following the language of the statute, contains a sufficient statement of an overt act to effect the object of the conspiracy, or alleges both the conspiracy and the contemplated crime in the language of the respective statutes defining them (15A C.J.S. 842-844).

x x x x x x x x

x x x. Conspiracy arises when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy comes to life at the very instant the plotters agree, expressly or impliedly, to commit the felony and forthwith to actually pursue it. Verily, the information must state that the accused have confederated to commit the crime or that there has been a community of design, a unity of purpose or an agreement to commit the felony among the accused. Such an allegation, in the absence of the usual usage of the words “conspired” or “confederated” or the phrase “acting in conspiracy,” must aptly appear in the information in the form of definitive acts constituting conspiracy. In fine, the agreement to commit the crime, the unity of purpose or the community of design among the accused must be conveyed such as either by the use of the term “conspire” or its derivatives and synonyms or by allegations of basic facts constituting the conspiracy. Conspiracy must be alleged, not just inferred, in the information on which basis an accused can aptly enter his plea, a matter that is not to be confused with or likened to the adequacy of evidence that may be required to prove it. In establishing conspiracy when properly alleged, the evidence to support it need not necessarily be shown by direct proof but may be inferred from shown acts and conduct of the accused.

x x x x x x x x.”

Again, following the stream of our own jurisprudence, it is enough to allege conspiracy as a mode in the commission of an offense in either of the following manner: (1) by use of the word “conspire,” or its derivatives or synonyms, such as confederate, connive, collude, etc;[53] or (2) by allegations of basic facts constituting the conspiracy in a manner that a person of common understanding would know what is intended, and with such precision as would enable the accused to competently enter a plea to a subsequent indictment based on the same facts.[54]

The allegation of conspiracy in the information must not be confused with the adequacy of evidence that may be required to prove it. A conspiracy is proved by evidence of actual cooperation; of acts indicative of an agreement, a common purpose or design, a concerted action or concurrence of sentiments to commit the felony and actually pursue it.[55] A statement of this evidence is not necessary in the information.

In the case at bar, the second paragraph of the Amended Information alleged in general terms how the accused committed the crime of plunder. It used the words “in connivance/conspiracy with his co-accused.” Following the ruling in *Quitlong*, these words are sufficient to allege the conspiracy of the accused with the former President in

committing the crime of plunder.

V.

We now come to petitioner's plea for bail. On August 14, 2002, during the pendency of the instant petition before this Court, petitioner filed with respondent Sandiganbayan an "Urgent Second Motion for Bail for Medical Reasons." Petitioner prayed that he be allowed to post bail due to his serious medical condition which is life-threatening to him if he goes back to his place of detention. The motion was opposed by respondent Ombudsman to which petitioner replied.

For three days, i.e., on September 4, 20 and 27, 2001, respondent Sandiganbayan conducted hearings on the motion for bail. Dr. Roberto V. Anastacio, a cardiologist of the Makati Medical Center, testified as sole witness for petitioner.

On December 18, 2001, petitioner filed with the Supreme Court an "Urgent Motion for Early/Immediate Resolution of Jose 'Jinggoy' Estrada's Petition for Bail on Medical/Humanitarian Considerations." Petitioner reiterated the motion for bail he earlier filed with respondent Sandiganbayan.[56]

On the same day, we issued a Resolution referring the motion to respondent Sandiganbayan for resolution and requiring said court to make a report, not later than 8:30 in the morning of December 21, 2001.

On December 21, 2001, respondent court submitted its Report. Attached to the Report was its Resolution dated December 20, 2001 denying petitioner's motion for bail for "lack of factual basis." [57] Basing its finding on the earlier testimony of Dr. Anastacio, the Sandiganbayan found that petitioner "failed to submit sufficient evidence to convince the court that the medical condition of the accused requires that he be confined at home and for that purpose that he be allowed to post bail." [58]

The crime of plunder is punished by R.A. No. 7080, as amended by Section 12 of R.A. No. 7659, with the penalty of reclusion perpetua to death. Under our Rules, offenses punishable by death, reclusion perpetua or life imprisonment are non-bailable when the evidence of guilt is strong, to wit:

"Sec. 7. Capital offense or an offense punishable by reclusion perpetua or life imprisonment, not bailable. – No person charged with a capital offense, or an offense punishable by reclusion perpetua or life imprisonment, shall be admitted to bail when evidence of guilt is strong, regardless of the stage of the criminal prosecution." [59]

Section 7, Rule 114 of the Revised Rules of Criminal Procedure is based on Section 13, Article III of the 1987 Constitution which reads:

"Sec. 13. All persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall, before conviction be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended. Excessive bail shall not be required."

The constitutional mandate makes the grant or denial of bail in capital offenses hinge on the issue of whether or not the evidence of guilt of the accused is strong. This requires that the trial court conduct bail hearings wherein both the prosecution and the defense are afforded sufficient opportunity to present their respective evidence. The burden of proof lies with the prosecution to show strong evidence of guilt.[60]

This Court is not in a position to grant bail to the petitioner as the matter requires evidentiary hearing that should be conducted by the Sandiganbayan. The hearings on which respondent court based its Resolution of December 20, 2001 involved the reception of medical evidence only and which evidence was given in September 2001, five

months ago. The records do not show that evidence on petitioner's guilt was presented before the lower court.

Upon proper motion of the petitioner, respondent Sandiganbayan should conduct hearings to determine if the evidence of petitioner's guilt is strong as to warrant the granting of bail to petitioner.

IN VIEW WHEREOF, the petition is dismissed for failure to show that the respondent Sandiganbayan acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Mendoza, Panganiban, Quisumbing, and De Leon, Jr., JJ., concur.

Vitug, J., please see Separate Opinion.

Kapunan, and Buena, J., joins Justices Santiago and Gutierrez in their separate dissenting opinions.

Ynares-Santiago, J., pls. see separate Dissenting Opinion.

Sandoval-Gutierrez, J., please see my Dissent.

Carpio, J., no part as before.

[1] Annex "H" to Petition, Rollo, pp. 217-310.

[2] Annex "D" to Petition, Rollo, pp. 52-57.

[3] Id., p. 57.

[4] Annex "D-1" to Petition, Rollo, pp. 59-69.

[5] Annex "D-2" to Petition, Rolo, pp. 72-83.

[6] Annex "E" to Petition, Rollo, pp. 87-124.

[7] Id., pp.123-124.

[8] Annex "E-1" to Petition, Rollo, pp. 126-128.

[9] Petition, pp. 10-11, Rollo, pp. 12-13.

[10] Petition. p. 12, Rollo, p. 14.

[11] G.R. No. 148560, November 19, 2001.

[12] Annex "C" to Petition, Rollo, pp. 47-49.

[13] Supra note 11.

[14] Ombudsman Resolution of April 4, 2001, Annex "H" to Petition, p. 61, Rollo, p. 278.

[15] Id., p. 78, Rollo, p. 293.

[16] Petition, p. 18.

[17] Petition, pp. 24-25, Rollo, pp. 26-27.

[18] Petition, p. 25, Rollo, p. 27.

[19] Comment of the Solicitor General, pp. 26-36, 85-91, Rollo, pp. 379-389, 438-444.

[20] Sponsorship Remarks of Pablo Garcia on H.B. No. 22752, Congressional Proceedings, October 9, 1990, pp.

361-362; Explanatory Note, S.B. No. 733.

[21] Ibid.

[22] The law is a consolidation of S.B. No. 733 and H.B. No. 22752.

[23] LaFave & Scott, Criminal Law, Second Edition, Hornbook Series, pp. 550-551 [1986]. There is a third type referred to as the “enterprise conspiracy” introduced by the Racketeer Influence and Corrupt Organizations (RICO) Act of 1970, a law enacted to eradicate organized crime in the United States (18 U.S.C. Sec. 1961 et seq.). Under the RICO, it is “unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity or collection of unlawful debt.” “Racketeering activity” includes a great variety of serious criminal conduct, such as murder, kidnapping, arson, robbery, bribery, extortion and drug dealing, and for there to be a “pattern” there must be at least two such acts within a 10-year span. The RICO has its own conspiracy provision.

In *United States v. Elliot*, 571 F 2d 880 [5th Cir. 1978], it was held that the RICO created a substantive offense by tying together diverse parties and crimes. It is irrelevant that each defendant participated in the enterprise’s affairs through different, even unrelated crimes, so long as it may be reasonably inferred that each crime was intended to further the enterprise’s affairs (at 902-903). The *Elliot* approach has been sharply criticized by legal commentators. *Elliot* made certain affairs of an enterprise a new substantive offense in addition to the underlying racketeering activity. The requirement remains that the activities making up a multiple criminal conspiracy must be connected, and the term ‘enterprise’ as applied by *Elliot* did not supply the connection. Recent trend rejects the ideas espoused in *Elliot* and returns to traditional conspiracy principles in determining complicity in multi-defendant RICO prosecutions.—LaFave & Scott, *supra* at 554 citing *United States v. Griffin*, 660 F 2d 996 [4th Cir.1981], *United States v. Errico*, 635 F 2d 152 [2d Cir. 1980], *United States v. Anderson*, 626 F 2d 1358 [8th Cir. 1980].

[24] In the American jurisdiction, there is a clear distinction in the law of conspiracy as applied in civil and criminal cases. In criminal conspiracy, the agreement or conspiracy is the gravamen of the offense. In civil action, the conspiracy is not the gravamen of the charge, but may be both pleaded and proved as aggravating the wrong which the plaintiff complains, the gravamen of the tort being the damage resulting to plaintiff from an overt act done pursuant to the common design—15A C.J.S. “Conspiracy” Sec. 1 (1).

[25] 18 U.S.C.A. Sec. 371, Note 31 citing cases.

[26] *United States v. Melchor-Lopez*, 627 F 2d 886, 890 [1980], also citing other cases.

[27] 18 U.S.C. Sec. 241 also punishes conspiracy to deprive persons of their civil rights.

[28] Conspiracy is an enlargement of the common-law doctrine of aiding and abetting or being a principal, or an accessory before the fact - *U.S. v. Molin*, 244 F Supp 1015 [1965]. At common-law, the crime of conspiracy was complete when one agreed with others to do an unlawful act, or to do a lawful act in an unlawful way. Sec. 371 (formerly Sec. 88) added the requirement that some members of the conspiracy did an overt act in furtherance of the venture - *Deacon v. U.S.*, 124 F 2d 352; see also 18 U.S.C.A. Sec. 371, Note 33.

[29] *State v. Henglefelt*, 33 NW 2d 492 [1948].

[30] *United States v. Smith*, 200 F Supp 227 [1961]; *United States v. Bell*, 48 F Supp 986 [1943].

[31] *United States v. Bell*, *supra*.

[32] John M. Scheb and John M. Scheb II, *Criminal Law*, p. 87 [1999]. For other cases on conspiracy to commit substantive offenses, see 18 U.S.C.A. Sec. 371, Note 33; see also Ninth Decennial Digest Part I vol. 5 “Conspiracy” Key 28 (3).

[33] *United States v. Meacham*, 626 F 2d 503 [1980]; *United States v. Lyman*, 592 F 2d 496 [1978] certiorari denied 99 S Ct 2864, 442 US 931, 61 L Ed 2d 300; *United States v. Miller*, 546 F 2d 320 [1976].

[34] *United States v. Romeros*, 600 F 2d 1104 [1979] certiorari denied 100 S Ct 1025, 444 US 1077, 62 L Ed 2d 759; *Perluss v. United States*, 101 S Ct 863, 449 US 1080, 66 L Ed 2d 804 [1980]. Generally, a requirement for a conspiracy conviction is proof of an agreement. Conviction in the substantive count requires consummation of the crime which is not essential for completing the crime of conspiracy -- *United States v. Wylie*, 625 F 2d 1371 [1980] certiorari denied.

[35] *Harvey v. United States*, 306 F 2d 523 [1962], certiorari denied 83 S Ct 254, 371 US 911, 9 L Ed 2d 171; *United States v. Kaiser*, 179 F Supp 545 [1960]; *Haas v. Henkel*, 216 US 462, 54 L Ed 569 [1910].

