Republic of the Philippines
Supreme Court
Manila

EN BANC

JUAN PONCE ENRILE,
Petitioner,

- versus -

PEOPLE OF THE PHILIPPINES, HON. AMPARO M. CABOTAJE-TANG, HON. SAMUEL R. MARTIRES, and HON. ALEX L. QUIROZ OF THE THIRD DIVISION OF THE SANDIGANBAYAN,
Respondents.

G.R. No. 213455

Present:

SERENO, *C.J.*,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
VILLARAMA, JR.,
PEREZ,
MENDOZA
REYES,*
PERLAS-BERNABE,
LEONEN, and
JARDELEZA,** *JJ.*

Promulgated:
August 11, 2015

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DECISION

BRION, *J.*:

We resolve the "petition for *certiorari* with prayers (a) for the Court *En Banc* to act on the petition; (b) to expedite the proceedings and to set the case for oral arguments; and (c) to issue a temporary restraining order to the respondents from holding a pre-trial and further proceedings in Criminal

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* On leave.
** No Part.

Case No. SB-14-CRM-0238"[1] filed by petitioner Juan Ponce Enrile (*Enrile*) challenging the July 11, 2014 resolutions[2] of the Sandiganbayan.

I.

THE ANTECEDENTS

On June 5, 2014, the Office of the Ombudsman filed an Information[3] for plunder against Enrile, Jessica Lucila Reyes, Janet Lim Napoles, Ronald John Lim, and John Raymund de Asis before the Sandiganbayan.

The Information reads:

x x x x

> In 2004 to 2010 or thereabout, in the Philippines, and within this Honorable Court's jurisdiction, above-named accused JUAN PONCE ENRILE, then a Philippine Senator, JESSICA LUCILA G. REYES, then Chief of Staff of Senator Enrile's Office, both public officers, committing the offense in relation to their respective offices, conspiring with one another and with JANET LIM NAPOLES, RONALD JOHN LIM, and JOHN RAYMUND DE ASIS, did then and there willfully, unlawfully, and criminally amass, accumulate, and/or acquire ill-gotten wealth amounting to at least ONE HUNDRED SEVENTY TWO MILLION EIGHT HUNDRED THIRTY FOUR THOUSAND FIVE HUNDRED PESOS (Php172,834,500.00) through a combination or series of overt criminal acts, as follows:
>
> (a) by repeatedly receiving from NAPOLES and/or her representatives LIM, DE ASIS, and others, kickbacks or commissions under the following circumstances: before, during and/or after the project identification, NAPOLES gave, and ENRILE and/or REYES received, a percentage of the cost of a project to be funded from ENRILE'S Priority Development Assistance Fund (PDAF), in consideration of ENRILE'S endorsement, directly or through REYES, to the appropriate government agencies, of NAPOLES' non-government organizations which became the recipients and/or target implementors of ENRILE'S PDAF projects, which duly-funded projects turned out to be ghosts or fictitious, thus enabling NAPOLES to misappropriate the PDAF proceeds for her personal gain;
>
> (b) by taking undue advantage, on several occasions, of their official positions, authority, relationships, connections, and influence to unjustly enrich themselves at the expense and to the damage and prejudice, of the Filipino people and the Republic of the Philippines.
>
> CONTRARY TO LAW.

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1 *Rollo*, pp. 3-92.

2 The resolutions denied petitioner Enrile's motion for bill of particulars and his motion for reconsideration. Both resolutions were contained in a Minute Resolution adopted on July 11, 2014.

3 *Rollo*, pp. 170-171.

Enrile responded by filing before the Sandiganbayan (1) an *urgent omnibus motion (motion to dismiss for lack of evidence on record to establish probable cause* and *ad cautelam motion for bail),*[4] and (2) a *supplemental opposition to issuance of warrant of arrest and for dismissal of Information,*[5] on June 10, 2014, and June 16, 2014, respectively. The Sandiganbayan heard both motions on June 20, 2014.

On June 24, 2014, the prosecution filed a *consolidated opposition* to both motions.

On July 3, 2014, the Sandiganbayan **denied** Enrile's motions and ordered the issuance of warrants of arrest on the plunder case against the accused.[6]

On July 8, 2014, Enrile received a *notice of hearing*[7] informing him that his arraignment would be held before the Sandiganbayan's Third Division on July 11, 2014.

On July 10, 2014, **Enrile filed a *motion for bill of particulars***[8] before the Sandiganbayan. On the same date, he filed a *motion for deferment of arraignment*[9] since he was to undergo medical examination at the Philippine General Hospital (PGH).

On July 11, 2014, Enrile was brought to the Sandiganbayan pursuant to the Sandiganbayan's order and his *motion for bill of particulars* was called for hearing. Atty. Estelito Mendoza (*Atty. Mendoza*), Enrile's counsel, argued the motion orally. Thereafter, Sandiganbayan Presiding Justice (*PJ*) Amparo Cabotaje-Tang (*Cabotaje-Tang*), declared a "10-minute recess" to deliberate on the motion.

When the court session resumed, PJ Cabotaje-Tang announced the Court's **denial** of Enrile's *motion for bill of particulars* essentially on the following grounds:

> (1) ***the details that Enrile desires are "substantial reiterations" of the arguments he raised in his supplemental opposition to the issuance of warrant of arrest and for dismissal of information***; and
>
> (2) ***the details sought are evidentiary in nature and are best ventilated during trial***.

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4 Id. at 174-226.

5 Id. at 232-261.

6 On July 24, 2014, Enrile filed a motion for reconsideration assailing the Sandiganbayan's July 3, 2014 resolution.

7 *Rollo*, pp. 265-267.

8 Id. at 84-92.

9 Id. at 268-273. This motion includes Criminal Case Nos. SB-14-CRM-0241 to 0255 for violation of Section 3(e) of Republic Act No. 3019.

Atty. Mendoza asked for time to file a motion for reconsideration, stating that he would orally move to reconsider the Sandiganbayan's denial if he would not be given time to seek a reconsideration. The Sandiganbayan then directed Atty. Mendoza to immediately proceed with his motion for reconsideration.

Atty. Mendoza thus orally presented his arguments for the reconsideration of the denial of Enrile's *motion for bill of particulars*. The Sandiganbayan again declared a recess to deliberate on the motion. After five (5) minutes, PJ Cabotaje-Tang announced the Sandiganbayan's **denial** of the motion for reconsideration.[10]

The Sandiganbayan reduced its rulings into writing on Enrile's written and oral motions. The pertinent portion of this ruling reads:

x x x x

> In today's consideration of accused Juan Ponce Enrile's Motion for Bill of Particulars, the Court heard the parties on oral arguments in relation thereto. Thereafter, it declared a ten-minute recess to deliberate thereon. After deliberating on the said motion as well as the arguments of the parties, the Court resolves to **DENY** as it hereby **DENIES** the same motion for bill of particulars for the following reasons: (1) the details desired in paragraphs 2 to 5 of the said motion are substantially reiterations of the arguments raised by accused Enrile in his Supplemental Opposition to Issuance of Warrant of Arrest and for Dismissal of Information dated June 16, 2014 x x x.
>
> The Court already upheld the sufficiency of the allegations in the Information charging accused Enrile, among other persons, with the crime of plunder in its Resolution dated July 3, 2014. It finds no cogent reasons to reconsider the said ruling.
>
> Moreover, the "desired details" that accused Enrile would like the prosecution to provide are evidentiary in nature, which need not be alleged in the Information. They are best ventilated during the trial of the case.
>
> Counsel for accused Juan Ponce Enrile orally sought a reconsideration of the denial of his motion for bill of particulars which was opposed by the prosecution. The Court then declared another ten-minute recess to deliberate on the said motion for reconsideration. After deliberation thereon, the Court likewise resolved to **DENY** as it hereby **DENIES** accused Juan Ponce Enrile's motion for reconsideration there being no new or substantial grounds raised to warrant the grant thereof.
>
> ACCORDINGLY, the scheduled arraignment of accused Juan Ponce Enrile shall now proceed as previously scheduled.
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> SO ORDERED.[11]

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[10] Id. at 167-A-169; see also Annexes "B," "B-1," and "B-2" at 93-166.

[11] Id. at 167-A-169; signed by Presiding Justice Amparo Cabotaje-Tang and Justices Samuel Martires and Alex Quiroz.

Atty. Mendoza subsequently moved for the deferment of Enrile's arraignment. The Sandiganbayan responded by directing the doctors present to determine whether he was physically fit to be arraigned. After he was declared fit, the Sandiganbayan proceeded with Enrile's arraignment. Enrile entered a "no plea," prompting the Sandiganbayan to enter a "not guilty" plea on his behalf.

II.

THE PETITION FOR *CERTIORARI*

Enrile claims in this petition that the Sandiganbayan acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it denied his *motion for bill of particulars* despite the ambiguity and insufficiency of the Information filed against him. Enrile maintains that the denial was a serious violation of his constitutional right to be informed of the nature and cause of the accusation against him.

