

JUAN CALUBAQUIB Y CARBONEL, PETITIONER, VS. THE SANDIGANBAYAN AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. Nos. 54272-73. September 30, 1982

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

These are two (2) separate appeals by certiorari from the decision of the Sandiganbayan convicting the petitioners, along with two other co-accused, of the crime of estafa, through falsification of public documents, as shown by the dispositive portion of said decision which reads:

"WHEREFORE, Criminal Cases Nos. 355 and 356 are hereby considered as one offense and judgment is hereby rendered as follows:

"a. Accused Viriato Molina, Jr. y Morales, Timoteo Tamaray y Mallillin, Pompeo Bassig y Ramos and Juan Calubaquib y Carbonel are hereby found guilty beyond reasonable doubt as principals of the crime of estafa as defined and penalized under Article 315, paragraph 2 of the Revised Penal Code, through falsification of public documents under Article 171 of the same Code, and there being no modifying circumstance to consider, the Court sentences each one of them to an indeterminate imprisonment ranging from 4 years, 2 months and 1 day of prision correccional as minimum, to 10 years and 1 day of prision mayor as maximum and to pay a fine of P3,000.00; and

"b. Accused Epifanio Palattao y Guzman, Eduardo Pazziuagan y Lagundi, Juan C. Daogas, Apolinario Obispo y Arugay, Jose Buñag y Carag and Avelina Macaraniag y Garcia are hereby acquitted of the crime charged for failure of the prosecution to prove their guilt beyond reasonable doubt, with costs de oficio. Their respective bail bonds filed for their temporary liberty are hereby cancelled.

"No pronouncement as to the civil liability it appearing that the amount for which the Province of Cagayan was defrauded had already been refunded.

"All of the convicted accused are further ordered to proportionately pay the costs.

"Let the cases be archived with respect to accused Bonifacio Cañedo, without prejudice to their being revived upon his arrest. Major General Fidel V. Ramos, Chief of the Philippine Constabulary and Director General of the Integrated National Police, is hereby directed to exert maximum effort for the arrest of accused Benjamin Cañedo." [1]

The appeal of Juan Calubaquib, docketed as G. R. Nos. 54272-73, and that of Viriato Molina, Jr. as G. R. Nos. 55136-37, arose from the same cases which were tried jointly in the Sandiganbayan, and decided in one single decision. Hence, for convenience and expediency, the two separate petitions are taken up together.

For the statement of the case and of the facts as proven by the evidence of the prosecution, We quote from the memorandum of the Solicitor General the following:

"Prior to his going on leave on May 30, 1977, Judge Bonifacio Cacdac, the Presiding Judge of Branch V and designated Presiding Judge of Branch I of the Court of First Instance of Cagayan stationed in Tuguegarao, instructed Norma Avena, the clerk in charge of requisitioning supplies in his court to requisition supplies needed by the janitor because "the office was dirty, the toilet was stinky and the floor in the courtroom of Branch V was very dirty" and that according to the janitor they did not have materials for the use of the court.

"On June 6 or 7, 1977, when Judge Cacdac reported for work, he was told by Avena that the latter was unable to requisition the supplies needed by the janitor because there were no more funds left in the Capitol as the same had already been exhausted due to repairs of typewriters. Forthwith, Cacdac went to the Provincial Treasurer's Office in the Capitol of Tuguegarao to inquire about the matter. Timoteo Tamaray, a bookkeeper at the Treasurer's Office showed him vouchers purporting to show that there were repairs of typewriters made in Branches I and V of the court. Astonished, as he was not informed of the repairs and knowing that the typewriters in his court necessitated no repairs, Cacdac wired National Bureau of Investigation Director Jolly Bugarin requesting for NBI agents to investigate ghost repairs of equipments of Branches I and V of the Cagayan Court of First Instance.

"The outcome of aforesaid investigation and the preliminary investigation conducted later by Special Prosecutor Rufo Baculi was the filing on August 6, 1979 before respondent Sandiganbayan of two identical informations, except as to the number and amount of the vouchers, against 13 persons, for malversation through falsification of public documents.

"Upon arraignment, all the accused, with the exception of Cañedo who is still at large until the present time, pleaded not guilty. Thereafter, upon motion of the prosecution, accused Domingo and Dayag were discharged from the two informations to be utilized as state witnesses in a resolution of respondent court to that effect dated February 26, 1980 .

"The two cases which were jointly tried upon agreement of the prosecution and the defense therefore did not include Cañedo, Domingo and Dayag.

"The evidence adduced by the prosecution and undisputed by the defense revealed the following facts:

"In the requisition of office supplies, a Requisition and Issue Voucher (RIV) is used if supplies are in stock but if the same is not carried in stock the Purchase Request is used instead. After the preparation of the RIV or Purchase Request by the requisitioning officer, the same is submitted to the Provincial Treasurer's Office for verification if there is fund for the purpose, and if there is, the Bookkeeper initials it and submits it to the Administrative Deputy for the latter's initial to indicate availability of funds. Then it is forwarded to the Provincial Treasurer for approval and finally returned to the requisitioning officer who will obtain the approval of the local chief executive. There will now be a canvass for the lowest price wherein Open Quotations are sent to reputable firms requesting the latter to quote their lowest price for the article. Then the abstract of open quotation is prepared wherein the award is given to the lowest bidder.

"The Purchase Order and Report of Waste Materials are prepared and then the materials or supplies are delivered and inspected by the representative of the Provincial Auditor to find out if the articles delivered conform to the specified quantities. If they do conform, a certificate is made and the voucher for payment is prepared by the requisitioning officer.

"The voucher is forwarded to the Provincial Treasurer's Office where the same goes first to the processing clerk of the Accounting Division who verifies the mathematical computation of the voucher and its supporting documents and initials the same. The voucher then goes to the ledger clerk of the same division who sees to it that there is an appropriation for the same based on the budget and then initials it. Thereafter, the voucher goes to the Assistant Bookkeeper who verifies if there is enough allotment, meaning the quarterly allotment, and if there is, initials it. Then it goes to the Bookkeeper who reviews it and its supporting documents and likewise initials the same.

"The voucher now goes to the Administrative Deputy for processing and for his initial signifying his approval. Then it goes to the Assistant Provincial Treasurer who reviews it and its supporting documents and after affixing his initial, passes the same to the Provincial Treasurer for approval, but if the Provincial Treasurer and his Assistant are absent, the Administrative Deputy has the final authority.

