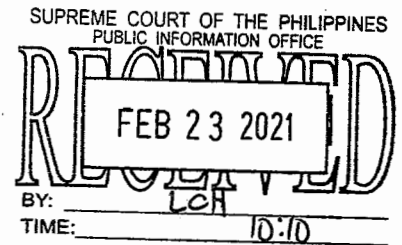




Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **October 14, 2020**, which reads as follows:

**“G.R. No. 228720-21 – (PEOPLE OF THE PHILIPPINES, *petitioner* v. THE HON. SANDIGANBAYAN (FOURTH DIVISION) and MA. GLORIA M. MACAPAGAL ARROYO, *respondents*).** – This is a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure, as amended, assailing, on grounds of grave abuse of discretion amounting to lack or excess of jurisdiction, the Resolutions dated August 8, 2016<sup>1</sup> and November 7, 2016<sup>2</sup> of the *Sandiganbayan*, Fourth Division,<sup>3</sup> in Criminal Case Nos. SB-11-CRM-0468 and SB-11-CRM-0469. The assailed issuances granted the demurrer to evidence filed by private respondent Ma. Gloria M. Macapagal Arroyo (GMA), thereby resulting in her acquittal of the crimes charged in the said cases.

**Antecedents**

On August 7, 2006, Zhong Xing Telecommunications Equipment International Investment Limited (ZTE), a company owned by the government of the People’s Republic of China, submitted a proposal to the Philippine government, through the Department of Transportation and Communications (DOTC) and the Commission on Information and Communications Technology (CICT), for the establishment of a National Broadband Network (NBN) covering the entire country. The said proposal was formally endorsed to the National Economic Development Authority (NEDA) on October 23, 2006, by then CICT Chairperson Ramon Sales. On the other hand, then DOTC Secretary Leandro R. Mendoza (Secretary Mendoza) endorsed ZTE’s proposal to NEDA on March 22, 2007.<sup>4</sup>

<sup>1</sup> *Rollo*, pp. 39-80.

<sup>2</sup> *Id.* at 82-86.

<sup>3</sup> Composed of Associate Justices Jose R. Hernandez, Alex L. Quiroz and Geraldine Faith A. Econg.

<sup>4</sup> *Rollo*, pp. 46-50.

On March 29, 2007, the NEDA Board, which was chaired by former President GMA and composed of 16 other government officials<sup>5</sup> from the Cabinet and the *Bangko Sentral ng Pilipinas* (BSP), unanimously approved the NBN-ZTE deal. Thus, the Contract for the Supply of Equipment and Services for the National Broadband Project (NBN Contract), dated April 21, 2007, was entered into by ZTE and the Government of the Philippines through Secretary Mendoza and DOTC Assistant Secretary Lorenzo G. Formoso.<sup>6</sup>

However, amid allegations of impropriety surrounding the project, the NBN Contract was canceled by GMA on October 2, 2007.<sup>7</sup>

On September 8, 2011, a complaint was filed against GMA, former First Gentleman Jose Miguel Arroyo (FG Arroyo), former Commission on Elections (COMELEC) Chairperson Benjamin Abalos, Sr. (Chairperson Abalos), and Secretary Mendoza by Representatives Teddy Casiño, Liza Maza, and Maria Carolina Pagaduan-Araullo before the Office of the Ombudsman. The complaint alleged, *inter alia*, that GMA and her co-accused committed illegal acts which led to the approval by the NEDA Board of the NBN Contract. Accordingly, GMA was charged with violation of Section 3 (i)<sup>8</sup> of Republic Act (R.A.) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, and Section 7(d)<sup>9</sup> of R.A. No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees. She was indicted of the said crimes by virtue of two separate Informations<sup>10</sup> which read as follows:

<sup>5</sup> Id. at 51-54. As borne by the records, apart from GMA in her capacity as President of the Philippines, the NEDA Board at the time of the commission of the alleged crimes was composed of: (a) NEDA Secretary Romulo L. Neri; (b) Noli L. De Castro; (c) Arthur C. Yap; (d) Manuel M. Bonoan; (e) Peter B. Favila; (f) Joseph H. Durano; (g) Estrella F. Alabastro; (h) Rolando G. Andaya, Jr.; (i) Angelo T. Reyes; (j) Bayani F. Fernando; (k) Ramon P. Sales; (l) Enrico B. Aumentado; (m) Diwa C. Guinigundo; (n) Leandro R. Mendoza; (o) Raphael P.M. Lotilla; and (p) Zaldy Uy Ampatuan.

<sup>6</sup> Id.

<sup>7</sup> Id. at 56.

<sup>8</sup> **Section 3. Corrupt practices of public officers.** — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(i) Directly or indirectly becoming interested, for personal gain, or having a material interest in any Transaction or act requiring the approval of a board, panel or group of which he is a member, and which exercises discretion in such approval, even if he votes against the same or does not participate in the action of the board, committee, panel or group.

<sup>9</sup> **Section 7. Prohibited Acts and Transactions.** — In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

x x x x

(d) **Solicitation or acceptance of gifts.** — Public officials and employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office.

<sup>10</sup> *Rollo*, pp. 40-41.

SB-11-CRM-0468

(For violation of Section 3 (i) of R.A. No. 3019)

That [on] or about February-April 2007, in Malacañang, Manila, Philippines, or sometime prior or subsequent thereto, and within the jurisdiction of this Honorable Court, accused Gloria Macapagal Arroyo, a high ranking public officer, being then the President of the Republic of the Philippines, committing the offense in relation to her office and while in the performance of her official functions as such, did then and there willfully, unlawfully and criminally become interested, for personal gain, in the approval of the National Broadband Network Project, a contract or transaction that requires the approval of National Economic and Development Authority (NEDA) of which she is the Chairperson of the Board, as proposed by Zhong Xing Telecommunications Equipment International Investment Limited (ZTE), despite knowledge of the irregularities and anomalies that attended its approval, such as but not limited to the following:

- a) Attempt by Commission on Elections Chairman Benjamin Abalos Sr. to bribe Secretary Romulo Neri with P200 million to immediately approve the ZTE proposal;
- b) Lack of public bidding;
- c) Absence of DOJ opinion whether the contract is exempted from the coverage of public bidding;
- d) The unnecessary presence of accused Gloria Macapagal Arroyo during the signing of the contract despite delegating the signing, for and in behalf, to Sec. Leandro Mendoza the "Contract for the Supply of Equipment and Services for the National Broadband Network Project" dated April 21, 2007, a contract that is grossly and manifestly disadvantageous to the government; and
- e) The haste with which the ZTE contract was processed and approved by the government.

CONTRARY TO LAW.

SB-11-CRM-0469

(For violation of Section 7 (d) of R.A. No. 6713)

That [on] or about February-April 2007, in Malacañang, Manila, Philippines, or sometime prior or subsequent thereto, and within the jurisdiction of this Honorable Court, accused Gloria Macapagal Arroyo, a high ranking public officer, being then the President of the Republic of the Philippines, committing the offense in relation to her office and while in the performance of her official functions as such, did then and there willfully, unlawfully and criminally accept or receive entertainment, gift or favor from Zhong Xing Telecommunications Equipment International Investment Limited (ZTE) or from its officials in the form of a round of golf and lunch, in connection with the proposal being considered by the NEDA and DOTC for approval and eventual approval on April 21, 2007, of the National Broadband Project of the ZTE, a contract or transaction that is directly affected by the office of the accused GMA, being the NEDA Chairperson and President of the Republic of the Philippines.

