

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. IMELDA ROMUALDEZ MARCOS, ACCUSED-APPELLANT.

G.R. Nos. 243402-08, June 10, 2026

Ponente: ZALAMEDA, J.

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ZALAMEDA, J.:

The Court is again faced with the delicate task of balancing the constitutionally protected right of an accused to due process of law and the interest of the State in repressing acts of public officers that constitute graft and corrupt practices. In executing such a delicate task, the Court is armed with the rules of procedure it promulgated to facilitate the fair and orderly conduct of proceedings. While the Court, in the exercise of its judicial discretion, may allow the relaxation of the rules in the interest of substantial justice, it cannot be done at the expense of the substantive rights of the accused.

The rules on the sufficiency of allegations in the Information and the admissibility and probative weight of evidence, in so far as they may cause injury to the substantive rights of the accused, cannot be casually brushed aside by the invocation of substantial justice and public interest. This is especially true in this case, considering that the prosecution has, at its disposal, the vast resources of the State.

The Case

These consolidated criminal cases involve 10 Informations filed against former First Lady Imelda Romualdez Marcos (Imelda), viz.:

Criminal Case No. 17287

(For violation of Section 3(h) of [Republic Act] No. 3019, as amended[,] in relation to Article IX, Section 8 of the 1973 Constitution)

That on or about [October 19,] 1968, and for some time thereafter, until June 6, 1991, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then a member of Interim Batasang Pambansa, while in the performance of her official functions, taking advantage of her position, and committing the offense in relation to her office, did then and there willfully, unlawfully[,] and criminally have direct and indirect financial or pecuniary interest in and participated in the management of Maler Establishment, a company which she and her spouse Ferdinand E. Marcos purchased from the Swiss Bank Corporation and in which she was prohibited by the Constitution from having an interest, by having the sole and full right of disposal of 50% of the assets of said company during their lifetime; by appointing one Dr. Andre Barbey and Jean Louis Sunier as attorneys of the said company and as administrator and manager of all the assets held by it and ratifying all the decisions and circumstances the aforementioned persons have induced to protect the interest of the accused and her spouse; by transmitting instructions to the company under the name and signature "John Lewis"; by opening and maintaining bank accounts with the Swiss Bank Corporation; and by subsequently transforming the company into the Maler Foundation, changing its attorneys to Michael Amaudruz, et. al. and by causing the registration of its articles of incorporation; and by transferring the management of the assets of Maler Foundation to Suntrust Investment Co., S.A.[1]

Criminal Case No. 17288

(For violation of Section 3(h) of [Republic Act] No. 3019, as amended[,] in relation to Article IX, Section 8 of the 1973 Constitution)

That on or about [August 26,] 1970, and thereafter until August 3, 1981, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then a member of the Interim Batasang Pambansa, while in the performance of her official functions, taking advantage of her position, and committing the offense in relation to her office, did then and there willfully, unlawfully and criminally have a direct and indirect financial or pecuniary interest in, and participated in the management of the Trinidad Foundation, a company created in Liechtenstein and with domicile in Triesenberg, Switzerland, in which she was prohibited by the Constitution from having any interest during her term of office, by, among others, performing the following acts: providing the capital of [CHF] 100,000 for said Foundation which had the object of investment and the administration of its assets and the utilization of its capital and interest; designating herself as its first beneficiary during her lifetime and her children after her death; executing a Mandator-Mandatory Agreement between her and one Markus Geel, C. Walter Fessler and Ernst Scheller; by subsequently ordering the Board of Trustees of said Foundation to remit to Bank Hofman, AG, Zurich in favor of Fides Trust Company, for the account "Reference Dido" all the assets, securities, time deposits, [and] balances held by the aforesaid Foundation as a final distribution thereof preparatory to its liquidation; and finally causing the dissolution and liquidation of said Foundation.[2]

Criminal Case No. 17289

(For violation of Section 3(h) of [Republic Act] No. 3019, as amended[,] in relation to Article IX, Section 8 of the 1973 Constitution)

That on or about [June 22,] 1971, and thereafter until August 6, 1981, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then a member of the Interim Batasang Pambansa, while in the performance of her official functions, taking advantage of her position, and committing the offense in relation to her office, did then and there willfully, unlawfully[,] and criminally have a direct and indirect financial or pecuniary interest in, and participated in the management of the Rayby Foundation, Vaduz, a company created in Vaduz, Switzerland and in which she was prohibited by the Constitution from having any interest during her term of office, by, among others, performing the following acts: ordering that the capitalization of the aforesaid Foundation and the cost of establishing it be debited against the account of Trinidad Foundation, a company which the accused herself established and of which she is the first beneficiary; designating herself as the first and only beneficiary of said Rayby Foundation; ordering the Board of Trustees of said Foundation, including Walter Fessler, Peter Ritter, Ernst Scheller as members, to transfer to the Trinidad Foundation, for their account with Credit Suisse, Zurich, any assets, balance, etc. presently held by the Rayby Foundation, which was to be liquidated after effecting said transfer; by further approving the accounts and all additional statements and releasing the executives and officers thereof from responsibility in the management of said company; and finally by causing the dissolution of aforesaid Foundation.[3]

Criminal Case No. 17290

(For violation of Section 3(h) of [Republic Act] No. 3019, as amended[,] in relation to Article IX, Section 8 of the 1973 Constitution)

That on or about [May 13,] 1981, and for sometime thereafter, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then a member of the Interim Batasang Pambansa, while in the performance of her official functions, taking advantage of her position, and committing the offense in relation to her office, did then and there willfully, unlawfully[,] and criminally have a direct and indirect financial or pecuniary interest in and participated in the management of the Palmy Foundation, a company created in Vaduz and in which she was prohibited by the Constitution from having any interest during her term of office, by, among others, causing the deposit/ registration of the deed of

foundation and statutes/ articles pursuant to the legal regulations; [and] appointing one Dr. Ivo Beck & Limag Management & Administration Stock Corporation as members of the Board of Trustees of aforesaid Foundation with authority to sign in twos and being the beneficial owner of the assets of said Foundation deposited under Account No. 391528.[4]

Criminal Case No. 17291

(For violation of Section 3(h) of [Republic Act] No. 3019, as amended[,] in relation to Article IX, Section 8 of the 1973 Constitution)

That on or about [August 3,] 1982, and for sometime thereafter, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then a member of the Interim Batasang Pambansa, while in the performance of her official functions, taking advantage of her position, and committing the offense in relation to her office, did then and there willfully, unlawfully[,] and criminally intervene directly in opening, managing, and/or administering business ventures using government resources, in which she was prohibited by the Constitution during her term of office from having an interest or participating in their management, by securing and heavily recommending the approval by then Central Bank Governor Jaime Laya of the [USD] 25 [m]illion loan being applied for by the Asian Reliability Corporation, a private Corporation with offices [in] Taguig, Metro Manila, for its semiconductor related projects, which loan was guaranteed by the Philippine Export and Foreign Loan Guarantee Corporation.[5]

Criminal Case No. 19225

(For violation of Section 3(h) of [Republic Act] No. 3019, as amended)

That [on] or about the year 1980, or immediately prior and subsequent thereto, in Manila, and within the jurisdiction of this Honorable Court, accused, a public officer, being then the Minister of then Ministry of Human Settlement and Environmental Management, and a member of the Batasang Pambansa, did then and there, [willfully] and unlawfully, acquire financial pecuniary interest in Asian Reliability Company, Inc., and Dynetics, private entities, then headed by Vicente B. Chuidan by becoming part owners thereof wherein she is prohibited by law and the Constitution from having any interest.[6]

Criminal Case No. 22867

(For violation of Section 3(h) of [Republic Act] No. 3019, as amended[,] in relation to Article IX, Section 8 and Article VIII, Section 11 of the 1973 Constitution)

That on or about the period [June 11,] 1971 to 1991, or sometime prior or subsequent thereto, in Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, IMELDA ROMUALDEZ MARCOS, a high-ranking public officer, being then the Minister of Human Settlements and, as such Cabinet Member, constitutionally prohibited from participating in the management of any business and from intervening in any matter before any office for her pecuniary interest, while in the performance and taking advantage of her official administrative functions, did then and there willfully, unlawfully[,] and criminally have a direct and/or indirect financial or pecuniary interest and participate in the management and administration of the Vibur Foundation, also previously known as the Azio Foundation and the Verso Foundation, which Foundation the accused and her late husband then President Ferdinand Marcos used or utilized as a conduit in the funneling [sic] or transferring of ill-gotten wealth or monies, by opening and maintaining bank account or accounts with the Schweizerische Kreditanstalt (SKA), or Credit Swiss Bank Corporation (SBC), or in other banks outside of the Philippines, in the Foundation's name for the benefit of the accused and her late husband then President Ferdinand E. Marcos, and their children, which monies amounting to [USD] 3,597,544.00 as of [December 31,] 1991 in the account of the said Foundation, having been illegally, unlawfully, irregularly or illegitimately acquired or obtained by the accused and her late husband beyond their lawful income of [USD] 957,487.75 for the years 1965 to 1985 as reflected in their income tax returns, or some of said monies, were then ordered or caused by the accused to be remitted to the Central Bank of the Philippines to be used to purchased [sic] or be invested in or caused to be converted to high-interest yielding

private issues of Dollar Treasury Notes of the Central Bank, with accused intervening in the investment placements of the Central Bank for the pecuniary benefit of said Foundation, herself and her family, to the damage and prejudice of the Government service.[7] (Citation omitted)

Criminal Case No. 22868

(For violation of Section 3(h) of [Republic Act] No. 3019, as amended[,] in relation to [Article IX, Section 8] and [Article VIII, Section 11] of the 1973 Constitution)

That on [sic] about the period 1971 to August 1991, or sometime prior or subsequent thereto, in Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, IMELDA ROMUALDEZ MARCOS, a high-ranking public officer, being then the Minister of Human Settlements and, as such Cabinet Member, constitutionally prohibited from participating in the management of any business and from intervening in any matter before any office for her pecuniary interest, while in the performance and taking advantage of her official and administrative functions, did then and there willfully, unlawfully[,] and criminally have a direct and/or indirect financial or pecuniary interest and participate in the management and administration of the Aguamina Foundation, also previously known as the Rosalys Foundation, which Foundation the accused and her late husband then President Ferdinand Marcos used or utilized as a conduit in the funnelling [sic] or transferring of ill-gotten wealth or monies, by opening and maintaining bank account or accounts with the Schweizeresche Kreditanstalt (SKA), or Credit Swiss Bank or Swiss Bank Corporation (SBC), or in other banks outside of the Philippines, in the Foundation's name for the benefit of the accused and her late husband then President Ferdinand E. Marcos, and their children, which monies amounting to [USD] 80,566,483.00 as of [August 30,] 1991 in the account of said Foundation, having been illegally, unlawfully, irregularly or illegitimately acquired or obtained by the accused and her late husband beyond their lawful income of [USD] 957,487.75 for the years 1965 to 1985 as reflected in their income tax returns, of which [USD] 10.3 million was deposited to SBC General Account No. 51960 and received as bribes, facilitation fees, kickbacks or commissions from Japanese corporations or suppliers of roaders and graders for infrastructure projects, or some of said monies, were then ordered by accused to be remitted to the Central Bank of the Philippines to be used to purchase or be invested in or caused to be converted to high-interest yielding private issues of Dollar Treasury Notes of the Central Bank, with accused intervening in the investment placements of the Central Bank [for] the pecuniary benefit of said Foundation, herself and her family, to the damage and prejudice of the Government service.[8] (Citation omitted)

Criminal Case No. 22869

(For violation of Section 3(h) of [Republic Act] No. 3019, as amended[,] in relation to [Article IX, Section 8] and [Article VIII, Section III, of the 1973 Constitution])

That on or about the period March 1968 to 1986, or sometime prior or subsequent thereto, in Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, IMELDA ROMUALDEZ MARCOS, a high-ranking public officer, being then the Minister of Human Settlements and, as such Cabinet Member, constitutionally prohibited from participating in the management of any business and from intervening in any matter before any office for her pecuniary interest, while in the performance and taking advantage of her official administrative functions, did then and there willfully, unlawfully[,] and criminally have a direct and/or indirect financial or pecuniary interest and participate in the management and administration of the Avertina Foundation, basically comprising the consolidation of [two] sets of Swiss bank accounts of [two] groups of foundations the first of which was also previously known as the Xandy Foundation and the Wintrop Foundation [(Wintrop)] and the second of which was previously known as the Charis Foundation, Scolari Foundation, Valamo Foundation and the Spinus Foundation, which Foundation the accused and her late husband then President Ferdinand Marcos used or utilized as a conduit in the funnelling [sic] or transferring of ill-gotten wealth or monies, by opening and maintaining bank account or accounts with the Schweizeresche Kreditanstalt (SKA), or Credit Swiss Bank, or Bank Hoffman or Swiss Bank Corporation (SBC) or in other banks outside the Philippines, in the Foundation's name for the benefit of the accused and her

late husband then President Ferdinand E. Marcos, and their children, which monies amounting to [USD] 231,366,894.00 as of [December 31,] 1989 under the account Category NES in the account of the said Foundation, having been illegally, unlawfully, irregularly or illegitimately acquired or obtained by the accused and her late husband beyond their lawful income of [USD] 957,487.75 for the years 1965 to 1985 as reflected in their income tax returns, or some of said monies, were then ordered by the accused to be remitted to the Central Bank of the Philippines to be used to purchase or be invested in or caused to be converted to high-interest yielding private issues of Dollar Treasury Notes of the Central Bank, with accused intervening in the investment placements of the Central Bank for the pecuniary benefit of said Foundation, herself and her family, and further, with the accused: using an alias, "Jane Ryan", to open a SKA bank account and conceal her identity; signing a Contract for the Opening of a Current Account and/or Safe Custody Account as a depositor with SKA on [March 21,] 1968, with specific instructions to mail regularly all correspondence and statements pertaining to the said account to P.O. Box 4539, Manila; instructing Mr. Markus Geel the creation of a Foundation in Liechtenstein, approving the By-laws of the foundation and appointing Mr. C.W. Fessler, C. Souviron and E. Scheller as trustees; designating the beneficiaries of the said Foundation on [February 13,] 1970 in Manila; providing the capital of the Foundation amounting to [CHF] 100,000; and issuing a written order to the board of Wintrop to liquidate the Foundation and transfer all its assets to Bank Hoffman, among others, for the benefit of the respondent and her late husband, to the damage and prejudice of the Government service.[9] (Citation omitted)

Criminal Case No. 22870

(For violation of Section 3(h) of [Republic Act] No. 3019, as amended[,] in relation to [Article IX, Section 8] and [Article VIII, Section 11] of the 1973 Constitution)

