G.R. No. 224945 – GIRLIE J. LINGAD, *Petitioner*, v. PEOPLE OF THE PHILIPPINES, *Respondent*.

Date Promulgated:

October 11, 2022

X - X

SEPARATE OPINION

ZALAMEDA, *J.*:

It has been said that money laundering is probably as old as money itself. In the past, however, nobody looked at it as a crime. It was more the predicate offense that was looked at than what was done with the proceeds of that crime.[1]

The *ponencia* denied the Petition for Review on *Certiorari* of Girlie J. Lingad (petitioner) and affirmed the Decision dated 11 December 2015 and Resolution dated 02 June 2016 of the Court of Appeals (CA) that upheld the conviction of petitioner for money laundering as penalized under Section 4 (a) of Republic Act No. (RA) 9160 or the Anti-Money Laundering Act (AMLA), as amended by RA 9194. Ultimately, the *ponencia* found that petitioner was correctly sentenced to serve an indeterminate penalty of imprisonment of seven (7) years as minimum to thirteen (13) years as maximum, to pay a fine of ₱34,099,195.85, to suffer all accessory penalties provided by law, and to pay the costs. Nonetheless, since petitioner has fully served the maximum penalty imposed, her immediate release was ordered, unless she is confined for any other lawful cause.[2]

I concur with the denial of the petition. However, I am writing this opinion to highlight an issue where the *ponencia* and I diverge, particularly the elements of money laundering, and to further elucidate the relationship between money laundering and the underlying unlawful activity.

The proceeds' appearance of legitimacy is not an element of money laundering; unlawful activity is not synonymous with predicate offense

---

[1] Wouter H. Muller, Christian H. Kalin, John G. Goldsworth, Anti-Money Laundering International Law and Practice (2007), p. 3.

[2] *Ponencia*, p. 22.

In finding petitioner guilty, the *ponencia* laid down the following elements of money laundering under Section 4(a) of AMLA: (1) there is an unlawful activity – any act or omission, or a series or combination of acts or omissions, involving or directly related to offenses enumerated under Section 3 of the law; (2) the proceeds of the unlawful activity are transacted by the accused; (3) the accused knows that the proceeds involve or relate to the unlawful activity; and (4) the proceeds are made to appear to have originated from legitimate sources.[3]

However, I submit that the fourth component, *i.e.,* the proceeds are made to appear to have originated from legitimate sources, is not an element of the offense. Section 4 of AMLA, as originally enacted, reads:

> SECTION 4. *Money Laundering Offense.* — Money laundering is a crime whereby the proceeds of an unlawful activity are transacted, **thereby making them appear to have originated from legitimate sources.** It is committed by the following:
>
> > (a) Any person knowing that any monetary instrument or property represents, involves, or relates to, the proceeds of any unlawful activity, transacts or attempts to transact said monetary instrument or property.
> >
> > (b) Any person knowing that any monetary instrument or property involves the proceeds of any unlawful activity, performs or fails to perform any act as a result of which he facilitates the offense of money laundering referred to in paragraph (a) above.
> >
> > (c) Any person knowing that any monetary instrument or property is required under this Act to be disclosed and filed with the Anti-Money Laundering Council (AMLC), fails to do so.[4]

In 2003, RA 9194 further amended Section 4 to read:

> SECTION 4. *Money Laundering Offense.* — Money laundering is a crime whereby the proceeds of an unlawful activity as herein defined are transacted, **thereby making them appear to have originated from legitimate sources**. It is committed by the following:
>
> > (a) Any person knowing that any monetary instrument or property represents, involves, or relates to, the proceeds of any unlawful activity, transacts or attempts to transact said monetary

---

[3] Id. at 9.

[4] Emphasis supplied.

> instrument or property.
>
> (b) Any person knowing that any monetary instrument or property involves the proceeds of any unlawful activity, performs or fails to perform any act as a result of which he facilitates the offense of money laundering referred to in paragraph (a) above.
>
> (c) Any person knowing that any monetary instrument or property is required under this Act to be disclosed and filed with the Anti-Money Laundering Council (AMLC), fails to do so.[5]

These two versions are applicable to petitioner's case as the relevant acts were alleged to have been committed from 2002 to 2004.[6]

The language used in the quoted provisions may give the impression that, to sustain a charge of money laundering, the proceeds must be made to appear to have originated from legitimate sources. However, I submit that the proceeds' appearance of legitimacy is not an element of the offense.[7] As shown in the quoted provisions, such requirement is not in the sub-paragraphs of Section 4 enumerating the punishable acts. The apparent legitimacy of the proceeds is mentioned only in the sentence defining the crime of money laundering. Thus, "[i]t is merely a description of the outcome of the whole transaction, and is in no way related to the criminal intent (or lack thereof) of the person accused of money laundering[.]"[8]

This conclusion is supported by the House of Representatives' deliberations on House Bill No. 3083, which eventually became RA 9160, thus:

> REP. ROMAN: x x x [I]s this really what we want that we have to require evidence to show that the purpose is to disguise? Or do we just want a description of the natural consequence of converting the proceeds of an unlawful activity into something? Because if we want to say that it is being concealed in order to disguise and thereby make it appear as if it came from legitimate sources, we are either talking of a person who is an accomplice or a principal by direct, indirect, by indispensable cooperation so he may be also liable for two crimes, one the predicate crime and one for money laundering.
>
> x x x x
>
> CHAIRMAN LOPEZ: In other words, the last clause that it is for the

---

5 Emphasis supplied.

6 *Ponencia*, pp. 3-5.

