Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

GREGORIO SINGIAN, JR., *Petitioner,*	**G.R. Nos. 195011-19**
	Present:
- versus -	BRION, *Acting Chairperson,* DEL CASTILLO, ABAD,* PEREZ, *and* PERLAS-BERNABE, *JJ.*
SANDIGANBAYAN (3RD DIVISION), THE PEOPLE OF THE PHILIPPINES, and THE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, *Respondents.*	Promulgated: SEP 30 2013

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DECISION

DEL CASTILLO, *J.*:

The grant or denial of a Demurrer to Evidence is left to the sound discretion of the court, and its ruling on the matter shall not be disturbed in the absence of a grave abuse of such discretion.

This Petition for *Certiorari Ad Cautelam*[1] seeks to set aside the August 5, 2010 Resolution[2] of the *Sandiganbayan* in Criminal Case Nos. 26297-26305, denying petitioner Gregorio Singian, Jr.'s Demurrer to Evidence[3] and the November 18, 2010 Resolution[4] denying reconsideration thereof.

Antecedents

The criminal cases involved in the present Petition have been the subject of a previous disposition of the Court, specifically *Singian, Jr. v. Sandiganbayan*.[5] In said case, the Court made the following recital of facts:

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* Per Raffle dated September 30, 2013.

1 *Rollo*, pp. 3-48.

2 Id. at 50-67; penned by Associate Justice Alex L. Quiroz and concurred in by Associate Justices Francisco H. Villaruz, Jr. and Samuel R. Martires.

3 Id. at 74-105.

4 Id. at 68-72.

5 514 Phil. 536 (2005).

Atty. Orlando L. Salvador was Presidential Commission On Good Government Consultant on detail with the Presidential *Ad Hoc* Committee on Behest Loans (Committee). He was also the coordinator of the Technical Working Group composed of officers and employees of government financing institutions to examine and study the reports and recommendations of the Asset Privatization Trust relating to loan accounts in all government financing institutions. Among the accounts acted upon by the Committee were the loans granted to Integrated Shoe, Inc. (ISI) by the Philippine National Bank (PNB).

It would appear that on 18 January 1972, ISI applied for a five-year confirmed irrevocable deferred letter of credit amounting to US$2,500,000.00 (₱16,287,500.00) to finance its purchase of a complete line of machinery and equipment. The letter of credit was recommended to the PNB Board of Directors by then Senior Vice[-]President, Mr. Constantino Bautista.

On 27 January 1972, the PNB approved the loan, subject to certain stipulations. The said letter of credit was to be secured by the following collaterals: a) a second mortgage on [a] 10,367-square meter lot under Transfer Certificate of Title No. 218999 with improvements, machinery and equipment; b) machinery and equipment to be imported under the subject letter of credit; and c) assignment of US$0.50 per pair of shoes of ISI's export sales. It was further subjected to the following pertinent conditions: a) that the letter of credit be subject to joint and several signatures of Mr. Francisco J. Teodoro, Mrs. Leticia T. Teodoro, Marfina T. Singian, Tomas Teodoro, and Gregorio Singian, Jr.; b) that ISI, which has a paid-up capital amounting to ₱1,098,750.00 as of January 1972, shall increase its authorized capital to ₱5,000,000.00, and in the event that cash receipts do not come up to the projections, or as may be required by the bank, ISI will further increase its capitalization and the present stockholders will subscribe to their present holdings; and c) that ISI shall submit other collaterals in case the appraised value of the new machinery and equipment be insufficient.

ISI was further extended the following subsequent loan accommodations:

1. ₱1,500,000.00 on 10 February 1972 for the purchase of raw materials;

2. ₱1,000,000.00 on 18 January 1973 as export advance;

3. ₱1,500,000.00 on 21 March 1973 as export advance;

4. ₱600,000.00 on 06 March 1974 as credit line;

5. ₱2,500,000.00 renewed on 15 December 1976;
6. ₱5,000,000.00 on 19 November 1978 as export advance;

7. ₱1,500,000.00 on 04 August 1980 as export advance; and

8. ₱7,000,000.00 on 15 December 1980 also as an export advance.

The Committee found that the loans extended to ISI bore characteristics of behest loans specifically for not having been secured with sufficient collaterals and obtained with undue haste.

