

Republic of the Philippines
SUPREME COURT
Manila

EN BANC

JANET LIM NAPOLES,
Petitioner,

G.R. No. 218266

- versus -

**SANDIGANBAYAN (FIRST DIVISION),
HON. CONCHITA CARPIO MORALES,**
in her capacity as Ombudsman, and **PEOPLE
OF THE PHILIPPINES.**

Respondents.

X-----X

MOTION TO ADMIT ATTACHED REPLY

Petitioner, **JANET LIM NAPOLES,** through the undersigned counsel, unto this Honorable Court, most respectfully avers that:

1. On 23 September 2015, Petitioner, by counsel, received a copy of the Comment dated 10 September 2015 from the Respondent Office of the Ombudsman.
2. Upon going over the Comment of the Respondent, Petitioner, deems it necessary and appropriate to file a Reply to answer the allegations/arguments presented by the Respondent to make a clearer picture of the case of the Petitioner.
3. Thus, in the interest and in the administration of justice, Petitioner Napoles humbly submits the attached Reply to be considered by the Honorable Court in resolving the Petition.

PRAYER

WHEREFORE, premises considered, it is respectfully prayed of this Honorable Court to **ADMIT** the attached **REPLY.**

Other reliefs that are just and equitable under the premises are likewise prayed for.

Pasig City, for City of Manila, 08 October 2015.

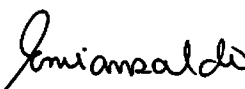
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OFFICE OF THE SPECIAL PROSECUTOR

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GREETINGS!

Please take notice that the undersigned counsel shall submit the Motion immediately upon receipt hereof, for the consideration and approval of the Honorable Court without need of further arguments.


EVITA MAGNOLIA I. ANSALDO

EXPLANATION

The foregoing Motion is being filed and served to this Honorable Court by personal service and to the other parties by registered mail due to time, distance and lack of manpower constraints.


EVITA MAGNOLIA I. ANSALDO

Republic of the Philippines
SUPREME COURT
Manila

EN BANC

JANET LIM NAPOLES,
Petitioner,

G.R. No. 21866

- versus -

**SANDIGANBAYAN (FIRST DIVISION),
HON. CONCHITA CARPIO MORALES,**
in her capacity as Ombudsman, and **PEOPLE
OF THE PHILIPPINES.**

Respondents.

X-----X

REPLY

(Re: Consolidated Comment dated 10 September 2015)

Petitioner, **JANET LIM NAPOLES**, by the undersigned counsel, to this Honorable Court, most respectfully states that:

1. Petitioner through the undersigned counsel, submits her Reply to the Comment dated 10 September 2015 copy of which was received on 23 September 2015, and hereby states that:

- **THE DOCTRINE OF INDEPENDENT RELEVANT STATEMENT IS NOT APPLICABLE IN THIS CASE.**
- **THE PROSECUTION WAS NOT ABLE TO ESTABLISH BEYOND REASONABLE DOUBT A PATTERN OF OVERT OR CRIMINAL ACTS INDICATIVE OR THE OVERALL UNLAWFUL SCHEME OF CONSPIRACY**

THE DOCTRINE OF INDEPENDENT RELEVANT STATEMENT IS NOT APPLICABLE IN THIS CASE.

2. The doctrine of Independently Relevant Statement is considered an exception to the Hearsay Rule. The ban on hearsay evidence does not cover independently relevant statements, i.e, those statements which are relevant independently of whether they are true or not.¹

3. The case of *Estrada vs. Desierto*², classifies independently relevant statements into two (2) classes:

- a) *Those statements which are the very facts in issue;*
and
- b) Those statements which are circumstantial evidence of the fact in issue.

The second class includes the following:

- a) Statements of a person showing his state of mind, that is, his mental condition, knowledge, belief, intention, ill-will and other emotions;
- b) Statements of a person which shows his physical condition, as illness and the like;
- c) Statements of a person from which an inference may be made as to the state of mind of another, that is knowledge, belief, motive, good or bad faith, etc. of the latter;
- d) Statements which may identify the date, place, and person in question; and
- e) Statements showing the lack of credibility of a witness.³

4. Now, to be able to determine whether the testimonies of the witnesses of the prosecution will fall under the Doctrine of Independently Relevant Statement, we should go back to the offer of testimony of the witnesses. It should be remembered that each of their testimonies was offered to prove the truth that there was indeed a conspiracy between the herein Petitioner and her co-accused public officers. Such offer was admitted by the Court for such purpose. **THE TESTIMONIES WERE OFFERED TO PROVE THE TRUTH THAT THERE WAS INDEED SUCH CONSPIRACY.**

