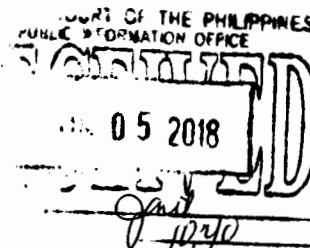




Republic of the Philippines
 Supreme Court
 Baguio City

FIRST DIVISION



REPUBLIC OF THE PHILIPPINES, G.R. No. 198393
 Petitioner,

- versus -

Present:

SERENO, C.J.,*
 LEONARDO-DE CASTRO,**
 DEL CASTILLO,
 LEONEN,*** and
 TIJAM, JJ.,

RODOLFO M. CUENCA,
 FERDINAND E. MARCOS,
 IMELDA R. MARCOS, ROBERTO
 S. CUENCA, MANUEL I. TINIO,
 VICTOR AFRICA, MARIO K.
 ALFELOR, DON M. FERRY and
 OSCAR BELTRAN,

Respondents.

Promulgated:

APR 04 2018

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DECISION

TIJAM, J.:

Petitioner Republic of the Philippines (Republic), represented by the Presidential Commission on Good Government (PCGG), assails through this petition for review¹ under Rule 45, the Decision² dated August 5, 2010 of the Sandiganbayan in Civil Case No. 0016 which dismissed, for insufficiency of evidence, the Republic's complaint for reconveyance, reversion, accounting, restitution and damages. Likewise assailed is the Sandiganbayan's Joint

*On leave.

**Designated Acting Chairperson, First Division per Special Order No. 2540 dated February 28, 2018.

***Designated as additional Member as per Raffle dated March 26, 2018.

¹ *Rollo*, pp. 16-349.

² Penned by Associate Justice Alex L. Quiroz and concurred in by Associate Justices Francisco H. Villaruz, Jr. and Efren N. De La Cruz. Id. at 68-104.

Resolution³ dated August 31, 2011 dismissing the Republic's motion for reconsideration.

The Antecedents

On July 24, 1987, the Republic, through the PCGG and assisted by the Office of the Solicitor General (OSG), filed a complaint⁴ for reconveyance, reversion, accounting, restitution and damages against respondents Rodolfo M. Cuenca, Ferdinand E. Marcos,⁵ Imelda R. Marcos, Roberto S. Cuenca, Manuel I. Tinio, Jose L. Africa, Mario K. Alfelor,⁶ Don M. Ferry and Oscar P. Beltran,⁷ together with other individuals namely, Saul Y. Alfonso, Nora O. Vinluan, Panfilo O. Domingo, Roberto V. Ongpin, Ricardo P. de Leon, Arturo Lazo, Arthur C. Balch, Rodolfo M. Munsayac, and Antonio L. Carpio. The complaint was later amended to include corporate defendants⁸ alleged to be beneficially owned or controlled by respondent Rodolfo M. Cuenca.⁹

Through its complaint and its amendments, the Republic sought to recover from respondents alleged ill-gotten wealth which they acquired in unlawful concert with one another, in breach of trust, and with grave abuse of right and power, which resulted to their unjust enrichment during Ferdinand E. Marcos' rule from December 30, 1965 to February 25, 1986.¹⁰

Specifically, the Republic enumerated the alleged illegal acts committed by respondents in this wise:

12. Defendant, Rodolfo M. Cuenca, by himself, and/or in unlawful concert with defendants Ferdinand E. Marcos and Imelda R. Marcos, taking undue advantage of his influence and association and with the active collaboration and willing participation of above defendant spouses, engaged in schemes, devices and stratagems designed to unjustly enrich themselves and to prevent disclosure and discovery of ill-gotten assets, among others:

(a) created, organized and managed the Construction and Development Corporation of the Philippines (CDCP), originally from a company known as "Cuenca Construction" and, with the active collaboration, knowledge, assistance and willing participation of defendants Jose L. Africa, Nora O. Vinluan,

³ Id. at 105-116.

⁴ Id. at 123-154.

⁵ Designated in this case by his legal representative and co-respondent, Imelda R. Marcos.

⁶ Deceased. Id. at 1187.

⁷ Deceased. Id. at 373.

⁸ Namely, Universal Holdings Corporation, Philippine National Construction Corporation (formerly CDCP), Sta. Ines Melale Corporation (formerly Sta. Ines Melale Forests Products), Sta. Ines Melale Veneer and Plywood, Inc. (formerly Sta. Ines Venner & Plywood, Inc.), Resort Hotels Corporation, CDCP Mining Inc., Galleon Shipping Corporation and Cuenca Investments Corporation. Id. at 159.

⁹ Id. at 155-186.

¹⁰ Id. at 124.

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Roberto S. Cuenca, and Panfilo O. Domingo, obtained favored public works contracts amounting to billions of pesos from the Department of Public Works which later became the Department of Public Highways, and from the National Irrigation Administration, such as the construction of sugar centrals, the Philippine Associated Smelting and Refining Corporation (PASAR), the Philippine Phosphate Fertilizer Corporation (PHILPHOS), and the Light Railway Transit Project (LRT), among others, under terms and conditions manifestly disadvantageous to Plaintiff and the Filipino people;

(b) secured loans and financial assistance fro[m] government financial institutions without sufficient collateral, in contravention of banking laws and sound banking practices, and other terms and conditions manifestly disadvantageous to said government institutions, the plaintiff and the Filipino people. Defendant Panfilo O. Domingo, as director and president of one of these government financial institutions – the Philippine National Bank, abetted, facilitated and collaborated in the illegal execution and release of such loans and financial assistance to CDCP, among other corporations of defendant Rodolfo M. Cuenca, in violation of law, sound banking practice and his duty of loyalty and due care to PNB, to its extreme damage and prejudice and that of plaintiff and the Filipino people;

(c) secured a favored rescue arrangement at the behest of defendants Ferdinand E. Marcos and Imelda R. Marcos in the form, among others, of conversion of multimillion peso debt in favor of NDC into equity, release of collaterals to CDCP of government funds in violation of the outstanding policy that no such funds shall be paid to persons and/or corporations which have obligations with the government, through the illegal and unconstitutional use of the Letters of Instructions, to the grave damage and prejudice of plaintiff and the Filipino people;

(d) acquired, through Galleon Shipping Corporation, which was beneficially held and/or controlled by defendant Rodolfo M. Cuenca, vessels with dollar loans from abroad, on guarantee of the Development Bank of the Philippines (DBP), for clearly overpriced consideration including improper payments, such as bribes, kickbacks and commissions given to defendants, which loans remain unpaid to date, to the gross disadvantage of plaintiff and the Filipino people;

(e) secured, after Galleon Shipping Corporation defaulted in its obligations, additional financial assistance from government institutions, through the issuance of Letter of Instruction No. 1155, which required the National Development Company (NDC) to buy out the entire shareholdings in Galleon Shipping Corporation of defendant Rodolfo M. Cuenca, Arthur C. Balch, Manuel I. Tinio, Mario K. Alfelor, Rodolfo Munsayac and those of other stockholders for P46.7 Million and to provide the required additional equity;



(f) caused NDC to purchase worthless shares of defendant Rodolfo M. Cuenca in CDCP at par value to the detriment of government institutions and plaintiff;