Enrile further alleges that he was left to speculate on what his specific participation in the crime of plunder had been. He posits that the Information should have stated the details of the particular acts that allegedly constituted the imputed series or combination of overt acts that led to the charge of plunder. Enrile essentially reiterates the "details desired" that he sought in his motion for bill of particulars, as follows:

Allegations of Information	Details Desired
"x x x accused JUAN PONCE ENRILE, then a Philippine Senator, JESSICA LUCILA G. REYES, then Chief of Staff of Senator Enrile's Office, both public officers, committing the offense in relation to their respective offices, conspiring with one another and with JANET LIM NAPOLES, RONALD JOHN LIM, and JOHN RAYMUND DE ASIS, did then and there willfully, unlawfully, and criminally amass, accumulate, and/or acquire ill-gotten wealth amounting to at least ONE HUNDRED SEVENTY TWO MILLION EIGHT HUNDRED THIRTY FOUR THOUSAND FIVE HUNDRED PESOS (Php172,834,500.00) through a combination or series of overt acts, x x x."	a. Who among the accused acquired the alleged "ill-gotten wealth amounting to at least ONE HUNDRED SEVENTY TWO MILLION EIGHT HUNDRED THIRTY FOUR THOUSAND FIVE HUNDRED PESOS (Php172,834,500.00)"? One of them, two of them or all of them? Kindly specify. b. The allegation "through a combination or series of overt criminal acts" is a conclusion of fact or of law. What are the particular *overt* acts which constitute the "*combination*"? What are the particular overt acts which constitute the "*series*"? Who committed those

	acts?
"x x x by repeatedly receiving from NAPOLES and/or her representatives LIM, DE ASIS, and others, kickbacks or commissions under the following circumstances: before, during and/or after the project identification, NAPOLES gave, and ENRILE and/or REYES received, a percentage of the cost of a project to be funded from ENRILE'S Priority Development Assistance Fund (PDAF), in consideration of ENRILE'S endorsement, directly or through REYES, to the appropriate government agencies, of NAPOLES' non-government organizations which became the recipients and/or target implementers of ENRILE'S PDAF projects, which duly-funded projects turned out to be ghosts or fictitious, thus enabling NAPOLES to misappropriate the PDAF proceeds for her personal gain;	a. What was "repeatedly" received? If sums of money, the particular amount. If on several occasions and in different amounts, specify the amount on each occasion and the corresponding date of receipt. b. Name the specific person(s) who delivered the amount of Php172,834,500.00 and the specific person(s) who received the amount; or if not in lump sum, the various amounts totaling Php172,834,500.00. x x x Specify particularly the person who delivered the amount, Napoles or Lim or De Asis, and who particularly are "the others." c. To *whom* was the money given? To Enrile or Reyes? State the amount given on each occasion, the *date* when and the *place* where the amount was given. d. x x x *Describe* each project allegedly identified, *how*, and *by whom* was the project identified, the *nature* of each project, where it is located and the cost of each project. e. For each of the years 2004-2010, under *what law* or *official document* is a portion of the "Priority Development Assistance Fund" identified as that of a member of Congress, in this instance, as ENRILE's, to be found? In what *amount* for each year is ENRILE's Priority Development Assistance Fund? When, and to whom, did Enrile endorse the projects in favor of

	"Napoles non-government organizations which became the recipients and/or target implementers of ENRILE's PDAF projects?" *Name* Napoles non-government organizations which became the recipients and/or target implementers of ENRILE's PDAF projects. *Who paid* Napoles, *from whom* did Napoles collect the fund for the projects which turned out to be ghosts or fictitious? *Who authorized* the payments for each project? f. x x x what COA audits or field investigations were conducted which validated the findings that each of Enrile's PDAF projects in the years 2004-2010 were ghosts or spurious projects?
x x x by taking undue advantage, on several occasions of their official positions, authority, relationships, connections, and influence to unjustly enrich themselves at the expense and to the damage and prejudice, of the Filipino people and the Republic of the Philippines.	a. Provide the details of *how* Enrile took undue advantage, on several occasions, of his official positions, authority, relationships, connections, and influence to unjustly enrich himself at the expense and to the damage and prejudice, of the Filipino people and the Republic of the Philippines. Was this because he *received* any *money* from the government? *From whom* and *for what* reason did he receive any money or property from the government through which he "unjustly enriched himself"? State the details from whom each *amount* was received, the *place* and the *time*.

Enrile posits that his 'desired details' are not evidentiary in nature; they are material facts that should be clearly alleged in the Information so

that he may be fully informed of the charges against him and be prepared to meet the issues at the trial.

Enrile adds that the grounds raised in his *motion for bill of particulars* are cited in a context different from his opposition to the issuance of a warrant of arrest. He maintains that the resolution of the probable cause issue was interlocutory and did "not bar the submission of the same issue in subsequent proceedings especially in the context of a different proceeding."

Enrile thus prays that: "(a) the Court *en banc* act on the present petition; (b) by way of an interim measure, the Court issue a TRO or writ of preliminary injunction enjoining the Sandiganbayan from holding the pre-trial and subsequent proceedings against him in Criminal Case No. SB-14-CRM-0238 during the pendency of the present petition; (c) the Court expedite the proceedings and set the case for oral arguments; and (d) at the conclusion of the proceedings, the Court annul and set aside the Sandiganbayan's July 11, 2014 resolution and his arraignment."

A. The People's Comment

In its Comment,[12] the People of the Philippines[13] counters that the Sandiganbayan did not exercise its discretionary power in an arbitrary or despotic manner. Even assuming that the Sandiganbayan's denial of Enrile's motion for bill of particulars was erroneous, the error did not amount to lack or excess or jurisdiction. It further maintains that the assailed Sandiganbayan rulings were arrived at based on the procedures prescribed under Section 2, Rule VII of the Revised Internal Rules of the Sandiganbayan.

The *People* also argues that the Information already contained the ultimate facts; matters of evidence do not need to be averred.

B. Enrile's Reply

In his Reply, Enrile essentially claims that the right to move for a bill of particulars is "ancillary to and in implementation" of an accused's rights to due process, to be heard, and to be informed of the nature and cause of the accusation against him. He maintains that the Sandiganbayan's denial of his motion for bill of particulars is not "a mere denial of a procedural right under the Rules of Court, but of rights vested in an accused under the Constitution to ensure fairness in the trial of the offense charged." Enrile also adds that there could only be a fair trial if he could properly plead to the Information and prepare for trial.

Enrile further argues that the People's Comment did not dispute the relevance of the details sought in the motion for bill of particulars. He

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12 Temporary *rollo*, unnumbered pages.

13 Represented by the Office of the Ombudsman, through the Office of the Special Prosecutor.

likewise claims that ***the "desired details" could not be found in the bundle of documents marked by the prosecution during the preliminary conference***. Finally, Enrile maintains that his motion for bill of particulars was not dilatory**.**

III.

THE COURT'S RULING

After due consideration, we resolve to partially GRANT the petition under the terms outlined below.

A. The constitutional right of the accused to be informed

Under the Constitution, a person who stands charged of a criminal offense has the right to be informed of the nature and cause of the accusation against him.[14] This right has long been established in English law, and is the same right expressly guaranteed in our 1987 Constitution. This right requires that the offense charged be stated with clarity and with certainty to inform the accused of the crime he is facing in sufficient detail to enable him to prepare his defense.[15]

In the 1904 case of *United States v. Karelsen*,[16] the Court explained the purpose of informing an accused in writing of the charges against him from the perspective of his right to be informed of the nature and cause of the accusation against him:

> The object of this written accusation was – First. To furnish the accused with such a description of the charge against him as will enable him to make his defense; and second, to avail himself of his conviction or acquittal for protection against a further prosecution for the same cause; and third, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had. (United States vs. Cruikshank, 92 U.S. 542.) In order that this requirement may be satisfied, **facts must be stated, not conclusions of law**. Every crime is made up of certain acts and intent; these must be set forth in the complaint with reasonable particularity of time, place, names (plaintiff and defendant), and circumstances. In short, the complaint must contain a specific allegation of every fact and circumstances necessary to constitute the crime charged. x x x.[17] [Emphasis supplied.]

The objective, in short, is to describe the act with sufficient certainty to fully appraise the accused of the nature of the charge against him and to avoid possible surprises that may lead to injustice. Otherwise, the accused would be left speculating on why he has been charged at all.[18]

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[14] Section 14(2), Article III, 1987 Constitution; see *Go v. Bangko Sentral ng Pilipinas*, G.R. No. 178429, October 23, 2009, 604 SCRA 322, 329.

[15] See Dissenting Opinion of Justice (ret.) Dante O. Tinga in *Teves v. Sandiganbayan*, 488 Phil. 311, 340 (2004), citing 21 AM JUR 2d § 325.

[16] 3 Phil. 223 (1904).

[17] Id. at 226.

[18] See *Burgos v. Sandiganbayan*, 459 Phil. 794, 806 (2003).

In *People v. Hon. Mencias, et al.*,[19] the Court further explained that a person's constitutional right to be informed of the nature and cause of the accusation against him signifies that an accused should be given the necessary data on why he is the subject of a criminal proceeding. The Court added that the act or conduct imputed to a person must be described with sufficient particularity to enable the accused to defend himself properly.

The general grant and recognition of a protected right emanates from Section 1, Article III of the 1987 Constitution which states that no person shall be deprived of life, liberty, or property without due process of law. The purpose of the guaranty is to prevent governmental encroachment against the life, liberty, and property of individuals; to secure the individual from the arbitrary exercise of the powers of the government, unrestrained by the established principles of private rights and distributive justice x x x; and to secure to all persons equal and impartial justice and the benefit of the general law.[20]

Separately from Section 1, Article III is the specific and direct underlying root of the right to information in criminal proceedings – Section 14(1), Article III – which provides that *"No person shall be held to answer for a criminal offense without due process of law."* Thus, no doubt exists that the right to be informed of the cause of the accusation in a criminal case has deep constitutional roots that, rather than being cavalierly disregarded, should be carefully protected.

In *Republic of the Philippines v. Sandiganbayan (2nd Division)*,[21] the Court, in sustaining the Sandiganbayan's grant of the motion for bill of particulars of Ferdinand Marcos, Jr., held that "the facile verbosity with which the legal counsel for the government flaunted the accusation of excesses against the Marcoses in general terms must be soonest refurbished by a bill of particulars, so that respondent can properly prepare an intelligent responsive pleading and so that trial in this case will proceed as expeditiously as possible."[22] The Court additionally stated that:

> This Court has been liberal in giving the lower courts the widest latitude of discretion in setting aside default orders justified under the right to due process principle. Plain justice demands and the law requires no less that defendants must know what the complaint against them is all about.
>
> x x x In the interest of justice, we need to dispel the impression in the individual respondents' minds that they are being railroaded out of their rights and properties without due process of law.[23]

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19 150-B Phil. 78, 89-90 (1972).
20 See *City of Manila v. Hon. Laguio, Jr.*, 495 Phil. 289, 311 (2005), citing 16 C.J.S., pp. 1150-1151.
21 565 Phil. 172, (2007).
22 Id. at 191-192.
23 Id. at 192.