That on [sic] about the period 1976 to 1986, or sometime prior or subsequent thereto, in Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, IMELDA ROMUALDEZ MARCOS, a high-ranking public officer, being then the Minister of Human Settlements and, as such Cabinet Member, constitutionally prohibited from participating in the management of any business and from intervening in any matter before any office for her pecuniary interest, while in the performance and taking advantage of her official administrative functions, did then and there willfully, unlawfully[,] and criminally have a direct and/or indirect financial or pecuniary interest and participate in the management and administration of the various establishments, which establishments the accused and her late husband then President Ferdinand Marcos used or utilized as conduits in the funnelling [sic] or transferring of ill-gotten wealth or monies, by opening and maintaining bank account or accounts with the Banque Paribas, formerly known as the Banque de Paris et des Pays-Bas, for the benefit of the accused and her late husband then President Ferdinand E. Marcos, and their children, which monies at said bank: [USD] 13,577,321.66 deposited for the account of Pretorien Establishment as of [November 10,] 1978; [USD] 9,201,240.91 deposited for the account of Gladiator Establishment, formerly known as Bullseye, as of [November 10,] 1978; [USD] 3,601,446.01 deposited for the account of Cesar Establishment, formerly known as Gardenia, as of [November 10,] 1978; [USD] 1,811,426.61 deposited for the account of ESG Establishment as of [November 10,] 1978, among other establishments, having been illegally, unlawfully, irregularly or illegitimately acquired or obtained by the accused and her late husband beyond their lawful income of [USD] 957,487.75 for the years 1965 to 1985 as reflected in their income tax returns, or some of said monies, were then ordered by accused to be remitted to the Central Bank of the Philippines to be used to purchase or be invested in or caused to be converted to high-interest yielding private issues of Dollar Treasury Notes of the Central Bank, with accused intervening in the investment placements of the Central Bank for the pecuniary benefit of said Foundation, herself and her family, and further, with the accused; utilizing the Establishments Bullseye, Mabari, Gladiator and Volubilis as fiduciary agents with respect to her and her late husband's accounts; applying to pen account No. 073 043 P with Banque de Paris et des Pays-Bas (Buisse) S.A. in Geneva and filed on [October 3,] 1980 through S. Cattai and Ph. Siegenthaler; and executing a Power of Attorney dated [September 29,] 1980 in favor of her deceased husband, showing that then President Ferdinand E. Marcos could also withdraw or do anything with respect to the accused's secret Swiss accounts, for the benefit of the respondent and her late

husband, to the damage and prejudice of the Government service.[10] (Citation omitted)

As aptly summarized by the Sandiganbayan (SBN), the foregoing cases may be classified into three groups:

- Criminal Case Nos. 17287 (Maler Foundation), 17288 (Trinidad Foundation), 17289 (Rayby Foundation), 17290 (Palmy Foundation), and 17291 (Asian Reliability Corporation, Inc. [ARCI] Loan), which were all filed on December 16, 1991;
- Criminal Case No. 19225 (ARCI) filed on December 21, 1993; and
- Criminal Case Nos. 22867 (Azio-Verzo-Vibur Foundation), 22868 (Rosalys-Aguamina Foundations), 22869 (Avertina-Xandy/Wintrop-Charis/Scolari/Valamo/Spinus Foundations), and 22870 (Pretorien-Gladiator-Cesar-ESG Foundations), which were all filed on August 17, 1995. The prosecution subsequently filed Amended Informations, all dated August 2, 1999, which were admitted on October 8, 2001.[11]

Criminal Case Nos. 17287 to 17291 and Criminal Case No. 19225 were originally raffled to the Third Division of the SBN, and the trials on these cases were consolidated on June 14, 2002. On January 2, 2003, Criminal Case Nos. 22867 to 22870, originally assigned to the Fourth Division of the SBN, were consolidated with Criminal Case Nos. 17287 to 17291 and Criminal Case No. 19225, which were then pending with the Third Division. However, due to the inhibition of Justice Godofredo L. Legaspi, Chairperson of the Third Division, all these consolidated cases were again re-raffled and assigned to the Fourth Division. When Justice Gregory Ong (Justice Ong), Chairperson of the Fourth Division, recused himself from participating in these cases following the directive of the Supreme Court (SC), these consolidated cases altogether ended up with the Fifth Division.

Antecedents

I. Proceedings Prior to Consolidation of All Cases

A. Criminal Case Nos. 17287 to 17291

On December 23, 1991, or six days after the filing of the Informations, Imelda personally surrendered before the court and posted bail to secure her temporary liberty during the pendency of these cases. Her arraignment was set on January 7, 1992.[12]

On January 5, 1992, Imelda filed a Motion to Quash, alleging that: (1) the criminal actions in Criminal Case Nos. 17287 to 17289 have prescribed; (2) the offense allegedly committed in Criminal Case Nos. 17287 to 17290 took place in Switzerland; thus, the court lacks jurisdiction under the territoriality principle; and (3) the Information in Criminal Case No. 17290 does not charge an offense.[13]

Notwithstanding the filing of the Motion to Quash, the arraignment proceeded as scheduled, whereby Imelda pleaded "not guilty" to the charges. The Pre-Trial Conference was set from March 9, 1992 to March 11, 1992.[14]

On March 1, 1992, Imelda filed a Waiver of Pre-Trial and Appearance, which the SBN noted in an April 1, 1992 Minute Resolution.[15] On March 9, 1992, the prosecution filed a Motion for Consolidation of these cases with the forfeiture case against Imelda titled, "Republic of the Philippines v. Ferdinand E. Marcos and Imelda R. Marcos," docketed as Civil Case No. 0141 pending before the First Division. Consequently, the Pre-Trial Conference set on said date was deferred. In an April 20, 1992 Resolution, the prosecution's move for consolidation was eventually denied. Its Motion for Reconsideration was likewise denied in a June 22, 1992 Resolution.[16]

During a hearing on July 5, 1993, Imelda raised an alleged defect in the Informations. Thus, she was given a

period of 10 days to file a Motion to Quash.[17]

On July 12, 1993, the prosecution filed an Omnibus Motion to: (a) withdraw waiver of pre-trial; (b) set the case for pre-trial; (c) set aside the Order allowing Imelda to submit Motion to Quash, which was granted in the July 15, 1993 Order, setting the cases for Pre-Trial Conference on August 19, 1993. However, due to the voluminous documents to be marked by the prosecution and Imelda's manifestation to file a motion for production of documents and photocopy documents of the prosecution, the Pre-Trial Conference was set to continue on August 30, 1993.[18]

Imelda then filed a Motion for Production, Inspection, and Photocopying of Documents on August 25, 1993. It was set for hearing on August 27, 1993, where the prosecution committed that it would make the proper manifestation during the scheduled continuation of Pre-Trial Conference on its readiness to produce the subject documents. However, as jointly moved by the parties, the proceeding on said date did not push through and was reset to September 23, 1993. On the latter date, the SBN granted Imelda access to the documents or exhibits of the prosecution during office hours for the purpose of examining and photocopying the same. Imelda also manifested her intent to file a motion to quash. However, due to the voluminous records of the cases, Imelda filed an Urgent Motion praying that the 30-day period given to her within which to file a motion to quash be held in abeyance until after the exhibits have been marked, which was granted in an October 8, 1993 Minute Resolution.[19]

On January 12, 1994, Imelda filed five Motions to Quash, to which the prosecution filed a Consolidated Memorandum in Opposition to the Motion to Quash. On October 16, 1995, Imelda filed a Motion for Leave to File Supplemental Motion to Quash, attaching her Supplemental Motion to Quash. In an August 9, 1996 Resolution, both the Motion to Quash and the Supplemental Motion to Quash were denied. Imelda moved for reconsideration, but it was denied for lack of merit. This prompted Imelda to file a Petition for Certiorari, docketed as G.R. No. 137687-91, elevating the matter for the resolution of the SC. However, in a December 12, 2001 Resolution, the SC dismissed Imelda's Petition, and this became final on January 3, 2002.[20]

Meanwhile, the Pre-Trial Conference continued on March 15, 1999, where the parties agreed to submit a joint stipulation of facts upon which the pre-trial order shall be based. However, the parties failed to submit a joint stipulation of facts despite the lapse of the given time. Thus, in a June 21, 1999 Minute Resolution, the Pre-Trial Conference was terminated. The cases then proceeded to trial, and the prosecution presented its witnesses.[21]

On September 4, 2002, the prosecution filed a Motion for Consolidation of Criminal Case Nos. 22867 to 22870 (then with the Fourth Division) with Criminal Case Nos. 17287 to 17291 and Criminal Case No. 19225 (originally raffled to the Third Division). Said Motion was denied by the Third Division in a September 19, 2002 Resolution, but the same was reconsidered on January 2, 2003. Hence, the cases were consolidated at the Third Division.[22]

B. Criminal Case No. 19225

While this case was filed as early as December 21, 1993, Imelda was not immediately arraigned. Arraignment was held in abeyance pending reinvestigation by the Office of the Ombudsman. On March 5, 1999, the prosecution was ordered to show cause within 10 days why the case should not be dismissed for failure to prosecute. The prosecution then filed its Compliance on April 27, 1999, explaining that the reinvestigation was already completed, and the Memorandum was submitted for approval of the Ombudsman.[23]

On August 6, 1999, the prosecution filed a Motion to Withdraw Information in Criminal Case No. 19225 on the ground that it is identical to Criminal Case No. 17291. However, this was denied in a June 14, 2002 Resolution of the Third Division, directing its consolidation with Criminal Case No. 17291 and further setting the Pre-Trial Conference in Criminal Case No. 19225 on July 16, 2002.[24]

During the said conference, the parties were enjoined to come up with a joint stipulation of facts within 30 days. The Pre-Trial Conference was reset to September 10, 2002. On September 9, 2002, Imelda filed a Manifestation and Motion with the prosecution's conformity waiving the submission of a joint stipulation of facts, thus terminating the Pre-Trial Conference. Trial then ensued in Criminal Case No. 19225 to coincide with the hearing in Criminal Case Nos. 17287 to 17291.[25]

C. Criminal Case Nos. 22867 to 22870

These cases were filed on August 17, 1995, but four years later, the prosecution filed separate Amended Informations, all dated August 2, 1999, which were admitted on October 8, 2001. Imelda then posted bond on October 16, 2001 to secure her temporary liberty. On August 14, 2002, she was arraigned and pleaded "not guilty" to all the charges. On even date, the Pre-Trial Conference ensued and was terminated. The parties failed to come up with any stipulation. From then on, the cases were consolidated with Criminal Case Nos. 17287 to 17291 and Criminal Case No. 19225 at the Third Division.[26]

II. Proceedings Subsequent to Consolidation of All Cases

As mentioned, after the Chairperson of the Third Division inhibited, the consolidated cases were transferred to the Fourth Division. The proceedings were stayed upon a June 21, 2004 Order of the Fourth Division, while awaiting the resolution of the prosecution's Petition for Certiorari before the SC assailing the denial by Justice Ong, Chairperson of the Fourth Division, of its Motion for Inhibition. On May 5, 2006, the SC directed Justice Ong to recuse himself from participating in the consolidated cases. Upon re-raffle, the consolidated cases ended up with the Fifth Division, and trial was ordered to resume on August 4, 2006.[27]

At this point, Imelda was not yet arraigned in Criminal Case No. 19225. Hence, on September 14, 2006, she was arraigned, and she pleaded "not guilty" to the charged offense. On September 25, 2006, Imelda filed a Waiver of Appearance, which the SBN approved on October 16, 2006. Both parties later moved for several postponements. Thus, the trial only resumed on December 6, 2006. The prosecution continued its presentation of witnesses from 2007 to 2015. On December 3, 2015, the prosecution filed its Consolidated Formal Offer of Documentary Evidence, which the SBN resolved to admit, there being no opposition from Imelda.[28]

Meanwhile, the defense did not present any witness. On March 8, 2017, Imelda filed her Formal Offer of Evidence consisting of Exhibits "1" to "3," which the SBN admitted over the objection of the prosecution. The prosecution and defense filed their Memoranda on August 29, 2017 and September 19, 2017, respectively, and the consolidated cases were deemed submitted for resolution.[29]

Evidence for the Prosecution

The prosecution presented the following witnesses:

(1) Ms. Lourdes Magno (Magno), Records Officer III of the Presidential Commission on Good Government (PCGG)

Magno testified that she had in her custody at the PCGG the authenticated documents sent by the Swiss authorities representing the Swiss assets and bank accounts of Imelda and former President Ferdinand Marcos (President Marcos; collectively, Marcoses), which were marked by the prosecution as Exhibits "D" to "K" and series. Magno likewise identified her signatures in the certifications of the photocopies of said documents.[30]

(2) Mr. Nestor J. Ballasillo (Ballasillo), Assistant Solicitor General of the Office of the Solicitor General (OSG)

Ballasillo declared that he was a member of Task Force Humongous, created by then Solicitor General Francisco I. Chavez (Atty. Chavez), which was tasked to work closely with the PCGG to study the documents sent to the

Philippine government by Peter Cosandey (Cosandey), Chief Magistrate of Canton, Zurich, Switzerland. He explained that aside from the Swiss documents, Task Force Humongous was also provided with documents recovered from Malacañang, Central Bank, and other sources.[31]

(3) Atty. Chavez, former Solicitor General from March 16, 1987 to February 6, 1992

Atty. Chavez testified that he organized and led Task Force Humongous to gather documents and information that were necessary in the filing of criminal and civil cases against the Marcoses. In the process, he received from Ambassador Luis Ascalon (Ambassador Ascalon) voluminous Swiss documents attached as annexes to the Certificate of Authentication executed by Ma. Fe Pangilinan-Klingert (Consul General Klingert), Philippine Consul to Switzerland. These documents were transmitted to Ambassador Ascalon via diplomatic pouch. He also stated that he conferred on numerous occasions with Cosandey, who was designated by the Swiss Federal Supreme Court to act as the sole Investigating Magistrate for the discovery, freezing, and recovery of the assets of the Marcoses in Switzerland.[32]

Allegedly, the documents furnished to Task Force Humongous reveal that the Trinidad, Rayby, Palmy, Maler, Avertina, Xandy, Wintrop, Charis, Vibur-Avertina, Azio-Verso-Vibur, Scolari, Valamo, Spinus, and Aguamina Foundations had been established by the Marcoses in Switzerland, with a common design to administer, manage, promote, and participate in the operations thereof.[33] As regards the local company ARCI, Atty. Chavez claimed that while this was not registered in the name of the Marcoses, the PCGG documents show that they were the beneficial owners.[34]

(4) Ambassador Ascalon, former Chargé d'affairs and later Ambassador to Switzerland from March 16, 1987 to April 21, 1992

Ambassador Ascalon testified that he acted as the conduit between the Philippine authorities and Swiss government. He participated in the process of transmitting some documents pertaining to the alleged Swiss accounts of the Marcoses.[35]