CONTRARY TO LAW.<sup>11</sup>

In imputing upon GMA a violation of Section 3(i) of R.A. No. 3019, petitioner, through the Office of the Special Prosecutor (OSP), adduced evidence as would establish that the NBN Contract was approved despite the anomalies that were attendant during its evaluation, particularly (a) the statement of former NEDA Secretary Romulo Neri (Secretary Neri) during the Senate Blue Ribbon Committee Hearing on the NBN-ZTE deal that Chairperson Abalos attempted to bribe him with the amount of ₱200 million, which attempt he reported to GMA who, in turn, advised him to refuse the same; (b) the lack of public bidding as required by R.A. No. 9184 or the Government Procurement Reform Act; (c) the absence of any Department of Justice (DOJ) Opinion on the propriety of public bidding; (d) the unwarranted presence of GMA at the signing of the NBN Contract; (e) the haste in the processing and approval of the project; and (f) the provisions in the NBN Contract and its attachments that are grossly and manifestly disadvantageous to the government.<sup>12</sup>

On the other hand, to prove that GMA violated Section 7(d) of R.A. No. 6713, petitioner presented Jose C. De Venecia, Jr. (Speaker De Venecia), former Speaker of the House of Representatives, who testified that sometime in November 2006, he accompanied GMA and FG Arroyo at a golf club in Shenzhen, China. They were welcomed by Chairperson Abalos and unnamed Chinese government officials who were invited to a breakfast comprised of porridge and dimsum. After playing a round of golf, GMA was invited by officials of ZTE to their office at the downtown area of Shenzhen and to have lunch at the company's executive room, where GMA was informed that the NBN Project would be financed by the Chinese government.<sup>13</sup>

Following the presentation of its testimonial and documentary evidence, the prosecution rested its case. Thereafter, GMA filed a Demurrer to Evidence.

### **Ruling of the *Sandiganbayan***

On August 8, 2016, the *Sandiganbayan* rendered the first assailed Resolution granting GMA's Demurrer to Evidence.

In dismissing the charge of violation of Section 3(i) of R.A. No. 3019, the court *a quo* found that the prosecution failed to prove the existence of any direct or indirect interest for personal gain on the part of GMA during the entire deliberations on the NBN Contract. The NBN Project was proposed by ZTE on August 7, 2006, and was approved only after undergoing a lengthy evaluation process on March 29, 2007. Said approval was not made by GMA alone but by

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<sup>11</sup> Id. at 40-41.

<sup>12</sup> Id. at 68-69.

<sup>13</sup> Id. at 78-79.

the entire NEDA Board which voted with unanimity. Moreover, the statements of Secretary Neri before the Senate cannot be given any evidentiary weight because the same were not propounded before the courts. Likewise, the attachments to the NBN Contract referred to by the prosecution – which allegedly support the claim that the same was grossly and manifestly disadvantageous to the government – were neither presented nor offered as evidence during the trial. Thus, the NBN Contract enjoys the presumption of regularity. At any rate, the *Sandiganbayan* concluded, the DOJ had already opined that the NBN Contract is an executive agreement which, accordingly, exempted it from the public bidding requirement.<sup>14</sup>

As to the accusation that GMA violated Section 7(d) of R.A. No. 6713, the *Sandiganbayan* stressed that it did not have any territorial jurisdiction over the same because it was committed outside the Philippines. At any rate, considering the total cost of the NBN Project, the round of golf and lunch that GMA received were of nominal value that could hardly amount to a violation of the Code of Conduct and Ethical Standards for Public Officials and Employees.<sup>15</sup>

Ultimately, the *Sandiganbayan* decreed:

WHEREFORE, considered in its entirety, the evidence adduced by the prosecution in Criminal Case No. SB-11-CRM-0468 for violation of Section 3 (i), R.A. No. 3019 and in Criminal Case No. SB-11-CRM-0469 for violation of Section 7 (d) of R.A. No. 6713 did NOT SUFFICIENTLY prove the guilt of accused Ma. Gloria M. Macapagal Arroyo and this Court hereby GRANTS Accused's Demurrer to Evidence. These cases are then DISMISSED.

