

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. JOSEPH EJERCITO ESTRADA AND THE HONORABLE SPECIAL DIVISION OF THE SANDIGANBAYAN, RESPONDENTS.

G.R. Nos. 164368-69. April 02, 2009

Ponente: BRION, J.

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BRION, J.:

The People of the Philippines (the People) filed this Petition for Review on Certiorari[1] to seek the reversal of the Sandiganbayan's Joint Resolution dated July 12, 2004, granting respondent Joseph Ejercito Estrada's (Estrada) demurrer to evidence in Crim. Case No. 26565.[2]

THE FACTS

On April 4, 2001, an Information for plunder (docketed as Crim. Case No. 26558) was filed with the Sandiganbayan against respondent Estrada, among other accused. A separate Information for illegal use of alias, docketed as Crim. Case No. 26565, was likewise filed against Estrada. The Amended Information in Crim. Case No. 26565 reads:

That on or about 04 February 2000, or sometime prior or subsequent thereto, in the City of Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then President of the Republic of the Philippines, without having been duly authorized, judicially or administratively, taking advantage of his position and committing the offense in relation to office, i.e., in order to CONCEAL THE ill-gotten wealth HE ACQUIRED during his tenure and his true identity as THE President of the Republic of the Philippines, did then and there, willfully, unlawfully and criminally REPRESENT HIMSELF AS 'JOSE VELARDE' IN SEVERAL TRANSACTIONS AND use and employ the SAID alias "Jose Velarde" which IS neither his registered name at birth nor his baptismal name, in signing documents with Equitable PCI Bank and/or other corporate entities.

CONTRARY TO LAW.

Crim. Case Nos. 26565 and 26558 were subsequently consolidated for joint trial. Still another Information, this time for perjury and docketed as Crim. Case No. 26905, was filed with the Sandiganbayan against Estrada. This was later consolidated, too, with Crim. Cases No. 26558 and 26565.

Estrada was subsequently arrested on the basis of a warrant of arrest that the Sandiganbayan issued.

On January 11, 2005, we ordered the creation of a Special Division in the Sandiganbayan to try, hear, and decide the charges of plunder and related cases (illegal use of alias and perjury) against respondent Estrada.[3]

At the trial, the People presented testimonial and documentary evidence to prove the allegations of the Informations for plunder, illegal use of alias, and perjury. The People's evidence for the illegal alias charge, as summarized by the Sandiganbayan, consisted of:

- The testimonies of Philippine Commercial and Industrial Bank (PCIB) officers Clarissa G. Ocampo (Ocampo) and Atty. Manuel Curato (Curato) who commonly declared that on February 4, 2000, Estrada opened a numbered trust account (Trust Account C-163) with PCIB and signed as "Jose Velarde" in the account opening documents; both Ocampo and Curato also testified that Aprodicio Lacquian and Fernando Chua were present on that occasion;

- (1) The testimony of PCIB-Greenhills Branch Manager Teresa Barcelan, who declared that a certain Baby Ortaliza (Ortaliza) transacted several times with her; that Ortaliza deposited several checks in PCIB Savings Account No. 0160-62502-5 under the account name "Jose Velarde" on the following dates (as evidenced by deposit receipts duly marked in evidence):

- 20 October 1999 (Exh. "MMMMM")
- 8 November 1999 (Exh. "LLLLL")
- 22 November 1999 (Exh. "NNNNN")
- 24 November 1999 (Exh. "OOOOO")
- 25 November 1999 (Exh. "PPPPP")
- 20 December 1999 (Exh. "QQQQQ")
- 21 December 1999 (Exh. "RRRRR")
- 29 December 1999 (Exh. "SSSSS")
- 4 January 2000 (Exh. "TTTTT")
- 10 May 2000 (Exh. "UUUUU")
- 6 June 2000 (Exh. "VVVVV")
- 25 July 2000 (Exh. "WWWWW")

(2) Documents duly identified by witnesses showing that Lucena Ortaliza was employed in the Office of the Vice President and, later on, in the Office of the President when Estrada occupied these positions and when deposits were made to the Jose Velarde Savings Account No. 0160-62502-5.

The People filed its Formal Offer of Exhibits in the consolidated cases, which the Sandiganbayan admitted into evidence in a Resolution dated October 13, 2003.[4] The accused separately moved to reconsider the Sandiganbayan Resolution;[5] the People, on the other hand, filed its Consolidated Comment/Opposition to the motions.[6] The Sandiganbayan denied the motions in its Resolution dated November 17, 2003.[7]

After the People rested in all three cases, the defense moved to be allowed to file a demurrer to evidence in these cases.[8] In its Joint Resolution dated March 10, 2004,[9] the Sandiganbayan only granted the defense leave to file demurrers in Crim. Case Nos. 26565 (illegal use of alias) and 26905 (perjury).

Estrada filed separate Demurrers to Evidence for Crim. Case Nos. 26565 and 26905.[10] His demurrer to evidence for Crim. Case No. 26565 (illegal use of alias) was anchored on the following grounds[11]:

- Of the thirty-five (35) witnesses presented by the prosecution, only two (2) witnesses, Ms. Clarissa Ocampo and Atty. Manuel Curato, testified that on one occasion (4 February 2000), they saw movant use the name "Jose Velarde";

- The use of numbered accounts and the like was legal and was prohibited only in late 2001 as can be gleaned from Bangko Sentral Circular No. 302, series of 2001, dated 11 October 2001;
- There is no proof of public and habitual use of alias as the documents offered by the prosecution are banking documents which, by their nature, are confidential and cannot be revealed without following proper procedures; and
- The use of alias is absorbed in plunder.