[36] *United States v. Newton*, 48 F 218 [1891]; *United States v. Gordon*, 22 F 250 [1884].

[37] *United States v. Haldeman*, 559 F 2d 31, 121 [1976] certiorari denied 431 US 993, 53 L Ed 2d 250, 97 S Ct 2641, rehearing denied 433 US 916, 53 L Ed 2d 1103, 97 S Ct 2992 citing 18 U.S.C.A. Sec. 371.

[38] *Reno v. United States*, 317 F 2d 499 [1963], certiorari denied 375 US 828, 11 L Ed 2d 60, 84 S Ct 72; see Lester B. Orfield, *Criminal Procedure Under the Federal Rules*, Rule 1- Rule 9, vol. 1, p. 689, Note 4. Federal law requires an overt act in a conspiracy to commit an offense or defraud the United States. Most state laws define the elements of the offense along the lines of common law, hence, an overt act is not required to be pleaded—John M. Scheb and John M. Scheb II, *Criminal Law and Procedure*, pp. 86-87 [1999]. Most states, however, require that the overt act in furtherance of the plan be proven for all or specified conspiratorial objectives. The overt act may be done by only one of the conspirators and the act need not be criminal or unlawful in itself—LaFave & Scott, *Criminal Law*, Second Edition, Hornbook Series, p. 548 [1986].

[39] *United States v. White*, 171 F 775 [1909]; see also 18 U.S.C.A. Sec. 371, Note 224.

[40] *United States v. Westbrook*, 114 F Supp 192 [1953]; see also 18 U.S.C.A. Sec. 371, Note 226.

[41] Section 8, Rule 110, Revised Rules of Criminal Procedure.

[42] *Ibid.*

[43] Section 9, Rule 110, Revised Rules of Criminal Procedure.

[44] *People v. Sy Gesiong*, 60 Phil. 614, 616-617 [1934]; *Sugay v. Pamaran*, 41 SCRA 260, 265 [1971]; see Francisco, *Criminal Procedure*, pp. 55-57 [1993].

[45] Agpalo, *Handbook on Criminal Procedure*, p. 52 [2001].

[46] *Balitaan v. Court of First Instance of Batangas*, 115 SCRA 729, 739 [1982].

[47] *Ibid.*

[48] Articles 115, 114 and 8, Revised Penal Code; Reyes, *The Revised Penal Code*, Book II, p. 16 [1993 ed]; Francisco, *Revised Penal Code*, Book II, p. 27 [1960].

[49] *People v. Solon*, 244 SCRA 554 [1995].

[50] *People v. Chua*, 297 SCRA 229 [1998].

[51] *People v. Rodico*, 249 SCRA 309 [1995]; *People v. Lopez*, 249 SCRA 610 [1995].

[52] 292 SCRA 360, 376-378 [1998].

[53] *People v. Quitlong*, *supra* at 378.

[54] See also 15A C.J.S. "Conspiracy" Sec. 80 [1967 ed.], cited in *People v. Quitlong*.

[55] *People v. Paguntalan*, 242 SCRA 753 [1995]; *People v. de Leon*, 245 SCRA 785 [1995]; *People v. Nacional*, 248 SCRA 122 [1995].

[56] *Rollo*, pp. 620-626.

[57] Resolution of December 20, 2001, pp. 5, 8, *Rollo*, p. 691, 694.

[58] *Id.*, p. 5, *Rollo*, p. 691.

[59] Section 7, Rule 114, Revised Rules of Criminal Procedure.

[60] *Agpalo*, Handbook on Criminal Procedure, p. 263 [2001].

SEPARATE OPINION

VITUG, J.:

Cicero once has said that we are in bondage to the law in order that we might be free. Freedom is a precious right, a seasoned richness, which every person holds dear. Many have valiantly fought for it, not a few losing their lives, to keep it. In historical past, it has meant the shedding of blood, the slashing of blades and the wielding of arms. Now, freedom is the language of humanity, spoken through codified laws and deep-seated in the people's sense of justice. Thus engraved in the highest law of the land is that no one shall be deprived of his life or liberty without due process of law.

In a petition for certiorari, Mr. Jose "Jinggoy" Estrada affronts his alleged unwarranted restraint and, for several agonizing months, he remains without freedom. The antecedent facts would show that petitioner stands indicted for "plunder," a capital offense, with the former President, Mr. Joseph E. Estrada, after being declared by this Court, in its decision of 04 April 2001 in *Estrada vs. Desierto*[1] and *Estrada vs. Arroyo*,[2] to have vacated his office.

The Amended Information reads thusly:

"AMENDED INFORMATION

"The undersigned Ombudsman Prosecutor and OIC-Director, EPIB, Office of the Ombudsman, hereby accuses former PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES, Joseph Ejercito Estrada a.k.a. 'ASIONG SALONGA' and a.k.a. 'JOSE VELARDE', TOGETHER WITH Jose 'Jinggoy' Estrada, Charlie 'Atong' Ang, Edward Serapio, Yolanda T. Ricaforte, Alma Alfaro, JOHN DOE a.k.a. Eleuterio Tan OR Eleuterio Ramos Tan or Mr. Uy, Jane Doe a.k.a. Delia Rajas, and John DOES & Jane Does, of the crime of Plunder, defined and penalized under R.A. 7080, as amended by Sec. 12 of R.A. 7659, committed as follows:

"That during the period from June, 1998 to January 2001, in the Philippines, and within the jurisdiction of this Honorable Court, accused Joseph Ejercito Estrada, THEN A PUBLIC OFFICER, BEING THEN THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES, by himself, AND/OR in CONNIVANCE/CONSPIRACY with his co-accused, WHO ARE MEMBERS OF HIS FAMILY,

RELATIVES BY AFFINITY OR CONSANGUINITY, BUSINESS ASSOCIATES, SUBORDINATES AND/OR OTHER PERSONS, BY TAKING UNDUE ADVANTAGE OF HIS OFFICIAL POSITION, AUTHORITY, RELATIONSHIP, CONNECTION OR INFLUENCE, did then and there wilfully, unlawfully and criminally amass, accumulate and acquire BY HIMSELF, DIRECTLY OR INDIRECTLY, ill-gotten wealth in the aggregate amount OR TOTAL VALUE of FOUR BILLION NINETY SEVEN MILLION EIGHT HUNDRED FOUR THOUSAND ONE HUNDRED SEVENTY THREE PESOS AND SEVENTEEN CENTAVOS (P4,097,804,173.17), more or less, THEREBY UNJUSTLY ENRICHING HIMSELF OR THEMSELVES AT THE EXPENSE AND TO THE DAMAGE OF THE FILIPINO PEOPLE AND THE REPUBLIC OF THE PHILIPPINES, through ANY OR A combination OR a series of overt OR criminal acts, OR SIMILAR SCHEMES OR MEANS, described as follows:

"(a) by receiving OR collecting, directly or indirectly, on SEVERAL INSTANCES, MONEY IN THE AGGREGATE AMOUNT OF FIVE HUNDRED FORTY-FIVE MILLION PESOS (P545,000,000.00) MORE OR LESS, FROM ILLEGAL GAMBLING, IN THE FORM OF GIFT, SHARE, PERCENTAGE, KICKBACK OR ANY FORM OF PECUNIARY BENEFIT, BY HIMSELF AND/OR in connivance with co-accused CHARLIE 'ATONG' ANG, Jose 'Jinggoy' Estrada, Yolanda T. Ricaforte, Edward Serapio, AND JOHN DOES AND JANE DOES, in consideration OF TOLERATION OR PROTECTION OF ILLEGAL GAMBLING;

"(b) by DIVERTING, RECEIVING, misappropriating, converting OR misusing DIRECTLY OR INDIRECTLY, for HIS OR THEIR PERSONAL gain and benefit, public funds in the amount of ONE HUNDRED THIRTY MILLION PESOS (P130,000,000.00), more or less, representing a portion of the TWO HUNDRED MILLION PESOS (P200,000,000.00) tobacco excise tax share allocated for the Province of Ilocos Sur under R.A. 7171, BY HIMSELF AND/OR in CONNIVANCE with co-accused Charlie 'Atong' Ang, Alma Alfaro, JOHN DOE a.k.a. Eleuterio Tan OR Eleuterio Ramos Tan or Mr. Uy and Jane Doe a.k.a. Delia Rajas, AND OTHER JOHN DOES AND JANE DOES;

"(c) by directing, ordering and compelling, FOR HIS PERSONAL GAIN AND BENEFIT, the Government Service Insurance System (GSIS) TO PURCHASE, 351,878,000 SHARES OF STOCKS, MORE OR LESS, and the Social Security System (SSS), 329,855,000 SHARES OF STOCK, MORE OR LESS, OF THE BELLE CORPORATION IN THE AMOUNT OF MORE OR LESS ONE BILLION ONE HUNDRED TWO MILLION NINE HUNDRED SIXTY FIVE THOUSAND SIX HUNDRED SEVEN PESOS AND FIFTY CENTAVOS (P1,102,965,607.50) AND MORE OR LESS SEVEN HUNDRED FORTY-FOUR MILLION, SIX HUNDRED TWELVE THOUSAND AND FOUR HUNDRED FIFTY PESOS (P744,612,450.00). x x x

"(d) by unjustly enriching himself FROM COMMISSIONS, GIFTS, SHARES, PERCENTAGES, KICKBACKS, OR ANY FORM OF PECUNIARY BENEFITS, IN CONNIVANCE WITH JOHN DOES AND JANE DOES, in the amount of MORE OR LESS THREE BILLION TWO HUNDRED THIRTY THREE MILLION ONE HUNDRED FOUR THOUSAND ONE HUNDRED SEVENTY THREE PESOS AND SEVENTEEN CENTAVOS [P3,233,104,173.17] AND DEPOSITING THE SAME UNDER HIS ACCOUNT NAME 'JOSE VELARDE' AT THE EQUITABLE-PCI BANK."

On 30 April 2001, petitioner filed a "Very Urgent Omnibus Motion" before the Sandiganbayan, praying that he (1) be dropped from the information for plunder for want of probable cause; and (2) be discharged from custody immediately since he was being charged only with illegal gambling under first specification of the accusatory Information or, in the alternative, be allowed to post bail.

In its resolution of 09 July 2001, the Sandiganbayan denied the motion to quash, which was consolidated with similar motions filed by Mr. Joseph Estrada and Mr. Edward Serapio, and set the hearing for bail on 10 July 2001.

On the day the hearing for bail was set, petitioner filed his "Urgent Motion for Reconsideration," stressing that his urgent omnibus motion had specifically asked the Sandiganbayan to fix bail. On 10 July 2001, the Sandiganbayan

denied the motion for reconsideration.

Hence, the recourse to this Court where he contends that -

"RESPONDENT COURT (HAS) ACTED WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN-

"1)

NOT DECLARING THAT R.A. 7080 IS UNCONSTITUTIONAL ON ITS FACE AND, AS APPLIED TO PETITIONER, AND DENYING HIM THE EQUAL PROTECTION OF THE LAWS.

"2)

NOT HOLDING THAT THE PLUNDER LAW DOES NOT PROVIDE COMPLETE AND SUFFICIENT STANDARDS.

"3)

SUSTAINING THE CHARGE AGAINST PETITIONER FOR ALLEGED OFFENSES, AND WITH ALLEGED CONSPIRATORS, WITH WHICH AND WITH WHOM HE IS NOT EVEN REMOTELY CONNECTED-CONTRARY TO THE DICTUM THAT CRIMINAL LIABILITY IS PERSONAL, NOT VICARIOUS- RESULTS IN THE DENIAL OF SUBSTANTIVE DUE PROCESS.

"4)

NOT FIXING BAIL FOR PETITIONER FOR ALLEGED INVOLVEMENT IN JUETENG IN ONE COUNT OF THE INFORMATION WHICH AMOUNTS TO CRUEL AND UNUSUAL PUNISHMENT TOTALLY IN DEFIANCE OF THE PRINCIPLE OF PROPORTIONALITY."

According to petitioner, considering that he is said to have been involved, per the accusatory information itself, in only one count, and not series of "overt or criminal acts" nor a combination of acts, he cannot be held to have been himself validly charged with plunder.