As a result, Atty. Orlando Salvador filed with the Office of the

> Ombudsman a sworn complaint dated 20 March 1996, for violation of Section 3, paragraphs (e) and (g), of Republic Act No. 3019, as amended, against the following: Panfilo Domingo, former PNB President, Constantino Bautista, former PNB Senior Vice[-]President, Domingo Ingco, former member of the PNB Board of Directors, John Does, former members of the PNB Board of Directors, Francisco Teodoro, President of ISI, Leticia Teodoro, Vice[-]President of ISI, Marfina Singian, Incorporator of ISI, Tomas Teodoro, General Manager of ISI, and Gregorio Singian, Jr., Executive Vice[-]President of ISI. The complaint, docketed as OMB-0-96-0967, was assigned to Graft Investigation Officer I Atty. Edgar R. Navales (Investigator Navales) of the Evaluation and Preliminary Investigation Bureau (EPIB) for investigation.
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> Hence, the corresponding eighteen (18) Informations against petitioner and his co-accused for violation of Section 3(e) and (g) of Rep. Act No. 3019, docketed as Criminal Cases No. 26297 to No. 26314, were filed before the Sandiganbayan and were raffled to the Third Division thereof. The eighteen (18) Informations correspond to the nine (9) loan accommodations granted to ISI, each loan being the subject of two informations alleging violations of both paragraphs of Section 3 of Rep. Act No. 3019.[6]

Thus, herein petitioner was charged with nine counts of violation of Section 3(e),[7] and another nine counts of violation of Section 3(g),[8] of Republic Act No. 3019 (RA 3019), or the Anti-Graft and Corrupt Practices Act. Docketed as Criminal Case Nos. 26297-26314, the cases involved the purported granting of behest loans by the government's Philippine National Bank (PNB) to Integrated Shoes, Inc. (ISI), in various amounts and on different dates as above-enumerated.

The Informations[9] covering Section 3(e) charged that Panfilo Domingo (Domingo), then PNB Director/President/Vice-President (Europe); Domingo C. Ingco (Ingco), then PNB Director; and Constantino Bautista (Bautista), then PNB Senior Executive Vice-President, while in the performance of their official functions and taking advantage of their official positions, conspired with private individuals, specifically officers of ISI, including petitioner, who was ISI's Executive Vice-President, in willfully, unlawfully and criminally causing undue injury to the government and giving unwarranted benefits, advantage and preference to ISI by accommodating and granting several loans and advances to

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6 Id. at 539-543.

7 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:

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(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

8 g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

9 *Rollo*, pp. 134-136, 140-142, 146-148, 152-154, 158-160, 164-166, 170-172, 176-178, 182-184.

the latter, despite knowing that it lacked sufficient capitalization, or failed to give adequate collateral or raise its working capital to secure the government's interest in case it failed to pay said loans, as in fact it failed to pay these loans.

On the other hand, the Informations[10] covering Section 3(g) charged the above individuals, including petitioner, with conspiring, confederating, and willfully, unlawfully and criminally entering into the above-mentioned loan transactions which are grossly and manifestly disadvantageous to the government, for lack of sufficient capitalization or adequate collateral, and for failure of ISI to raise its working capital to secure the government's interest in case it failed to pay said loans, which indeed ISI failed to pay.

On January 27, 2004, petitioner entered a plea of not guilty on all counts. All the other accused were arraigned as well, except for Bautista, who passed away prior to his scheduled arraignment.

On April 29, 2005, the *Sandiganbayan* dismissed Criminal Case Nos. 26306-26314.[11] On October 6, 2007, the accused Ingco passed away; as a result, the cases against him were dismissed as well. Accused Domingo likewise passed away on June 26, 2008 resulting in an October 29, 2008 Resolution wherein the *Sandiganbayan* dropped the cases against him.