(g) conspired and executed with the help, cooperation and participation of the other defendants, such other schemes and devices to defraud plaintiff and its agencies millions of pesos for their personal benefit;

(h) willingly participating in defendants Rodolfo M. Cuenca, Ferdinand E. Marcos and Imelda R. Marcos' scheme to enrich themselves at the expense of plaintiff and the Filipino people, defendants Antonio L. Carpio, Manuel I. Tinio, Arthur C. Balch, Mario K. Alfelor, Rodolfo Munsayac, Roberto V. Ongpin and Don M. Ferry unlawfully caused NDC to release P46.7 Million to Galleon Shipping Corporation; allowed defendant Rodolfo M. Cuenca to continue running the Galleon Shipping Corporation; released defendant Rodolfo M. Cuenca's counter-guarantees for the security of the loans guaranteed by the NDC and DBP and, released the first mortgage of DBP over vessels owned by Galleon Shipping Corporation, thereby resulting in substantial loss of government funds, to the prejudice and damage of plaintiff and the Filipino people;

(i) organized the Universal Holding Corporation, a holding company for CDCP, Sta. Ines Melale, and Resort Hotels, all beneficially held and/or controlled by Ferdinand E. Marcos, Imelda R. Marcos and Rodolfo M. Cuenca, which corporations with the help, cooperation and participation of defendants Jose L. Africa, Roberto Cuenca, Manuel Tinio, Mario Alfelor, Rodolfo Munsayac, Arthur Balch, Nora O. Vinluan, Ricardo de Leon, among others as directors, officers and/or agents thereof, served as conduits for deposit abroad of illegally obtained funds and property;

(j) transferred, through the Security Bank and Trust Company, US\$8 Million to CDCP International Bank account with Irving Trust, N.Y., which amount was utilized by defendant Ferdinand E. Marcos and Imelda R. Marcos in the purchase of New York properties.

13. Defendants Oscar P. Beltran and Saul Y. Alfonso of the Merchants Construction and Development Corporation, Ricardo P. De Leon and Arturo Lazo of Tierra Factors Corporation, participated and/or allowed themselves at one time or another to be used in achieving the schemes, devises and stratagem of defendants Ferdinand E. Marcos and Imelda R. Marcos to enrich themselves at the expense of plaintiff and the Filipino people.

14. The acts of defendants, singly or collectively, and/or in unlawful concert with one another constitute brazen abuse of right and power, unjust enrichment, flagrant breach of public trust and fiduciary obligations,

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acquisition of position and authority, violation of the Constitution and laws of the Republic of the Philippines, to the grave and irreparable damage of plaintiff and the Filipino people.¹¹

The Sandiganbayan dismissed the case as against Arturo Lazo and Ricardo P. de Leon for failure to state a cause of action. Imelda R. Marcos was designated as Ferdinand E. Marcos' legal representative upon the latter's death in 1989, while Arthur C. Balch's heirs¹² were substituted as defendants. Saul Y. Alfonso, Mario K. Alfelor, Rodolfo M. Munsayac, Don M. Ferry and Sta. Ines Melale Veneer and Plywood, Inc., filed their respective answers but did not participate in the proceedings.¹³

In support of its complaint, the Republic presented the testimonies of Ma. Lourdes O. Magno (PCGG Records Officer II), Evelita E. Celis (Financial Analyst V of the PCGG's Research and Intelligence Department), Evelyn R. Singson (Executive Vice-President of Security Bank and Trust Company), Atty. Orlando L. Salvador (Coordinator and Legal Consultant of the Presidential *Ad Hoc* Fact-Finding Committee on Behest Loans) and Stephen P. Tanchuling (Records Officer V of PCGG's Research Department).¹⁴

The testimonies of the witnesses for the Republic are summarized by the Sandiganbayan in its assailed Decision as follows:

Ma. Lourdes O. Magno was Records Officer II of the PCGG from May 1992 up to the time of her testimony in January 1999. Magno was custodian of the records for the PCGG, including the documents in this case, marked as Exhibits "A" to "Y" for the [petitioner]. She testified that while some of the records of the PCGG were turned over by the previous Chairman and Commissioners of the PCGG and others came from its Research Department, she could not determine how each particular document was obtained by the PCGG.

Evelita E. Celis was Financial Analyst V of the Research and Intelligence Department of the PCGG since February 17, 1992. She testified that the main function of their department was to conduct research, gather, evaluate and analyze the data, and then to prepare a comprehensive report to be submitted to the PCGG's Legal Department for verification reports. She prepared the report entitled, "Executive Summary of Rodolfo M. Cuenca, SB Case No. 0016" after she had analyzed the documents pertinent to this case. However, she stated that she had no personal knowledge of the transactions involved in said documents. The documents were gathered by the staff of the Intelligence Division from various sources such as the Presidential Library, the Asset Privatization

¹¹ Id. at 165-172.

¹² Namely, Jacinta T. Balch, Tress A. Balch, Charles Arthur Balch, Jr., Sherryl Lyn Zeñarosa and Bryan Wesley Head.

¹³ Id. at 73-74.

¹⁴ Id. at 29.

Trust, the Office of the Securities and Exchange Commission, and from the files of the Behest Loans cases.

Evelyn R. Singson was Executive Vice President of Security Bank and Trust Company from 1980 to 1986. She testified that she executed an Affidavit on August 18, 1986 in connection with the efforts of the government to recover the Marcos wealth.

Atty. Orlando L. Salvador was coordinator and legal consultant of the Presidential *Ad Hoc* Fact-Finding Committee on Behest Loans. He testified that the said committee was created on October 8, 1992 by then President Fidel Ramos by virtue of his issuance of Administrative Order No. 30 (A.O. No. 30). On November 9, 1992, President Ramos issued Memorandum Order No. 61 (M.O. No. 61), which broadened the scope of the *Ad Hoc* Committee to include investigation, inventory and study of all non-performing loans, both behest and non-behest. When the Committee had concluded its investigation, including its review and examination of the account of the PNCC, Salvador made an Executive Summary thereof and submitted it to then President Ramos. The same report was attached to his complaint affidavit which was subsequently filed before the Ombudsman on May 18, 1994 against the defendants.

On cross-examination, Salvador claimed that although he sat in the deliberations of the Committee as its consultant and was asked for his opinion on certain matters, he was not given the opportunity to vote. However, he had no personal knowledge of the different transactions making up the account and his participation was limited to summarizing the report which he digested into his Executive Summary. He reiterated that he did not interview parties involved in the transactions of the behest loans, but only reviewed the findings and reports submitted to him because his role was to ascertain whether the reports faithfully reflected the circumstances of each account as stated in the documents. Also, he alleged that he did not indict the Marcoses in his complaint affidavit despite their participation in the form of marginal notes on the documents subject of his report because the marginal notes were only favorable endorsements and did not qualify under the definition of behest loans. He further reasoned that it was up to the Ombudsman to determine who should be the defendants in a criminal case.

Stephen P. Tanchuling was Records Officer V of the Research Department of the PCGG for more than four years at the time he gave his testimony. He testified that it was his job to secure documents from the concerned agencies, then to collate the same upon order of the Legal Department. He claimed that the Research Department prepared the official report entitled "Executive Summary on Rodolfo Cuenca (SB Case No. 0016)" and that most of its supporting documents came from the Presidential Library in Malacañang. While he attested that the supporting documents were certified true copies, he admitted that he did not ask the Records Custodian if said copies were based on actual originals existing in their departments.¹⁵

¹⁵ Id. at 74-77.