Republic Act No. 7080, also known as the Anti-Plunder Law, has heretofore been declared constitutional by this Court in its decision, dated 19 November 2001, in *Estrada vs. Sandiganbayan* (Third Division).[3] What should only then remain for resolution raised in the petition are -

- Whether or not Jinggoy Estrada can be prosecuted for Plunder even if he has been charged only on one count with what could constitute acts of plunder under paragraph (a) of the Amended Information; and
- Assuming ex argumenti that petitioner can be prosecuted for plunder, whether or not his stated participation in the information disentitles him to bail.

I take no particular exception from the convincing disquisitions expressed in the ponencia on the conceptual understanding of conspiracy or its legal consequences and that an indictment averring conspiracy in the commission of an offense, such conspiracy not being the crime itself, need not specify in detail the manner and means of effecting the object of conspiracy. It is solely in the context bearing on the extent of the alleged "conspiracy" involving petitioner in the charge of plunder under the statute that I am expressing this separate opinion. The issue I propose to instead submit is whether or not the allegations against petitioner in the accusatory Information would suffice to suit the "series" or the "combination" contemplated in, and understood by the Court in upholding the constitutionality of, the plunder law.

Section 2 of Republic Act No. 7080, as amended by Republic Act 7659,[4] provides:

“SEC. 2. Definition of the Crime of Plunder; Penalties. – Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts as described in Section 1(d) hereof, in the aggregate amount or total value of at least Fifty million pesos (P50,000,000.00) shall be guilty of the crime of plunder and shall be punished by reclusion perpetua to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State.”

Plunder may be committed by any public officer either by himself or “in connivance” with other persons; it may also be committed by a person who participates with a public officer in the commission of an offense contributing to the crime of plunder. A person may thus be held accountable under the law by conniving with the principal co-accused or by participating in the commission of “an offense” contributing to the crime of plunder. The term “in connivance” would suggest an agreement or consent to commit an unlawful act or deed with or by another, to connive being to cooperate secretly or privily with another.[5] Upon the other hand, to participate is to have a part or a share in conjunction with another of the proceeds of the unlawful act or deed.

The amended Information alleged “connivance” and would assume that petitioner and his co-accused had a common design in perpetrating the violations complained of constitutive of “plunder.”

The Supreme Court in *Estrada vs. Sandiganbayan*[6] has declared the anti-plunder law constitutional for being neither vague nor ambiguous on the thesis that the terms “series” and “combination” are not unsusceptible to firm understanding. “Series” refers to two or more acts falling under the same category of the enumerated acts provided in Section 1(d)[7] of the statute; “combination” pertains to two or more acts falling under at least two separate categories mentioned in the same law.[8]

The records would show that petitioner was charged with having been in connivance with the former President, only in reference to paragraph (a) of the accusatory information. Nowhere in the charge sheet would it appear that petitioner was likewise being indicted for any of the other charges contained in paragraphs (b), (c), and (d) of that information. Relative to paragraph (a), the accusation of conspiracy between petitioner and the former President was, per the records of the case, evidently and for all intents and purposes, confined to the alleged collections in Bulacan of jueteng money, specifically, in the sum of P2,000,000.00, far too short of the statutory minimum of P50,000,000.00 under the law, that was then turned over to an acknowledged emissary of Mr. Luis Singson. The accusatory information, aforequoted, was filed on the basis of the Joint Resolution, dated 04 April 2001, of the Office of the Ombudsman; to wit:

“Respondent Jose ‘Jingoy’ Estrada, the present Mayor of San Juan, Metro Manila, appears to have also surreptitious collection of protection money from jueteng operations in Bulacan. This is gleaned from the statement of Gov. Singson himself and the fact that Mayor Estrada, on at least two occasions, turned over to a certain Emma Lim, an emissary of the respondent governor, jueteng haul totaling P2 million i.e., P1 million in January, 2000 and another P1 million in February, 2000. An alleged ‘listahan’ of jueteng recipients listed him as one ‘Jingle Bell,’ as affirmed by Singson. (TSN, 8 & 11 Dec. 2000 SICt/17 Oct. 2000 SBRC/SCJ).[9]

“Thus, Gov. Luis ‘Chavit’ Singson effected the collection of jueteng money from the jueteng operators in the northern provinces after getting the job from Charlie ‘Atong’ Ang on direct orders of then President Estrada; Yolanda Ricaforte saw to it the excess collection moneys were deposited in her account on behalf of the former president, aside from the latter directly received from Singson; Edward Serapio put up the Muslim Youth

Foundation, Inc. wherein P200 million from the jueteng collection was channeled by Gov. Singson, through Ricaforte, Designed the eventually reach Erap Estrada, with the organization serving only as a money laundering front; and, as part of the whole operation, Mayor Jinggoy Estrada collected money in Bulacan, code named 'Jingle Bell,' and known to have turned over P2 million to Emma Lim, Singson's acknowledged emissary."^[10]

The government argues that the illegal act ascribed to petitioner is a part of the chain that links the various acts of plunder by the principal accused. It seems to suggest that a mere allegation of conspiracy is quite enough to hold petitioner equally liable with the principal accused for the latter's other acts, even if unknown to him, in paragraph (a) of the indictment. This contention is a glaring bent. It is, to my mind, utterly unacceptable, neither right nor just, to cast criminal liability on one for the acts or deeds of plunder that may have been committed by another or others over which he has not consented or acceded to, participated in, or even in fact been aware of. Such vicarious criminal liability is never to be taken lightly but must always be made explicit not merely at the trial but likewise, and no less important, in the complaint or information itself in order to meet the fundamental right of an accused to be fully informed of the charge against him. It is a requirement that cannot be dispensed with if he were to be meaningfully assured that he truly has a right to defend himself. Indeed, an unwarranted generalization on the scope of the anti-plunder law would be a fatal blow to maintaining its constitutionality given the ratio decidendi in the pronouncement heretofore made by the Court upholding the validity of the statute.

Given the foregoing exegesis, the petitioner, although ineffectively charged in the Amended Information for plunder, could still be prosecuted and tried for a lesser offense, for it is a recognized rule that an accused shall not be discharged even when a mistake has been made in charging the proper offense if he may still be held accountable for any other offense necessarily included in the crime being charged. It is, however, the Sandiganbayan, not this Court, which must make this determination on the basis of its own findings.

WHEREFORE, I vote for the remand of the case to the Sandiganbayan for further proceedings on the merits thereof with instructions that it shall, forthwith, consider the plea for bail of petitioner.

[1] GR. No. 146710.

[2] GR. No. 146738.

[3] G.R. No. 148560.

[4] An Act Imposing the Death Penalty on Heinous Crimes

[5] Black's Law Dictionary.

[6] G.R. No. 148560.

[7] Section 1(d)

"1) Through misappropriation, conversion, misuse or malversation of public funds or raids on the public treasury;

"2) By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned;

"3) By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities or government-owned or controlled corporations and their subsidiaries;

"4) By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;

"5) By establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or

"6) By taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines."

[8] *Supra.*, p. 15.

[9] Joint Resolution dated 04 April 2001, p. 61, referring to the proceedings before the Impeachment Court and the Senate Blue Ribbon Committee and Committee on Justice. Records of Sandiganbayan, Annex F.

[10] *Ibid.*, p. 75.

DISSENTING OPINION

KAPUNAN, J.:

Does the following information charge petitioner Jose "Jinggoy" E. Estrada with the crime of plunder?

The undersigned Ombudsman Prosecutor and OIC-Director, EPIB, Office of the Ombudsman, hereby accuse former President of the Republic of the Philippines, Joseph Ejercito Estrada a.k.a. "Asiong Salonga" and a.k.a. "Jose Velarde," together with Jose "Jinggoy" Estrada, Charlie "Atong" Ang, Edward Serapio, Yolanda T. Ricaforte, Alma Alfaro, John Doe a.k.a. Eleuterio Tan or Eleuterio Ramos Tan or Mr. Uy, Jane Doe a.k.a. Delia Rajas, and John Does & Jane Does, of the crime of Plunder, defined and penalized under R.A. No. 7080, as amended by Sec. 12 of R.A. No. 7659, committed as follows:

That during the period from June 1998 to January, 2001, in the Philippines, and within the jurisdiction of this Honorable Court, accused Joseph Ejercito Estrada, then a public officer, being then the President of the Republic of the Philippines, by himself and/or in connivance/conspiracy with his co-accused, who are members of his family, relatives by affinity or consanguinity, business associates, subordinates and/or other persons, by taking undue advantage of his official position, authority, relationship, connection, or influence, did then and there willfully, unlawfully and criminally amass, accumulate and acquire by himself, directly or indirectly, ill-gotten wealth in the aggregate amount or total value of four billion ninety seven million eight hundred four thousand one hundred seventy three pesos and seventeen centavos [P4,097,804,173.17], more or less, thereby unjustly enriching himself or themselves at the expense and to the damage of the Filipino people and the Republic of the Philippines through any or a combination or a series of overt or criminal acts, or similar schemes or means, described as follows:

a)

by receiving or collecting, directly or indirectly, on several instances, money in the aggregate amount of Five Hundred Forty-Five Million Pesos (P545,000,000.00), more or less, from illegal gambling in the form of gift, share, percentage kickback or any form of pecuniary benefit, by himself and/or in connivance with co-accused Charlie "Atong" Ang, Jose "Jinggoy" Estrada, Yolanda T. Ricaforte, Edward Serapio, and John Does and Jane Does, in consideration of toleration or protection of illegal gambling;

b)

by diverting, receiving, misappropriating, converting or misusing directly or indirectly, for his or their personal gain and benefit, public funds in the amount of one hundred thirty million pesos (P130,000,000.00) more or less, representing a portion of the Two Hundred Million Pesos (P200,000,000.00) tobacco excise tax share allocated for the Province of Ilocos Sur under R.A. No. 7171, by himself and/or in connivance with co-accused Charlie “Atong” Ang, Alma Alfaro, John Doe a.k.a. Eleuterio Tan Or Eleuterio Ramos Tan on Mr. Uy, and Jane Doe a.k.a. Delia Rajas, and other John Does and Jane Does;

c)

by directing, ordering and compelling, for his personal gain and benefit, the Government Service Insurance System (GSIS) to purchase, 351,878,000 shares of stock, more or less and the Social Security System (SSS), 329,855,000 shares of stock, more or less, of the Belle Corporation in the amount of more or less One Billion One Hundred Two Million Nine Hundred Sixty five Thousand Six Hundred Seven Pesos and Fifty Centavos [P1,102,965,607.50] and more or less Seven Hundred Forty Four Million Six Hundred Twelve Thousand and Four Hundred Fifty Thousand Pesos (P744,612,450.00), respectively, or a total of a more or less One Billion eight Hundred Forty Seven Million Five Hundred Seventy Eight Thousand Fifty Seven Pesos and Fifty Centavos [P1,847,578,057.50]; and by collecting or receiving, directly or indirectly, by himself and/or in connivance with John Does and Jane Does, commissions or percentages by reason of said purchases of shares of stock in the amount of One Hundred Eighty-Nine Million Seven Hundred Thousand Pesos [P189,700,000], more or less, from the Belle Corporation, which became part of the deposit in the Equitable-PCI Bank under the account name of “Jose Velarde”;

d)

by unjustly enriching himself from commissions, gifts, shares, percentage, kickbacks, or any form of pecuniary benefits, in connivance with John Does and Jane Does, in the amount of more or less Three billion Two Hundred Thirty-Three Million One Hundred Four Thousand One Hundred Seventy Three Pesos and Seventeen Centavos [P3,233,104,173.17] and depositing the same under his account name “Jose Velarde” at the Equitable-PCI Bank.

CONTRARY TO LAW. [Emphasis supplied.]

I submit that, as against petitioner, the foregoing information does not allege sufficient facts as to constitute the crime of plunder.

The Constitution provides that in “all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved.”[1] As the accused is presumed to not have independent knowledge of the facts that constitute the offense,[2] the Constitution also grants him the right “to be informed of the nature and cause of the accusation against him.”[3] To give life to this constitutionally guaranteed right, Sections 2 and 3, Rule 110 of the Rules of Court require that the charge against the accused, which takes the form of either a complaint or an information, be in writing.