Trial with respect to the remaining cases ensued. For its testimonial evidence, the prosecution called to the stand nine witnesses:

1. Director Danilo R.V. Daniel, then Coordinator of the Technical Working Group on Behest Loans (TWG) and Director of the Research Division of the Presidential Commission on Good Government (PCGG), who testified on the investigation conducted by the TWG of the ISI account and on various documents relative thereto, including the Fourteenth (14th) Report of Presidential *Ad Hoc* Fact-Finding Committee on Behest Loans[12] (*Ad Hoc* Committee) dated July 15, 1993 which he drafted, and which characterized the ISI account as a behest loan;[13]

2. Atty. Reginald Bacolor from the Legal Department, Privatization Management Office of the Asset Privatization Trust (APT), who testified on the deeds, documents and titles covering the foreclosed properties offered as collaterals in the ISI account and thereafter sold by the government through the APT;[14]

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10 Id. at 131-133, 137-139, 143-145, 149-151, 155-157, 161-163, 167-169, 173-175, 179-181.
11 Covering Section 3(e) of REPUBLIC ACT NO. 3019.
12 *Rollo*, pp. 304-309.
13 Id. at 58-59.
14 Id. at 60.

3. Atty. Edwin Flor V. Barroga, then Deputy Registrar of Deeds of Binangonan, Rizal, who testified on the property offered as collateral by ISI, which was the subject of a prior encumbrance to the Government Service Insurance System (GSIS);[15]

4. Atty. Cinderella Benitez, Securities Counsel II of the Securities and Exchange Commission (SEC), who testified on ISI's SEC documents, specifically its capitalization and financial status. She identified certified copies of ISI's Articles of Incorporation, By-Laws, Amended Articles of Incorporation, Certificates of Increase of Capital Stock, etc.;[16]

5. Atty. Mary Ann B. Morales, SEC Securities Counsel III from its Registration and Monitoring Department, who likewise testified on ISI's SEC documents. She identified ISI's General Information Sheets, Schedule of Stockholders, Subscribed and Paid-Up Capital, Certificate of Corporate Filing/ Information, etc. She testified, among others, that as of 1973, ISI's subscribed capital stock was only ₱1.6 million, while its paid-up capital was merely ₱1,298,750.00;[17]

6. Cesar Luis Pargas, of the Privatization Management Office, APT, custodian of ISI's loan documents, who testified on and brought with him the loan documents, deeds, titles, notes, etc. covering the ISI account;[18]

7. Claro Bernardino, Senior Manager of PNB's Human Resource Group, who brought the personnel records/certificates of employment of the accused Domingo and Ingco;[19]

8. Ramonchito Bustamante, Manager of the Loans and Implementing Services Division of PNB, expert witness on banking policy and PNB's loan policies, as well as ISI's loan data; and[20]

9. Stephen Tanchuling, Chief Administrative Officer of the Records Division of the Research Department of the PCGG, custodian of documents turned over to PCGG by the *Ad Hoc* Committee. He testified that his function was to authenticate documents in his custody, which consisted of records transmitted to the *Ad Hoc* Committee by different government agencies. He identified as well the Executive Summary[21] of the ISI account; the Fourteenth

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15 Id. at 61.
16 Id. at 56-57.
17 Id. at 58.
18 Id. at 55.
19 Id. at 57-58.
20 Id. at 59-60.
21 Id. at 295-303.

(14th) Report of Presidential *Ad Hoc* Fact-Finding Committee on Behest Loans dated July 15, 1993; the Executive Summary of the *Ad Hoc* Committee Findings; and other relevant documents.[22]

For its documentary evidence, the prosecution presented the following, among others:

1) Photocopy of the Fourteenth (14th) Report of Presidential *Ad Hoc* Fact-Finding Committee on Behest Loans[23] which listed ISI as among the corporations with loans obtained from the government or government banks (in this case, PNB) which were found to possess the characteristics of a behest loan;

2) Photocopy of an Executive Summary of Findings of the *Ad Hoc* Committee,[24] detailing the particulars of the ISI account;

3) Photocopy of the certified true copy of the January 10, 1972 Memorandum[25] from Bautista to the PNB Board of Directors, detailing Bautista's findings and recommendations regarding ISI's application for a $2.5 million (₱16,287,500.00) letter of credit for the purpose of purchasing machinery and equipment for a new shoe factory then being built in Bataan.