"The voucher now is brought to the Office of the Provincial Auditor for pre-auditing and thereafter, the same is returned to the cash division of the Provincial Treasurer's Office for preparation of the check.

"After the check is prepared and initialed by the Cashier, the same is submitted to the Administrative Deputy for his initial. Then the check goes to the Provincial Treasurer for his signature and finally to the Provincial Auditor for counter-signature. The check then goes to the cash division and delivered to the creditor as payment.

"Likewise undisputed is the fact that in the approval of the vouchers in question and preparation of its supporting documents, Molina, as Clerk of Court of the Court of First Instance of Cagayan, Branches I and V, certified in the Purchase Requests (Exhs. K, W and X) that the typewriter spare parts stated therein are necessary for the use of his office, signed the Open Quotations (Exhs. I, I-1, I-2, S, T and U), the Abstract of Open Quotations (Exhs. J and V) awarding the items therein to be purchased to the Universal Business Machine, the Requisition and Issue Vouchers (Exhs. H and R) that he received the supplies mentioned therein, the Report of Waste Materials (Exhs. N, AA, and BB), and the payment vouchers (Exhs. G and Q) that the expenses therein are correct and have been incurred under his authority; that Pazziuagan, as Administrative Deputy of the Provincial Treasurer's Office, initialed below the typewritten name of Provincial Treasurer Sergio Taguinod in the payment vouchers, the Purchase Requests, the Requisition and Issue Vouchers, the Purchase Order (Exh. Y) and signed the Open Quotations for the Assistant Provincial Treasurer, the Abstract of Open Quotations for the Provincial Treasurer and finally, the check (Exh. GG); that Palattao, as Provincial Administrator, signed the Abstract of Open Quotations; that Obispo, as representative of the Office of the Provincial Governor in the Committee of Canvassers, signed the Open Quotations and initialed the Abstract of Open Quotations; that Tamaray, as Bookkeeper of the Accounting Division of the Provincial Treasurer's Office, signed the payment vouchers as to their journal entries, ini-tialed below the name of Provincial Treasurer Taguinod in the payment vouchers, the Purchase Requests, the Requisition and Issue Vouchers and the Purchase Order; that Dayag, as Assistant Bookkeeper of the Office of the Provincial Treasurer of Cagayan, affixed his initial in the payment vou-chers after the handwritten words "As to allotment advice," the Requisition and Issue Vouchers, the Purchase Requests and the Purchase Orders (Exhs. L, Y, and Z); that Domingo, a laborer-carpenter in the Provincial Treasurer's Office of Cagayan and assigned as canvasser, signed the Open Quotations; that herein petitioner Calubaquib, as Division Chief of the Provincial Auditor's Office, signed the Report of Waste Materials (Exhs. N, AA and BB) and certified to the verification and inspection of the parts and repairs made in the Requisition and Issue Vouchers (Exhs. H and R-1); that Bassig, a laborer in the Office of the Provincial Treasurer, signed the Report of Waste Materials (Exhs. N, AA and BB) as witness to disposition; that Daogas, as Assistant Provincial Auditor, signed the Report of Waste Materials in a second indorsement approving the action of Calubaquib and the check (Exh. GG); that Macaraniag, as Assistant Chief of Section of the Provincial Auditor's Office, initialed the dorsal part of the payment vouchers and initialed below the name of Provincial Auditor Benjamin C. Cortez in the Purchase Requests; and that Buñag, as Senior Clerk of the Provincial Auditor's Office, likewise initialed the dorsal part of the payment vouchers."[2]

Conviction, after due trial, was based on conspiracy in which both petitioners deny having had any part.

G. R. Nos. 54272-73 (Juan Calubaquib, Petitioner)

For the statement of the facts as proven by the evidence of petitioner Calubaquib, We also quote from his memorandum the following:

"It appears that on May 30, 1977, Atty. Molina executed Purchase Requests (Exhibits "K", "W" and "X") certifying therein that the typewriters of both Branches I and V needed repairs and that the spare parts enumerated therein were necessary. Along with the Purchase Requests and on probably the same occasion, he also prepared and signed the following:

"i. the Open Quotations (Exhibits "I", "I-1", "I-2", "S", "T" and "U") to the effect that three (3) bidders submitted bids for the repairs to be made;

"ii. the Abstract of Open Quotations (Exhibits "J" and "V") to the effect that the Committee on Awards of which he was a member had found Universal Business Machines, owned by Bonifacio Cañedo, as the lowest bidder;

"iii. the Requisition and Issue Voucher (Exhibits "H" and "R") to the effect that he received the supplies mentioned therein.

"It is important to note that your petitioner had no say whatsoever in the determination of the necessity of repairs.

"On the very day that Atty. Molina accomplished the documents, Bonifacio Cañedo hand-carried the Open Quotations and the Abstracts of Open Quotations to Epifanio Palattao, who forthwith affixed his signature to the abstracts notwithstanding that no actual canvass of supplies had been conducted. In other words, Atty. Molina and Mr. Palattao certified to the lowest bid of Bonifacio Cañedo in advance of an actual canvass, or in the absence of an actual canvass. Certainly, since the abstracts had already been signed ahead of the actual canvass, canvassers Dominador Domingo and Apolinario Obispo believed that they had no practical alternative but to sign the Open Quotations already prepared for their signatures.

"The defraudation continued the next day, May 31, 1977, when Cañedo came to the Office of the Provincial Auditor requesting for the inspection of typewriters he alleged to have already repaired and bringing with him the worn-out spare parts that were supposedly extracted from the repaired typewriters as well as the new parts that were still to be installed (tsn, March 18, 1980, p. 86).

"This is where petitioner Juan Calubaquib's participation begins - the verification of repairs made antecedent to payment.

"At the very instance that Cañedo called on the Office of the Provincial Auditor, there were no checkers and inspectors around, for which reason, he approached your petitioner, who asked Cañedo to wait until they came. The job of inspection and certification was a responsibility of the checkers and inspectors of the Provincial Auditor's Office although Mr. Calubaquib, as part of his appointment, was also authorized to make an inspection, after all, he had been issued a designation therefor by the Commission on Audit and has an identification card bearing such authority (Id., pp. 136-137).

