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facts of which plainly call for the exercise of jurisdiction by the regular courts for their resolution.

WHEREFORE, premises considered, the instant Petition is *DENIED*. The Decision dated 19 July 2007 and the Resolution dated 10 December 2007 of the Court of Appeals in CA-G.R. SP No. 97731 are hereby *AFFIRMED in toto*. Costs against the petitioner.

SO ORDERED.

Quisumbing,[*] *Carpio,*[**] *Nachura,* and *Peralta, JJ.*, concur.

THIRD DIVISION

[G.R. No. 168918. March 2, 2009]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **HERMENEGILDO DUMLAO *y* CASTILIANO and EMILIO LA'O *y* GONZALES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; SUFFICIENCY OF; TEST. — The fundamental test in determining the sufficiency of the material averments of an information is whether the facts alleged therein, which are hypothetically admitted, would establish the essential elements of the crime defined by law. Evidence *aliunde*, or matters extrinsic of the Information, are not to be considered.

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[*] Per Special Order No. 564, dated 12 February 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Leonardo A. Quisumbing to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave under the Court's Wellness Program.

[**] Per Special Order No. 568, dated 12 February 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Antonio T. Carpio to replace Associate Justice Ma. Alicia Austria-Martinez, who is on official leave under the Court's Wellness Program.

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2. CRIMINAL LAW; VIOLATION OF SECTION 3(G) OF REPUBLIC ACT NO. 3019; ELEMENTS. —The elements of the crime under Section 3(g) of Republic Act No. 3019 are as follows: (1) that the accused is a public officer; (2) that he entered into a contract or transaction on behalf of the government; and (3) that such contract or transaction is grossly and manifestly disadvantageous to the government.

3. REMEDIAL LAW; CRIMINAL PROCEDURE; MOTION TO QUASH; GROUNDS. — Insufficiency of evidence is not one of the grounds of a Motion to Quash. The grounds, as enumerated in Section 3, Rule 117 of the Revised Rules of Criminal Procedure, are as follows: "(a) That the facts charged do not constitute an offense; (b) That the court trying the case has no jurisdiction over the offense charged; (c) That the court trying the case has no jurisdiction over the person of the accused; (d) That the officer who filed the information had no authority to do so; (e) That it does not conform substantially to the prescribed form; (f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law; (g) That the criminal action or liability has been extinguished; (h) That it contains averments which, if true, would constitute a legal excuse or justification; and (i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent."

4. ID.; ID.; TRIAL; DEMURRER TO EVIDENCE; INSUFFICIENCY OF EVIDENCE; A GROUND FOR DISMISSAL OF AN ACTION ONLY AFTER THE PROSECUTION RESTS ITS CASE. — Insufficiency of evidence is a ground for dismissal of an action only after the prosecution rests its case. Section 23, Rule 119 of the Revised Rules of Criminal Procedure provides: "Sec. 23. *Demurrer to evidence*. — After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court."

5. MERCANTILE LAW; CORPORATION LAW; CORPORATIONS; RESOLUTION AND MINUTES, DISTINGUISHED. — A resolution is distinct and different from the minutes of the meeting. A board *resolution* is a formal action by a corporate

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board of directors or other corporate body authorizing a particular act, transaction, or appointment. It is ordinarily special and limited in its operation, applying usually to some single specific act or affair of the corporation; or to some specific person, situation or occasion. On the other hand, *minutes* are a brief statement not only of what transpired at a meeting, usually of stockholders/members or directors/trustees, but also at a meeting of an executive committee. The minutes are usually kept in a book specially designed for that purpose, but they may also be kept in the form of memoranda or in any other manner in which they can be identified as minutes of a meeting.

6. ID.; ID.; ID.; MEETINGS; MINUTES; NEED NOT BE SIGNED BY ALL THE MEMBERS OF THE BOARD; CASE AT BAR. — The Sandiganbayan concluded that since only three members out of seven signed the minutes of the meeting of 23 April 1982, the resolution approving the Lease-Purchase Agreement was not passed by the GSIS Board of Trustees. Such conclusion is erroneous. The non-signing by the majority of the members of the GSIS Board of Trustees of the said minutes does not necessarily mean that the supposed resolution was not approved by the board. The signing of the minutes by all the members of the board is not required. There is no provision in the Corporation Code of the Philippines that requires that the minutes of the meeting should be signed by all the members of the board.

7. ID.; ID.; ID.; ID.; ID.; THE SIGNATURE OF THE CORPORATE SECRETARY GIVES THE MINUTES OF THE MEETINGS PROBATIVE VALUE AND CREDIBILITY; CASE AT BAR. — The proper custodian of the books, minutes and official records of a corporation is usually the corporate secretary. Being the custodian of corporate records, the corporate secretary has the duty to record and prepare the minutes of the meeting. The signature of the corporate secretary gives the minutes of the meeting probative value and credibility. In this case, Antonio Eduardo B. Nachura, Deputy Corporate Secretary, recorded, prepared and certified the correctness of the minutes of the meeting of 23 April 1982; and the same was confirmed by Leonilo M. Ocampo, Chairman of the GSIS Board of Trustees. Said minutes contained the statement that the board approved the sale of the properties, subject matter of this case, to respondent La'o. The minutes of the meeting of 23 April 1982 were prepared

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by the Deputy Corporate Secretary of the GSIS Board of Trustees. Having been made by a public officer, the minutes carry the presumption of regularity in the performance of his functions and duties. Moreover, the entries contained in the minutes are *prima facie* evidence of what actually took place during the meeting, pursuant to Section 44, Rule 130 of the Revised Rule on Evidence.