5. Under such circumstance mentioned above, the Doctrine of Independently Relevant Statement is **NOT APPLICABLE** because the **credibility and truthfulness** of the statements of the testimonies made by the prosecution's witnesses is the anchor of their PDAF SCAM Conspiracy Theory. The obvious issue here is **THE TRUTH**. The witnesses' testimonies became one of the major bases in the Respondent Court's denial of the petition for bail. **The Doctrine of Independently Relevant**

¹ Willard B. Riano, Evidence (The Bar Lecture Series), 2009, p.360.

² 356 SCRA 108

³ Willard B. Riano, Evidence (The Bar Lecture Series), 2009, p.360-361

Statement is applicable only when the statement is not offered for the truth of their contents. On the contrary, the truth about the alleged conspiracy is the very core issue in this Plunder case.

6. To accept the prosecution's proposition that it is of little import that such witnesses did not actually see or hear accused Revilla and Petitioner directly confirm their agreement regarding the "PDAF SCAM" are not excludible considering that such statements constitute independently relevant statements supporting the prosecution's theory of conspiracy is INTOLERABLE.

7. *Section 36, Rule 130 of the Rules of Court*, limits the testimony of a witness only to matters of his personal knowledge, as follows:

"Sec. 36. Testimony generally confined to personal knowledge; hearsay excluded. A witness can testify only to those facts which he knows of his personal knowledge; that is which are derived from his own perception, except as otherwise provided in these rules."

8. This section is known as the hearsay evidence rule. Any evidence, whether oral or documentary, is hearsay if its probative value is not based on the personal knowledge of the witness but on the knowledge of some other person not on the witness stand.⁴

9. The transcripts of the testimonies of Benhur Luy and the other whistle blowers are replete with information not of their own personal knowledge but which were only mentioned or recited to them supposedly by Petitioner. Thus, clearly hearsay. They cannot be used to prove the alleged conspiracy between Senator Revilla and Petitioner.

THE PROSECUTION WAS NOT ABLE TO ESTABLISH BEYOND REASONABLE DOUBT A PATTERN OF OVERT OR CRIMINAL ACTS INDICATIVE OR THE OVERALL UNLAWFUL SCHEME OF CONSPIRACY

10. A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.⁵

11. Conspiracy to commit a crime must be established by positive evidence.⁶ Once an express or implied conspiracy is proved, all of the conspirators are liable as co-principals regardless of the extent and character of their respective active participation in the commission of the crime or

⁴ Florenz D. Regalado, Remedial Law Compendium, Volume II 9th Ed., p. 368.

⁵ Article 8 of the Revised Penal Code.

⁶ People vs. Ancheta, et al., 66 Phil. 638.

crimes perpetrated in furtherance of the conspiracy because in contemplation of law *the act of one is the act of all.*⁷

12. Conspiracy, like any other ingredient of the offense, must be proved as sufficient as the crime itself through clear and convincing evidence, not only by mere conjectures.⁸ **Proof beyond reasonable doubt is required to establish the presence of criminal conspiracy.**⁹

13. To prove conspiracy, the prosecution need not establish that all the parties thereto agreed on every detail in the execution of the crime or that they were actually together at all the stages of the conspiracy. It is enough that, from the individual acts of each accused, it may be deduced that they had a common plan to commit the felony.¹⁰ **However, the same degree of proof required for establishing the crime is required to support a finding of conspiracy, i.e., proof beyond reasonable doubt.**¹¹

14. The prosecution was only able to allege, to accuse, to insinuate, to guess, hypothesize and to presume that Senator Revilla, and Atty. Cambe conspired with the Petitioner, Ronald John Lim and Raymond De Asis.

15. The prosecution was not able to prove conspiracy. Specifically, the prosecution was not able to present evidence as to when and how the conspiracy was hatched. **None of the witnesses of the prosecution saw and or heard, how and when the supposed conspiracy happened.**

16. Instead, the prosecution through Benhur tried to presume, insinuate and speculate conspiracy between Senator Revilla and the Petitioner by information supposedly coming from the Petitioner. Clearly, this is hearsay. Repeatedly, Benhur stated that as per information from the Petitioner, he learned things pointing to the alleged conspiracy. He does not have a personal knowledge of the supposed conspiracy between Senator Revilla and the Petitioner.