The Republic then proceeded to formally offer its documentary evidence. Acting on the Republic's formal offer of evidence, as well as the comments/oppositions filed by the respondents, the Sandiganbayan resolved to admit only the following exhibits:¹⁶

Exhibit	Description	Purpose
A-4	PD No. 1112 dated 31 March 1997, Authorizing the Establishment of Toll Facilities on Public Improvements, Creating a Board for the Regulation Thereof and for Other Purposes.	To show that deposed president Marcos used vast totalitarian powers to favor cronies and herein defendants for the purpose of perpetrating ill-gotten wealth through conduit corporations including CDCP, its subsidiaries, and other corporations herein involved.
A-5	PD No. 1113 dated 31 March 1997, granting the CDCP a Franchise to Operate, Construct and Maintain Toll Facilities in the North and South Luzon Toll Expressways and for other purposes.	-do-
A-6	PD 1984 issued in 1983, extending the duration of the franchise of CDCP for another thirty (30) years.	-do-
A-14	LOI No. 1136 issued on 27 May 1981 by Pres. Marcos, directing DBP and/or NDC to guarantee a financial restructuring of \$150 million to \$200 million for CDCP.	To show the indispensable cooperation of defendant Antonio L. Carpio in his capacity as Chairman of the NDC in siphoning and manipulating government funds, as part of the ill-gotten wealth amassed by the defendants.
A-18	LOI No. 1107 dated 16 February 1981 directing the government to determine the need for an industrial rehabilitation program to assist financially distressed companies.	To show how the late President Marcos issued orders for his and his cronies' personal gain and benefit.
A-20	LOI No. 1295 issued by President Marcos on 23 February 1983, directing the DBP, PNB, GSIS, LBP, NDC and PhilGuarantee to	To show that defendant Rodolfo Cuenca obtained a favored rescue arrangement at the behest of President Marcos through the conversion of a multi-million peso

¹⁶ Id. at 395-400.

	convert the loan obligations of CDCP into shares of common stock.	debt in favor of NDC and other government financial institutions into equity, the release of collaterals to CDCP, its subsidiaries and affiliates, notwithstanding that it had unpaid obligations and the security of payments to CDCP of government funds in violation of the standing policy against such payments to persons as firms having obligations with the government and to show the involvement of the other defendants who were officers of the above government financial institutions including Antonio L. Carpio and the co-defendants mentioned under Exhibit A-9.
A-60	LOI No. 1296 issued on 23 February 1981, which directed the PNB to release its security interests on certain assets of CDCP and those of its two wholly owned subsidiaries namely, the Marina Properties Corp. (MPC), and the Manila Land Corp. (MLC).	(a) To show that President Marcos committed grave, blatant, and open abuse of authority and excesses and plundered the government funds to favor private interest of CDCP; (b) To show that the CDCP and its affiliates are dummies and conduit corporations of President Marcos in amassing ill-gotten wealth and plunder of the national wealth and treasury.
A-61	LOI No. 1297 issued on 23 February 1981, directing all government ministries, bureaus, agencies and corporations with outstanding payables to CDCP to expedite payment of the same.	To show the magnitude and special favors given by Pres. Marcos to CDCP, to the point of issuing an LOI in the exercise of law-making power, thus showing that CDCP and its affiliates are dummies and conduit corporations of Pres. Marcos.
A-69	LOI No. 1155 dated 21 July 1981, directing a rehabilitation plan for Galleon Shipping Corp.	a) To show the use of totalitarian power by Pres. Marcos for the private interests of Galleon Shipping Corp. b) To justify sequestration and reversion of the properties herein involved to the state.
D	<i>Administrative Order No. 13</i> dated 8 October 1992 issued by the president of the Philippines, creating a Presidential Ad Hoc Fact	a) To lay the legal and factual basis for the recovery of behest loans extended by Pres. Marcos to his cronies, relatives and friends. b) To criminally prosecute

	Finding Committee on Behest Loans.	officials and persons involved.
E	<i>Memorandum Order No. 61</i> dated 9 November 1992 issued by the President of the Philippines, broadening the scope of the Ad Hoc Fact-Finding Committee on Behest Loans.	-do-
G-1	Copy of <i>Memorandum Order No. 91</i> .	-do-
M	<i>Decision</i> dated July 10, 2000 in SEC Case No. 05 96 5357, entitled, <i>Rodolfo M. Cuenca v. [PNCC], et al.</i>	To show that the SEC hearing panel dismissed Rodolfo M. Cuenca's complaint to annul the shares of capital stocks issued to therein defendants GFIs pursuant to LOI 1295.
N	<i>Order</i> dated August 8, 2000 in SEC Case No. 807 entitled, <i>Rodolfo M. Cuenca v. Hon. Alberto P. Atas, et al.</i> , issued by the SEC En Banc.	To show that the SEC En Banc affirmed the July 10, 2000 <i>Decision</i> of the SEC Hearing Panel, thus dismissing Rodolfo Cuenca's appeal of the July 10, 2000 <i>Decision</i> .
O	<i>Decision</i> dated 29 November 2000 of the Court of Appeals in CA-G.R. SP No. 60366, entitled, <i>Rodolfo M. Cuenca v. Hon. Alberto P. Atas, et al.</i>	To show that the Court of Appeals affirmed the 8 August 2000 <i>Order</i> of the SEC En Banc thus denying Rodolfo M. Cuenca's appeal of the said <i>Order</i> .
P	<i>Entry of Judgment</i> in CA-G.R. SP No. 60366 entered in the Book of Entries of Judgments stating the Finality of the 29 November 2000 <i>Decision</i> of the Court of Appeals.	To show that the Nov. 29, 2000 <i>Decision</i> of the Court of Appeals denying Cuenca's appeal of the <i>Decision</i> dismissing his Complaint had become final and executory on December 29, 2000.
R	<i>Resolution</i> dated 14 February 2001 of the Honorable Supreme Court in G.R. No. 146214.	To show that the Supreme Court denied Rodolfo Cuenca's petition in its <i>Resolution</i> dated 14 February 2001.
T	<i>Resolution</i> of the Supreme Court dated 7 March 2001.	To show that the Supreme Court granted Cuenca's <i>Motion for Reconsideration</i> thus reinstating his petition.
U	<i>Complaint</i> dated 29 May 1996 filed before SEC SICD in SEC Case No. 05 96 5357 by Rodolfo M.	To show that Rodolfo Cuenca filed a complaint to annul the shares issued to defendant GFIs before the SEC.