SO ORDERED.<sup>16</sup>

Petitioner's motion for reconsideration<sup>17</sup> was denied by the *Sandiganbayan* in the second assailed Resolution dated November 7, 2016.

Hence, the present recourse.

### Issues

Taking into consideration the parties' postures which are amplified in their respective pleadings, the Court is now tasked to resolve the following issues:

#### I.

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<sup>14</sup> Id. at 63-70.

<sup>15</sup> Id. at 78-80.

<sup>16</sup> Id. at 80.

<sup>17</sup> Id. at 87-101.

WHETHER OR NOT THE INSTANT PETITION FOR CERTIORARI IS PROPER, CONSIDERING THAT THE GRANT OF GMA'S DEMURRER TO EVIDENCE AMOUNTS TO AN ACQUITTAL;

## II.

WHETHER OR NOT THE SANDIGANBAYAN ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN GRANTING GMA'S DEMURRER TO EVIDENCE.

*Petitioner's Arguments*

Petitioner contends that the *Sandiganbayan* committed grave abuse of discretion amounting to lack or excess of jurisdiction when it granted GMA's Demurrer to Evidencé.

Petitioner argues that Criminal Case No. SB-11-CRM-0468 was wrongfully dismissed, contending that the *Sandiganbayan* erred in disregarding the contents of the stenographic notes of Secretary Neri's Senate testimony which was offered as evidence before the court *a quo*. As declared by Secretary Neri, GMA was duly informed of the attempted bribe on the part of Chairperson Abalos but continued to pursue the NBN-ZTE deal. In addition, petitioner insists that the NBN Contract is not exempt from the public bidding requirement of R.A. No. 9184 because the said law does not make any distinction between foreign and local sources of funding. Even if it were exempt, petitioner adds, Section 4<sup>18</sup> of R.A. No. 4860 or the Foreign Borrowings Act requires that the waiver of the public bidding requirement be embodied in the agreement itself, which is not the case for the NBN Contract.

Petitioner also bewails the dismissal of Criminal Case No. SB-11-CRM-0468, arguing that GMA never refuted that she was treated to a free round of golf followed by a lunch meeting in Shenzhen, China. Petitioner likewise asserts that the court *a quo* has jurisdiction over the case under the principle of continuing crimes.

*Respondent's Arguments*

Resolute in maintaining that the *Sandiganbayan* appropriately dismissed the criminal cases against her, GMA laments that the instant petition violates her

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<sup>18</sup> SEC. 4 in the contracting of any loan, credit or indebtedness under this Act, the President of the Philippines may, when necessary, agree to waive or modify, the application of any law granting preference or imposing restrictions on international competitive bidding, including among others, [Act. No. 4239, C.A. 541, insofar as such provisions do not pertain to construction primarily for national defense or security purposes, R. A. 5183]; Provided, however, That as far as practicable, utilization of the services qualified domestic firms in the prosecution of projects financed under this Act shall be encouraged: Provided, further, that in case where international competitive bidding shall be conducted preference of at least fifteen per centum shall be granted in favor of articles, materials or supplies of the growth, production or manufacture of the Philippines: Provided, finally, That the method and procedure in the comparison of bids shall be the subject of agreement between the Philippine Government and the lending institution.

constitutional right against double jeopardy. She also asserts that the petition is procedurally infirm because petitioner failed to attach copies of its evidence, or even the Demurrer to Evidence that she filed before the *Sandiganbayan*.

GMA further expounds that even if the instant petition was accepted by this Court notwithstanding its grave infirmities, the same must necessarily fail on the merits. She contends that the prosecution had failed to establish all of the elements for the crime of violation of Section 3(i) of R.A. No. 3019, having failed to adduce any evidence as would prove the supposed irregularities and anomalies that attended the evaluation and approval of the NBN Contract.

As to her alleged violation of Section 7(d) of R.A. No. 6713, GMA contends that there was no proof that ZTE paid for the golf game in Shenzhen, China, much less its value or cost. At any rate, the *Sandiganbayan* had no territorial jurisdiction to try her for the said crime.

