

EN BANC

[G.R. Nos. 164368-69, April 02, 2009]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. JOSEPH
EJERCITO ESTRADA AND THE HONORABLE SPECIAL DIVISION
OF THE SANDIGANBAYAN, RESPONDENTS.**

DECISION

BRION, J.:

The People of the Philippines (the People) filed this Petition for Review on Certiorari^[1] to seek the reversal of the Sandiganbayan's Joint Resolution dated July 12, 2004, granting respondent Joseph Ejercito Estrada's (Estrada) demurrer to evidence in Crim. Case No. 26565.^[2]

THE FACTS

On April 4, 2001, an Information for **plunder** (docketed as **Crim. Case No. 26558**) was filed with the Sandiganbayan against respondent Estrada, among other accused. A separate Information for illegal use of alias, docketed as **Crim. Case No. 26565**, was likewise filed against Estrada. The Amended Information in Crim. Case No. 26565 reads:

That on or about 04 February 2000, or sometime prior or subsequent thereto, in the City of Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then President of the Republic of the Philippines, without having been duly authorized, judicially or administratively, taking advantage of his position and committing the offense in relation to office, i.e., in order to CONCEAL THE ill-gotten wealth HE ACQUIRED during his tenure and his true identity as THE President of the Republic of the Philippines, did then and there, willfully, unlawfully and criminally REPRESENT HIMSELF AS `JOSE VELARDE' IN SEVERAL TRANSACTIONS AND use and employ the SAID alias "Jose Velarde" which IS neither his registered name at birth nor his baptismal name, in signing documents with Equitable PCI Bank and/or other corporate entities.

CONTRARY TO LAW.

Crim. Case Nos. 26565 and 26558 were subsequently consolidated for joint trial. Still another Information, this time for **perjury** and docketed as **Crim. Case No. 26905**, was filed with the Sandiganbayan against Estrada. This was later consolidated, too, with Crim. Cases No. 26558 and 26565.

Estrada was subsequently arrested on the basis of a warrant of arrest that the Sandiganbayan issued.

On January 11, 2005, we ordered the creation of a Special Division in the Sandiganbayan to try, hear, and decide the charges of plunder and related cases (illegal use of alias and perjury) against respondent Estrada.^[3]

At the trial, the People presented testimonial and documentary evidence to prove the allegations of the Informations for plunder, illegal use of alias, and perjury. The People's **evidence for the illegal alias charge**, as summarized by the Sandiganbayan, consisted of:

- A. The testimonies of Philippine Commercial and Industrial Bank (*PCIB*) officers Clarissa G. Ocampo (*Ocampo*) and Atty. Manuel Curato (*Curato*) who commonly declared that on February 4, 2000, Estrada opened a numbered trust account (*Trust Account C-163*) with PCIB and signed as "Jose Velarde" in the account opening documents; both Ocampo and Curato also testified that Aprodicio Lacquian and Fernando Chua were present on that occasion;
- B. (1) The testimony of PCIB-Greenhills Branch Manager Teresa Barcelan, who declared that a certain Baby Ortaliza (*Ortaliza*) transacted several times with her; that Ortaliza deposited several checks in PCIB Savings Account No. 0160-62502-5 under the account name "Jose Velarde" on the following dates (as evidenced by deposit receipts duly marked in evidence):
 - a. 20 October 1999 (Exh. "MMMMM")
 - b. 8 November 1999 (Exh. "LLLLL")
 - c. 22 November 1999 (Exh. "NNNNN")
 - d. 24 November 1999 (Exh. "OOOOO")
 - e. 25 November 1999 (Exh. "PPPPP")
 - f. 20 December 1999 (Exh. "QQQQQ")
 - g. 21 December 1999 (Exh. "RRRRR")
 - h. 29 December 1999 (Exh. "SSSSS")
 - i. 4 January 2000 (Exh. "TTTTT")
 - j. 10 May 2000 (Exh. "UUUUU")
 - k. 6 June 2000 (Exh. "VVVVV")
 - l. 25 July 2000 (Exh. "WWWWW")

(2) Documents duly identified by witnesses showing that Lucena Ortaliza was employed in the Office of the Vice President and, later on, in the Office of the President when Estrada occupied these positions and when deposits were made to the Jose Velarde Savings Account No. 0160-62502-5.