"x x x

"Sometime thereafter, Judge Bonifacio A. Cacdac, Jr. of Branch V (and concurrently of Branch I) of the Court of First Instance of Cagayan showed up at the Office of the Provincial Auditor complaining about the representation to the court employees that the provincial funds allotted to the court for supplies had already been exhausted when there were really no repairs on the typewriters of Branch I and V (tsn, March 17, 1980, p. 104). Pursuing the matter further, Judge Cacdac wired the National Bureau of Investigation to investigate the ghost repairs (Exh. "OO").

"Probably having gotten wind of the discovery of the fraud, Cañedo sent a letter offering to return the money he got from the Provincial Treasurer, rationalizing his gesture with the fact that he was not able to make the repairs (tsn, March 18, 1980, p. 131). In a conference with Provincial Auditor Benjamin Cortez, Juan Calubaquib, along with Mr. Adarme of the Provincial Auditor's Office, was asked by Mr. Cortez to prepare a

letter accepting the offer to return the money. (Id., pp. 101-103). After the letter was prepared, petitioner sent the same to the Provincial Auditor for his signature but was not signed because the Provincial Auditor left Cagayan for the City of Manila. To facilitate the restitution, nevertheless, your petitioner made a Second Indorsement (Exh. HH) to the Provincial Treasurer to the effect that a letter was indeed prepared for the signature of the Provincial Auditor accepting the offer to return the money.

"Eventually, the money was returned and duly receipted for by the Province of Cagayan (Exh. "MM").[3]

The theory of the prosecution is that all the accused entered into a conspiracy to commit the fraud. However, the trial court convicted only four of the ten accused and acquitted six of them.

The petitioner, Juan Calubaquib, denies having had any part in the supposed conspiracy. His participation in the fraudulent scheme is the verification of the repairs before payment was made to the repairer, Cañedo. He alleged he did the verification job because he was approached by Cañedo when the latter called at the Office of the Provincial Auditor on May 31, 1977 where petitioner worked as Chief of Division, but with designation to make inspection, because the regular inspectors and checkers were not around. Petitioner's version on how he came to do the verification job, quoting from his memorandum, is as follows:

"Cañedo paid a visit to Mr. Calubaquib's office in the early morning of May 31, 1977. Since Cañedo's wait had been long and since it was already approaching noontime yet no checkers or inspectors came by, Mr. Calubaquib decided to go to the courts to conduct the inspection himself, after all, he did not have much to do (Id., pp. 86-87).

"Your petitioner saw all the typewriters in both Branches I and V of the Court of First Instance of Cagayan and they were all being used (Id., pp. 87-91). In other words, they were all in good operating condition. On the basis of the fact that they were all being used, and were therefore in good running condition, he concluded that they had already been repaired (Id., pp. 116-117). Of course, he was not at all aware that the typewriters did not need repairs at all - after all, neither he nor his office had anything to do with the determination of whether or not repairs were required at the very outset.

"After the inspection he conducted at the courts, Mr. Calubaquib went back to the Provincial Capitol (Id., p. 91) where he made the Certificates of Inspection (Exhibits "1-Calubaquib" and "2-Calubaquib"). On the same occasion, he asked Cañedo to open the bundle of spare parts (tsn, March 18, 1980, p. 94). He examined and checked the materials listed in the Reports of Waste Materials (Exhibits N, AA and BB), signed said documents and instructed Cañedo, first, to type out his name below his (Calubaquib's) signature and, second, to let Mrs. Avelina Macaraniag, who was still in the office then, to sign as witness to the disposition (tsn, March 18, 1980, p. 96).

"In accordance with his job, Juan Calubaquib destroyed and hammered the waste materials and threw them away (Id., p. 99).

"Such was the end of Mr. Calubaquib's participation. He had nothing more to do with the transaction thereafter.

"Contrary to the instructions given by Mr. Calubaquib, however, Cañedo did not have Mrs. Macaraniag sign as witness to the disposition. Instead, he got Pompeo Bassig to sign when Bassig was not actually in attendance during the inspection. This can be readily seen from the fact that the typewriter used in placing Mr. Calubaquib's name on the Report of Waste Materials (Exhibits N, AA and BB) is different from that used in typing out the name POMPEO BASSIG.

"In due course, the papers went to the offices of the Provincial Auditor and the Provincial Treasurer. In the end, the P11,802.00 was released and paid to Cañedo.[4]

In denying conspiracy as imputed to him, Calubaquib points to the following circumstances which he alleged to negate conspiracy:

- "a. there was no prior acquaintance, arrangement or tryst between Juan Calubaquib and Bonifacio Cañedo and the other accused;
- "b. it was mere coincidence that Juan Calubaquib had to do the inspection himself because of the unavailability of checkers and inspectors at the time;
- "c. Juan Calubaquib actually went to the courts to inspect; he did not just sit on his desk;
- "d. contrary to the conclusion of the Sandiganbayan, there were typewriter parts brought to the office of petitioner although it turned out that they were not really extracted from the typewriters of the courts;
- "e. Juan Calubaquib inspected the spare parts after coming from the court and disposed of them accordingly;
- "f. Juan Calubaquib concluded that repairs were actually made because (i) waste materials were presented to him, (ii) the typewriters were in good working condition, and (iii) Atty. Molina certified that the repairs were already made;
- "g. there is no other evidence, direct or circumstantial, implicating Juan Calubaquib in the conspiracy;
- "h. Juan Calubaquib paved the way for a return of the money, a fact at war with a finding of conspiracy;
- "i. Juan Calubaquib did not have any part of the money or profit from the transaction." [5]

If the enumerated circumstances were true, there, indeed, would be grave doubts as to petitioner having taken part in the conspiracy to commit the fraud against the government. Since there are regular checkers and inspectors in the Provincial Auditor's Office, anyone of them would have been a better choice to perform the job of verification. Petitioner was holding a much higher position as Division Chief with more than 40 years of service, unmarred by any act of dishonesty, he would ordinarily not be expected to accept a proposal to commit a fraud against the government, the very kind of an irregularity or offense his office of which he is a ranking personnel is committed to prevent and guard against.

If he was a co-conspirator, there would have been no need for the 5-kilometer travel to the courts under the "hot summer sun" for an actual verification of the repairs. Having seen the typewriters and found them in good operating condition, and with the presentation of spare parts to him at his office, which he destroyed as no longer usable, and with the certification of Clerk of Court Molina that the repairs were already made, petitioner had every reason to believe that the repairs were real, not fictitious. Considering that it was too easy to make any inspector believe that the repairs were real because the typewriters had always been in good working condition, and with discarded spare parts so easily procurable, there was hardly any need, if at all, for the "inspector," to be brought into the conspiracy. In any fraudulent scheme, the less participants, the better for easier execution of the plot and lesser chance of detection.