	Cuenca.	
U-1	Par. No. 3 of the <i>Complaint</i> .	To show that Cuenca admitted that he was and still is a registered stockholder of PNCC/CDCP although some of his shares therein have been sequestered by the PCGG.
U-2	Par. No. 4.1, page 3 of the <i>Complaint</i> .	To show that Cuenca admitted that in 1982 he controlled the management of PNCC/CDCP and that he was its President and Chief Executive Officer.
U-3	Signature of Rodolfo M. Cuenca on page 14 of the <i>Complaint</i> .	To show the authenticity of the <i>Complaint</i> .
V	<i>Amended Complaint</i> dated 20 March 1998	-do-
V-1	Pars. 3 and 4, page 3 of the <i>Amended Complaint</i> .	To show that Cuenca admitted that he was and still is a registered stockholder of PNCC although some of his shares have been sequestered by the PCGG and that he and the Cuenca Investment Corporation has 3,254,148 shares in PNCC or a percentage of 4.98%.
V-2	Par. 4.1 of the <i>Amended Complaint</i>	To show that Cuenca admitted that he controlled the management of PNCC in 1982 and that he was its President and Chairman.
V-3	Signature of Roberto S. Cuenca, Rodolfo M. Cuenca's son on page 30 of the <i>Amended Complaint</i> .	To show the authenticity of the amended complaint.
W	<i>Second Amended Complaint</i> dated 19 June 2000.	Same as in <i>Exhibit U</i> .
W-1	Pars. 3 and 4, page 3 of the <i>Second Amended Complaint</i> .	To show that Cuenca admitted that he was and still is a registered stockholder of PNCC although some of his shares have been sequestered by the PCGG and that he and his Cuenca Investment Corp. owns 5% of the shares; and that he controlled management of PNCC in 1982 and that he was its President and Chief Executive Officer.

W-2	Signature of Rodolfo M. Cuenca on page 19 of the <i>Second Amended Complaint</i> .	To show the authenticity of the <i>Second Amended Complaint</i> .
X	<i>Third Amended Complaint</i> dated 5 May 1998 filed in Civil Case No. 985 1356 entitled, <i>Rodolfo M. Cuenca, for and in behalf of the Philippine National Construction Corp. v. Asset Privatization Trust, GSIS, PNB, DBP, NDC, LBP and PEFLGC, before Branch 142, RTC, Makati</i> .	To show that Cuenca filed a complaint praying that defendant GFIs be ordered to strictly comply with LOI 1295 and to immediately convert all their loan credits against PNCC into shares of common stocks in PNCC.
X-1	Par. 1 of the <i>Third Amended Complaint</i> .	To show that Cuenca admitted that at all relevant times, he was and still is a registered stockholder of PNCC.
X-2	Signature of Rodolfo M. Cuenca on page 12 of the <i>Third Amended Complaint</i> .	To show the authenticity of the <i>Third Amended Complaint</i> .

Petitioner's other documentary evidence which were mere photocopies were excluded by the Sandiganbayan pursuant to the best evidence rule under Section 3, Rule 130.¹⁷ Subsequently, Nora O. Vinluan, Panfilo O. Domingo, Antonio L. Carpio and Roberto V. Ongpin filed their respective demurrers to evidence which were granted by the Sandiganbayan, and thus, the complaint as against them was dismissed for insufficiency of evidence.¹⁸

On the other hand, respondents Rodolfo M. Cuenca, Roberto S. Cuenca and Manuel I. Tinio presented the testimonies of Rodolfo M. Cuenca and Atty. Cinderella B. Benitez (Securities Counsel III of the Company Registration Monitoring Department of the Securities and Exchange Commission).

Rodolfo M. Cuenca's testimony was offered for the following purposes:

That the defendant Rodolfo M. Cuenca would testify that there is no truth to any of the allegations against him in the third amended complaint which stated that he and/or in unlawful concert with then President and Mrs. Ferdinand E. Marcos, taking advantage of his influence and association with and active collaboration of defendants spouses engaged in schemes, devices and stratagems designed to unjustly enrich

¹⁷ Id. at 238-246.

¹⁸ Id. at 73.

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themselves and to prevent disclosure and discovery of ill-gotten assets; by among others, a) organized and managed the CDCP by obtaining favored public work contracts under conditions manifestly disadvantageous to the government; b) secured loans and favored assistance from government financial institutions without sufficient collateral manifestly disadvantageous to said institutions; c) secured favored financial assistance for CDCP from President and Mrs. Marcos; d) government acquired the Galleon Shipping then owned by him on disadvantageous terms; e) secured favored assistance from NDC, and the other charges therein; and to rebut whatever evidence plaintiff adduced; to show that he was in fact and is a legitimate businessman who pursued his profession with dedication and whatever assets he may have acquired are the fruits of his honest labor and industry, and not thru any illegal means.¹⁹

Rodolfo M. Cuenca's testimony is summarized in the assailed Decision as follows:

Co-defendant Rodolfo, a businessman, denied having created the Construction and Development Corporation of the Philippines (CDCP), now the Philippine National Construction Corporation (PNCC), to obtain favored work contracts amounting to billions of pesos. He testified that he created the CDCP along with other businessmen, contractors and bankers using their own finances, then undertook projects in the Philippines and abroad, all of which were secured through public bidding. He also claimed that they funded constructions by borrowing money from local and American banks, government financial institutions, and by using the funds of their own shareholders.

On cross-examination, Rodolfo averred that he did not file a case for collection of a sum of money against government agencies as he relied on good representation with the government to help him. He also asserted that in 1981, the CDCP had no loan that was due or unpaid and, based on a study previously conducted, the CDCP was in good financial condition before February 1983.²⁰

On the other hand, the testimony of Atty. Cinderella B. Benitez was offered for the purpose of presenting and identifying certified copies of Construction Development Corporation of the Philippines' (CDCP's) Articles of Incorporation, By Laws and Financial Statements from 1981.²¹

Respondents then formally offered the following documentary evidence:

Exhibit	Description	Purpose
1	Certified machine copy of CDCP's <i>Articles of Incorporation</i> from SEC,	a) To prove that CDCP is a duly organized company for legitimate purposes under

¹⁹ Id. at 402.

²⁰ Id. at 84.

²¹ Id. at 403.

	consisting of several pages x x x	Philippine Laws. b) To prove that defendant Rodolfo M. Cuenca did not organize and manage CDCP to prevent disclosure and discovery of ill-gotten assets as <i>Exhibit 1</i> is a public record, easily accessible with the SEC.
2	First three (3) paragraphs of P.D. 1113, the <i>Whereas</i> clauses x x x.	a) To prove that the Philippine Government's grant of franchise to CDCP to operate, construct and maintain toll facilities in the North and South Luzon Toll Expressways was for the realization of the Government's legitimate developmental goals.
3	First three (3) paragraphs of LOI 1136, the <i>Whereas</i> clauses xxx	a) To prove that the LOI was issued for a legitimate reason this was that the rehabilitation of CDCP was for the best interest of the Philippine Government.
4	Documents reflecting the stockholdings of CDCP before and after the implementation of LOI 1295, given by LC Diaz [&] Co., the transfer agent of CDCP, consisting of two (2) pages x x x	a) To prove that CDCP is a duly organized company under Philippine Laws. b) To prove that defendant Rodolfo M. Cuenca did not organize and manage CDCP to prevent disclosure and discovery of ill-gotten assets as <i>Exhibits 4, 4-A and 5</i> will show that it is a legitimate publicly held corporation.
4-A	Page 2 of <i>Exhibit 4</i>	-do-
5	<i>Certification</i> by L.C. Diaz & [Co.] of the distribution of the total voting and non-voting shares/stockholdings of the Philippine National Construction Corporation [formerly CDCP] as of 30 May 1991 x x x	-do-
6	Comparative <i>Financial Statements</i> of CDCP/PNCC from 1981-	a) To show that at the time CDCP was being managed by defendant Rodolfo M. Cuenca