The People filed its Formal Offer of Exhibits in the consolidated cases, which the Sandiganbayan admitted into evidence in a Resolution dated October 13, 2003.^[4] The accused separately moved to reconsider the Sandiganbayan Resolution;^[5] the People, on the other hand, filed its Consolidated Comment/Opposition to the motions.^[6] The Sandiganbayan denied the motions in its Resolution dated November 17, 2003.^[7]

After the People rested in all three cases, the defense moved to be allowed to file a demurrer to evidence in these cases.^[8] In its Joint Resolution dated March 10, 2004,^[9] the Sandiganbayan only granted the defense leave to file demurrers in

Crim. Case Nos. 26565 (illegal use of alias) and 26905 (perjury).

Estrada filed separate Demurrers to Evidence for Crim. Case Nos. 26565 and 26905. [10] His demurrer to evidence for Crim. Case No. 26565 (illegal use of alias) was anchored on the following grounds[11]:

1. Of the thirty-five (35) witnesses presented by the prosecution, only two (2) witnesses, Ms. Clarissa Ocampo and Atty. Manuel Curato, testified that on one occasion (4 February 2000), they saw movant use the name "Jose Velarde";
2. The use of numbered accounts and the like was legal and was prohibited only in late 2001 as can be gleaned from Bangko Sentral Circular No. 302, series of 2001, dated 11 October 2001;
3. There is no proof of public and habitual use of alias as the documents offered by the prosecution are banking documents which, by their nature, are confidential and cannot be revealed without following proper procedures; and
4. The use of alias is absorbed in plunder.

The People opposed the demurrers through a Consolidated Opposition that presented the following arguments:[12]

1. That the use of fictitious names in bank transaction was not expressly prohibited until BSP No. 302 is of no moment considering that as early as Commonwealth Act No. 142, the use of alias was already prohibited. Movant is being prosecuted for violation of C.A. No. 142 and not BSP Circular No. 302;
2. Movant's reliance on *Ursua vs. Court of Appeals* (256 SCRA 147 [1996]) is misplaced;
3. Assuming *arguendo* that C.A. No. 142, as amended, requires publication of the alias and the habitual use thereof, the prosecution has presented more than sufficient evidence in this regard to convict movant for illegal use of alias; and
4. Contrary to the submission of movant, the instant case of illegal use of alias is not absorbed in plunder.

Estrada replied to the Consolidated Opposition through a Consolidated Reply Opposition.

THE ASSAILED SANDIGANBAYAN'S RULING

The Sandiganbayan issued on July 12, 2004 the Resolution now assailed in this petition. The salient points of the assailed resolution are:

First - the coverage of Estrada's indictment. The Sandiganbayan found that the only relevant evidence for the indictment are those relating to what is described in the

Information - *i.e.*, the testimonies and documents on the opening of Trust Account C-163 on February 4, 2000. The Sandiganbayan reasoned out that the use of the disjunctive "**or**" between "**on or about 04 February 2000**" and "**sometime prior or subsequent thereto**" means that the act/s allegedly committed on February 4, 2000 could have actually taken place *prior to or subsequent thereto*; the use of the conjunctive was simply the prosecution's procedural tool to guard against any variance between the date stated in the Information and that proved during the trial in a situation in which time was not a material ingredient of the offense; it does not mean and cannot be read as a roving commission that includes acts and/or events **separate and distinct** from those that took place on the single date "on or about 04 February 2000 or sometime prior or subsequent thereto." The Sandiganbayan ruled that the use of the disjunctive "or" prevented it from interpreting the Information any other way.

Second - the People's failure to present evidence that proved Estrada's commission of the offense. The Sandiganbayan found that the People failed to present evidence that Estrada committed the crime punished under Commonwealth Act No. 142, as amended by Republic Act (R.A.) No. 6085 (CA 142), as interpreted by the Supreme Court in *Ursua v. Court of Appeals*.^[13] It ruled that there is an illegal use of alias within the context of CA 142 only if the use of the alias is **public** and **habitual**. In Estrada's case, the Sandiganbayan noted, the application of the principles was not as simple because of the complications resulting from the nature of the transaction involved - the alias was used in connection with the opening of a numbered trust account made during the effectivity of R.A. No. 1405, as amended,^[14] and prior to the enactment of Republic R.A. No. 9160.^[15]