The People opposed the demurrers through a Consolidated Opposition that presented the following arguments:[12]

- That the use of fictitious names in bank transaction was not expressly prohibited until BSP No. 302 is of no moment considering that as early as Commonwealth Act No. 142, the use of alias was already prohibited. Movant is being prosecuted for violation of C.A. No. 142 and not BSP Circular No. 302;
- Movant's reliance on *Ursua vs. Court of Appeals* (256 SCRA 147 [1996]) is misplaced;
- Assuming *arguendo* that C.A. No. 142, as amended, requires publication of the alias and the habitual use thereof, the prosecution has presented more than sufficient evidence in this regard to convict movant for illegal use of alias; and
- Contrary to the submission of movant, the instant case of illegal use of alias is not absorbed in plunder.

Estrada replied to the Consolidated Opposition through a Consolidated Reply Opposition.

THE ASSAILED SANDIGANBAYAN'S RULING

The Sandiganbayan issued on July 12, 2004 the Resolution now assailed in this petition. The salient points of the assailed resolution are:

First - the coverage of Estrada's indictment. The Sandiganbayan found that the only relevant evidence for the indictment are those relating to what is described in the Information - i.e., the testimonies and documents on the opening of Trust Account C-163 on February 4, 2000. The Sandiganbayan reasoned out that the use of the disjunctive "or" between "on or about 04 February 2000" and "sometime prior or subsequent thereto" means that the act/s allegedly committed on February 4, 2000 could have actually taken place prior to or subsequent thereto; the use of the conjunctive was simply the prosecution's procedural tool to guard against any variance between the date stated in the Information and that proved during the trial in a situation in which time was not a material ingredient of the offense; it does not mean and cannot be read as a roving commission that includes acts and/or events separate and distinct from those that took place on the single date "on or about 04 February 2000 or sometime prior or subsequent thereto." The Sandiganbayan ruled that the use of the disjunctive "or" prevented it from interpreting the Information any other way.

Second - the People's failure to present evidence that proved Estrada's commission of the offense. The Sandiganbayan found that the People failed to present evidence that Estrada committed the crime punished under Commonwealth Act No. 142, as amended by Republic Act (R.A.) No. 6085 (CA 142), as interpreted by the Supreme Court in *Ursua v. Court of Appeals*.^[13] It ruled that there is an illegal use of alias within the context of CA 142 only if the use of the alias is public and habitual. In Estrada's case, the Sandiganbayan noted, the application of the principles was not as simple because of the complications resulting from the nature of the transaction involved - the alias was used in connection with the opening of a numbered trust account made during the effectivity of R.A. No. 1405, as amended,^[14] and prior to the enactment of Republic R.A. No. 9160.^[15]

Estrada did not publicly use the alias "Jose Velarde":

a. Estrada's use of the alias "Jose Velarde" in his dealings with Dichavez and Ortaliza after February 4, 2000 is not relevant in light of the conclusion that the acts imputed to Estrada under the Information were the act/s committed on February 4, 2000 only. Additionally, the phrase, "Estrada did ... represent himself as 'Jose Velarde' in several transactions," standing alone, violates Estrada's right to be informed of the nature and the cause of the accusation, because it is very general and vague. This phrase is qualified and explained by the succeeding phrase - "and use and employ the said alias 'Jose Velarde'" - which "is neither his registered name at birth nor his baptismal name, in signing documents with Equitable PCI Bank and/or other corporate entities." Thus, Estrada's representations before persons other than those mentioned in the Information are immaterial; Ortaliza and Dichavez do not fall within the "Equitable PCI Bank and/or other corporate entities" specified in the Information. Estrada's representations with Ortaliza and Dichavez are not therefore covered by the indictment.

b. The Sandiganbayan rejected the application of the principle in the law of libel that mere communication to a third person is publicity; it reasoned out that that the definition of publicity is not limited to the way it is defined under the law on libel; additionally, the application of the libel law definition is onerous to the accused and is precluded by the ruling in *Ursua* that CA No. 142, as a penal statute, should be construed strictly against the State and favorably for the accused. It ruled that the definition under the law on libel, even if it applies, considers a communication to a third person covered by the privileged communication rule to be non-actionable. Estrada's use of the alias in front of Ocampo and Curato is one such privileged communication under R.A. No. 1405, as amended. The Sandiganbayan said:

Movant's act of signing "Jose Velarde" in bank documents being absolutely confidential, the witnessing thereof by bank officers who were likewise sworn to secrecy by the same law cannot be considered as 'public' as to fall within the ambit of CA 142 as amended. On account of the absolute confidentiality of the transaction, it cannot be said that movant intended to be known by this name in addition to his real name. Confidentiality and secrecy negate publicity. *Ursua* instructs:

Hence, the use of a fictitious name or a different name belonging to another person in a single instance without any sign or indication that the user intends to be known by this name in addition to his real name from that day forth does not fall within the prohibition in C.A. No. 142 as amended.

c. The Sandiganbayan further found that the intention not to be publicly known by the name "Jose Velarde" is shown by the nature of a numbered account - a perfectly valid banking transaction at the time Trust Account C-163 was opened. The opening, too, of a numbered trust account, the Sandiganbayan further ruled, did not impose on Estrada the obligation to disclose his real identity - the obligation R.A. No. 6713 imposes is to file under oath a statement of assets and liabilities.[16] Reading CA No. 142, R.A. No. 1405 and R.A. No. 6713 together, Estrada had the absolute obligation to disclose his assets including the amount of his bank deposits, but he was under no obligation at all to disclose the other particulars of the bank account (such as the name he used to open it).

