

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON.
SANDIGANBAYAN (FOURTH DIVISION), IMELDA R. MARCOS, JOSE
CONRADO BENITEZ AND GILBERT C. DULAY, RESPONDENTS.**

G.R. Nos. 153304-05. February 07, 2012

Ponente: BRION, J.

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BRION, J.:

Before us is a petition for certiorari filed by the People of the Philippines (petitioner) assailing the decision dated March 22, 2002 of the Sandiganbayan[1] in Criminal Case Nos. 20345 and 20346 which granted the demurrers to evidence filed by Imelda R. Marcos, Jose Conrado Benitez (respondents) and Rafael Zagala.

The Facts

The petition stemmed from two criminal informations filed before the Sandiganbayan, charging the respondents with the crime of malversation of public funds, defined and penalized under Article 217, paragraph 4 of the Revised Penal Code, as amended. The charges arose from the transactions that the respondents participated in, in their official capacities as Minister and Deputy Minister of the Ministry of Human Settlements (MHS) under the MHS' Kabisig Program.

In Criminal Case No. 20345, respondents, together with Gilbert C. Dulay, were charged with malversation of public funds, committed as follows:

That on or about April 6, 1984 or sometime and/or [subsequent] thereto, in Pasig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, all public officers charged with the administration of public funds and as such, accountable officers, Imelda R. Marcos being then the Minister of Human Settlements, Jose Conrado Benitez being then the Deputy Minister of Human Settlements and Gilbert C. Dulay being then [the] Assistant Manager for Finance, Ministry of Human Settlements, while in the performance of their official functions, taking advantage of their positions, acting in concert and mutually helping one another thru manifest partiality and evident bad faith did then and there, willfully, unlawfully and criminally, in a series of anomalous transactions, abstract the total amount of P57.954 Million Pesos (sic), Philippine Currency from the funds of the Ministry of Human Settlements in the following manner: accused Conrado Benitez approved the series of cash advances made and received by Gilbert C. Dulay, and made it appear that the funds were transferred to the University of Life, a private foundation represented likewise by Gilbert C. Dulay when in truth and in fact no such funds were transferred while Imelda R. Marcos concurred in the series of such cash advances approved by Jose Conrado Benitez and received by Gilbert C. Dulay and in furtherance of the conspiracy, in order to camouflage the aforesaid anomalous and irregular cash advances and withdrawals, Imelda R. Marcos requested that the funds of the KSS Program be treated as "Confidential Funds"; and as such be considered as "Classified Information"; and that the above-named accused, once in possession of the said aggregate amount of P57.954 Million Pesos (sic), misappropriated and converted the same to their own use and benefit to the damage and prejudice of the government in the said amount.

CONTRARY TO LAW. [Emphasis ours][2]

In Criminal Case No. 20346, respondents together with Zagala were charged with malversation of public funds under these allegations:

That on or about April 6 to April 16, 1984[3] and/or sometime or subsequent thereto, in Pasig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, all public officers charged with the administration of public funds and as such, accountable officers, Imelda R. Marcos being then the Minister of Human Settlements, Jose Conrado Benitez being then the Deputy Minister of Human Settlements[,] and Rafael Zagala being then [the] Assistant Manager for Regional Operations and at the same time Presidential Action Officer, while in the performance of their official functions, taking advantage of their positions, acting in concert and mutually helping one another thru manifest partiality and evident bad faith[,] did then and there, willfully, unlawfully and criminally, in a series of anomalous transactions, abstract from the funds of the Ministry of Human Settlements the total amount of P40 Million Pesos (sic), Philippine Currency, in the following manner: Jose Conrado Benitez approved the cash advances made by Rafael Zagala and Imelda R. Marcos concurred in the series of cash advances approved by Jose Conrado Benitez in favor of Rafael G. Zagala; and in furtherance of the conspiracy, Imelda R. Marcos in order to camouflage the aforesaid anomalous and irregular cash advances, requested that funds of the KSS Program be treated as "Confidential Funds"; and as such be considered as "Classified Information"; and the above-named accused, once in possession of the total amount of P40 Million Pesos (sic), misappropriated and converted the same to their own use and benefit to the damage and prejudice of the government in the said amount.

CONTRARY TO LAW. [Emphasis ours][4]

Only the respondents and Zagala were arraigned for the above charges to which they pleaded not guilty; Dulay was not arraigned and remains at large. On March 15, 2000, Zagala died, leaving the respondents to answer the charges in the criminal cases.

After the pre-trial conference, a joint trial of the criminal cases ensued. The prosecution's chief evidence was based on the lone testimony of Commission of Audit (COA) Auditor Iluminada Cortez and the documentary evidence used in the audit examination of the subject funds.[5]

The gist of COA Auditor Cortez' direct testimony was summarized by the Sandiganbaya, as follows:

In Criminal Case No. 20345 -

[s]he was appointed on March 31, 1986 by then COA Chairman Teofisto Guingona, Jr. to head a team of COA auditors. Upon examination of the documents, she declared that an amount of P100 Million Pesos (sic) from the Office of Budget and Management was released for the KSS Project of the Ministry of Human Settlements (MHS) by virtue of an Advice of Allotment for Calendar Year 1984. Also, an amount of P42.4 Million Pesos (sic) was separately disbursed for the Kabisig Program of the Ministry of Human Settlements. With regard to the amount of P100 Million Pesos (sic) received by the MHS, P60 Million Pesos (sic) [was] disbursed through cash advances. Of the P60 Million Pesos (sic) in cash advances, accused Zagala received P40 Million Pesos (sic) in four (4) disbursements while accused Dulay received the remaining P20 Million Pesos (sic) in two disbursements.

With respect to accused Rafael Zagala, the cash advances consist of four (4) disbursement vouchers in the amount of P5 Million Pesos (sic), P10 Million Pesos (sic), P10 Million Pesos (sic) and P15 Million Pesos (sic). All of these vouchers are in the name of accused Zagala as claimant and accused Benitez as approving officer and are accompanied by their corresponding Treasury Warrants that were countersigned by accused Benitez and approved by accused Dulay.