17. Conspiracy can be proved by circumstantial evidence¹² but it **must be proved with much certainty as the crime itself.**¹³ **The circumstances qualifying or aggravating the act must be proved in evident and incontestable manner.** They must be proved as conclusively as the acts constituting the offense.¹⁴

18. Clearly from the above-mentioned cases, it should be established that the conspirators **conspired and confederated** in the

⁷ U.S. vs. Ramos, 2 Phil. 434; U.S. vs. Maza, 5 Phil. 346; U.S. vs. Grant and Kennedy, 18 Phil. 122; U.S. vs. Ipil, 27 Phil. 530 and the cases therein cited.

⁸ People v. Marquez, No. L-31403, 14 December 1981, 110 SCRA 91.

⁹ People v. Saavedra, No. L-48738, 18 May 1987, 149 SCRA 610.

¹⁰ People vs. Caitor, et al., G.R. No. 66615, July 26, 1985.

¹¹ People vs. Saavedra, L-4873, May 18, 1987.

¹² People vs. Candado et al., L-34089, August 1, 1978.

¹³ People vs. Dagangon, et al., G.R. Nos. 62654-58, Nov. 13, 1986.

¹⁴ People vs. Atienza, G.R. No. 68481, February 27, 1987.

commission of the crime proved and as such collective liability of the accused conspirators attaches by reason of the conspiracy. **In fine, the convergence of the wills of the conspirators in the scheming and execution of the crime must be proven.** It is in this light that conspiracy is generally viewed not as a separate indictable offense, but a rule for collectivizing criminal liability.

19. BARE ALLEGATIONS, UNSUBSTANTIATED BY EVIDENCE ARE NOT EQUIVALENT TO PROOF UNDER OUR RULES. In short, mere allegations are not evidence.¹⁵ Suffice it to state that bare allegations of fact should not be entertained as they are bereft of any probative value.¹⁶ Bare allegations which are not supported by any evidence, documentary or otherwise, sufficient to support a claim, fall short to satisfy the degree of proof needed.¹⁷

20. Accusation is not synonymous to guilt. In juxtaposition is the constitutional presumption of innocence of all accused persons. Conversely, it is therefore the duty of the prosecution to prove his guilt. Stated otherwise, the burden of proof therefore is incumbent upon the prosecution, thus, **being charged of the crime of plunder is one thing; proving that the act had been committed is another thing.** What bemuddled the issue all the more is the allegation that conspiracy existed in the commission thereof, which evidently was intended to indict a *private individual*. The Prosecution failed to substantiate a baseless claim that there was indeed a conspiracy in committing the crime of Plunder. **For conspiracy, like the crime itself, must be proved by pieces of evidence other than those utilized to justify the filing of a case for Plunder.**

21. To reiterate, the Respondent Court erred in ruling that the prosecution was able to present strong evidence against the Petitioner on the basis of the hearsay, speculative, and conjectural testimonies of its witnesses and their unreliable disbursement ledgers, reports and opinions.

P R A Y E R

WHEREFORE, Petitioner, **JANET LIM NAPOLES,** respectfully prays of this Honorable Supreme Court to give due course to this Petition, and after due consideration, render a Decision:

1. SETTING ASIDE, REVERSING and NULLIFYING the Resolution dated 01 December 2014 and the Resolution dated 26 March 2015, denying the Petitioner's Joint Petition for Bail for being issued with grave abuse of discretion;

¹⁵ Mayor v. Belen, G.R. No. 151035, June 3, 2004, 430 SCRA 561, 567.

¹⁶ BPI vs. Sarabia Manor Hotel Corp., G.R. No. 175844, July 29, 2013, citing (Real v. Belo, 542 Phil. 109, 122 [2007].)

¹⁷ Cuizon v. Court of Appeals, 329 Phil. 456, 483 (1996).

2. **GRANTING/ALLOWING** Petitioner **JANET LIM NAPOLES** to post bail for her provisional liberty in such amount to be fixed by the Court on the ground that the evidence of her guilt is not strong.

Other reliefs, just and equitable, are likewise prayed for.

Pasig City, for City of Manila, 08 October 2015.

**DAVID CUI-DAVID BUENAVENTURA
& ANG LAW OFFICES**

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EXPLANATION

The foregoing Reply is being filed and served to this Honorable Court by personal service and to the other parties by registered mail due to time, distance and manpower constraints.

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EVITA MAGNOLIA I. ANSALDO