The trial court, however, refused to believe the petitioner on the version he gave as set forth above. We find no cogent reason to agree with the said court in not according credence to petitioner's testimony. No contradiction was offered, nor can we find any, to justify discarding said testimony as unworthy of credit. The trial court's disbelief is grounded merely on the fact that the supposed repairs were not real but simulated. What is important to consider, however, is whether petitioner knew that to be the fact. There is absolutely no solid evidence to prove that knowledge. On the contrary, the circumstances cited by him, effectively undisputed, much less rebutted, raise grave doubt as to his being involved in the conspiracy.

We are particularly impressed by the following argument of petitioner:

"In reasoning out its conviction of Juan Calubaquib, the Sandiganbayan declared in unequivocal terms as follows:

"xxx Like Molina, he (Calubaquib) cannot ignore the cold reality that there was nothing to be inspected and verified for there was no delivery of parts and no parts were hammered into pieces because none was actually replaced. (Decision, p. 14)

"Such, of course, was a sweeping statement that has utterly failed to filter the relevant facts in an appropriate and judicious manner.

"For there were typewriter spare parts brought to the Office of the Provincial Auditor in the morning of May 31, 1977 (tsn, March 18, 1980, p. 86). The bundles were later unwrapped and checked by your petitioner. (Id., pp. 94-95, pp. 109-110, pp. 113-114, pp. 114-116, pp. 118-119). These parts were brought by Cañedo when he came in the morning of May 31, 1977 . THIS PORTION OF THE EVIDENCE IS UNREBUTTED.

"True, there were really no parts replaced in the typewriters of the courts. But this is to be distinguished from the fact that typewriter parts were actually presented to your petitioner at the Provincial Auditor's Office. What has surfaced here is that Juan Calubaquib was deceived into believing that they were the waste materials taken out of the typewriters and were afterwards replaced.

"For Juan Calubaquib to have recognized the spare parts as pertaining to typewriters is not difficult. Anyway, it does not take technical knowledge to tell that the parts were those of typewriters.

"Besides, it was not within the competence of the petitioner to determine, then and now, whether or not the parts were really removed from the courts' typewriters. His job did not call for his presence during the supposed dismantling of the parts.

"Unfortunately for the petitioner, what has surfaced here is that Canedo gathered spare parts in his shop and deceived Juan Calubaquib into believing that they were the waste materials extracted from the typewriters of the courts."[6]

The trial court seems to have given much weight to the testimony of Bassig, petitioner's co-accused, that he did not witness "any part being hammered into pieces and thrown to the pit." (p. 24, tsn, March 16, 1980). Again, petitioner's argument on this point is not without merit. Thus -

"Juan Calubaquib inspected the bundles of spare parts. Petitioner's testimony in this respect is straightforward and its truth cannot be doubted, to wit:

'I signed the reports of waste materials and because of the pressing paper works that are awaiting on my table I told Bonifacio Cañedo to just type my name below my signature and I instructed him to see Mrs. Macaraniag who was then present if she can witness as to the disposition of the materials (tsn, March 18, 1980, p. 96).'

"Contrary to your petitioner's instruction, Cañedo did not see Mrs. Macaraniag; instead, he got accused Pompeo Bassig to sign as witness when Bassig was not there during the inspection. The Sandiganbayan failed to notice that the typewriter used in placing the name of Bassig was different from that which was used in typing out the action taken as well as the name of Juan Calubaquib."[7]

Furthermore, Bassig being a co-accused, he could not have been cross-examined by petitioner's counsel, for which reason, plus the fact that Bassig's testimony is a "negative" evidence, same is of no evidentiary value against the positive, un rebutted testimony of petitioner.

By and large, the evidence fails to convince Us beyond reasonable doubt that petitioner Juan Calubaquib is guilty as charged.

G. R. Nos. 55136-37 (Viriato Molina, Jr., petitioner)

In his petition, Molina raises both questions of law and of fact.

The questions of law are: (1) Whether the Sandiganbayan was validly created, and if not, as claimed, it acted without jurisdiction in violation of the due process clause of the Constitution; (2) Whether the decree providing for the procedures in the Sandiganbayan are ex post facto, and (3) Whether the equal protection guaranty is violated by the procedures provided in the decree.

The question of fact refers to the sufficiency of the evidence upon which petitioner was convicted.

I

All the issues of law, as indicated above, have been set at rest in the case of *Nuñez vs. Sandiganbayan and People of the Philippines*,^[8] The decision in which was penned by Chief Justice Fernando, from which We can do no better than to quote the pertinent rulings.

Thus, on the legality of the creation of the Sandiganbayan:

"1. It is to be made clear that the power of the then President and Prime Minister Ferdinand E. Marcos to create the Sandiganbayan in 1978 is not challenged in this proceeding. While such competence under the 1973 Constitution contemplated that such an act should come from the National Assembly, the 1976 Amendments made clear that he as incumbent President 'shall continue to exercise legislative powers until martial law shall have been lifted.' Thus, there is an affirmation of the ruling of this Court in *Aquino Jr. v. Commission on Elections* decided in 1975. In the language of the ponente, Justice Makasiar, it dissipated 'all doubts as to the legality of such law-making authority by the President during the period of Martial Law, * * *.' As the opinion went on to state: 'It is not a grant of authority to legislate, but a recognition of such power as already existing in favor of the incumbent President during the period of Martial Law.'"^[9]

The alleged denial of due process of law consequent upon the claimed illegality of the creation and constitution of the Sandiganbayan which would thus be incapable of exercising valid jurisdiction, an indispensable element of due process, is likewise disposed of in the *Nuñez* case against the proposition postulated by petitioner in the following passages, as quoted from the decision:

"The argument based on denial of due process has much less to recommend it. In the exhaustive forty-two page memorandum of petitioner, only four and a half pages were devoted to its discussion. There is the allegation of lack of fairness. Much is made of what is characterized as 'the tenor and thrust' of the leading American Supreme Court decision, *Snyder v. Massachusetts*. Again this citation cuts both ways. With his usual felicitous choice of words, Justice Cardozo, who penned the opinion, emphasized: 'The law, as we have seen, is sedulous in maintaining for a defendant charged with crime whatever forms of procedure are of the essence of an opportunity to defend. Privileges so fundamental as to be inherent in every concept of a fair trial that could be acceptable to the thought of reasonable men will be kept inviolate and inviolable, however crushing may be the pressure of incriminating proof. But justice, though due to the accused, is due to the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true.' What is required for compliance with the due process mandate in criminal proceedings? In *Arnault v. Pecson*, this Court with Justice Tuason as ponente, succinctly identified it with 'a fair and impartial trial and reasonable opportunity for the preparation of defense.' In criminal proceedings then, due process is satisfied if the accused is 'informed as to why he is proceeded against and what charge he has to meet, with his conviction being made to rest on evidence that is not tainted with falsity after full opportunity for him to rebut it and the sentence being imposed in accordance with a valid law. It is assumed, of course, that the court that rendered the decision is one of competent jurisdiction.' The above formulation is a reiteration of what was decided by the American Supreme Court in a case of Philippine origin, *Ong Chang Wing v. United States* decided during the period of American rule, 1910 to be precise. Thus: 'This court has had frequent occasion to consider the requirements of due process of law as applied to criminal procedure, and, generally speaking, it may be said that if an accused

has been heard in a court of competent jurisdiction, and proceeded against under the orderly, processes of law, and only punished after inquiry and investigation, upon notice to him, with an opportunity to be heard, and a judgment awarded within the authority of a constitutional law, then he has had due process of law." [10]

Bolstering his attack against the constitutionality of the decree creating the Sandiganbayan, petitioner also contends that the procedure provided therein is violative of the provision of the constitution which prohibits the passage of ex post facto law. Again, let Us note what the Nuñez case says on this point:

"4. The contention that the challenged Presidential Decree is contrary to the ex post facto provision of the Constitution is similarly premised on the allegation that 'petitioner's right of appeal is being diluted or eroded efficacy wise * * *'. A more searching scrutiny of its rationale would demonstrate the lack of persuasiveness of such an argument. The Kay Villegas Kami decision, promulgated in 1970, cited by petitioner, supplies the most recent and binding pronouncement on the matter. To quote from the ponencia of Justice Makasiar: 'An ex post facto law is one which: (1) makes criminal an act done before the passage of the law and which was innocent when done, and punishes such an act; (2) aggravates a crime, or makes it greater than it was, when committed; (3) changes the punishment and inflicts a greater punishment than the law annexed to the crime when committed; (4) alters the legal rules of evidences, and authorizes conviction upon less or different testimony than the law required at the time of the commission of the offense; (5) assuming to regulate civil rights and remedies only, in effect imposes penalty or deprivation of a right for something which when done was lawful; and (6) deprives a person accused of a crime of some lawful protection to which he has become entitled, such as the protection of a former conviction or acquittal, or a proclamation of amnesty.' Even the most careful scrutiny of the above definition fails to sustain the claim of petitioner. The 'lawful protection' to which an accused 'has become entitled' is qualified, not given a broad scope. It hardly can be argued that the mode of procedure provided for in the statutory right to appeal is therein embraced. This is hardly a controversial matter. This Court has spoken in no uncertain terms. In *People v. Vilo*, a 1949 decision, speaking through the then Justice, later Chief Justice Paras, it made clear that seven of the nine Justices then composing this Court, excepting only the ponente himself and the late Justice Perfecto, were of the opinion that Section 9 of the Judiciary Act of 1948, doing away with the requirement of unanimity under Article 47 of the Revised Penal Code with eight votes sufficing for the imposition of the death sentence, does not suffer from any constitutional infirmity. For them its applicability to crimes committed before its enactment would not make the law ex post facto.

"5. It may not be amiss to pursue the subject further. The first authoritative exposition of what is prohibited by the ex post facto clause is found in *Mekin v. Wolfe*, decided in 1903. Thus: 'An ex post facto law has been defined as one - (a) Which makes an action done before the passing of the law and which was innocent when done criminal, and punishes such action; or (b) Which aggravates a crime or makes it greater than it was when committed; or (c) Which changes the punishment and inflicts a greater punishment than the law annexed to the crime when it was committed; or (d) Which alters the legal rules of evidence and receives less or different testimony than the law required at the time of the commission of the offense in order to convict the defendant.' There is relevance to the next paragraph of the opinion of Justice Cooper: 'The case clearly does not come within this definition, nor can it be seen in what way the act in question alters the situation of petitioner to his disadvantage. It gives him, as well as the Government, the benefit of the appeal, and is intended as furnishing the means for the correction of errors. The possibility that the judge of the Court of First Instance may commit error in his favor and wrongfully discharge him appears to be the only foundation for the claim. A person can have no vested right in such a possibility.'

"6. *Mekin v. Wolfe* is traceable to *Calder v. Bull*, a 1798 decision of the United States Supreme Court. Even the very language as to what falls within the category of this provision is well-nigh identical. Thus: 'I will state what laws I consider ex post facto laws, within the words and the intent of the prohibition. 1st. Every law that makes an action done before the passing of the law; and which was innocent when done, criminal; and punishes such action. 2d. Every law that aggravates a crime, or makes it greater than it was, when committed.

3d. Every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed. 4th. Every law that alters the legal rules of evidence, and receives less, or different, testimony, than the law required at the time of the commission of the offense, in order to convict the offender. All these, and similar laws, are manifestly unjust and oppressive.' The opinion of Justice Chase who spoke for the United States Supreme Court went on to state: 'The expressions ex post facto laws are technical, they had been in use long before the Revolution, and had acquired an appropriate meaning, by legislators, lawyers, and authors. The celebrated and judicious Sir William Blackstone in his commentaries, considers an ex post facto law precisely in the same light I have done. His opinion is confirmed by his successor, Mr. Wooddeson; and by the author of the Federalist, who I esteem superior to both, for his extensive and accurate knowledge of the true principles of government.

"7. Petitioner relies on *Thompson v. Utah*. As it was decided by the American Supreme Court in April of 1898 - the very same year when the Treaty of Paris, by virtue of which, American sovereignty over the Philippines was acquired - it is understandable why he did so. Certainly, the exhaustive opinion of the first Justice Harlan, as was mentioned by an author, has a cutting edge, but it cuts both ways. It also renders clear why the obstacles to declaring unconstitutional the challenged Presidential Decree are well-nigh insuperable. After a review of the previous pronouncements of the American Supreme Court on this subject, Justice Harlan made this realistic appraisal: 'The difficulty is not so much as to the soundness of the general rule that an accused has no vested right in particular modes of procedure as in determining whether particular statutes by their operation take from an accused any right that was regarded, at the time of the adoption of the constitution, as vital for the protection of life and liberty, and which he enjoyed at the time of the commission of the offense charged against him.' An 1894 decision of the American Supreme Court, *Duncan v. Missouri* was also cited by petitioner. The opinion of the then Chief Justice Fuller, speaking for the Court, is to the same effect. It was categorically stated that 'the prescribing of different modes of procedure and the abolition of courts and the creation of new ones, leaving untouched all the substantial protections with which the existing laws surrounds the person accused of crime, are not considered within the constitutional inhibition.'