7 JOSE MARI BENJAMIN F. U. TIROL, THE ANTI-MONEY LAUNDERING LAW OF THE PHILIPPINES ANNOTATED, (2nd ed., 2007) at 64.

8 Id.

> purpose of furthering the criminal activity is not necessary if he knows that the proceeds came from illegal activity and he allows it to move, the proceeds to be transported or rather to transact business with the proceeds, then we can already infer from that that the intention was really to allow it, to allow it to move in the financial system in order to make it appear that it is legitimate.
>
> REP. ROMAN: Yes, Mr. Chairman, although I'd like to say *na hindi naman sa hindi kailangan iyun kaya gawin lang natin* descriptive instead of making it an element, **we make it descriptive thereby making it appear as if the proceeds came from legitimate activity.** So we are just saying that it is the natural consequence instead of saying, for the purpose of, there's a world of difference because from an evidence point of view *pag sinabi mong* for the purpose of, you gonna prove it.
>
> CHAIRMAN LOPEZ: So let's make that on record when we deliberate on that on the floor so that will form part of the intention of the lawmaking body.[9] (Emphasis supplied.)

In the proceedings of the bicameral conference committee for the precursor bills of RA 9160, it was stressed anew that the purpose of the offender, whether to conceal or make the proceeds appear legitimate, is immaterial:

> SEN. PANGILINAN. Mr. Chairman, if I may be allowed. My understanding of the elements of the crime of money laundering are the following. There are three elements. First is knowledge that the proceeds came from an unlawful activity. Second is that there is a transaction or there is an attempt to transact such proceeds. And third, that the said attempt or the transaction itself is for the purpose of concealing and disguising.
>
> REP. ROMAN. Mr. Chairman, that's not what we want. Otherwise, prosecution will be extremely difficult. Even if you...You cannot prove the purpose from direct evidence. You can only prove it from circumstances attending the transaction. *Eh, kung sabihin lang noong testimonya niya*, it was not the purpose, *di ala nang element na iyon. Ang ginagawa natin, sinasabi nating malinaw na iyon ang intensyon mo sapagkat nakaw iyan o masamang pera iyan, eh, bakit mo ipinapasok sa isang* legal *na* environment.
>
> THE CHAIRMAN (REP. LOPEZ). Congressman Moreno.
>
> REP. MORENO. Thank you, Mr. Chairman.
>
> In fact, I am glad that this was discussed because this one is one of those instances where we are, in fact, outperforming, even the United States.

---

[9] Id. at 64-65, citing House of Representatives, Transcript of Committee Meetings, Joint Public Hearing of the Committees on Banks and Financial Intermediaries, Economic Affairs, and Justice, pp. 49 and 60-61 (11 September 2001).

> Because in the United States, money laundering to constitute as a crime requires intent, and intent either to pursue or further an unlawful activity or to conceal xxx the origin or receive, etcetera, or to evade the payment of taxes or to evade reporting requirements. But in our version, Mr. Chairman, and I'm saying this as a... since this has already been agreed and to make sure that this is clearly understood also that **intent here will no longer be relevant with just financial transaction, proceeds of an [unlawful activity] and knowledge as the elements of the crime of money laundering under this section**, Mr. Chairman.[10] (Emphasis supplied.)

By committing any of the enumerated acts under Section 4 of AMLA, the offender becomes liable for money laundering, regardless of the offender's purpose or the outcome of his or her acts. Even if the offender failed to make the proceeds appear legitimate, he or she may still be held liable for money laundering under Section 4(a) of AMLA so long as the offender transacted or attempted to transact the proceeds of an unlawful activity.

Notably, in the latest version of Section 4, as amended by RA 10365, the condition of apparent legitimacy was already deleted in the provision:

> SEC. 4. *Money Laundering Offense.* — Money laundering is committed by any person who, knowing that any monetary instrument or property represents, involves, or relates to the proceeds of any unlawful activity:
>
> (a) transacts said monetary instrument or property;
>
> (b) converts, transfers, disposes of, moves, acquires, possesses or uses said monetary instrument or property;
>
> (c) conceals or disguises the true nature, source, location, disposition, movement or ownership of or rights with respect to said monetary instrument or property;
>
> (d) attempts or conspires to commit money laundering offenses referred to in paragraphs (a), (b) or (c);
>
> (e) aids, abets, assists in or counsels the commission of the money laundering offenses referred to in paragraphs (a), (b) or (c) above; and
>
> (f) performs or fails to perform any act as a result of which he facilitates the offense of money laundering referred to in paragraphs (a), (b) or (c) above.

---

[10] Bicameral Conference Committee on the Disagreeing Provisions of Senate Bill No. 1175 and House Bill No. 3083 (Anti-Money Laundering Bill), 28 September 2001, pp. 110-112.

> Money laundering is also committed by any covered person who, knowing that a covered or suspicious transaction is required under this Act to be reported to the Anti-Money Laundering Council (AMLC), fails to do so.