Third - the effect of the enactment of R.A. No. 9160.[17] The Sandiganbayan said that the absolute prohibition in R.A. No. 9160 against the use of anonymous accounts, accounts under fictitious names, and all other similar accounts, is a legislative acknowledgment that a gaping hole previously existed in our laws that allowed depositors to hide their true identities. The Sandiganbayan noted that the prohibition was lifted from *Bangko Sentral ng Pilipinas* (BSP) Circular No. 251 dated July 7, 2000 - another confirmation that the opening of a numbered trust account was perfectly legal when it was opened on February 4, 2000.

The Sandiganbayan ruled that the provisions of CA No. 142, as interpreted in *Ursua*, must necessarily be harmonized with the provisions of R.A. No.1405 and R.A. No. 9160 under the principle that every statute should

be construed in a way that will harmonize it with existing laws. A reasonable scrutiny, the Sandiganbayan said, of all these laws in relation to the present case, led it to conclude that the use of an alias within the context of a bank transaction (specifically, the opening of a numbered account made before bank officers) is protected by the secrecy provisions of R.A. No. 1405, and is thus outside the coverage of CA No. 142 until the passage into law of R.A. No. 9160.

THE PETITION

The People filed this petition raising the following issues:

- Whether the court a quo gravely erred and abused its discretion in dismissing Crim. Case No. 26565 and in holding that the use by respondent Joseph Estrada of his alias "Jose Velarde" was not public despite the presence of Messrs. Aprodicio Laquian and Fernando Chua on 4 February 2000;
- Whether the court a quo gravely erred and abused its discretion in dismissing Crim. Case No. 26565 and in holding that the use by respondent Joseph Estrada of his alias "Jose Velarde" was allowable under banking rules, despite the clear prohibition under Commonwealth Act No. 142;
- Whether the court a quo gravely erred and abused its discretion in dismissing Crim. Case No. 26565 and in applying R.A. No. 1405 as an exception to the illegal use of alias punishable under Commonwealth Act No. 142;
- Whether the alleged harmonization and application made by the court a quo of R.A. No.1405 and Commonwealth Act No. 142 were proper;
- Whether the court a quo gravely erred and abused its discretion in limiting the coverage of the amended Information in Crim. Case No. 26565 to the use of the alias "Jose Velarde" by respondent Joseph Estrada on February 4, 2000;
- Whether the court a quo gravely erred and abused its discretion in departing from its earlier final finding on the non-applicability of *Ursua v. Court of Appeals* and forcing its application to the instant case.

THE COURT'S RULING

The petition has no merit.

The Law on Illegal Use of Alias and the *Ursua* Ruling

Sections 1 and 2 of CA No. 142, as amended, read:

Section 1. Except as a pseudonym solely for literary, cinema, television, radio or other entertainment purposes and in athletic events where the use of pseudonym is a normally accepted practice, no person shall use any name different from the one with which he was registered at birth in the office of the local civil registry or with which he was baptized for the first time, or in case of an alien, with which he was registered in the bureau of immigration upon entry; or such substitute name as may have been authorized by a competent court: Provided, That persons whose births have not been registered in any local civil registry and who have not been baptized, have one year from the approval of this act within which to register their names in the civil registry of their residence. The name shall comprise the patronymic name and one or two surnames.

Section 2. Any person desiring to use an alias shall apply for authority therefor in proceedings like those legally provided to obtain judicial authority for a change of name and no person shall be allowed to secure such judicial authority for more than one alias. The petition for an alias shall set forth the person's baptismal and family name and the name recorded in the civil registry, if different, his immigrant's name, if an alien, and his pseudonym, if he has such names other than his original or real name, specifying the reason or reasons for

the desired alias. The judicial authority for the use of alias, the Christian name and the alien immigrant's name shall be recorded in the proper local civil registry, and no person shall use any name or names other than his original or real name unless the same is or are duly recorded in the proper local civil registry.

How this law is violated has been answered by the *Ursua* definition of an alias - "a name or names used by a person or intended to be used by him publicly and habitually usually in business transactions in addition to his real name by which he is registered at birth or baptized the first time or substitute name authorized by a competent authority." There must be, in the words of *Ursua*, a "sign or indication that the user intends to be known by this name (the alias) in addition to his real name from that day forth ... [for the use of alias to] fall within the prohibition contained in C.A. No. 142 as amended." [18]

Ursua further relates the historical background and rationale that led to the enactment of CA No. 142, as follows:

The enactment of C.A. No. 142 was made primarily to curb the common practice among the Chinese of adopting scores of different names and aliases which created tremendous confusion in the field of trade. Such a practice almost bordered on the crime of using fictitious names which for obvious reasons could not be successfully maintained against the Chinese who, rightly or wrongly, claimed they possessed a thousand and one names. C.A. No. 142 thus penalized the act of using an alias name, unless such alias was duly authorized by proper judicial proceedings and recorded in the civil register. [19]

Following the doctrine of *stare decisis*, [20] we are guided by the *Ursua* ruling on how the crime punished under CA No. 142 may be committed. Close adherence to this ruling, in other words, is unavoidable in the application of and the determination of criminal liability under CA No. 142.

Among the many grounds the People invokes to avoid the application of the *Ursua* ruling proceeds from Estrada's position in the government; at the time of the commission of the offense, he was the President of the Republic who is required by law to disclose his true name. We do not find this argument sufficient to justify a distinction between a man on the street, on one hand, and the President of the Republic, on the other, for purposes of applying CA No. 142. In the first place, the law does not make any distinction, expressly or impliedly, that would justify a differential treatment. CA No. 142 as applied to Estrada, in fact allows him to use his cinema or screen name of Joseph Estrada, which name he has used even when he was already the President of the Philippines. Even the petitioner has acquiesced to the use of the screen name of the accused, as shown by the title of the present petition. Additionally, any distinction we make based on the People's claim unduly prejudices Estrada; this is proscribed by the *Ursua* dictum that CA No. 142, as a penal statute, should be construed strictly against the State and in favor of the accused. [21] The mode of violating CA No. 142 is therefore the same whoever the accused may be.