"8. Even from the standpoint then of the American decisions relied upon, it cannot be successfully argued that there is a dilution of the right to appeal. Admittedly under Presidential Decree No. 1486, there is no recourse to the Court of Appeals, the review coming from this Court. The test as to whether the ex post facto clause is disregarded, in the language of Justice Harlan in the just-cited *Thompson v. Utah* decision taking 'from an accused any right that was regarded, at the time of the adoption of the constitution, as vital for the protection of life and liberty, and which he enjoyed at the time of the commission of the offense charged against him.' The crucial words are 'vital for the protection of life and liberty' of a defendant in a criminal case. Would the omission of the Court of Appeals as an intermediate tribunal deprive petitioner of a right vital to the protection of his liberty? The answer must be in the negative. In the first place, his innocence or guilt is passed upon by the three-judge court of a division of respondent Court. Moreover, a unanimous vote is required, failing which 'the Presiding Justice shall designate two other justices from among the members of the Court to sit temporarily with them, forming a division of five justices, and the concurrence of a majority of such division shall be necessary for rendering judgment.' Then if convicted, this Court has the duty if he seeks a review to see whether any error of law was committed to justify a reversal of the judgment. Petitioner makes much, perhaps excessively so as is the wont of advocates, of the fact that there is no review of the facts. What cannot be too sufficiently stressed is that this Court in determining whether or not to give due course to the petition for review must be convinced that the constitutional presumption of innocence has been overcome. In that sense, it cannot be said that on the appellate level there is no way of scrutinizing whether the quantum of evidence required for a finding of guilt has been satisfied. The standard as to when there is proof of such weight to justify a conviction is set forth in *People v. Dramayo*. Thus: 'Accusation is not, according to the fundamental law, as synonymous with guilt. It is incumbent on the prosecution to demonstrate that culpability lies. Appellants were not even called upon then to offer evidence on their behalf. Their freedom is forfeit only if the requisite quantum of proof necessary for conviction be in existence. Their guilt must be shown beyond reasonable doubt. To such a standard, this Court has always been committed. There is need, therefore, for the

most careful scrutiny of the testimony of the state, both oral and documentary, independently of whatever defense, is offered by the accused. Only if the judge below and thereafter the appellate tribunal could arrive at a conclusion that the crime had been committed precisely by the person on trial under such an exacting test should the sentence be one of conviction. It is thus required that every circumstance favoring his innocence be duly taken into account. The proof against him must survive the test of reason; the strongest suspicion must not be permitted to sway judgment. The conscience must be satisfied that on the defendant could be laid the responsibility for the offense charged; that not only did he perpetrate the act but that it amounted to a crime. What is required then is moral certainty.' This Court has repeatedly reversed convictions on a showing that this fundamental and basic right to be presumed innocent has been disregarded. It does seem far-fetched and highly unrealistic to conclude that the omission of the Court of Appeals as a reviewing authority results in the loss 'vital protection' of liberty." [11]

In the same Nuñez case, the alleged violation by the decree of the equal protection clause of the Constitution is shown to be non-existent. Again, in the words of Our learned Chief Justice:

"2. Petitioner in his memorandum invokes the guarantee of equal protection in seeking to nullify Presidential Decree No. 1486. What does it signify? To quote from *J.M. Tuason & Co. v. Land Tenure Administration*: 'The ideal situation is for the law's benefits to be available to all, that none be placed outside the sphere of its coverage. Only thus could chance and favor be excluded and the affairs of men governed by that serene and impartial uniformity, which is of the very essence of the idea of law.' There is recognition, however, in the opinion that what in fact exists 'cannot approximate the ideal. Nor is the law susceptible to the reproach that it does not take into account the realities of the situation. The constitutional guarantee then is not to be given a meaning that disregards what is, what does in fact exist. To assure that the general welfare be promoted, which is the end of law, a regulatory measure may cut into the rights to liberty and property. Those adversely affected may under such circumstances invoke the equal protection clause only if they can show that the governmental act assailed, far from being inspired by the attainment of the common weal was prompted by the spirit of hostility, or at the very least, discrimination that finds no support in reason.' Classification is thus not ruled out, it being sufficient to quote from the *Tuason* decision anew 'that the laws operate equally and uniformly on all persons under similar circumstances or that all persons must be treated in the same manner, the conditions not being different, both in the privileges conferred and the liabilities imposed. Favoritism and undue preference cannot be allowed. For the principle is that equal protection and security shall be given to every person under circumstances which, if not identical, are analogous. If law be looked upon in terms of burden or charges, those that fall within a class should be treated in the same fashion, whatever restrictions cast on some in the group equally binding on the rest.

"3. The premise underlying petitioner's contention on this point is set forth in his memorandum thus: '1. The Sandiganbayan proceedings violates petitioner's right to equal protection, because - appeal as a matter of right became minimized into a mere matter of discretion; - appeal likewise was shrunk and limited only to questions of law, excluding a review of the facts and trial evidence; and there is only one chance to appeal conviction, by certiorari to the Supreme Court, instead of the traditional two chances; while all other estafa indictees are entitled to appeal as a matter of right covering both law and facts and to two appellate courts, i.e., first to the Court of Appeals and thereafter to the Supreme Court. That is hardly convincing, considering that the classification satisfied the test announced by this Court through Justice Laurel in *People v. Vera*, requiring that it 'must be based on substantial distinctions which make real differences; it must be germane to the purposes of the law; it must not be limited to existing conditions only, and must apply equally to each member of the class.' To repeat, the Constitution specifically makes mention of the creation of a special court, the Sandiganbayan, precisely in response to a problem, the urgency of which cannot be denied namely, dishonesty in the public service. It follows that those who may thereafter be tried by such court ought to have been aware as far back as January 17, 1973, when the present Constitution came into force, that a different procedure for the accused therein, whether a private citizen as petitioner is or a public official, is not necessarily offensive to the equal protection clause of the Constitution. Petitioner, moreover, cannot be unaware of the ruling of this Court in *Co*