A complaint or information is sufficient if it states (a) the name of the accused; (b) the designation of the offense given by the statute; (c) the acts or omissions complained of as constituting the offense; (d) the name of the offended party; (e) the approximate date of the commission of the offense; and (4) the place where the offense was committed. When an offense is committed by more than one person, all of them shall be included in the

complaint or information.[4]

Regarding the designation of the offense, Section 8, Rule 110 provides:

SEC. 8. Designation of the offense. – The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

Section 9, Rule 110, governing the cause of the accusation, reads as follows:

SEC. 9. Cause of the accusation. – The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and enable the court to pronounce judgment.

While Section 8 requires that the complaint or information state the designation of the offense given by the statute or, if there be no such designation, make reference to the section or subsection to the statute punishing it, such designation or reference is not controlling. The nature and character of the crime charged is determined not by the specification of the provision of the law alleged to have been violated but by the facts alleged in the indictment.[5] Justice Trent, in *United States vs. Lim San*,[6] expounded on the rationale behind the rule:

x x x. Notwithstanding apparent contradiction between caption and body, we believe that we ought to say and hold that the characterization of the crime by the fiscal in the caption of the information is immaterial and purposeless, and that the facts stated in the body of the pleading must determine the crime of which the defendant stands charged and for which he must be tried. The establishment of this doctrine is permitted by the Code of Criminal Procedure, and is thoroughly in accord with common sense and with the requirements of plain justice. x x x.

From a legal point of view, and in a very real sense, it is of no concern to the accused what is the technical name of the crime of which he stands charged. It in no way aids him in a defense on the merits. x x x. That to which his attention should be directed, and in which he, above all things else, should be most interested, are the facts alleged. The real question is not did he commit a crime given in the law some technical and specific name, but did he perform the acts alleged in the body of the information in the manner therein set forth. If he did, it is of no consequence to him, either as a matter of procedure or of substantive right, how the law denominates the crime which those acts constitute. The designation of the crime by name in the caption of the information from the facts alleged in the body of that pleading is a conclusion of law made by the fiscal. In the designation of the crime the accused never has a real interest until the trial has ended. For his full and complete defense he need not know the name of the crime at all. It is of no consequence whatever for the protection of his substantial rights. The real and important question to him is, "Did you perform the acts alleged in the manner alleged?" If he performed the acts alleged, in the manner stated, the law determines what the name of the crime is and fixes the penalty therefor. It is the province of the court alone to say what the crime is or what it is named. x x x.

In short, the complaint or information must allege facts, not conclusions of law.[7]

The majority holds that since conspiracy is not the gravamen of plunder, but relates to the manner of committing the crime, its particularities need not be alleged in the information. The ponencia cites *People vs. Quitlong*,[8] where it was held that the information must be alleged in the information in order that an accused may be held liable for the acts of his co-accused:

x x x. In embodying the essential elements of the crime charged, the information must set forth the facts and

circumstances that have a bearing on the culpability and liability of the accused so that the accused can properly prepare for and undertake his defense. One such fact or circumstance in a complaint against two or more accused persons is that of conspiracy. Quite unlike the omission of an ordinary recital of fact which, if not excepted from or objected to during trial, may be corrected or supplied by competent proof, an allegation, however, of conspiracy, or one that would impute criminal liability to an accused for the act of another or others, is indispensable in order to hold such person, regardless of the nature and extent of his own participation, equally guilty with the other or others in the commission of the crime. Where conspiracy exists and can rightly be appreciated, the individual acts done to perpetrate the felony becomes of secondary importance, the act of one being imputable to all the others. [Citing *People vs. Ilano*, 313 SCRA 442.] Verily, an accused must know from the information whether he faces a criminal responsibility not only for his acts but also for the acts of his co-accused as well.

Quitlong first broadly described how conspiracy should be alleged in the complaint or information:

A conspiracy indictment need not, of course aver all the components of conspiracy or allege all the details thereof like the part that each of the parties therein have performed, the evidence proving the common design or the facts connecting all the accused with one another in the web of the conspiracy. Neither is it necessary to describe conspiracy with the same degree of particularity required in describing a substantive offense. It is enough that the indictment contains a statement of the facts relied upon to be constitutive of the offense in ordinary and concise language, with as much certainty as the nature of the case will admit, in a manner that can enable a person of common understanding to know what is intended, and with such precision that the accused may plead his acquittal or conviction to a subsequent indictment based on the same facts. It is said, generally, that an indictment may be held sufficient “if it follows the words of the character of the offense he is charged with conspiring to commit, or, following the language of the statute, contains a sufficient statement of an overt act to effect the object of the conspiracy, or alleges both the contemplated crime in the language of the statutes defining them.” [Citing 15A, C.J.S., 842-844.]

It bears noting that the foregoing paragraph cites *Corpus Juris Secundum*, an American authority. A perusal thereof reveals that the “conspiracy” it refers to is conspiracy as a crime, not as a mode of committing the crime, which concepts the ponencia has taken pains to distinguish.

Quitlong then went on to illustrate how conspiracy should be specifically alleged:

x x x. Conspiracy arises when two or more persons come into agreement concerning the commission of a felony and decide to commit it. Conspiracy comes to life at the very instant the plotters agree, expressly or impliedly, to commit the felony and forthwith to actually pursue it. [Citing Article 8, Revised Penal Code; *People vs. Mirabete*, 318 Phil. 146 (1995).] Verily, the information must state that the accused have confederated to commit the crime or that there has been a community of design, a unity of purpose or an agreement to commit the felony among the accused. Such an allegation, in the absence of the usual usage of the words, “conspired” or “confederated” or the phrase “acting in conspiracy,” must aptly appear in the information in the form of definitive acts constituting conspiracy. In fine, the agreement to commit the crime, the unity or purpose or the community of design among the accused must be conveyed such as either by the use of the term “conspire” or its derivatives and synonyms or by allegations of basic facts constituting the conspiracy. Conspiracy must be alleged, not just inferred, in the information on which basis an accused can aptly enter his plea, a matter that is not to be confused with or likened to the adequacy or evidence that may be required to prove it. In establishing conspiracy when properly alleged, the evidence to support it need not necessarily be shown by direct proof but may be inferred from shown acts and conduct of the accused.

The aforequoted portion would seem to imply that conspiracy may be alleged in the information either by (1) use of the word “conspire,” or its derivatives and synonyms, or (2) allegations of basic facts constituting the conspiracy. It creates the impression that conspiracy is deemed sufficiently alleged by the mere use of the word “conspire,” or its derivatives and synonyms. Curiously enough, the passage does not cite any basis for the

pronouncement. However, if I read Quitlong correctly, the overall thrust and logic of the ruling, citing authoritatively Article III of the 1987 Constitution, Section 1(b) of Rule 115, Sections 6 and 8 of Rule 110, all of the Revised Rules of Court, U.S. v. Karelsen[9] and Pecho v. People,[10] the mandatory rule still remains that, in the very words of Quitlong itself –

the information must set forth the facts and circumstances that have a bearing on the culpability and liability of the accused so that the accused can properly prepare for and undertake his defense. One such fact or circumstance in a complaint against two or more accused persons is conspiracy

– in order that

an accused [may] know from the information whether he faces a criminal responsibility not only for his acts but also for the acts of his co-accused as well.

Thus, we quote from the other portions of Quitlong:

sOverwhelming, such as it may have been thought of by the trial court, evidence of conspiracy is not enough for an accused to bear and to respond to all its grave legal consequences; it is equally essential that such accused has been apprised when the charge is made conformably with prevailing substantive and procedural requirements. Article III, Section 14, of the 1987 Constitution, in particular, mandates that no person shall be held answerable for a criminal offense without due process of law and that in all criminal prosecutions the accused shall first be informed of the nature and cause of the accusation against him. The right to be informed of any such indictment is likewise explicit in procedural rules. The practice and object of informing an accused in writing of the charges against him has been explained as early as the 1904 decision of the Court in U.S. vs Karelsen; viz:

First. To furnish the accused with such a description of the charge against him as will enable him to make his defense; and second, to avail himself of his conviction or acquittal for protection against a further prosecution for the same cause; and third, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had. (United States vs. Cruikshank, 92 U.S. 542). In order that this requirement may be satisfied, facts must be stated, not conclusions of law. Every crime is made up of certain acts and intent; these must be set forth in the complaint with reasonable particularity of time, place, names (plaintiff and defendant), and circumstances. In short, the complaint must contain a specific allegation of every fact and circumstances necessary to constitute the crime charged.

An information, in order to ensure that the constitutional right of the accused to be informed of the nature and cause of his accusation is not violated, must state the name of the accused; the designation given to the offense by the statute; a statement of the acts or omissions so complained of as constituting the offense; the name of the offended party; the approximate time and date of the commission of the offense; and the place where the offense has been committed. In embodying the essential elements of the crime charged, the information must set forth the facts and circumstances that have a bearing on the culpability and liability of the accused so that the accused can properly prepare for and undertake his defense.

To allege that the accused “conspired” or “connived” with one another or, that they acted, in the words of the subject information, in “connivance/conspiracy,” is to make a conclusion of law, not a statement of fact. While it may be argued that the information sufficiently charges conspiracy since it uses the term “connivance,” which is the same term used in Section 2 of R.A. No. 7080, this does not make it less a conclusion of law. The terms “connivance” and “conspiracy” are thus superfluous and should not be considered as written in the information.

It is true that conspiracy does not constitute an element of plunder. Nevertheless, if jurisprudence is to be consistent with the rationale in Lim San, supra, and subsequent cases, the information should allege facts, not conclusions of law regardless of whether the allegation relates to the acts constituting the offense or to the manner

of its commission. The purpose of the information is to inform the accused and it does not help him any if it states conclusions of law unfamiliar to a “person of common understanding.”

“Conspiracy” is a technical term with a precise meaning in law. Article 7 of the Revised Penal Code provides that a conspiracy exists when two or more persons come into agreement concerning the commission of a felony and decide to commit it. Jurisprudence also holds that it is sufficient that at the time of the commission of the offense, the accused had the same purpose and were united in its execution.[11] Conspiracy requires concurrence of wills or unity of action or purpose, or common and joint purpose and design.[12]

The information at bar does not allege that former President Joseph Ejercito Estrada and petitioner came into agreement concerning the commission of plunder and decided to commit it. It does not say that they shared the same purpose or had a “concurrence of wills” or a “common and joint purpose and design” to amass ill-gotten wealth, etc.

As conspiracy was not adequately alleged, the acts stated in sub-paragraph (a) of the information, standing alone, would not constitute the crime of plunder, the elements of which are:

(1) That the offender is a public officer who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons;

(2) That he amassed, accumulated or acquired ill-gotten wealth through a combination or series of the following overt or criminal acts:

(a)

through misappropriation, conversion, misuse, malversation of public funds or raids on the public treasury;

(b)

by receiving directly or indirectly, any commission, gift, share, percentage, kickback or any other form of pecuniary benefits from any person and/or entity in connection with any government contract or project by reason of the office or position of the public officer;

(c)

by the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities of government owned or controlled corporations or their subsidiaries;

(d)

by obtaining, receiving or accepting any shares of stock, equity or any other form of interest of participation, including the promise of future employment in any business enterprise or undertaking;

(e)

by establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or

(f)

by taking advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines; and

(3) That the aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired is at

least P50,000,000.00.[13]

First, there is no allegation that petitioner occupies or occupied a public office. The only “public officer” expressly mentioned in the information is former President Estrada whose links with petitioner in the alleged plunder has been severed because of the failure to sufficiently allege conspiracy.

Second, the information does not adequately allege acts constituting the second means by which plunder may be committed. It does not state that petitioner received or collected money “in connection with any government contract or project by reason of the office or position of the public officer.”

It also bears noting that the information also suffers from ambiguity as to the element that there be “a combination or series of overt or criminal acts.” The information charges petitioner with receiving or collecting money “on several instances” but this does not necessarily amount to an allegation that petitioner performed a combination or series of overt or criminal acts. It is entirely possible that the receipt or collection of money was made “on several instances,” but such transactions were impelled by a single criminal resolution and, therefore, pertain only to a single “overt or criminal act,” not to a series or combination of acts.