Thus, I submit that money laundering under Section 4(a) of AMLA, as originally enacted and as amended by RA 9194, only has the following elements:

1. An unlawful activity, as defined under Section 3 of the law, has been committed.

2. The accused transacts, or attempts to transact, any monetary instrument or property representing, involving, or relating to the proceeds of the unlawful activity.

3. The accused knows that the monetary instrument or property represents, involves, or relates to the proceeds of the unlawful activity.

The enumerated elements track the language of the law and include an attempt to transact the proceeds, as well as money or property relating to the proceeds of the unlawful activity.

As to the first element, *i.e.,* the existence of an unlawful activity, I wish to highlight the distinction between the unlawful activity and the predicate crimes enumerated under Section 3 of AMLA. The term "unlawful activity" is not synonymous with the predicate offense.

As originally enacted, the law defines unlawful activity as "any act or omission or series or combination thereof involving or having relation to" the enumerated crimes and offenses.[11] RA 9194 amended the definition to "any act or omission or series or combination thereof involving or having **direct** relation to" the predicate offenses.[12] In the latest version of the definition, as amended in 2021 by RA 11521, the original language in RA 9160 was reinstated, *i.e.,* "any act or omission or series or combination thereof involving or having relation to" the predicate offenses.[13]

Thus, **the unlawful activity is not necessarily the predicate offense**;

---

[11] RA 9160, Sec. 4 (i).
[12] RA 9160, as amended by 9194, Sec. 3 (i). Emphasis supplied.
[13] RA 9160, as amended by RA 11521, Sec. 3 (i).

it could simply be an act or omission involving or having relation to the predicate offense. This distinction was emphasized during the deliberations of the bicameral conference committee for the original law.[14] Otherwise put, the term unlawful activity casts a wider net.

There is a conflict between the interpretation in the ponencia and the IRR of AMLA on the required quantum of evidence for the unlawful activity

As to the first element, the *ponencia* discussed that money laundering generally involves a predicate offense. A predicate offense is a crime that is a component of another offense. In money laundering, the predicate offense is usually an unlawful activity that generates proceeds of money or property. In this case, for instance, the predicate offense was qualified theft.[15]

In this regard, the *ponencia* declared that it must be proven beyond reasonable doubt that the money or property were the proceeds of an unlawful activity. In doing so, **particular elements of the unlawful activity must be proven beyond reasonable doubt**, although the guilt of the person who committed the alleged unlawful activity need not be determined first.[16] As applied to this case, the *ponencia* ruled that the prosecution needed to show that the amounts were taken with intent to gain from third parties by grave abuse of confidence.[17]

It is significant to underscore that this interpretation in the *ponencia* as to the quantum of evidence for the unlawful activity appears inconsistent with the less rigid requirement under the Implementing Rules and Regulations (IRR) of AMLA. Rule 6.7 of the 2002 IRR of RA 9160, Rule 6 (B) of the 2016 IRR, and Section 4.2, Rule 9 of the 2018 IRR of AMLA (latest IRR) all provide that the elements of the unlawful activity need *not* be established by proof beyond reasonable doubt in the money laundering case, thus:

2002 IRR:

RULE 6
Prosecution of Money Laundering

---

[14] Bicameral Conference Committee on the Disagreeing Provisions of Senate Bill No. 1175 and House Bill No. 3083 (Anti-Money Laundering Bill), 28 September 2001, pp. 127-128.
[15] *Ponencia*, p. 11.
[16] Id. at 17.
[17] Id.

x x x x

RULE 6.6. All the elements of every money laundering offense under Section 4 of the AMLA must be proved by evidence beyond reasonable doubt, including the element of knowledge that the monetary instrument or property represents, involves or relates to the proceeds of any unlawful activity.

RULE 6.7. **No element of the unlawful activity,** however, including the identity of the perpetrators and the details of the actual commission of the unlawful activity **need be established by proof beyond reasonable doubt**. The elements of the offense of money laundering are separate and distinct from the elements of the felony or offense constituting the unlawful activity.[18] (Emphasis supplied.)

2016 IRR:

RULE VI.
Prosecution of Money Laundering Cases

RULE 6. Prosecution of Money Laundering Cases. —

A. Independent Proceedings. — The prosecution of money laundering and the unlawful activity shall proceed independently.

Any person may be charged with and convicted of both money laundering and the unlawful activity.

B. Separate and Distinct Elements. — The elements of money laundering are separate and distinct from the elements of the unlawful activity. **The elements of the unlawful activity**, including the identity of the perpetrators and the details of the commission of the unlawful activity, **need not be established by proof beyond reasonable doubt in the case for money laundering.**[19] (Emphasis supplied.)

2018 IRR:

RULE 9
Money Laundering and Terrorism Financing

SECTION 4. Prosecution of Money Laundering Cases. —

4.1. Independent Proceedings.

The prosecutions of ML and the associated unlawful activity shall proceed independently. Any person may be charged with and convicted of both ML and the associated unlawful activity.

4.2. Separate and Distinct Elements.

---

[18] 2002 IRR.
[19] 2016 IRR.