Chiong v. Cuaderno, a 1949 decision, that the general guarantees of the Bill of Rights, included among which are the due process of law and equal protection clauses must 'give way to [a] specific provision,' in that decision, one reserving to 'Filipino citizens of the operation of public services or utilities.' The scope of such a principle is not to be constricted. It is certainly broad enough to cover the instant situation." [12]

The petition of Viriato Molina Jr. was given due course mainly because of the legal questions as indicated above. These are the same legal issues formulated in the Nuñez case which was the first case to put to the most severe test the constitutionality of the decree creating the Sandiganbayan and the peculiar procedures prescribed for it to effectively function as the special organ that it is envisioned to be under the new Constitution. Numerous cases have been filed in the wake of the filing of the Nuñez case, all raising identical constitutional questions. The importance and gravity of the issues raised naturally impressing themselves on the mind of the Court, the decision of the lead case of Nuñez vs. Sandiganbayan, et al. is the result of a most profound and painstaking study, as may be gleaned from the expression by some members of their individual views which robbed the main opinion of perfect unanimity, well reasoned out and scholarly written though it may be. Even so, the decision mustered more than enough vote to make it doctrinal. It is the doctrines laid down therein that, perforce, have to be applied in this case and in the many other similar cases that followed.

II

Petitioner has also raised the question of the sufficiency of the evidence upon which his conviction was predicated. This necessarily raises a question of fact which, by the manifest sufficiency of the evidence against him, may not be transformed into one of law, under the exceptions as have been noted by this Court by which a question of fact may be passed upon even under a petition for certiorari. [13]

Indeed, the evidence against petitioner is clearly not wanting in how it would dissipate all doubt as to his involvement in the conspiracy to defraud the government. We need only repeat what the trial court observed as to the evidence proving his guilt. Thus -

"The guilt of Molina is inevitable. He certified in the Purchase Requests (Exhibits "K", "W" and "X") that the various typewriter spare parts stated therein are necessary for the use of the office when such was not the fact for according to Deputy Clerk of Court of Branch I, Benigno Patugalan, there was no need for major repair of their typewriters (TSN, p. 44, Feb. 21, 1980 hearing). Vilma Pagulayan, a clerk of Branch V, likewise testified that from May 30 to June 1, 1977, the typewriters in their court were in good working condition and not in need of any repair (TSN, pp. 68-69, March 6, 1980 hearing). Molina signed the Abstract of Open Quotations awarding the items to be purchased to Universal Business Machine (Exhibit 'J' and 'V') when actually no canvass was made. He likewise signed the Requisitions and Issue Vouchers (Exhibits 'H' and 'R') that he received the supplies were ever delivered. Patugalan categorically testified on this score (TSN, p. 91, Feb. 21, 1980 hearing) which is likewise the tenor of Pagulayan's testimony. Molina certified in the vouchers (Exhibits 'G' and 'Q') among others, that the expenses incurred therein 'are correct and have been incurred under his authority' when said certification is a complete falsity for he knew very well that there was no need for the delivery of said items, that no delivery was actually made nor was there repair or replacement made on the typewriters. But before signing all said documents, he first signed the Report of Waste Materials (Exhibits 'N', 'AA' and 'BB') to make it appear that there were really parts of typewriter to be replaced when it cannot be true for as previously stated the typewriters were all in good working condition.

"The defense of Molina that before he signed the vouchers, Cañedo showed him two bags of typewriters spare parts which convinced him that necessary repairs would follow and that vouchers were checked in the Office of the Provincial Treasurer's Office is, to say the least, amusing for he cannot ignore the hard fact that he could have seen for himself whether major repairs of his typewriters were needed, if spare parts were actually delivered and if repairs were made at all. There was no need for him to rely on documents. As a matter of fact,

there was even no showing that he made preliminary inquiries from his employees, especially the ones using the typewriters allegedly repaired, if there was a necessity for repair and if repair was actually made." [14]

As stated earlier, We gave due course to Molina's petition only because of the legal questions raised, for had the petitioner raised only the factual question of the sufficiency of evidence against him, the petition should have been dismissed outright.

His admission that he merely relied on the representations of his subordinates, is not consistent with his pre-tension of good faith and innocence. By his position as head of the office, he ought to have verified carefully and with that sense of responsibility as called for by the Constitution, the truth of these representations. His failure to do so was such gross omission that it would amount to a positive act of himself committing, as his subordinates did, the fraudulent representation, which as the NBI investigators demonstrated, did not take much effort to discover. He only had to have a look at the typewriters, and with a simple testing of how they worked, their good or bad condition could easily be found.

Molina's case is to be distinguished from that of Calubaquib, for the latter actually made the verification, and with the circumstances, as noted earlier, that exerted some influence on what findings he would make, including Molina's having certified to the receipt of the typewriter spare parts listed in the RIVs (Exhs. H and R), his claim of good faith is rendered credible, in contrast to that of Molina which, by no means, could inspire credence and belief. For to repeat, it was a very easy matter for Molina to have tested the working condition of the typewriters, to find what their alleged defects were, and whether repairs were needed. Yet, he merely relied on the representations of his subordinates.

We find the nature of the crime of which petitioner Molina was convicted that of estafa through falsification of public document correct, not that of estafa alone, or falsification alone as he claims. Neither may voluntary surrender, or one analogous to it, be considered to mitigate his liability because of the return of the amount misappropriated, for it was not he, but Cañedo, who returned the money and more at the instance of petitioner Calubaquib whose nonparticipation in the conspiracy, as We have found, made his prompting on Cañedo effective, but not, had he been as guilty as petitioner Molina is.

WHEREFORE, in view of the foregoing, the Court hereby acquits Juan Calubaquib in G. R. Nos. 54272-73, while in G. R. Nos. 55136-37, the petition of Viriato Molina Jr. is hereby dismissed for lack of merit.

SO ORDERED.

Fernando, C.J., Makasiar, Concepcion, Jr., Guerrero, Abad Santos, Melencio-Herrera, Plana, Escolin, Vasquez, Relova, and Gutierrez, Jr., JJ., concur.

Teehankee, J., concurs and dissents in a separate opinion.

Aquino, J., see dissent.

Barredo, J., no part.

[1] pp. 13-14, Rollo, G. R. Nos. 54272-73.

[2] pp. 130-138, Rollo, Id.