(5) Mr. Jaime Laya (Laya), former Governor of the Central Bank of the Philippines (Central Bank)

According to Laya, during his incumbency as the Governor of the Central Bank, the country was experiencing an acute dollar crisis. This prompted him to seek the assistance of the Marcoses. After receiving former President Marcos' advice, the Central Bank received USD 200 million from two Swiss Banks, with no indication of who the principals were.[36]

(6) Mr. Cesar Virata (Virata), former Chairperson and member of the Board of Directors of the Philippine Export and Foreign Loan Guarantee Corporation (Philguarantee) from January 31, 1977 to February 26, 1986; former Minister of Finance from February 1970 to February 1986; and former Prime Minister of the Philippines from July 1981 to March 1986

According to Virata, ARCI's foreign loan in 1981 was USD 25 million, approved for the purpose of financing its capital requirements for five electronic projects. However, these projects did not materialize because the funds were used for other purposes, with the alleged involvement of former President Marcos.[37]

(7) Mr. Victor Macalinag (Macalinag), Officer-in-Charge from January 11, 1985 to February 28, 1991 and Presidential/Chief Executive Officer and Board Member from March 1, 1991 to August 31, 2001 of Philguarantee and its successor, Trade and Investment Development Corporation of the Philippines (TIDCORP)

Macalinag corroborated Virata's statements.[38]

(8) Guillermo Soliven (Soliven), former Special Assistant to the Governor of the Central Bank

Soliven's testimony was dispensed with after Imelda's counsel agreed to stipulate on the documents on January 22, 2015.[39]

Evidence for the Defense

On July 14, 2016, the parties stipulated on the authenticity and existence of the Transcript of Stenographic Notes of the cross-examination of Assistant Solicitor General Cesar del Rosario in Criminal Case Nos. 91-101732-39, 91-101879-92, and 91-101959-69 entitled "People of the Philippines v. Imelda R. Marcos et al." before Branch 26 of the Regional Trial Court of Manila. These were marked as Exhibits "1" to "3." [40]

Ruling of the SBN

A. Criminal Case Nos. 17287 to 17291

The SBN ruled that Imelda is guilty in Criminal Case Nos. 17287 to 17290. It found that the prosecution adequately established all the elements of Section 3(h) of Republic Act No. 3019, in relation to Article IX, Section 8 of the 1973 Constitution. It explained that it is undisputed that Imelda held the alleged government positions. Pertinently, the SBN noted that the documents and testimonies presented by the prosecution showed that she has a direct or indirect financial interest in the foundations and has participated in the management of the same. Further, it observed that the evidence points to her role in organizing, coordinating, and directing the affairs of the foundations through their agents, attorneys, and administrators/managers. In coming up with this conclusion, the SBN deemed it proper to relax technical rules in view of the public interest involved in these cases.[41]

As regards Criminal Case No. 17291, in relation to the ARCI Loan, Imelda was acquitted due to insufficiency of evidence. The SBN found that proof of management and control points to former President Marcos, instead of Imelda.[42]

B. Criminal Case No. 19225

Imelda was acquitted in Criminal Case No. 19225. The SBN held that the specific provision of the 1973 Constitution or law allegedly violated in relation to Republic Act No. 3019 was not stated in the Information.[43]

C. Criminal Case Nos. 22867 to 22870

With respect to Criminal Case Nos. 22867 to 22869, the SBN found Imelda guilty. In finding that Imelda had prohibited pecuniary interest in Criminal Case Nos. 22867 and 22869, the SBN considered the letters of the Marcoses to Credit Suisse and Mr. Markus Geel (Geel), as well as the declaration of Dr. Ivo Beck that the beneficiaries of the Avertina accounts were the Marcoses. Meanwhile, for Criminal Case No. 22868, the SBN considered circumstantial evidence.

Meanwhile, as to Criminal Case No. 22870, Imelda was acquitted for insufficiency of evidence. The SBN ruled that the prosecution failed to prove Imelda's participation in the management of the foundations. Specifically, it observed that the evidence lacked material details showing a link to Imelda.[44]

Thus, the dispositive portion of the assailed November 9, 2018 Decision reads as follows:

WHEREFORE, judgment is hereby rendered finding the accused, Imelda R. Marcos:

(a)

GUILTY beyond reasonable doubt for violation of [Republic Act] No. 3019, Section 3(h) in relation to Article IX, Section 8 of the 1973 Constitution in Criminal [Case] Nos. 17287, 17288, 17289, 172890 [sic], 22867,

22868, and 22869 whereby she is sentenced, in each of these cases, to suffer the indeterminate penalty of imprisonment from [six] years and [one] month as minimum to [11] years as maximum, with perpetual disqualification to hold public office. As regards the civil aspect consisting of forfeiture of the assets and accounts of the foundations subject of these cases, the Court defers to the disposition thereof in the forfeiture proceedings separately instituted against the accused;

(b)

ACQUITTED in Criminal Case No. 19225, for failure of the Information therein to charge an offense; [and]

(c)

ACQUITTED in Criminal [Case] Nos. 17291 and 22870, for insufficiency of evidence.

SO ORDERED.[45] (Emphasis in the original)

Hence, this appeal.

Issues

The Court emphasizes that these cases do not deal with the character of the assets in the subject foundations. We do not determine whether they may be considered ill-gotten wealth as defined under Executive Order Nos. 1[46] and 2,[47] the PCGG Rules and Regulations, and jurisprudence. That issue is the subject of separate forfeiture proceedings instituted by the Republic.[48] The only issue in these cases is whether accused-appellant is guilty of holding a financial or pecuniary interest in any business, contract, or transaction, which interest is prohibited under the 1973 Constitution.

Based on the parties' submissions, the pertinent sub-issues are:

- Whether accused-appellant availed of the wrong mode of appeal;
- Whether accused-appellant's rights to a speedy trial and speedy disposition of cases were violated;
- Whether accused-appellant was charged with and convicted of violating a non-existing law; and
- Whether the prosecution duly established accused-appellant's guilt for the offenses charged.

Ruling of the Court

Accused-appellant availed of the correct mode of appeal

Contrary to the People's contention, accused-appellant availed of the correct mode of appeal. The proper remedy to assail her conviction is through a notice of appeal, and not a petition for review on certiorari as posited by the People.

The 2018 Revised Internal Rules of the SBN (2018 SBN Rules) provides as follows:

RULE XI REVIEW OF JUDGMENTS AND FINAL ORDERS

SECTION 1. Methods of Review. —

(a) In General. — The appeal to the Supreme Court in criminal cases decided by the Sandiganbayan in the exercise of its original jurisdiction shall be by notice of appeal filed with the Sandiganbayan and by serving a

copy thereof upon the adverse party.

The appeal to the Supreme Court in criminal cases decided by the Sandiganbayan in the exercise of its appellate jurisdiction, and in civil cases shall be by petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure.

In *People v. Talaue*,^[49] the Court emphasized that the 2018 SBN Rules were issued pursuant to the Court's exclusive power under Article VIII, Section 5(5) of the 1987 Constitution to promulgate rules concerning pleading, practice, and procedure in all courts. The Court distinguished the modes of review for SBN judgments and final orders, thus:

In promulgating said Rules, this Court merely distinguished between the modes of review of the judgments and final orders of the Sandiganbayan in the exercise of its original jurisdiction and in the exercise of its appellate jurisdiction. In the former, the facts are tried by the Sandiganbayan in the first instance and the accused is entitled to appeal the factual findings of said court via notice of appeal. In the latter, the facts had already been tried by the lower courts. Therefore, the factual findings of the Sandiganbayan in the exercise of its appellate jurisdiction, just like those of the Court of Appeals when it affirms the factual findings of the lower courts, are given great weight and are generally conclusive upon this Court. That being the case, only questions of law may be raised in appeals to this Court in criminal cases decided by the Sandiganbayan in the exercise of its appellate jurisdiction, and in civil cases, via petition for review on certiorari under Rule 45 of the Rules of Court.^[50]

The Court further clarified that the Rules of Court can only apply in a suppletory manner and cannot supplant the procedure in the 2018 SBN Rules since the latter specifically provides for the modes of review of judgments and final orders of the SBN.^[51] Similarly, the procedure provided in Presidential Decree No. 1606^[52] and its amendatory laws cannot prevail over the 2018 SBN Rules, as the Constitution vested upon the Court the exclusive power to promulgate rules concerning pleading, practice, and procedure in all courts.

The 2018 SBN Rules took effect on November 16, 2018.^[53] Accused-appellant filed her Notice of Appeal on December 3, 2018,^[54] or during the effectivity of the 2018 SBN Rules. As the cases were decided by the SBN in the exercise of its original jurisdiction, the accused-appellant correctly filed a Notice of Appeal.

There was no violation of accused-appellant's rights to a speedy trial and speedy disposition of cases

The Constitution guarantees the right to a speedy trial. Under Article III, Section 14(2):

Section 14.

....

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable. (Emphasis supplied)

This must not be confused with the right of an accused to a speedy disposition of cases under Article III, Section 16:

Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies. The right to a speedy trial is invoked against courts in a criminal prosecution.

The right to speedy disposition of cases, however, is invoked even against quasi-judicial or administrative bodies in civil, criminal, or administrative cases before them. Jurisprudence clarifies the guidelines in determining whether the rights to a speedy trial and speedy disposition of cases have been violated. In *Cagang v. Sandiganbayan*,^[55] We discussed that the determination of the length of delay is never mechanical. Courts must consider the entire context of the case, from the amount of evidence to be weighed to the simplicity or complexity of the issues raised. Further, an alleged violation of said right must be timely raised. The respondent or the accused must file the appropriate motion upon the lapse of the statutory or procedural periods. Otherwise, they are deemed to have waived their right to speedy disposition of cases.^[56]

Here, particularly with respect to Criminal Case Nos. 17287 to 17291, while the pertinent Informations were filed on December 16, 1991, the accused-appellant filed several Motions to Quash, as well as a Motion for Production, Inspection, and Photocopying of Documents. The Decision on the denial of the Motions to Quash only became final on January 3, 2002. To repeat, Criminal Case Nos. 17287 to 17291, Criminal Case No. 19225, and Criminal Case Nos. 22867 to 22870 were consolidated on January 2, 2003 in the Third Division. From then on, due to the inhibition of Justice Legaspi, Chairperson of the Third Division, all these consolidated cases were re-raffled and assigned to the Fourth Division. On May 5, 2006, the SC directed Justice Ong, Chairperson of the Fourth Division, to recuse himself from participating in the consolidated cases. Upon re-affle, the consolidated cases ended up with the Fifth Division, and trial was ordered to resume on August 4, 2006. Under SC Circular No. 38-98, We exclude delays resulting from orders of inhibition in the running of the periods.

Further, there are other factors that must also be considered, such as the volume of evidence presented by the prosecution that must be weighed, and the numerous postponements initiated by accused-appellant. More importantly, accused-appellant did not file the appropriate motion upon the lapse of the statutory or procedural period but raised the supposed inordinate delay only after the SBN's adverse Decision. Thus, even assuming that there has been any delay, following *Cagang v. Sandiganbayan* and the more recent case of *Alarilla v. Sandiganbayan* (Fourth Division),^[57] accused-appellant is deemed to have already waived her rights to speedy trial and speedy disposition.

The legal basis of the charges against accused-appellant is still in effect

Going to the charges filed against accused-appellant, the Informations accused her of violating Section 3(h) of Republic Act No. 3019, which reads as follows:

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

....

(h) Directly or indirectly having financial or pecuniary interest in any business, contract[,] or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.

In *Teves v. Sandiganbayan*,^[58] the Court laid down the elements of the offense and clarified the two modes by which a public officer may violate Section 3(h) of Republic Act No. 3019:

The essential elements set out in the afore-quoted legislative definition of the crime of violation of Section 3(h) of the Anti-Graft Law are as follows:

- The accused is a public officer;
- [They have] a direct or indirect financial or pecuniary interest in any business, contract, or transaction; [and]

- [They] either[:]
- [intervene] or [take] part in [their] official capacity in connection with such interest; or
- [are] prohibited from having such interest by the Constitution or by any law.

There are, therefore, two modes by which a public officer who has a direct or indirect financial or pecuniary interest in any business, contract, or transaction may violate Section 3(h) of the Anti-Graft Law. The first mode is if in connection with [their] pecuniary interest in any business, contract[,] or transaction, the public officer intervenes or takes part in [their] official capacity. The second mode is when [they are] prohibited from having such interest by the Constitution or any law.[59]

The first mode of committing the offense, or unlawful intervention, has the following elements:

- The accused is a public officer;
- [They have] a direct or indirect financial or pecuniary interest in any business, contract, or transaction, whether or not prohibited by law; and
- [They intervene] or [take] part in [their] official capacity in connection with such interest.[60]

Meanwhile, the second mode of committing the offense, or possession of prohibited interest, has the following elements:

- The accused is a public officer;
- [They have] a direct or indirect financial or pecuniary interest in any business, contract, or transaction; and
- [They are] prohibited from having such interest by the Constitution or any law.[61]

Jurisprudence has clarified that the first mode contemplates actual intervention in the business, contract, or transaction in which the public officer has a financial or pecuniary interest.[62] This is in keeping with the *raison d'être* of the law, i.e., to prevent the dominant use of influence, authority, and power.[63] In contrast, the second mode requires possession of a financial or pecuniary interest that is prohibited by the Constitution or by law.[64] As such, a constitutional or legal prohibition is a key element of the second mode.

In this case, accused-appellant's conviction is based on the second mode of violating Section 3(h) of Republic Act No. 3019. The cited constitutional prohibition is in Article IX, Section 8 of the 1973 Constitution, which reads as follows:

SECTION 8. The Prime Minister and the Members of the Cabinet shall be subject to the provisions of Sections [10] and [11] of Article [VIII] hereof and may not appear as counsel before any court or administrative body, or participate in the management of any business, or practice any profession. (Emphasis supplied)

Pursuant to Proclamation No. 2332 (1984), such provision was eventually renumbered and amended to read as follows:

SECTION 7. The Prime Minister and the Members of the Cabinet shall be subject to the provisions of Section 11, Article VIII hereof and may not appear as counsel before any court or administrative body, or take part in the management of any business, or practice any profession, and shall also be subject to such other disqualifications as may be provided by law. (Emphasis supplied)

According to the SBN, accused-appellant participated in the management of the subject foundations—a financial or pecuniary interest prohibited under Article IX, Section 7 (then Section 8) of the 1973 Constitution.[65] Thus, she was found guilty of violating Section 3(h) of Republic Act No. 3019 in seven criminal cases.

On this score, accused-appellant argues that she was convicted of violating a non-existing law.[66] She claims that the March 25, 1986 Proclamation No. 3, otherwise known as the Freedom Constitution, excluded Article IX of the 1973 Constitution, which is the basis of the charges against her.[67] The repeal of the 1973 Constitution supposedly deprived the SBN of its jurisdiction to punish persons who may have violated the 1973 Constitution.[68] Such contentions are unmeritorious.