In contrast, x x x a disbursement voucher in the amount of P10 Million Pesos (sic) was drawn in favor of accused Gilbert Dulay and approved by accused Benitez. Pursuant to this, a Treasury Warrant was issued to the order of accused Dulay, countersigned by accused Benitez and approved by accused Zagala. Another

voucher was drawn in favor of accused Dulay in the amount of P10 Million Pesos (sic) and approved by accused Benitez. Again, a Treasury Warrant was issued to the order of accused Dulay in the amount of P10 Million Pesos (sic), which was countersigned by accused Benitez and approved by accused Zagala.

x x x [A]ccused Marcos sent a letter to then President Ferdinand E. Marcos requesting that the fund intended for the KSS Project in the amount of P100 Million Pesos (sic) be deemed as "Confidential Fund".

x x x [T]he liquidation of accused Zagala's account, which was contained in a Journal Voucher dated November 27, 1984, was without any supporting documents. Upon this discovery, witness requested and secured a certification from the Manager of the National Government Audit Office to the effect that the COA did not receive any document coming from the MHS. However, this liquidation voucher which contained figures in the total amount of P50 Million Pesos (sic), comprised the entire cash advances of accused Zagala in the amount of P40 Million Pesos (sic) and the P10 Million Pesos (sic) cash advance made by accused Dulay. Since the amount of P10 Million Pesos (sic) was already contained in Zagala's Journal Voucher, the witness and her team of auditors tried to locate the remaining P10 Million Pesos (sic) and found out that accused Dulay had liquidated the same amount.[6] (footnotes omitted)

According to COA Auditor Cortez, Zagala's cash advances were supported by a liquidation report and supporting documents submitted to the resident auditor even before the P100 Million Kilusang Sariling Sikap (KSS) fund was made confidential.[7] The witness also testified that the COA resident auditor found no irregularity in this liquidation report.[8]

COA Auditor Cortez stated that since the P100 Million KSS fund was classified as confidential, the liquidation report should have been submitted to the COA Chairman who should have then issued a credit memo. No credit memo was ever found during the audit examination of the MHS accounts.[9] COA Auditor Cortez admitted that she did not verify whether the supporting documents of Zagala's cash advances were sent to the COA Chairman.[10]

Respondent Marcos was prosecuted because of her participation as Minister of the MHS, in requesting that the P100 Million KSS fund be declared confidential. Respondent Benitez was prosecuted because he was the approving officer in these disputed transactions.

In Criminal Case No. 20346 -

Regarding the Kabisig Program of the MHS, the COA team of auditors examined the vouchers of the MHS, which upon inspection revealed that there were at least three (3) memoranda of agreements entered into between the MHS and University of Life (UL). With reference to the first Memorandum of Agreement dated July 2, 1985, an amount of P21.6 Million Pesos (sic) was transferred by the MHS to the UL to pay for the operations of the Community Mobilization Program and the Kabisig Program of the MHS. Accused Benitez as the Deputy Minister of the MHS and accused Dulay as Vice President of the UL were the signatories of this agreement. Although there is no disbursement voucher in the records, it is admitted that a Treasury Warrant was drawn in the sum of P21.6 Million Pesos (sic). The second Memorandum of Agreement dated July 10, 1985 provided for a fund transfer in the amount of P3.8 Million Pesos (sic) for the Human Resources Development Plan of the MHS. Accordingly, a Disbursement Voucher certified by accused Dulay and approved by accused Benitez was drawn in the sum of P3.8 Million Pesos (sic). The third Memorandum of Agreement in the sum of P17 Million Pesos (sic) was granted for the acquisition of motor vehicles and other equipment to support the Kabisig Program of the MHS. For that reason, a Disbursement Voucher pertaining thereto accompanied by a Treasury Warrant was drafted.

Similarly, the witness declared that although they did not examine any of the records of the UL, the abovementioned sums were not received by the UL based on the affidavit of the UL Comptroller named Pablo Cueto. In the same way, an affidavit was executed by the UL Chief Accountant named Ernesto Jiao attesting

that there is no financial transaction on record covering the purchase of motor vehicles. Again, witness Cortez admitted that they did not examine the books of the UL on this matter but only inquired about it from Mr. Jiao. The affidavit of Mr. Jiao with respect to the nonexistence of the purchases of motor vehicles was further corroborated by the affidavit of one Romeo Sison, who was the Administrative Assistant of the Property Section of the UL.

The respective treasury warrants representing the various sums of P21.6 Million Pesos (sic), P17 Million Pesos (sic) and P3.8 Million Pesos (sic) were subsequently deposited with the United Coconut Planters' Bank (UCPB), Shaw Blvd. Branch, Mandaluyong, under various accounts. Soon after, several checks were drawn out of these funds as evidenced by the Photostat copies recovered by the COA auditors. In the course of the testimony of the witness, she revealed that her team of auditors classified said several checks into different groups in accordance with the account numbers of the said deposits.

x x x [T]he amount of P3.8 Million Pesos (sic), the same was intended for the Human Resource Development Plan of the UL. x x x [T]he aforesaid amount is not a cash advance but rather paid as an expense account, which is charged directly as if services have already been rendered. Hence, UL is not mandated to render liquidation for the disbursement of P3.8 Million Pesos (sic).

The sums of P21.6 Million Pesos (sic) and P17 Million Pesos (sic) were deposited under x x x the name of the UL Special Account. Out of these deposits, the following first sequence of withdrawals of checks[11] payable either to its order or to cash x x x reached a total sum of P5,690,750.93 Million Pesos (sic).

The second list of checks[12] [which] consists of numerous [Manager's] Checks x x x reached the amount of P18,416,062.15.