### Ruling of the Court

The petition is bereft of merit.

*The grant of a Demurrer to Evidence in a criminal case amounts to a judgment of acquittal which may be assailed only through a petition for certiorari under Rule 65.*

A demurrer to evidence is a motion to dismiss on the ground of insufficiency of evidence. It is a remedy available to the defendant, to the effect that the evidence produced by the plaintiff is insufficient in point of law, whether true or not, to make out a case or sustain an issue.<sup>19</sup> The party demurring challenges the sufficiency of the whole evidence to sustain a verdict.<sup>20</sup> Sufficient evidence for purposes of frustrating a demurrer thereto is such evidence in character, weight or amount as will legally justify the judicial or official action demanded according to the circumstances. To be considered sufficient therefore, the evidence must prove: (a) the commission of the crime, and (b) the precise degree of participation therein by the accused.<sup>21</sup>

The nature and consequences of the grant of a demurrer to evidence in criminal cases has been expounded upon by the Court in *Bautista v. Cuneta-Pangilinan*,<sup>22</sup> to wit:

<sup>19</sup> *Republic v. De Borja*, 803 Phil. 8, 16 (2017).

<sup>20</sup> *Rivera v. People*, 499 Phil. 80, 86 (2005).

<sup>21</sup> Citing *Singian, Jr. v. Sandiganbayan, et al.*, 718 Phil. 455, 472 (2013).

<sup>22</sup> 698 Phil. 110 (2012).

Under Section 23, Rule 119 of the Rules of Court on Demurrer to Evidence, after the prosecution terminates the presentation of evidence and rests its case, the trial court may dismiss the case on the ground of insufficiency of evidence upon the filing of a Demurrer to Evidence by the accused with or without leave of court. If the accused files a Demurrer to Evidence with prior leave of court and the same is denied, he may adduce evidence in his defense. However, if the Demurrer to Evidence is filed by the accused without prior leave of court and the same is denied, he waives his right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.

Corollarily, after the prosecution rests its case, and the accused files a Demurrer to Evidence, the trial court is required to evaluate whether the evidence presented by the prosecution is sufficient enough to warrant the conviction of the accused beyond reasonable doubt. If the trial court finds that the prosecution evidence is not sufficient and grants the accused's Demurrer to Evidence, the ruling is an adjudication on the merits of the case which is tantamount to an acquittal and may no longer be appealed. Any further prosecution of the accused after an acquittal would, thus, violate the constitutional proscription on double jeopardy.<sup>23</sup>

The demurrer to evidence in criminal cases, such as the one at bench, is “filed after the prosecution had rested its case.” As such, it calls “for an *appreciation of the evidence* adduced by the prosecution *and its sufficiency* to warrant conviction beyond reasonable doubt, resulting in a dismissal of the case on the merits, tantamount to an acquittal of the accused.”<sup>24</sup>

There are certain exceptions, however, as when the grant thereof would not violate the constitutional proscription on double jeopardy. For instance, this Court ruled that when there is a finding that there was grave abuse of discretion on the part of the trial court in dismissing a criminal case by granting the accused's demurrer to evidence, its judgment is considered void.<sup>25</sup> Accordingly, a review of a dismissal order of the *Sandiganbayan* granting an accused's demurrer to evidence may be done via the special civil action of certiorari under Rule 65, based on the narrow ground of grave abuse of discretion amounting to lack or excess of jurisdiction.<sup>26</sup>

*Nevertheless, the instant petition infringes upon GMA's constitutional right against double jeopardy.*

In his celebrated treatise *Commentaries on the Laws of England*, Sir William Blackstone wrote that “when a man is once fairly found not guilty upon any indictment, or other prosecution, before any court having competent jurisdiction, he may plead such acquittal in bar of any subsequent accusation for

<sup>23</sup> Id. at 125-126.