B. Procedural Sufficiency of the Information

An Information is an accusation in writing charging a person with an offense, signed by the prosecutor and filed with the court.[24] The Revised Rules of Criminal Procedure, in implementing the constitutional right of the accused to be informed of the nature and cause of the accusation against him, specifically require certain matters to be stated in the Information for its sufficiency. ***The requirement aims to enable the accused to properly prepare for his defense since he is presumed to have no independent knowledge of the facts constituting the offense charged***.[25]

To be considered as sufficient and valid, an information must state the name of the accused; the designation of the offense given by the statute; the acts or omissions constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.[26]

If there is no designation of the offense, reference shall be made to the section or subsection of the statute penalizing it. The acts or omissions constituting the offense and the qualifying and aggravating circumstances alleged must be stated in ordinary and concise language; they do not necessarily need to be in the language of the statute, and should be in terms sufficient to enable a person of common understanding to know what offense is charged and what qualifying and aggravating circumstances are alleged, so that the court can pronounce judgment.[27] The Rules do not require the Information to exactly allege the date and place of the commission of the offense, unless the date and the place are material ingredients or essential elements of the offense, or are necessary for its identification.

B.1. Ultimate facts versus Evidentiary facts

An Information only needs to state the ultimate facts constituting the offense; the evidentiary and other details (*i.e.*, the facts supporting the ultimate facts) can be provided during the trial.[28]

Ultimate facts is defined as "those facts which the expected evidence will support. The term does not refer to the details of probative matter or particulars of evidence by which these material elements are to be established." ***It refers to the facts that the evidence will prove at the trial***.[29]

Ultimate facts has also been defined as the principal, determinative, and constitutive facts on whose existence the cause of action rests;[30] they are

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24 Section 4, Rule 110, Revised Rules of Criminal Procedure.
25 *People v. Ching*, 563 Phil. 433, 443-444 (2007).
26 Id. at 443.
27 See *Olivarez v. Court of Appeals*, 503 Phil. 421, 435 (2005).
28 *People v. Romualdez, et al*., 581 Phil. 462, 479-480 (2008).
29 See *Salita v. Magtolis*, G.R. No. 106429, June 13, 1994, 233 SCRA 100, 105.
30 See *Philippine Bank of Communications v. Trazo*, 531 Phil. 636, 653 (2006).

also the essential and determining facts on which the court's conclusion rests and without which the judgment would lack support in essential particulars.[31]

Evidentiary facts, on the other hand, are the facts necessary to establish the ultimate facts; they are the premises that lead to the ultimate facts as conclusion.[32] ***They are facts supporting the existence of some other alleged and unproven fact***.[33]

In *Bautista v. Court of Appeals*,[34] the Court explained these two concepts in relation to a particular criminal case, as follows:

> The distinction between the elements of the offense and the evidence of these elements is analogous or akin to the difference between *ultimate facts* and *evidentiary facts* in civil cases. ***Ultimate facts*** **are the essential and substantial facts which either form the basis of the primary right and duty or which directly make up the wrongful acts or omissions of the defendant, while e*videntiary facts*** **are those which tend to prove or establish said *ultimate facts.*** x x x.[35] [Emphasis supplied.]

While it is fundamental that every element of the offense must be alleged in the Information, matters of evidence – as distinguished from the facts essential to the nature of the offense – do not need to be alleged. Whatever facts and circumstances must necessarily be alleged are to be determined based on the definition and the essential elements of the specific crimes.[36]

C. <u>Arraignment</u>

The procedural due process mandate of the Constitution requires that the accused be arraigned so that he may be **<u>fully informed</u>** as to why he was charged and what penal offense he has to face, to be convicted only on showing that his guilt is shown beyond reasonable doubt with full opportunity to disprove the evidence against him.[37] During arraignment, the accused is **granted the opportunity to fully know the precise charge that confronts him and made fully aware of possible loss of freedom, even of his life, depending on the nature of the crime imputed to him**.[38]

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31 *See Brundage v. KL House Construction Company*, 396 P.2d 731 (N.M. 1964).

32 *Tantuico, Jr. v. Republic*, G.R. No. 89114, December 2, 1991, 204 SCRA 428, 437, citing *Womack v. Industrial Comm*., 168 Colo. 364, 451 P.2d 761, 764.

33 Id., citing Black's Law Dictionary, 5th Ed., p. 500.

34 413 Phil. 159 (2001). This case involved a violation of Batas Pambansa Blg. 22. The Court held that *knowledge of insufficiency of funds* is the ultimate fact, or element of the offense that needs to be proved, while *dishonor of the check presented within ninety (90) days* is merely the evidentiary fact of such knowledge.

35 Id. at 175.

36 *Romualdez v. Sandiganbayan*, 479 Phil. 265, 288-289 (2004).

37 Herrera, Remedial Law, Vol. IV (Rules 110-127), Criminal Procedure, 2007 ed., p. 591.

38 Id. at 592.

An arraignment thus ensures that an accused be fully acquainted with the nature of the crime imputed to him in the Information and the circumstances under which it is allegedly committed.[39] It is likewise at this stage of the proceedings when the accused enters his plea,[40] or enters a plea of not guilty to a lesser offense which is necessarily included in the offense charged.[41]

A concomitant component of this stage of the proceedings is that the Information should provide the accused with **fair notice** of the accusations made against him, so that he will be able to make an intelligent plea and prepare a defense.[42] **Moreover, the Information must provide some means of ensuring that the crime for which the accused is brought to trial is in fact one for which he was charged, rather than some alternative crime seized upon by the prosecution in light of subsequently discovered evidence**.[43] **Likewise, it must indicate just what crime or crimes an accused is being tried for, in order to avoid subsequent attempts to retry him for the same crime or crimes**.[44] In other words, the Information must permit the accused to prepare his defense, ensure that he is prosecuted only on the basis of facts presented, enable him to plead jeopardy against a later prosecution, and inform the court of the facts alleged so that it can determine the sufficiency of the charge.

Oftentimes, this is achieved when the Information alleges the material elements of the crime charged. If the Information fails to comply with this basic standard, it would be quashed on the ground that it fails to charge an offense.[45] **Of course, an Information may be sufficient to withstand a motion to quash, and yet insufficiently inform the accused of the specific details of the alleged offenses. In such instances, the Rules of Court allow the accused to move for a bill of particulars to enable him properly to plead and to prepare for trial.**[46]

C.1. Bill of Particulars

In general, a bill of particulars is the further specification of the charges or claims in an action, which an accused may avail of by motion before arraignment, to enable him to properly **plead and prepare for trial**. In civil proceedings, a bill of particulars has been defined as a complementary procedural document consisting of an amplification or more particularized outline of a pleading, and is in the nature of a more specific

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39 Id.

40 Id.

41 SEC. 2. *Plea of guilty to a lesser offense.* — At arraignment, the accused, with the consent of the offended party and the prosecutor, may be allowed by the trial court to plead guilty to a lesser offense which is necessarily included in the offense charged. After arraignment but before trial, the accused may still be allowed to plead guilty to said lesser offense after withdrawing his plea of not guilty. No amendment of the complaint or information is necessary. (Sec. 4, cir. 38-98) (Rule 116, Rules of Criminal Procedure).

42 See *Russell v. United States*, 369 US 749.

43 Id. See also Rule 117, Section 5.

44 Id.

45 Section 3(a), Rule 117.

46 Section 9, Rule 116.

allegation of the facts recited in the pleading.[47] The purpose of a motion for bill of particulars in civil cases is to enable a party to **prepare his responsive pleading** properly.

In criminal cases, a bill of particulars details items or specific conduct not recited in the Information but nonetheless pertain to or are included in the crime charged. Its purpose is to enable an accused: to know the theory of the government's case;[48] to prepare his defense and to avoid surprise at the trial; to plead his acquittal or conviction in bar of another prosecution for the same offense; and to compel the prosecution to observe certain limitations in offering evidence.[49]

In criminal proceedings, the motion for a bill of particulars is governed by Section 9 of Rule 116 of the Revised Rules of Criminal Procedure which provides:

> Section 9. *Bill of particulars*. - The accused may, before arraignment, move for a bill of particulars to enable him properly to plead and prepare for trial. The motion shall specify the alleged defects of the complaint or information and the details desired.

The rule requires the information to describe the offense with sufficient particularity to apprise the accused of the crime charged with and to enable the court to pronounce judgment. ***The particularity must be such that persons of ordinary intelligence may immediately know what the Information means***.[50]

The general function of a bill of particulars, whether in civil or criminal proceedings, is ***to guard against surprises during trial***. It is not the function of the bill to furnish the accused with the evidence of the prosecution. Thus, the prosecutor shall *not* be required to include in the bill of particulars matters of evidence relating to how the people intend to prove the elements of the offense charged or how the people intend to prove any item of factual information included in the bill of particulars.[51]

C.2. Origin of bill of particulars in criminal cases[52]

Even before the promulgation of the 1964 Rules of Court, when the applicable rules for criminal procedure was still General Order No. 58,[53] the Court had already recognized the need for a bill of particulars in criminal cases. *This recognition came despite the lack of any specific provision in*

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47 *Virata v. Sandiganbayan*, 339 Phil. 47, 62 (1997).

48 *Remmer v. United States*, 9 Cir., 1953, 205 F.2d 277, 281; *United States v. Caserta*, 3 Cir., 1952, 199 F.2d 905.

49 See *US v. Kelly*, 92 F. Supp. 672, 673 (W.D. Mo. 1950).

50 *Romualdez v. Sandiganbayan*, *supra* note 36.

51 *US v. Kelly*, *supra* note 49.

52 Philippine setting.

53 Criminal Procedure 1900.

General Order No. 58 setting out the rules for a bill of particulars in criminal cases.

In *U.S. v. Schneer*,[54] the issue presented was whether a bill of particulars was available in a criminal case for estafa after the accused had already been arraigned. The Court essentially ruled that there was no specific provision of law expressly authorizing the filing of specifications or bills of particulars in criminal cases, and held that:

> We know of no provision either in General Orders, No. 58, or in the laws existing prior thereto which requires the Government to furnish such a bill of particulars, and we accordingly hold that it was not error on the part of the court below to refuse to do so.

In *U.S. v. Cernias*,[55] however, the Court formally recognized the existence and applicability of a bill of particulars in criminal cases. In this case, the prosecution filed an information charging Basilio Cernias with several counts of brigandage before the Court of First Instance of Leyte. In overruling the accused's objection, the Court declared that the prosecution's act of specifying certain acts done by the conspirators in the Information "did no more than to furnish the defendant with a bill of particulars of the facts which it intended to prove at the trial x x x."[56]

In sum, the Court essentially held that a detailed complaint or information is not objectionable, and that the details it contains may be properly considered as specifications or bill of particulars.[57]

In *People v. Abad Santos*,[58] the court first recognized a bill of particulars, as a right that the accused may ask for from the court. In this case, the prosecution charged respondent Joseph Arcache with the crime of treason before the People's Court. The Information filed against the accused contained, in counts 2 and 3, the phrase "and other similar equipment."