A third set of checks allegedly consists of nine (9) ordinary checks and two (2) manager's checks in the sum of P1,971,568.00 and P4,566,712.18[,] respectively. x x x

Moreover, [a] witness confirmed that as regards the amount of P17 Million Pesos (sic) intended for the acquisition of motor vehicles, P10.4 Million Pesos (sic) was spent for the purchase of some five hundred (500) units of motorcycles while P2.1 Million Pesos (sic) was used to procure eight (8) brand new cars. The balance of P4.5 Million Pesos (sic) was later refunded to the MHS. As regards the five hundred (500) units of motorcycle, the Presidential Task Force furnished the witness documents attesting to the transfers of some two hundred seventy-one (271) units of motorcycles from the UL to the MHS by virtue of Deed of Assignments allegedly executed on February 17, 1986. However, of the two hundred seventy-one (271) units of motorcycle, only one hundred ninety (190) units were covered with complete documents. With respect to the eight (8) brand new cars, the team of auditors did not see any registration papers. (footnotes omitted; underscorings ours)[13]

COA Auditor Cortez admitted that the audit team did not conduct a physical inventory of these motor vehicles; it based its report on the information given by the Presidential Task Force.[14] She emphasized that the audit team found it highly irregular that the motor vehicles were registered in the name of University of Life (UL) and not in the name of MHS; and for this reason, she believed that no proper liquidation was made of these vehicles by MHS.[15]

After COA Auditor Cortez' testimony, the prosecution submitted its formal offer of evidence and rested its case.

Subsequently, separate motions to dismiss the criminal cases, by way of demurrers to evidence, were filed by Zagala and the respondents on November 15, 1997, January 5, 1998 and January 28, 1998; on January 27, 1998, the prosecution filed a Manifestation stating that it was not opposing the demurrers to evidence.[16]

The Sandiganbayan's Ruling

The Sandiganbayan granted the demurrers to evidence and acquitted the respondents in its assailed decision dated March 22, 2002. The dispositive portion of this decision reads:

Wherefore, the Demurrers to Evidence are hereby granted. Accused Imelda R. Marcos, Jose Conrado Benitez and Gilbert C. Dulay are hereby acquitted of the crime of Malversation in Criminal Case No. 20435 for insufficiency of evidence to prove their guilt beyond reasonable doubt. Accused Imelda R. Marcos, Jose Conrado Benitez and Rafael G. Zagala are likewise acquitted of the offense of Malversation in Criminal Case No. 20346 for insufficiency of evidence in proving their guilt beyond reasonable doubt.[17]

In dismissing these criminal cases, the Sandiganbayan found no evidence of misappropriation of the subject funds in the two criminal cases considering the unreliability and incompleteness of the audit report.[18]

The Issues

The issues for our consideration are:

- Whether the prosecutor's actions and/or omissions in these cases effectively deprived the State of its right to due process; and
- Whether the Sandiganbayan gravely abused its discretion in granting the demurrers to evidence of the respondents.

The petitioner claims that the State was denied due process because of the nonfeasance committed by the special prosecutor in failing to present sufficient evidence to prove its case. It claims that the prosecutor failed to protect the State's interest in the proceedings before the Sandiganbayan. To support its position, petitioner cites the case of *Merciales v. Court of Appeals*[19] where the Court nullified the dismissal of the criminal cases due to the serious nonfeasance committed by the public prosecutor.

The petitioner argues that the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction that resulted in a miscarriage of justice prejudicial to the State's interest when it took the demurrers to evidence at face value instead of requiring the presentation of additional evidence, taking into consideration the huge amounts of public funds involved and the special prosecutor's failure to oppose the demurrers to evidence.

The Court's Ruling

We do not find the petition meritorious.

We are called to overturn a judgment of acquittal in favor of the respondents brought about by the dismissal, for insufficiency of evidence, of the malversation charged in the two criminal cases. As a rule, once the court grants the demurrer, the grant amounts to an acquittal; any further prosecution of the accused would violate the constitutional proscription on double jeopardy.[20] Notably, the proscription against double jeopardy only envisages appeals based on errors of judgment, but not errors of jurisdiction. Jurisprudence recognizes two grounds where double jeopardy will not attach, these are: (i) on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction;[21] and/or (ii) where there is a denial of a party's due process rights.[22]

A judgment of acquittal sought to be reviewed on the basis of grave abuse of discretion amounting to lack or excess of jurisdiction or on the ground of denial of due process implies an invalid or otherwise void judgment. If either or both grounds are established, the judgment of acquittal is considered void; as a void judgment, it is legally inexistent and does not have the effect of an acquittal.[23] Thus, the defense of double jeopardy will not lie in such a case.[24]

Accordingly, a review of a dismissal order of the Sandiganbayan granting an accused's demurrer to evidence may

be done via the special civil action of certiorari under Rule 65, based on the narrow ground of grave abuse of discretion amounting to lack or excess of jurisdiction.[25] Mere allegations of grave abuse of discretion, however, are not enough to establish this ground; so also, mere abuse of discretion is not sufficient.[26] On the petitioner lies the burden of demonstrating, plainly and distinctly, all facts essential to establish its right to a writ of certiorari.[27]

In the present case, the petitioner particularly imputes grave abuse of discretion on the Sandiganbayan for its grant of the demurrer to evidence, without requiring the presentation of additional evidence and despite the lack of basis for the grant traceable to the special prosecutor's conduct. The special prosecutor's conduct allegedly also violated the State's due process rights.

There is grave abuse of discretion when the public respondent acts in a capricious, whimsical, arbitrary or despotic manner, amounting to lack of jurisdiction, in the exercise of its judgment.[28] An act is done without jurisdiction if the public respondent does not have the legal power to act or where the respondent, being clothed with the power to act, oversteps its authority as determined by law,[29] or acts outside the contemplation of law. For the grant of the present petition, the petitioner must prove, based on the existing records, action in the above manner by the Sandiganbayan.

I. State's right to due process

In *People v. Leviste*,[30] we stressed that the State, like any other litigant, is entitled to its day in court; in criminal proceedings, the public prosecutor acts for and represents the State, and carries the burden of diligently pursuing the criminal prosecution in a manner consistent with public interest.[31] The State's right to be heard in court rests to a large extent on whether the public prosecutor properly undertook his duties in pursuing the criminal action for the punishment of the guilty.[32]

The prosecutor's role in the administration of justice is to lay before the court, fairly and fully, every fact and circumstance known to him or her to exist, without regard to whether such fact tends to establish the guilt or innocence of the accused and without regard to any personal conviction or presumption on what the judge may or is disposed to do.[33] The prosecutor owes the State, the court and the accused the duty to lay before the court the pertinent facts at his disposal with methodical and meticulous attention, clarifying contradictions and filling up gaps and loopholes in his evidence to the end that the court's mind may not be tortured by doubts; that the innocent may not suffer; and that the guilty may not escape unpunished.[34] In the conduct of the criminal proceedings, the prosecutor has ample discretionary power to control the conduct of the presentation of the prosecution evidence, part of which is the option to choose what evidence to present or who to call as witness.[35]

The petitioner claims that the special prosecutor failed in her duty to give effective legal representation to enable the State to fully present its case against the respondents, citing *Merciales v. Court of Appeals*[36] where we considered the following factual circumstances - (1) the public prosecutor rested the case knowing fully well that the evidence adduced was insufficient; (2) the refusal of the public prosecutor to present other witnesses available to take the stand; (3) the knowledge of the trial court of the insufficiency of the prosecution's evidence when the demurrer to evidence was filed before it; and (4) the trial court's failure to require the presentation of additional evidence before it acted on the demurrer to evidence. All these circumstances effectively resulted in the denial of the State's right to due process, attributable to the inaction of the public prosecutor and/or the trial court.