Third, ambiguity also results from the insufficiency of the allegation of “connivance,” a legal conclusion also found in sub-paragraph (a). Absent an allegation of conspiracy, each of the co-accused may be held liable for his own acts and not for those of his co-accused. The question then arises, what amount did each of the co-accused in sub-paragraph (a) receive or collect? Did petitioner, by himself, receive or collect at least P50,000,000.00? The Resolution of the Ombudsman recommending the filing of charges against petitioner indicates otherwise:

Respondent Jose “Jinggoy” Estrada, the present Mayor of San Juan, Metro Manila, appears to have also surreptitious collection of protection money from jueteng operations in Bulacan. This is gleaned from the statements of Gov. Singson himself and the fact that Mayor Estrada, on at least two occasions, turned over to a certain Emma Lim, an emissary of the respondent governor, jueteng haul totalling P2 million, i.e., P1 million in January, 2000 and another P1 million in February, 2000. An alleged “listahan” of jueteng recipients listed him as one “Jingle Bell,” as affirmed by Singson.

The Ombudsman merely alleged that P2 million was delivered to petitioner on “at least two occasions” the “jueteng haul;” P1 million in January 2000 and another P1 million in February 2000. There was no mention at all as to what were the other occasions and how much were delivered on those other occasions so as to reach the aggregate amount of P50,000,000.00. The failure to state such basic facts would yield to no other conclusion that only P2 million was involved in the jueteng transaction involving petitioner. To assume otherwise would deprive him of his constitutional right to be informed of the nature and cause of the accusation against him.

The Rules of Court were designed to give flesh to the right of the accused to be informed of the nature and cause of the accusation against him. As noted earlier, the Rules demand that the complaint or information be in writing. It also prescribes certain requirements for the complaint or information to be deemed sufficient. The Rules further provide that, upon arraignment, the accused be furnished with a copy of the complaint or information, which is then to be read in the language or dialect known to him.[14] These provisions would be rendered inutile if the complaint or information contains meaningless legal conclusions and ambiguous factual allegations that leave the accused wondering what exactly is being charged.

The foregoing discussion, to me, is more than a fanciful splitting of legal hairs. As this Court said in *People vs. Perez*: [15]

It may be contended that such a rule, if applied to the instant case would appear to be unduly resorting to sheer technicality. The requirement for complete allegations on the particulars of the indictment is based on the right of the accused to be fully informed of the nature of the charge against him, so that he may adequately prepare

for this defense pursuant to the due process clause of the Constitution. x x x.

The fact, however, is that it is the prosecution which determines the charges to be filed and how the legal and factual elements in the case shall be utilized as components of the information. It is not for the accused, usually a layman, to speculate upon the purposes and strategy of the prosecution and be thereafter prejudiced through erroneous guesswork. Thus, since the People dictate what he should be charged with, fairness demands that he should not be convicted of a crime with which he is not charged or which is not necessarily included therein. x x x. Law, after all, is a technical science; it must perforce observe the necessary technicalities to avoid an injustice.

The constitutional rights of the accused are for the protection of the guilty and of the innocent alike. Only with the assurance that even the guilty shall be given the benefit of every constitutional guarantee can the innocent be secure in the same rights.[16]

For these reasons, I vote to GRANT the petition.

[1] Section 14 (2), Article III.

[2] Lacson vs. Executive Secretary, 301 SCRA 298 (1999).

[3] Section 14 (2), Article III.

[4] Id., at Sec. 6.

[5] People vs. Diaz, 320 SCRA 168 (1999); People vs. Juachon, 319 SCRA 761 (1999); People vs. Salazar, 277 SCRA 67 (1997); People vs. Escosio, 220 SCRA 475 (1993); People vs. Sandoval, 254 SCRA 436 (1996).

[6] 17 Phil. 273 (1910).

[7] Lacson vs. Executive Secretary, *supra*. Indeed, the same rule applies to civil actions. Rule 8 provides:

Section 1. In general. – Every pleading shall contain in a methodical and logical form a plain, concise and direct statement of the ultimate facts on which the party pleading relies for his claim or defense, as the case may be, omitting the statement of mere evidentiary facts.

x x x.

[8] 292 SCRA 360.

[9] 3 Phil. 226 (1904).

[10] 262 SCRA 518 (1996).

[11] People vs. Hubilla, Jr., 252 SCRA 471 (1996); People vs. Botona, 304 SCRA 712 (1999); People vs. Patalinghug, 318 SCRA 116 (1999).

[12] People vs. Mindac, 216 SCRA 558 (1992).

[13] Estrada vs. Sandiganbayan, G.R. No. 148560, November 19, 2001. Emphasis supplied.

[14] Rule 116, Section 1 (a).

[15] 296 SCRA 17 (1998).

[16] 305 SCRA 519 (1999).

SEPARATE DISSENTING OPINION

YNARES-SANTIAGO, J.:

One of the most frightening developments in today's prosecution of high-profile criminal cases is the use of conspiracy as a dragnet device to sweep into the lethal execution chamber an accused whose unfortunate offense is to be feared or intensely disliked by those in power.

In Criminal Case No. 26558 for Violation of Republic Act No. 7080, the Anti-Plunder Law, Jose "Jinggoy" Estrada is charged with only one (1) of the combination or series of four (4) criminal acts attributed to his father, former President Joseph Ejercito Estrada.

The only specific charge against Jose E. Estrada is "TOLERATION OF ILLEGAL GAMBLING," nothing else.[1] His father, the former President, is the principal who is accused of having committed three (3) additional series or combinations of criminal acts, namely (1) misappropriating P130 million of the tobacco excise tax share of Ilocos Sur; (2) receiving a commission of P189,700.00 from the purchase by GSIS and SSS of P1,847,578,057.50 worth of Belle Corporation stocks; and (3) unlawfully enriching himself from commissions and kickbacks in the amount of P3,233,104,173.17.

Significantly, the name of Jose E. Estrada appears only in the illegal gambling charge under Paragraph "a" of the Amended Information and not in any of the three (3) other charges. As far as I can gather, the alleged act of receiving or collecting money from illegal gambling was only on one occasion, when Jose Estrada supposedly received jueteng money from Gov. Chavit Singson for delivery to his father, the then President Joseph E. Estrada.

The Anti-Plunder Law clearly described the offense of Plunder as committed through a combination of series of overt or criminal acts.[2] Jose Estrada did not participate in three (3) out of the four (4) acts for which his father is charged. In the acts of illegal-gambling, there is only one instance of his alleged participation. Under the factual averments of the Information, there is no series or combination of overt or criminal acts allegedly committed by Jose E. Estrada. How can an accused be guilty of plunder if he is supposed to have committed a single act in only one (1) of four (4) of the series or combination of acts for which his father is accused? Assuming, he committed the act attributed to him, the offense is some other crime. It cannot be plunder.

Last November 19, 2001, I dissented from this Court's legitimization of Republic Act No. 7080, the Anti-Plunder Law.[3] I felt that under its loose, vague, and overbroad terminology, an ordinary offense like illegal gambling which should be prosecuted under the Revised Penal Code as amended by P.D. No. 1602[4] becomes a death penalty offense of plunder if the prosecution so decides. As worded, the law allows selective law enforcement depending on who is the accused.

The unfortunates who happen to be the objects of political vindictiveness and, worse, their children and close relatives are prosecuted not for ordinary or common offenses, but for the singular crime of plunder.

The Court has declared the Anti-Plunder Law valid and constitutional. I disagree with the Court's conclusion but like all law-abiding Filipinos, I am bound by its consequences. Unless the Court reconsiders its decision in a future case where the tensions and pressures are less pronounced, we all must respect it.

I respectfully submit, however, that because of the controversial nature of the Anti-Plunder Law, extra care must be exercised in its enforcement and implementation. During our deliberations on the main Plunder Case, G.R. No. 148560, some members of the Court believed that the law is valid because any possible vagueness or overbreadth in the way it is enacted would be remedied through judicial construction. Under that theory, any unconstitutionality is not in the broad wording of the law but in its implementation. In other words, it was propounded that the time to declare any invalidity is when the Anti-Plunder Law is enforced in an unconstitutional manner.

If the alleged amassing of P545,000,000.00 out of illegal gambling or jueteng under par. “a” of the amended information is correct, there must have been dozens if not hundreds of jueteng collectors and jueteng lords who together gathered the money for the principal accused. I venture to say that not one of them will be prosecuted for plunder. Any possible charges would be under the Revised Penal Code as amended.[5]

It is an established principle of Statutory Construction that penal laws are strictly construed against the State and liberally in favor of the accused.[6] A penal law cannot be enlarged or broadened by intendment, implication, or equitable consideration in order to prosecute or convict an accused whose criminal participation under the strict terminology of the law is doubtful or non-existent.[7] No accused who is not clearly, within the verbatim, direct, and exact terms of the penal law should be brought under it.[8]

I agree with Justice Angelina Sandoval-Gutierrez in her Dissenting Opinion that “the essence of the law on plunder lies in the phrase combination or series of overt or criminal acts” and that “the determining factor of Rep. Act 7080 as can be gleaned from the Records of the Senate is the plurality of the overt or criminal acts under a grand scheme or conspiracy to amass ill-gotten wealth.”[9]

The Comment of the Ombudsman on this particular issue of expanding the coverage of a criminal statute befuddles and blurs the meaning of the law. It neither elucidates nor enlightens. Instead of clarifying, it confuses. The Ombudsman states:

Verily, although the act attributable to petitioner is only under paragraph (a) of the Amended Information, the said act comprises the combination of overt acts committed by former President Estrada to constitute the crime of plunder.[10]

“Comprises” means to be made up of or to include or contain. The Ombudsman correctly states that under the Amended Information, petitioner Jose “Jinggoy” Estrada committed only one act or “the said act.” The reasoning of the Ombudsman is, however, beyond comprehension. How can one act become a combination of overt acts, not of the petitioner Mayor Estrada but of his father, former President Estrada? The issue in this case is whether Mayor Estrada should be prosecuted for his one single act under the Anti-Plunder Law or under some other statute. This petition does not refer to the alleged combination or series of overt or criminal acts allegedly committed by the father. If the former President may be prosecuted of plunder because he is alleged to have committed a combination or series of criminal acts, it does not follow that his son who committed a single act converts that solo act into a series or combination of acts.

The Prosecution adverts to the intent of the framers as gathered from their deliberations.[11] Not one of the Congressmen or Senators cited from the Records ever mentioned anything about one act being a combination of series of acts. All of them explained that two or more acts are required. The quoted discussion refers to whether a “combination” refers to two acts of one enumerated means of the offense or there must be at least two acts of two or more of the different enumerated methods of committing the offense. There was discussion on whether or not “series” can refer to two or more repetitions of the same means or methods of the offense, not necessarily to two enumerated but separate methods. Not once did any Senator or Congressman refer to a single act as a combination

or series.

True, the amended information alleges that accused Joseph Ejercito Estrada acted in connivance or conspiracy with his co-accused. However, conspiracy in this case, bears all the earmarks of a term carelessly thrown into the amended information, a practice common to all prosecutors who tend to automatically include the word “conspiracy” whenever they prosecute one crime but want to embrace within it at least two or more persons.

There is nothing in the amended information nor in the Ombudsman’s comment to explain that conspiracy was committed. A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[12]

The usual phraseology employed to characterize conspiracy includes concurrence of wills, unity of action and purpose, common and joint purpose and design, previous concert of criminal design or united and concerted action.[13]

Petitioner Jose Estrada is not included in the misappropriation of the tobacco excise tax share of Ilocos Sur nor in the Belle Corporation scandal nor in the fourth accusation of having unexplained wealth. There is absolutely no insinuation that he committed any specific act with closeness and coordination under Paragraphs (b), (c) and (d), of the amended information. There is no unmistakable indication of a common purpose or design to commit the three offenses under these latter paragraphs which would make him a co-conspirator in the crime of plunder. And since he committed only one alleged act of illegal gambling, there can be no conspiracy in a crime where a combination or series of criminal acts is essential.