The People also calls our attention to an earlier Sandiganbayan ruling (Resolution dated February 6, 2002) denying Estrada's motion to quash the Information. This earlier Resolution effectively rejected the application of *Ursua* under the following tenor:

The use of the term "alias" in the Amended Information in itself serves to bring this case outside the ambit of the ruling in the case of *Ursua v. Court of Appeals* (256 SCRA 147 [1996]), on which the accused heavily relies in his motion to quash. The term "alias" means "otherwise known as" (Webster Third New International Dictionary, 1993 ed., p. 53). The charge of using an "alias" logically implies that another name has been used publicly and habitually. Otherwise, he will not be known by such name. In any case, the amended information adverts to "several transactions" and signing of documents with the Equitable PCI Bank and/or other corporate entities where the above-mentioned alias was allegedly employed by the accused.

The facts alleged in the information are distinctly different from facts established in the *Ursua* case where another name was used by the accused in a single instance without any sign or indication that that [sic] he

intended to be known from that day by this name in addition to his real name.[22]

The People argues that the Sandiganbayan gravely abused its discretion in applying *Ursua* notwithstanding this earlier final ruling on its non-applicability - a ruling that binds the parties in the present case. The People thus claims that the Sandiganbayan erred to the point of gravely abusing its discretion when it resurrected the application of *Ursua*, resulting in the reversal of its earlier final ruling.

We find no merit in this argument for two reasons. First, the cited Sandiganbayan resolution is a mere interlocutory order - a ruling denying a motion to quash[23] - that cannot be given the attributes of finality and immutability that are generally accorded to judgments or orders that finally dispose of the whole, of or particular matters in, a case.[24] The Sandiganbayan resolution is a mere interlocutory order because its effects would only be provisional in character, and would still require the issuing court to undertake substantial proceedings in order to put the controversy to rest.[25] It is basic remedial law that an interlocutory order is always under the control of the court and may be modified or rescinded upon sufficient grounds shown at any time before final judgment.[26] *Perez v. Court of Appeals*,[27] albeit a civil case, instructively teaches that an interlocutory order carries no res adjudicata effects. Says Perez:

The Decision in CA-G.R. No. 10415 having resolved only an interlocutory matter, the principle of res judicata cannot be applied in this case. There can be no res judicata where the previous order in question was not an order or judgment determinative of an issue of fact pending before the court but was only an interlocutory order because it required the parties to perform certain acts for final adjudication. In this case, the lifting of the restraining order paved the way for the possession of the fishpond on the part of petitioners and/or their representatives pending the resolution of the main action for injunction. In other words, the main issue of whether or not private respondent may be considered a sublessee or a transferee of the lease entitled to possess the fishpond under the circumstances of the case had yet to be resolved when the restraining order was lifted.[28]

Second, in the earlier motion to quash, the Sandiganbayan solely looked at the allegations of the Information to determine the sufficiency of these allegations and did not consider any evidence aliunde. This is far different from the present demurrer to evidence where the Sandiganbayan had a fuller view of the prosecution's case, and was faced with the issue of whether the prosecution's evidence was sufficient to prove the allegations of the Information. Under these differing views, the Sandiganbayan may arrive at a different conclusion on the application of *Ursua*, the leading case in the application of CA 142, and the change in ruling is not per se indicative of grave abuse of discretion. That there is no error of law is strengthened by our consideration of the Sandiganbayan ruling on the application of *Ursua*.

In an exercise of caution given *Ursua*'s jurisprudential binding effect, the People also argues in its petition that Estrada's case is different from *Ursua*'s for the following reasons: (1) respondent Estrada used and intended to continually use the alias "Jose Velarde" in addition to the name "Joseph Estrada"; (2) Estrada's use of the alias was not isolated or limited to a single transaction; and (3) the use of the alias "Jose Velarde" was designed to cause and did cause "confusion and fraud in business transactions" which the anti-alias law and its related statutes seek to prevent. The People also argues that the evidence it presented more than satisfied the requirements of CA No. 142, as amended, and *Ursua*, as it was also shown or established that Estrada's use of the alias was public.

In light of our above conclusions and based on the parties' expressed positions, we shall now examine within the *Ursua* framework the assailed Sandiganbayan Resolution granting the demurrer to evidence. The prosecution has the burden of proof to show that the evidence it presented with the Sandiganbayan satisfied the *Ursua* requirements, particularly on the matter of publicity and habituality in the use of an alias.

What is the coverage of the indictment?

The People argues that the Sandiganbayan gravely erred and abused its discretion in limiting the coverage of the amended Information in Crim. Case No. 26565 to Estrada's use of the alias "Jose Velarde" on February 4, 2000. It posits that there was a main transaction - one that took place on February 4, 2000 - but there were other transactions covered by the phrase "prior to or subsequent thereto; the Information specifically referred to "several transactions" ... "with Equitable PCI Bank and/or other corporate entities." To the People, the restrictive finding - that the phrase "prior to or subsequent thereto" is absorbed by the phrase "on or about 04 February 2000" - drastically amends the succeeding main allegations on the constitutive criminal acts by removing the plurality of both the transactions involved and the documents signed with various entities; there is the undeniable essential relationship between the allegations of the multiplicity of transactions, on one hand, and the additional antecedent of "prior to or subsequent thereto," on the other. It argues that the Sandiganbayan reduced the phrase "prior to or subsequent thereto" into a useless appendage, providing Estrada with a convenient and totally unwarranted escape route.