Merciales was followed by *Valencia v. Sandiganbayan*,[37] where we recognized the violation of the State's right to due process in criminal proceedings because of sufficient showing that the special prosecutor haphazardly handled the prosecution. In upholding the prosecution's right to present additional evidence under the circumstances, *Valencia* took into account the fact that the former special prosecutor rested his case solely on the

basis of a Joint Stipulation of Facts that was not even signed by the accused.

These two cases, to our mind, not only show the existing factual considerations[38] that led to the conclusion that the public prosecutor willfully and deliberately failed to perform his mandated duty to represent the State's interest, but stress as well that there must be sufficient facts on record supporting this conclusion. In the absence of these supporting facts, no conclusion similar to the Merciales and Valencia outcomes can be reached.

The requirement for supporting factual premises finds complement in the general rule founded on public policy[39] that the negligence or mistake of a counsel binds the client. While this rule admits of exceptions[40] (as when the gross negligence of a counsel resulted in depriving the client of due process), the application of the exception likewise depends on a showing of facts on record demonstrating a clear violation of the client's due process rights.

II. The factual premises cited in the petition and the issue of due process

In the present case, we find that the State was not denied due process in the proceedings before the Sandiganbayan. There was no indication that the special prosecutor deliberately and willfully failed to present available evidence or that other evidence could be secured. For purposes of clarity, we shall address the instances cited in the petition as alleged proof of the denial of the State's due process rights, and our reasons in finding them inadequate.

First. The petitioner bewails the alleged lack of efforts by the special prosecutor to ascertain the last known addresses and whereabouts, and to compel the attendance of Pablo C. Cueto, Ernesto M. Jiao and Romeo F. Sison, UL officers who executed affidavits in connection with the alleged anomalous fund transfers from MHS to UL.

The special prosecutor likewise allegedly did not present the records of the UL to show that the sums under the Memoranda of Agreement were not received by UL (based on the affidavit of UL Comptroller Cueto) and that no financial transactions really took place for the purchase of the motor vehicles (based on the affidavit of UL Chief Accountant Jiao, as corroborated by the affidavit of UL Administrative Assistant Sison).

We note that, other than making a claim that these instances demonstrate the serious nonfeasance by the special prosecutor, the petitioner failed to offer any explanation showing how these instances deprived the State of due process. An examination of the records shows that the affidavits of Cueto,[41] Jiao and Sison surfaced early on to prove the alleged anomalous fund transfers from MHS to UL. The records further show that during the hearing of December 5, 1995 - when the special prosecutor was asked by the presiding judge what she intended to do with these affidavits - the special prosecutor replied that she planned to present Jiao and Cueto who were the chief accountant and the designated comptroller, respectively, of UL.[42] The same records, however, show that, indeed, an attempt had been made to bring these prospective witnesses to court; as early as April 20, 1994, subpoenas had been issued to these three individuals and these were all returned unserved because the subjects had RESIGNED from the service sometime in 1992, and their present whereabouts were unknown.[43]

We consider at this point that these individuals executed their respective affidavits on the alleged anomalous transactions between MHS and UL sometime in 1986; from that period on, and until the actual criminal prosecution started in 1994, a considerable time had elapsed bringing undesirable changes - one of which was the disappearance of these prospective witnesses.

Significantly, no evidence exists or has been submitted showing that the special prosecutor willfully and deliberately opted not to present these individuals. The petitioner also failed to show that the whereabouts of these individuals could have been located by the exercise of reasonable diligence in order to prove that the special prosecutor had been remiss in performing her duties. We can in fact deduce from the allegations in the petition

that even at present, the petitioner has not and cannot ascertain the whereabouts of these prospective witnesses.

Further, the records show that the affidavits of these individuals (who denied the transfer of the funds in the amounts of P21.6 Million, P3.8 Million and P17 Million from MHS to UL) were refuted by contrary evidence of the prosecution itself. The records indicate that the special prosecutor presented treasury warrants and disbursement vouchers issued in the name of UL, bearing the respective amounts for transactions between MHS and UL.[44]

The special prosecutor admitted that the audit team failed to examine the records of UL to support the prosecution's allegation of an anomalous fund transfer. COA Auditor Cortez admitted, too, that the amounts (P21.6 Million and P3.8 Million) were transferred[45] to UL[46] and that a portion of the amount of P17 Million, i.e., P12.5 Million, was used to purchase 500 motorcycles and eight cars, while the remaining amount of P4.5 Million was refunded by UL to MHS.[47]

Under these facts, and in the absence of indicators too that other persons could have testified, we cannot give weight to the petitioner's allegation that no efforts were exerted by the special prosecutor. On the contrary, we find under the circumstances that the special prosecutor exerted reasonable efforts to present these individuals in court, but failed to do so for reasons beyond her control. One of these reasons appears to be the simple lack of concrete evidence of irregularities in the respondents' handling of the MHS funds.

Second. The petitioner alleged that the special prosecutor failed to present the resident auditor to testify on the physical inventory of the vehicles, or to produce documents showing that an inspection was conducted on the vehicles.