8. REMEDIAL LAW; CRIMINAL PROCEDURE; MOTION TO QUASH; DOUBLE JEOPARDY; REQUISITES. — To raise the defense of double jeopardy, three requisites must be present: (1) a first jeopardy must have attached prior to the second; (2) the first jeopardy must have been validly terminated; and (3) the second jeopardy must be for the same offense as that in the first. The first jeopardy attaches only (1) upon a valid indictment; (2) before a competent court; (3) after arraignment; (4) when a valid plea has been entered; and (5) when the defendant was convicted or acquitted, or the case was dismissed or otherwise terminated without the express consent of the accused.

9. ID.; ID.; ID.; ID.; A JUDGMENT WHICH IS VOID FOR LACK OF DUE PROCESS IS EQUIVALENT TO EXCESS OR LACK OF JURISDICTION AND CANNOT BE THE BASIS OF DOUBLE JEOPARDY; CASE AT BAR. — In the instant case, double jeopardy has not yet set in. The first jeopardy has not yet attached. There is no question that four of the five elements of legal jeopardy are present. However, we find the last element – valid conviction, acquittal, dismissal or termination of the case – wanting. x x x [T]he Sandiganbayan violated the prosecution's right to due process. The prosecution was deprived of its opportunity to prosecute its case and to prove the accused's culpability. The dismissal was made in a capricious and whimsical manner. The trial court dismissed the case on a ground not invoked by the respondent. The Sandiganbayan dismissed the case for insufficiency of evidence, while the ground invoked by the respondent was that *the facts charged did not constitute an offense.* The dismissal was clearly premature, because any dismissal based on insufficiency of evidence may only be made after the prosecution rests its case and not at any time before then. A purely capricious dismissal of an information deprives the State of a fair opportunity to prosecute and convict. It denies the prosecution a day in court. It is

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void and cannot be the basis of double jeopardy. The cardinal precept is that where there is a violation of basic constitutional rights, courts are ousted of their jurisdiction. Where the denial of the fundamental right to due process is apparent, a decision in disregard of the right is void for lack of jurisdiction. In the instant case, there was **no error of judgment but a denial of due process resulting in loss of jurisdiction.** Respondent Dumlao would not be placed in double jeopardy because, from the very beginning, the Sandiganbayan had acted without jurisdiction. Precisely, any ruling issued without jurisdiction is, in legal contemplation, necessarily null and void and does not exist. Otherwise put, the dismissal of the case below was invalid for lack of a fundamental prerequisite, that is, due process. In rendering the judgment of dismissal, the trial court acted without or in excess of jurisdiction, for a judgment which is void for lack of due process is equivalent to excess or lack of jurisdiction. This being the case, the prosecution is allowed to appeal because it was not given its day in court.

10. CRIMINAL LAW; CONSPIRACY; WHEN THE ACQUITTAL OR DEATH OF A CO-CONSPIRATOR DOES NOT REMOVE THE BASIS OF A CHARGE OF CONSPIRACY, ONE DEFENDANT MAY BE FOUND GUILTY OF THE OFFENSE. — A conspiracy is in its nature a joint offense. One person cannot conspire alone. The crime depends upon the joint act or intent of two or more persons. Yet, it does not follow that one person cannot be convicted of conspiracy. As long as the acquittal or death of a co-conspirator does not remove the basis of a charge of conspiracy, one defendant may be found guilty of the offense.

11. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; CONSTITUTIONAL RIGHT TO EQUAL PROTECTION; NOT VIOLATED IN CASE AT BAR.— We are not convinced that respondent Dumlao was unfairly discriminated against and his constitutional right to equal protection violated. It must be remembered that the manner in which the prosecution of the case is handled is within the sound discretion of the prosecutor, and the non-inclusion of other guilty persons is irrelevant to the case against the accused. We find that there was no clear and intentional discrimination in charging respondent Dumlao. A discriminatory purpose is never presumed. It must be remembered that it was not solely respondent who was

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charged, but also five of the seven board members. If, indeed, there were discrimination, respondent Dumlao alone could have been charged. But this was not the case. Further, the fact that the dismissal of the case against his co-accused Canlas and Clave was not appealed is not sufficient to cry discrimination. This is likewise true for the non-inclusion of the two government officials who signed the Lease-Purchase Agreement and the other two board members. Mere speculation, unsupported by convincing evidence, cannot establish discrimination on the part of the prosecution and the denial to respondent of the equal protection of the laws.

APPEARANCES OF COUNSEL

Benjamin A. Moraleda, Jr. & Bonifacio A. Tavera, Jr. for H.C. Dumlao.

D E C I S I O N

CHICO-NAZARIO, *J.*:

On appeal is the Resolution[1] of the Sandiganbayan in Criminal Case No. 16699 dated 14 July 2005 which granted the Motion to Dismiss/Quash of respondent Hermenegildo C. Dumlao and dismissed the case against him. The Sandiganbayan likewise ordered the case against respondent Emilio G. La'o archived. The dispositive portion of the resolution reads:

WHEREFORE, finding the Motion to Dismiss/Quash filed by accused Hermenegildo C. Dumlao to be meritorious this case as against him is hereby ordered DISMISSED.

The cash bond posted by him is hereby cancelled and accused Dumlao is allowed to withdraw the same from the Cashier's Office of this Court.