4) Certified photocopy of a Deed of Undertaking and Conformity to Bank Conditions[26] (Deed of Undertaking) dated March 24, 1972 executed by ISI in favor of PNB;

5) Certified photocopy of a Deed of Assignment[27] dated March 24, 1972, assigning $0.50 per pair of shoes of all export sales of ISI in favor of PNB;

6) Certified photocopy of Chattel Mortgage with Power of Attorney[28] executed by ISI in favor of PNB;

7) Certified true copy of Certificate of Filing of Certificate of Increase of Capital Stock[29] issued by the SEC dated February 6, 1974, showing that ISI increased its authorized capital stock from ₱3 million to ₱7 million; and

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22 Id. at 62.
23 Id. at 305-309.
24 Id. at 295-303.
25 Id. at 258-268.
26 Id. at 286-291.
27 Id. at 292-293.
28 See Formal Offer of Exhibits, id. at 197-219, at 200.
29 Id. at 294.

8) Certified true copy of the By-Laws of Integrated Pacific, Inc. (ISI's predecessor corporation).[30]

After the presentation of its testimonial and documentary evidence, the prosecution rested its case and filed its Formal Offer of Exhibits.[31] The respondent court admitted *in toto* the State's documentary exhibits.

Petitioner's Demurrer to Evidence

On February 17, 2010, petitioner, with prior leave, filed a Demurrer to Evidence[32] anchored on the following grounds: (1) lack of proof of conspiracy with any PNB official; (2) the contracts with PNB contained provisions that are beneficial, and not manifestly and grossly disadvantageous, to the government; (3) the loans could not be characterized as behest loans because they were secured by sufficient collaterals and ISI increased its capitalization; and (4) assuming the loans are behest loans, petitioner could not be held liable for lack of any participation.[33]

In particular, petitioner claimed that the prosecution failed to adduce evidence of conspiracy to defraud the government because his co-accused from PNB had no power to approve the alleged behest loans; that if a theory of conspiracy were to be pursued, then all the members of the PNB's Board of Directors at the time the loans and credit accommodations to ISI were approved, and not only Domingo and Ingco, should have been impleaded as they were the ones who directed PNB's affairs; that the prosecution failed to show that he exercised any kind of influence over PNB's Board of Directors in order to ensure the grant of the loans and accommodations applied for; and for failure to present evidence that the accused colluded with each other in entering into the loan agreements and accommodations.

Petitioner contended further that the contracts and agreements entered into by and between PNB and ISI were standard contracts used by PNB in its dealings with its clients; that the terms thereof were couched in words and fashioned in a manner that favored the bank; that the agreements guaranteed repayment of the loan and the putting up of sufficient collateral, and provided for interest and penalties in the event of breach, and thus were not grossly and manifestly disadvantageous to the government.

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30 Id. at 272-285.
31 Id. at 197-219.
32 Id. at 74-105.
33 Id. at 74-76.

Next, petitioner argued that the subject loans were not undercollateralized; that ISI was not undercapitalized as the corresponding increase in its authorized capital stock and paid-up capital was timely made; and that the loans could not have been characterized as behest loans considering the following stipulations: a) the assets intended for acquisition through the letter of credit would serve as the collateral therefor; b) the officers and majority stockholders of ISI were made jointly and severally liable for its obligations; c) ISI may not declare dividends while the loans are subsisting; d) PNB is given the right to designate its Comptroller in ISI; and e) even if it is assumed for the sake of argument that the subject loans were undercollateralized, this fact – standing alone – does not make for a behest loan, as the presence of at least two (2) criteria out of the eight enumerated in Presidential Memorandum Order No. 61 dated November 9, 1992 is required to characterize the loans as behest loans.

Assuming that the loan agreements are behest loans, petitioner claimed that he may not be held liable because his indictment was based solely on the Deed of Undertaking which was altered such that his name was stricken out and instead the name "Gregorio T. Teodoro" was inserted; that the accountee-mortgagor-assignor under said deed was ISI; that the obligations were assumed by ISI; that ISI had already fully complied with all its obligations under the deed; and that he was not a member of ISI's Board of Directors, which alone was tasked – as ISI's governing body – with the observance of the obligations set forth under the deed; nor may he seek to compel action thereon at a stockholders' meeting, as he is not a shareholder of ISI either.

Finally, petitioner claimed that the *Ad Hoc* Committee documents – specifically the Executive Summary and Fourteenth (14th) Report of Presidential *Ad Hoc* Fact-Finding Committee on Behest Loans – are inadmissible for not being photocopies of the originals, but mere copies of photocopies in the custody of the PCGG; and that they were prepared and issued by individuals who have no personal knowledge of the facts and circumstances which transpired during the proceedings adverted to.