As a rule, an absolute repeal of a penal law deprives courts of jurisdiction to punish persons charged with violating said law. An exception to such rule is when a new law reenacts the act penalized under the repealed law. Such reenactment has the effect of continuing the law in force without any interruption. In *Benedicto v. Court of Appeals*,[69] the Court laid down the rules on repeal, which read as follows:

As a rule, an absolute repeal of a penal law has the effect of depriving a court of its authority to punish a person charged with violation of the old law prior to its repeal. This is because an unqualified repeal of a penal law constitutes a legislative act of rendering legal what had been previously declared as illegal, such that the offense no longer exists and it is as if the person who committed it never did so. There are, however, exceptions to the rule. One is the inclusion of a saving clause in the repealing statute that provides that the repeal shall have no effect on pending actions. Another exception is where the repealing act reenacts the former statute and punishes the act previously penalized under the old law. In such instance, the act committed before the reenactment continues to be an offense in the statute books and pending cases are not affected, regardless of whether the new penalty to be imposed is more favorable to the accused.

. . . .

Where a clause or provision or a statute for that matter is simultaneously repealed and reenacted, there is no effect, upon the rights and liabilities which have accrued under the original statute, since the reenactment, in effect "neutralizes" the repeal and continues the law in force without interruption. The rule applies to penal laws and statutes with penal provisions. Thus, the repeal of a penal law or provision, under which a person is charged with violation thereof and its simultaneous reenactment penalizing the same act done by [them] under the old law, will neither preclude the accused's prosecution nor deprive the court of its jurisdiction to hear and try [their] case.[70]

Here, Article II, Section 6 of the Freedom Constitution expressly retained the prohibitions applicable to cabinet members:

SECTION 6. The President, the Vice-President, and the Members of the Cabinet shall be subject to the disabilities provided for in Section 8, Article VII, and in Sections 6 and 7, Article IX, respectively, of the 1973 Constitution, as amended. (Emphasis supplied)

The prohibitions were again reenacted in Article VII, Section 13 of the 1987 Constitution:

SECTION 13. The President, Vice-President, the Members of the Cabinet, and their deputies or assistants shall not, unless otherwise provided in this Constitution, hold any other office or employment during their tenure. They shall not, during said tenure, directly or indirectly, practice any other profession, participate in any business, or be financially interested in any contract with, or in any franchise, or special privilege granted by the Government or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries. They shall strictly avoid conflict of interest in the conduct of their office.

The spouse and relatives by consanguinity or affinity within the fourth civil degree of the President shall not during his tenure be appointed as members of the Constitutional Commissions, or the Office of the Ombudsman, or as Secretaries, Undersecretaries, chairmen or heads of bureaus or offices, including government-owned or controlled corporations and their subsidiaries. (Emphasis supplied)

Thus, the constitutional prohibition allegedly violated by accused-appellant was continuously reenacted up to the present Constitution. Such reenactments neutralized the repeal of the 1973 Constitution and had the effect of maintaining the prohibition without any interruption. Accordingly, the charges against accused-appellant were not affected by the repeal of the 1973 Constitution.

A charge for a violation of Section 3(h) of Republic Act No. 3019 under the second mode must accurately specify the position held by the accused, as it constitutes the first and third elements of the offense; accused-appellant cannot be convicted of an offense not charged in the Information

Before delving into the evidence presented by the prosecution, We first take note of the disparity between the basis of accused-appellant's conviction and the allegations in the Informations in Criminal Case Nos. 17287, 17288, 17289, and 17290.

Specifically, accused-appellant was convicted of violating the constitutional prohibition applicable to cabinet members. However, the Informations in Criminal Case Nos. 17287, 17288, 17289, and 17290 charged accused-appellant in her capacity as a member of the Interim Batasang Pambansa. The Informations state that accused-appellant committed the offense as "a member of the Interim Batasang Pambansa, while in the performance of her official functions, taking advantage of her position, and committing the offense in relation to her office[.]"[71]

Of the charges where accused-appellant was adjudged guilty, only the Informations in Criminal Case Nos. 22867, 22868, and 22869 charged her in relation to her actions as a cabinet member, thus:

Criminal
Case No.

Dates

Position/s Held

Constitutional Provision/s Cited

Violation/s Imputed

17287

October 19, 1968 to June 6, 1991

Member of the Interim Batasang Pambansa

Article IX, Section 8 of the 1973 Constitution

"have direct and indirect financial or pecuniary interest in and participated in the management of Maler Establishment"

17288

August 26, 1970 to August 3, 1981

Member of the Interim Batasang Pambansa

Article IX, Section 8 of the 1973 Constitution

"have a direct and indirect financial or pecuniary interest in, and participated in the management of the Trinidad Foundation"

17289

June 22, 1971 to August 6, 1981

Member of the Interim Batasang Pambansa

Article IX, Section 8 of the 1973 Constitution

"have a direct and indirect financial or pecuniary interest in, and participated in the management of the Rayby Foundation"

17290

May 13, 1981 and for sometime thereafter

Member of the Interim Batasang Pambansa

Article IX, Section 8 of the 1973 Constitution

"have a direct and indirect financial or pecuniary interest in and participated in the management of the Palmy Foundation"

22867

June 11, 1971 to 1991

Minister of Human Settlements (Cabinet Member)

Article IX, Section 8 and Article VIII, Section 11 of the 1973 Constitution

"have a direct and/or indirect financial or pecuniary interest and participate in the management and administration of the Vibur Foundation"

22868

1971 to August 1991

Minister of Human Settlements (Cabinet Member)

Article IX, Section 8 and Article VIII, Section 11 of the 1973 Constitution

"have a direct and/or indirect financial or pecuniary interest and participate in the management and administration of the Aguamina Foundation"

22869

March 1968 to 1986

Minister of Human Settlements (Cabinet Member)

Article IX, Section 8 and Article VIII, Section 11 of the 1973 Constitution

"have a direct and/or indirect financial or pecuniary interest and participate in the management and administration of the Avertina Foundation"

Notably, under the 1973 Constitution, cabinet members are prohibited from participating in the management of any business. No similar prohibition is imposed on the members of the Interim Batasang Pambansa. Article VIII, Section 11 of the 1973 Constitution, as amended, merely prohibits specific financial interests and employment to

intervene in certain causes or matters, thus:

SECTION 11. No Member of the Batasang Pambansa shall appear as counsel before any court without appellate jurisdiction, before any court in any civil case wherein the Government, or any subdivision, agency, or instrumentality thereof is the adverse party, or in any criminal case wherein any officer or employee of the Government is accused of an offense committed in relation to his office, or before any administrative body. Neither shall he, directly or indirectly, be interested financially in any contract with, or in any franchise or special privilege granted by the Government, or any subdivision, agency or instrumentality thereof, including any government-owned and controlled corporation, during his term of office. He shall not accept employment to intervene in any cause or matter where he may be called upon to act on account of his office.

It is settled that the prosecution must establish its case on the basis of the Information read to the accused during arraignment, and the accused may only be convicted of the crime charged and proved.[72] This is pursuant to the right of the accused to be informed of the nature and cause of the accusation against them.[73]

As accused-appellant was charged in her capacity as a member of the Interim Batasang Pambansa and for violating the constitutional proscriptions applicable to such position, she cannot be convicted of violating the constitutional prohibition applicable to cabinet members. To hold otherwise would be to violate her right to be informed of the nature and cause of the accusation against her.

While the Informations in Criminal Case Nos. 17287, 17288, 17289, and 17290 cite Article IX, Section 8 of the 1973 Constitution in its caption, this designation is not controlling. The real nature of the criminal charge is determined not by the caption of the Information or the citation of the law allegedly violated, which are mere conclusions of law, but by the actual recital of facts in that Information.[74] As the Informations categorically state that the offense was committed by accused-appellant in relation to her position as a member of the Interim Batasang Pambansa, such factual allegation prevails over the cited constitutional provision.

The allegation in the Information of a public officer's specific position is not always consequential. For some crimes or offenses, the specific position held may not have a bearing on the prosecution. However, for offenses involving the second mode of violating Section 3(h) of Republic Act No. 3019, precision in the allegation of the public officer's position is required. This is because the applicable constitutional or legal prohibition varies depending on the position held by the accused. Such prohibition, in turn, constitutes the third element of the offense.

As earlier illustrated, the prohibitions applicable to cabinet members, as stated in Article IX, Section 7 (then Section 8) of the 1973 Constitution, are different from those applicable to members of the Interim Batasang Pambansa, as enumerated in Article VIII, Section 11 of the 1973 Constitution. Parsing out the elements of Section 3(h) of Republic Act No. 3019 under the second mode in relation to the constitutional prohibition applicable to cabinet members, the relevant offense is committed when the following elements concur:

1.

The accused is a public officer;

2.

[They have] a direct or indirect financial or pecuniary interest in any business, contract, or transaction; and

3.

[They are] prohibited from having such interest under Article IX, Section 7 (then Section 8) of the 1973 Constitution:

a.

[They are] a member of the cabinet;

b.

[They] participated or took part in the management of any business; and

c.

[They] held the prohibited interest during [their] term of office.[75]

The specifics of the third element change when the accused is charged as a member of the Interim Batasang Pambansa. The elements of the relevant offense are:

1.

The accused is a public officer;

2.

[They have] a direct or indirect financial or pecuniary interest in any business, contract, or transaction; and

3.

[They are] prohibited from having such interest under Article VIII, Section 11 of the 1973 Constitution:

a.

[They are] a member of the Batasang Pambansa;

b.

[They are] directly or indirectly interested financially in any contract with, or in any franchise or special privilege granted by the Government, or any subdivision, agency or instrumentality thereof, including any government-owned or controlled corporation, or [have] accept[ed] employment to intervene in any cause or matter where [they] may be called to act on account of [their] office; and

c.

[They] held the prohibited interest during [their] term of office.[76]

Clearly, the elements of the offense vary depending on the capacity in which accused-appellant was charged. The specific position held by accused-appellant not only constitutes the first element of the offense but, more importantly, the third element dealing with the applicable legal or constitutional prohibition. As such, if the Informations were to be considered as indictments for accused-appellant's purported violation of the prohibition applicable to cabinet members, the Informations would be clearly deficient as they failed to allege the first and third elements of the offense. As held in *People v. Dimaano*:^[77]

The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged and enable the Court to pronounce proper judgment. No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged. Every element of the offense must be stated in the information. What facts and circumstances are necessary to be included therein must be determined by reference to the definitions and essentials of the specified crimes. The requirement of alleging the elements of a crime in the information is to inform the accused of the nature of the accusation against [them] so as to enable [them] to suitably prepare [their] defense. The presumption is that the accused has no independent knowledge of the facts that constitute the offense.^[78] (Emphasis supplied)

Further, the defenses available to an accused differ depending on the position alleged in the Information. The prohibitions applicable to *Batasang Pambansa* members are more specific, such that an accused-appellant needs only to prove the absence of financial interest in any government contract, franchise, special privilege, or non-intervention in any government matter. Meanwhile, the prohibitions applicable to cabinet members are broader and would necessarily entail a different set of defenses.

The situation in the case at bar is similar to that in *Go v. People*.^[79] In said case, petitioner Encarnacion Go (Encarnacion) was charged with a violation of Section 92 of Republic Act No. 8550, or "The Philippine Fisheries Code of 1998." The Information alleged that Encarnacion was on board the subject fishing vessel when it engaged in muro-ami fishing. Subsequently, however, it was established that Encarnacion was not on board the fishing vessel.^[80] Nonetheless, the trial court convicted Encarnacion, for being a treasurer and director of the company that owned the fishing vessel. The trial court held that, as a corporate officer and director, Encarnacion was aware of the company's business activities and had the opportunity to prevent a violation of Republic Act No. 8550, but she failed to do so.^[81]

In reversing Encarnacion's conviction, the Court held that she cannot be convicted in a capacity different from that in which she was charged, as such would violate her constitutional rights, thus:

There is no mistaking that the foregoing excerpt from the Information charges petitioner with taking a direct part in the commission of muro-ami fishing by allegedly being on board the vessel. She was not indicted as an officer or a director of ASB nor as the owner of the said vessel.

As the Information had charge[d] her with active participation in the offense, allegedly having been on board the vessel at the time of its commission, her defense should naturally revolve around her actual and physical role in the commission thereof. During trial, she was able to establish that she did not have a direct hand in the commission of the offense. Contrary to the allegation in the Information, petitioner was not even on board the vessel when the offense was committed.

This should thus suffice to acquit her of the charges.

In convicting petitioner, the trial court relied on the ruling of this Court in the *Tan Boon Kong* and *Sia* cases. However, We cannot draw a parallel between those two cases and the instant petition for the simple reason that the information in the cases cited by the trial court both indicted the accused in their capacity as officers of the corporations charged with some wrongdoing.

That is not the case with petitioner. Nowhere in the Information was she charged as treasurer, director, operator, or owner of F/V Prince Arnold, and thus she could not be convicted in such capacity. To do otherwise would be the same as disregarding her constitutional rights as an accused in a criminal prosecution.

....

Needless to say, the fact that the information and the attachments thereto have indicated the various capacities by which petitioner could be charged with did not in any way help the cause of the prosecution, as it even highlighted the defect in the charge made against petitioner vis-à-vis her aforesaid constitutional right.[82] (Citations omitted)

Similarly, here, even from the initial stages of the proceedings, accused-appellant pleaded her defense taking into account the allegations against her as a member of the Interim Batasang Pambansa. Specifically, in her Motions to Quash,[83] accused-appellant argued that the facts charged do not constitute an offense because members of the Interim Batasang Pambansa are not prohibited from investing financially or participating in the management of any business, so long as that business did not acquire any government contract, franchise, or special privilege.[84] She further argued that what is prohibited is her actual intervention in her official capacity as a member of the Interim Batasang Pambansa.[85] It is legally impossible for her to violate Article IX, Section 7 (then Section 8) of the 1973 Constitution, which is applicable to cabinet members, when she was charged for acts she allegedly committed as a member of the Interim Batasang Pambansa.[86]

In its Opposition[87] to accused-appellant's Motions to Quash, the prosecution claimed that, "except for the missing words 'Cabinet and,' the Information is sufficient in form and substance to charge a specific offense." [88] In the same pleading, the prosecution manifested its intention to amend the Informations by the inclusion of the words "Cabinet and." [89] However, this was objected to by accused-appellant, claiming that such an amendment is a substantial one that would prejudice her rights, as she was not informed during the arraignment and preliminary investigation that she would also be charged for acts prohibited to cabinet members.[90] The addition of the words "Cabinet and" would also result in the Informations charging two offenses.[91]

Notably, despite the prosecution's acknowledgment that the Informations lacked certain allegations,[92] the Informations in Criminal Case Nos. 17287, 17288, 17289, and 17290 were not amended. As such, the allegations therein remain insufficient.