The hold departure order issued by this Court against herein accused Dumlao is lifted and set aside.

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[1] Penned by Associate Justice Godofredo L. Legaspi with Associate Justices Efren N. de la Cruz and Norberto Y. Geraldez, concurring; *rollo*, pp. 13-19.

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The Commissioner of the Bureau of Immigration and Deportation is ordered to cancel the name of accused Hermenegildo C. Dumlao from the Bureau's Hold Departure List.

This case as against Emilio La'o who is still at large is ordered archived.[2]

On 19 July 1991, an Amended Information was filed before the Sandiganbayan charging respondents Dumlao and La'o, Aber P. Canlas, Jacobo C. Clave, Roman A. Cruz, Jr. and Fabian C. Ver with violation of Section 3(g) of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act. The case was docketed as Criminal Case No. 16699. The accusatory portion of the information reads:

That on or about May 10, 1982, or for sometime prior or subsequent thereto, in Manila, Philippines, and within the jurisdiction of this Honorable Court, the accused Hermenegildo C. Dumlao, Aber Canlas, Jacobo C. Clave, Roman A. Cruz, Jr., and Fabian C. Ver, being then the members of the Board of Trustees of the Government Service Insurance System (GSIS) which is a government corporation and therefore all public officers, conspiring and confederating together and mutually helping one another, while in the performance of their official functions, did then and there willfully, unlawfully and criminally enter into contract of lease-purchase with Emilio G. La'o, a private person whereby the GSIS agreed to sell to said Emilio G. La'o, a GSIS acquired property consisting of three parcels of land with an area of 821 square meters together with a 5-storey building situated at 1203 A. Mabini St., Ermita, Manila, known as the Government Counsel Centre for the sum of ₱2,000,000.00 with a down payment of ₱200,000.00 with the balance payable in fifteen years at 12% interest per annum compounded yearly, with a yearly amortization of ₱264,278.37 including principal and interest granting Emilio G. La'o the right to sub-lease the ground floor for his own account during the period of lease, from which he collected yearly rentals in excess of the yearly amortization which contract is manifestly and grossly disadvantageous to the government.[3]

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[2] *Id.* at 19.

[3] Records, Vol. 1, pp. 204-205.

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When arraigned on 9 November 2004, respondent Dumlao, with the assistance of counsel *de parte*, pleaded "not guilty" to the offense charged.[4] As agreed upon by the prosecution and respondent Dumlao, a *Joint Stipulation of Facts and Admission of Exhibits* was submitted to the court on 10 January 2005.[5] On the basis thereof, the court issued on 19 January 2005 the following Pre-Trial Order:

PRE-TRIAL ORDER

The Prosecution and Accused Hermenegildo C. Dumlao, as assisted by counsel, submitted their "JOINT STIPULATION OF FACTS AND ADMISSION OF EXHIBITS" dated December 21, 2004, quoted hereunder:

I. STIPULATION OF FACTS

The Prosecution and Accused Dumlao jointly stipulate on the following:

1. That at the time material to this case, the following were members of the Board of Trustees of the Government Service Insurance System (GSIS):

a. Hermenegildo C. Dumlao
b. Aber P. Canlas
c. Jacobo C. Clave
d. Roman A. Cruz
e. Fabian C. Ver
f. Leonilo M. Ocampo and
g. Benjamin C. Morales;

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[4] Records, Vol. 7, p. 250.

Emilio La'o was arraigned on 7 August 1991 (Records, Vol. I, pp. 249-251). The case against him was dismissed because of his death.

The cases against Roman A. Cruz, Jr. and Fabian C. Ver were likewise dismissed on the account of their deaths. (Records, Vol. VI, p. 125.)

Aber P. Canlas and Jacobo C. Clave were arraigned on 20 January 2004. (Records, Vol. VI, pp. 505-506). The cases against them were dismissed on 4 October 2004. (Records, Vol. VII, pp. 233-241).

[5] *Id.* at 306-311.

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2. That Emilio Gonzales La'o is a private person;

3. That GSIS was the owner of a property consisting of three (3) parcels of land with an area of 821 square meters, together with a 5-storey building situated as 1203 A. Mabini Street, Ermita, Manila known as the Government Counsel Centre;

4. That on June 22, 1978, the GSIS entered into a Lease-Purchase Agreement with the Republic of the Philippines through the Office of the Government Corporate Counsel (OGCC) involving the property described under paragraph 3 above, for a consideration of ₱1.5 million payable in equal yearly amortizations for a period of fifteen (15) years with zero interest. The period should commence after the GSIS shall have renovated the building according to the specification of the OGCC;

5. That in accordance with the June 22, 1978 Lease-Purchase Agreement, the 5-storey building was renovated. Thereafter, the OGCC occupied the same;

6. That Ferdinand E. Marcos was, at all-times material hereto, the President of the Republic of the Philippines;

7. That then President was at all times material hereto, legislating through the issuance of Presidential Decrees, Executive Orders and the like;

8. That among the three Members of the Board who signed the Minutes only accused Dumlao was charged in this case;

9. That there are only seven (7) members of the Board of Trustees of the GSIS present during the board meeting held on April 23, 1982;

10. Exhibit "A" and "1" entitled Agreement was signed by Luis A. Javellana, for and in behalf of the GSIS, Felipe S. Aldaña, for and [in] behalf of the Republic of the Philippines thru Government Corporate Counsel, and Emilio Gonzales La'o, as buyer.