The counsel for the accused verbally petitioned the People's court to order the prosecution to "make more specific [the] phrase 'and other similar equipment,'" which request the People's Court granted. The People of the Philippines filed a petition for *certiorari*, but the Court dismissed this petition.

In upholding the order of the People's Court, the Court ruled that "in the absence of specific provisions of law prohibiting the filing of specifications or bills of particulars in criminal cases, their submission may be permitted, as they cannot prejudice any substantial rights of the accused. On the contrary, they will serve to apprise the accused clearly of the charges

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54 7 Phil. 523, 525 (1907).
55 10 Phil. 682 (1908).
56 Id. at 690.
57 See *People v. Abad Santos*, 76 Phil. 746 (1946).
58 Id. at 745.

filed against them, and thus enable them to prepare intelligently whatever defense or defenses they might have.[59]

Notably, *Abad Santos* emphasized the importance of a bill of particulars in criminal cases, stating that "x x x inasmuch as in criminal cases not only the liberty but even the life of the accused may be at stake, it is always wise and proper that the accused should be fully apprised of the true charges against them, and thus avoid all and any possible surprise, which might be detrimental to their rights and interests; and ambiguous phrases should not, therefore, be permitted in criminal complaints or informations; and if any such phrase has been included therein, on motion of the defense, before the commencement of the trial, the court should order either its elimination as surplusage or the filing of the necessary specification, which is but an amendment in mere matters of form."[60]

In these cited cases, the Courts did not rely on the Rules of Court to provide for a bill of particulars in criminal cases. *A specific provision granting the accused the right "to move for or demand a more definite statement or a bill of particulars" was not incorporated as a formal rule until the 1964 Rules of Court,*[61] *under its Section 6, Rule 116.* This initial provision later *became Section 10 of Rule 116 under the 1985 Rules of Criminal Procedure*[62] *and Section 9 of Rule 116 under the Revised Rules of Criminal Procedure, as amended.*[63]

C.3. <u>The Distinctive Role of a Bill of Particulars</u>

When allegations in an Information are ***vague or indefinite***, the remedy of the accused is not a motion to quash, but a motion for a bill of particulars.

The purpose of a bill of particulars is to supply vague facts or allegations in the complaint or information to enable the accused to properly plead and prepare for trial. ***It <u>presupposes a valid Information</u>, one that presents all the elements of the crime charged, albeit under vague terms***. Notably, the specifications that a bill of particulars may supply are only formal amendments to the complaint or Information.

In *Virata v. Sandiganbayan,*[64] the Court expounded on the purpose of a bill of particulars as follows:

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59 Id. at 746-747.

60 Id. at 747. See also *Bill of Particulars in Criminal Cases*, by Angel C. Cruz, PLJ volume 23, Number 1-03, Notes and Comments, p. 438. plj.upd.edu.ph (http://www.plj.upd.edu.ph, last visited on September 17, 2014), where the concept and origin of bill of particulars was discussed more extensively. It examined, among others, the cases of *Schneer*, *Cernias*, *Veluz* and *Abad Santos*.

61 Effective January 1, 1964.

62 Promulgated on November 22, 1984; Effective January 1, 1985.

63 A.M. No. 00-5-03-SC. Effective December 1, 2000.

64 G.R. No. 106527, April 6, 1993, 221 SCRA 52.

> It is the office or function, as well as the object or purpose, of a bill of particulars to amplify or limit a pleading, specify more minutely and particularly a claim or defense set up and pleaded in general terms, give information, not contained in the pleading, to the opposite party and the court as to the precise nature, character, scope, and extent of the cause of action or defense relied on by the pleader, and apprise the opposite party of the case which he has to meet, to the end that the proof at the trial may be limited to the matters specified, and in order that surprise at, and needless preparation for, the trial may be avoided, and that the opposite party may be aided in framing his answering pleading and preparing for trial. **It has also been stated that it is the function or purpose of a bill of particulars to define, clarify, particularize, and limit or circumscribe the issues in the case, to expedite the trial, and assist the court. A general function or purpose of a bill of particulars is to prevent injustice or do justice in the case when that cannot be accomplished without the aid of such a bill**. [65]
>
> x x x x [Emphasis ours.]

Notably, the failure of the accused to move for the specification of the details desired deprives him of the right to object to evidence that could be introduced and admitted under an Information of more or less general terms but which sufficiently charges the accused with a definite crime.[66]

Although the application for the bill of particulars is one addressed to the sound discretion of the court[67] it should nonetheless exercise its discretion ***within the context of the facts and the nature of the crime charged in each case and the right of the accused to be informed of the nature and cause of accusation against him.*** **As articulated in the case of *People v. Iannone*:**[68]

> It is beyond cavil that a defendant has a basic and fundamental right to be informed of the charges against him so that he will be able to prepare a defense. Hence the courts must exercise careful surveillance to ensure that a defendant is not deprived of this right by an overzealous prosecutor attempting to protect his case or his witnesses. Any effort to leave a defendant in ignorance of the substance of the accusation until the time of trial must be firmly rebuffed. This is especially so where the indictment itself provides a paucity of information. In such cases, the court must be vigilant in safeguarding the defendant's rights to a bill of particulars and to effective discovery. Should the prosecutor decide to use an indictment which, although technically sufficient, does not adequately allow a defendant to properly prepare for trial, he may well run afoul of the defendant's right to be informed of the accusations against him.

Thus, if the Information is lacking, a court should take a liberal attitude towards its granting[69] and order the government to file a bill of particulars elaborating on the charges. Doubts should be resolved in favor of granting

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65 Id. at 62-63.
66 See *People v. Marquez*, 400 Phil. 1313, 1321 (2000).
67 *Wong Tai v. United States*, 273 U.S. 77, 82, 47 S.Ct. 300, 302, 71 L.Ed. 545 (1927).
68 45 N.Y.2d 589 (1978).
69 *Walsh v. United States*, 371 F.2d 436 (1st Cir. 1967).

the bill[70] to give full meaning to the accused's Constitutionally guaranteed rights.

Notably, the government cannot put the accused in the position of disclosing certain overt acts through the Information and withholding others subsequently discovered, all of which it intends to prove at the trial. This is the type of surprise a bill of particulars is designed to avoid.[71] ***The accused is entitled to the observance of all the rules designated to bring about a fair verdict.***

This becomes more relevant in the present case where the crime charged carries with it the severe penalty of capital punishment and entails the commission of several predicate criminal acts involving a great number of transactions spread over a considerable period of time.

C.4. Motion to Quash vs. Motion for Bill of Particulars

A bill of particulars presupposes a valid Information while a motion to quash is a jurisdictional defect on account that the facts charged in the Information does not constitute an offense.[72]

Justice Antonio T. Carpio, in his dissent, avers that the allegations in the information are not vague because the Information needs only allege the ultimate facts constituting the offense for which the accused stands charged, not the finer details of why and how the illegal acts alleged were committed. In support of his position, Justice Carpio cited the cases of *Miguel v. Sandiganbayan,*[73] *Go v. Bangko Sentral ng Pilipinas*,[74] and *People v. Romualdez,*[75] among others, to support the superfluity of the details requested by Enrile.

Justice Carpio's reliance on these cases is **misplaced** for **they involve the issue of quashal of an information** on the ground that the facts charge do not constitute an offense, rather than a request for bill of particulars. That is, these cited cases involve the critical issue of the validity of an information, and not a request for specificity with request to an offense charged in an information.

On the other hand, the cases of *People v. Sanico,*[76] *People v. Banzuela,*[77] *Pielago v. People,*[78] *People v. Rayon, Sr.*,[79] *People v. Subesa,*[80]

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70 See *United States v. Tanner*, 279 F. Supp. 457, 474 (N.D. Ill. 1967).
71 See *United States v. Covelli*, 210 F . Supp. 589 (N.D. Ill. 1967).
72 Revised Rules of Criminal Procedure.
73 G.R. No. 172035, July 4, 2012, 675 SCRA 560.
74 619 Phil. 306 (2009).
75 581 Phil. 462 (2008).
76 G.R. No. 208469, August 13, 2014, 732 SCRA 158.
77 G.R. No. 202060, December 11, 2013, 712 SCRA 735.
78 G.R. No. 202020, March 13, 2013, 693 SCRA 476.
79 G.R. No. 194236, January 30, 2014, 689 SCRA 745.
80 G.R. No. 193660, November 16, 2011, 660 SCRA 390.

People v. Anguac,[81] and *Los Baños v. Pedro*,[82] which were likewise cited by Justice Carpio, involve the issue that an Information only need to allege the ultimate facts, and not the specificity of the allegations contained in the information as to allow the accused to prepare for trial and make an intelligent plea.[83]

Notably, in *Miguel*,[84] to which Justice Carpio concurred, this Court mentioned that the proper remedy, if at all, to a supposed ambiguity in an otherwise valid Information, is merely to move for a bill of particulars and not for the quashal of an information which sufficiently alleges the elements of the offense charged.[85]

Clearly then, a bill of particulars does not presuppose an invalid information for it merely fills in the details on an otherwise valid information to enable an accused to make an intelligent plea and prepare for his defense.

I stress, however, that the issue in the present case involves abuse of discretion for denying Enrile's request for a bill of particulars, and not a motion to quash.

If the information does not charge an offense, then a motion to quash is in order.[86]

But if the information charges an offense and the averments are so vague that the accused cannot prepare to plead or prepare for trial, then a motion for a bill of particulars is the proper remedy.[87]

Thus viewed, a motion to quash and a motion for a bill of particulars are distinct and separate remedies, the latter presupposing an information sufficient in law to charge an offense.[88]

D. The Grave Abuse of Discretion Issue

The grant or denial of a motion for bill of particulars is discretionary on the court where the Information is filed. As usual in matters of discretion, the ruling of the trial court will not be reversed unless grave abuse of discretion or a manifestly erroneous order amounting to grave abuse of discretion is shown.[89]

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81 606 Phil. 728 (2009).
82 604 Phil. 215 (2009).
83 Section 9, Rule 116.
84 *Supra* note 73.
85 Id.
86 Section 3(a), Rule 117.
87 *People v. Abad Santos*, *supra* note 57.
88 *Du Bois v. People*, 200 Ill, 157, 66 ARR 658 (1902); *Kelly v. PeopIe*, 192 Ill, 119, 61 NE (1901), 425.
89 See *Republic of the Philippines v. Sandiganbayan (2nd Div.)*, *supra* note 21, at 192 (2007).