> The elements of ML are separate and distinct from the elements of the associated unlawful activity. **The elements of the unlawful activity,** including the identity of the perpetrators and the details of the commission of the unlawful activity, **need not be established by proof beyond reasonable doubt in the case for ML.**[20] (Emphasis supplied.)

As will be discussed at length below, I submit that the *ponencia*'s interpretation is consistent with the predicate offense-primary offense dynamic in the law and the Constitutional requirement for proof beyond reasonable doubt prior to any conviction.[21]

The second element of money laundering requires the proceeds to be traced to one of the predicate offenses in Section 3 of AMLA; the existence of the predicate offense must be established beyond reasonable doubt

It is indispensable that the existence of a predicate offense must be established, and that money or property be ultimately traced to a specific predicate offense. This is because the first element requires proof of an unlawful activity **involving or having relation** to a predicate offense. Notably, the law does not cover all unlawful activities or crimes. Section 3 of AMLA enumerates the specific crimes that may give rise to an unlawful activity. Also, the second element requires the transaction of the proceeds of an unlawful activity which, again, must be related to one of the predicate offenses.[22] Thus, by the very nature of the offense of money laundering, the

---

20 Latest IRR.

21 CONSTITUTION, Article III, Secs. 1 and 14; *See Daayata v. People,* 807 Phil. 102 (2017).

22 Record of the Senate, Vol. I, No. 24, p. 852 (25 September 2001):
Senator Cayetano. Mr. President, after a brief huddle with almost everyone, I think we now understand the process clearly. As I said, I cannot overemphasize the need for clarity in the process itself before we can even talk about some of the sections here.

Having said that, Mr. President, let me now go to some concepts.

The definition of "Anti-Money Laundering Act," Mr. President, involves the presence of proceeds from an unlawful activity. Am I correct?

Senator Pangilinan. That is correct as well as the knowledge.

Senator Cayetano. So, am I also correct, for instance, that if there were no proceeds from an unlawful activity, there will be no anti-money laundering violation. Am I correct, Mr. President?

Senator Pangilinan. That is correct because the second element is, there is an attempt to transact or there is a transaction involving the proceeds.

nexus between the money or property and the predicate offense must be established.[23]

To illustrate, simple theft is not a predicate offense for money laundering, but qualified theft is. Therefore, to prove that the money transacted is from an unlawful activity covered by the law, the prosecution must prove that the money forms proceeds of qualified theft. It is not enough that the money was stolen. The prosecution must adduce evidence on the qualifying circumstances under Article 310 of the Revised Penal Code, such as grave abuse of confidence.

This example shows that, by enumerating specific predicate offenses, and by requiring that the money or property be proceeds of those crimes, the very definition and essence of money laundering necessarily requires proof that a covered predicate offense has been committed and that the proceeds relate to the predicate offense.

Proof of these matters must be beyond reasonable doubt. As held in *People v. Ganguso*,[24] every fact necessary to constitute the crime must be proved beyond reasonable doubt:

> An accused has in his [or her] favor the presumption of innocence which the Bill of Rights guarantees. Unless his [or her] guilt is shown beyond reasonable doubt, he [or she] must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he [or she] is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his [or her] behalf, and he [or she] would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.[25]

---

[23] Record of the Senate, Vol: I, No. 24, p. 864 (26 September 2001):
Senator Angara. There must be a clear-cut statement that the ordinary course of transaction or banking dealings should not be covered by this law. As the gentleman said, only transactions that can be traced to a predicate crime is covered.

The President. Yes, that is right.

Senator Angara. And that is why it is important to reassure our people that the ordinary course of banking dealings and transactions will not be covered by this.

[24] 320 Phil. 324 (1995).

[25] Id. at 335.

Notably, requiring proof beyond reasonable doubt of the commission of the predicate offense is not entirely novel. AMLA is similar to Presidential Decree No. (PD) 1612, or the Anti-Fencing Law, in that both criminalize transacting with proceeds of a predicate offense separately and independently from the predicate crime.[26] Moreover, in both laws, the perpetrator of the predicate offense is not necessarily the fence or money launderer.[27] Hence, the former need not be identified before prosecuting the latter.

Jurisprudence sets out the elements of fencing as follows:

> 1. A crime of robbery or theft has been committed;
>
> 2. The accused, who is not a principal or an accomplice in the commission of the crime of robbery or theft, buys, receives, possesses, keeps, acquires, conceals, sells or disposes, or buys and sells, or in any manner deals in any article, item, object or anything of value, which has been derived from the proceeds of the said crime;
>
> 3. The accused knows or should have known that the said article, item, object or anything of value has been derived from the proceeds of the crime of robbery or theft; and
>
> 4. There is on the part of the accused, intent to gain for himself [or herself] or for another.[28]

As shown above, the elements of fencing and money laundering are substantially similar. Prosecution for fencing also requires proof that a predicate crime has been committed, and that the accused dealt with the proceeds of such predicate crime.

Case law on fencing has long acknowledged that the first element, *i.e.*, the commission of robbery or theft, must be proved beyond reasonable doubt. As such, evidence for the elements of robbery or theft must meet the

---

[26] JOSE MARI BENJAMIN F. U. TIROL, THE ANTI-MONEY LAUNDERING LAW OF THE PHILIPPINES ANNOTATED, (2nd ed., 2007) at 31.