The prosecution's theory, as the records would show, was to prove that there had been misappropriation of funds since the motor vehicles were registered in UL's name instead of the MHS.[48] In this regard, the special prosecutor presented COA Auditor Cortez who testified that the audit team did not assail the existence of the motor vehicles and she also did not dispute that the amount of P12.5 Million (out of P17 Million) was used to purchase 500 motorcycles and eight cars. The witness stated that the audit team was more concerned with the documentation of the disbursements made rather than the physical liquidation (inventory) of the funds.[49] The witness further explained that it was the Presidential Task Force which had the duty to keep track of the existence of the motor vehicles.[50] She reiterated that the audit team was only questioning the registration of the vehicles; it never doubted that the vehicles were purchased.[51]

More importantly, COA Auditor Cortez stated that at the time the team made the audit examination in April 1986, 500 registration papers supported the purchase of these motorcycles;[52] none of the audit team at that time found this documentation inadequate or anomalous.[53] The witness also stated that the Presidential Task Force gave the audit team a folder showing that P10.4 Million was used to purchase the motorcycles and P2.1 Million was used to purchase the cars.[54] Checks were presented indicating the dates when the purchase of some of the motor vehicles was made.[55] COA Auditor Cortez also testified that 270 of these motorcycles had already been transferred by UL in the name of MHS.[56] She stated that all the documents are in order except for the registration of the motor vehicles in the name of UL.[57]

Given these admissions regarding the existence of the motor vehicles, the presentation of the resident auditor who would simply testify on the physical inventory of the motor vehicles, or that an inspection had been conducted thereon, was unnecessary. Her presentation in court would not materially reinforce the prosecution's case; thus, the omission to present her did not deprive the State of due process. To repeat, the prosecution's theory of misappropriation was not based on the fact that the funds were not used to purchase motor vehicles, in which case, the testimony of the resident auditor would have had material implications. Rather, the prosecution's theory,

as established by the records, shows that the imputed misappropriation stemmed from the registration of the motor vehicles in UL's name - an administrative lapse in light of the relationship of UL to MHS simply as an implementing agency.[58]

Third. Despite the Sandiganbayan's warning on June 7, 1996 that the various checks covering the cash advances for P40 Million were "photostatic" copies, the special prosecutor still failed to present the certified copies from the legal custodian of these commercial documents.

The petitioner faults the special prosecutor for failing to present the original copies of the checks drawn out of the P21.6 Million and P17 Million combination account from the United Coconut Planters Bank (UCPB), as well as the P3.8 Million expense account with the same bank. The presentation would have allegedly proven the misappropriation of these amounts.[59]

Records show that instead of presenting the original copies of these checks, the special prosecutor tried to establish, through the testimony of COA Auditor Cortez, that these checks were photocopied from the original checks in the possession of UCPB, which were obtained through the assistance of the UL management.[60] Thus, while the originals of these checks were not presented, COA Auditor Cortez testified that the photostatic copies were furnished by the UCPB which had custody of the original checks.[61] Further, the witness also testified that at the time she made the examination of these documents, the entries thereon were legible.[62] She also presented a summary schedule of the various micro film prints of the UCPB checks that she examined.[63]

At any rate, we observe that the defense never objected[64] to the submission of the photostatic copies of the UCPB checks as evidence, thus making the production of the originals dispensable. This was our view in *Estrada v. Hon. Desierto*[65] where we ruled that the production of the original may be dispensed with if the opponent does not dispute the contents of the document and no other useful purpose would be served by requiring its production. In such case, we ruled that secondary evidence of the content of the writing would be received in evidence if no objection was made to its reception.[66] We note, too, that in addition to the defense's failure to object to the presentation of photostatic copies of the checks, the petitioner failed to show that the presentation of the originals would serve a useful purpose, pursuant to our ruling in *Estrada*.

We reiterate in this regard our earlier observation that other than enumerating instances in the petition where the State was allegedly deprived of due process in the principal case, no explanation was ever offered by the petitioner on how each instance resulted in the deprivation of the State's right to due process warranting the annulment of the presently assailed Sandiganbayan ruling.

Fourth. The petitioner faults the special prosecutor for making no effort to produce the "final audit report" dated June 6, 1986, referred to in the last paragraph of the Affidavit[67] dated June 10, 1987 of COA Auditor Cortez.

The records show that although this final audit report dated June 6, 1986 was not presented in court, the prosecution questioned her on the contents of this audit report since she had a hand in its preparation. COA Auditor Cortez directly testified on the audit team's findings and examination, which took three hearings to complete; the cross-examination of COA Auditor Cortez took two hearings to complete; and subsequently, the Sandiganbayan ordered that a clarificatory hearing be held with respect to COA Auditor Cortez' testimony. In addition to her testimony, the special prosecutor did present, too, other pieces of documentary evidence (from which the final audit report was based) before the Sandiganbayan.

Under these circumstances, we are reluctant to consider the special prosecutor's omission as significant in the petitioner's allegation of serious nonfeasance or misfeasance.

Fifth. The petitioner presents the special prosecutor's failure to oppose the demurrer to evidence as its last point

and as basis for the applicability of the Merciales ruling.

The failure to oppose per se cannot be a ground for grave abuse of discretion. The real issue, to our mind, is whether the special prosecutor had basis to act as she did. As the point-by-point presentation above shows, the dismissal of the criminal cases cannot be attributed to any grossly negligent handling by the special prosecutor. To begin with, the prosecution's case suffered from lack of witnesses because, among others, of the time that elapsed between the act charged and the start of the actual prosecution in 1994; and from lack of sufficient preparatory investigation conducted, resulting in insufficiency of its evidence as a whole. In sum, in the absence of circumstances approximating the facts of Merciales and Valencia, which circumstances the petitioner failed to show, no basis exists to conclude that the special prosecutor grossly erred in failing to oppose the demurrer to evidence.

Neither are we persuaded by the petitioner's position that the special prosecutor's Manifestation of non-opposition to the demurrer needed to be submitted to, and approved by, her superiors.[68] The petitioner's argument assumes that the special prosecutor lacked the necessary authority from her superiors when she filed her non-opposition to the demurrers to evidence. This starting assumption, in our view, is incorrect. The correct premise and presumption, since the special prosecutor is a State delegate, is that she had all incidental and necessary powers to prosecute the case in the State's behalf so that her actions as a State delegate bound the State. We do not believe that the State can have an unbridled discretion to disown the acts of its delegates at will unless it can clearly establish that its agent had been grossly negligent[69] or was guilty of collusion with the accused or other interested party,[70] resulting in the State's deprivation of its due process rights as client-principal.