The People further argues that the allegation of time is the least exacting in satisfying the constitutional requirement that the accused has to be informed of the accusation against him. Section 6 of Rule 110 of the Revised Rules of Court provides that an allegation of the approximate date of the commission of the offense will suffice, while Section 11 of the same Rule provides that it is not necessary to state in the complaint or information the precise date the offense was committed except when it is a material ingredient of the crime. This liberality allegedly shaped the time-tested rule that when the "time" given in the complaint is not of the essence of the offense, the time of the commission of the offense does not need to be proven as alleged, and that the complaint will be sustained if the proof shows that the offense was committed at any time within the period of the statute of limitations and before the commencement of the action (citing *People v. Bugayong* [299 SCRA 528, 537] that in turn cited *US v. Smith* [3 Phil. 20, 22]). Since allegations of date of the commission of an offense are liberally interpreted, the People posits that the Sandiganbayan gravely abused its discretion in disregarding the additional clause "prior to or subsequent thereto"; under the liberality principle, the allegations of the acts constitutive of the offense finally determine the sufficiency of the allegations of time. The People thus claims that no surprise could have taken place that would prevent Estrada from properly defending himself; the information fully notified him that he was being accused of using the alias Jose Velarde in more than just one instance.

We see no merit in these arguments.

At its core, the issue is constitutional in nature - the right of Estrada to be informed of the nature and cause of the accusation against him. Under the provisions of the Rules of Court implementing this constitutional right, 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 in the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.[29] As to the cause of 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 the offense charged and the qualifying and aggravating circumstances, and for the court to pronounce judgment.[30] The date of the commission of the offense need not be precisely stated in the complaint or information except when the precise date is a material ingredient of the offense. The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission.[31]

The information must at all times embody the essential elements of the crime charged by setting forth the facts and circumstances that bear on the culpability and liability of the accused so that he can properly prepare for and undertake his defense.[32] In short, the allegations in the complaint or information, as written, must fully inform

or acquaint the accused - the primary reader of and the party directly affected by the complaint or information - of the charge/s laid.

The heretofore cited Information states that "... on or about 04 February 2000, or sometime prior or subsequent thereto, in the City of Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused [did] ... willfully, unlawfully and criminally REPRESENT HIMSELF AS 'JOSE VELARDE' IN SEVERAL TRANSACTIONS AND use and employ the SAID alias "Jose Velarde" which IS neither his registered name at birth nor his baptismal name, in signing documents with Equitable PCI Bank and/or other corporate entities."

We fully agree with the disputed Sandiganbayan's reading of the Information, as this was how the accused might have similarly read and understood the allegations in the Information and, on this basis, prepared his defense. Broken down into its component parts, the allegation of time in the Information plainly states that (1) ON February 4, 2000; (2) OR before February 4, 2000; (3) OR sometime prior or subsequent to February 4, 2000, in the City of Manila, Estrada represented himself as "Jose Velarde" in several transactions in signing documents with Equitable PCI Bank and/or other corporate entities.

Under this analysis, the several transactions involving the signing of documents with Equitable PCI Bank and/or other corporate entities all had their reference to February 4, 2000; they were all made on or about or prior or subsequent to that date, thus plainly implying that all these transactions took place only on February 4, 2000 or on another single date sometime before or after February 4, 2000. To be sure, the Information could have simply said "on or about February 4, 2000" to capture all the alternative approximate dates, so that the phrase "sometime prior or subsequent thereto" would effectively be a surplusage that has no meaning separately from the "on or about" already expressed. This consequent uselessness of the "prior or subsequent thereto" phrase cannot be denied, but it is a direct and necessary consequence of the use of the "OR" between the two phrases and the "THERETO" that referred back to February 4, 2000 in the second phrase. Of course, the reading would have been very different (and would have been clearly in accord with the People's present interpretation) had the Information simply used "AND" instead of "OR" to separate the phrases; the intent to refer to various transactions occurring on various dates and occasions all proximate to February 4, 2000 could not be disputed. Unfortunately for the People, the imprecision in the use of "OR" is the reality the case has to live with. To act contrary to this reality would violate Estrada's right to be informed of the nature and cause of accusation against him; the multiple transactions on several separate days that the People claims would result in surprise and denial of an opportunity to prepare for Estrada, who has a right to rely on the single day mentioned in the Information.

Separately from the constitutional dimension of the allegation of time in the Information, another issue that the allegation of time and our above conclusion raise relates to what act or acts, constituting a violation of the offense charged, were actually alleged in the Information.

The conclusion we arrived at necessarily impacts on the People's case, as it deals a fatal blow on the People's claim that Estrada habitually used the Jose Velarde alias. For, to our mind, the repeated use of an alias within a single day cannot be deemed "habitual," as it does not amount to a customary practice or use. This reason alone dictates the dismissal of the petition under CA No. 142 and the terms of Ursua.

The issues of publicity, numbered accounts, and the application of CA No. 142, R.A. No. 1405, and R.A. No. 9160.

We shall jointly discuss these interrelated issues.

The People claims that even on the assumption that Ocampo and Curato are bank officers sworn to secrecy under the law, the presence of two other persons who are not bank officers - Aprodicio Laquian and Fernando Chua - when Estrada's signed the bank documents as "Jose Velarde" amounted to a "public" use of an alias that violates CA No. 142.