	2005, consisting of four (4) pages x x x	until the government took over thereof in 1983 the business was earning a profit but thereafter, after the take over of CDCP in 1983, PNCC suffered losses. This goes to show that the take over did not serve to rehabilitate CDCP as contemplated by LOI 1295 nor did it favor defendant Rodolfo M. Cuenca.
7	Certified Machine Copy of the Articles of Incorporation of CDCP issued 22 November 1966, consisting of fourteen (14) pages, including the Certificate of Incorporation plus the attached Treasurer's Affidavit, consisting of sixteen (16) pages.	a) To prove that CDCP is a duly organized company for legitimate purposes under Philippine Laws. b) To prove that defendant Rodolfo M. Cuenca did not organize and manage CDCP to prevent disclosure and discovery of ill-gotten assets as <i>Exhibits 7, 7-A, 8 and 8-A</i> are of public record, easily accessible with the SEC.
7-A	<i>Certificate of Filing</i> plus the <i>Amended Articles of Incorporation</i> which was approved 7 December 1983	-do-
8	<i>By-Laws</i> of the CDCP, consisting of fourteen (14) pages together with the <i>Certificate of Filing</i> dated 29 November 1966	-do-
8-A	<i>Amended By-Laws</i> approved in July 1982	-do-
9	<i>Financial Statements</i> of CDCP for the period ending 31 December 1982 and 1981	a) To prove that CDCP is a legitimate corporation, in religious compliance with the reportorial requirements of the SEC. b) To prove that defendant Rodolfo M. Cuenca did not organize and manage CDCP to prevent disclosure and discovery of ill-gotten assets.
9-A	<i>Financial Statement</i> for the period ending 31	-do-

	December 1996 and 1995	
9-B	<i>Audit Report</i> for the years ending 1996 and 1995	-do-
9-C	<i>Balance Sheet</i> as of 31 December 1996	-do-
9-D	<i>Audit Report</i> for the years 1997 and 1996	-do-
9-E	<i>Audit Report</i> for the period 31 December 1998 and 1997	-do-
9-F	<i>Audit Report</i> for the years ending 31 December 2001 and 2000	-do-
9-G	<i>Audit Report</i> for the years ending 31 December 2000 and 1999	-do-
9-H	<i>Audit Report</i> for the year ending 31 December 2002	-do-
9-I	<i>Audit Report</i> for the year ending 31 December 2005	-do-
10	LOI 1296 [<i>Exhibit A-60</i>] the first three (3) paragraphs, the <i>Whereas</i> clauses x x x	a) To prove that LOI 129[5] was issued for a legitimate purpose, <i>i.e.</i> , to expedite the rehabilitation of CDCP for the best interest of the Philippine Government. ²²

These documentary evidence were all admitted by the Sandiganbayan. Thereafter, the parties were directed to submit their respective memoranda.²³

The Ruling of the Sandiganbayan

On August 5, 2010, the Sandiganbayan rendered its presently assailed Decision dismissing the Republic's complaint for insufficiency of evidence. In analyzing the documentary evidence presented by the Republic and which were admitted by the Sandiganbayan, the latter observed that the same merely consisted of the executive issuances of then President Marcos and of court decisions and resolutions. According to the Sandiganbayan, said executive issuances are not *per se* illegal considering that every public official is entitled to presumption of good faith in the discharge of official duties. The Sandiganbayan further declared that in the absence of bad faith

²² *Id.* at 403-406.

²³ *Id.* at 39.

and malice, the presumption of regularity in the performance of official duties stands.²⁴

The Sandiganbayan also regarded the testimonial evidence presented by the Republic as insufficient to establish that respondents engaged in “schemes, devices or stratagems” to acquire ill-gotten assets. It observed that while witness Ma. Lourdes O. Magno attested that the excluded documentary evidence came from the records of the PCGG, she herself admitted lack of personal knowledge as to how these documents were obtained. Further, the Sandiganbayan emphasized that witnesses Evelita E. Celis and Atty. Orlando L. Salvador, who prepared the summaries of the PCGG documents and of the reports pertaining to PNCC's account, had no personal knowledge of the transactions or of the contents of the reports submitted to them. Finally, the Sandiganbayan assessed that witness Stephen P. Tanchuling simply testified that the supporting documents for the summary prepared by witness Evelita E. Celis were sourced from the Presidential Library in Malacañang.²⁵

In disposal, the Sandiganbayan held:

WHEREFORE, in view of the foregoing, this Complaint for Reconveyance, Reversion, Accounting, Restitution and Damages is **DISMISSED** for insufficiency of evidence. The writs of sequestration and freeze orders issued in this case are hereby **LIFTED**.

SO ORDERED.²⁶

Consequently, the Republic moved for reconsideration while respondents moved to expunge the Republic's motion for reconsideration for lack of notice of hearing. Both motions were denied by the Sandiganbayan in its Joint Resolution and disposed, thus:

WHEREFORE, the Motion for Reconsideration of the plaintiff, Republic of the Philippines, is hereby **DENIED** for lack of merit.

SO ORDERED.²⁷

Hence, recourse to the instant petition.

The Issue

The Republic relies on this sole ground for review:

²⁴ Id. at 90-91.

²⁵ Id. at 91.

²⁶ Id. at 93.

²⁷ Id. at 115.

THE SANDIGANBAYAN ERRED IN DISMISSING
PETITIONER'S COMPLAINT AGAINST RESPONDENTS DESPITE
HAVING ESTABLISHED A *PRIMA FACIE CASE* IN ITS FAVOR.²⁸

The Republic argues that Rodolfo M. Cuenca, in his answer dated July 3, 1989 and in his testimony, admitted that CDCP obtained loans from local and American Banks and government financial institutions. Thus, the Sandiganbayan should have only resolved whether or not said loans were grossly disadvantageous to the government and to the Filipino people.²⁹

The Republic also assails the Sandiganbayan's exclusion of its documentary evidence on the ground of the best evidence rule. It argues that by its exhibits, it has proven that the documents showing the loans, financial assistance, guarantees and other favors bestowed upon Rodolfo M. Cuenca really existed and were actually executed and that the contents thereof were established by Rodolfo M. Cuenca's judicial admissions.³⁰ In any case, the Republic argues that the content, extent and quantity of the Presidential issuances demonstrate obvious partiality to CDCP which are enough to arouse suspicion that said issuances were made to advance a furtive design.³¹

Respondents Rodolfo M. Cuenca, Roberto S. Cuenca and Manuel I. Tinio filed their comment³² to the petition reasoning that the Sandiganbayan did not err in excluding the documentary exhibits of the Republic for being mere photocopies as the contents thereof and not merely their existence, were at issue. This comment was adopted by respondent Imelda R. Marcos.³³ Respondent Don M. Ferry,³⁴ on the other hand, insisted that the complaint as against him is dismissible as the acts imputed to him were made in his official capacity as one of the Vice Chairmen of the Development Bank of the Philippines (DBP) which bears the collective approval of DBP's Board of Governors and as such, his actions were presumed to be regular, in the absence of evidence to the contrary.³⁵ Respondent Mario K. Alfelor, through counsel, prayed that the complaint be dismissed as to him in view of his death during the pendency of the petition.³⁶

The Republic's consolidated reply³⁷ to the comments were reiterative of the arguments contained in its petition.