There is no showing in the records that Mayor Estrada consciously adopted a common plan or joined in concerted action with President Estrada and Governor Singson to commit any two of the four criminal acts in the amended information or conspired to commit more than once the receipt and transmission of jueteng money.

If the petitioner was aware that the money entrusted to him for delivery came from illegal gambling, it is established that “mere knowledge, acquiescence, or agreement to cooperate (in the transmission of jueteng funds in this case) is not enough to constitute one as a conspirator of the crime (in this case, plunder) with a view to a furtherance of the common design and purpose.”[14]

Petitioner states that he is linked to only P2,000,000.00 of jueteng money but the Ombudsman seeks to hold him responsible with his father for the aggregate amount of P4,097,804,173.17 of ill-gotten wealth. Petitioner’s criminal act is alleged to be “contributing to the crime of plunder.” This construction of the law by the Prosecution is dangerous if not ominous.

To illustrate: a jueteng collector turns over to the provincial gambling lord only P100.00 of jueteng share but the latter added the amount to the P2,000,000.00 he turned over to Mayor Estrada. This, in turn, is added to the P545,000,000.00 accumulated from national illegal gambling by President Estrada as alleged in the amended information which the Ombudsman refuses to treat separately but includes in the more than P4 Billion amassed through the four (4) criminal acts stated as President Estrada’s alleged criminal acts. This small jueteng collector is equally guilty of Plunder because he contributed P100.00 to the P4 Billion alleged unexplained wealth of President Estrada. The absurdity of the Prosecution’s interpretation of the Plunder Law is readily apparent.

This Court has a history of ruling against the use by Government of the strong arm of the law to oppress or persecute. Under the rule of law, the most unpopular person and even the wretched and unloved, are all the more, given the mantle of protection of due process and the other protections of the Bill of Rights. In *Salonga v. Hon. Ernani Cruz Paño, et al.*, [15] the Court stated that “infinitely more important than conventional adherence to general rules of procedure is respect for the citizen’s right to be free not only from arbitrary arrest and

punishment but also from unwarranted and vexatious prosecution. The integrity of a democratic society is corrupted if a person is carelessly included in the trial of (many) persons when on the very face of the record no evidence linking him to the alleged conspiracy exists.”

In this case, the petitioner is charged with a capital offense when at the very most, only the offense of illegal gambling can be deduced from the alleged criminal acts.

In Hashim v. Boncan,[16] Trocio v. Manta[17] and Salonga v. Ernani Cruz Paño,[18] we stated that the innocent (as in this case of plunder) must be secured against hasty, malicious, and oppressive prosecution and to protect him from an open and public accusation of crime, from the trouble, expense, and anxiety of a public trial and also to protect the state from useless and expensive trials. This is basic in a Government that adheres to the Rule of Law.

In the light of all the foregoing, I vote to grant the petition, set aside the questioned resolutions of the Sandiganbayan dated July 9 and 10, 2001, order the exclusion of Jose “Jinggoy” Estrada from the amended information in Criminal Case No. 26558, and order his release unless he is also being held for an offense other than Plunder.

[1] Paragraph “a” of the Amended Information dated April 18, 2001 filed by the Ombudsman.

[2] Sec. 2, Rep. Act No. 7080, as amended by Sec. 12, Rep. Act No. 7659.

[3] Jose Ejercito Estrada v. Sandiganbayan and People of the Philippines, G.R. No. 148560, November 19, 2001.

[4] Art. 195, Revised Penal Code, as amended under “Gambling And Betting.”

[5] Supra.

[6] People v. Estapia, 37 Phil. 17 (1917); People v. Jackson, 54 Phil. 176 (1929); People v. Terrado, 125 SCRA 648 (1983); People v. Deleverio, 289 SCRA 547 (1998).

[7] People v. Garcia, 85 Phil. 651 (1950).

[8] U.S. v. Abad Santos, 36 Phil. 243 (1917). See People v. Atop, 286 SCRA 157 (1998).

[9] Gutierrez Separate Dissenting Opinion, p. 8.

[10] Ombudsman’s Comment filed on October 5, 2001, p. 11.

[11] Records of the deliberations of the Bicameral Conference Committee on May 7, 1991 and the Senate on June 6, 1989.

[12] Art. 8, Revised Penal Code; People v. Celeste, 348 SCRA 292 (2000).

[13] People v. Tiongson, 47 SCRA 287 (1972).

[14] People v. Alas, 274 SCRA 310 (1997).

[15] 13 SCRA 438 (1985).

[16] 76 Phil. 216.

[17] 118 SCRA 241 (1982).

[18] Supra.

DISSENTING OPINION**SANDOVAL-GUTIERREZ, J.:**

Enshrined in the 1987 Constitution is the guarantee that in all criminal prosecutions, the accused shall be informed of the nature and cause of the accusation against him.[1] Concomitant with this is the requirement that an information must allege the constituent elements of the offense. If the facts alleged do not constitute an offense within the terms of the law on which the accusation is based, or if the facts alleged may all be true and yet do not constitute an offense, the information is insufficient.

It is on account of the above constitutional guarantee that I am unable to agree with the decision of the majority of my brethren and I find it my duty to express my dissent.

For easy reference, reproduced hereunder is the Amended Information in Criminal Case No. 26558 for plunder against former President Joseph Ejercito Estrada and others, including his son, then Mayor Jose "Jinggoy" Estrada, herein petitioner.

“The undersigned Ombudsman Prosecutor and OIC-Director, EPIB, Office of the Ombudsman, hereby accuses former President of the Republic of the Philippines, Joseph Ejercito Estrada a.k.a. ‘Asiong Salonga’ and a.k.a. ‘Jose Velarde,’ together with Jose ‘Jinggoy’ Estrada, Charlie ‘Atong’ Ang, Edward Serapio, Yolanda T. Ricaforte, Alma Alfaro, John Doe a.k.a Eleuterio Tan or Eleuterio Ramos Tan or Mr. Uy, Jane Doe a.k.a. Delia Rajas, and John Does & Jane Does, of the crime of Plunder, defined and penalized under R.A. No. 7080, as amended by Sec. 12 of R.A. No. 7659, committed as follows:

“That during the period from June 1998 to January, 2001, in the Philippines, and within the jurisdiction of this Honorable Court, accused Joseph Ejercito Estrada, then a public officer, being then the President of the Republic of the Philippines, by himself and/or in connivance/conspiracy with his co-accused, who are members of his family, relatives by affinity or consanguinity, business associates, subordinates and/or other persons, by taking undue advantage of his official position, authority, relationship, connection, or influence, did then and there willfully, unlawfully and criminally amass, accumulate and acquire by himself, directly or indirectly, ill-gotten wealth in the aggregate amount or total value of four billion ninety seven million eight hundred four thousand one hundred seventy three pesos and seventeen centavos [P4,097,804,173.17], more or less, thereby unjustly enriching himself or themselves at the expense and to the damage of the Filipino people and the Republic of the Philippines through any or a combination or a series of overt OR criminal acts, or similar schemes or means, described as follows:

a)

by receiving or collecting, directly or indirectly, on several instances, money in the aggregate amount of Five Hundred Forty-Five Million Pesos (P545,000,000.00), more or less, from illegal gambling in the form of gift, share, percentage kickback or any form of pecuniary benefit, by himself and/or in connivance with co-accused Charlie ‘Atong’ Ang, Jose ‘Jinggoy’ Estrada, Yolanda T. Ricaforte, Edward Serapio, AND JOHN DOES AND JANE DOES, in consideration OF TOLERATION OR PROTECTION OF ILLEGAL GAMBLING;

b)

by diverting, receiving, misappropriating, converting or misusing directly or indirectly, for his or their personal gain and benefit, public funds in the amount of one hundred thirty million pesos (P130,000,000.00) more or less, representing a portion of the Two Hundred Million Pesos (P200,000,000.00) tobacco excise tax share allocated for the Province of Ilocos Sur under R.A. No. 7171, by himself and/or in connivance with co-accused Charlie 'Atong' Ang, Alma Alfaro, John Doe a.k.a. Eleuterio Tan Or Eleuterio Ramos Tan or Mr. Uy, and Jane Doe a.k.a Delia Rajas, and other John Does and Jane Does;

c)

by directing, ordering and compelling, for his personal gain and benefit, the Government Service Insurance System (GSIS) to purchase, 351,878,000 shares of stock, more or less and the Social Security System (SSS), 329,855,000 shares of stock, more or less, of the Belle Corporation in the amount of more or less One Billion One Hundred Two Million Nine Hundred Sixty Five Thousand Six Hundred Seven Pesos and Fifty Centavos [P1,102,965,607.50] and more or less Seven Hundred Forty Four Million Six Hundred Twelve Thousand and Four Hundred Fifty Thousand Pesos (P744,612,450.00), respectively, or a total of a more or less One Billion Eight Hundred Forty Seven Million Five Hundred Seventy Eight Thousand Fifty Seven Pesos and Fifty Centavos [P1,847,578,057.50]; and by collecting or receiving, directly or indirectly, by himself and/or in connivance with John Does and Jane Does, commissions or percentages by reason of said purchases of shares of stock in the amount of One Hundred Eighty-Nine Million Seven Hundred Thousand Pesos [P189,700,000], more or less, from the Belle Corporation, which became part of the deposit in the Equitable-PCI Bank under the account name of 'Jose Velarde';

d)

by unjustly enriching himself FROM COMMISSIONS, gifts, shares, percentages, kickbacks, or any form of pecuniary benefits, in connivance with John Does and Jane Does, in the amount of more or less Three Billion Two Hundred Thirty-Three Million One Hundred Four Thousand One Hundred Seventy Three Pesos and Seventeen Centavos [P3,233,104,173.17] and depositing the same under his account name 'Jose Velarde' at the Equitable-PCI Bank.

"CONTRARY TO LAW."[2]

Contrary to the decision of the majority, I find merit in the petition.

The majority of my colleagues deems it proper to dismiss the petition for its failure to show that respondent Sandiganbayan acted without or in excess of its jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction. I beg to stand apart from such disposition.

There are two legal points in the majority decision to which I cannot yield concurrence. First, there is an over-all conspiracy to commit plunder. And second, while petitioner's name is mentioned only under paragraph (a) of the Amended Information, he is still being charged with plunder considering that he committed bribery "in toleration or protection of illegal gambling" in several instances.

I

The majority adheres to the view that under the Amended Information, petitioner is accused not only with one criminal act or one offense but a series thereof, using as justification the allegation of conspiracy in the Amended Information.[3]

While petitioner is being charged of the "crime of Plunder, defined and penalized under R.A. No. 7080," his alleged participation therein is limited to what is specified under paragraph (a) of the Amended Information, i.e., bribery "in consideration of toleration or protection of illegal gambling," thus:

a)

by receiving or collecting, directly or indirectly, on several instances, money in the aggregate amount of Five Hundred Forty-Five Million Pesos (P545,000,000.00), more or less, from illegal gambling in the form of gift, share, percentage kickback or any form of pecuniary benefit, by himself and/or in connivance with co-accused Charlie 'Atong' Ang, Jose 'Jinggoy' Estrada, Yolanda T. Ricaforte, Edward Serapio, AND JOHN DOES AND JANE DOES, in consideration OF TOLERATION OR PROTECTION OF ILLEGAL GAMBLING;

It must be observed that petitioner's name is not mentioned or included in paragraphs (b), (c) and (d) of the Amended Information. *Expressio unius personae vel rei est exclusio alterius*. The express mention of one person or thing is the exclusion of another.[4]

Taking into consideration the provisions of R.A. No. 7080 vis-à-vis the Amended Information, there can be no crime of plunder insofar as petitioner is concerned. The essence of the law on plunder lies in the phrase "combination or series of overt or criminal acts." The determining factor of R.A. No. 7080, as can be gleaned from the Record of the Senate, is the plurality of the overt acts or criminal acts under a grand scheme or conspiracy to amass ill-gotten wealth. Thus, even if the amassed wealth equals or exceeds fifty million pesos, a person cannot be prosecuted for the crime of plunder if he performs only a single criminal act.[5]

Respondents basically argue that since there is an allegation of conspiracy at the inception of the Amended Information, the criminal acts recited in paragraphs (b), (c) and (d) also pertain to petitioner, the act of one being the act of all. This is an obvious non sequitur. Even the Amended Information, on its face, cannot admit such a construction.