[27] *See People v. De Guzman*, 297 Phil 993, 998 (1993): "The crimes of robbery and fencing are clearly then two distinct offenses. The law on fencing does not require the accused to have participated in the criminal design to commit, or to have been in any wise involved in the commission of, the crime of robbery or theft."

[28] *Lopez v. People*, G.R. No. 249196, 28 April 2021.

required standard of proof; otherwise, the accused cannot be convicted for fencing.

For instance, in *Tan v. People*,[29] the Court acquitted the accused because the prosecution failed to prove beyond reasonable doubt that theft was committed. The Court ruled that there was no sufficient proof of unlawful taking of another's property. Complainant therein did not report to the authorities the alleged commission of theft or any loss resulting from the incident. The extra-judicial confession of the supposed theft was also held insufficient, it having been given without the assistance of counsel and unsupported by evidence of *corpus delicti*.

Similarly, in *Lim v. People*,[30] the Court reversed the conviction of the accused due to insufficient proof that theft had been committed. Particularly, the elements of theft on ownership of property by another and unlawful taking were not established. Thus, the Court ruled that the first element of fencing was not proved beyond reasonable doubt, thus:

> After a careful and thorough review of the records, we are convinced that the trial court erred in convicting herein petitioner.
>
> On the first element, we find that the prosecution failed to establish that theft had been committed.
>
> Theft under Article 308 of the Revised Penal Code has been defined as the taking of someone's property without the owner's consent, for his personal gain, and without committing any violence against or intimidation of persons or force upon things. The elements of theft are: (1) that there be taking of personal property; (2) that said property belongs to another; (3) that the taking be done with intent to gain; (4) that the taking be done without the consent of the owner; and (5) that the taking be accomplished without the use of violence against or intimidation of persons or force upon things.
>
> While the CA correctly ruled that conviction of the principal in the crime of theft is not necessary for an accused to be found guilty of the crime of fencing, we disagree with its ruling that the prosecution sufficiently proved the DPWH's ownership of the Komatsu Grader.
>
> x x x x
>
> In fact, the prosecution even failed to conclusively establish that the grader had been stolen. xxx
>
> x x x x

[29] 372 Phil. 93 (1999).
[30] 797 Phil. 215 (2016).

> From the foregoing, we find that the CA erred in affirming the trial court's findings and in convicting herein petitioner. It is necessary to remember that in all criminal prosecutions, the burden of proof is on the prosecution to establish the guilt of the accused beyond reasonable doubt. It has the duty to prove **each and every element of the crime charged in the information** to warrant a finding of guilt for the said crime. Furthermore, the information must correctly reflect the charges against the accused before any conviction may be made.
>
> In the case at bar, the prosecution failed to prove the first and third essential elements of the crime charged in the information. Thus, petitioner should be acquitted due to insufficiency of evidence and reasonable doubt.[31]

Conversely, however, successful prosecutions for fencing show that the standard of proof for the predicate offense is not insurmountable. Indeed, the Court has sustained fencing convictions after finding that the commission of theft or robbery was proved beyond reasonable doubt, even when the theft or robber was unidentified.[32] The commission of the predicate crime may be established through circumstantial evidence, such as the testimony of the victim, documentary evidence of ownership, reports made to law enforcement, and the like.[33]

Another crime that requires a predicate offense is plunder. It may be worth mentioning that some aspects of the predicate crimes under AMLA were patterned after RA 7080, or the Plunder Law, as amended.[34] Section 4 of the Plunder Law provides that "[f]or purposes of establishing the crime of plunder, it shall not be necessary to prove each and every criminal act done by the accused in furtherance of the scheme or conspiracy to amass, accumulate or acquire ill-gotten wealth, it being sufficient to establish beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy."

In *Estrada v. Sandiganbayan,*[35] We explained the meaning of the foregoing provisions of the Plunder Law. We clarified that while Section 4 only requires proof of pattern of criminal acts showing unlawful scheme, it does not do away with proof beyond reasonable doubt. The Court ruled,

---

[31] Id. at 225-241. Citations omitted; emphasis supplied.

[32] *See Estrella v. People*, G.R. No. 212942, 17 June 2020; *Dimat v. People*, 680 Phil. 233 (2012); *Ong v. People*, 708 Phil. 565 (2013).

[33] *See Estrella v People*, G.R. No. 212942, 17 June 2020; *Dizon-Pamintuan v. People*, 304 Phil. 219 (1994); *Cahulogan v. People*, 828 Phil. 742 (2018); *Francisco v. People*, 478 Phil. 167 (2004); *Ong v. People*, 708 Phil. 565 (2013); *Capili v. Court of Appeals*, 392 Phil. 577 (2000).

[34] Transcript of the Joint Meeting of the Committee on Banks, Financial Intermediaries, Committee on Justice and the Committee on Economic Affairs (28 August 2001), p. 34.