²⁸ Id. at 40.

²⁹ Id. at 42.

³⁰ Id. at 49.

³¹ Id. at 51.

³² Id. at 369-445.

³³ Id. at 1224-1228.

³⁴ Id. at 1214-1218.

³⁵ Id. at 1215.

³⁶ Id. at 1187-1199.

³⁷ Id. at 1250-1269.

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The Ruling of the Court

We deny the petition.

No error could be attributed to the Sandiganbayan when it dismissed the Republic's complaint for insufficiency of evidence.

I

Appeal by *certiorari* is limited only to questions of law

Section 1, Rule 45 provides:

SECTION 1. *Filing of petition with Supreme Court.* – A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, **the Sandiganbayan**, the Court of Tax Appeals, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and **shall raise only questions of law which must be distinctly set forth.** x x x (Emphasis ours)

As stated, Section 1, Rule 45 requires that only questions of law should be raised in an appeal by *certiorari*. Subject to certain exceptions,³⁸ the factual findings of lower courts bind the Supreme Court.³⁹ The limitation finds justification as this Court is not a trier of facts that undertakes the re-examination and re-assessment of the evidence presented by the contending parties during the trial. This Court thus receives with great respect the lower court's appreciation and resolution of factual issues.

For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented. There is a question of law in a given case when the doubt or difference arises as to what the law is on certain state of facts.⁴⁰ Contrariwise, the following questions relating to issues of fact are not reviewable by this Court:

³⁸ (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record. *Medina v. Mayor Asistio, Jr.*, 269 Phil. 225 (1990) (Citations omitted)

³⁹See *FNCB Finance v. Estavillo*, 270 Phil. 630, 633 (1990).

⁴⁰See *Rep. of the Phils v. Malabanan*, 646 Phil. 631 (2010).

x x x [W]hether certain items of evidence should be accorded probative value or weight, or should be rejected as feeble or spurious; or whether or not the proofs on one side or the other are clear and convincing and adequate to establish a proposition in issue; whether or not the body of proofs presented by a party, weighed and analyzed in relation to contrary evidence submitted by adverse party, may be said to be strong, clear and convincing; whether or not certain documents presented by one side should be accorded full faith and credit in the face of protests as to their spurious character by the other side; whether or not inconsistencies in the body of proofs of a party are of such gravity as to justify refusing to give said proofs weight – all these are questions of fact.⁴¹

In order to determine the veracity of the Republic's main contention that it has established a *prima facie* case against respondents through its documentary and testimonial evidence, a reassessment and reexamination of the evidence is necessary. Unfortunately, the limited and discretionary judicial review allowed under Rule 45 does not envision a re-evaluation of the sufficiency of the evidence upon which respondent court's action was predicated.

II.

Exclusion of documentary evidence under the best evidence rule

Except for the Presidential issuances and court decisions of which the Sandiganbayan took judicial notice of, the remainder of the Republic's documentary evidence consisting of reports, sworn statements, memoranda, board resolutions, letters of guarantee, deeds of undertaking, promissory notes, letters and loan agreements⁴² were excluded by the Sandiganbayan for being mere photocopies. That these documentary exhibits were indeed mere photocopies were never disputed by the Republic. What the Republic disputes is the exclusion thereof on the basis of Section 3, Rule 130, known in legalese parlance as the best evidence rule, which provides:

SEC. 3. *Original document must be produced; exceptions.*—When the subject of inquiry is the contents of a documents, no evidence shall be admissible other than the original document itself, except in the following cases:

- (a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
 - (b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
 - (c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole;
- and

⁴¹ *Paterno v. Paterno*, 262 Phil. 688, 694-695 (1990).

⁴² *Rollo*, pp. 337-343.

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(d) When the original is a public record in the custody of a public officer or is recorded in a public office.

Thus, a photocopy, being merely secondary evidence, is not admissible unless it is shown that the original is unavailable.⁴³ Section 5, Rule 130 provides:

SEC.5 When original document is unavailable. –When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.

Pursuant to the aforementioned section, before a party is allowed to adduce secondary evidence to prove the contents of the original, it is imperative that the offeror must prove: (1) the existence or due execution of the original; (2) the loss and destruction of the original or the reason for its non-production in court; and (3) on the part of the offeror, the absence of bad faith to which the unavailability of the original can be attributed. Hence, the correct order of proof is existence, execution, loss, and contents.⁴⁴

In this case, the Sandiganbayan observed that the Republic failed to introduce either the original or the certified true copies of the documents during its examination-in-chief for purposes of identification, marking, authentication and comparison with the copies furnished the Sandiganbayan and the adverse parties.⁴⁵ When the Sandiganbayan inquired as to whether the Republic will present the original or certified true copies of its documentary exhibits, the Republic answered that it will do so, if necessary, as the originals are kept in the Central Bank vault.⁴⁶ Despite knowledge of the existence and whereabouts of the documents' originals, the Republic still failed to present the same and contented itself with the presentation of mere photocopies. Neither was there any showing that the Republic exerted diligent efforts to produce the original.

Further, despite the Republic's claim that the excluded documentary exhibits are public documents, the Sandiganbayan is correct in observing that the Republic failed to show, in case of a public record in the custody of a public officer or is recorded in a public office, an official publication thereof or a copy attested by the officer having the legal custody of the record or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certification that such officer has the custody, or in the case of a public record of a private document, the original record, or a copy

⁴³ *Lee v. Atty. Tambago*, 568 Phil. 363, 374 (2008).

⁴⁴ *Citibank, N.A. Mastercard v. Teodoro*, 458 Phil. 480, 489 (2003) citing *De Vera v. Sps. Aguilar*, 291-A Phil. 649, 653 (1993).

⁴⁵ *Rollo*, p. 244.

⁴⁶ *Id.* at 245.

thereof attested by the legal custodian of the record, with an appropriate certificate that such officer has the custody.⁴⁷

While witness Ma. Lourdes O. Magno testified that she is the custodian of PCGG's records, together with the excluded documents, and that the PCGG's records were turned over by the previous Chairman and Commissioners of the PCGG and from the PCGG's Research Department, such does not make the documents public in character *per se*.

On this score, *Republic of the Philippines v. Marcos-Manotoc, et al.*,⁴⁸ which similarly upheld the denial of the Republic's documentary exhibits for violating the best evidence rule, provides elucidation:

The fact that these documents were collected by the PCGG in the course of its investigations does not make them *per se* public records referred to in the quoted rule.

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

Neither did petitioner present as witnesses the affiants of these Affidavits or Memoranda submitted to the court. Basic is the rule that, while affidavits may be considered as public documents if they are acknowledged before a notary public, these Affidavits are still classified as hearsay evidence. The reason for this rule is that they are not generally prepared by the affiant, but by another one who uses his or her own language in writing the affiant's statements, parts of which may thus be either omitted or misunderstood by the one writing them. Moreover, the adverse party is deprived of the opportunity to cross-examine the affiants. For this reason, affidavits are generally rejected for being hearsay, unless

⁴⁷ *Id.*, citing Sections 24 and 27 of Rule 132 of the Rules of Court.

Section 24. Proof of official record. — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.

Section 27. Public record of a private document. — An authorized public record of a private document may be proved by the original record, or by a copy thereof, attested by the legal custodian of the record, with an appropriate certificate that such officer has the custody.