First, it bears noting that the Amended Information names the co-conspirators of former President Estrada individually and separately in each of the four predicate offenses. Paragraph (a) names petitioner Jose "Jinggoy" Estrada, "Atong" Ang, Yolanda T. Ricaforte, Edward Serapio, John Does and Jane Does as co-conspirators in the crime of bribery. Paragraph (b) names Alma Alfaro, "Atong" Ang, Eleuterio Ramos Tan, Delia Rajas and other John Does and Jane Does as co-conspirators in the crime of malversation of public funds representing a portion of the tobacco excise tax share allocated to the Province of Ilocos Sur. Paragraphs (c) and (d) name John Does and Jane Does as co-conspirators in the purchase of the Belle's shares and in the acquisition of ill-gotten wealth in the amount of P3,233,104,173.17 under the account name "Jose Velarde."

Is it logical to infer from the Amended Information the existence of a single continuing conspiracy of plunder when the factual recital thereof individually and separately names the co-conspirators in each of the predicate offenses? The answer is an outright no. A single agreement to commit several crimes constitutes one conspiracy. By the same reasoning, multiple agreements to commit separate crimes constitute multiple conspiracies. A simple allegation that former President Estrada and all his co-accused, including petitioner, conspired or connived in committing the four predicate offenses could have been sufficient to indicate conspiracy among them. But to individually and separately name the co-conspirators in each of the predicate offenses is to emphasize the absence of a common design. To my mind, this explicit clustering of co-conspirators for each predicate offense thwarts respondents' theory of a single continuing conspiracy of plunder. It shows a clear line segregating each predicate offense from the other. Thus, the act of one cannot be considered as the act of all.

Second, the allegation of conspiracy at the inception of the Amended Information basically pertains to former President Estrada as the common key figure in the four predicate offenses. Quoted below is the pertinent portion:

“That during the period from June 1998 to January, 2001, in the Philippines, and within the jurisdiction of this Honorable Court, accused Joseph Ejercito Estrada, then a public officer, being then the President of the Republic of the Philippines, by himself and/or in connivance/conspiracy with his co-accused, who are members of his family, relatives by affinity or consanguinity, business associates, subordinates and/or other persons, by taking undue advantage of his official position, authority, relationship, connection, or influence, did then and there willfully, unlawfully and criminally amass, accumulate and acquire by himself, directly or indirectly, ill-gotten wealth in the aggregate amount or total value of four billion ninety seven million eight hundred four thousand one hundred seventy three pesos and seventeen centavos [P4,097,804,173.17], more or less, thereby unjustly enriching himself or themselves at the expense and to the damage of the Filipino people and the Republic of the Philippines through any or a combination or a series of overt OR criminal acts, or similar schemes or means, described as follows: x x x”

From the foregoing allegation, it can be reasonably construed that former President Estrada conspired with all the accused in committing the four predicate offenses. However, there is no allegation that his co-accused, including petitioner, conspired with him to commit all, or some, or one of the predicate offenses.

I note with particularity the phrase in the Amended Information stating, "by himself and/or in connivance/conspiracy with his co-accused." The use of "or" – a function word to indicate an alternative between different or unlike things, state, or actions[6] - negates absolute commonality of design among the former President and all his co-accused. The phrase indicates that former President Estrada did not, in all instances, act in connivance with the other accused. It admits a construction that, at times, he acted alone.

And third, the statement in the accusatory portion of the Amended Information cumulatively charging all the accused of the crime of plunder cannot be given much weight in determining the nature of the offense charged. It is a jurisprudentially-embedded rule that what determines the "nature and cause of accusation" against an accused is the crime described by the facts stated in the information or complaint and not that designated by the fiscal in the preamble thereof.[7] In the recent *En Banc* ruling in *Lacson v. Executive Secretary*,[8] citing *People v. Cosare*[9] and *People v. Mendoza*,[10] this Court held:

“The factor that characterizes the charge is the actual recital of the facts. The real nature of the criminal charge is determined not from the caption or preamble of the information nor from the specification of the provision of law alleged to have been violated, they being conclusions of law, but by the actual recital of facts in the complaint or information.”[11]

Thus, in the event that the appellation of the crime charged as determined by the public prosecutor, does not exactly correspond to the criminal acts described in the information to have been committed by the accused, what controls is the description of the said criminal acts and not the technical name of the crime supplied by the public prosecutor.[12]

Here, while the crime being charged under the Amended Information is plunder, however, the recital of facts constituting that crime under paragraph (a) indicates that petitioner is being accused of bribery, not plunder.

To reiterate, the majority is of the view that petitioner can be held accountable for the crimes enumerated under paragraphs (a) to (d) of the Amended Information by reason of conspiracy, the gravamen of which is that he "agreed to participate, directly or indirectly, in the amassing, accumulation and acquisition of ill-gotten wealth of and/or for former President Estrada." Thus, the majority ratiocinates:

“X x x. In the crime of plunder, therefore, different parties may be united by a common purpose. In the case at bar, the different accused and their different criminal acts have a commonality – to help the former President amass, accumulate or acquire ill-gotten wealth. Sub-paragraphs (a) to (d) in the Amended Information alleged the different participation of each accused in the conspiracy. The gravamen of the conspiracy charge, therefore,

is not that each accused agreed to receive protection money from illegal gambling, that each misappropriated a portion of the tobacco excise tax, that each accused ordered the GSIS and SSS to purchase shares of Belle Corporation and receive commissions from such sale, nor that each unjustly enriched himself from commissions, gifts and kickbacks; rather, it is that each of them, by their individual acts, agreed to participate, directly or indirectly, in the amassing, accumulation and acquisition of ill-gotten wealth or and/or for former President Estrada.”

The theory of the majority, as it appears to me, is that there is one overall continuing conspiracy among all the accused, with various parties joining each other in the commission of four (4) specific offenses at different times. This is not the way I understand the language of the Amended Information. My theory is that there are four separate conspiracies with no overall goal or common purpose to commit the crime of plunder. For one, there is no allegation in the Amended Information that petitioner agreed with the former President and the other accused to acquire and amass ill-gotten wealth by misappropriating the tobacco excise tax allocated for Ilocos Sur; by ordering the GSIS and SSS to purchase shares of Belle Corporation and receive commission from such sale; and enriching himself from commissions, gifts and kickbacks.

At this point, let me again call the attention of the majority that the Amended Information does not allege that petitioner conspired with the former President and the other accused in committing the criminal acts enumerated under paragraphs (b), (c) and (d).

The permeating error in the Amended Information lies in the fact that it joins together four distinct conspiracies in a single continuing conspiracy of plunder and indiscriminately accused all the persons who participated therein of the said resulting crime. This is akin to that of "separate spokes meeting at a common center, without the rim of the wheel to enclose the spokes." This is highly irregular. There exists a distinction between separate conspiracies, where certain parties are common to all the conspiracies, but with no overall goal or common purpose; and one overall continuing conspiracy with various parties joining and terminating their relationship at different times.[13] Significantly, distinct and separate conspiracies do not, in contemplation of law, become a single conspiracy merely because one man is a participant and key figure in all the separate conspiracies.[14] The case at bar is a perfect example. The fact that former President Estrada is a common key figure in the criminal acts recited under paragraphs (a), (b), (c) and (d) of the Amended Information does not automatically give rise to a single continuing conspiracy of plunder, particularly, with respect to petitioner whose participation is limited to paragraph (a). To say otherwise is to impute to petitioner the acts of the others without reference to whether or not he knows such criminal acts or agrees with them to commit the same. It could not have been the intention of the Legislature, in drafting R.A. No. 7080, to authorize the prosecution to chain together four separate and distinct crimes when the only nexus among them lies in the fact that one man participated in all. There lies a great danger for the transference of guilt from one to another across the line separating conspiracies.

In *State v. Harkness*,^[15] a demurrer to the information was sustained on the ground that an information charging two separate conspiracies is bad for misjoinder of parties where the only connection between the two conspiracies was the fact that one defendant participated in both. The Supreme Court of Washington ruled:

“[W]e see no ground upon which the counts against both the Harknesses can be included in the same information. While they are charged with crimes of the same class, the crimes are alleged to have been committed independently and at different times. The crimes are related to each other only by the fact that the prescriptions used were issued by the same physician. x x x We find ourselves unable to agree with the appellant that the misjoinder is cured by the conspiracy charge. It is doubtful if the count is sufficient in form to charge a conspiracy. x x x Reference is made in the count, to counts one to six, inclusive, for a specification of the acts constituting the conspiracy. When these counts are examined, it will be seen that they charge separate substantive offenses without alleging any concert of action between the Harknesses.”

Thus, when certain persons unite to perform certain acts, and some of them unite with others who are engaged in totally different acts, it is error to join them in an information.[16] Otherwise stated, defendants charged with two separate conspiracies having one common participant are not properly joined, and similarity of acts alone is insufficient to indicate that series of acts exist.[17] Joinder may be permitted when the connection between the alleged offenses and the parties is the accused's awareness of the identity and activity of the other alleged participants.[18] Consequently, the general allegation of conspiracy at the inception of the Amended Information cannot cure the misjoinder of the accused charged under paragraphs (a), (b), (c) and (d) alleging separate and distinct conspiracies.

Guilt should remain individual and personal, even as respect conspiracies. It is not a matter of mass application. There are times when of necessity, because of the nature and scope of a particular federation, large numbers of persons taking part must be tried by their conduct. The proceeding calls for the use of every safeguard to individualize each accused in relation to the mass. Criminal each may be, but it is not the criminality of mass conspiracy. True, this may be inconvenient for the prosecution. But the government is not one of mere convenience or efficiency. It too has a stake with every citizen, in his being afforded the individual protections, including those surrounding criminal trials.[19]

II

Surprisingly, while the theory of the majority is that there is one overall conspiracy of plunder, however, they conclude that petitioner may be held accountable only for the predicate act alleged in paragraph (a) of the Amended Information.[20] This runs counter to the basic principle in conspiracy cases that the act of one is the act of all. The proper approach, I strongly believe, is to consider paragraphs (a), (b), (c) and (d) for what they really are i.e., separate conspiracies. Forcing the issue that there is a single continuing conspiracy, yet insisting that petitioner may be charged with only bribery (in "toleration or protection of illegal gambling") will certainly result in an inconsistent ruling.

When an accused invokes in a motion to quash the ground that the facts charged do not constitute an offense, the sufficiency of the information hinges on the question of whether the facts alleged, if hypothetically admitted, meet the essential elements of the offense defined in the law.[21] In *Mustang Lumber, Inc. v. Court of Appeals*,[22] this Court held that "the test for the correctness of this ground is the sufficiency of the averments in the information, that is, whether the facts alleged, if hypothetically admitted, constitute the elements of the offense, and matters aliunde will not be considered. Under Section 2 of R.A. No 7080, the essential elements of the crime of plunder are: a) that the offender is a public officer; b) that he amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts described in Section 1 (d), to wit:

1)

Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;

2)

By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks, or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned;

3)

By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivision, agencies or instrumentalities or government –owned or controlled corporations and their subsidiaries;

4)

By obtaining, receiving or accepting directly, or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;

5)

By establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular person or special interests; or

6)

By taking undue advantage of official position, authority, relationship, connection, or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

and c) that the aggregate amount or total value of the ill-gotten wealth is at least Fifty Million Pesos (P50,000,000.00).[23]

From the Amended Information, it cannot be said that petitioner committed a "combination or series of overt of criminal acts." In its Joint Resolution[24] dated April 4, 2001, the Office of the Ombudsman found probable cause against petitioner only for collecting protection money from "jueteng" operations in Bulacan in the aggregate amount of P2,000,000, thus:

“Respondent Jose ‘Jinggoy’ Estrada, the present Mayor of San Juan, Metro Manila, appears to have also surreptitious collection of protection money from jueteng operations in Bulacan. This is gleaned from the statements of Gov. Singson himself and the fact that Mayor Estrada, on at least two occasions, turned over to a certain Emma Lim, an emissary of the respondent governor, jueteng haul totalling P2 million, i.e., 1 million in January 2000 and another in February 2000. An alleged listahan of jueteng recipients listed him as one ‘Jingle Bell,’ as affirmed by Singson.”[25]

The Joint Resolution is quite revealing. Charging petitioner with plunder merely on the basis of the above factual recital is plain injustice which this Court will not allow.