On the issue of numbered accounts, the People argues that to premise the validity of Estrada's prosecution for violation of CA No. 142 on a mere banking practice is gravely erroneous, improper, and constitutes grave abuse of discretion; no banking law provision allowing the use of aliases in the opening of bank accounts existed; at most, it was allowed by mere convention or industry practice, but not by a statute enacted by the legislature. Additionally, that Estrada's prosecution was supposedly based on BSP Circular No. 302 dated October 11, 2001 is wrong and misleading, as Estrada stands charged with violation of CA No. 142, penalized since 1936, and not with a violation of a mere BSP Circular. That the use of alias in bank transactions prior to BSP Circular No. 302 is allowed is inconsequential because as early as CA No. 142, the use of an alias (except for certain purposes which do not include banking) was already prohibited. Nothing in CA No. 142 exempted the use of aliases in banking transactions, since the law did not distinguish or limit its application; it was therefore grave error for the Sandiganbayan to have done so. Lastly on this point, bank regulations being mere issuances cannot amend, modify or prevail over the effective, subsisting and enforceable provision of CA No. 142.

On the issue of the applicability of R.A. No. 1405 and its relationship with CA No. 142, that since nothing in CA No. 142 excuses the use of an alias, the Sandiganbayan gravely abused its discretion when it ruled that R.A. No. 1405 is an exception to CA No. 142's coverage. Harmonization of laws, the People posits, is allowed only if the laws intended to be harmonized refer to the same subject matter, or are at least related with one another. The three laws which the Sandiganbayan tried to harmonize are not remotely related to one another; they each deal with a different subject matter, prohibits a different act, governs a different conduct, and covers a different class of persons,[33] and there was no need to force their application to one another. Harmonization of laws, the People adds, presupposes the existence of conflict or incongruence between or among the provisions of various laws, a situation not obtaining in the present case.

The People posits, too, that R.A. No. 1405 does not apply to trust transactions, such as Trust Account No. C-163, as it applies only to traditional deposits (simple loans). A trust account, according to the People, may not be considered a deposit because it does not create the juridical relation of creditor and debtor; trust and deposit operations are treated separately and are different in legal contemplation; trust operation is separate and distinct from banking and requires a grant of separate authority, and trust funds are not covered by deposit insurance under the Philippine Deposit Insurance Corporation law (R.A. No. 3591, as amended).

The People further argues that the Sandiganbayan's conclusion that the transaction or communication was privileged in nature was erroneous - a congruent interpretation of CA No. 142 and R.A. No. 1405 shows that a person who signs in a public or private transaction a name or alias, other than his original name or the alias he is authorized to use, shall be held liable for violation of CA No. 142, while the bank employees are bound by the confidentiality of bank transactions except in the circumstances enumerated in R.A. No. 1405. At most, the People argues, the prohibition in R.A. No. 1405 covers bank employees and officers only, and not Estrada; the law does not prohibit Estrada from disclosing and making public his use of an alias to other people, including Ocampo and Curato, as he did when he made a public exhibit and use of the alias before Messrs. Lacquian and Chua.

Finally, the People argues that the Sandiganbayan ruling that the use of an alias before bank officers does not violate CA No. 142 effectively encourages the commission of wrongdoing and the concealment of ill-gotten wealth under pseudonyms; it sustains an anomalous and prejudicial policy that uses the law to silence bank

officials and employees from reporting the commission of crimes. The People contends that the law - R.A. No. 1405 - was not intended by the Legislature to be used as a subterfuge or camouflage for the commission of crimes and cannot be so interpreted; the law can only be interpreted, understood and applied so that right and justice would prevail.

We see no merit in these arguments.

We agree, albeit for a different reason, with the Sandiganbayan position that the rule in the law of libel - that mere communication to a third person is publicity - does not apply to violations of CA No. 142. Our close reading of *Ursua* - particularly, the requirement that there be intention by the user to be culpable and the historical reasons we cited above - tells us that the required publicity in the use of alias is more than mere communication to a third person; the use of the alias, to be considered public, must be made openly, or in an open manner or place, or to cause it to become generally known. In order to be held liable for a violation of CA No. 142, the user of the alias must have held himself out as a person who shall publicly be known under that other name. In other words, the intent to publicly use the alias must be manifest.

To our mind, the presence of Lacquian and Chua when Estrada signed as Jose Velarde and opened Trust Account No. C-163 does not necessarily indicate his intention to be publicly known henceforth as Jose Velarde. In relation to Estrada, Lacquian and Chua were not part of the public who had no access to Estrada's privacy and to the confidential matters that transpired in Malacañan where he sat as President; Lacquian was the Chief of Staff with whom he shared matters of the highest and strictest confidence, while Chua was a lawyer-friend bound by his oath of office and ties of friendship to keep and maintain the privacy and secrecy of his affairs. Thus, Estrada could not be said to have intended his signing as Jose Velarde to be for public consumption by the fact alone that Lacquian and Chua were also inside the room at that time. The same holds true for Estrada's alleged representations with Ortaliza and Dichavez, assuming the evidence for these representations to be admissible. All of Estrada's representations to these people were made in privacy and in secrecy, with no iota of intention of publicity.

The nature, too, of the transaction on which the indictment rests, affords Estrada a reasonable expectation of privacy, as the alleged criminal act related to the opening of a trust account - a transaction that R.A. No. 1405 considers absolutely confidential in nature.[34] We previously rejected, in *Ejercito v. Sandiganbayan*,[35] the People's nitpicking argument on the alleged dichotomy between bank deposits and trust transactions, when we said:

The contention that trust accounts are not covered by the term "deposits," as used in R.A. 1405, by the mere fact that they do not entail a creditor-debtor relationship between the trustor and the bank, does not lie. An examination of the law shows that the term "deposits" used therein is to be understood broadly and not limited only to accounts which give rise to a creditor-debtor relationship between the depositor and the bank.