⁴⁸ 681 Phil. 380 (2012).

the affiants themselves are placed on the witness stand to testify thereon.

As to the copy of the TSN of the proceedings before the PCGG, while it may be considered as a public document since it was taken in the course of the PCGG's exercise of its mandate, it was not attested to by the legal custodian to be a correct copy of the original. This omission falls short of the requirement of Rule 132, Secs. 24 and 25 of the Rules of Court.⁴⁹ (Citations omitted)

The Republic seeks exception to the application of the best evidence rule by arguing that said documents were presented to prove their existence and execution, and not their contents. The Court is hard-pressed to give credence to such argument in the light of the purposes for which these excluded documents were sought to be admitted, *i.e.*, to show that Rodolfo M. Cuenca secured loans from government financial institutions without sufficient collateral; to show that Rodolfo M. Cuenca obtained favorable rescue arrangement at the behest of Ferdinand E. Marcos; to show that the sequestered properties are part of the ill-gotten wealth; to show that respondents are dummies of Ferdinand E. Marcos; and to show the complicity between respondents in amassing ill-gotten wealth.⁵⁰ Clearly, no amount of legal hermeneutics could betray that what should be proven are the contents, and not the mere existence, of the documents themselves.

In the same vein, neither can Rodolfo M. Cuenca's supposed judicial admissions excuse the Republic's unexplained failure to produce the originals of its documentary evidence. There is no contention that Rodolfo M. Cuenca, through the then CDCP, admits having incurred credit obligations in the course of its operations. This, as much, was reiterated by Rodolfo M. Cuenca in his comment⁵¹ to the petition and which was an established fact in the case of *Cuenca v. Hon. Atas*.⁵²

However, the admission that CDCP obtained loans from government financial institutions is not the same as admitting that these were behest loans disadvantageous to the Filipino people or were used to amass ill-gotten wealth in concert with the spouses Ferdinand E. Marcos and Imelda R.

⁴⁹ *Id.* at 404-405.

⁵⁰ See Formal Offer of Evidence attached as Annex "G" to the petition; *rollo*, pp. 203-235.

⁵¹ *Id.* at 412.

⁵² 561 Phil. 186, 189-190 (2007). In *Cuenca v. Hon. Atas*, the Court stated in its recitation of facts that:

"[Rodolfo M. Cuenca] was an incorporator, President, and Chief Executive Officer of the then Construction Development Corporation of the Philippines (CDCP), now PNCC, from its incorporation in 1966 until 1983. Sometime in 1977, CDCP was granted a franchise under Presidential Decree No. 1113 to construct, operate, and maintain toll facilities of the North and South Luzon Expressway. In the course of its operations, it incurred substantial credit obligations from both private and government sources.

However, its unpaid obligations ballooned so much that by 1983, it became impossible for it to settle its maturing and overdue accounts with various GFIs, namely, the Philippine National Bank (PNB), Development Bank of the Philippines (DBP), National Development Company (NDC), Government Service Insurance System (GSIS), Land Bank of the Philippines (LBP), and Philippine Export and Foreign Loan Guarantee Corporation (PEFLGC), now known as the Trade and Investment Development Corporation of the Philippines."

Marcos. Even then, the judicial admissions referred to by the Republic found in Rodolfo M. Cuenca's answer was a general statement to the effect that it, indeed, secured loans without, however, specifying which loans these were and for what amounts. It will thus be unfounded, if not unduly hasty, to conclude that Rodolfo M. Cuenca admits having obtained behest loans specifically averred to in the complaint.

III.

The Republic failed to prove by preponderance of evidence the allegations in the complaint

To recover the unexplained or ill-gotten wealth reputedly amassed by then President Ferdinand E. Marcos and Imelda R. Marcos, former President Corazon Aquino issued Executive Order No. 1⁵³ and thereby, gave birth to the PCGG with the task of recovering "*all ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad, including the takeover or sequestration of all business enterprises and entities owned or controlled by them during his administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship.*"⁵⁴ The recovery of the reputed ill-gotten wealth was both a matter of urgency and necessity⁵⁵ and the right of the State to recover unlawfully acquired properties eventually found flesh under Section 15, Article XI of the Constitution.⁵⁶

Nevertheless, in as early as 1959, forfeiture in favor of the State of any property in an amount found to have been manifestly out of proportion to a public officer or employee's salary or to the latter's other lawful income and the income from legitimately acquired property, has been sanctioned under Republic Act No. 1379 (R.A. 1379). Forfeiture proceedings under R.A. 1379 are civil in nature⁵⁷ and actions for reconveyance, revision, accounting, restitution, and damages for ill-gotten wealth, as in this case, are also called civil forfeiture proceedings.⁵⁸ Similar to civil cases, the quantum of evidence required for forfeiture proceedings is preponderance of evidence.⁵⁹

⁵³ Creating the Presidential Commission on Good Government dated February 28, 1986.

⁵⁴ *Rep. of the Phils. v. Sandiganbayan*, 453 Phil. 1059, 1087 (2003).

⁵⁵ See *Rep. Of the Phils. v. Sandiganbayan*, 310 Phil. 401, 414 (1995).

⁵⁶ Section 15. The right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall not be barred by prescription, laches, or estoppel.

⁵⁷ *Garcia v. Sandiganbayan, et al.*, 618 Phil. 346, 363 (2009).

⁵⁸ *Rep. of the Phils. v. Sps. Gimenez*, 776 Phil. 233, 251 (2016).

⁵⁹ Section 1 of Executive Order No. 14-A (Amending Executive Order No 14, dated August 18, 1986) provides:

Sec. 1. Section 3 of Executive Order No. 14 dated May 7, 1986 is hereby amended to read as follows:



Section 1, Rule 133 spells how preponderance of evidence is determined:

SECTION 1. *Preponderance of evidence, how determined.* - In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

Expounding on the concept of preponderance of evidence, this Court held:

x x x. "Preponderance of evidence" is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term greater weight of the evidence or greater weight of the credible evidence. Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.⁶⁰

Juxtaposing the specific allegations in the complaint with the Republic's documentary and testimonial evidence and as against the respondents' documentary and testimonial evidence showing the due organization and existence of CDCP, the Court agrees with the Sandiganbayan that the weight of evidence fails to preponderate in the Republic's favor. Neither were the Presidential issuances nor the witnesses' testimonies sufficient to prove the allegations in the Republic's complaint.