II. DOCUMENTARY EVIDENCE

The Prosecution and Accused Dumlao admitted the authenticity and due execution of the following documentary evidence:

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EXHIBITS		DESCRIPTION
"A" (also Exhibit "1" for accused Dumlao		The Agreement executed by and among the GSIS, the Republic of the Philippines, through OGCC and accused Emilio Gonzales La'o on May 10, 1982, consisting of 11 pages;
"B" (also Exhibit "2" for accused Dumlao)		The pertinent portion, including the signature page, of Minutes of Meeting No. 14 of the GSIS Board of Trustees held on April 23, 1982, specifically containing item no. 326 regarding the approval of the proposed Agreement by and among the GSIS, the Republic of the Philippines through the OGCC and accused Emilio Gonzales La'o, consisting of 5 pages.

III. RESERVATION

The Prosecution and Accused Dumlao reserve the right to mark and offer in evidence the documents mentioned in their respective Pre-Trial Briefs, as well as to present the witnesses listed therein.

IV. ISSUE

Whether or not accused Dumlao is liable for violation of Section 3(g), RA 3019.

WHEREFORE, with the submission by the parties of their Joint Stipulation of Facts, the pre-trial is deemed terminated. Let the above-mentioned joint stipulation as recited in this pre-trial order bind the parties, limit the trial to matters not disposed of, and control the course of the proceedings in this case unless modified by the Court to prevent manifest injustice.[6]

[6] *Id.* at 313-315.

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On 21 February 2005, respondent Dumlao filed a Motion to Dismiss/Quash on the ground that the facts charged do not constitute an offense.[7] He stated that the prosecution's main thrust against him was the alleged approval by the Government Service Insurance System (GSIS) Board of Trustees — of which he was a member — of the Lease-Purchase Agreement entered into by and among the GSIS, the Office of the Government Corporate Counsel (OGCC) and respondent La'o. He argued that the allegedly approved Board Resolution was not in fact approved by the GSIS Board of Trustees, contrary to the allegations in the information. Since the signatures of Fabian Ver, Roman Cruz, Aber Canlas and Jacobo Clave did not appear in the minutes of the meeting held on 23 April 1982, he said it was safe to conclude that these people did not participate in the alleged approval of the Lease-Purchase Agreement. This being the case, he maintained that there was no quorum of the board to approve the supposed resolution authorizing the sale of the GSIS property. There being no approval by the majority of the Board of Trustees, there can be no resolution approving the Lease-Purchase Agreement. The unapproved resolution, he added, proved his innocence. He further contended that the person to be charged should be Atty. Luis Javellana, who sold the subject property to respondent La'o without the proper authority. He likewise wondered why he alone was charged without including the other two signatories in the minutes of the meeting held on 23 April 1982.

On 14 July 2005, the Sandiganbayan issued the assailed resolution. It ruled:

> The Court finds the motion meritorious. The minutes of the meeting held on April 23, 1982 of the Board of Trustees of GSIS shows that the Board failed to approve the Lease-Purchase Agreement in question. As stipulated upon by both parties out of the seven (7) members of GSIS Board of Trustees only three (3) members signed the minutes, the others did not. In order to validly pass a resolution at least a majority of four (4) members of the Board of Trustees must sign and approve the same.

[7] *Id.* at 322-327.

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No amount of evidence can change the fact that Resolution dated April 23, 1982 was not validly passed by the Board of Trustees of GSIS since it was only signed by three (3) members of the Board. Thus, it never had the force and effect of a valid resolution and did not in effect approve the Lease and Purchase Agreement subject matter hereof. Therefore, the prosecution has no cause of action against herein movant-accused Hermenegildo C. Dumlao.[8]

On 2 September 2005, the People of the Philippines, represented by the Office of the Ombudsman, thru the Office of the Special Prosecutor, filed a petition for *certiorari*[9] under Rule 45 of the Rules of Court seeking the reversal and setting aside of the Sandiganbayan Resolution dismissing the case against respondent Dumlao. Petitioner raises the following issues:

I) WHETHER OR NOT THE COURT *A QUO* ACTED IN ACCORDANCE WITH LAW AND JURISPRUDENCE WHEN IT RESOLVED TO DISMISS CRIMINAL CASE NO. 16699 AS AGAINST RESPONDENT DUMLAO AFTER THE PRE-TRIAL AND BEFORE THE PETITIONER COULD PRESENT ITS WITNESSES AND FORMALLY OFFER ITS EXHIBITS.

II) WHETHER OR NOT THE SIGNATURES OF THE MAJORITY OF THE GSIS BOARD OF TRUSTEES ARE NECESSARY ON THE MINUTES OF MEETING NO. 14 DATED 23 APRIL 1982 TO GIVE FORCE AND EFFECT TO RESOLUTION NO. 326 APPROVING THE PROPOSED AGREEMENT BY AND AMONG THE GSIS, THE OGCC AND RESPONDENT EMILIO LA'O.

III) WHETHER OR NOT THE VALIDITY OF THE CONTRACT IS AN ESSENTIAL ELEMENT OF VIOLATION OF SECTION 3(G), RA 3019.

IV) WHETHER OR NOT THE COURT *A QUO* ACTED IN ACCORDANCE WITH LAW AND JURISPRUDENCE WHEN IT RESOLVED TO ARCHIVE THE CASE AGAINST RESPONDENT LA'O.

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[8] *Rollo*, p. 18.