Petitioner thus prayed that as against him, Criminal Case Nos. 26297-26305 be dismissed for insufficiency of evidence.

Prosecution's Opposition

In its Opposition,[34] the prosecution insisted that conspiracy may be inferred from the following pattern of events:

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[34] Id. at 525-539.

a. The frequency of the loans or closeness of the dates at which they were granted;

b. The quantity of the loans granted;

c. The failure of [PNB] to verify and to take any action on [ISI's failure] to put up additional capitalization and additional collaterals; and

d. The eventual absence of any action by [PNB] to collect full payment from ISI.[35]

The prosecution noted that without ISI putting up additional capitalization or collateral, PNB kept granting loans to it, such that in 1973, its indebtedness already rose to ₱16,360,000.00 while its capital stock stood at only ₱7 million; that petitioner is intimately connected with the incorporators and officers of ISI – Leticia Teodoro is his mother-in-law, while Francisco Teodoro is his father-in-law; and Marfina Teodoro-Singian is his wife; that as of 1983, ISI's debt to PNB amounted to ₱71,847,217.00, as a result of the undercapitalized and undercollateralized loans extended to it; and that as signatory to the Deed of Undertaking, petitioner assumed the obligations of a surety.

Finally, the prosecution noted that petitioner's arguments in his Demurrer to Evidence constitute matters of defense which should be passed upon only after trial on the merits.

Ruling of the Sandiganbayan

On August 5, 2010, the *Sandiganbayan* issued the first assailed Resolution, which decreed as follows:

> **WHEREFORE**, considering all the foregoing, this Court **DENIES** the Demurrer to Evidence filed by accused Gregorio Singian, Jr. as the evidence for the prosecution sufficiently established the essential elements of the offense charged and overcame the presumption of innocence in favor of said accused.
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> **SO ORDERED**.[36]

Petitioner's Motion for Reconsideration[37] having been denied on November 18, 2010 by the respondent court, he filed the present Petition for *Certiorari*.

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35 Id. at 531.
36 Id. at 67. Emphases in the original.
37 Id. at 109-130.

Issues

Petitioner raises the following issues:

> THE RESPONDENT SANDIGANBAYAN ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED [RESOLUTIONS] X X X CONSIDERING THAT:
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> I.
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> THE FIRST ELEMENT OF SECTION 3(G) OF R.A. 3019 IS NOT PRESENT BECAUSE THE EXISTENCE OF CONSPIRACY IS NEGATED BY THE FACT THAT THE PUBLIC OFFICERS WHO WERE RESPONSIBLE FOR GRANTING THE LOANS IN QUESTION WERE NEVER CHARGED, ACCUSED OR INCLUDED IN THE INFORMATIONS SUBJECT OF THESE CASES.
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> II.
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> EVEN IF IT IS PRESUMED, PURELY IN *GRATIA ARGUMENTIS*, THAT A CONSPIRACY ATTENDED THE GRANT OF THE QUESTIONED LOANS TO ISI, THERE IS, NEVERTHELESS, NO OVERT ACT ATTRIBUTABLE TO THE PETITIONER THAT EVEN REMOTELY JUSTIFIES HIS INCLUSION IN THE PROSECUTION'S CONSPIRACY DRAGNET.
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> III.
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> THE PROSECUTION'S EXHIBITS "C" (ALSO MARKED AS EXHIBIT "RR") AND "QQ" WHICH THE PROSECUTION FOISTED TO MAKE IT APPEAR THAT THE CREDIT ACCOMMODATIONS SUBJECT OF THE CRIMINAL CASES BELOW ARE BEHEST LOANS, DO NOT HAVE ANY PROBATIVE VALUE AND ARE COMPLETELY INADMISSIBLE BECAUSE THEY ARE UNDISPUTABLY AND BLATANTLY HEARSAY.[38]

Petitioner's Arguments

Essentially, petitioner reiterates all his arguments in his Demurrer to Evidence and Motion for Reconsideration of the respondent court's denial thereof. He emphasizes, however, that he had nothing to do with the application and grant of the questioned loans, since he was never a member of ISI's Board of Directors which, under the law and ISI by-laws, had the sole power and authority to approve and obtain loans and give collaterals to secure the same; nor is he a stockholder of ISI. Nor has it been shown from the testimonial and documentary evidence that as Executive Vice-President, he participated in ISI's loan and credit transactions, or that he actively participated in the commission of the crimes of which he is charged. Without such proof, petitioner believes that he may not be charged with conspiracy.