<sup>24</sup> *People v. Sandiganbayan (1<sup>st</sup> Division), et al.*, 637 Phil. 147, 161 (2010).

<sup>25</sup> *People v. Go, et al.*, 740 Phil. 583, 602-603 (2014).

<sup>26</sup> *Republic v. Sps. Gimenez*, 776 Phil. 233, 253 (2016).



the same crime.”<sup>27</sup> The underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty.<sup>28</sup>

Thus, even if the first trial is not completed, a second prosecution may be grossly unfair. It increases the financial and emotional burden on the accused, prolongs the period in which he is stigmatized by an unresolved accusation of wrongdoing, and may even enhance the risk that an innocent defendant may be convicted. The danger of such unfairness to the defendant exists whenever a trial is aborted before it is completed. Consequently, as a general rule, the prosecutor is entitled to one, and only one, opportunity to require an accused to stand trial.<sup>29</sup>

In this jurisdiction, We adhere to the finality-of-acquittal doctrine, that is, a judgment of acquittal is final and unappealable.<sup>30</sup> The right against double jeopardy is enshrined in Article III, Section 21 of the Constitution, viz.:

Section 21. No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

As previously stated, a judgment of acquittal, such as the grant of GMA's Demurrer to Evidence in this case, may only be assailed in a petition for certiorari under Rule 65 of the Rules of Court on grounds of grave abuse of discretion. Under such circumstances, the petitioner must be able to discharge the burden of establishing the respondent court or tribunal acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction.<sup>31</sup>

A cursory examination of the petition readily reveals that in essence, petitioner excoriates the *Sandiganbayan's* evaluation and assessment of the evidence presented by the prosecution. Petitioner bemoans the “gross misapprehension of the facts and the evidence on record”<sup>32</sup> which led to the grant of the demurrer in favor of GMA.

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<sup>27</sup> William Blackstone, *Commentaries on the Laws of England* (1753), Book 4, p. 260.

<sup>28</sup> *Green v. United States*, 355 U.S. 184 (1957).

<sup>29</sup> See *Arizona v. Washington*, 434 U.S. 497 (1978).

<sup>30</sup> *People v. Alejandro*, 823 Phil. 684, 691 (2018).

<sup>31</sup> *Chua v. People, et al.*, 821 Phil. 271, 279 (2017).

<sup>32</sup> *Rollo*, p. 12.

Certainly, what petitioner questions are the purported errors of judgment or those involving misappreciation of evidence or errors of law.<sup>33</sup> However, a writ of *certiorari* can only correct errors of jurisdiction or those involving the commission of grave abuse of discretion, not those which call for the evaluation of evidence and factual findings.<sup>34</sup> Accordingly, we cannot condone this specious approach at stretching the allowable limits of questioning a judgment of acquittal. Case law dictates that imputations of errors of judgment can never be allowed as an exception on the constitutional right against double jeopardy.

In *People v. Ang Cho Kio*,<sup>35</sup> the Court succinctly declared:

No error, however, flagrant, committed by the Court against the State, can be reserved by it for decision by the Supreme Court when the defendant has once been placed in jeopardy and discharged, even though the discharge was the result of the error committed.<sup>36</sup>

In *Central Bank of the Philippines v. Court of Appeals*,<sup>37</sup> We exhaustively ratiocinated that:

x x x Whether this conclusion was based merely on speculations and conjecture, or on a misapprehension of facts and contrary to the documents and exhibits of the case, is not for us to determine in a petition for certiorari wherein only issues of jurisdiction may be raised. Neither can we determine whether the constructions given by the appellate court to a document is right or wrong as errors in the appreciation of evidence may not be reviewed by certiorari because they do not involve any jurisdictional question.