Estrada did *not* publicly use the alias "Jose Velarde":

a. Estrada's use of the alias "Jose Velarde" in his dealings with Dichavez and Ortaliza *after* February 4, 2000 is not relevant in light of the conclusion that the acts imputed to Estrada under the Information were the act/s committed on February 4, 2000 only. Additionally, the phrase, "Estrada did ... represent himself as `Jose Velarde' in several transactions," standing alone, violates Estrada's right to be informed of the nature and the cause of the accusation, because it is very general and vague. This phrase is qualified and explained by the succeeding phrase - "and use and employ the said alias `Jose Velarde'" - which "is neither his registered name at birth nor his baptismal name, in signing documents with Equitable PCI Bank and/or other corporate entities." Thus, Estrada's representations before persons other than those mentioned in the Information are immaterial; Ortaliza and Dichavez do not fall within the "Equitable PCI Bank and/or other corporate entities" specified in the Information. Estrada's representations with Ortaliza and Dichavez are not therefore covered by the indictment.

b. The Sandiganbayan rejected the application of the principle in the law of libel that mere communication to a third person is publicity; it reasoned out that that the definition of publicity is not limited to the way it is defined under the law on libel; additionally, the application of the libel law definition is onerous to the accused and is precluded by the ruling in *Ursua* that CA No. 142, as a penal statute, should be construed strictly against the State and favorably for the accused. It ruled that the definition under the law on libel, even if it applies, considers a communication to a third person covered by the privileged communication rule to be non-actionable.

Estrada's use of the alias in front of Ocampo and Curato is one such privileged communication under R.A. No. 1405, as amended. The Sandiganbayan said:

Movant's act of signing "Jose Velarde" in bank documents being absolutely confidential, the witnessing thereof by bank officers who were likewise sworn to secrecy by the same law cannot be considered as 'public' as to fall within the ambit of CA 142 as amended. On account of the absolute confidentiality of the transaction, it cannot be said that movant intended to be **known** by this name in addition to his real name. *Confidentiality and secrecy negate publicity. Ursua* instructs:

Hence, the use of a fictitious name or a different name belonging to another person in a single instance without any sign or indication that the user **intends to be known** by this name in addition to his real name from that day forth does not fall within the prohibition in C.A. No. 142 as amended.

c. The Sandiganbayan further found that the intention not to be publicly known by the name "Jose Velarde" is shown by the nature of a numbered account - a perfectly valid banking transaction *at the time* Trust Account C-163 was opened. The opening, too, of a numbered trust account, the Sandiganbayan further ruled, did not impose on Estrada the obligation to disclose his real identity - the obligation R.A. No. 6713 imposes is to file under oath a statement of assets and liabilities.^[16] Reading CA No. 142, R.A. No. 1405 and R.A. No. 6713 together, Estrada had the absolute obligation to disclose his assets including the amount of his bank deposits, but he was under no obligation at all to disclose the other particulars of the bank account (such as the name he used to open it).

Third - the effect of the enactment of R.A. No. 9160.^[17] The Sandiganbayan said that the absolute prohibition in R.A. No. 9160 against the use of anonymous accounts, accounts under fictitious names, and all other similar accounts, is a legislative acknowledgment that a gaping hole previously existed in our laws that allowed depositors to hide their true identities. The Sandiganbayan noted that the prohibition was lifted from Bangko Sentral ng Pilipinas (BSP) Circular No. 251 dated July 7, 2000 - another confirmation that the opening of a numbered trust account was perfectly legal when it was opened on February 4, 2000.

The Sandiganbayan ruled that the provisions of CA No. 142, as interpreted in *Ursua*, must necessarily be harmonized with the provisions of R.A. No. 1405 and R.A. No. 9160 under the principle that every statute should be construed in a way that will harmonize it with existing laws. A reasonable scrutiny, the Sandiganbayan said, of all these laws in relation to the present case, led it to conclude that the use of an alias within the context of a bank transaction (specifically, the opening of a numbered account made before bank officers) is protected by the secrecy provisions of R.A. No. 1405, and is thus outside the coverage of CA No. 142 until the passage into law of R.A. No. 9160.

THE PETITION

The People filed this petition raising the following issues:

1. Whether the court *a quo* gravely erred and abused its discretion in dismissing Crim. Case No. 26565 and in holding that the use by