The policy behind the law is laid down in Section 1:

SECTION 1. It is hereby declared to be the policy of the Government to give encouragement to the people to deposit their money in banking institutions and to discourage private hoarding so that the same may be properly utilized by banks in authorized loans to assist in the economic development of the country. (Underscoring supplied)

If the money deposited under an account may be used by bank for authorized loans to third persons, then such account, regardless of whether it creates a creditor-debtor relationship between the depositor and the bank, falls under the category of accounts which the law precisely seeks to protect for the purpose of boosting the economic development of the country.

Trust Account No. 858 is, without doubt, one such account. The Trust Agreement between petitioner and Urban

Bank provides that the trust account covers "deposit, placement or investment of funds" by Urban Bank for and in behalf of petitioner. The money deposited under Trust Account No. 858, was, therefore, intended not merely to remain with the bank but to be invested by it elsewhere. To hold that this type of account is not protected by R.A. 1405 would encourage private hoarding of funds that could otherwise be invested by bank in other ventures, contrary to the policy behind the law.

Section 2 of the same law in fact even more clearly shows that the term "deposits" was intended to be understood broadly:

SECTION 2. All deposits of whatever nature with bank or banking institutions in the Philippines including investments in bonds issued by the Government of the Philippines, its political subdivisions and its instrumentalities, are hereby considered as of an absolutely confidential nature and may not be examined, inquired or looked into by any person, government official, bureau or office, except upon written permission of the depositor, or in cases of impeachment, or upon order of a competent court in cases of bribery or dereliction of duty of public officials, or in cases where the money deposited or invested is the subject matter of the litigation. (Emphasis and underscoring supplied)

The phrase "of whatever nature" proscribes any restrictive interpretation of "deposits." Moreover, it is clear from the immediately quoted provision that, generally, the law applies not only to money which is deposited but also to those which are invested. This further shows that the law was not intended to apply only to "deposits" in the strict sense of the word. Otherwise, there would have been no need to add the phrase "or invested."

Clearly, therefore, R.A. 1405 is broad enough to cover Trust Account No. 858.[36]

We have consistently ruled that bank deposits under R.A. No. 1405 (the Secrecy of Bank Deposits Law) are statutorily protected or recognized zones of privacy.[37] Given the private nature of Estrada's act of signing the documents as "Jose Velarde" related to the opening of the trust account, the People cannot claim that there was already a public use of alias when Ocampo and Curato witnessed the signing. We need not even consider here the impact of the obligations imposed by R.A. No.1405 on the bank officers; what is essentially significant is the privacy situation that is necessarily implied in these kinds of transactions. This statutorily guaranteed privacy and secrecy effectively negate a conclusion that the transaction was done publicly or with the intent to use the alias publicly.

The enactment of R.A. No.9160, on the other hand, is a significant development only because it clearly manifests that prior to its enactment, numbered accounts or anonymous accounts were permitted banking transactions, whether they be allowed by law or by a mere banking regulation. To be sure, an indictment against Estrada using this relatively recent law cannot be maintained without violating the constitutional prohibition on the enactment and use of ex post facto laws.[38]

We hasten to add that this holistic application and interpretation of these various laws is not an attempt to harmonize these laws. A finding of commission of the offense punished under CA No. 142 must necessarily rest on the evidence of the requisites for culpability, as amplified in *Ursua*. The application of R.A. No. 1405 is significant only because Estrada's use of the alias was pursuant to a transaction that the law considers private or, at the very least, where the law guarantees a reasonable expectation of privacy to the parties to the transactions; it is at this point that R.A. No. 1405 tangentially interfaces with an indictment under CA 142. In this light, there is no actual frontal clash between CA No. 142 and R.A. No. 1405 that requires harmonization. Each operates within its own sphere, but must necessarily be read together when these spheres interface with one another. Finally, R.A. No. 9160, as a law of recent vintage in relation to the indictment against Estrada, cannot be a source or an influencing factor in his indictment.

In finding the absence of the requisite publicity, we simply looked at the totality of the circumstances obtaining in Estrada's use of the alias "Jose Velarde" vis-à-vis the Ursua requisites. We do not decide here whether Estrada's use of an alias when he occupied the highest executive position in the land was valid and legal; we simply determined, as the Sandiganbayan did, whether he may be made liable for the offense charged based on the evidence the People presented. As with any other accused, his guilt must be based on the evidence and proof beyond reasonable doubt that a finding of criminal liability requires. If the People fails to discharge this burden, as they did fail in this case, the rule of law requires that we so declare. We do so now in this review and accordingly find no reversible error of law in the assailed Sandiganbayan ruling.

WHEREFORE, premises considered, we DENY the petition for lack of merit.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Corona, Carpio Morales, Tinga, Velasco, Jr., and Nachura, JJ., concur.
Carpio, J., no part due to inhibition in related cases.

Austria-Martinez, J., on official leave.

Chico-Nazario, Leonardo-De Castro, and Peralta, JJ., no part.

[1] Under Rule 45 of the Rules of Court.

[2] People of the Philippines v. Joseph Ejercito Estrada for the crime of illegal use of alias.

[3] A.M. No. 02-1-07-SC, entitled Re: Request for the Creation of a Special Division to Try the Plunder Case, SB Crim. Case No. 26558, and related cases.

[4] Rollo, pp. 1304-1316.