Gross negligence exists where there is want, or absence of or failure to exercise slight care or diligence, or the entire absence of care. It involves a thoughtless disregard of consequences without exerting any effort to avoid them.[71] As the above discussions show, the State failed to clearly establish the gross negligence on the part of the special prosecutor (or to show or even allege that there was collusion in the principal case between the special prosecutor and the respondents) that resulted in depriving the petitioner of its due process rights; and, consequently prevent the application of the rule on double jeopardy. If at all, what the records emphasized, as previously discussed, is the weakness of the prosecution's evidence as a whole rather than the gross negligence of the special prosecutor. In these lights, we must reject the petitioner's position.

III. Grave abuse of discretion

Under the Rules on Criminal Procedure, the Sandiganbayan is under no obligation to require the parties to present additional evidence when a demurrer to evidence is filed. In a criminal proceeding, the burden lies with the prosecution to prove that the accused committed the crime charged beyond reasonable doubt, as the constitutional presumption of innocence ordinarily stands in favor of the accused. Whether the Sandiganbayan will intervene in the course of the prosecution of the case is within its exclusive jurisdiction, competence and discretion, provided that its actions do not result in the impairment of the substantial rights of the accused, or of the right of the State and of the offended party to due process of law.[72]

A discussion of the violation of the State's right to due process in the present case, however, is intimately linked with the gross negligence or the fraudulent action of the State's agent. The absence of this circumstance in the present case cannot but have a negative impact on how the petitioner would want the Court to view the Sandiganbayan's actuation and exercise of discretion.

The court, in the exercise of its sound discretion, may require or allow the prosecution to present additional evidence (at its own initiative or upon a motion) after a demurrer to evidence is filed. This exercise, however, must be for good reasons and in the paramount interest of justice.[73] As mentioned, the court may require the

presentation of further evidence if its action on the demurrer to evidence would patently result in the denial of due process; it may also allow the presentation of additional evidence if it is newly discovered, if it was omitted through inadvertence or mistake, or if it is intended to correct the evidence previously offered.[74]

In this case, we cannot attribute grave abuse of discretion to the Sandiganbayan when it exercised restraint and did not require the presentation of additional evidence, given the clear weakness of the case at that point. We note that under the obtaining circumstances, the petitioner failed to show what and how additional available evidence could have helped and the paramount interest of justice sought to be achieved. It does not appear that pieces of evidence had been omitted through inadvertence or mistake, or that these pieces of evidence are intended to correct evidence previously offered. More importantly, it does not appear that these contemplated additional pieces of evidence (which the special prosecutor allegedly should have presented) were ever present and available. For instance, at no point in the records did the petitioner unequivocally state that it could present the three UL officers, Cueto, Jiao and Sison. The petitioner also failed to demonstrate its possession of or access to these documents (such as the final audit report) to support the prosecution's charges - the proof that the State had been deprived of due process due to the special prosecutor's alleged inaction.

IIIa. Grave abuse of discretion and the demurrers to evidence

In Criminal Case No. 20345 that charged conspiracy for abstracting P57.59 Million out of the P100 Million KSS fund, the prosecution's evidence showed that P60 Million of this fund was disbursed by respondent Benitez, as approving officer, in the nature of cash advances to Zagala (who received a total amount of P40 Million) and Dulay (who received P20 Million).

To prove the misappropriation, the prosecution tried to establish that there was an irregularity in the procedure of liquidating these amounts on the basis of COA Auditor Cortez' testimony that the liquidation should have been made before the COA Chairman (not to the resident auditor of the MHS) because these funds were confidential.[75]

Quite evident from the prosecution's position is that it did not dispute whether a liquidation had been made of the whole amount of P60 Million; rather, what it disputed was the identity of the person before whom the liquidation should have been made. Before the directive of former President Marcos was made which declared the KSS funds (of which the P60 Million formed part) to be confidential, the liquidation of this amount must be made before the resident auditor of the MHS. With the issuance of the directive, liquidation should have been made to the COA Chairman who should have then issued a credit memo to prove proper liquidation.[76]

To justify conviction for malversation of public funds, the prosecution has to prove that the accused received public funds or property that they could not account for, or was not in their possession and which they could not give a reasonable excuse for the disappearance of such public funds or property.[77] The prosecution failed in this task as the subject funds were liquidated and were not shown to have been converted for personal use by the respondents.

The records reveal that the amounts of P50 Million and P10 Million were liquidated by Zagala and Dulay, respectively.[78] On Zagala's part, the liquidation of P50 Million (P10 Million of which was the cash advance given to Dulay) was made to resident auditor Flerida V. Creencia on September 25, 1984 or before the directive of former President Marcos (declaring the said funds confidential) was issued on November 7, 1984.[79] Hence, at the time the liquidation of the amount was made, the liquidation report submitted to the resident auditor was the proper procedure of liquidation. Respondent Benitez, for his part, submitted Journal Voucher No. 4350208 dated November 27, 1984 stating, among others, that as early as June 22, 1984, the supporting papers for the liquidation of the P50 Million had already been submitted to the COA.[80]

Moreover, even if the liquidation should have been made in compliance with the former President's directive, the prosecution's evidence did not sufficiently establish the non-existence of a credit memo. As admitted by COA Auditor Cortez, certain documents they were looking for during the audit examination (including the credit memo) could no longer be located after the (EDSA) revolution.[81] She further declared that she did not know if COA Chairman Alfredo Tangingco complied with the required audit examination of the liquidated P60 Million.[82]

In Criminal Case No. 20346, respondents are sought to be held liable under the criminal information for converting P40 Million (subdivided to P21.6 Million, P3.8 Million and P17 Million or a total of P42.4 Million) to their own use given that these funds were never allegedly transferred to UL, the intended beneficiary.

Records show that the disputed amount allegedly malversed was actually P37,757,364.57 Million because of evidence that an amount of P4.5 Million was returned by respondent Benitez.[83] As previously mentioned, the documentary evidence adduced reveals the existence of treasury warrants and disbursement vouchers issued in the name of UL bearing the amounts of P21.6 Million, P3.8 Million and P17 Million.[84] Documentary evidence also exists showing that these amounts were deposited in the UCPB and drawn afterwards by means of checks issued for purchases intended for the Kabisig Program of the MHS.