Grave abuse of discretion refers to the capricious or whimsical exercise of judgment that amounts or is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law such as when the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.[90] For the extraordinary writ of *certiorari* to lie, there must be capricious, arbitrary, or whimsical exercise of power.

It will be recalled that the Sandiganbayan **denied Enrile's motion** for bill of particulars on **two grounds**, namely:

(1) the details sought were evidentiary in nature and are best ventilated during trial; and

(2) his desired details were reiterations of the details he sought in his supplemental opposition to the issuance of a warrant of arrest.

We shall separately examine these grounds in determining whether the Sandiganbayan committed grave abuse of discretion when it denied Enrile's motion for a bill of particulars and his subsequent motion for reconsideration.

Sandiganbayan Ground #1:
The details sought were evidentiary in nature

D.1. The Law of Plunder

A determination of whether the details that Enrile sought were evidentiary requires an examination of the elements of the offense he is charged with, *i.e.*, **plunder under Republic Act No. 7080**.

Section 2 of R.A. No. 7080, as amended, reads:

> Section 2. *Definition of the Crime of Plunder; Penalties.* — Any **public officer** who, **by himself or in connivance** with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or **acquires ill-gotten wealth** through a **combination or series of overt criminal acts** as described in Section 1 (d) hereof in the aggregate amount or total value **of at least Fifty million pesos (₱50,000,000.00)** shall be guilty of the crime of plunder and shall be punished by *reclusion perpetua* to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating

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[90] See *Hegerty v. Court of Appeals*, 456 Phil. 543, 548 (2003), citing *DM Consunji, Inc. v. Esguerra*, 328 Phil. 1168, 1180 (1996).

circumstances, as provided by the Revised Penal Code, shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State. [Emphasis supplied.]

Based on this definition, the elements of plunder are:

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

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

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

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

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

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

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

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

(3) That the aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired is at least ₱50,000,000.00. [Emphasis supplied.]

D.1.a. <u>The Conspiracy Element and its Requested Details</u>

Taking these elements into account, we hold that Enrile's requested details on ***"Who among the accused acquired the alleged "ill-gotten wealth"*** are **not** proper subjects for a bill of particulars.

The allegation of the Information that the accused and Jessica Lucila G. Reyes, *"conspiring with one another and with Janet Lim Napoles, Ronald John Lim, and John Raymund de Asis x x x"* expressly charges conspiracy.

The law on plunder provides that it is committed by *"a public officer who acts by himself or* ***in connivance with*** *x x x."* The term "connivance" suggests an agreement or consent to commit an unlawful act or deed with another; to *connive* is to cooperate or take part secretly with another.[91] It implies both knowledge and assent that may either be active or passive.[92]

Since the crime of plunder may be done in connivance or in conspiracy with other persons, and the Information filed clearly alleged that Enrile and Jessica Lucila Reyes **conspired** with one another and with Janet Lim Napoles, Ronald John Lim and John Raymund De Asis, then it is unnecessary to specify, as an essential element of the offense, whether the ill-gotten wealth amounting to at least ₱172,834,500.00 had been acquired by one, by two or by all of the accused. ***In the crime of plunder, the amount of ill-gotten wealth acquired by each accused in a conspiracy is immaterial for as long as the total amount amassed, acquired or accumulated is at least ₱50 million***.

We point out that conspiracy in the present case is not charged as a crime by itself but only as the mode of committing the crime. Thus, there is no absolute necessity of reciting its particulars in the Information because conspiracy is not the gravamen of the offense charged.

It is enough to allege conspiracy as a mode in the commission of an offense in either of the following manner: (1) by use of the word "conspire," or its derivatives or synonyms, such as confederate, connive, collude; or (2) by allegations of basic facts constituting the conspiracy in a manner that a person of common understanding would know what is intended, and with such precision as the nature of the crime charged will admit, to enable the accused to competently enter a plea to a subsequent indictment based on the same facts.[93]

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91 See Separate Opinion of Justice (ret.) Jose C. Vitug in *Atty. Serapio v. Sandiganbayan (3rd Division)*, 444 Phil. 499, 507 (2003).

92 Black's Law Dictionary, 5th edition, 1979, p. 274.

93 *Estrada v. Sandiganbayan*, 427 Phil. 820, 860 (2002).

Our ruling on this point in *People v. Quitlong*[94] is particularly instructive:

> A conspiracy indictment need not, of course, aver all the components of conspiracy or allege all the details thereof, like the part that each of the parties therein have performed, the evidence proving the common design or the facts connecting all the accused with one another in the web of the conspiracy. Neither is it necessary to describe conspiracy with the same degree of particularity required in describing a substantive offense. It is enough that the indictment contains a statement of the facts relied upon to be constitutive of the offense in ordinary and concise language, with as much certainty as the nature of the case will admit, in a manner that can enable a person of common understanding to know what is intended, and with such precision that the accused may plead his acquittal or conviction to a subsequent indictment based on the same facts. x x x[95]

D.1.b. The Requested Details of Enrile's PDAF

We similarly rule that the petitioner is **not entitled to a bill of particulars** for specifics sought under the questions –

> ***For each of the years 2004-2010, under what law or official document is a portion of the "Priority Development Assistance Fund" identified as that of a member of Congress, in this instance, as ENRILE's, to be found? In what amount for each year is ENRILE's Priority Development Assistance Fund?***
>
> and
>
> ***x x x what COA audits or field investigations were conducted which validated the findings that each of Enrile's PDAF projects in the years 2004-2010 were ghosts or spurious projects?***

These matters will simply establish and support the ultimate fact that Enrile's PDAF was used to fund fictitious or nonexistent projects. Whether a discretionary fund (in the form of PDAF) had indeed been made available to Enrile as a member of the Philippine Congress and in what amounts are evidentiary matters that do not need to be reflected with particularity in the Information, and may be passed upon at the full-blown trial on the merits of the case.

D.1.b(i) The yearly PDAF Allocations

Specifically, we believe that the **exact amounts** of Enrile's yearly PDAF allocations, if any, from 2004 to 2010 need not be pleaded with specific particularity to enable him to properly plead and prepare for his defense. In fact, Enrile may be in a better position to know these details than the prosecution and thus cannot claim that he would be taken by surprise

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94 354 Phil. 372 (1998).

95 Id. at 388-389.

during trial by the omission in the Information of his annual PDAF allocations.

Thus, whether the amounts of Enrile's PDAF allocations have been specified or not, Enrile has been sufficiently informed that he stands charged of endorsing Napoles' non-government organizations to implement spurious or fictitious projects, in exchange for a percentage of his PDAF.

D.1.b(ii) The details of the COA Audits

The details of the *"COA audits or field investigations"* only support the ultimate fact that the projects implemented by Napoles' NGOs, and funded by Enrile's PDAF, were nonexisting or fictitious. Thus, they are evidentiary in nature and do not need to be spelled out with particularity in the Information.

To require more details on these matters from the prosecution would amount to asking for evidentiary information that the latter intends to present at the trial; it would be a compulsion on the prosecution to disclose in advance of the trial the evidence it will use in proving the charges alleged in the indictment.

D.1.c. Other Sources of Kickbacks and Commissions

We also **deny Enrile's plea for details *on who "the others"*** were (aside from Napoles, Lim and De Asis) from whom he allegedly received kickbacks and commissions. These other persons do not stand charged of conspiring with Enrile and need not therefore be stated with particularly, either as specific individuals or as John Does. The Court cannot second-guess the prosecution's reason for not divulging the identity of these "others" who may potentially be witnesses for the prosecution.

What the Constitution guarantees the accused is simply the right to meet and examine the prosecution witnesses. The prosecution has the prerogative to call witnesses other than those named in the complaint or information, subject to the defense's right to cross-examine them.[96] Making these "others" known would in fact be equivalent to the prosecution's premature disclosure of its evidence. We stress, to the point of repetition, that a bill of particulars is not meant to compel the prosecution to *prematurely disclose* evidentiary matters supporting its case.

D.2. The Overt Acts constituting the "Combination" or Series" under the Plunder Law

We hold that Enrile is **entitled to a bill of particulars** for specifics sought under the following questions –

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[96] See Section1(a), Rule 116, Revised Rules on Criminal Procedure. The last sentence reads: The prosecution may call at the trial witnesses other than those named in the complaint or information.

What are the particular overt acts which constitute the "combination"? What are the particular overt acts which constitute the "series"? Who committed those acts? [Emphasis ours.]

D.2.a. Reason for Requirement for Particulars of Overt Acts

Plunder is the crime committed by public officers when they amass wealth involving at least ₱50 million by means of a combination or series of overt acts.[97] Under these terms, it is not sufficient to simply allege that the amount of ill-gotten wealth amassed amounted to at least ₱50 million; the manner of amassing the ill-gotten wealth – whether ***through a combination or series of overt acts under Section 1(d) of R.A. No. 7080*** – is an important element that must be alleged.

When the Plunder Law speaks of "***combination,***" it refers to at least two (2) acts falling under different categories listed in Section 1, paragraph (d) of R.A. No. 7080 [*for example*, raids on the public treasury under Section 1, paragraph (d), subparagraph (1), and fraudulent conveyance of assets belonging to the National Government under Section 1, paragraph (d), subparagraph (3)].

On the other hand, to constitute a ***"series"*** there must be two (2) or more overt or criminal acts falling under the same category of enumeration found in Section 1, paragraph (d) [*for example*, misappropriation, malversation and raids on the public treasury, all of which fall under Section 1, paragraph (d), subparagraph (1)].[98]

With respect to paragraph (a) of the Information –

> [(*i.e., by repeatedly receiving from NAPOLES and/or her representatives LIM, DE ASIS, and others, kickbacks or commissions under the following circumstances: before, during and/or after the project identification, NAPOLES gave, and ENRILE and/or REYES received, a percentage of the cost of a project to be funded from ENRILE'S Priority Development Assistance Fund (PDAF), in consideration of ENRILE'S endorsement, directly or through REYES, to the appropriate government agencies, of NAPOLES' non-government organizations which became the recipients and/or target implementers of ENRILE'S PDAF projects, which duly funded projects turned out to be ghosts or fictitious, thus enabling NAPOLES to misappropriate the PDAF proceeds for her personal gain x x x*)] –

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97 Boado, Leonor, Notes and Cases on the Revised Penal Code (Books 1 and 2) and Special Penal Laws, 2004 edition, p. 554.