Further, while accused-appellant's Motions to Quash were eventually denied by the SBN,[93] and the Court refused to reverse such denial on certiorari[94] in the absence of grave abuse of discretion,[95] We are not precluded from reviewing anew the allegations in the Informations in relation to the basis of accused-appellant's conviction. The proper remedy from a denial of a motion to quash is to proceed to trial and, in case of an adverse judgment, to appeal therefrom.[96] This is such an appeal. It is settled that an appeal in a criminal case throws the entire case open for review.[97]

Notably, the SBN itself acknowledged that accused-appellant, in her capacity as a member of the Interim Batasang Pambansa, did not violate Section 3(h) of Republic Act No. 3019. Her alleged interest in the foundations does not transgress the constitutional proscription applicable to members of the Interim Batasang Pambansa:

[M]ere possession of pecuniary interest in the foundations subject of these cases is not penalized [under Article VIII, Section 11 of the 1973 Constitution]. What is prohibited is the intervention in her official capacity in any transaction, contract, franchise[,] or special privilege granted by the government. In these foundations, the evidence does not say so, nor does it show that she intervened, for her pecuniary benefit, in any matter before any government office. The setting up of these Swiss foundations, the contracts or transactions that relate thereto, were private in character, which did not require any intervention of the Philippine Government, or in which Ms. Marcos would have been called upon to act or intervene in her official capacity as a member of the

National Assembly or as a Cabinet member.[98]

All told, accused-appellant's right to due process was violated when the SBN convicted her of an offense which she had not been legally informed of. The evidence on record failed to prove accused-appellant's guilt for the crime charged, i.e., a violation of Section 3(h) of Republic Act No. 3019 in her capacity as a member of the Interim Batasang Pambansa. These warrant accused-appellant's acquittal in Criminal Case Nos. 17287, 17288, 17289, and 17290.

The evidence of the prosecution failed to prove accused-appellant's guilt beyond reasonable doubt

Even if the Court were to ignore the fatal infirmity in the Informations, accused-appellant must still be acquitted because the prosecution failed to establish all the elements of the offense beyond reasonable doubt.

As to the first element, Section 2(b) of Republic Act No. 3019 states that the term public officer "includes elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government[.]"

Here, it is undisputed that accused-appellant was a public officer during the relevant period. The Court has previously taken note of accused-appellant's personal circumstances, i.e., she served as a member of the Interim Batasang Pambansa from 1978 to 1984 and as Minister of Human Settlements, a cabinet member, from June 1976 to February 1986.[99] Thus, the first element is present.

Only the second and third elements are contested. The prosecution presented testimonial and documentary evidence aimed at proving a financial or pecuniary interest prohibited by the Constitution. Consequently, it is necessary to pass upon and weigh these pieces of evidence.

The testimonial and documentary evidence of the prosecution are inadmissible and lack probative weight

According to the SBN, accused-appellant had a financial and pecuniary interest in the subject foundations based mainly on the Swiss documents identified by Atty. Chavez and Ambassador Ascalon. It found that the documents retrieved by Cosandey from Swiss banks have been authenticated in accordance with Swiss established legal procedure. The SBN further stated that substantial justice demands that said documents be considered and, in any case, accused-appellant did not interpose any objection.[100]

The SBN erred in considering the Swiss documents as duly authenticated. Case law states that matters of remedy and procedure are governed by the *lex fori* or the internal law of the forum.[101] It must be emphasized that the Philippine Rules on Evidence, even prior to amendment, state that "[t]he rules of evidence shall be the same in all courts and in all trials and hearings, except as otherwise provided by law or these rules." [102] Since the present criminal proceedings are before Philippine courts, the authentication of the Swiss documents should be governed by Rule 132 of the Rules of Court.

The pertinent provision under Rule 132 of the Rules of Court state:

SECTION 19. Classes of Documents. — For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

(a)

The written official acts, or records of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;

(b)

Documents acknowledged before a notary public except last wills and testaments;

(c)

Documents that are considered public documents under treaties and conventions which are in force between the Philippines and the country of source; and

(d)

Public records, kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private. (19a)

SECTION 20. Proof of Private Documents. — Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved by any of the following means:

(a)

By anyone who saw the document executed or written;

(b)

By evidence of the genuineness of the signature or handwriting of the maker; or

(c)

By other evidence showing its due execution and authenticity.

Any other private document need only be identified as that which it is claimed to be. (20)

SECTION 21. When Evidence of Authenticity of Private Document Not Necessary. — Where a private document is more than [30] years old, is produced from a custody in which it would naturally be found if genuine and is unblemished by any alterations or circumstances of suspicion, no other evidence of its authenticity need be given.[103]

The Court has emphasized that the rule on authentication, more particularly as to private documents, is in place to prevent the inclusion of spurious documents in the body of evidence.[104] Thus, it is settled that private documents are generally inadmissible in evidence unless they are properly authenticated.[105]

The relevant Swiss documents relied upon by the SBN consist of:

1)

Documents showing the establishment[106] and dissolution[107] of the subject foundations signed by the Marcoses;

2)

Agreements constituting a mandator/mandatary relationship between accused-appellant and Geel, Mr. C. Walter Fessler, Mr. Ernest Scheller, Mr. Theo Bertheau, and Mr. F.W. Schweizer, most of whom were appointed as the subject foundations' board of directors;[108]

3)

Letters sent by the Marcoses giving instructions to the board of directors of the subject foundations and to Swiss banks;[109] and

4)

Credit and debit advices.[110]

The People contends that Rule 132, Section 20 of the Rules of Court is not applicable since the Swiss documents are public documents under the custody of proper Philippine offices, i.e., the Philippine Embassy in Switzerland, the OSG, and the PCGG, and officially transmitted by the Swiss government to the Philippine government.[111]

Conversely, accused-appellant argues that the pieces of documentary evidence of the prosecution are "inadmissible hearsay evidence that have no probative value" since the declarants or authors of the documents were not presented in court to testify.[112]

In this case, the relevant documents retrieved by Cosandey from Swiss banks, which were relied upon by the SBN, do not fall under the types of public documents listed in Rule 132, Section 20 of the Rules on Court. Thus, these are private in character. This remains true regardless of the fact that these Swiss documents came into the custody of the PCGG, the Philippine Embassy in Switzerland, or the OSG.

In *Republic v. Marcos-Manotoc*,[113] Court has settled that documents collected by the PCGG during its investigation are not per se public documents. Magno was likewise presented as a witness in her capacity as records officer of the PCGG, but it was found that she is not credible to testify on the contents of the documents. The Court explained as follows:

Petitioner presented as witness its records officer, Maria Lourdes Magno, who testified that these public and private documents had been gathered by and taken into the custody of the PCGG in the course of the Commission's investigation of the alleged ill-gotten wealth of the Marcoses. However, given the purposes for which these documents were submitted, Magno was not a credible witness who could testify as to their contents. To reiterate, "[i]f the writings have subscribing witnesses to them, they must be proved by those witnesses." Witnesses can testify only to those facts which are of their personal knowledge; that is, those derived from their own perception. Thus, Magno could only testify as to how she obtained custody of these documents, but not as to the contents of the documents themselves.[114] (Emphasis supplied, citation omitted)

By the same token, Ambassador Ascalon is likewise not credible to authenticate the Swiss documents. Ambassador Ascalon testified that as the former Chargé d'affaires and later Ambassador to Switzerland, he mainly acted as a conduit between the Philippine and Swiss authorities in the legal assistance proceedings.[115] In his capacity as then Ambassador to Switzerland, he transmitted the Swiss documents turned over to him either directly to Atty. Chavez, or by way of a diplomatic pouch.[116] However he admitted that the documents were sealed when he received the same, and he did not open and read the sealed documents.[117] He clarified, when questioned by the SBN, that he was not able to verify if the contents of the cartons containing the sealed documents were the same as those listed in his cover letter to Atty. Chavez.[118] Clearly, Ambassador Ascalon could not have properly authenticated the Swiss documents in accordance with the rules on evidence since he did

not have knowledge of the execution or the contents of the same. At most, he could only testify as to his receipt and transmittal of the Swiss documents.

The same is true with Atty. Chavez. He testified that as then Solicitor General, he organized a task force to gather all documents and information for the filing of the criminal and civil complaints against the Marcoses.[119] The Swiss documents were merely sent to him pursuant to the legal assistance which the Philippines sought from Switzerland.[120] He did not claim knowledge of the execution and the contents of the Swiss documents.

Markedly, in *Chavez v. Marcos*,[121] the Court rejected the contention that had Atty. Chavez been allowed to continue his testimony before the trial court, accused-appellant would not have been acquitted in the criminal cases related to the same Swiss foundations and bank accounts subject of this case. The Court noted that Atty. Chavez's testimony would have been of little evidentiary value, as he would have identified a Certification of Swiss Banking Document which was issued not by him, but by Cosandey, who was not presented in court.[122]

Here, the prosecution presented Atty. Chavez to prove that he saw to it that the criminal charges filed against accused-appellant "were properly supported by documentary evidence which he himself examined[,] and which he[,] in his official capacity[,] received from various officials of the government[,] not only from the Philippines[,] but also from abroad, particularly from Switzerland [and] specifically from the person of then District Attorney Designate & Investigating Magistrate Mr. Cosandey." [123] As such, similar to the observation of the Court in the case of Chavez, the testimony of Atty. Chavez identifying Cosandey's certification offers little evidentiary value. Atty. Chavez's claim to have personally examined the documents received from Cosandey does not cure the defect in the identification and authentication of the Swiss documents.

To support its claim that the Swiss documents are admissible, the People submitted a Letter dated December 3, 1991 sent by Cosandey to Atty. Chavez, confirming their phone conversation on the certification of the documents, particularly those obtained from the banks.[124] Cosandey stated therein that there is no disposition in any of the criminal proceedings applicable in Switzerland providing for the certification of banking documents.[125] Hence, he explained that if a bank submits photocopies of documents to a criminal authority, these automatically become conclusive evidence without a need for further certification.[126] Notably, Cosandey deemed it proper to submit the certificates as he acknowledged that there are countries which have stricter rules on evidence. He explained as follows:

We know that[,] especially in Anglo-Saxon law countries[,] there are very strict rules concerning the formal constitution of conclusive evidence. [Article] 65 litt. b EIMP therefore provides that in order to permit the formal admission of other evidence (especially of documents)[,] the express desiderata of the requesting authority must be considered. In the Treaty between the Confederation of Switzerland and the United States of America mutual legal assistance in criminal matters of May 25, 1973[,] the certification of documents is specifically provided for. Practically, this certification is in the form of two certificates. Through the "Certificate of Authenticity of Business Records", the holder of the documents certifies their authenticity; the competent examining magistrate issues the "Certificate of the Swiss Authority executing Request for Documents" to attest that he checked himself the documents and is convinced that they are "genuine, authenticated and certified true copies." [127]

Relatedly, the People submitted: 1) the Certificates of Authenticity of Business Records; 2) the Certificates of the Swiss Authority Executing Request for Documents; and 3) the Certificates of Authentication issued by then Consul General Klingert.[128]

The Certificates of Authenticity of Business Records state as follows:

I, . . . , whose signature appears below, understanding that I am subject to criminal penalty under Article 307 of

the Swiss Penal Code for any intentional false declaration, declare that I am employed by . . . in the position of . . . and by reason of my position am authorized and qualified to make this declaration.

I further declare that the...documents attached hereto and made an integral part hereof . . . are genuine, authenticated[,] and certified true copies of records which:

- were made, at or near the time of the occurrence of the matters set forth therein, by (or from information transmitted by) a person with knowledge of those matters;
- were kept in the course of a regularly conducted business activity;
- were made by the said business activity as a regular practice; and
- if not original records, are duplicates of original records.

. . . .

The originals or duplicates of these records are maintained in the country of Switzerland.[129]

On the other hand, the Certificates of the Swiss Authority Executing Request for Documents provide as follows:

I certify that I, . . ., hold the office of ... and in that capacity came into possession of official records mentioned herein by reason of court orders issued in relation to my investigation of the Marcos banking accounts in . . ., Switzerland, and likewise in that capacity have been charged with the final certification of the official records mentioned in the request of the Republic of the Philippines pursuant to its request dated April 7, 1986 through its Solicitor General for legal assistance in criminal matters.

I hereby further certify that I have examined the . . . documents listed in . . . the Certificate of Authenticity of Business Records, signed by . . . on . . . in my presence and I am satisfied that they are genuine, authenticated[,] and certified true copies.[130]

The Swiss documents were annexed to the Certificate of Authentication issued by Consul General Klingert, which were transmitted via diplomatic pouch to Ambassador Ascalon.[131] In the Certificate of Authentication, Consul General Klingert certified that those who executed the Certificates of Authenticity of Business Records and the Certificates of the Swiss Authority Executing Request for Documents did so in their official capacities.[132] It was expressly stated therein that the office of Consul General Klingert assumes no responsibility for the contents of the certificates.[133]

The Certificates of Authenticity of Business Records and the Certificates of the Swiss Authority Executing Request for Documents fall short of the standard of authentication required under Rule 132, Section 20 of the Rules of Court. Those who executed the certificates were not presented as witnesses before the SBN. Even if they were presented, they cannot be considered as credible witnesses who could authenticate the Swiss documents and testify on the contents. A close reading of the certificates shows that the Swiss documents came into their custody only during their investigation, and there was no allegation that they saw the documents executed or written. For this, the certificates are not sufficient as proof of the authenticity of the Swiss documents.

In sum, the relevant Swiss documents were not properly authenticated. The prosecution was not able to present any credible witness who could have attested to the genuineness and due execution of the documents.[134] Further, it was not shown that any of the exceptions to the rule on authentication under Rule 132, Section 21 of the Rules of Court apply.[135] Thus, they are inadmissible as evidence.

The People argues that accused-appellant's "lack of opposition to the prosecution's formal offer of documentary exhibits constitutes as a waiver of her objection on the matter, thus, she could no longer object to their admissibility." [136]

Even if We consider the Swiss documents as admissible, admissibility of evidence should not be confused with its probative value. Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue.[137] Relatedly, jurisprudence instructs that hearsay evidence, whether objected to or not, cannot be given credence for it has no probative value.[138]

Here, the contents of the Swiss documents are hearsay because the witnesses presented by the prosecution to identify said documents—Magno, Atty. Chavez, and Ambassador Ascalon—are incompetent to testify on the veracity of the same. As noted by the SBN, accused-appellant consistently interposed objections to the testimonies of Atty. Chavez due to his lack of personal knowledge of the contents of the Swiss documents.[139]

Indeed, "a witness can testify only to those facts which [they know] of [their] personal knowledge, which means those facts which are derived from [their] perception. Consequently, a witness may not testify as to what [they] merely learned from others, either because [they were] told, read, or heard the same. Such testimony is considered hearsay and may not be received as proof of the truth of what [they have] learned. Such is the hearsay rule, which applies not only to oral testimony or statements but also to written evidence as well." [140]

To reiterate, Magno, Atty. Chavez, and Ambassador Ascalon could not have testified on the veracity of the contents of the Swiss documents since they were not the declarants or authors of said private documents. In Ambassador Ascalon's case, he admittedly did not even actually see said documents before he transmitted the same to Atty. Chavez. Being hearsay evidence, the Swiss documents cannot be given credence, notwithstanding the lack of objection, for these do not have probative value.