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[38] Id. at 22-23.

Petitioner adds that no evidence was presented as well to show that he had any participation in PNB's failure to verify and take action against ISI to compel it to put up additional capital and collaterals, or that he was responsible for PNB's failure to collect or secure full payment of the ISI credit.

Finally, petitioner justifies his resort to *certiorari* on the argument that the collective acts of the prosecution and the respondent court constitute a denial of his constitutional right to due process, which gives ground for the availment of the extraordinary remedy.[39]

Respondents' Arguments

In its Comment,[40] the prosecution asserts that the respondent court did not commit grave abuse of discretion in denying the Demurrer to Evidence arguing that in petitioner's case, all the elements under Section 3(g) exist to hold petitioner liable. It adds that petitioner was part of the conspiracy to defraud the government, as evidenced by his participation and signature in the Deed of Undertaking, the terms of which ISI violated and PNB failed to enforce.

On the other hand, the PCGG in its Comment[41] adopts the arguments of the prosecution and asserts that the respondent court arrived at its conclusion after careful examination of the record and the evidence, which justify a finding sustaining petitioner's indictment. It adds that all the elements of the crime under Section 3(g) have been proved, which thus justifies a denial of petitioner's Demurrer to Evidence.

Our Ruling

The Court dismisses the Petition.

Demurrer to evidence

"A demurrer to the evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The court, in passing upon the sufficiency of the evidence raised in a

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39 Citing *Toledo, Jr. v. People*, 174 Phil. 582 (1978).
40 *Rollo*, pp. 461-497.
41 Id. at 549-568.

demurrer, is merely required to ascertain whether there is *competent* or *sufficient* evidence to sustain the indictment or to support a verdict of guilt."[42]

"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."[43]

Elements of Section 3(g), RA 3019

For one to be successfully prosecuted under Section 3(g) of RA 3019, the following elements must be proven: "1) the accused is a public officer; 2) the public officer entered into a contract or transaction on behalf of the government; and 3) the contract or transaction was grossly and manifestly disadvantageous to the government."[44] However, private persons may likewise be charged with violation of Section 3(g) of RA 3019 if they conspired with the public officer. Thus, "if there is an allegation of conspiracy, a private person may be held liable together with the public officer, in consonance with the avowed policy of the Anti-Graft and Corrupt Practices Act which is 'to repress certain acts of public officers and private persons alike which may constitute graft or corrupt practices or which may lead thereto.'"[45]

The Sandiganbayan found competent or sufficient evidence to sustain the indictment or to support a verdict of guilt for violation of Section 3(g), RA 3019

The *Sandiganbayan* found that the prosecution presented sufficient or competent evidence to establish the three material elements of Section 3(g) of RA 3019. *First*, although petitioner is a private person, he was shown to have connived with his co-accused. *Second*, ISI and PNB entered into several loan transactions and credit accommodations. *Finally*, the loan transactions proved disadvantageous to the government.

There is no grave abuse of discretion on the part of the Sandiganbayan in

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42 *Soriquez v. Sandiganbayan (Fifth Division)*, 510 Phil. 709, 706.
43 *Gutib v. Court of Appeals*, 371 Phil. 293, 300, 305 (1999).
44 *Nava v. Palattao*, 531 Phil. 345, 372 (2006).
45 *Go v. Sandiganbayan*, G.R. No. 172602, April 16, 2009, 585 SCRA 404, 405-406.

denying petitioner's Demurrer to Evidence

At the outset, we emphasize that "[t]he resolution of a demurrer to evidence should be left to the exercise of sound judicial discretion. A lower court's order of denial shall not be disturbed, that is, the appellate courts will not review the prosecution's evidence and precipitately decide whether such evidence has established the guilt of the accused beyond a reasonable doubt, unless accused has established that such judicial discretion has been gravely abused, thereby amounting to a lack or excess of jurisdiction. Mere allegations of such abuse will not suffice."[46]