98 *Estrada v. Sandiganbayan*, 421 Phil. 290, 351 (2001).

we hold that the prosecution employed a generalized or **shotgun approach** in alleging the criminal overt acts allegedly committed by Enrile. This approach rendered the allegations of the paragraph uncertain to the point of ambiguity ***for purposes of enabling Enrile to respond and prepare for his defense***. These points are explained in greater detail below.

The heart of the Plunder Law lies in the phrase "combination or series of overt or criminal acts." Hence, ***even if the accumulated ill-gotten wealth amounts to at least ₱50 million, a person cannot be prosecuted for the crime of plunder if this resulted from a single criminal act***. This interpretation of the Plunder Law is very clear from the congressional deliberations.[99]

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[99] HR Committee Journal, May 7, 1991:

x x x x

CHAIRMAN GARCIA:

That's series.

HON. ISIDRO:

That is not series, it is combination.

CHAIRMAN GARCIA:

Well, however you look at it…

HON. ISIDRO:

Because when you say combination or series, we seem to say that two or more, *di ba*?

CHAIRMAN GARCIA:

Yeah. This distinguishes it, really, from the ordinary crimes. That is why, I said, that is a very good suggestion because **if it is only one act, it may fall under ordinary crime but we have here a combination or series of overt or criminal acts**.

x x x x

HON. ISIDRO:

When you say combination, two different acts? Now, a series may mean repetition of the same act?

CHAIRMAN:

Repetition.

CHAIRMAN TAÑADA:

Yes.

HON. ISIDRO:

So, in other words…that's it. When we say combination, we mean two different acts, it cannot be a repetition of the same act.

CHAIRMAN GARCIA:

That will refer to series.

Considering that without a number of overt or criminal acts, there can be no crime of plunder, the various overt acts that constitute the "combination" and "series" the Information alleged, are material facts that should not only be alleged, but must be stated with sufficient definiteness so that the accused would know what he is specifically charged of and why he stands charged, so that he could properly defend himself against the charge.

Thus, the **several** (*i.e.*, at least 2) acts which are indicative of the overall scheme or conspiracy must not be *generally* stated; they should be stated with *enough particularity* for Enrile (and his co-accused) to be able to prepare the corresponding refuting evidence to meet these alleged overt acts.

It is insufficient, too, to merely allege that a set of acts had been *repeatedly* done (although this may constitute a series if averred with sufficient definiteness), and aver that these acts resulted in the accumulation or acquisition of ill-gotten wealth amounting to at least ₱172,834,500.00, as in this case. The Information should reflect with particularity *the predicate acts* that underlie the crime of plunder, based on the enumeration in Section 1(d) of R.A. No. 7080.

A reading of the Information filed against Enrile in the present case shows that ***the prosecution made little or no effort to particularize the transactions that would constitute the required series or combination of overt acts***.

In fact, it ***clustered under paragraph (a) of the Information its recital of the manner Enrile and his co-accused allegedly operated, thus describing its general view of the series or combination of overt criminal acts that constituted the crime of plunder***.

Without any specification of the basic transactions where kickbacks or commissions amounting to at least ₱172,834,500.00 had been allegedly received, Enrile's preparation for trial is obviously hampered. This defect is not cured by mere reference to the prosecution's attachment, as ***Enrile already stated in his Reply that the "desired details" could not be found in the bundle of documents marked by the prosecution***, **which documents are not integral parts of the Information.** Hence, the prosecution does not discharge its burden of informing Enrile what these overt acts were by simply pointing to these documents.

HON. ISIDRO:

No, no supposing one act is repeated, so there are two.

x x x x

See also Rufus B. Rodriguez, The Crime of Plunder in the Philippines, 1st edition, 2002.

In providing the particulars of the overt acts that constitute the "combination" or "series" of transactions constituting plunder, it stands to reason that the ***amounts involved, or at their ball park figures***, should be stated; these transactions are not necessarily uniform in amount, and cannot simply collectively be described as amounting to ₱172,834,500.00 without hampering Enrile's right to respond after receiving the right information.

To stress, this final sum is **not a general ball park figure** but a very **specific sum based on a number of different acts** and hence must have a breakdown. Providing this breakdown reinforces the required specificity in describing the different overt acts.

Negatively stated, unless Enrile is given the particulars and is later given the chance to object to unalleged details, he stands to be surprised at the trial at the same time that the prosecution is given the opportunity to play fast and loose with its evidence to satisfy the more than ₱50 Million requirement of law.

D.2.b. Approximate Dates of Commissions or Kickbacks

Enrile should likewise know the *approximate* dates, at least, of the receipt of the kickbacks and commissions, so that he could prepare the necessary pieces of evidence, documentary or otherwise, to disprove the allegations against him. We point out that the period covered by the indictment extends from *"2004 to 2010 or thereabout,"* of which, we again stress that different overt acts constituting of the elements of Plunder took place during this period.

Undoubtedly, the length of time involved – ***six years*** – will pose difficulties to Enrile in the preparation of his defense and will render him susceptible to surprises. Enrile should *not be left guessing and speculating* which one/s from among the numerous transactions involving his discretionary PDAF funds from 2004 to 2010, are covered by the indictment.

D.2.c. The Projects Funded and NGOs Involved

Enrile is also **entitled to particulars** specifying the ***project*** that Enrile allegedly funded ***coupled with the name of Napoles' NGO*** (*e.g.*, Pangkabuhayan Foundation, Inc.), to sufficiently inform Enrile of the particular transactions referred to.[100]

Be it remembered that the **core of the indictment** is:

(1) the funding of nonexisting projects using Enrile's PDAF;

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[100] Per the Reflections of Justice Estela M. Perlas-Bernabe, the year of the launching of the PDAF project, as well the intended beneficiaries, need not anymore be stated in the Information.

(2) Enrile's endorsement of Napoles' NGOs to the government agencies to implement these projects; and

(3) Enrile's receipt of kickbacks or commissions in exchange for his endorsement.

Under the elaborate scheme alleged to have been committed by Enrile and his co-accused, the **project identification** was what started the totality of acts constituting plunder: only after a project has been identified could Enrile have endorsed Napoles' NGO to the appropriate government agency that, in turn, would implement the supposed project using Enrile's PDAF. Note that without the project identification, no justification existed to release Enrile's PDAF to Napoles' allegedly bogus NGO.

In these lights, the "***identified project***" and ***"Napoles' NGO"*** are material facts that should be clearly and definitely stated in the Information to allow Enrile to adequately prepare his defense evidence on the specific transaction pointed to. The omission of these details will necessarily leave Enrile guessing on what transaction/s he will have to defend against, since he may have funded other projects with his PDAF. Specification will also allow him to object to evidence not referred to or covered by the Information's ultimate facts.

D.2.d. The Government Agencies Serving as Conduits

The ***government agencies*** to whom Enrile endorsed Napoles' NGOs are also material facts that must be specified, since they served a **necessary role** in the crime charged – **the alleged conduits between Enrile and Napoles' NGOs**. They were indispensable participants in the elaborate scheme alleged to have been committed.

The particular person/s in each government agency who facilitated the transactions, need not anymore be named in the Information, as these are already evidentiary matters. The identification of the particular agency *vis-à-vis* Napoles' NGO and the identified project, will already inform Enrile of the transaction referred to.

In *Tantuico v. Republic*,[101] the Republic filed a case for reconveyance, reversion, accounting, restitution, and damages before the Sandiganbayan against former President Ferdinand Marcos, Imelda Marcos, Benjamin Romualdez, and Francisco Tantuico, Jr. Tantuico filed a motion for bill of particulars essentially alleging that the complaint was couched in general terms and did not have the particulars that would inform him of the alleged factual and legal bases. The Sandiganbayan denied his motion on the ground that the particulars sought are evidentiary in nature. Tantuico moved to reconsider this decision, but the Sandiganbayan again denied his motion.

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[101] G.R. No. 89114, December 2, 1991, 204 SCRA 428.

The Court overturned the Sandiganbayan's ruling and directed the prosecution to prepare and file a bill of particulars. Significantly, the Court held that **the particulars prayed for, such as: names of persons, names of corporations, dates, amounts involved, a specification of property for identification purposes, the particular transactions involving withdrawals and disbursements, and a statement of other material facts as would support the conclusions and inferences in the complaint, are not evidentiary in nature**. The Court explained that those particulars are material facts that should be clearly and definitely averred in the complaint so that the defendant may be fairly informed of the claims made against him and be prepared to meet the issues at the trial.

To be sure, the differences between ultimate and evidentiary matters are not easy to distinguish. While *Tantuico* was a civil case and did not involve the crime of plunder, the Court's ruling nonetheless serves as a useful guide in the determination of what matters are indispensable and what matters may be omitted in the Information, in relation with the constitutional right of an accused to be informed of the nature and cause of the accusation against him.

In the present case, the particulars on the:

(1) projects involved;
(2) Napoles' participating NGOs; and
(3) the government agency involved in each transaction

will undoubtedly provide Enrile with sufficient data to know the specific transactions involved, and thus enable him to prepare adequately and intelligently whatever defense or defenses he may have.

We reiterate that the purpose of a bill of particular is to clarify allegations in the Information that are indefinite, vague, or are conclusions of law ***to enable the accused to properly plead and prepare for trial***, **not simply *to inform him of the crime of which he stands accused***. Verily, an accused cannot intelligently respond to the charge laid if the allegations are incomplete or are unclear to him.