The function of a writ of certiorari is to keep an inferior court within the bounds of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to excess of jurisdiction. It is available only for these purposes and not to correct errors of procedure or mistakes in the judge's findings or conclusions. The mere fact that the court decides the question wrong is utterly immaterial to the question of its jurisdiction. Thus, assuming arguendo, that the court had committed a mistake, the error does not vitiate the decision considering that it had jurisdiction over the case. The writ of *certiorari* issues for the correction of errors of jurisdiction only or grave abuse of discretion amounting to lack or excess of jurisdiction. The writ of certiorari cannot be legally used for any other purpose. If the court has jurisdiction of the subject matter and of the person, the orders and rulings upon all questions pertaining to the cause are orders and rulings within its jurisdiction and cannot be corrected by certiorari.

Ordinarily, errors of judgment may be corrected in a timely appeal from the judgment on the merits. Such remedy, however, is not available in the case at bar, the decision involved being one of acquittal. An appeal therefrom by the

<sup>33</sup> See *Villareal v. Aliga*, 724 Phil. 47, 64 (2014).

<sup>34</sup> Id.

<sup>35</sup> 95 Phil. 475 (1954), quoting from *State v. Rook*, 49 L. R. A. 186, 61, Kan. 382, 59 Pac. 653.

<sup>36</sup> Id. at 480.

<sup>37</sup> 253 Phil. 39 (1989).

People would run counter to the accused's constitutional guarantee against double jeopardy.

We discern in this petition for certiorari a subtle attempt to have us review the judgment of the appellate court on the merits. While the petition at bar is denominated a special civil action for certiorari under Rule 65 of the Rules of Court and the issues raised therein ostensibly dealt with the jurisdiction of the appellate court, petitioners' attack on the appellate court's jurisdiction is premised on the conclusions that (a) the findings of facts of the appellate court were based on conjectures and speculations, or on misapprehension of facts and contrary to the documents and exhibits; (b) the exhibit relied upon by the appellate court has not been offered nor admitted in evidence during the trial; and (c) the appellate court gave to a document a meaning contrary to its contents. But how valid and tenable these premises are remains a question. To determine their validity would entail a review and re-evaluation of the evidence on record as well as the procedure taken vis-a-vis the conclusions arrived at by the appellate court; in effect, a review of the judgment of acquittal, which we cannot do in a petition for certiorari and without violating the private respondents' constitutional right against double jeopardy.

Section 2 of Rule 122 of the Rules of Court provides that "the People of the Philippines cannot appeal if the defendant would be placed thereby in double jeopardy." The argument that the judgment is tainted with grave abuse of discretion and therefore, null and void, is flawed because whatever error may have been committed by the lower court was merely an error of judgment and not of jurisdiction. It did not affect the intrinsic validity of the decision. This is the kind of error that can no longer be rectified on appeal by the prosecution no matter how obvious the error may be. The rule therefore, in this jurisdiction is that a judgment of acquittal is not reviewable by a higher court, for an appeal by the government from the judgment would put the accused in second jeopardy for the same offense.<sup>38</sup> (Underscoring ours)

Likewise, in *G.V. Florida Transport, Inc. v. Tiara Commercial Corporation*,<sup>39</sup> the Court explained:

A special civil action for *certiorari* is an original civil action and not an appeal. An appeal aims to correct errors in judgment and rectify errors in the appreciation of facts and law which a lower court may have committed in the proper exercise of its jurisdiction. A special civil action for *certiorari*, on the other hand, is used to correct errors in *jurisdiction*. We have defined an error in jurisdiction as "one where the officer or tribunal acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction."

This distinction finds concrete significance when a party pleads before a higher court seeking the correction of a particular order. When a party seeks an appeal of a final order, his or her petition must identify the errors in the lower court's findings of fact and law. Meanwhile, when a party files a special civil action for *certiorari*, he or she must allege the acts constituting grave abuse of discretion.

<sup>38</sup> Id. at 47-49.

<sup>39</sup> 820 Phil. 235 (2017).