Except for the appropriated P17 Million, the petitioner's evidence does not sufficiently show how the amounts of P21.6 Million and P3.8 Million were converted to the personal use by the respondents. The testimony of COA Auditor Cortez revealed that documents showing the disbursements of the subject funds were in possession of one Flordeliz Gomez as the Records Custodian and Secretary of UL. For undisclosed reasons, however, COA Auditor Cortez failed to communicate with Gomez but merely relied on the documents and checks, which the audit team already had in its possession.[85]

This omission, in our view, raises doubts on the completeness and accuracy of the audit examination pertaining to the P21.6 Million and P3.8 Million funds. Such doubt was further strengthened by COA Auditor Cortez' testimony showing that P3.8 Million was listed in the books of the MHS as a direct expense account to which UL is not required to render an accounting or liquidation.[86] Also, she admitted that the amount of P21.6 Million was contained in a liquidation voucher submitted by Dulay, which was included in the transmittal letter signed by the respondents to the COA and accompanied by a performance report on the Kabisig Program. This performance report showed that the total amount of P21.6 Million was exhausted in the Kabisig Program.[87]

With respect to the P17 Million, evidence adduced showed that 270 units of the motorcycles have already been transferred in the name of MHS by UL.[88] There is also evidence that the audit team initially found nothing irregular in the documentation of the 500 motorcycles during the audit examination conducted in April 1986; the same goes for the eight cars purchased.

Under the circumstances, we agree with the Sandiganbayan that registration of these vehicles in UL's name alone did not constitute malversation in the absence of proof, based on the available evidence, to establish that the respondents benefited from the registration of these motor vehicles in UL's name, or that these motor vehicles were converted by the respondents to their own personal use.[89] In the end, the prosecution's evidence tended to prove that the subject funds were actually used for their intended purpose.

IV. Conclusion

In dismissing this petition, we observe that the criminal cases might have been prompted by reasons other than injury to government interest as the primary concern.[90] These other reasons might have triggered the hastiness that attended the conduct of audit examinations which resulted in evidentiary gaps in the prosecution's case to

hold the respondents liable for the crime of malversation.[91] As matters now stand, no sufficient evidence exists to support the charges of malversation against the respondents. Hence, the Sandiganbayan did not commit any grave abuse of discretion amounting to lack or excess of jurisdiction when it granted the demurrers to evidence and, consequently, dismissed the criminal cases against the respondents.

We take this opportunity to remind the prosecution that this Court is as much a judge in behalf of an accused-defendant whose liberty is in jeopardy, as it is the judge in behalf of the State, for the purpose of safeguarding the interests of society.[92] Therefore, unless the petitioner demonstrates, through evidence and records, that its case falls within the narrow exceptions from the criminal protection of double jeopardy, the Court has no recourse but to apply the finality-of-acquittal rule.

WHEREFORE, premises considered, we hereby DENY the petition.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-De Castro, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Sereno, Reyes, and Perlas-Bernabe, JJ., concur.

[*] Per the petition for certiorari, Gilbert C. Dulay has remained at large and has not been arraigned. Thus, he never officially became an accused.

[1] Fourth Division. Penned by Associate Justice Narciso S. Nario, and concurred in by Associate Justice Nicodemo T. Ferrer, Associate Justice Teresita J. Leonardo-de Castro (now an Associate Justice of the Supreme Court) and Associate Justice Ma. Cristina G. Cortez-Estrada; Associate Justice Rodolfo G. Palattao dissented. Rollo, pp. 72-120.

[2] Id. at 7-8.

[3] Records show that the transactions for these funds started on July 10, 1985, with the execution of the Memorandum of Agreement for P3.8 Million.

[4] Rollo, pp. 8-9.

[5] Formal Offer of Documentary Evidence, Exhibits "A" to "BB"; id. at 427-437.

[6] Id. at 89-92.

[7] Id. at 101.

[8] Ibid.

[9] Id. at 102.

[10] Ibid.

[11] A total of nine checks: (1) Check No. 282604 dated December 27, 1985; (2) Check No. 282606 dated January 28, 1986; (3) Check No. 282607 dated January 28, 1986; (4) Check No. 282608 dated January 29, 1986; (5) Check No. 282609 dated January 31, 1986; (6) Check No. 28610 dated January 31, 1986; (7) Check No. 282612 dated February 4, 1986; (8) Check No. 282616 dated February 18, 1986; and (9) Check No. 282618 dated February 20, 1986.

[12] A total of 10 checks: (1) Manager's Check No. 5280 dated January 15, 1986; (2) Manager's Check No. 5281 dated January 15, 1986; (3) Manager's Check No. 5283 dated January 15, 1986; (4) Manager's Check No. 5284

dated January 15, 1986; (5) Manager's Check No. 5363 dated January 28, 1986; (6) Manager's Check No. 5422 dated January 30, 1986; (7) Manager's Check No. 5468 dated January 31, 1986; (8) Manager's Check No. 5548 dated February 18, 1986; (9) Manager's Check No. 5549 dated February 12, 1986; and (10) Manager's Check No. 5641 dated February 27, 1986.

[13] Rollo, pp. 92- 99.

[14] Id. at 100.

[15] Ibid.

[16] Id. at 14-15.

[17] Id. at 15-16.

[18] Id. at 117-118.

[19] G.R. No. 124171, March 18, 2002, 379 SCRA 345, 352.

[20] *People v. Sandiganbayan* (Fourth Division), G.R. No. 164185, July 23, 2008, 559 SCRA 449.

[21] *People v. Sandiganbayan*, G.R. Nos. 168188-89, June 16, 2006, 491 SCRA 185.

[22] *People v. Velasco*, G.R. No. 127444, September 13, 2000, 340 SCRA 207. A court certainly acts with grave abuse of discretion if it acts in violation of the due process rights of a party; but grave abuse of discretion is not limited to violation of the right to due process.

[23] *People v. Sandiganbayan* (Fourth Division), *supra* note 20, at 460.