[9] Same was filed after this Court granted the Office of the Special Prosecutor's motion for extension within which to file the petition for review on *certiorari*. (*Rollo*, pp. 25-233.)

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On the other hand, respondent Dumlao proffers the following grounds to support the dismissal of the case against him:

1. TO GIVE DUE COURSE TO THE OMBUDSMAN'S PETITION IS TO PLACE DUMLAO IN DOUBLE JEOPARDY, IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS;

2. THE SANDIGANBAYAN COULD NOT BE SAID TO HAVE GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OF JURISDICTION BECAUSE IT MERELY FOLLOWED THE RULE ON PRE-TRIAL AND DECIDED THE CASE ON THE BASIS OF THE FACTS STIPULATED IN THE PRE-TRIAL;

3. THE FACTS AS AGREE (SIC) BY THE PROSECUTION AND RESPONDENT DUMLAO IN THEIR PRE-TRIAL STIPULATION AND AS APPROVED BY THE SANDIGANBAYAN SHOWED THAT HE DID NOT COMMIT ANY CRIME; AND

4. CONTINUALLY PROSECUTING DUMLAO, TO THE EXCLUSION OF OTHER GSIS TRUSTEES, UNDER THE CIRCUMSTANCES OBTAINING, CONSTITUTES UNFAIR DISCRIMINATION AND VIOLATION OF HIS CONSTITUTIONAL RIGHT TO EQUAL PROTECTION OF THE LAW.[10]

Petitioner argues it was denied its right to due process when the court *a quo* dismissed the case against respondent Dumlao after pre-trial and before it could present its witnesses and formally offer its exhibits. The court *a quo* deprived it of the opportunity to prove its case – that the Resolution dated 23 April 1982 was passed by the GSIS Board of Trustees and that the Lease-Purchase Agreement was grossly and manifestly disadvantageous to the government.

Respondent Dumlao was charged, he being one of the members of the GSIS Board of Trustees who allegedly approved the lease-purchase of the subject GSIS properties consisting of three parcels of land with an area of 821 square meters, together with a five-storey building, in favor of respondent La'o, which lease-purchase agreement was deemed by the Office of the Ombudsman to be grossly disadvantageous to the government.

[10] *Id.* at 259.

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A review of the Motion to Dismiss/Quash filed by respondent Dumlao reveals that the ground he invoked was that "*the facts charged do not constitute an offense*." He contends that the alleged approved Board Resolution was not approved by the GSIS Board of Trustees, contrary to the allegation in the information. Since the signatures of four out of the seven members of the board did not appear in the minutes of the meeting held on 23 April 1982, there was no quorum present or no majority that approved the supposed resolution. This being the case, he asserts that there was no resolution adopted by the GSIS Board of Trustees approving the sale of the subject properties to respondent La'o.

The Sandiganbayan, basing its resolution on the Pre-trial Stipulation entered into by the prosecution and respondent Dumlao, dismissed the case against the latter, since it found that the GSIS Board of Trustees failed to approve or validly pass the Lease-Purchase Agreement, because only three out of the seven members of the Board signed the minutes of the meeting held on 23 April 1982. It explained that, "no amount of evidence can change the fact that the Resolution dated April 23, 1982 was not validly passed by the Board of Trustees of GSIS since it was only signed by three members of the Board. Thus, it never had the force and effect of a valid resolution and did not in effect approve the Lease and Purchase Agreement subject matter hereof. Therefore, the prosecution has no cause of action against herein movant-accused Hermenegildo C. Dumlao."

The ground raised by respondent Dumlao in his Motion to Quash/Dismiss is that *the facts charged do not constitute an offense*. The fundamental test in determining the sufficiency of the material averments of an information is whether the facts alleged therein, which are hypothetically admitted, would establish the essential elements of the crime defined by law. Evidence *aliunde*, or matters extrinsic of the Information, are not to be considered.[11]

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[11] *Go v. Fifth Division, Sandiganbayan*, G.R. No. 172602, 13 April 2007, 521 SCRA 270, 291.

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The elements of the crime under Section 3(g) of Republic Act No. 3019 are as follows: (1) that the accused is a public officer; (2) that he entered into a contract or transaction on behalf of the government; and (3) that such contract or transaction is grossly and manifestly disadvantageous to the government.[12]

After examining the information, we find that the facts alleged therein, if hypothetically admitted, will prove all the elements of Section 3(g) as against respondent Dumlao.

It can be gathered from the resolution of the Sandiganbayan that it did consider the ground invoked by Dumlao (that *the facts charged do not constitute an offense)*; otherwise, it could have denied respondent Dumlao's motion. From the reasoning given by the Sandiganbayan, it is clear that it dismissed the case because of *insufficiency of evidence*.

Insufficiency of evidence is not one of the grounds of a Motion to Quash. The grounds, as enumerated in Section 3, Rule 117 of the Revised Rules of Criminal Procedure, are as follows:

(a) That the facts charged do not constitute an offense;

(b) That the court trying the case has no jurisdiction over the offense charged;

(c) That the court trying the case has no jurisdiction over the person of the accused;

(d) That the officer who filed the information had no authority to do so;

(e) That it does not conform substantially to the prescribed form;

(f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law;

(g) That the criminal action or liability has been extinguished;

(h) That it contains averments which, if true, would constitute a legal excuse or justification; and

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[12] *Dans, Jr. and Marcos v. Sandiganbayan*, 349 Phil. 434, 460 (1998).

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(i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent.