The Court finds the Sandiganbayan's ruling to be *apropos*:

A careful examination of the afore-mentioned issuances yields that while it may be true that then President Marcos gave instructions to certain government institutions to extend financial support to the [CDCP before it was renamed Philippine National Construction Corporation (PNCC) to reflect the government stockholding], there is nothing in them which

"Sec. 3. The civil suits to recover unlawfully acquired property under Republic Act No. 1379 or for restitution, reparation of damages, or indemnification for consequential and other damages or any other civil actions under the Civil Code or other existing laws filed with the Sandiganbayan against Ferdinand E. Marcos, Imelda R. Marcos, members of their immediate family, close relatives, subordinates, close and/or business associates, dummies, agents and nominees, may proceed independently of any criminal proceedings and may be proved by a **preponderance of evidence.**" (Emphasis ours)

⁶⁰ *Encinas v. National Bookstore, Inc.*, 485 Phil. 683, 695 (2004).

would substantiate the [Republic's] claims that Rodolfo [M. Cuenca], through the PNCC, enjoyed a magnitude of special favors to unjustly enrich himself. Even if the Court were to take into consideration the testimonies of the [Republic's] witnesses, it finds that these are not sufficient to establish that the [respondents] engaged in "schemes, devices or stratagems" to acquire ill-gotten assets. While Magno attested that Exhibits "A" to "A-70" of the [Republic's] evidence came from the records of the PCGG, she herself admitted that she did not know how they were obtained. Further, the documents in question were rendered inadmissible in evidence as they were only photocopies. Celis and Atty. Salvador, who prepared Executive Summaries of the PCGG documents relevant to this case, and of the reports pertaining to the account of the PNCC, respectively, both claimed that they had no personal knowledge of the transactions or of the contents of the reports submitted to them. Lastly, Tanchuling simply testified that the supporting documents for the Executive Summary prepared by Celis were gathered from the Presidential Library in Malacañang.

[The Republic] having failed to present tangible evidence to prove that Rodolfo [M. Cuenca] indeed amassed ill-gotten wealth to the detriment of the government, such claim is nothing but a mere inference on its part. x x x⁶¹

It bears stressing that it is upon the Republic to prove the allegations in its complaint. It is therefore imperative that the operative act on how and in what manner the respondents participated in amassing ill-gotten wealth be demonstrated through preponderance of evidence. In case of failure to do so, the Republic's complaint will merit nothing but denial.

Notably, in the consolidated cases of *Development Bank of the Philippines v. Sta. Ines Melale Forest Products Corporation, et al.*, and *National Development Corporation v. Sta. Ines Melale Forest Products Corporation, et al.*,⁶² the Court had the opportunity to examine the contents of a Memorandum of Agreement (MOA) dated August 10, 1981 between NDC and Galleon Shipping Corporation where the parties undertook to prepare and sign a share purchase agreement covering 100% of Galleon's equity for P46,740,755.00. This arrangement appears to be one of the alleged illegal acts committed by herein respondents. To recall, paragraph 12 (e) of the Republic's complaint provides:

(e) secured, after Galleon Shipping Corporation defaulted in its obligations, additional financial assistance from government institutions, through the issuance of Letter of Instruction No. 1155, which required the National Development Company (NDC) to buy out the entire shareholdings in Galleon Shipping Corporation of defendant Rodolfo M. Cuenca, Arthur C. Balch, Manuel I. Tinio, Mario K. Alfelor, Rodolfo Munsayac and those of other

⁶¹ *Rollo*, p. 91.

⁶² G.R. Nos. 193068 and 193099, February 1, 2017.

stockholders for P46.7 Million and to provide the required additional equity;

To emphasize, the original of the said MOA was not presented by the Republic before the Sandiganbayan in the forfeiture proceeding. But even as the Court takes judicial notice of the existence and contents of the said MOA, it was nonetheless established in the *Sta. Ines Melale* cases that the MOA was a mere preliminary agreement that is separate and distinct from the actual share purchase agreement but that due to NDC's delay, the execution of the share purchase agreement is considered fulfilled with NDC as the new owner of 100% of Galleon's shares of stocks. In making such pronouncement, the Court effectively recognized the validity and binding effect of the MOA between the parties even when the MOA was admittedly the fruit of LOI No. 1155 issued by former President Marcos. Given that the Court duly recognized the rights and obligations of NDC and the stockholders of Galleon under the MOA, neither the said MOA nor the acts of the parties thereto can be interpreted as tending to prove that respondents amassed ill-gotten wealth for themselves, in concert with one another.

In closing, the Court finds it opportune to echo its concluding statement in the *Marcos-Manatoc* case if only to emphasize the importance of a well-executed effort on the part of the government to recover ill-gotten wealth and the dire consequences if done improperly, hastily and haphazardly:

x x x the best evidence rule has been recognized as an evidentiary standard since the 18th century. For three centuries, it has been practiced as one of the most basic rules in law. It is difficult to conceive that one could have finished law school and passed the bar examinations without knowing such elementary rule. Thus, it is deeply disturbing that the PCGG and the Office of the Solicitor General (OSG) - the very agencies sworn to protect the interest of the state and its people - could conduct their prosecution in the manner that they did. To emphasize, the PCGG is a highly specialized office focused on the recovery of ill-gotten wealth, while the OSG is the principal legal defender of the government. The lawyers of these government agencies are expected to be the best in the legal profession.

However, despite having the expansive resources of government, the members of the prosecution did not even bother to provide any reason whatsoever for their failure to present the original documents or the witnesses to support the government's claims. xxx

The public prosecutors should employ and use all government resources and powers efficiently, effectively, honestly and economically, particularly to avoid wastage of public funds and revenues. They should perform and discharge their duties with the highest degree of excellence, professionalism, intelligence and skill.

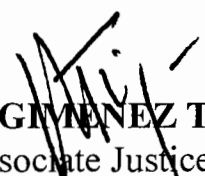
The basic ideal of the legal profession is to render service and secure justice for those seeking its aid. In order to do this, lawyers are required to observe and adhere to the highest ethical and professional standards. The legal profession is so imbued with public interest that its practitioners are accountable not only to their clients, but to the public as well.

The public prosecutors, aside from being representatives of the government and the state, are, first and foremost, officers of the court. They took the oath to exert every effort and to consider it their duty to assist in the speedy and efficient administration of justice. Lawyers owe fidelity to the cause of the client and should be mindful of the trust and confidence reposed in them. Hence, should serve with competence and diligence.⁶³ (Citations omitted)

In sum, absent preponderant evidence to hold otherwise, the Republic failed to prove that the respondents by themselves or in unlawful concert with one another, accumulated or participated in the accumulation of ill-gotten wealth insofar as the specific allegations in the subject complaint are concerned.

WHEREFORE, the Decision dated August 5, 2010 and Joint Resolution dated August 31, 2011 of the Sandiganbayan in Civil Case No. 0016 dismissing the Republic's complaint for reconveyance, reversion, accounting, restitution and damages for insufficiency of evidence are **AFFIRMED**.

SO ORDERED.


NOEL GIMENEZ TIJAM
Associate Justice

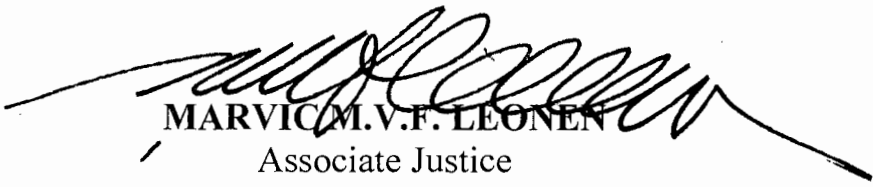
WE CONCUR:

(On Leave)
MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

⁶³ *Rep. of the Phils. v. Marcos-Manotoc, et al.*, supra note 48, at 412-414.

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Acting Chairperson, First Division

Mariano C. Del Castillo
MARIANO C. DEL CASTILLO
Associate Justice


MARVIC M. V. F. LEONEN
Associate Justice


A T T E S T A T I O N

I attest 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's Division.

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson, First Division

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution and the Acting Division Chairperson's Attestation, I certify 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's Division.


ANTONIO T. CARPIO
Acting Chief Justice