[35] 421 Phil. 290 (2001).

thus:

> On the second issue, petitioner advances the highly stretched theory that Sec. 4 of the Plunder Law circumvents the immutable obligation of the prosecution to prove beyond reasonable doubt the predicate acts constituting the crime of plunder when it requires only proof of a pattern of overt or criminal acts showing unlawful scheme or conspiracy —
>
> > SEC. 4. *Rule of Evidence.* — For purposes of establishing the crime of plunder, it shall not be necessary to prove each and every criminal act done by the accused in furtherance of the scheme or conspiracy to amass, accumulate or acquire ill-gotten wealth, it being sufficient to establish beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy.
>
> The running fault in this reasoning is obvious even to the simplistic mind. In a criminal prosecution for plunder, as in all other crimes, the accused always has in his [or her] favor the presumption of innocence which is guaranteed by the Bill of Rights, and unless the State succeeds in demonstrating by proof beyond reasonable doubt that culpability lies, the accused is entitled to an acquittal. The use of the "reasonable doubt" standard is indispensable to command the respect and confidence of the community in the application of criminal law. It is critical that the moral force of criminal law be not diluted by a standard of proof that leaves people in doubt whether innocent [persons] are being condemned. It is also important in our free society that every individual going about his [or her] ordinary affairs has confidence that his [or her] government cannot adjudge him [or her] guilty of a criminal offense without convincing a proper factfinder of his [or her] guilt with utmost certainty. This "reasonable doubt" standard has acquired such exalted stature in the realm of constitutional law as it gives life to the *Due Process Clause* which protects the accused against conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he [or she] is charged.[36]

Justice Vicente V. Mendoza, in his Separate Opinion, emphasized that the quantum of proof required to prove the predicate crimes in plunder is the same as that required were they separately prosecuted.

Applying *Estrada* by analogy, the quantum of proof for the unlawful activity under AMLA should be the same as in all other crimes – proof

---

[36] Id. at 358-359.

beyond reasonable doubt.

All told, the Court's discussions in this case clearly conflict with the requirement under the IRR that the elements of the predicate crime need *not* be established by proof beyond reasonable doubt. However, this is not a proper time to resolve the constitutionality of Rule 6.6 of the IRR because it appears that its validity was not raised at the earliest opportunity and its constitutionality is not the very *lis mota* of the case.[37] Nevertheless, to avoid confusion or misinterpretation, it would best serve the interests of the public, law enforcement, and the State's prosecution arm if the latest IRR were to be amended to reflect the principles enunciated in this case.

Prior conviction for the predicate offense is not necessary to sustain a conviction for money laundering; the existence of the unlawful activity and the predicate offense may be established beyond reasonable doubt in the money laundering case

Notwithstanding the need to prove the commission of a predicate offense beyond reasonable doubt, I emphasize that prior conviction for the predicate offense is not required.

As the *ponencia* aptly pointed out, RA 10365, which amended RA 9160, explicitly states that the prosecution of the money laundering offense shall proceed independently of any action relating to the unlawful activity. In other words, it is sufficient that the elements of the predicate offense be established by proof beyond reasonable doubt in the money laundering case. There is no need for a prior and separate conviction for the predicate offense.

I wish to add, however, that the distinction between money laundering and the unlawful activity was first recognized in the 2001 version of the law, or before petitioner's commission of the offense from July 2002 onwards.[38] As originally enacted, AMLA already treated money laundering and its predicate crime as two separate offenses that may be separately prosecuted. The law only mandated that the prosecution for the predicate offense, if any,

---

[37] *DENR Employees Union v. Abad*, G.R. No. 204152, 19 January 2021.

[38] *Ponencia*, pp. 2-5.

must be given precedence, thus:

> SECTION 6. Prosecution of Money Laundering. —
>
> (a) Any person may be charged with and convicted of both the offense of money laundering and the unlawful activity as herein defined.
>
> (b) Any proceeding relating to the unlawful activity shall be given precedence over the prosecution of any offense or violation under this Act without prejudice to the freezing and other remedies provided.

Thus, at the time petitioner committed the offense, the applicable legal framework already recognized the distinction between the two offenses.

Relatedly, case law also provides that a prior conviction for theft or robbery is not necessary to prosecute fencing.[39] Thus, prosecution for money laundering is similar to that for fencing in that the commission of the predicate offense may be established in the money laundering or fencing case itself. The two proceedings are independent of each other.

Corollary to this, in violations of RA 9208, or the Anti-Trafficking in Persons, as amended, which also involve predicate or related crimes, the offense of trafficking in persons may be filed simultaneously with other felonies or offenses, as long as the elements of said crimes are present. Jurisprudence states that when an act violates two or more different laws and constitutes two different offenses, a prosecution under one will not bar a prosecution under the other.[40] Applying this by analogy to AMLA, the prosecution under a predicate offense is not a bar to a prosecution under AMLA.

Any judgment in the prosecution for the predicate offense does not bind the outcome of the money laundering charge, and vice versa

Since the proceedings for the predicate offense and the money laundering charge are separate and independent from each other, it is necessary to examine the interplay between the two proceedings and their

---

[39] *See Lim v. People*, 797 Phil. 215 (2016).
[40] *People v. Lalli*, 675 Phil. 126, 157 (2011).

effect, if any, on each other.

For instance, a judgment of conviction or acquittal for the predicate offense may be rendered while the money laundering case is pending or before it is filed. Conversely, a judgment may also be rendered in the money laundering case prior to the institution of a case for the predicate offense or while the latter is pending. In either case, it may be argued that the judgment of conviction or acquittal in one case should bind the other; otherwise, there would be two conflicting decisions on the guilt or innocence of the accused.