Insufficiency of evidence is a ground for dismissal of an action only after the prosecution rests its case. Section 23, Rule 119 of the Revised Rules of Criminal Procedure provides:

Sec. 23. *Demurrer to evidence*. — After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.

In the case under consideration, the Sandiganbayan dismissed the case against respondent for insufficiency of evidence, even without giving the prosecution the opportunity to present its evidence. In so doing, it violated the prosecution's right to due process. It deprived the prosecution of its opportunity to prosecute its case and to prove the accused's culpability.

It was therefore erroneous for the Sandiganbayan to dismiss the case under the premises. Not only did it not consider the ground invoked by respondent Dumlao; it even dismissed the case on a ground not raised by him, and not at the appropriate time. The dismissal was thus without basis and untimely.

On the second issue raised by petitioner, it maintains that the Sandiganbayan erred in equating, or confusing, the minutes of the meeting of 23 April 1982 with Resolution No. 326, which allegedly approved the lease-purchase agreement on the GSIS properties, entered into with respondent La'o. It argues that the Sandiganbayan incorrectly ruled that the Resolution dated 23 April 1982 regarding the lease-purchase of the GSIS properties was not approved, because only three out of the seven members of the GSIS Board of Trustees signed the minutes of the meeting of 23 April 1982.

We agree with petitioner that the Sandiganbayan erred in equating the minutes of the meeting with the supposed resolution

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of the GSIS Board of Trustees. A resolution is distinct and different from the minutes of the meeting. A board *resolution* is a formal action by a corporate board of directors or other corporate body authorizing a particular act, transaction, or appointment.[13] It is ordinarily special and limited in its operation, applying usually to some single specific act or affair of the corporation; or to some specific person, situation or occasion.[14] On the other hand, *minutes* are a brief statement not only of what transpired at a meeting, usually of stockholders/members or directors/trustees, but also at a meeting of an executive committee. The minutes are usually kept in a book specially designed for that purpose, but they may also be kept in the form of memoranda or in any other manner in which they can be identified as minutes of a meeting.[15]

The Sandiganbayan concluded that since only three members out of seven signed the minutes of the meeting of 23 April 1982, the resolution approving the Lease-Purchase Agreement was not passed by the GSIS Board of Trustees. Such conclusion is erroneous. The non-signing by the majority of the members of the GSIS Board of Trustees of the said minutes does not necessarily mean that the supposed resolution was not approved by the board. The signing of the minutes by all the members of the board is not required. There is no provision in the Corporation Code of the Philippines[16] that requires that the minutes of the meeting should be signed by all the members of the board.

The proper custodian of the books, minutes and official records of a corporation is usually the corporate secretary. Being the custodian of corporate records, the corporate secretary has

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[13] Black's Law Dictionary (Eighth Edition, 2004), p. 1337.

[14] Fletcher Cyclopedia Corporations (Permanent Edition), Vol. 8, §4167, p. 625.

[15] *The Corporation Code of the Philippines Annotated* (1994) by Rosario N. Lopez, Vol. 2, p. 871.

[16] *Batas Pambansa Blg. 68* which took effect on 1 May 1980.

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the duty to record and prepare the minutes of the meeting. The signature of the corporate secretary gives the minutes of the meeting probative value and credibility.[17] In this case, Antonio Eduardo B. Nachura,[18] Deputy Corporate Secretary, recorded, prepared and certified the correctness of the minutes of the meeting of 23 April 1982; and the same was confirmed by Leonilo M. Ocampo, Chairman of the GSIS Board of Trustees. Said minutes contained the statement that the board approved the sale of the properties, subject matter of this case, to respondent La'o.

The minutes of the meeting of 23 April 1982 were prepared by the Deputy Corporate Secretary of the GSIS Board of Trustees. Having been made by a public officer, the minutes carry the presumption of regularity in the performance of his functions and duties. Moreover, the entries contained in the minutes are *prima facie* evidence of what actually took place during the meeting, pursuant to Section 44, Rule 130 of the Revised Rule on Evidence.[19] This being the case, the Sandiganbayan erred in dismissing the case, because there was evidence, at that time, when it dismissed the case against respondent Dumlao. The dismissal by the lower court of the case against respondent Dumlao was indeed premature. It should have given the prosecution the opportunity to fully present its case and to establish reasonable doubt on the alleged approval by the GSIS Board of Trustees of the lease-purchase of the GSIS properties.

Petitioner likewise faults the Sandiganbayan for archiving the case against respondent La'o, arguing that since he had

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[17] *Union of Supervisors (R.B.)-NATU v. Secretary of Labor*, 195 Phil. 691, 711 (1981).

[18] Now Associate Justice of the Supreme Court.

[19] Sec. 44. *Entries in official records.* — Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated.

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already been arraigned, it should have ordered the prosecution to adduce evidence against him.

We agree. However, said issue has already been mooted by the death of respondent La'o.[20] The death of an accused prior to final judgment terminates his criminal as well as civil liability based solely thereon.[21] Accordingly, the case against respondent La'o was dismissed.[22]

In support of the dismissal of the case against him, respondent Dumlao contends that to give due course to the Ombudsman's petition would place him in double jeopardy, in violation of his constitutional rights. Respondent Dumlao asserts that all the elements of double jeopardy are present in the case at bar. Citing *Heirs of Tito Rillorta v. Firme*,[23] he added: "[A]ssuming *arguendo* that the Sandiganbayan committed an error, whatever error may have been committed by the Sandiganbayan 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."