The prosecution failed to prove that the alleged financial or pecuniary interest is covered by Section 3(h) of Republic Act No. 3019 and Article IX, Section 7 (then Section 8) of the 1973 Constitution

Even if the Court were to ignore the issues on the probative weight of the prosecution's evidence and consider all the facts sought to be proved as established, accused-appellant must still be acquitted. The prosecution failed to prove that the alleged financial or pecuniary interest in the foundations is covered by Section 3(h) of Republic Act No. 3019 and Article IX, Section 7 (then Section 8) of the 1973 Constitution.

Both the second element of the offense and the invoked constitutional prohibition use the term "business." Section 3(h) of Republic Act No. 3019 refers to a direct or indirect financial or pecuniary interest in any "business." Meanwhile, Article IX, Section 7 (then Section 8) of the 1973 Constitution prohibits cabinet members from participating or taking part in the management of any "business." Thus, to be covered by the offense charged, it must be shown that the subject foundations, are businesses.

In *People v. Palabrica III*, [141] the Court held that the issuance of a business permit is nor a "transaction" under Section 3(h) of Republic Act No. 3019, as it does not involve any monetary consideration. In arriving at such ruling, the Court defined the terms used in Section 3(h) of Republic Act No. 3019, thus:

Applying the foregoing rules, "transaction[.]" as used in Section 3(h) of [Republic Act] No. 3019[,] must be interpreted in reference to the words preceding it—"business" and "contract." Absent a statutory definition under [Republic Act] No. 3019, the words "business" and "contract" are to be understood in their plain and ordinary meaning. Settled is the rule in legal hermeneutics that words of a statute will be interpreted in their natural, plain[,] and ordinary acceptance and signification, unless it is evident that the legislature intended a technical or special legal meaning to those words. The intention of the lawmakers—who are, ordinarily, untrained philologists and lexicographers—to use statutory phraseology in such a manner is always presumed.

The plain and ordinary meaning of "business" and "contract" is as follows:

Business — the activity of making, buying, or selling goods or providing services in exchange for money.

Contract — a binding agreement between two or more persons or parties[, especially one that is] legally enforceable.

The word "transaction[.]" therefore[,] must be interpreted in the context of the above definitions of "business" and "contract," which essentially connotes an agreement that involves monetary consideration. This is the sensible interpretation because Section 3(h) of [Republic Act] No. 3019 requires that the accused public officer must have a direct or indirect financial or pecuniary interest in the "business," "contract," or "transaction," wherein the accused public officer intervened or took part.

Jurisprudentially, the word business has been defined as "the means by which a party habitually or regularly earns a livelihood or some gain"; or those "restricted to activities or affairs where profit is the purpose, or livelihood is the motive"; or "that which occupies time, attention, and labor of men for the purpose of livelihood or profit." [142] (Emphasis supplied)

Similarly, Black's Law Dictionary defines "business" as a "commercial enterprise carried on for profit; a particular occupation or employment habitually engaged in for livelihood or gain." [143] Cambridge Dictionary also defines "business" as "the activity of buying and selling goods and services." [144]

In its plain and ordinary meaning, therefore, a business is a commercial enterprise involving some form of value exchange, i.e., a business trades goods or services for money. To be considered a business, the entity must offer some goods or services for profit. Further, the provision of such goods or services must be habitual or regular, and the main purpose should be to earn income.

In this case, however, both the Informations and the evidence failed to show any goods or services being sold by the subject foundations. Even if the allegations in the Informations were to be proved, they merely establish the deposit of certain assets in the subject foundations and the rules for distribution of these assets to designated beneficiaries. [145] The same is true for the body of evidence presented by the prosecution. The evidence does not show any commercial enterprise. They merely indicate the placement of assets in the subject foundations for the purpose of providing financial assistance to the beneficiaries. [146]

Notably, the SBN ruling defined business as "the activity of making one's living or making money by producing or buying and selling goods or services." [147] However, in classifying the foundations as businesses, the SBN merely held that the term "foundation" should not be controlling because these entities were put up "primarily for the entrepreneurial activity of opening bank accounts and deposits, transferring funds, earning interests, and even profit from investment, for the private benefit of the Marcos family as beneficiaries. The purpose of setting up these entities is not charitable, educational, religious, or otherwise in service of public interests." [148] Such a pronouncement is problematic for numerous reasons.

First, it is the prosecution's burden to show that the subject foundations were incorrectly classified as such under the foreign laws and that these were in fact businesses. The prosecution failed to do so. In reclassifying the foundations as businesses, the SBN took judicial notice of a journal article [149] stating that, in a civil law system such as the Swiss regime, a foundation is normally defined as a "legal entity established by the endowment of assets for a specified purpose. In theory, this purpose must be one of public interest." [150] According to the SBN, as the subject foundations were allegedly not established to serve public interest, they cannot be considered foundations. [151]

The SBN should not have used such statement in the journal article as the sole criterion for determining whether the subject foundations are truly foundations. The cited journal article itself states that the Swiss Civil Code was

reformed in 2007,[152] and the discussion in the article refers to the current law. A different law may have been applicable when the foundations were formed.

Further, the article focuses on "grant-making foundations,"[153] and it was not shown that the subject foundations fall under that category. Article 80 of the Swiss Civil Code, which was cited by the article, merely states that "[a] foundation is established by endowment of assets for a particular purpose." The purpose "in theory" being one of public interest, which statement the SBN heavily relied on, was merely stated in the journal article and not in Article 80 of the Swiss Civil Code.

Just because the subject foundations may not be charitable does not mean that they are already businesses, as concluded by the SBN. This is a non sequitur because there could be other forms of foundations. In fact, the journal article cited by the SBN enumerates the three main forms of foundations under Swiss law:

Swiss law establishes three main forms of foundation: classic foundations, known also as charitable foundations, which are regulated primarily in the Swiss Civil Code (SCC); family and ecclesiastical foundations, which are not specifically regulated in the SCC; and foundations consisting of retirement schemes for employees, which are regulated under other special legal regimes. In addition, there are business foundations, which, though "unregulated" by the SCC, seem to be recognized in jurisprudence.[154] (Emphasis supplied)

Thus, the SBN's own basis states that there could be foundations established for purposes other than public interest. Even if they are not foundations in the classic sense, they could be family foundations. Had the SBN fully considered the journal article and checked the other forms of foundations mentioned in it, the SBN would have seen that Article 335 of the Swiss Civil Code specifies the nature of a family foundation: "[a] body of assets may be tied to a family by means of a family foundation created under the law of persons or inheritance law to meet the costs of raising, endowing or supporting family members or for similar purposes." [155] As thus defined, family foundations may not qualify as businesses because they do not sell any good or service for profit; they merely link assets to a family for financial assistance under certain situations. It is indeed possible that the subject foundations may fall under the less traditional classification of business foundations, but this fact should have been established by the prosecution.

Further, the journal article cited by the SBN only refers to Swiss law. However, many of the subject foundations, including Maler Foundation,[156] Trinidad Foundation,[157] Rayby Foundation,[158] and Avertina Foundation,[159] were established pursuant to Liechtenstein law. As such, the cited journal article cannot be relied on in characterizing these foundations. Likewise, the records do not contain the applicable Liechtenstein law.

In sum, the prosecution should have shown under what classification the subject foundations fall by submitting in evidence the applicable foreign laws and relating them to the activities of the subject foundations. If, as posited by the SBN, the subject foundations were incorrectly organized as such and inconsistent with the relevant law on foundations, the prosecution should have presented evidence to this effect. As it stands, however, the evidence on record is insufficient to impugn the status of the subject foundations, much less classify them as businesses. It would be improper and highly imprudent for the Court to simply take judicial notice of and apply the laws pursuant to which the subject foundations were organized, especially since English is not an official language in both Switzerland[160] and Liechtenstein.[161] It is settled that foreign laws must be properly pleaded and proved.[162] Thus, the SBN erred in relying on isolated statements in a journal article to recharacterize the subject foundations.

Second, the supposed "entrepreneurial activity" performed by these foundations does not make them businesses.

Following the SBN's own definition, the first step in characterizing these entities is to identify the goods or services being produced or sold in exchange for profit. However, as mentioned, the SBN failed to cite any such goods or services. The evidence also shows none.

The supposed entrepreneurial activities of opening bank accounts, transferring funds, and earning interest and investment profits do not, by themselves, make an entity a commercial enterprise. These activities are no different from maintaining a bank deposit or an investment portfolio. Specifically, bank depositors lend banks their money in exchange for the payment of interest.[163] This, however, does not per se make bank depositors business operators. Similarly, placing investments and earning income from them do not necessarily come within the purview of carrying on a trade or business, as they could be activities of a passive investor.[164] Absent a showing that the subject foundations are regularly offering goods or services for the main purpose of earning profit, they cannot be considered businesses.

Third, to support its conclusion that the subject foundations are businesses, the SBN cited a statement in *Republic v. Sandiganbayan*[165] that "management of businesses, like the administration of foundations to accumulate funds, was expressly prohibited under the 1973 Constitution." However, such a statement does not have any binding effect on these cases.[166]

Republic v. Sandiganbayan was an appeal from a civil forfeiture case and did not involve an interpretation of the term "business" in the context of Section 3(h) of Republic Act No. 3019. Based on a holistic reading of the decision, it appears that the quoted sentence was casually brought up as an aside, because the supposed violation of the constitutional prohibition was not even at issue. The Court only made the statement to emphasize that former President Marcos could not have received income from other sources during his term.

In fact, in *Republic v. Sandiganbayan*,[167] accused-appellant raised the possible effect of the cited statement on these criminal cases in her Motion for Reconsideration.[168] The Republic countered that the Decision of the Court would not prejudice the criminal actions filed against accused-appellant.[169] The Court held that it does not affect these cases and the duty of the prosecution to prove accused-appellant's guilt beyond reasonable doubt:

Respondent Imelda R. Marcos, likewise asserts that the factual finding that the foundations involved in the instant forfeiture proceedings were businesses managed by her and her late husband, will adversely affect the criminal proceedings filed by the Republic against her. The contention is bereft of merit. The criminal cases referred to by said respondent are actions in personam, directed against her on the basis of her personal liability. In criminal cases, the law imposes the burden of proving guilt on the prosecution beyond reasonable doubt, and the trial judge[,] in evaluating the evidence[,] must find all the elements of the crime charged have been established by sufficient proof to convict.

Hence, the factual findings of this Court in its decision dated July 15, 2003[,] will, as a consequence, neither affect nor do away with the requirement of having to prove her guilt beyond reasonable doubt in the criminal cases against her.[170] (Emphasis supplied)

As such, the SBN committed a reversible error when it relied on the statement in *Republic v. Sandiganbayan*[171] to support its judgment of conviction.

All told, the prosecution failed to establish that the subject foundations are businesses as the term is ordinarily understood. Any financial or pecuniary interest in the subject foundations is not covered by Section 3(h) of Republic Act No. 3019 and Article IX, Section 7 (then Section 8) of the 1973 Constitution. Doubts on the coverage of the term "business" should be resolved against the State and in favor of the accused-appellant. As emphasized by the Court in *Palabrica*, a restrictive interpretation, rather than a liberal one, is more in accord with the rule that penal laws are strictly construed against the State and liberally in favor of the accused.[172] The

Court reiterated that, "[i]n interpreting penal laws, words are given their ordinary meaning, and that any reasonable doubt about the meaning is decided in favor of anyone subjected to a criminal statute." [173]

Ultimately, when the Court dons its robe, inclinations and personal beliefs are set aside, as they do not have a place in a court of law. It is the constitutionally mandated duty of the Court to dispense justice in an impartial manner. To do so, the Court must follow the rules it promulgates and consider only facts supported by admissible and relevant evidence.

ACCORDINGLY, the Appeal is GRANTED. The November 9, 2018 Decision of the Sandiganbayan in Criminal Case Nos. 17287, 17288, 17289, 17290, 22867, 22868, and 22869 is REVERSED and SET ASIDE. Accused-appellant Imelda R. Marcos is ACQUITTED for the prosecution's failure to prove her guilt beyond reasonable doubt for violation of Section 3(h) of Republic Act No. 3019, in relation to Article IX, Section 8 of the 1973 Constitution.

SO ORDERED.

Hernando (Acting Chairperson), Inting,[*] and Marquez, JJ., concur.
Rosario,[*][*] J., on leave but left a concurring vote.

[*] Designated additional member per Raffle dated July 5, 2023.

[*][*] On leave.

[1] Rollo, p. 8.

[2] Id. at 8-9.

[3] Id. at 9.

[4] Id. at 10.

[5] Id.

[6] Id. at 11.

[7] Id. at 11-12.

[8] Id. at 12.

[9] Id. at 13-14.

[10] Id. at 14-15.

[11] Id. at 7.

[12] Id. at 15.

[13] Id.

[14] Id. at 15-16.

[15] Id. at 16.

[16] Id.

[17] Id.

[18] Id.

[19] Id. at 17.

[20] Id.

[21] Id. at 17-18.

[22] Id. at 18.

[23] Id. at 18-19.

[24] Id. at 19.

[25] Id.

[26] Id.

[27] Id. at 20.

[28] Id. at 20-21.

[29] Id. at 21-22.

[30] Id. at 23.

[31] Id.

[32] Id. at 23-24.

[33] Id. at 25.

[34] Id. at 36.

[35] Id. at 38-39.

[36] Id. at 39-40.

[37] Id. at 40-41.

[38] Id. at 41-42.

[39] Id. at 22.

[40] Id. at 42.

[41] Id. at 75.

[42] Id. at 76.

[43] Id. at 75.

[44] Id. at 76.

[45] Id. at 75-76.

[46] Executive Order No. 1 (1986), sec. 1, Creating the Presidential Commission on Good Government.

[47] Executive Order No. 2 (1986), Regarding the Funds, Moneys, Assets, and Properties Illegally Acquired Misappropriated by Former President Ferdinand Marcos, Mrs. Imelda Romualdez Marcos, their Close Relatives,

Subordinates, Business Associates, Dummies, Agents, or Nominees.

[48] Rollo, pp. 25, 72. Docketed as Civil Case No. 0141.

[49] 893 Phil. 554 (2021) [Per C.J. Peralta, First Division].