On this point, **I submit that any judgment in the predicate offense cannot be determinative of the guilt or innocence of the accused in the money laundering case.** The reverse is also true – a conviction or acquittal in the money laundering case is not binding on the case for the predicate offense.

Indeed, there are several factors affecting the success or failure of a prosecution, including the evidence and witnesses available at the time the case was instituted, the court's appreciation of such evidence and testimony, the speed of trial, or even the strategies employed by the defense lawyers and prosecutors. An accused may be acquitted due to failure to prosecute, the unavailability of certain pieces of evidence during trial, or sheer mistakes in case handling. These conditions may not be present in the other case.

Unless joined, no two trials would have the same circumstances. Thus, at most, the judgment of acquittal or conviction in one case may only be presented in evidence in the other case. However, such judgment would not control judicial discretion. The court is free to render a judgment taking into account the decision in the other case *vis-à-vis* all the other pieces of evidence before the court.

Notably, Congressional records show that the framers of RA 9160 were conscious of the independence of the two proceedings. The inclusion of a *proviso* on the relationship between the two cases was even suggested. However, ultimately, the legislature omitted any provision making the judgment in one case binding on the other:

> SENATOR JAWORSKI. Mr. President, as manifested by this representation during the period of interpellations and was welcomed by one of the sponsors, I would like to propose an amendment on page 6, line 5, Section 7 of the bill. After the word "Act", add the phrase PROVIDED, THAT ANY DISMISSAL OR ACQUITTAL OF THE UNLAWFUL ACTIVITY UPON WHICH THE CHARGE OF MONEY LAUNDERING

IS PREDICATED, WITH THE POSITIVE DECLARATION THAT NO SUCH UNLAWFUL ACTIVITY WAS COMMITTED, SHALL CAUSE THE TERMINATION OF THE PROSECUTION FOR MONEY LAUNDERING IN WHATEVER STAGE.

THE PRESIDENT. What is the view of Senator Pangilinan on this proposed amendment?

x x x x

SENATOR PANGILINAN. Just a clarification, Mr. President.

If we add this particular provision, do we take it to mean that if there is an acquittal because of failure to prosecute, for example, or an acquittal because of failure to establish proof beyond reasonable doubt, this acquittal in specific cases will not mean the dismissal of the money laundering case?

x x x x

THE PRESIDENT. May the Chair suggest that we state it positively. The dismissal for failure to prosecute or acquittal for insufficiency of evidence shall not bar the prosecution of money laundering under this Act.

SENATOR JAWORSKI. That is correct, Mr. President.

x x x x

SENATOR ANGARA. The proposed amendment of Senator Jaworski should clearly state that the acquittal is on the basis of a clear determination by the judge that the accused did not commit the crime.

THE PRESIDENT. After trial on the merits.

SENATOR ANGARA. That is correct, Mr. President.

x x x x

SENATOR RECTO. We were discussing during the huddle earlier that I would have no problem with the positive declaration of a judge that the accused is innocent of a crime or of an unlawful activity. But in the event that a prosecutor mishandles the prosecution and the person may have been really innocent of the crime and there is no positive declaration now because the trial did not continue, I do not think that that should be the fault of the accused.

May I hear from Senator Angara? What would be his comment on this?

SENATOR ANGARA. Mr. President, **the fact that the accused was already acquitted by reason of any other ground is already a powerful argument for saying that the second case of money laundering should already be dropped. But we cannot put that kind of rule in the law. We were suggesting that Senator Recto just express—and we are**

> **already expressing it—that the intent of this law is that an acquittal in the predicate crime would be a powerful argument or reason for seeking a dismissal of the money-laundering case, and that is our clear and unequivocal intent.**[41] (Emphasis supplied.)

Thus, at most, a conviction or acquittal in one case is simply another piece of evidence that must still be weighed and subjected to judicial scrutiny, taking into account the body of evidence presented by the prosecution and the defense. In other words, acquittal in the predicate offense does not result in an automatic acquittal in the money laundering case.

The independence of money laundering from its predicate offense is recognized by law and consistent with international standards

Notably, the separability of money laundering and its predicate offense is consistent with international norms and standards. The Model Legislation on Money Laundering and Financing of Terrorism (Model Legislation)[42] developed by the United Nations Office on Drugs and Crime and the International Monetary Fund provides that prior conviction for the predicate offense is not necessary:

> (2) Knowledge, intent or purpose required as constituent elements of the offence may be inferred from objective factual circumstances. In order to prove the illicit origin of the proceeds it shall not be required to obtain the conviction of the predicate offence.[43]

While the Model Legislation is merely a guide for crafting money laundering laws, its provisions represent international best practice. The Model Legislation incorporates the requirements under various international instruments[44] to which the Philippines is a party, as well as the recommendations of the Financial Action Task Force on Money Laundering (FATF).[45]

---

41 Record of the Senate, Vol. II, No. 24, pp. 45-47 (27 September 2001).

42 *Model Legislation on Money Laundering and Financing of Terrorism* (Model Legislation) issued on 01 December 2005 <https://www.imf.org/external/np/leg/amlcft/eng/pdf/amlml05.pdf> (visited 8 August 2022).