To raise the defense of double jeopardy, three requisites must be present: (1) a first jeopardy must have attached prior to the second; (2) the first jeopardy must have been validly terminated; and (3) the second jeopardy must be for the same offense as that in the first.[24] The first jeopardy attaches only (1) upon a valid indictment; (2) before a competent court; (3) after arraignment; (4) when a valid plea has been entered; and (5) when the defendant was convicted or acquitted, or the case

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[20] Certificate of Death of Emilio Gonzalez La'o; *rollo*, p. 335.

[21] *Republic v. Desierto*, G.R. No. 131966, 31 August 2005, 468 SCRA 458, 469.

[22] *Rollo*, pp. 338-339.

[23] G.R. No. 54904, 29 January 1988, 157 SCRA 518.

[24] *Dimayacyac v. Court of Appeals*, G.R. No. 136264, 28 May 2004, 430 SCRA 121, 129.

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was dismissed or otherwise terminated without the express consent of the accused.[25]

We do not agree. In the instant case, double jeopardy has not yet set in. The first jeopardy has not yet attached. There is no question that four of the five elements of legal jeopardy are present. However, we find the last element – valid conviction, acquittal, dismissal or termination of the case – wanting. As previously discussed, the Sandiganbayan violated the prosecution's right to due process. The prosecution was deprived of its opportunity to prosecute its case and to prove the accused's culpability. The dismissal was made in a capricious and whimsical manner. The trial court dismissed the case on a ground not invoked by the respondent. The Sandiganbayan dismissed the case for insufficiency of evidence, while the ground invoked by the respondent was that *the facts charged did not constitute an offense*. The dismissal was clearly premature, because any dismissal based on insufficiency of evidence may only be made after the prosecution rests its case and not at any time before then.[26] A purely capricious dismissal of an information deprives the State of a fair opportunity to prosecute and convict. It denies the prosecution a day in court. It is void and cannot be the basis of double jeopardy.[27]

The cardinal precept is that where there is a violation of basic constitutional rights, courts are ousted of their jurisdiction. Where the denial of the fundamental right to due process is apparent, a decision in disregard of the right is void for lack of jurisdiction.[28] In the instant case, there was **no error of judgment but a denial of due process resulting in loss of jurisdiction**. Respondent Dumlao would not be placed in double

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[25] *Benares v. Lim*, G.R. No. 173421, 14 December 2006, 511 SCRA 100, 107.

[26] Section 23, Rule 119, Revised Rules of Criminal Procedure.

[27] *People v. Gomez*, 126 Phil. 640, 645 (1967).

[28] *People v. Bocar*, G.R. No. L-27935, 16 August 1985, 138 SCRA 166, 171.

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jeopardy because, from the very beginning, the Sandiganbayan had acted without jurisdiction. Precisely, any ruling issued without jurisdiction is, in legal contemplation, necessarily null and void and does not exist.[29] Otherwise put, the dismissal of the case below was invalid for lack of a fundamental prerequisite, that is, due process. In rendering the judgment of dismissal, the trial court acted without or in excess of jurisdiction, for a judgment which is void for lack of due process is equivalent to excess or lack of jurisdiction.[30] This being the case, the prosecution is allowed to appeal because it was not given its day in court.

As heretofore explained, the Sandiganbayan gravely abused its discretion amounting to lack of jurisdiction when it dismissed the case against respondent Dumlao based only on the stipulations made by the parties during pre-trial. The erroneous equation of the number of members who signed the minutes of the meeting with the number of members who approved the alleged resolution necessarily led to the Sandiganbayan's faulty conclusion that there was no evidence showing that the GSIS Board of Trustees approved the alleged Lease-Purchase Agreement. As we have said, the minutes issued by the Deputy Corporate Secretary were enough, at that time, to set the case for trial and to allow the prosecution to prove its case and to present all its witnesses and evidence.

Respondent Dumlao claims that the GSIS has not been prejudiced because it still owns the properties subject matter of this case. This Court cannot rule on this claim, the same being a factual issue and a defense he is raising. The appreciation of this claim is not proper in this forum and is better left to the trial court, since the Supreme Court is not a trier of facts.[31]

Respondent Dumlao maintains he was charged with conspiring with the other GSIS Board Members in approving the Lease-

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[29] *People v. Velasco*, 394 Phil. 517, 559 (2000).

[30] *Merciales v. Court of Appeals*, 429 Phil. 70, 81 (2002).

[31] *Francisco, Jr. v. Fernando*, G.R. No. 166501, 16 November 2006, 507 SCRA 173, 179.

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Purchase Agreement. However, of the seven members, two died, two were acquitted and the other two were not charged. He was left alone. He argues that since a conspiracy requires two or more persons agreeing to commit a crime, he can no longer be charged because he was left alone to face a charge of conspiracy.

His assumption that he can no longer be charged because he was left alone — since the co-conspirators have either died, have been acquitted or were not charged — is wrong. A conspiracy is in its nature a joint offense. One person cannot conspire alone. The crime depends upon the joint act or intent of two or more persons. Yet, it does not follow that one person cannot be convicted of conspiracy. As long as the acquittal or death of a co-conspirator does not remove the basis of a charge of conspiracy, one defendant may be found guilty of the offense.[32] In the case at bar, the absence or presence of conspiracy is again factual in nature and involves evidentiary matters. The same is better left ventilated before the trial court during trial, where the parties can adduce evidence to prove or disprove its presence.