We are aware that in a prosecution for plunder, what is sought to be established is the commission of the criminal acts in furtherance of the acquisition of ill-gotten wealth. In the language of Section 4 of R.A. No. 7080, for purposes of establishing the crime of plunder, it is "sufficient to establish beyond reasonable doubt a ***pattern of overt or criminal acts*** indicative of the overall unlawful scheme or conspiracy to amass, accumulate, or acquire ill-gotten wealth.[102]

The term ***"overall unlawful scheme"*** indicates a general plan of action or method that the principal accused and public officer and others

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[102] See *Garcia v. Sandiganbayan*, G.R. No. 170122, October 12, 2009, 603 SCRA 349, 361.

conniving with him follow to achieve their common criminal goal. In the alternative, if no overall scheme can be found or where the schemes or methods used by the multiple accused vary, the overt or criminal acts must form part of a conspiracy to attain a common criminal goal.[103]

Lest Section 4 be misunderstood as allowing the prosecution to allege that a set of acts has been *repeatedly* done (thereby showing a 'pattern' of overt criminal acts), as has been done in the present case, we point out that this section does not dispense with the requirement of stating the essential or material facts of each component or predicate act of plunder; ***it merely prescribes a rule of procedure for the prosecution of plunder***.

In *Estrada v. Sandiganbayan*,[104] we construed this procedural rule to mean that [w]hat the prosecution needed to prove beyond reasonable doubt was only the number of acts sufficient to form a combination or series that would constitute a pattern involving an amount of at least ₱50,000,000.00. There was no need to prove each and every other act alleged in the Information to have been committed by the accused in furtherance of the overall unlawful scheme or conspiracy to amass, accumulate, or acquire ill-gotten wealth.[105]

If, for example, the accused is charged in the Information of malversing public funds on twenty different (20) occasions, the prosecution does not need to prove all 20 transactions; it suffices if a number of these acts of malversation can be proven with moral certainty, provided only that the series or combination of transaction would amount to at least ₱50,000,000.00. Nonetheless, ***each of the twenty transactions should be averred with particularity, more so if the circumstances surrounding each transaction are not the same***. This is the only way that the accused can properly prepare for his defense during trial.

D.3. <u>Paragraph (b) of the Information</u>

As his last requested point, Enrile wants the prosecution to provide the details of the allegation under paragraph (b) of the Information (*i.e.*, *x x x by taking undue advantage, on several occasions, of their official position, authority, relationships, connections, and influence to unjustly enrich themselves at the expense and to the damage and prejudice, of the Filipino people and the Republic of the Philippines*) in the following manner:

> Provide the details of *how* Enrile took undue advantage, on several occasions, of his official positions, authority, relationships, connections, and influence to unjustly enrich himself at the expense and to the damage and prejudice, of the Filipino people and the Republic of the Philippines. Was this because he *received* any *money* from the government? *From whom* and *for what* reason did he receive any money or property from the

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103 See *Estrada v. Sandiganbayan*, *supra* note 98.
104 Id. at 360-361.
105 Id.

> government through which he "unjustly enriched himself"? State the details from whom each *amount* was received, the *place* and the *time*.

Our ruling on Enrile's desired details – specifically, the particular overt act/s alleged to constitute the "combination" and "series" charged in the Information; a breakdown of the amounts of the kickbacks and commissions allegedly received, stating how the amount of ₱172,834,500.00 was arrived at; a brief description of the 'identified' projects where kickbacks and commissions were received; the *approximate* dates of receipt of the alleged kickbacks and commissions from the identified projects; the name of Napoles' non-government organizations (NGOs) which were the alleged "recipients and/or target implementors of Enrile's PDAF projects;" and the government agencies to whom Enrile allegedly endorsed Napoles' NGOs – **renders it unnecessary to require the prosecution to submit further particulars on the allegations contained under paragraph (b) of the Information**.

Simply put, the particular overt acts alleged to constitute the combination or series required by the crime of plunder, coupled with a specification of the other non-evidentiary details stated above, already answer the question of how Enrile took undue advantage of his position, authority, relationships, connections and influence as Senator to unjustly enrich himself.

We also point out that the PDAF is a discretionary fund intended solely for public purposes. Since the Information stated that Enrile, as "Philippine Senator," committed the offense "in relation to his office," by "repeatedly receiving kickbacks or commissions" from Napoles and/or her representatives through projects funded by his (Enrile's) PDAF, then it already alleged how undue advantage had been taken and how the Filipino people and the Republic had been prejudiced. These points are fairly deducible from the allegations in the Information as supplemented by the required particulars.

E. <u>The Grave Abuse of Discretion</u>

In the light of all these considerations, we hold that the ***Sandiganbayan's denial of the petitioner's motion for a bill of particulars, on the ground that the details sought to be itemized or specified are all evidentiary – without any explanation supporting this conclusion – constitutes grave abuse of discretion***.

As discussed above, some of the desired details are material facts that must be alleged to enable the petitioner to properly plead and prepare his defense. The Sandiganbayan should have diligently sifted through each detail sought to be specified, and made the necessary determination of whether each detail was an ultimate or evidentiary fact, particularly after Enrile stated in his Reply that the "desired details" could not be found in the bundle of documents marked by the prosecution. We cannot insist or

speculate that he is feigning ignorance of the presence of these desired details; neither can we put on him the burden of unearthing from these voluminous documents what the desired details are. The remedy of a bill of particulars is precisely made available by the Rules to enable an accused to positively respond and make an intelligent defense.

Justice Carpio's reference to the voluminous 144-page Ombudsman's resolution (which found probable cause to indict the petitioner and his co-accused not only of the crime of plunder, but also for violations of several counts of the Anti-Graft and Corrupt Practice Act) to justify his argument that Enrile was already aware of the details he seeks in his motion for a bill of particulars, all the more strengthens our conclusive position that the Information for plunder filed against Enrile was ambiguous and glaringly insufficient to enable him to make a proper plea and to prepare for trial. We reiterate, to the point of being repetitive, that the purpose of the bill of particulars in criminal cases is to supply vague facts or allegations in the complaint or information to enable the accused to properly plead and prepare for trial.

Moreover, a resolution arising from a preliminary investigation does not amount to nor does it serve the purpose of a bill of particulars.

A bill of particulars guards against the taking of an accused by surprise by **restricting the scope of the proof**;[106] **it limits the evidence to be presented by the parties to the matters alleged in the Information as supplemented by the bill**. It is for this reason that the failure of an accused to move for a bill of particulars deprives him of the right to object to evidence which could be lawfully introduced and admitted under an information of more or less general terms which sufficiently charges the defendants with a definite crime.

The record on preliminary investigation, in comparison, serves as the written account of the inquisitorial process when the fiscal determined the existence of *prima facie* evidence to indict a person for a particular crime. The record of the preliminary investigation, as a general rule, does not even form part of the records of the case.[107] These features of the record of investigation are significantly different from the bill of particulars that serves as basis, together with the Information, in specifying the overt acts constituting the offense that the accused pleaded to during arraignment.

Notably, **plunder is a crime composed of several predicate criminal acts**. To prove plunder, **the prosecution must weave a web out of the six ways of illegally amassing wealth and show how the various acts reveal a combination or series of means or schemes that reveal a pattern of criminality**. The interrelationship of the separate acts must be shown and

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106 *Berger v. State*, 179 Md. 410 (1941; *Hunter v. State*, 193 Md. 596 (1949).

107 Section 7 (b), Rule 112, Revised Rules of Criminal Procedure.

be established as a scheme to accumulate ill-gotten wealth amounting to at least ₱50 million.

Plunder thus involves intricate predicate criminal acts and numerous transactions and schemes that span a period of time. Naturally, in its prosecution, the State possesses an "**effective flexibility**" of proving a predicate criminal act or transaction, not originally contemplated in the Information, but is otherwise included in the broad statutory definition, in light of subsequently discovered evidence. The unwarranted use of the flexibility is what the bill of particulars guards against.

Justice Carpio further argues that the *ponencia* transformed the nature of an action from an accusation in writing charging a person with an offense to an initiatory pleading alleging a cause of action.

We see nothing wrong with such treatment, for a motion for a bill of particulars in criminal cases is designed to achieve the same purpose as the motion for a bill of particulars in civil cases. In fact, certainty, to a reasonable extent, is an essential attribute of all pleadings, both civil and criminal, and is more especially needed in the latter where conviction is followed by penal consequences.[108]

Thus, even if the Information employs the statutory words does not mean that it is unnecessary to allege such facts in connection with the commission of the offense as will certainly put the accused on full notice of what he is called upon to defend, and establish such a record as will effectually bar a subsequent prosecution for that identical offense.[109]

Notably, conviction for plunder carries with it the penalty of capital punishment; for this reason, more process is due, not less. When a person's life interest – protected by the life, liberty, and property language recognized in the due process clause – is at stake in the proceeding, all measures must be taken to ensure the protection of those fundamental rights.

As we emphasized in *Republic v. Sandiganbayan*,[110] "the administration of justice is not a matter of guesswork. ***The name of the game is fair play, not foul play***. We cannot allow a legal skirmish where, from the start, one of the protagonists enters the arena with one arm tied to his back."

Finally, we find no significance in Justice Carpio's argument that Atty. Estelito Mendoza did not previously find vague the Information for plunder filed against President Joseph Estrada in 2001.

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108 *State v. Canova*, 278 Md. 483, 498-99, 365 A.2d 988, 997-98 (1976).

109 *State v. Lassotovitch*, 162 Md. 147, 156, 159 A. 362, 366 (1932).

110 *Republic of the Philippines v. Sandiganbayan (2nd Division)*, *supra* note 21.