Section 14, Article III, of the 1987 Constitution mandates that no person shall be held answerable for a criminal offense without due process of law and that in all criminal prosecutions the accused shall first be informed of the nature and cause of the accusation against him.[26] In *U.S. v. Karelsen*,[27] the object of written accusations was carefully spelled-out, thus:

“The object of this written accusations was – First. To furnish the accused with such a description of the charge against him as will enable him to make his defense; and second, to avail himself of his conviction or acquittal for protection against a further prosecution for the same cause; and third, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had. In order that this requirement may be satisfied, facts must be stated, not conclusions of law. x x x. In short, the complaint must contain a specific allegation of every fact and circumstance necessary to constitute

the crime charged.”

Consequently, reasonable certainty is required in an information. This means that the charge must be set forth with enough particularity to apprise the accused adequately as to the exact offense being charged. The allegations must clearly designate the offense and the specific criminal act for which the accused is to answer so that the court can see, admitting the facts to be as stated, that a criminal offense has been committed.

In the present case, while the Amended Information clearly sets forth the criminal acts committed by former President Estrada in furtherance of plunder, it fails to do so with respect to petitioner. As I repeatedly mentioned earlier, the only criminal act attributed to petitioner is that provided under paragraph (a) of the Amended Information alleging that the former President, by himself and/or in conspiracy with petitioner and other accused, received or collected, on several instances, money in the aggregate amount of P545,000,000.00 from illegal gambling in the form of gift, share, kickback, etc. This allegation leaves much to be desired. It fails to specify the particular acts for which petitioner is being prosecuted. On the "several instances" referred to in the Amended Information whereby former President Estrada and others received or collected money from illegal gambling, I am at a quandary where petitioner's participation comes in. When did these several instances occur? How many instances? On what dates? Where? In each instance, how much was delivered to whom by whom? It bears noting that the period covered by the Amended Information extends from June 1998 to January 2001. Surely, the length of time, as well as the general character of the allegation will pose difficulties to petitioner in the preparation of his defense and will render him totally vulnerable to surprises. True enough, the phrase "on at least two occasions" in the Joint Resolution of the Office of the Ombudsman is now being utilized by the majority to show that the P2,000,000.00 allegedly received by petitioner as protection money is not yet the entire sum for which he maybe held liable. This is leading towards a dangerous path. Consistent with the constitutional right of an accused to be informed about the nature and cause of an accusation against him, the information must be written in clear, direct, simple, understandable language, which establishes the crime being charged and the acts constituting that crime, in sufficient detail, to enable the preparation of a defense and afford protection against double jeopardy.[28] How can petitioner adequately prepare his defense when the acts for which he is being prosecuted are not set forth with certainty in the Amended Information? Worse, there seems to be an allowance to include additional charges upon availability of evidence in the future. Undoubtedly, this will render petitioner vulnerable to proscribed surprises from the prosecution. During the hearing, it is very likely that the prosecution will present evidence that aside from those "two occasions" wherein petitioner allegedly received P2,000,000.00 as protection money, there were other instances when he was bribed amounting to P50,000,000.00 or more.

In *United States v. Dichao*,[29] decided as early as 1914, this Court sustained the dismissal of the complaint on a demurrer filed by the accused on the ground that the designation of time within which the crime was committed is so indefinite as to violate the accused's right to be informed, thus:

“In the case before us the statement of the time when the crime is alleged to have been committed is so indefinite and uncertain that it does not give the accused the information required by law. To allege in an information that the accused committed rape on a certain girl between October 1910 and August 1912, is too indefinite to give the accused an opportunity to prepare for his defense, and that indefiniteness is not cured by setting out the date when a child was born as a result of such crime. Section 7 of the Code of Criminal Procedure does not warrant such pleading. Its purpose is to permit the allegation of a date of the commission of the crime as near to the actual date as the information of the prosecuting officer will permit, and when that has been done any date may be proved which does not surprise and substantially prejudice the defense. It does not authorize the total omission of a date or such an indefinite allegation with reference thereto as amounts to the same thing.” (Emphasis supplied)

In *People v. Ladrillo*,[30] this Court, again emphasizing the right of the accused to be informed of the nature and

cause of accusation against him, ruled:

“The peculiar designation of time in the Information clearly violates Sec. 11, Rule 110, of the Rules Court which requires that the time of the commission of the offense must be alleged as near to the actual date as the information or complaint will permit. More importantly, it runs afoul of the constitutionally protected right of the accused to be informed of the nature and cause of the accusation against him. The Information is not sufficiently explicit and certain as to time to inform accused-appellant of the date on which the criminal act is alleged to have been committed.

The phrase "on or about the year 1992" encompasses not only the twelve (12) months of 1992 but includes the years prior and subsequent to 1992, e.g., 1991 and 1993, for which accused-appellant has to virtually account for his whereabouts. Hence, the failure of the prosecution to allege with particularity the date of the commission of the offense and, worse, its failure to prove during the trial the date of the commission of the offense as alleged in the Information, deprived accused-appellant of his right to intelligently prepare for his defense and convincingly refute the charges against him. At most, accused-appellant could only establish his place of residence in the year indicated in the Information and not for the particular time he supposedly committed the rape.” (Emphasis supplied)

Section 6, Rule 10 of the Revised Rules of Criminal Procedure provides:

"SEC. 6. Sufficiency of complaint or information. - A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions as complained of as constituting the offense; the name of the offended party, the approximate date of the commission of the offense; and the place where the offense was committed."

Unfortunately, the Amended Information which, according to the majority, charges petitioner with plunder under paragraph (a), utterly failed to comply with the above Rule.

In fine, petitioner should not have been charged with the serious crime of plunder in the Amended Information considering that his participation is limited only to paragraph (a) thereof alleging a single crime of bribery. Indeed, respondent Sandiganbayan should not have sustained the validity of the Amended Information as against petitioner. Certainly, this is grave abuse of discretion on its part.

Corollarily, I find it improper to require the Sandiganbayan to receive evidence for the purpose of determining petitioner's entitlement to bail. I am convinced that such issue is rendered moot by the fact that the Amended Information is fatally defective in so far as petitioner is concerned. The allegations in the Amended Information do not constitute the offense charged, and thus the same cannot validly support a judgment of conviction against petitioner for the crime of plunder. He must be dropped from the Amended Information and proceeded against under a new one charging the proper offense.

WHEREFORE, I vote to GRANT the petition. Petitioner Jose "Jinggoy" Estrada is ordered excluded from the Amended Information for plunder.

[1] Article III, Section 14 (2).

[2] Annex "C," Petition, Rollo, pp. 46-49.

[3] Ponencia of Justice Reynato S. Puno, pp. 8-9.

[4] Sodhi, *Latin Words & Phrases for Lawyers*, 1980, p. 85.

[5] “Senator Paterno. Mr. President, not too clear yet on the reason for trying to define a crime of plunder. Could I

get some further clarification?

Senator Tanada. Yes, Mr. President.

Because of our experience in the former regime, we feel that there is a need for Congress to pass the legislation which would cover a crime of this magnitude. While it is true, we already have the Anti-Graft Law. But that does not directly deal with plunder. That covers only the corrupt practices of public officials as well as their spouses and relatives within the civil degree, and the Anti-Graft law as presently worded would not adequately or sufficiently address the problems that we experienced during the past regime.

Senator Paterno. May I try to give the Gentleman, Mr. President, my understanding of the bill?

Senator Tanada. Yes.

Senator Paterno. I envision that this bill or this kind of plunder would cover a discovered interconnection of certain acts, particularly, violations of Anti-Graft and Corrupt Practices Act when, after the different acts are looked at, a scheme of conspiracy can be detected, such scheme or conspiracy consummated by the different criminal acts or violations of Anti-Graft and Corrupt Practices Act, such that the scheme or conspiracy becomes a sin, as a large scheme to defraud the public or rob the public treasury. It is parang robo and banda. It is considered as that. And, the bill seeks to define or says that P100 million is that level at which ay talagang sobra na dapat nang parusahan ng husto. Would it be a correct interpretation or assessment of the intent of the bill?

Senator Tanada. Yes, Mr. President. The fact that under existing law, there can be only one offense charged in the information, that makes it very cumbersome and difficult to go after these grafters if we would not come out with this bill. That is what is happening now; because of that rule that there can be only one offense charged per information, then we are having difficulty in charging all the public officials who would seem to have committed these corrupt practices. With this bill, we could come out with just one information, and that would cover all the series of criminal acts that may have been committed by him.

x x x x x

Senator Romulo. To follow up the interpolations of Senator Paterno and Maceda, this crime of plunder as envisioned here contemplates of a series or a scheme as responded by the distinguished Sponsor.

Senator Tanada. That is correct, Mr. President. (Record of Senate, June 5, 1989, Vol. IV, No. 140, p. 1315)

x x x x x

Senator Romulo. Mr. President, I was going to suggest prior to Senator Maceda that on line 24: "SHALL THROUGH ONE overt or criminal act OR..." I was just thinking of one which is really not a "series."

The President. If there is only one, then he has to be prosecuted under the particular crime. But when we say "acts of plunder" there should be, at least, two or more. (Record of the Senate, June 6, 1989, Vol. IV, No. 141, p. 1399).

[6] Webster Third New International Dictionary, 1993, p. 1585.

[7] United States v. Lim San, 17 Phil. 273 (1910); United States v. de Guzman, 19 Phil. 350 (1911).

[8] 301 SCRA 298 (1999).

[9] 95 Phil. 657, 660 (1954).

[10] 175 SCRA 743 (1989).

[11] Lacson v. Executive Secretary, 301 SCRA 298 (1999).

[12] Buhat v. Court of Appeals, 265 SCRA 701 (1996).

[13] 16 Am Jur 2d § 11, p. 209.

[14] Ibid..

[15] 82 P. 2d 541.

[16] Wilson v. United States, 190 Federal Reporter 427 (1911).

[17] United States v. Welch 656 F 2d 1039 (1981).

[18] 41 Am Jur 2d § 202.

[19] Kotteakos v. U.S 328 U.S. 750 (1946).

[20] I must stress that "participating" and "conspiring" are two distinct terms in law. Of course, the latter term has a graver legal consequence. In an attempt to sustain its theory that there is a single conspiracy of plunder, i.e., there is a common design among all the accused to help Estrada amass, accumulate, or acquire ill-gotten wealth, the majority treat the acts enumerated under paragraphs (a), (b), (c) and (d) as mere "acts of participation." This is not the way I understand the language of the Amended Information. Each paragraph expressly uses the word "in connivance." This presupposes that each paragraph covers a separate conspiracy and petitioner is not a co-conspirator with respect to paragraphs (b), (c) and (d). Thus, Justice Jose C. Vitug, in his separate opinion, correctly observes:

"The records would show that petitioner was charged with having been in connivance with the former President, only in reference to paragraph (a) of the accusatory information. Nowhere in the charge sheet would it appear that petitioner was likewise being indicted for any of the other charges contained in paragraphs (b), (c) and (d) of that information." (Emphasis supplied)

[21] People v. Court of First Instance of Quezon, 206 SCRA 187 (1992).

[22] G.R. No. 106424, June 18, 1996.

[23] Section 2 of R.A. No. 7080.

[24] Rollo, pp. 217-314.

[25] Rollo, p. 278.

[26] Such right, an ancient bulwark of the liberties of men, has its origin in the Bill of Rights which the people of Great Britain demanded and received from the Prince and Princess of Orange on 13 February 1668. It was adopted by the Constitution of the United States and was extended to the Philippines by Act No. 235, or the Philippine Bill of 1902. It was later carried into the Jones Law and, ultimately, enshrined in the Constitutions of 1935, 1973, and 1987. Pecho v. People, 262 SCRA 518 (1996).

[27] 3 Phil. 223 (1904).

[28] 41 Am Jur 2d § 101.

[29] 27 Phil, 421 (1914).

[30] 320 SCRA 61 (1999).

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