[3] pp. 162-166, Rollo, G.R. Nos. 54272-73.

[4] pp. 163-165, Rollo, Id.

[5] pp. 168-169, Id.

[6] pp. 173-174, Rollo, G.R. No. 54272-73.

[7] pp. 174-175, Rollo, G.R. Nos. 54272-73.

[8] G.R. Nos. 50581-50617, January 30, 1982.

[9] p. 4, Decision, Nunez vs. Sandiganbayan, et al., G. R. Nos. 50581-50617, January 30, 1982.

[10] pp. 11-12, Id.

[11] pp. 6-11, Decision, Id.

[12] pp. 4-6, Id.

[13] Alsua-Bett v. Court of Appeals, 92 SCRA 332; Vda. de la Cruz v. Court of Appeals, 88 SCRA 695; Baptista v. Carillo, 72 SCRA 214; Ramos v. Court of Appeals, 63 SCRA 331; Napolis v. Court of Appeals, 43 SCRA 301; Ramos, et al. v. Pepsi-Cola Bottling Co. of the P.I., et al., 19 SCRA 289.

[14] p. 28, Rollo, G.R. Nos. 55136-37.

DISSENTING OPINION

AQUINO, J.:

I dissent. Juan Calubaquib, chief of the post audit division in the office of the provincial auditor, Viriato Molina, Jr., clerk of court of the Court of First Instance and Timoteo Tamaray and Pompeo Bassig, bookkeeper and laborer, respectively, in the provincial treasurer's office, all of Cagayan, were convicted as co-conspirators, by the Sandiganbayan of the crime of estafa through falsification in connection with the fictitious repair from May 30 to June 1, 1977 of typewriters used in the Court of First Instance.

Each of them was sentenced to an indeterminate penalty of four years, two months and one day of prison correccional as minimum to ten years and one day of prison mayor as maximum and ordered to pay a fine of three thousand pesos.

Calubaquib signed the report of waste materials and certified the verification and inspection of the parts and repairs of typewriters, as stated in certain requisition and issue vouchers.

Because of that certification and the report that the parts replaced were thrown into the pit, the fictitious repairs were regarded as having been actually effected and the vouchers were paid. The false certification facilitated the payment of the corresponding vouchers.

Calubaquib in his appeal to this Court contends that the Sandiganbayan erred in concluding that he conspired with his co-accused to defraud the provincial government; in not finding that he did his job properly, that he was innocent and that his acts did not constitute a crime; "in disregarding the totality of" his "person and conduct"; in not holding that he was a mere accomplice and in committing a grave abuse of discretion in convicting him.

Although appellant's counsel categorizes some of the assignment of errors as errors of law, they do not raise any substantial legal issues. They involve factual issues.

The Sandiganbayan did not commit any error of law in convicting Calubaquib. This Court is bound by the facts found by the Sandiganbayan. Our power to review the decisions of that special tribunal is the same as our jurisdiction to review the decisions of the Court of Appeals. The review is confined to important legal questions.

(Sec. 7, P.D.

No. 1606.)

Indeed, many of the appeals to this Court from the decisions of the Sandiganbayan have no merit because they raise factual questions. They should be dismissed outright. They only clog the docket of this Court. To entertain those appeals is a waste of precious time which could be used in deciding other cases. The time of the Solicitor General is also wasted in requiring him to comment on petitions that are mani-festly devoid of merit. Calubaquib's guilt was established beyond reasonable doubt.

CONCURRING AND DISSENTING OPINION

TEEHANKEE, J.:

I. In Cases G.R. Nos. 54272-73, I concur with the Court's judgment of acquittal of petitioner Juan Calubaquib y Carbonel, since, as shown in the opinion of the Court penned by Mr. Justice De Castro, there are a number of circumstances that negate conspiracy or his having taken part in the conspiracy to commit fraud against the Government. The failure of the State to overcome the constitutional presumption of innocence in his favor, particularly considering his more than forty (40) years of service unmarred by any act of dishonesty, entitles him to a verdict of acquittal.

Article III, section 1, par. 17, of the Constitution mandates that "in all criminal prosecutions, the accused shall be presumed to be innocent, until the contrary is proved" The exposition of this fundamental constitutional right made in *People vs. Dramayo* [1] by the now Chief Justice bears reproduction, thus: ". . . the starting point is the presumption of innocence. So it must be, according to the Constitution. That is a right safeguarded both appellants. Accusation is not, according to the fundamental law, synonymous with guilt. It is incumbent on the prosecution to demonstrate that culpa-bility lies. Appellants were not even called upon then to offer evidence on their behalf. Their freedom is forfeit only if the requisite quantum of proof necessary for conviction be in existence. Their guilt must be shown beyond reasonable doubt. To such a standard, this Court has always been committed. There is need, therefore, for the most careful scrutiny of the testimony of the state, both oral and documentary, independently of whatever defense is offered by the accused. Only if the judge below and the appellate tribunal could arrive at a conclusion that the crime had been committed precisely by the person on trial under such an exacting test should the sentence be one of conviction. It is thus required that every circumstance favoring his innocence be duly taken into account. The proof against him must survive the test of reason; the strongest suspicion must not be permitted to sway judgment. The conscience must be satisfied that on the defendant could be laid the responsibility for the offense charged; that not only did he perpetrate the act but that it amounted to a crime. What is required then is moral certainty." Absent such moral certainty that overcomes the constitutional presumption of innocence, the Court has invariably held that "it is not only the right of the accused to be freed, it is, even more, our constitutional duty to acquit him." [2]

II. In Cases G.R. Nos. 55136-37 involving petitioner Viriato Molina, Jr., insofar as the Court's judgment reiterates its ruling in *Nuñez vs. Sandiganbayan* [3], dismissing the legal and constitutional questions raised against the creation of the Sandiganbayan and of its procedures being in violation of due process, of equal protection and ex post facto clauses of the Constitution, I maintain my dissent in *Nuñez* and concurrence with the grounds of dissent set forth in Mr. Justice Makasiar's dissenting and concurring opinion therein. As stressed by Mr. Justice Makasiar therein, "(T)he basic caveat for the embattled citizen is obsta principiis -- resist from the very beginning any attempt to assault his constitutional liberties."

[1] 42 SCRA 59, 63-64 (1971).

[2] People vs. Maisug, 27 SCRA 742 (1969).

[3] G.R. Nos. 50581-50617, Jan. 30, 1982.

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