[50] Id. at 565-566.

[51] Id. at 566.

[52] Presidential Decree No. 1606 (1978), Revising Presidential Decree No. 1486 Creating a Special Court to be Known as "Sandiganbayan" and for Other Purposes.

[53] SBN INT. RULES, Rule XIV, sec. 5.

[54] Rollo, p. 80.

[55] 837 Phil. 815 (2018) [Per J. Leonen, En Banc].

[56] Id. at 881-882.

[57] Alarilla v. Sandiganbayan (Fourth Division), 895 Phil. 542 (2021) [Per J. Zalameda, First Division].

[58] 488 Phil. 311 (2004) [Per J. Davide, En Banc].

[59] Id. at 326-327.

[60] Id. at 331.

[61] Id.

[62] See *People v. Palabrica III*, 915 Phil. 713, 732 (2021) [Per J. Gaerlan, Second Division]; *Caballero v. Sandiganbayan*, 560 Phil. 302, 304 (2007) [Per J. Garcia, First Division]; *Domingo v. Sandiganbayan*, 510 Phil. 691, 702-703 (2005) [Per J. Azcuna, First Division]; *Gil v. People*, 258 Phil. 23, 43 (1989) [Per J. Gutierrez, Jr., En Banc]; *Trieste, Sr. v. Sandiganbayan*, 229 Phil. 505, 506 (1986) [Per J. Alampay, En Banc].

[63] *Domingo v. Sandiganbayan*, 510 Phil. 691, 706 (2005) [Per J. Azcuna, First Division].

[64] See *Teves v. Sandiganbayan*, 488 Phil. 311, 327 (2004) [Per J. Davide, Jr., En Banc].

[65] Rollo, p. 72.

[66] Id. at 108.

[67] Id. at 109.

[68] Id. at 111.

[69] 416 Phil. 722 (2001) [Per J. Quisumbing, Second Division].

[70] Id. at 744-747.

[71] Rollo, pp. 8-10.

[72] *Remolano v. People*, 912 Phil. 931, 939 (2021) [Per J. Lazaro-Javier, First Division].

[73] Id.

[74] Id. at 942.

- [75] Teves v. Sandiganbayan, 488 Phil. 311, 331 (2004) [Per J. Davide, En Banc].
- [76] Id.
- [77] 506 Phil. 630 (2005) [Per Curiam, En Banc].
- [78] Id. at 649-650.
- [79] 920 Phil. 765 (2022) [Per J. Rosario, Second Division].
- [80] Id. at 765-766.
- [81] Id. at 770.
- [82] Id. at 777-778.
- [83] SBN rollo, pp. 484-514, 516-544.
- [84] Id. at 488-489.
- [85] Id. at 490-491.
- [86] Id. at 491-492.
- [87] Id. at 632-651.
- [88] Id. at 640.
- [89] Id. at 643.
- [90] Id. at 667.
- [91] Id.
- [92] Id. at 643.
- [93] Id. at 873-881.
- [94] Id. at 1806-1809.
- [95] Id. at 1807-1808.
- [96] See Maximo v. Villapando, 809 Phil. 343, 870-871 (2017) [Per J. Peralta, Second Division].
- [97] People v. Palabrica III, 915 Phil. 713, 727 (2021) [Per J. Gaerlan, Second Division].
- [98] Rollo, p. 70.
- [99] Republic v. Sandiganbayan, 453 Phil. 1059, 1128 (2003) [Per J. Corona, En Banc].
- [100] Rollo, p. 46.
- [101] Bankruptcy Estate of Mitich v. Mercantile Insurance Co., Inc., 919 Phil. 904, 924 (2022) [Per J. Lazaro-Javier, First Division].
- [102] RULES OF COURT, Rule 128, sec. 2.
- [103] A.M. No. 19-08-15-SC, October 8, 2019, Proposed Amendments to the Revised Rules on Evidence.
- [104] Cercado-Siga v. Cercado, Jr., 755 Phil. 583, 597 (2015) [Per J. Perez, First Division].

[105] See *Rodriguez v. Your Own Home Development Corp.*, 838 Phil. 749, 767 (2018) [Per J. Leonen, Third Division].

[106] Rollo, pp. 47-56, 58-64. The documents cited are summarized as follows:

Foundation

Document

Exhibit

Maler

Rules and Regulations of Maler Establishment signed by former President Marcos and accused-appellant on October 19, 1968 on disposal of Maler's assets

Exhibit "J-Maler"

Decision/Resolution dated November 17, 1981 of Sedes Trust Company, owner/ legal founder of Maler Establishment. Vaduz converting Maler Establishment to Maler Foundation, increasing its capital to SFr 30,000 and appointing Dr. Kerlheinze Ritter as board of the Foundation

Exhibit "O(t)-Maler"

Articles of the Maler Foundation dated February 5, 1962, May 16, 1968, and November 17, 1981, issued by founder Sedes Treuhand Anstalt

Exhibit "P(t)-Maler"

Power of Attorney dated February 28, 1984 issued by Maler Foundation in favor of Suntrust Investment Company S.A. for the management of assets of Maler Foundation under Account 98.929 N.Y. Vaduz-Liechtenstein, Geneva

Exhibit "R-Maler"

Power of Attorney dated February 28, 1984 for the management of assets of Maler Foundation under Account 254.508 B.T. Vaduz-Liechtenstein, Geneva

Exhibit "R-2-Maler"

Trinidad

Statutes dated August 28, 1970 of Trinidad Foundation

Exhibit "E"-Trinidad

Regulations of Trinidad Foundation naming accused-appellant as first beneficiary

Exhibit "F"-Trinidad

Rayby

Letter of accused-appellant to Dr. Theo Bertheau for the establishment of Rayby Foundation

Exhibit "C-Rayby"

Certification dated June 22, 1973 and July 2, 1973 issued by the District Court Chancery of Liechtenstein Vaduz confirming the establishment of Rayby Foundation

Exhibits "D(t)-Rayby and "E(t)-Rayby"

Agreement dated June 22, 1973 between accused-appellant as mandator and Dr. Theo Bertheau as mandatary for Rayby Foundation

Exhibits "F", "F-1", and "F-2"

By-Laws of Rayby Foundation

Exhibits "H", "H-1", "H-2", and "H-3"

Regulations dated June 22, 1973 naming accused-appellant as the beneficiary of Rayby Foundation

Exhibit "I (Rayby)"

Palmy

Certification dated March 19, 2002 of Public Registry Office, Vaduz on creation of Palmy Foundation

Exhibit "I(t)"-Palmy

Declaration dated April 11, 1989 on opening an account or securities account of Dr. Ivo Beck

Exhibit "DD-Palmy"

Classification Note: Confidential dated September 30, 1988 issued by Schweizerische Kreditanstalt/ Credit Suisse/ Credito Svizzero to Palmy Foundation

Exhibit "EE-(t)-Palmy"

Azio-Verzo-Vibur and Avertina-Xandy/ Wintrop-Charis/ Scolari/ Valamino/ Spinus (Vibur and Avertina)

Letter dated June 11, 1971 of former President Marcos to Dr. Theo Bertheau naming the foundation as Azio Foundation

Exhibit "F-Vibur-Avertina"

Power of Attorney dated June 11, 1971 appointing Roberto Benedicto as former President Marcos's attorney-in-fact

Exhibit "G-Vibur-Avertina"

Regulations of Azio dated June 11, 1971 and June 23, 1971

Exhibits "I" (Vibur Avertina) and "J" (Vibur Avertina)

Letter dated November 12, 1971 of former President Marcos and Regulations dated December 14, 1971, naming Austraphil PTY Ltd. Co. as the only beneficiary of Azio

Exhibits "K" (Vibur- Avertina) and "L" (Vibur- Avertina)

Letter dated December 14, 1971 of former President Marcos cancelling the Regulations of Azio Foundation and naming Charis Foundation as first and only beneficiary and Regulations dated December 4, 1972 of Azio Foundation making Charis Foundation as the first and only beneficiary of Azio Foundation

Exhibits "M" (Vibur- Avertina) and "N" (Vibur- Avertina)

Certification of the Office of the Public Register, Vaduz, concerning the change of company name from Azio to

Verso Foundation

Exhibit "O(t)" (Vibur- Avertina)

Certification dated September 14, 1978 issued by the Office of the Public Register Vaduz, stating that based on the documents registered with that office, Walter Fessler, Dr. Helmuth Merlin, and Ernst Scheller are authorized to sign and issue orders/ decrees for Verso Foundation

Exhibit "P(t)" (Vibur Arventina)

Certification Acknowledgment dated May 13, 1981 issued by the Office of the Public Registrar Vaduz on the existence of Vibur Foundation with Dr. Beck and Limag Management as members of the Board

Exhibit "R(t)"(Vibur-Avertina)

Contract dated September 10, 1981 for the opening of an account and/or safekeeping account between Vibur Stiftung, Vaduz, and Credit Suisse dated September 10, 1981 and Special arrangements supplementing the Contract dated September 10, 1981

Exhibits "S" and "S-7" (Vibur-Avertina)

Letter of Special Instructions dated September 10, 1981 from Vibur Stiftung and Limag Management to Credit Suisse regarding arrangement of fiduciary time deposits of Vibur Stiftung G19, Vaduz

Exhibit "S-9" (Vibur-Avertina)

Declaration dated September 12, 1981 on opening an account or a deposit of securities or on renting a safe deposit box of Vibur Stiftung, Vaduz, issued by Fides Trust Company

Exhibit "T" (Vibur-Avertina)

Declaration dated April 11, 1989 on opening an account or a securities account belonging to Vibur Foundation, signed by Dr. Beck and naming former President Marcos as the beneficial owner of the account

Exhibit "Z" (Vibur-Avertina)

Classification note: Confidential dated September 30, 1988 re: Vibur Foundation, naming the Marcos family as the owner probably financially empowered by the depositor under the account of Vibur Foundation

Exhibit "AA"(t) (Vibur-Avertina)

Power of Attorney dated March 12, 1968 of accused-appellant naming former President Marcos as her lawful attorney to represent her at the Swiss Credit Bank

Exhibit "GG" (Vibur-Avertina)

Letter dated March 3, 1970 of former President Marcos to Geel for the creation of Xandy and appointment of trustees

Exhibit "JJ" (Vibur-Avertina)

Hand printed and typewritten Regulations of Xandy Foundation dated February 13, 1970

Exhibits "KK" (Vibur-Avertina) and "LL" (Vibur-Avertina)

Certification dated September 7, 1978 of the Office of Public Register/Record Vaduz on the change of name of Xandy Foundation Vaduz to Wintrop Foundation Vaduz

Exhibit "MM(t)" (Vibur Aventina)

Certification dated September 7, 1978 issued by the Office of the Public Register/ Record Vaduz, concerning the change of company name from Xandy Foundation, Vaduz, to Wintrop Foundation, Vaduz

Exhibit "NN" (Vibur-Avertina)

Certification/ Acknowledgment dated May 13, 1981 of the Office of Public Register, Vaduz certifying the existence of Avertina Foundation

Exhibit "PP(t)" (Vibur Vertina)

Contract dated September 10, 1981 for the opening of an account and/or safekeeping account between Avertina Stiftung, Vaduz and Credit Suisse

Exhibit "QQ" (Vibur-Avertina)

Special arrangements supplementing the contract dated September 10, 1981 for the opening of an account/ accounts and safekeeping account between Credit Suisse - Swiss Credit Bank and Avertina Stiftung, Vaduz

Exhibit "RR" (Vibur-Avertina)

Specimen signatures dated September 10, 1981 of Dr. Ivo Beck, Herbert Kindle, and Ulrich Siegfried who are the authorized persons to sign for Avertina Stiftung, Vaduz

Exhibit "SS" (Vibur-Avertina)

Letter of Special Instructions dated September 10, 1981, from Avertina Foundation represented by Limag Management, addressed to Credit Suisse instructing the latter to make arrangements for fiduciary time deposits of Avertina Stiftung G19, Vaduz

Exhibit "TT" (Vibur-Avertina)

Contract dated September 10, 1981 for the opening of an account and/or safekeeping account between Avertina Stiftung, Vaduz and Credit Suisse

Exhibit "UU" (Vibur-Avertina)

Specimen signatures dated September 10, 1981 of Dr. Ivo Beck, Herbert Kindle, and Ulrich Siegfried who are the authorized persons to sign for Avertina Stiftung, Vaduz

Exhibit "VV" (Vibur-Avertina)

Letter of Special Instructions dated September 10, 1981 from Avertina Foundation represented by Limag Management addressed to Credit Suisse instructing the latter to make arrangements for fiduciary time deposits of Avertina Stiftung, G19, Vaduz

Exhibit "WW" (Vibur-Avertina)

Certification/ Acknowledgment dated May 13, 1981 issued by the Office of the Public Register, Vaduz, certifying the existence of Avertina Foundation with Dr. Ivo Beck and Limag Management as members of the board

Exhibit "XX"(t) (Vibur-Avertina)

Special arrangements supplementing the contract dated September 10, 1981 for the opening of an account/ accounts and safekeeping account between Credit Suisse - Swiss Credit Bank and Avertina Stiftung, Vaduz

Exhibit "YY" (Vibur-Avertina)

Declaration dated September 12, 1981 on opening an account or a deposit of securities or on renting a safe-deposit box of Avertina Stiftung, Rubric C.A.R. Zurich

Exhibit "ZZ" (Vibur-Avertina)

Declaration dated September 12, 1981 on opening an account or a deposit of securities or on renting a safe-deposit box of Avertina Stiftung, Zurich, Rubric N.E.S.