"Grave abuse of discretion is the capricious and whimsical exercise of judgment on the part of the public officer concerned which is equivalent to an excess or lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility."[47]

In this case, petitioner miserably failed to present an iota of evidence to show that the *Sandiganbayan* abused, much more, gravely abused, its discretion in denying petitioner's Demurrer to Evidence. We agree with the PCGG's observation that the *Sandiganbayan* arrived at its conclusion after a careful and deliberate examination and assessment of all the evidence submitted. A closer scrutiny of the assailed Resolutions would indeed show that the *Sandiganbayan* meticulously discussed both testimonial and documentary evidence presented by the prosecution.[48] It was only after a careful analysis of the facts and evidence presented did the respondent court lay down its findings and conclusions.[49]

Based on the evidence presented, the *Sandiganbayan* was convinced that all three elements of Section 3(g), RA 3019 were satisfactorily established. It found that PNB and ISI entered into several contracts or loan transactions. The *Sandiganbayan* also assessed that petitioner conspired with his co-accused in defrauding the government considering "(1) the frequency of the loans or closeness of the dates at which they were granted; (2) the quantity of the loans granted; (3) the failure of the bank to verify and to take any action on the failure of ISI to put up additional capitalization and additional collaterals; and (4) the eventual absence of any action by the Bank to collect full payment from ISI."[50] The *Sandiganbayan* ratiocinated that –

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46 *Alarilla v. Sandiganbayan*, 393 Phil. 143, 154 (2000).
47 *Singian, Jr. v. Sandiganbayan*, supra note 5 at 545-546.
48 *Rollo*, pp. 55-62.
49 Id. at 62-67.
50 Id. at 63.

> x x x the loans subject of this case refer to not just one but several loans. The first two loans were granted in a span of two months x x x The first loan was in the amount of ₱16,287,500.00 when the capital stock of ISI amounted to only ₱1,000,000.00. This was followed by two additional loans [in] January and March 1973 x x x then another loan x x x in the following year x x x. Two years later x x x ISI obtained another loan x x x which was succeeded by an additional loan x x x. Still, ISI was granted two more loans x x x.
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> x x x x
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> However, all loans subject of this case were granted despite failure of ISI to raise its working capital, and to put up additional collateral. The Certificate of Filing of Amended Articles of Incorporation and the Amended Articles of Incorporation likewise show that ISI last increased its authorized capital stock to ₱7,000,000.00 on April 27, 1973, when the indebtedness of the corporation was already ₱16,360,000.00. Indeed, it would appear that inaction on the part of the PNB to notify ISI to further increase its capital and the corresponding inaction on the part of ISI to comply with its undertaking indicate conspiracy between the accused.
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> Accused-movant further negates his liability by asserting that his name does not appear in the Deed of Undertaking, and neither has he signed the same. A cursory examination of the Deed, however, reveals otherwise. It also bears stressing at this point that as he has never denied his position as Executive Vice[-] President of ISI, he would undeniably have participation in its transactions, especially where loan accommodations of the corporation are concerned.[51]

The *Sandiganbayan* also found that the loan transactions were grossly and manifestly disadvantageous to the government. Based on the documentary evidence presented by the prosecution, it noted that ISI was undercapitalized while the loans were undercollateralized. It also noted that the government was only able to foreclose properties amounting to ₱3 million whereas ISI's indebtedness stood at more than ₱71 million.

Based on the foregoing, we find no showing that "the conclusions made by the [*Sandiganbayan*] on the sufficiency of the evidence of the prosecution at the time the prosecution rested its case, [were] manifestly mistaken."[52] The *Sandiganbayan* did not exercise its judgment in a whimsical or capricious manner. As we aptly held:

> Given the sufficiency of the testimonial and documentary evidence against petitioner, it would, therefore, be premature at this stage of the proceedings to conclude that the prosecution's evidence failed to establish petitioner's participation in the alleged conspiracy to commit the crime. Likewise, the Court cannot, at this point, make a categorical pronouncement that the guilt of the petitioner has not been proven beyond reasonable doubt. As there is competent and sufficient evidence to sustain the indictment for the crime

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51 Id. at 63-65.

52 *Resoso v. Sandiganbayan*, 377 Phil. 249, 257 (1999).