[24] *People v. Hernandez*, G.R. Nos. 154218 & 154372, August 28, 2006, 499 SCRA 688.

[25] *People v. Laguio, Jr.*, G.R. No. 128587, March 16, 2007, 518 SCRA 393.

[26] *Marcelo B. Gananden, Oscar B. Mina, Jose M. Bautista and Ernesto H. Narciso, Jr. v. Honorable Office of the Ombudsman and Robert K. Humiwat*, G.R. Nos. 169359-61, June 1, 2011.

[27] *Corpuz v. Sandiganbayan*, G.R. No. 162214, November 11, 2004, 442 SCRA 294, 307. The petitioner must allege in the petition and establish facts to show that: (a) the writ is directed against a tribunal, board or officer exercising judicial or quasi-judicial functions; (b) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to excess or lack of jurisdiction; and (c) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.

[28] Ibid.

[29] Ibid.

[30] G.R. No. 104386, March 28, 1996, 255 SCRA 238, 250.

[31] *Valencia v. Sandiganbayan*, G.R. No. 165996, October 17, 2005, 473 SCRA 279, 293.

[32] Ibid.

[33] *In re: The Hon. Climaco*, 154 Phil. 105 (1974).

[34] *People v. Esquivel, et al.*, 82 Phil. 453 (1948).

[35] *Alvarez v. Court of Appeals*, 412 Phil. 137 (2001).

[36] Supra note 19.

[37] Supra note 31, at 293.

[38] In *Merciales*, the failure to call witnesses who were plainly available; in *Valencia*, the submission of the case based on scanty evidence.

[39] Otherwise, there would never be an end to a suit so long as a new counsel could be employed who could allege and show that the former counsel had not been sufficiently diligent, experienced, or learned (*GSIS v. Bengson Comm'l Bldgs., Inc.*, 426 Phil. 111 [2002]).

[40] The following are the recognized exceptions: (1) where reckless or gross negligence of counsel deprives the client of due process of law, (2) when its application will result in outright deprivation of the client's liberty or property, or (3) where the interests of justice so require (*APEX Mining, Inc. v. Court of Appeals*, 377 Phil. 482 [1999]).

[41] His affidavit was not included in the petition.

[42] TSN, December 5, 1995, p. 40.

[43] Rollo, p. 10.

[44] *Id.* at 465, 471, 477 and 479.

[45] On December 27, 1985 or the date stated in the treasury warrant.

[46] TSN, June 7, 1996, p. 21 and TSN, November 4, 1996, p. 28.

[47] TSN, February 24, 1997, pp. 9 and 17.

[48] *Id.* at 23 and 29.

[49] *Id.* at 24.

[50] *Id.* at 21.

[51] *Id.* at 29.

[52] TSN, November 4, 1996, p. 17.

[53] *Ibid.*

[54] *Id.* at 8-9.

[55] *Id.* at 24.

[56] TSN, February 24, 1997, p. 33.

[57] *Id.* at 30.

[58] Rollo, pp. 462 and 473.

[59] TSN, June 7, 1996, p. 21.

[60] *Ibid.*

[61] *Id.* at 22.

[62] *Id.* at 21.

[63] Id. at 23, 24, 37 and 48.

[64] Rollo, pp. 518-523.

[65] 408 Phil. 194 (2001).

[66] Id. at 231.

[67] Rollo, pp. 511-517.

[68] Id. at 27.

[69] Heirs of Atty. Jose C. Reyes v. Republic of the Philippines, 529 Phil. 510 (2006); and Callangan v. People, G.R. No. 153414, June 27, 2006, 493 SCRA 269.

[70] People v. Sandiganbayan, supra note 21; and Galman v. Sandiganbayan, 228 Phil. 42 (1986).

[71] Multi-Trans Agency Phils., Inc. v. Oriental Assurance Corp., G.R. No. 180817, June 23, 2009, 590 SCRA 675.

[72] Dimatulac v. Hon. Villon, 358 Phil. 328 (1998).

[73] Atty. Gacayan v. Hon. Pamintuan, 373 Phil. 460 (1999). Section 11, Rule 119 of the Rules on Criminal Procedure reads:

Section. 11. Order of trial.-- The trial shall proceed in the following order:

x x x x

(c) The prosecution and the defense may, in that order, present rebuttal and sur-rebuttal evidence unless the court, in furtherance of justice, permits them to present additional evidence bearing upon the main issue.

[74] Republic of the Philippines v. Sandiganbayan (Fourth Division), Jose L. Africa (substituted by his heirs), Manuel H. Nieto, Jr., Ferdinand E. Marcos (substituted by his heirs), Imelda R. Marcos, Ferdinand R. Marcos, Jr., Juan Ponce Enrile, and Potenciano Ilusorio (substituted by his heirs), G.R. No. 152375, December 16, 2011; and Atty. Gacayan v. Hon. Pamintuan, supra note 73.

[75] TSN, December 5, 1995, p. 17.

[76] Rollo, p. 102.

[77] Estrella v. Sandiganbayan, 389 Phil. 413 (2000).

[78] TSN, December 5, 1995, pp. 25-26.

[79] Rollo, p. 530.

[80] Id. at 450.

[81] TSN, November 5, 1996, p. 53.

[82] Id. at 51.

[83] The remaining balance in the UCBP accounts was about P142,635.43. TSN, November 4, 1996, pp. 31 and 34.

[84] Rollo, pp. 465, 471, 477, 479.

[85] TSN, November 4, 1996, pp. 24-26.

[86] Id. at 30.

[87] TSN, June 7, 1996, pp. 17-18.

[88] TSN, February 24, 1997, p. 33.

[89] Id. at 27.

[90] TSN, November 5, 1996, p. 44.

[91] These evidentiary gaps in the prosecution's evidence pointed to by the Sandiganbayan are: (1) the missing folders that included the findings of the audit team; (2) the unreliability of the audit team report, having relied on the affidavits of the UL officers who were not presented in court; and (3) the failure of the audit team to verify with the COA Chairman if the supporting documents from the cash advances were already in its custody.

[92] *Tabuena v. Sandiganbayan*, 335 Phil. 795, 875 (1997), citing *Murphy v. State*, 13 Ga. App. 431, 79 S.E. 228.

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