Lastly, respondent Dumlao submits that his prosecution, to the exclusion of others, constitutes unfair discrimination and violates his constitutional right to equal protection of the law. He says that the dismissal of the case against his co-accused Canlas and Clave were not appealed by the prosecution; and the two government officials who signed the Lease-Purchase Agreement, and the two other members (Ocampo and Morales) of the GSIS Board of Trustees who signed the minutes were not charged.

We are not convinced that respondent Dumlao was unfairly discriminated against and his constitutional right to equal protection violated. It must be remembered that the manner in which the prosecution of the case is handled is within the sound discretion

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[32] Aquino, *The Revised Penal Code* (1997 Edition), Vol. 1, p. 125, citing *United States v. Remigio*, 37 Phil. 599, 612 (1918).

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of the prosecutor, and the non-inclusion of other guilty persons is irrelevant to the case against the accused.[33] We find that there was no clear and intentional discrimination in charging respondent Dumlao. A discriminatory purpose is never presumed.[34] It must be remembered that it was not solely respondent who was charged, but also five of the seven board members. If, indeed, there were discrimination, respondent Dumlao alone could have been charged. But this was not the case. Further, the fact that the dismissal of the case against his co-accused Canlas and Clave was not appealed is not sufficient to cry discrimination. This is likewise true for the non-inclusion of the two government officials who signed the Lease-Purchase Agreement and the other two board members. Mere speculation, unsupported by convincing evidence, cannot establish discrimination on the part of the prosecution and the denial to respondent of the equal protection of the laws.

In *Santos v. People*,[35] citing *People v. Dela Piedra*,[36] the Court explained:

> The prosecution of one guilty person while others equally guilty are not prosecuted, however, is not, by itself, a denial of the equal protection of the laws. Where the official action purports to be in conformity to the statutory classification, an erroneous or mistaken performance of the statutory duty, although a violation of the statute, is not without more a denial of the equal protection of the laws. The unlawful administration by officers of a statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination. This may appear on the face of the action taken with respect to a particular class or person, or it may only be shown by extrinsic evidence showing a discriminatory design over another not to be inferred from the action itself. **But a discriminatory purpose is not**

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[33] *People v. Nazareno,* 329 Phil. 16, 20-23 (1996).

[34] *People v. Dela Piedra,* 403 Phil. 31 (2001).

[35] G.R. No.173176, 26 August 2008.

[36] *Supra* note 34 at 54-56.

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presumed, there must be a showing of "clear and intentional discrimination." Appellant has failed to show that, in charging appellant in court, that there was a "clear and intentional discrimination" on the part of the prosecuting officials.

The discretion of who to prosecute depends on the prosecution's sound assessment whether the evidence before it can justify a reasonable belief that a person has committed an offense. **The presumption is that the prosecuting officers regularly performed their duties, and this presumption can be overcome only by proof to the contrary, not by mere speculation.** Indeed, appellant has not presented any evidence to overcome this presumption. The mere allegation that appellant, a Cebuana, was charged with the commission of a crime, while a Zamboangueña, the guilty party in appellant's eyes, was not, is insufficient to support a conclusion that the prosecution officers denied appellant equal protection of the laws.

There is also common sense practicality in sustaining appellant's prosecution.

While all persons accused of crime are to be treated on a basis of equality before the law, it does not follow that they are to be protected in the commission of crime. It would be unconscionable, for instance, to excuse a defendant guilty of murder because others have murdered with impunity. **The remedy for unequal enforcement of the law in such instances does not lie in the exoneration of the guilty at the expense of society** x x x. Protection of the law will be extended to all persons equally in the pursuit of their lawful occupations, but no person has the right to demand protection of the law in the commission of a crime.

Likewise, [i]f the failure of prosecutors to enforce the criminal laws as to some persons should be converted into a defense for others charged with crime, the result would be that the trial of the district attorney for nonfeasance would become an issue in the trial of many persons charged with heinous crimes and the enforcement of law would suffer a complete breakdown. (Emphases ours.)

WHEREFORE, premises considered, the instant petition is *GRANTED*. The resolution of the Sandiganbayan in Criminal Case No. 16699 dated 14 July 2005 granting the Motion to Dismiss/Quash of respondent Hermenegildo C. Dumlao, is hereby *REVERSED* and *SET ASIDE*. The Sandiganbayan is forthwith

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DIRECTED to set the case for the reception of evidence for the prosecution.

As to respondent Emilio G. La'o, on account of his demise, the case against him is *DISMISSED*.

SO ORDERED.

Carpio[*] and *Peralta, JJ.,* concur.

Quisumbing,[**] *J.,* dissents. Accused's motion is meritorious. GSIS reso. invalid, no cause of action here.

Puno,[**] *C.J.,* no part due to acquaintance with party.

THIRD DIVISION

[G.R. No. 184343. March 2, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JESUS DOMINGO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; A PERSON ACCUSED OF A CRIME WHO PLEADS THE EXEMPTING CIRCUMSTANCE OF INSANITY

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[*] Per Special Order No. 568 dated 12 February 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Antonio T. Carpio to replace Associate Justice Ma. Alicia Austria-Martinez, who is on official leave under the Court's Wellness Program.

[**] Per Special Order No. 564 dated 12 February 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Leonardo A. Quisumbing to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave under the Court's Wellness Program.

[***] Per raffle dated 23 February 2009, Chief Justice Reynato S. Puno was designated to sit as an additional member in place of Associate Justice Antonio Eduardo B. Nachura.