> charged, it behooves petitioner to adduce evidence on his behalf to controvert the asseverations of the prosecution. Withal, respondent court did not gravely abuse its discretion when it found that there was a *prima facie* case against petitioner warranting his having to go forward with his defensive evidence.
>
> The determination of the sufficiency or insufficiency of the evidence presented by the prosecution as to establish a *prima facie* case against an accused is left to the exercise of sound judicial discretion. Unless there is a clear showing of a grave abuse of discretion amounting to lack or excess of jurisdiction, the trial court's denial of a motion to dismiss or a demurrer to evidence may not be disturbed.[53]

Similarly, we have also ruled that:

> When there is no showing of such grave abuse, *certiorari* is not the proper remedy. Rather, the appropriate recourse from an order denying a demurrer to evidence is for the court to proceed with the trial, after which the accused may file an appeal from the judgment of the lower court rendered after such trial. In the present case, we are not prepared to rule that the Sandiganbayan has gravely abused its discretion when it denied petitioner's demurrer to evidence. Public respondent found that the prosecution's evidence satisfactorily established the elements of the crime charged. Correspondingly, there is nothing in the records of this case nor in the pleadings of petitioner that would show otherwise.[54]

At this juncture, it is worth mentioning that the issues raised herein are almost the same as those raised by petitioner before the Court when he questioned the *Sandiganbayan's* denial of his Motion for Re-determination of Existence of Probable Cause.[55] In resolving petitioner's contention that he should not be made liable for ISI's failure to put up additional capitalization and collaterals because he is not a member of the Board of Directors, the Court declared that:

> True, the power to increase capitalization and to offer or give collateral to secure indebtedness are lodged with the corporation's [B]oard of [D]irectors. However, this does not mean that the officers of the corporation other than the [B]oard of [D]irectors cannot be made criminally liable for their criminal acts if it can be proven that they participated therein. In the instant case, there is evidence that petitioners participated in the loan transactions when he signed the undertaking. x x x[56]

Anent the issue regarding the sufficiency of ISI's collateral, we also declared the same to be "a matter of defense which should be best ventilated in a full-blown trial."[57] Moreover, we declared that –

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53 *Soriquez v. Sandiganbayan (Fifth Division)*, supra note 42 at 718-719.
54 *Alarilla v. Sandiganbayan*, supra note 46 at 154-155.
55 See *Singian, Jr. v. Sandiganbayan*, supra note 5 at 544-545.
56 Id. at 551.
57 Id. at 550.

> Fifth. It is petitioner's view that the prosecution failed to adduce evidence that he took part in any conspiracy relative to the grant of the loan transactions. Suffice it to state that the alleged absence of any conspiracy among the accused is evidentiary in nature and is a matter of defense, the truth of which can be best passed upon after a full-blown trial on the merits.[58]

In fine, we hold that "the presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits," and "the validity and merits of a party's defense or accusation, as well as admissibility of testimonies and evidence, are better ventilated during trial proper."[59] Petitioner's claims and defenses in his Demurrer to Evidence can best be tackled during trial. In the presentation of his defense, he shall have the opportunity to explain or show why he should not be made liable. For example, if there is any truth to the allegation in his Demurrer of Evidence that the Deed of Undertaking was altered, or that the signature therein affixed is not his own, such that there arise serious doubts as to his participation in the execution of said document, this can be resolved only upon proof presented during trial. Petitioner must present evidence regarding such claim, the truth of which he can demonstrate during trial. Since this Court is not a trier of facts, there is no way that this issue can be resolved by this Court at this stage of the proceedings.

In light of the foregoing, the Court finds that the respondent court did not commit grave abuse of discretion in denying petitioner's Demurrer to Evidence; it was done in the proper exercise of its jurisdiction.

WHEREFORE, the Petition is **DISMISSED**.

SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

ARTURO D. BRION
Associate Justice
Acting Chairperson

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[58] Id. at 551-552.

[59] *Andres v. Justice Secretary Cuevas*, 499 Phil. 36, 49-50 (2005); see also *Lee v. KBC Bank N.V.*, G.R. No. 164673, January 15, 2010, 610 SCRA 117, 129.

ROBERTO D. ABAD
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

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.

ARTURO D. BRION
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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.

MARIA LOURDES P. A. SERENO
Chief Justice