[5] See Sandiganbayan's Resolution dated November 17, 2003, id., p. 1318.

[6] Ibid, p. 1320.

[7] Promulgated on November 18, 2003.

[8] Rollo, pp. 1323-1335.

[9] Id. , pp. 1337-1348.

[10] Dated March 29, 2004, id., pp. 1349-1377.

[11] See Sandiganbayan's Resolution dated July 09, 2004 (promulgated on July 12, 2004), id., p. 84.

[12] Id. , pp. 1378-1408.

[13] G.R. No. 112170, April 10, 1996, 256 SCRA 147.

[14] Otherwise known as the "Secrecy of Bank Deposits Act."

[15] Otherwise known as the "Anti-Money Laundering Act."

[16] Otherwise known as then "Code of Conduct and Ethical Standards for Public Officials and Employees."

[17] Otherwise known as the "Anti-Money Laundering Act of 2001."

[18] Supra note 13, pp. 155-156.

[19] Supra note 12, p. 154 .

[20] Stare decisis et non quieta movere which means "to adhere to precedents, and not to unsettle things which are established." Department of Transportation and Communication v. Cruz, G.R. No. 178256, July 23, 2008, explained the principle as follows:

The doctrine of stare decisis simply means that when the Supreme Court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all future cases, where facts are substantially the same; regardless of whether the parties and property are the same. The doctrine of stare decisis is based on the legal principle or rule involved and not upon the judgment which results therefrom and in this particular sense stare decisis differs from res judicata which is based upon the judgment. The doctrine of stare decisis is a policy grounded on the necessity for securing certainty and stability of judicial decisions, thus:

Time and again, the Court has held that it is a very desirable and necessary judicial practice that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. Stare decisis et non quieta movere. Stand by the decisions and disturb not what is settled. Stare decisis simply means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of stare decisis is a bar to any attempt to relitigate the same issue.

[21] Supra note 13, p. 157.

[22] Rollo, pp. 1421-1425.

[23] See: Socrates v. Sandiganbayan, G.R. Nos. 116259-60, 118896-97, February 20, 1996, 253 SCRA 773, 793.

[24] See: Sections 1 and 2 of Rule 36 of the Rules of Court.

[25] See: Monterey Foods Corp. v. Eserjose G.R. No. 153126, September 11, 2003, 410 SCRA 627, 634-635.

[26] See: East Asia Traders, Inc. v. Republic of the Philippines, G.R. No. 152947, July 7, 2004, 433 SCRA 716, 723.

[27] G.R. No. 107737. October 1, 1999, 316 SCRA 43, 56-57.

[28] Bold face supplied; citation omitted.

[29] RULES OF COURT, Section 6, Rule 110.

[30] Id. , Section 9.

[31] Id. , Section 11.

[32] People v. Almendral, G.R. No. 126025, July 6, 2004, 433 SCRA 440, 451.

[33] According to the People, CA 142 regulates the use of aliases and provides the penalty for violation of its provisions; in Estrada's case, it pertains to and regulates only his acts in using in several instances his alias "Jose Velarde;" the crime of illegal use of alias starts and stops with Estrada for he alone consummates the crime. The law deals with the use of alias outside the permissible trades and the subsequent conduct of persons who become privy to Estrada's use of the alias, or whatever obligation is incumbent upon them, are immaterial to the elements of the crime penalized by CA 142. On the other hand, the People further asserted, RA 1405 relates to the secrecy

of bank deposits and governs the conduct and liability of bank officers with respect to information to which they become privy; it does not regulate or govern the conduct of depositors themselves when they open accounts. Finally, RA 9160 refers to the crime of money laundering and the imposable penalty for its commission - the illegal use of alias violative of CA 142 is not indispensable in sustaining a violation of the anti-money laundering law and illegal use of alias does not necessarily amount to, or necessarily constitute, money laundering.

[34] *Ople v. Torres*, G.R. No. 127685, July 23, 1998, 293 SCRA 141, 164, provides the two-part test of a reasonable expectation of privacy as follows: (1) whether by his conduct, the individual has exhibited an expectation of privacy; and (2) whether his expectation is one that society recognizes as reasonable. See also: *People v. Cabalquinto*, G.R. No.167693, September 19, 2006, 502 SCRA 419, 424.

[35] G.R. Nos. 157294-95, November 30, 2006, 509 SCRA 190, 210-211.

[36] Underscoring in the original.

[37] *Ople v. Torres*, supra note 28, p. 158; see also *Marquez v. Desierto*, G.R. No. 135882, June 27, 2001, 359 SCRA 772, 781, and *Ejercito*, supra note 29.

[38] Section 22, Article III of the Constitution provides that no ex post facto law or bill of attainder shall be enacted. We enumerated in *Lacson v. Executive Secretary*, G.R. No. 128096, January 20, 1999, 301 SCRA 299, 322-323, the forms of ex post facto law as any of the following -

- (a) one which makes an act done criminal before the passing of the law and which was innocent when committed, and punishes such action; or
- (b) one which aggravates a crime or makes it greater than when it was committed; or
- (c) one which changes the punishment and inflicts a greater punishment than the law annexed to the crime when it was committed,
- (d) one which alters the legal rules of evidence and receives less or different testimony than the law required at the time of the commission of the offense in order to convict the defendant.
- (e) Every law which, in relation to the offense or its consequences, alters the situation of a person to his disadvantage.
- (f) that which assumes to regulate civil rights and remedies only but in effect imposes a penalty or deprivation of a right which when done was lawful;
- (g) deprives a person accused of crime of some lawful protection to which he has become entitled, such as the protection of a former conviction or acquittal, or a proclamation of amnesty.

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