Grave abuse of discretion has a precise meaning in remedial law. It is not mere abuse of discretion but must be grave “as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.” In more concrete terms, not every error committed by a tribunal amounts to grave abuse of discretion. A misappreciation of the facts or a misapplication of the law does not, by itself, warrant the filing of a special civil action for certiorari. There must be a clear abuse of the authority vested in a tribunal. This abuse must be so serious and so grave that it warrants the interference of the court to nullify or modify the challenged action and to undo the damage done.<sup>40</sup> (Underscoring ours)

And more recently, in the case of *First Corporation v. Former Sixth Division of the Court of Appeals*,<sup>41</sup> we held that:

It is a fundamental aphorism in law that a review of facts and evidence is not the province of the extraordinary remedy of *certiorari*, which is *extra ordinem* – beyond the ambit of appeal. In certiorari proceedings, judicial review does not go as far as to examine and assess the evidence of the parties and to weigh the probative value thereof. It does not include an inquiry as to the correctness of the evaluation of evidence. Any error committed in the evaluation of evidence is merely an error of judgment that cannot be remedied by certiorari. An *error of judgment* is one which the court may commit in the exercise of its jurisdiction. An *error of jurisdiction* is one where the act complained of was issued by the court without or in excess of jurisdiction, or with grave abuse of discretion, which is tantamount to lack or in excess of jurisdiction and which error is correctible only by the extraordinary writ of *certiorari*. *Certiorari* will not be issued to cure errors of the trial court in its appreciation of the evidence of the parties, or its conclusions anchored on the said findings and its conclusions of law. It is not for this Court to re-examine conflicting evidence, re-evaluate the credibility of the witnesses or substitute the findings of fact of the court *a quo*.<sup>42</sup> (Underscoring ours)

In the instant case, it may be recalled that the *Sandiganbayan* ordered the dismissal of the criminal complaints against GMA primarily on the grounds that: (a) with regard to the alleged violation of Section 3(i) of R.A. No. 3019, the prosecution failed to establish the element that there was a direct or indirect interest on the part of GMA for personal gain, bolstered by the fact that the NBN-ZTE Contract was approved by the entire NEDA Board unanimously and not just by GMA herself; and (b) as to GMA’s alleged violation of Section 7(d) of R.A. No. 6713, the prosecution was not even able to prove the value of the round of golf and succeeding luncheon in Shenzhen, China that GMA attended which, in the grand scale of things, is hardly significant compared to the value of the NBN Project.

While petitioner would want this Court to stray from the pivotal reasons given by the *Sandiganbayan* for the grant of the demurrer to evidence, it bears

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<sup>40</sup> Id. at 246-247.

<sup>41</sup> 553 Phil. 526 (2007).

<sup>42</sup> Id. at 540-541.

stressing that nothing therein detracts from the fact that relevant and material evidence was scrutinized, considered and evaluated.<sup>43</sup>

All told, the instant petition primarily raises issues pertaining to alleged errors of judgment, not errors of jurisdiction, which is tantamount to an appeal contrary to the express injunction of the Constitution, the Rules of Court and prevailing jurisprudence. Conformably then, We need not embark upon review of the factual and evidentiary issues raised by petitioner as these are obviously not within the realm of our jurisdiction.<sup>44</sup>

**WHEREFORE**, the petition is **DENIED** for lack of merit. The acquittal of private respondent Ma. Gloria Macapagal Arroyo by the *Sandiganbayan*, Fourth Division, in its Resolutions dated August 8, 2016 and November 7, 2016 in Criminal Case Nos. SB-11-CRM-0468 and SB-11-CRM-0469 is **AFFIRMED**.

**SO ORDERED.”**

*(Leonen, J., on leave; Gesmundo, J., Acting Chairperson.)*

By authority of the Court:

*Misael Domingo C. Battung III*  
**MISAELO DOMINGO C. BATTUNG III**  
Division Clerk of Court  
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<sup>43</sup> See *People v. Court of Appeals (Fifteenth Division)*, 545 Phil. 278, 296 (2007).

<sup>44</sup> *Villareal v. Aliga*, supra note 33 at 65.