Exhibit "AAA" (Vibur-Avertina)

Declaration on opening of account dated April 11, 1989 naming former President Marcos as the beneficial owner of the assets deposited under the Avertina accounts

Exhibit "HHH" (Vibur-Avertina)

Undated letter of former President Marcos to Dr. Bertheau requesting the latter to arrange the creation of Charis Foundation and to name the members of the Board

Exhibit "KKK" (Vibur-Avertina)

Regulations of Charis Foundation dated November 12, 1971 and December 30, 1971 naming former President Marcos as the first beneficiary of Charis Foundation, and Xandy Foundation as the second beneficiary

Exhibits "NNN" (Vibur-Avertina) and "OOO" (Vibur-Avertina)

Power of Attorney dated February 15, 1972 of former President Marcos addressed to the council of Charis Foundation appointing Roberto Benedicto as his lawful attorney to represent him before the council of Charis Foundation

Exhibit "PPP" (Vibur-Avertina)

Certification dated December 17, 1974 issued by the Principality of Liechstentein, District Court Chancery, Vaduz, certifying the change of company name of Charis Foundation to Scolari Foundation, Vaduz of name of Charis Foundation to Scolari Foundation

Exhibit "QQQ"(t) (Vibur-Avertina)

Certification dated December 13, 1974 issued by Principality of Liechtenstein, District Court Chancery, certifying that C. Walter Fessler, Dr. Peter Ritter, and Ernest Scheller as appointed as board of the Scolari Foundation authorized to sign and issue orders/ decrees

Exhibit "RRR" (Vibur-Avertina)

Certification dated September 7, 1978 issued by the Office of the Public Register Vauz, certifying the change of company name from Scolari Foundation to Valamo Foundation

Exhibit "SSS" (Vibur-Avertina)

Certification dated September 7, 1978 of Valamo Foundation, Vaduz issued by the Office of the Public Register, Vaduz, certifying that C. Walter Fessler, Dr. Peter Ritter, and Ernst Scheller are authorized to sign jointly in twos to issue decrees and orders for Valamo Foundation

Exhibit "TTT"(t) (Vibur-Avertina)

Certification of the Office of Public Register, Vaduz dated May 13, 1981 on the registration of Spinus Foundation
Exhibit "VVV" (Vibur-Avertina)

Documents for the opening of an account and/or safekeeping account between Spinus Stiftung, Vaduz and CS Credit Suisse

Exhibits "WWW" (Vibur-Avertina) to "ZZZ" (Vibur-Avertina)

[107] The documents cited are summarized as follows:

Foundation

Document

Records

Maler

Letter dated October 19, 1968 of accused-appellant addressed to Maler Establishment confirming the validity of the Rules and Regulations dated October 19, 1968

Exhibit "H"-Maler

Trinidad

Certification dated August 12, 1981 issued by the Office of the Public Register/ Record certifying the dissolution of Trinidad Foundation

Exhibit "J" Trinidad

Rayby

Letter dated March 10, 1981 of accused-appellant to the Board of Trustees of Rayby Foundation, requesting the transfer of the assets held by Rayby Foundation to Trinidad Foundation

Exhibit "J(Rayby)"

Certification dated May 7, 1981 of the Office of the Public Register, Vaduz

Exhibit "M(t)-Rayby"

Vibur-Avertina

Decision/Resolution dated March 18, 1986 of the Board of Foundation on the dissolution of Vibur Foundation

Exhibit "W(t) (Vibur-Avertina)

Letter dated March 10, 1981 to the Board of Trustees of Wintrop

Exhibit "OO" (Vibur-Avertina)

Documents on closure of Credit Suisse account of Spinus Foundation in favor of Avertina Stiftung, Rubrik C.A.R.

Exhibits "DDDD(t) (Vibur-Arventura)" to "EEEE(t) (Vibur-Avertina)"

[108] The documents cited are summarized as follows:

Foundation

Document

Records

Trinidad

Agreements dated August 28, 1970

Exhibits "G (Trinidad)" and "H (Trinidad)"

Rayby

Agreement dated June 22, 1973

Exhibit "G (Rayby)"

Vibur-Arvertina

Agreements dated November 12, 1971

Exhibits "LLL" (Vibur-Arvertina) and "MMM" (Vibur-Arvertina)"

[109] The documents cited are summarized as follows:

Foundation

Document

Records

Trinidad

Letter dated August 26, 1970 of accused-appellant requesting the creation of Trinidad Foundation

Exhibit "D (Trinidad)"

Letter dated March 10, 1981 of accused-appellant to the Board of Trustees requesting them to remit all assets, securities, time deposits, balances, etc. of Trinidad Foundation in favor of Fides Trust Company

Exhibit "I (Trinidad)"

Rayby

Letter dated March 10, 1981 of accused-appellant to the Board of Trustees of Rayby Foundation, requesting to transfer any assets etc. held by Rayby Foundation to Trinidad Foundation

Exhibit "J (Rayby)"

Palmy

Letter dated November 27, 1981 of former President Marcos to the Board of Trustees

Exhibit "CC" - Palmy

Vibur-Arvertina

Letter dated March 11, 1981 of former President Marcos to the Board of Trustees of Verso Foundation on transfer of assets, securities, time deposits, balances, etc. of Verso in favor of Fides Trust Company

Exhibit "Q" (Vibur-Avertina)

Letters from former President Marcos on the closure of the Vibur Suisse Credit bank account and the creation of Xandy

Exhibits "HH" (Vibur-Avertina) and "JJ" (Vibur-Avertina)

Letter dated March 11, 1981 from former President Marcos to the Board of Trustees of Valamo Foundation, Manila, requesting to remit all assets, securities, time deposits, balances, etc. of Valamo Foundation in favor of Fides Trust Company

Exhibit "UUU" (Vibur-Arvertina)

[110] The documents cited are summarized as follows:

Foundation

Document

Records

Trinidad

Credit and debit advices, statements of account, and bank statements

Exhibits "K (Trinidad)" to "YY (Trinidad)"

Rayby

Credit and debit advice for Rayby Foundation

Exhibits "K (Rayby)" to "L (Rayby)"

Vibur-Arvertina Credit advices for Avertina Foundation Exhibits "FFFF (Vibur-Arvertina)" to "GGGG (Vibur-Arvertina)"

[111] Rollo, p. 177.

[112] Id. at 114.

[113] 681 Phil. 380 (2012) [Per J. Sereno, Second Division].

[114] Id. at 404.

[115] Rollo, pp. 38-39; TSN, Luis Ascalon, September 24, 2012, pp. 25-35.

[116] Rollo, pp. 38-39. TSN, Luis Ascalon, September 24, 2012, pp. 25-35. Judicial Affidavit dated September 24, 2012, pp. 5-6.

[117] Rollo, pp. 38-39. TSN, Luis Ascalon, September 24, 2012, pp. 25-35. Judicial Affidavit dated September 24, 2012, pp. 10-12.

[118] TSN, Luis Ascalon, September 24, 2012, p. 38.

[119] Rollo, pp. 23-24.

[120] Id. at 24.

[121] 834 Phil. 219 (2018) [Per J. Leonen, Third Division].

[122] Id. at 283-284.

[123] TSN, Atty. Francisco I. Chavez, January 13, 2000, p. 7.

[124] SBN rollo, vol. 4, pp. 1157-1158.

[125] Id.

[126] Id.

[127] Id.

[128] Rollo, p. 177.

[129] SBN rollo, vol. 4, pp. 1212, 1235, 1247, 1581, 1864.

[130] Id. at 1211, 1234, 1246, 1580, 1863.

[131] Rollo, p. 46.

[132] SBN rollo, vol. 4, p. 1153.

[133] Id.

[134] *Berboso v. Cabral*, 813 Phil. 405 (2017) [Per J. Tijam, Third Division].

[135] Id. at 421.

[136] Rollo, p. 174.

[137] *People v. Pilen*, 935 Phil. 957, 985 (2023) [Per J. Hernando, First Division].

[138] *Republic v. Sandiganbayan*, 5th Division, 947 Phil. 157, 222 (2023) [Per J. Zalameda, En Banc], citing *People v. Parungao*, 332 Phil. 917 (1996) [Per J. Melo, Third Division].

[139] Rollo, p. 29.

[140] *Republic v. Sandiganbayan*, 5th Division, 947 Phil. 157, 218 (2023) [Per J. Zalameda, En Banc], citing *Country Bankers Insurance Corp. v. Lianga Bay & Community Multi-Purpose Cooperative, Inc.*, 425 Phil. 511, 520 (2002) [Per J. De Leon, Jr., Second Division].

[141] 915 Phil. 713 (2021) [Per J. Gaerlan, Second Division].

[142] Id. at 737-738.

[143] BLACK'S LAW DICTIONARY 594 (8th ed., 2004).

[144] CAMBRIDGE DICTIONARY, "business," available at <https://dictionary.cambridge.org/us/dictionary/english/business> (last accessed on February 2, 2026).

[145] See Information in Criminal Case No. 17287: "having the sole and full right of disposal of 50% of the assets of said company during their lifetime" (Rollo, p. 8); Information in Criminal Case No. 17288: "providing the capital, of SwFr 100'000 for said Foundation which had the object of investment and the administration of its assets and the utilization of its capital and interest; designating herself as its first beneficiary during her lifetime and her children after her death" (Rollo, pp. 8-9); Information in Criminal Case No. 17289: "ordering that the capitalization of the aforesaid Foundation and the cost of establishing it be debited against the account of Trinidad Foundation . . . designating herself as the first and only beneficiary of said Rayby Foundation" (Rollo, p. 9); Information in Criminal Case No. 17290: "causing the deposit/registration of the deed of foundation and statutes/articles pursuant to the legal regulations . . . and being the beneficial owner of the assets of said

Foundation deposited under Account No. 391528" (Rollo, p. 10); Information in Criminal Case No. 22867: "which Foundation the accused and her late husband then President Ferdinand Marcos used or utilized as a conduit in the funnelling [sic] or transferring of ill-gotten wealth or monies, by opening and maintaining bank account or accounts with the Schweizeresche Kreditanstalt (SKA), or Credit Swiss Bank or Swiss Bank Corporation (SBC), or in other banks outside of the Philippines, in the Foundation's name for the benefit of the accused and her late husband then President Ferdinand E. Marcos, and their children" (Rollo, pp. 11-12); Information in Criminal Case No. 22868: "which Foundation the accused and her late husband then President Ferdinand Marcos used or utilized as a conduit in the funnelling [sic] or transferring of ill-gotten wealth or monies, by opening and maintaining bank account or accounts with the Schweizeresche Kreditanstalt (SKA), or Credit Swiss Bank or Swiss Bank Corporation (SBC), or in other banks outside of the Philippines, in the Foundation's name for the benefit of the accused and her late husband then President Ferdinand E. Marcos, and their children" (Rollo, p. 11); Information in Criminal Case No. 22869: "which Foundation the accused and her late husband then President Ferdinand Marcos used or utilized as a conduit in the funnelling [sic] or transferring of ill-gotten wealth or monies, by opening and maintaining bank account or accounts with the Schweizeresche Kreditanstalt (SKA), or Credit Swiss Bank, or Bank Hoffman or Swiss Bank Corporation (SBC) or in other banks outside the Philippines, in the Foundation's name for the benefit of the accused and her late husband then President Ferdinand E. Marcos, and their children" (Rollo, pp. 13-14).

[146] The Articles of the Maler Foundation states that its purpose is "the placement, administration and the disposal of the assets of the Foundation for the purpose of financial assistance in favor of the beneficiaries." (SBN rollo, vol. 6, p. 126); The Statutes of the Trinidad Foundation states that "[t]he object of the Foundation is the investment and the administration of the Foundation's assets and the utilization of the capital and interest in favor of the persons specified in separate Regulations (By-Statutes)." (SBN rollo, vol. 6, p. 1588); The Articles of the Avertina Foundation states that "[t]he object and purpose of the Foundation are the administration of the Foundation's assets and all operations connected therewith as well as the distribution of allocations from the yields of the Foundation's assets or from the assets themselves to the persons and/or institutions designated as beneficiaries in By-Laws to be enacted by the Board of Trustees. (SBN rollo, vol. 6-A (22867-22870 v. 1), p. 204); The By-Laws of the Rayby Foundation states that "[t]he object of the Foundation is the investment and the administration of the Foundation's assets and the distribution of capital and interest to the persons designated in separate Regulations." (SBN rollo, vol. 5, p. 1732); The Statutes of the Xandy Foundation states that "[t]he object of the Foundation is the investment and the administration of the Foundation's assets and the utilization of the capital and interest in favor of the persons specified in separate Regulations (By-Statutes)." (SBN rollo, vol. 6-A, (22867-22870 v. 1), p. 227).

[147] Rollo, p. 71. (Emphasis supplied)

[148] Id. at 72.

[149] Lucas R. Arrivillaga & Georg von Schnurbein, The Swiss Legal Framework on Foundations and Its Principles About Transparency, 16 INT'L J. NOT-FOR-PROFIT L. 30 (2014).

[150] Rollo, p. 71.

[151] Id. at 72.

[152] Lucas R. Arrivillaga & Georg von Schnurbein, The Swiss Legal Framework on Foundations and Its Principles About Transparency, 16 INT'L J. NOT-FOR-PROFIT L. 30, 31 (2014).

[153] Lucas R. Arrivillaga & Georg von Schnurbein, The Swiss Legal Framework on Foundations and Its

Principles About Transparency, 16 INT'L J. NOT-FOR-PROFIT L. 30 (2014).

[154] Lucas R. Arrivillaga & Georg von Schnurbein, The Swiss Legal Framework on Foundations and Its Principles About Transparency, 16 INT'L J. NOT-FOR-PROFIT L. 30, 40 (2014).

[155] WIPO Lex, SWISS CIVIL CODE, available at <https://www.wipo.int/wipolex/en/text/530883> (last accessed February 10, 2026).

[156] Article 1 of the Articles of the Maler Foundation states: "A foundation under the name Maler Foundation is established pursuant to the provisions of Art. 552 of the Private and Company Law of Liechtenstein (PGR)." (SBN rollo, vol. 6, p. 125).

[157] Article 1 of the Statutes of the Trinidad Foundation was constituted "with the right of personality in accordance with Art. 552 and following of the PGR." (SBN rollo, vol. 5, p. 1588).

[158] Article 1 of the By-Laws of the Rayby Foundation states that it was constituted "as a corporate entity in accordance with Art. 552 et seq. of the Liechtenstein Code on Persons and Corporations." (SBN rollo, vol. 5, p. 1732)

[159] The Articles of Incorporation states that the foundation "has its own legal entity according to Liechtenstein Private and Company Law (Art. 552 et seq. PGR)." (SBN rollo, vol. 6-A (22867-22870 v. 1), p. 203).

[160] WIPO Lex, SWISS CIVIL CODE, available at <https://www.wipo.int/wipolex/en/text/530883> (last accessed June 21, 2024).

[161] Government of the Principality of Liechtenstein Law, available at <https://www.regierung.li/text/16318/law> (last accessed June 22, 2024).

[162] *Cuartocruz v. Active Works, Inc.*, 857 Phil. 463, 471 (2019) [Per J. Jardeleza, First Division].

[163] See *Serrano v. Central Bank of the Philippines*, 185 Phil. 54, 61 (1980) [Per J. Concepcion, Second Division].

[164] See *Hospital De San Juan De Dios, Inc. v. Commissioner of Internal Revenue*, 263 Phil. 981 (1990) [Per J. Grino-Aquino, First Division].

[165] 453 Phil. 1059 (2003) [Per J. Corona, En Banc].

[166] *Id.* at 1130.

[167] 461 Phil. 598 (2003) [Per J. Corona, En Banc].

[168] *Id.* at 604.

[169] *Id.* at 607.

[170] *Id.* at 615-616 (2003) [Per J. Corona, En Banc].

[171] 453 Phil. 1059 (2003) [Per J. Corona, En Banc].

[172] *People v. Palabrica III*, 915 Phil. 713 (2021) [Per J. Gaerlan, Second Division].

[173] *Id.* at 740.

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