Under the amended Information[111] against Estrada, et al., each overt act that constituted the series or combination and corresponding to the

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111 AMENDED INFORMATION

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

That during the period from June, 1998 to January, 2001, in the Philippines, and within the jurisdiction of this Honorable Court, accused Joseph Ejercito Estrada, THEN A PUBLIC OFFICER, BEING THEN THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES, by himself AND/OR in CONNIVANCE/CONSPIRACY with his co-accused, WHO ARE MEMBERS OF HIS FAMILY, RELATIVES BY AFFINITY OR CONSANGUINITY, BUSINESS ASSOCIATES, SUBORDINATES AND/OR OTHER PERSONS, BY TAKING UNDUE ADVANTAGE OF HIS OFFICIAL POSITION, AUTHORITY, RELATIONSHIP, CONNECTION, OR INFLUENCE, did then and there wilfully, unlawfully and criminally amass, accumulate and acquire BY HIMSELF, DIRECTLY OR INDIRECTLY, ill-gotten wealth in the aggregate amount OR TOTAL VALUE of FOUR BILLION NINETY SEVEN MILLION EIGHT HUNDRED FOUR THOUSAND ONE HUNDRED SEVENTY THREE PESOS AND SEVENTEEN CENTAVOS [₱4,097,804,173.17], more or less, THEREBY UNJUSTLY ENRICHING HIMSELF OR THEMSELVES AT THE EXPENSE AND TO THE DAMAGE OF THE FILIPINO PEOPLE AND THE REPUBLIC OF THE PHILIPPINES, through ANY OR A combination OR A series of overt OR criminal acts, OR SIMILAR SCHEMES OR MEANS, described as follows:

(a) by receiving OR collecting, directly or indirectly, on SEVERAL INSTANCES, MONEY IN THE AGGREGATE AMOUNT OF FIVE HUNDRED FORTY-FIVE MILLION PESOS (₱545,000,000.00), MORE OR LESS, FROM ILLEGAL GAMBLING IN THE FORM OF GIFT, SHARE, PERCENTAGE, KICKBACK OR ANY FORM OF PECUNIARY BENEFIT, BY HIMSELF AND/OR in connivance with co-accused CHARLIE 'ATONG' ANG, Jose 'Jinggoy' Estrada, Yolanda T. Ricaforte, Edward Serapio, AN *(sic)* JOHN DOES AND JANE DOES, in consideration OF TOLERATION OR PROTECTION OF ILLEGAL GAMBLING;

(b) by DIVERTING, RECEIVING, misappropriating, converting OR misusing DIRECTLY OR INDIRECTLY, for HIS OR THEIR PERSONAL gain benefit, public funds in the amount of ONE HUNDRED THIRTY MILLION PESOS [₱130,000,000.00], more or less, representing a portion of the TWO HUNDRED MILLION PESOS [₱200,000,000] tobacco excise tax share allocated for the Province of Ilocor Sur under R.A. No. 7171, BY HIMSELF AND/OR in CONNIVANCE with co-accused Charlie 'Atong' Ang, Alma Alfaro, JOHN DOE a.k.a. Eleuterio Tan OR Eleuterio Ramos Tan or Mr. Uy, and Jane Doe a.k.a. Delia Rajas, AND OTHER JOHN DOES AND JANE DOES;

(c) by directing, ordering and compelling, FOR HIS PERSONAL GAIN AND BENEFIT, the Government Service Insurance System (GSIS) TO PURCHASE 351,878,000 SHARES OF STOCK MORE OR LESS, and the Social Security System (SSS), 329,855,000 SHARES OF STOCK MORE OR LESS, OF THE BELLE CORPORATION IN THE AMOUNT OF MORE OR LESS ONE BILLION ONE HUNDRED TWO MILLION NINE HUNDRED SIXTY FIVE THOUSAND SIX HUNDRED SEVEN PESOS AND FIFTY CENTAVOS [₱1,102,965,607.50] AND MORE OR LESS SEVEN HUNDRED FORTY FOUR MILLION SIX HUNDRED TWELVE THOUSAND AND FOUR HUNDRED FIFTY PESOS [₱744,612,450.00], RESPECTIVELY, OR A TOTAL OF MORE OR LESS ONE BILLION EIGHT HUNDRED FORTY SEVEN MILLION FIVE HUNDRED SEVENTY EIGHT THOUSAND FIFTY SEVEN PESOS AND FIFTY CENTAVOS [₱1,847,578,057.50]; AND BY COLLECTING OR RECEIVING, DIRECTLY OR INDIRECTLY, BY HIMSELF AND/OR IN CONNIVANCE WITH JOHN DOES AND JANE DOES, COMMISSIONS OR PERCENTAGES BY REASON OF SAID PURCHASES OF SHARES OF STOCK IN THE

predicate acts under Section 1(d) had been averred with sufficient particularity **so that there was no doubt what particular transaction was referred to**.

We point out that unlike in the Information against Enrile, the following matters had been averred with sufficient definiteness, *viz*: the predicate acts that constitute the crime of plunder; the breakdown of how the alleged amount of ₱4,097,804,173.17, more or less, had been arrived at; the participants involved in each transaction; and the specific sources of the illegal wealth amassed.

At any rate, that Atty. Mendoza did not previously question the indictment of President Estrada *via* a motion for bill of particulars does not *ipso facto* mean that the present Information for plunder filed against Enrile is not vague and ambiguous.

Sandiganbayan Ground #2:

That Enrile's cited grounds are reiterations of the grounds previously raised

Enrile does not deny that the arguments he raised in his *supplemental opposition to issuance of a warrant of arrest and for dismissal of information* and in his *motion for bill of particulars* were identical. He argues, however, that the mere reiteration of these grounds should not be a ground for the denial of his motion for bill of particulars, since "***the context in which those questions were raised was entirely different***."

While both the motion to dismiss the Information and the motion for bill of particulars involved the right of an accused to due process, the enumeration of the details desired in Enrile's *supplemental opposition to issuance of a warrant of arrest and for dismissal of information* and in his *motion for bill of particulars* are different viewed particularly **from the prism of their respective objectives**.

AMOUNT OF ONE HUNDRED EIGHTY NINE MILLION SEVEN HUNDRED THOUSAND PESOS [₱189,700,000.00], MORE OR LESS, FROM THE BELLE CORPORATION WHICH BECAME PART OF THE DEPOSIT IN THE EQUITABLE-PCI BANK UNDER THE ACCOUNT NAME "JOSE VELARDE;"

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

CONTRARY TO LAW.[111] [Underscoring in the original.]

In the **former**, Enrile took the position that the Information did not state a crime for which he can be convicted; thus, the Information is void; he alleged a defect of substance. In the **latter**, he already impliedly admits that the Information sufficiently alleged a crime but is unclear and lacking in details that would allow him to properly plead and prepare his defense; he essentially alleged here a defect of form.

Note that in the **former**, the purpose is to dismiss the Information for its failure to state the nature and cause of the accusation against Enrile; while the details desired in the **latter** (the motion for bill of particulars) are required to be specified in sufficient detail because the allegations in the Information are vague, indefinite, or in the form of conclusions and will not allow Enrile to adequately prepare his defense unless specifications are made.

That every element constituting the offense had been alleged in the Information does not preclude the accused from requesting for more specific details of the various acts or omissions he is alleged to have committed. The request for details is precisely the function of a bill of particulars.

Hence, while the information may be sufficient for purposes of stating the cause and the crime an accused is charged, the allegations may still be inadequate for purposes of enabling him to properly plead and prepare for trial.

We likewise find no complete congruence between the grounds invoked and the details sought by Enrile in his motion for bill of particulars, and the grounds invoked in opposing the warrant for his arrest issued, so that the Sandiganbayan's action in one would bar Enrile from essentially invoking the same grounds.

The judicial determination of probable cause is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice.[112] Simply put, the judge determines whether the necessity exists to place the accused under immediate custody to avoid frustrating the ends of justice.

On the other hand, the Revised Rules of Criminal Procedure grants the accused the remedy of a bill of particulars to better inform himself of the specifics or particulars concerning facts or matters that had not been averred in the Information with the necessary clarity for purposes of his defense.

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[112] See *Alfredo C. Mendoza v. People of the Philippines and Juno Cars, Inc.*, G.R. No. 197293, April 21, 2014, 722 SCRA 647.

Its purpose is to better acquaint the accused of the specific acts and/or omissions in relation with the crime charged, to limit the matters and the evidence that the prosecution may otherwise be allowed to use against him under a more or less general averment, and to meet the charges head on and timely object to evidence whose inadmissibility may otherwise be deemed waived.

Based on these considerations, the question of whether there is probable cause to issue a warrant of arrest against an accused, is separate and distinct from the issue of whether the allegations in the Information have been worded with sufficient definiteness to enable the accused to properly plead and prepare his defense. While the grounds cited for each may seemingly be the same, they are submitted for different purposes and should be appreciated from different perspectives, so that the insufficiency of these grounds for one does not necessarily translate to insufficiency for the other. Thus, the resolution of the issue of probable cause should not bar Enrile from seeking a more detailed averment of the allegations in the Information.

The Sandiganbayan grossly missed these legal points and thus gravely abused its discretion: **it used wrong and completely inapplicable considerations to support its conclusion**.

WHEREFORE, in the light of the foregoing:

a. We **PARTIALLY GRANT** the present petition for *certiorari*, and **SET ASIDE** the Sandiganbayan's resolutions dated July 11, 2014, which denied Enrile's motion for bill of particulars and his motion for reconsideration of this denial.

b. We **DIRECT** the *People of the Philippines* to **SUBMIT**, within a **non-extendible period of fifteen (15) days from finality** of this Decision, with copy furnished to Enrile, a bill of particulars containing the facts sought that we herein rule to be material and necessary. The bill of particulars shall specifically contain the following:

> **1. The particular overt act/s alleged to constitute the "combination or series of overt criminal acts" charged in the Information.**
>
> **2. A breakdown of the amounts of the "kickbacks or commissions" allegedly received, stating how the amount of ₱172,834,500.00 was arrived at.**
>
> **3. A brief description of the 'identified' projects where kickbacks or commissions were received.**
>
> **4. The *approximate* dates of receipt, "in 2004 to 2010 or thereabout," of the alleged kickbacks and commissions from the**

identified projects. At the very least, the prosecution should state the year when the kickbacks and transactions from the identified projects were received.

5. The name of Napoles' non-government organizations (*NGOs*) which were the alleged "recipients and/or target implementors of Enrile's PDAF projects."

6. The government agencies to whom Enrile allegedly endorsed Napoles' NGOs. The particular person/s in each government agency who facilitated the transactions need not be named as a particular.

All particulars prayed for that are not included in the above are hereby denied.

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

I join the dissent of J. Carpio

MARIA LOURDES P. A. SERENO
Chief Justice

Please see Dissenting Opinion

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

I join J. Bernabe's opinion

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

I join the dissent of J. Carpio

MARIANO C. DEL CASTILLO
Associate Justice

I join J. Carpio in his dissenting Opinion
On leave

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

Please see Concurring Opinion

ESTELA M. PERLAS-BERNABE
Associate Justice

(On leave)
BIENVENIDO L. REYES
Associate Justice

I join dissent of J. Carpio. See separate opinion

MARVIC M.V.F. LEONEN
Associate Justice

(No Part)
FRANCIS H. JARDELEZA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

MARIA LOURDES P. A. SERENO
Chief Justice