43 Model Legislation, supra at Art. 55.2.1 (2).

44 These include the United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the United Nations Convention against Transnational Organized Crime, the United Nations Convention against Corruption, and the International Convention for the Suppression of the Financing of Terrorism.

45 *Introduction to the Model Law,* pp. 2-4.

The FATF is an inter-governmental body that develops policies against money laundering and terrorist financing, among others.[46] Its framework of measures, called the FATF Recommendations, is recognized as the international standard for anti-money laundering and countering terrorist financing.[47] The FATF Recommendations, together with their Interpretive Notes and applicable definitions, comprise the FATF Standards.[48] The Philippines is part of the Asia/Pacific Group on Money Laundering, which seeks to ensure the adoption and enforcement of the FATF Recommendations.[49]

In its Interpretive Note to Recommendation 3 (on Money Laundering Offence), the FATF explicitly recommended dispensing with the requirement of a prior conviction:

> a. [T]he offence of money laundering should extend to any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime. When proving that property is the proceeds of crime, it should not be necessary that a person be convicted of a predicate offence.
>
> xxxx
>
> 7 Countries should ensure that:
>
> (a) The intent and knowledge required to prove the offence of money laundering may be inferred from objective factual circumstances.[50]

Thus, consistent with the Court's interpretation, one may be convicted of money laundering without need of a prior conviction for the predicate offense.

I refer to these international standards as the Philippines is still in the "gray list" of countries being monitored by FATF due to deficiencies in our anti-money laundering measures.[51] The Anti-Money Laundering Council

---

<https://www.imf.org/external/np/leg/amlcft/eng/pdf/aml/ml05.pdf> (visited 08 August 2022).

46 FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*, Introduction, pp. 7-8 <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20 Recommendations%202012.pdf> (visited 9 August 2022).

47 Id.

48 Id. at 8.

49 FATF, *APG* <https://www.fatf-gafi.org/countries/#APG> (visited 09 August 2022).

50 Id. at pp. 38-39.

51 FATF, *Jurisdictions under increased monitoring* <https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-june-2022.html> (visited 09 August 2022).

aims to have the Philippines removed from the list on or before January 2023.[52] Thus, while the language of the law ultimately controls Our decision, prudence requires Us to be conscious of these international norms and standards, and to not depart from them whenever possible.

Banks should be reminded of their fiduciary duty

As a final note, I find the facts of this case alarming. It appears that petitioner, a marketing associate and branch marketing officer of a universal bank, was able to siphon off significant amounts of money entrusted by accountholders and depositors. Records show that she was able to pre-terminate money market placements without the approval of accountholders, issue official receipts reflecting outstanding placements when in fact there was *nil* balance or the true amount is less than what was reflected in the document, open unauthorized savings account of depositors, and transfer money from clients' accounts to her brother's account, among others. The trial court also found that her position allowed her to access the bank's computer operation system, cash, and record vaults. Ultimately, the prosecution determined that the proceeds of her illegal activities amounted to ₱83,335,628.97.[53]

To my mind, these findings suggest weak internal controls of the bank. The fraud triangle consists of pressure, opportunity, and rationalization. The most important element in fraud prevention is opportunity.[54] Here, it appears that there is not enough segregation of duties in the bank that gave petitioner a clear opportunity to accomplish her illegal activities. As we said in *Philippine National Bank v. Pike*,[55] the degree of diligence required of banks is more than that of a good father of a family, considering that the business of banking is imbued with public interest due to the nature of their functions. The stability of banks largely depends on the confidence of the people in the honesty and efficiency of banks. Thus, banks should be reminded that the law imposes on them a high degree of obligation, always having in mind the fiduciary nature of banking.

Accordingly, I vote to deny the petition and affirm the Decision dated 11 December 2015 and Resolution dated 02 June 2016 of the CA in

---

[52] Philippine Star, *Philippines making gains in resolving anti-money laundering issues* <https://www.philstar.com/business/2022/08/04/2200060/philippines-making-gains-resolving-anti money-laundering- issues (visited 09 August 2022).

[53] *Ponencia*, pp. 2-6.

[54] LEONARD W. VONA, THE FRAUD AUDIT: RESPONDING TO THE RISK OF FRAUD IN CORE BUSINESS SYSTEMS (2011), pp. 8-11.

[55] 507 Phil. 322 (2005).

CA-G.R. CR No. 36600. Petitioner is guilty beyond reasonable doubt of violating Section 4(a) of RA 9160 or the AMLA, as amended by RA 9194, and was correctly sentenced to suffer an indeterminate penalty of imprisonment of seven (7) years as minimum to thirteen (13) years as maximum, to pay a fine of ₱34,099,195.85, to suffer all accessory penalties provided by law, and to pay the costs. Nonetheless, since petitioner has fully served the maximum penalty imposed, I concur with the order for her immediate release, unless she is confined for any other lawful cause.

RODIL V. ZALAMEDA
Associate Justice

CERTIFIED TRUE COPY

MARIA LUISA M. SANTILLA
Deputy Clerk of Court and
Executive Officer
OCC-En Banc, Supreme Court